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PIVOTING UNDER PRESSURE: CULTURAL PROFICIENCY, RACE, AND REFORMS

Anastasia M. Boles*

INTRODUCTION

There is a new conversation in legal education about a pernicious problem. As the COVID-19 pandemic raged in spring 2020, legal educators around the country had to pivot to remote teaching. At the same time, racial protests erupted in response to the brutal and successive killings of Ahmaud Arbery, Breonna Taylor, and George Floyd. As law schools grappled with the pressure of the latest racial reckoning, Black law faculty and students demanded cultural change within legal education in response to their devastation, desperation, battle fatigue, and frustration.¹ Unwilling to accept the performative diversity efforts of the past, there was a clear demand for immediate, comprehensive, and reconceptualized action: diversify legal education, increase scholarships for diverse students, hire more faculty of color, divest investments in private prisons, create administrative positions focused on inclusion initiatives, and reform the traditional curriculum to integrate the operation of race in the law.² Unfortunately, many law schools were ill-equipped to meet these demands, especially in a remote learning environment.

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¹ Dr. Angela Onwuachi-Willig, Dean of Boston University School of Law, poignantly wrote: “For the past week, I have woken up each morning with an indescribable pit in my stomach and a paralysis in my head and my body. I have had to force myself to fight against this paralysis each day just to get up and face the loads of work that must be completed. This pit in my stomach has been festering for decades, finding itself repeatedly punctuated and re-ignited by a cycle of direct state violence as well as state-condoned, through inaction, violence against black people.” Angela Onwuachi-Willig, *The Fire This Time*, BOSTON U. L. SCH. NEWS & STORIES (June 1, 2020), https://www.bu.edu/law/record/articles/2020/dean-angela-onwuachi-willig-commentary-the-fire-this-time/?utm_source=TWITTER&utm_medium=social&utm_campaign=Dean%27s%20Message [<https://perma.cc/AK9P-ZJKH>].

² See, e.g., *Harvard’s Black Law Student Association’s Letter to the Administration Regarding Black Lives*, HARVARD BLACK L. STDS. ASS’N (June 5, 2020), <https://orgs.law.harvard.edu/blsa/2020/06/05/harvards-black-law-student-associations-letter-to-the-administration-regarding-black-lives/> [<https://perma.cc/AXG7-9RQJ>]; Karen Sloan, *‘This Is the Civil Rights Movement of My Lifetime’: Black Law Students Demand Action*, LAW.COM (June 18, 2020), <https://www.law.com/2020/06/18/this-is-the-civil-rights-movement-of-my-lifetime-black-law-students-demand-action/> [<https://perma.cc/W9VT-G26S>] (describing an open letter signed by Black law student groups at 17 schools).

Legal education has yet to remediate its role in the lack of diversity in the legal profession. Black students were historically excluded from law school admission and still matriculate at lower rates than white students despite comparable qualifications.³ While the percentage of women in the profession has shown positive growth, efforts to increase the percentage of diverse lawyers have largely stagnated over the last ten years.⁴ There is little evidence of commitment to prepare law students to enter the legal profession with the cultural skills necessary to navigate the complex racial and ethnic issues that will continue to define law practice.⁵ After analyzing recent data showing that students of color are overrepresented in non-transfer attrition rates, the AccessLex Institute recommended that schools seek to make the law school more inclusive and supportive of diverse law students.⁶

Nor has legal education truly engaged its role in maintaining racial inequities in the legal system. Legal scholars have long criticized the traditional law school curriculum as deceitfully neutral and divorced from the social and historical reality that race, and racism, have permeated the legal system.⁷ For decades, a rich body of

³ A.B.A., LEGAL EDUC. AND PRO. DEV. — AN EDUC. CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 23 (1992) [hereinafter A.B.A. LEGAL EDUC.] (describing historical exclusion of Black students); Aaron N. Taylor, *The Marginalization of Black Aspiring Lawyers*, 13 FIU L. REV. 489, 496–97 (2019) (describing disparate admissions of Black students with comparable LSAT scores).

⁴ A.B.A., PROFILE OF THE LEGAL PROFESSION: 2020, 32–33 (July 2020), <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf> [<https://perma.cc/M35K-4B4E>] [hereinafter A.B.A. PROFILE] (noting that while 60% of Americans are white, 86% of lawyers are White, down from 89% in 2010). The percentage of women has increased from 31% in 2010 to 37% in 2020. *Id.* The percentage of Black lawyers remained the same at 5%, despite Blacks comprising 13.4% of the population. *Id.* The percentage of Native American lawyers declined from 0.7% to 0.4%, while Native American's comprise 1.3% of the U.S. population. *Id.* Modest gains were reported among Hispanic and Asian lawyers, although both remain underrepresented in the profession. *Id.* Hispanics are 18.5% of the population yet only 5% of lawyers in 2020 (up from 4%). *Id.* Asians are 5.9% of the population and 2% of lawyers, up from 1.6% in 2010). *Id.*

⁵ The A.B.A. House of Delegates recently approved changes to Standard 303 to require curriculum related to cultural competence. *See* A.B.A., 2022 MIDYEAR MEETING: RESOLUTION (Feb. 2022), <https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2022/300-midyear-2022.pdf> [<https://perma.cc/JUC8-ZP97>] [hereinafter A.B.A. RESOLUTION]; A.B.A., REVISIONS TO THE 2021–2022 ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2021-2022/21-22-standards-book-revisions-since-printed.pdf [<https://perma.cc/UWS4-Q9WE>] (last visited Apr. 21, 2022) [hereinafter A.B.A. REVISIONS].

⁶ Kylie Thomas & Tiffane Cochran, *ABA Data Reveals Minority Students Are Disproportionately Represented in Attrition Figures*, ACCESSLEX INST. (Sept. 18, 2018), <https://www.accesslex.org/xblog/aba-data-reveals-minority-students-are-disproportionately-represented-in-attrition-figures> [<https://perma.cc/G5S4-9EDQ>].

⁷ *See* Kimberlé Williams Crenshaw, *Foreword: Toward A Race-Conscious Pedagogy in Legal Education*, 4 S. CAL. REV. L. & WOMEN'S STUD. 33, 35 (1994) (noting that legal

scholarship has explored the need to integrate issues of cultural and racial justice into the law school classroom.⁸ During the racial protests of 2020, there was new urgency to dismantle the façade of the law school curriculum. Many law students struggled to absorb a stubbornly artificial version of the law that ignored the contemporaneous social reality of the racial protests. Professor Shaun Ossei-Owusu starkly described the law school experience during the racial reckoning as an “intellectually violent” one that was “unforgiving, can feel unrelenting[,] and often goes unnamed.”⁹

There is danger, however, that this new conversation about race will follow the familiar path of dilution and inaction. Almost two years after the racial protests of 2020, many legal educators are still unsure how to navigate inclusive curriculum reform. The *Utah Law Review*'s 2021 symposium entitled *#IncludeTheirStories: Rethinking, Reimagining, and Reshaping Legal Education* took up this critical conversation. Scholars participating in the symposium amplified the national conversation about how to expand traditional courses to recenter race, empower law teachers to incorporate inclusive teaching methods, and reform the traditional law school curriculum. These types of conversations, as well as the emerging innovative reforms to the legal curriculum, are emerging at schools around the country and are a reason for hope.

Despite the pressure of the current moment, legal education needs to complete a sustainable cultural pivot towards inclusive curricular reform. This Essay seeks to stabilize the frame of the curriculum reform discussion by examining some threshold considerations which are often missing to create sustainable cultural change. I leverage the paradigm of cultural proficiency to highlight some critical concerns that, if not addressed, will prevent progress in efforts to integrate racial justice.¹⁰

education purportedly reflects the beliefs of the dominant culture and has no apparent “cultural, political, or class characteristics”).

⁸ See, e.g., *id.*; Okianer Christian Dark, *Incorporating Issues of Race, Gender, Class, Sexual Orientation, and Disability into Law School Teaching*, 32 WILLAMETTE L. REV. 541, 573 (1996); Margalynne J. Armstrong & Stephanie M. Wildman, *Teaching Race/Teaching Whiteness: Transforming Colorblindness to Color Insight*, 86 N.C. L. REV. 635 (2008); SpearIt, *Priorities of Pedagogy: Classroom Justice in the Law School Setting*, 48 CAL. W. L. REV. 467 (2012); L. Danielle Tully, *The Cultural (Re)Turn: The Case for Teaching Culturally Responsive Lawyering*, 16 STAN. J. C.R. & C.L. 201, 201 (2020).

⁹ Shaun Ossei-Owusu, *For Minority Law Students, Learning the Law Can Be Intellectually Violent*, A.B.A.J. (Oct. 15, 2020, 11:23 AM), https://www.abajournal.com/voice/article/for_minority_law_students_learning_the_law_can_be_intellectually_violent [<https://perma.cc/78XP-8S3G>] (explaining that the intellectual violence of legal education “pales in comparison to the structural and physical violence that people experience outside the ivory tower . . .”).

¹⁰ In this Essay, I use the phrase “cultural proficiency” to reference the expansive works of educational scholars Dr. Kikanza Nuri-Robins, Dr. Randall B. Lindsey, Dr. Delores B. Lindsey, and Raymond D. Terrell. See, e.g., KIKANZA J. NURI-ROBINS, RANDALL B. LINDSEY, DELORES B. LINDSEY & RAYMOND D. TERRELL, *CULTURALLY PROFICIENT INSTRUCTION: A GUIDE FOR PEOPLE WHO TEACH* (3d ed. 2012) [hereinafter NURI-ROBINS

Cultural proficiency is a paradigm for legal education to engage in transformative activism within law schools and classrooms. The paradigm is prescriptive, having been utilized by a variety of organizations as a framework for cultural change and continual growth. It is not a stock approach to performative “diversity and inclusion” efforts. In fact, the very core of cultural proficiency seeks to push organizations and individuals past superficial, abstract, and improvised attempts at cultural change.

In prior scholarship, I have used cultural proficiency to propose reforms to legal education and empower law professors to become culturally proficient educators.¹¹ For this Essay, I focus on two accessible tools that can guide law schools in the exercise of integrating racial justice throughout the curriculum. First, in Part I, I review the “essential elements” of cultural proficiency, a set of culturally proficient standards to guide law schools in crafting reform efforts. In Part II, I illustrate how the cultural proficiency “continuum” can guide interactions in the law school community about racial justice and the law school curriculum.

I. THRESHOLD CONSIDERATIONS: USING THE ESSENTIAL ELEMENTS

Cultural proficiency is a powerful paradigm that can help law schools restructure the upper-level curriculum to include racial and social justice. As noted by educational scholars Drs. Kikanza Nuri-Robins, Randall B. Lindsey, Delores B. Lindsey, and Raymond D. Terrell:

Cultural Proficiency is an inside-out approach, which focuses first on the insiders of the school or organization, encouraging them to reflect on their own individual understandings and values. It thereby relieves those identified as outsiders . . . from the responsibility of doing all the adapting.¹²

ET AL., CULTURALLY PROFICIENT INSTRUCTION]; KIKANZA NURI-ROBINS & LEWIS BUNDY, FISH OUT OF WATER: MENTORING, MANAGING, AND SELF-MONITORING PEOPLE WHO DON'T FIT IN 33–50 (2016) [hereinafter NURI-ROBINS & BUNDY, FISH OUT OF WATER]; RANDALL B. LINDSEY, KIKANZA NURI-ROBINS, RAYMOND D. TERRELL & DELORES B. LINDSEY, CULTURAL PROFICIENCY: A MANUAL FOR SCHOOL LEADERS (4th ed. 2019).

¹¹ See Anastasia M. Boles, *Seeking Inclusion from the Inside Out: Towards a Paradigm of Culturally Proficient Legal Education*, 11 CHARLESTON L. REV. 209, 209 (2017) (discussing the implications of culturally proficient legal education); Anastasia M. Boles, *The Culturally Proficient Law Professor: Beginning the Journey*, 48 N.M. L. REV. 145, 148, 153–72 (2018) (discussing threshold strategies for legal educators); Anastasia M. Boles, *Valuing the “Race Card”: Teaching Employment Discrimination Using Culturally Proficient Instruction*, 44 T. MARSHALL L. REV. 25, 25 (2019) [hereinafter Boles, *Valuing the “Race Card”*] (discussing teaching an Employment Discrimination course using cultural proficiency).

¹² NURI-ROBINS ET AL., CULTURALLY PROFICIENT INSTRUCTION, *supra* note 10, at 8.

The basic definition of cultural proficiency contains two core components. First, the paradigm identifies an “inside out” approach to building inclusive educational environments. Cultural change starts with an internal assessment of the individual’s or organization’s culture and values. The assessment then animates external change. Second, a culturally proficient culture engages all members, redistributing the responsibility for cultural belonging. No one group (of law students, faculty, or staff) bears the physical or emotional load of cultural change.

The framework of cultural proficiency is not simple jargon for abstract diversity, equity, and inclusion (“DEI”) efforts that are often misguided, unsustainable, and inadequate. Rather, cultural proficiency is an institutional (or individual) action plan to move past superficial DEI efforts towards policies, procedures, and behaviors that actually impact a culture. Culturally proficient curricular reform and performative diversity are mutually exclusive. The cultural proficiency paradigm centers engagement and inclusion of cultural differences and displaces the normative assumption that any dominant culture should exclude other cultures. Instead of assimilating culturally deficient “others” into a static and oppressive law school culture, cultural proficiency requires a malleable conception of culture that reaches toward growth, inclusion, and redefinition. A culturally proficient law school is necessarily in a permanent state of continual cultural adjustment.

The cultural proficiency paradigm is comprised of a set of impactful tools that can help make a law school’s culture more inclusive.¹³ Four concepts make up the framework. First, the “barriers” to cultural proficiency help schools overcome resistance to cultural change.¹⁴ Second, the “guiding principles” are a set of value statements that outline an understanding of an inclusive culture.¹⁵ Third, the “essential elements” are a set of five culturally proficient behavioral standards.¹⁶ Finally, the “continuum” provides language to understand conversations and interactions surrounding cultural change.¹⁷ This Essay uses the last two tools—the “essential elements” and “continuum”—to chart a path towards inclusive reform.

A. Listen, Reflect, Collaborate, and Plan

The first tools of cultural proficiency, the essential elements, are a set of standards that can assess and guide behaviors, interactions, and law classroom environments.¹⁸ The first two essential elements emphasize the centrality of cultural differences in an inclusive environment. Legal educators should first *assess culture* by understanding the different cultures that shape the learning environment,

¹³ See LINDSEY ET AL., *supra* note 10, at 77–79.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See *id.* at 144.

including the school's own culture.¹⁹ Next, educators should *value diversity* by engaging and leveraging cultural differences, not seeking to minimize or ignore them.²⁰ The first two essential elements require the culturally proficient educator to first understand the role of culture and then leverage culture to adapt the learning environment.

There was a rush to action in the midst of the pandemic that often occurred without first assessing the school's culture and engaging the collaboration and planning that creates sustainable cultural responses. Granted, much of the urgency was due to the pressing need to pivot to remote teaching in the midst of the COVID-19 pandemic. Law professors, most of whom are not trained in online instruction, were forced to create a remote learning environment. While some of our students attended Zoom classes in quiet home offices, other students attending class were struggling with poor internet, crowded family spaces, caregiving needs, and even homelessness. The racialized and class-based reality that occurred outside the law school classrooms was put on display. The pandemic complicated our ways of communicating and teaching, and many professors felt ill-prepared to facilitate meaningful discussions over Zoom. In other words, there was a tendency to act before assessing the culture of the law school or valuing the diversity and experiences of the school's community.

In addition to the pedagogical pressures, many law schools experienced a shortage of educators empowered to discuss racial issues in the classroom, or help students situate the contemporaneous racial tension within the historical racial and social context. At its core, cultural proficiency seeks to redistribute the work of inclusion to all members of the law school community. Legal education has historically relied on diverse community members to carry the burden of diversity and inclusion initiatives.²¹ Absent culturally proficient faculty and staff, law students

¹⁹ See NURI-ROBINS ET AL., CULTURALLY PROFICIENT INSTRUCTION, *supra* note 10, at 106–07; see also Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 FLA. COASTAL L.J. 219, 230 (2002) (“[Law professors should engage in] a deliberate exploration of the deeply rooted cultural assumptions that claim us. This, in turn, requires an exploration of our own biases and stereotypes about individuals and groups different from ourselves.”).

²⁰ See NURI-ROBINS ET AL., CULTURALLY PROFICIENT INSTRUCTION, *supra* note 10, at 119 (“As an instructor who values diversity, you foster a learning community, recognizing that diversity is always present in your classroom, even when such diversity is not strongly evident In valuing diversity, you see opportunities to learn from your students and your colleagues.”).

²¹ See Taled El-Sabawi & Madison Fields, *The Discounted Labor of BIPOC Students & Faculty*, 12 CAL. L. REV. ONLINE 17, 19–20 (2021) (discussing the disproportionate burden during the pandemic on students and faculty of color to engage in race work); Richard Delgado & Derrick Bell, *Minority Law Professors' Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L. REV. 349, 367–68 (1989) (presenting the results of a survey of job satisfaction among law professors of color).

are sometimes asked to identify problematic racial issues as well as craft solutions.²² Faculty of color and clinicians are frequently overburdened with tackling difficult racial conversations in the classroom. Too often, discussion of racial issues is relegated to seminar courses. The overreliance on a small group of faculty members willing to engage race worsened during the pandemic. Indeed, Dr. Meera Deo has observed, “diversity has been a casualty of the pandemic.”²³

Intentional, inclusive, and evenly allocated collaboration is a prominent theme among the leading voices calling for more inclusive reforms. For example, five law school deans, all Black women, established the Law Deans Antiracist Clearinghouse Project.²⁴ In addition to offering a wealth of resources on antiracism, the Clearinghouse Project outlines five phases for approaching sustainable reform to legal education: listening, learning, leading, audit reporting, and iteration.²⁵ The five phases of the Clearinghouse Project align with the values and goals of cultural proficiency.²⁶ Notably, the project encourages law school administration to conduct in-depth “audits” of the school’s programs to understand, *inter alia*, the 1) demographics of the school’s student body; 2) whether the school has a recent climate survey; 3) mental health resources; 4) whether the faculty are empowered to teach antiracist pedagogy; and 5) the ways the school can mitigate racial bias and improve student support.

A notable example of intentional and well-allocated collaboration was at Penn State Dickinson Law.²⁷ On June 2, 2020, Penn State was the first law school to adopt a faculty antiracist resolution “condemning brutality and inequity against Black

²² See DOROTHY H. EVENSEN & CARLA D. PRATT, *THE END OF THE PIPELINE: A JOURNEY OF RECOGNITION FOR AFRICAN AMERICANS ENTERING THE LEGAL PROFESSION* 55 (2012).

²³ Meera E. Deo, *Unequal Profession, Unleashed*, 73 RUTGERS U.L. REV. 857, 867 (2021).

²⁴ L. DEANS ANTIRACIST CLEARINGHOUSE PROJECT, <https://www.aals.org/about/publications/antiracist-clearinghouse/> [<https://perma.cc/2N8A-Y6DN>] (last visited Jan. 31, 2022). The founders of the project were Danielle M. Conway (Penn State Dickinson Law), Danielle Holley-Walker (Howard University School of Law), Kim Mutcherson (Rutgers Law School), Angela Onwuachi-Willig (Boston University School of Law), and Carla D. Pratt (Washburn University School of Law). *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ There are an important group of forthcoming articles describing Penn State Dickinson’s efforts to integrate race into its curriculum. See Danielle M. Conway, Bekah Saidman-Krauss & Rebecca Schreiber, *Building an Antiracist Law School: Inclusivity in Admissions and Retention of Diverse Students—Leadership Determines DEI Success*, RUTGERS RACE & L. REV. (forthcoming) (on file with the Rutgers Law Journal); Amy Gaudion, *Exploring Race and Racism in the Law School Curriculum: An Administrator’s View on Adopting an Antiracist Curriculum*, RUTGERS RACE & L. REV. (forthcoming 2022) (on file with the Rutgers Law Journal); Dermot Groome, *Educating Antiracist Lawyers: The Race and Equal Protection of the Laws Program at Dickinson Law*, RUTGERS RACE & L. REV. (forthcoming 2022) (on file with the Rutgers Law Journal).

people.”²⁸ Over the summer of 2020, administrators and faculty members at Penn State created three ad hoc committees, held six teaching workshops, created a new course, and engaged in extensive, and intense, collaboration.²⁹ Associate Dean for Academic Affairs Amy Gaudion emphasized:

After the powerful and moving words have been written, and the symmetry and grace of the curricular vision has been elegantly framed, it is time to embrace the burdens and tediousness of faculty governance processes and ad hoc committees, draft proposals and wordsmithing arguments, and administrative bureaucracy. In short, it is time to attend a lot—and I mean a lot—of meetings.³⁰

Gaudion describes the deep commitment necessary from a broad range of members of the law school community:

It is difficult to quantify the amount of time invested in proposal drafting efforts, workshop preparation, workshop attendance, meeting planning, meeting attendance, post-meeting analysis, difficult group conversations, awkward one-on-one conversations, and lengthy email exchanges. The time commitment, however, is a necessary part of the task of building an Antiracist curriculum. Do not ignore the time commitment. Do not deny it. Acknowledge and embrace the investment of time and energy that is required, and recognize the personal and institutional growth and sense of shared purpose that comes from the intensity of the bureaucratic effort.³¹

Gaudion’s advice concluded with a set of specific recommendations that center on diverse and distributed collaboration: include staff and students in discussions, use a committee structure, build accountability, and reassess and “recalibrate” when needed.³² Penn State’s extensive efforts are an excellent model for how to assess culture and value diversity in ways that animate cultural shifts in the law school environment.

B. Support Community Members Through Cultural Conflict

The third essential element requires legal educators to *manage the dynamics of difference*. Cultural differences, including racial differences, will always bring some

²⁸ L. DEANS ANTIRACIST CLEARINGHOUSE PROJECT, *supra* note 24 (noting that the Penn State Dickinson Law faculty resolution has been adopted by the Washington and Lee University School of Law and the Washburn University School of Law and has sparked faculty resolutions at twenty-two law schools, including the University of Arkansas at Little Rock, this author’s home institution).

²⁹ Gaudion, *supra* note 27.

³⁰ *Id.* (manuscript at 20–21).

³¹ *Id.* (manuscript at 21).

³² *Id.* (manuscript at 28–37).

level of cultural conflict. Culture is complicated by cultural values such as different religious backgrounds, learning styles, parental statuses, geographic affiliations, levels of digital competence, communication styles, and income levels. Cultural differences in law school stem from a variety of sources, such as learning styles, course content, pedagogical choices, and parenting status. Culture affects how conflict is both engaged with and perceived. In order to manage the dynamics of difference, law schools must embrace cultural difference and the corollary cultural conflict inherent in a diverse environment. “It is the mismanagement of conflict, not the conflict itself, that causes most problems.”³³

Previously, I have emphasized the need for faculty training, preparation, and empowerment to help manage cultural conflict, especially when law professors are fearful of mishandling racial justice discussions.³⁴ The literature is replete with inclusive teaching strategies, and there is a growing body of teaching resources. Law schools should provide structured opportunities for faculty and staff to develop fluency in racial justice. For example, the University of Memphis Law School created a Cultural Competence Teaching Fellowship, which allowed interested faculty to participate in a series of workshops and develop strategies to incorporate culturally competent learning objectives.³⁵

The Law Deans Antiracist Clearinghouse Project hosts a collection of resources to help legal educators address systemic racism, including books, legal scholarship, empirical research, music, art, and links to other resources.³⁶ In the wake of the racial protests, several law librarians assembled library guides and repositories filled with racial justice resources.³⁷ Professors can approach complex discussions of race with intention by structuring class discussions to meaningfully engage cultural

³³ NURI-ROBINS ET AL., CULTURALLY PROFICIENT INSTRUCTION, *supra* note 10, at 133; *see also* Rachel F. Moran, *Diversity and Its Discontents: The End of Affirmative Action at Boalt Hall*, 88 CAL. L. REV. 2241, 2335 (2000) (describing “clumsy” classroom discussions involving race and gender).

³⁴ *See, e.g.*, Boles, *Valuing the “Race Card,” supra* note 11, at 49 (“With preparation, law professors can engage cultural difference with sensitivity, confidence, and empathy.”).

³⁵ The fellowship was created under the leadership of Demetria Frank, Associate Dean for Diversity & Inclusion. Materials related to the fellowship are on file with the author.

³⁶ L. DEANS ANTIRACIST CLEARINGHOUSE PROJECT, *supra* note 24.

³⁷ *See, e.g.*, *Racial Justice Repository*, WASHBURN UNIV. SCH. OF L., <https://www.washburnlaw.edu/racialjustice/> [<https://perma.cc/K2NF-W3LN>] (last visited Jan. 31, 2022); *Racial Justice in the U.S.: Anti-Racism Work*, DRAKE L., <https://libguides.law.drake.edu/c.php?g=1046847&p=7596476> [<https://perma.cc/T9KN-7JGG>] (last updated Nov 11, 2021, 8:27 AM); *Pence Law Library Guides: Racial Justice & Diversity Resources*, WASH. COLL. OF L., <https://wcl.american.libguides.com/justice> [<https://perma.cc/J9KW-H52G>] (last updated Aug. 19, 2021, 6:21 PM); *Racial Justice Resources*, GA. ST. UNIV. COLL. OF L. LIBR., <https://libguides.law.gsu.edu/c.php?g=1085749&p=7952430> [<https://perma.cc/H43J-3S4P>] (last updated Feb. 11, 2022, 1:12 PM).

difference.³⁸ Professors are often fearful of making mistakes, and preparation empowers law professors to engage cultural difference instead of avoid it.³⁹

As cultural conflict increases, law schools must anticipate the additional cognitive work and emotional labor associated with cultural conflict. Specifically, as law schools solidify a commitment to make the curriculum more inclusive, institutions must pay deeper attention to the health and wellbeing of law schools' community members. Professor Janet Thompson Jackson has urged law schools to develop a race-conscious action plan for wellness that is "reinforced throughout law school and integrated into the curriculum."⁴⁰

The broader need for law schools to prioritize mental health and wellness is not new. Prior research has found that law students experience mental health decline and increased substance abuse throughout law school.⁴¹ A recent study at fifteen law schools found troubling evidence of problematic drinking, illegal drug use, abuse of prescription drugs, anxiety, and depression among law students.⁴² Many law students lack access to mental health services or are reluctant to seek help from a mental health professional.⁴³ While there have been some gains, legal education needs to discard the deficiency mindset that views students struggling with mental health as lacking character, intellectual ability, resilience, or "grit."⁴⁴

³⁸ The Liberating Structures website is an excellent resource and offers 33 easy-to-understand "microstructures" to structure group conversation in inclusive ways. *Liberating Structures Menu*, LIBERATING STRUCTURES, <https://www.liberatingstructures.com/ls-menu/> [<https://perma.cc/LTS3-T5TS>] (last visited Jan. 31, 2022).

³⁹ See Erin C. Lain, *Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment*, 67 J. LEGAL EDUC. 780, 784–86 (2018). Engaging issues of cultural difference and race in the classroom can feel like a "minefield." *Id.* at 781; Dark, *supra* note 8 ("Diversity issues should not be raised as an afterthought in a classroom discussion.").

⁴⁰ Janet Thompson Jackson, *Legal Education Needs a Wellness Reckoning*, BLOOMBERG L. (Apr. 7, 2021, 2:01 AM), <https://news.bloomberglaw.com/us-law-week/legal-education-needs-a-wellness-reckoning> [<https://perma.cc/L88R-XZ8Y>] ("Law schools must also take steps to proactively address race-based stress and trauma experienced by students of color.").

⁴¹ Jerome M. Organ, David B. Jaffe & Katherine M. Bender, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116, 118–22 (2016) (surveying literature on mental health and substance abuse of law students).

⁴² *Id.* at 145.

⁴³ *Id.*

⁴⁴ See *id.* at 141, 151–56 (calling law schools to action to address and change beliefs on law student wellness); Christian B. Sundquist, *Beyond the 'Resiliency' and 'Grit' Narrative in Legal Education: Race, Class, and Gender Considerations*, 50 J. MARSHALL L. REV. 271, 276–77 (2017).

Unfortunately, law students, staff, and faculty from marginalized groups are especially vulnerable to mental wellness concerns.⁴⁵ Law faculty of color are at increased risk for mental health concerns due to the unequal emotional labor and workload. In Dr. Meera Deo's study of women of color in the legal academy, respondents described stress, depression, increased illness, and post-traumatic stress disorder.⁴⁶ Diverse students may experience heightened stress due to the frequent experience of racial microaggressions.⁴⁷ Professor Erin Lain notes that students may respond to mishandled class discussions with anxiety, anger, emotional upset, withdrawal, and even thoughts of suicide.⁴⁸ Not surprisingly, the dual experience of COVID-19 and the 2020 racial reckoning is creating new mental wellness challenges for students of color.⁴⁹ For example, Professor Sarah Schendel surveyed recent graduates who took the summer 2020 bar exam.⁵⁰ Some of the participants of color reported mental health challenges severe enough to completely derail their bar preparation.⁵¹

Wellness support should be tailored to the culture of the law school community and must be attentive to the needs of diverse students. For example, diverse students may need help naming and understanding mental health issues related to cultural conflict. Law schools have an opportunity to expand wellness offerings, increase mental health services, and empower conversations about cultural conflict in healthy ways.

⁴⁵ Morrison Torrey, *Yet Another Gender Study? A Critique of the Harvard Study and a Proposal for Change*, 13 WILLIAM & MARY J. WOMEN & L. 795, 810–14 (2007) (describing negative effects from race, gender, and sexual diversity bias); MEERA DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* 48–50 (2019) (describing mental health challenges for female faculty of color); Jackson, *supra* note 40 (“Law schools must also take steps to proactively address race-based stress and trauma experienced by students of color.”).

⁴⁶ DEO, *supra* note 45, at 47–50.

⁴⁷ Brian Owsley, *Black Ivy: An African-American Perspective on Law School*, 28 COLUM. HUM. RTS. L. REV. 501, 523 (1997) (describing an amount of stress that almost led the author to quit law school).

⁴⁸ Lain, *supra* note 39, at 784 (citing Derald Wing Sue, Gina C. Torino, Christina M. Capodilupo, David P. Rivera & Annie I. Lin, *How White Faculty Perceive and React to Difficult Dialogues on Race*, 37 COUNSELING PSYC. 1090, 1098–101 (2009)); see Erin Lain, *Experiences of Academically Dismissed Black and Latino Law Students: Stereotype Threat, Fight or Flight Coping Mechanisms, Isolation and Feelings of Systemic Betrayal*, 45 J.L. & EDUC. 279, 299 (2016) (noting that academically dismissed students of color reported feelings of “suicidal ideation, anxiety, weight gain, feeling down, lack of energy, and depression”).

⁴⁹ Jackson, *supra* note 40 (describing mental health challenges for law students navigating remote learning during the pandemic, racial violence, and law school stress).

⁵⁰ Sarah J. Schendel, *Listen!: Amplifying the Experiences of Black Law School Graduates in 2020*, 100 NEB. L. REV. 73, 78–79 (2021).

⁵¹ *Id.* at 84 n.51 (“I was exhausted. It’s exhausting to think back on. As a Black woman I had to fight to stay alive from a virus and police brutality. It affected me emotionally and I did not have the bandwidth to continue to study for the exam.”).

C. Adapt and Institutionalize

The final two essential elements—the adaptation and institutionalization of cultural knowledge—stabilize the cultural shift to a racially inclusive curriculum. Adapting to diversity means implementing permanent changes to values, behaviors, policies, and procedures—a process that requires continuous change. Educator Randall Lindsey and his co-authors observe that cultural change is “difficult” and “may be seen as loss” by some community members.⁵² The final essential element guides educators to institutionalize cultural knowledge: “[a]s school members develop facility in responding to the issues that are found in diverse environments, culturally competent behaviors and practices are no longer seen as external or supplemental to the ‘real’ work of the school. The processes for teaching, learning, and growing are institutionalized.”⁵³ Simply put, to institutionalize cultural knowledge is to “[p]repare for a future without your presence.”⁵⁴

Since 2020, some law schools have implemented exciting curricular changes. Penn State Dickinson, for example, added a required eight-session first-year course entitled *Race and the Equal Protection of the Laws*.⁵⁵ There is promise that the American Bar Association will incentivize law schools to add courses related to racial justice. The ABA House of Delegates recently voted to amend Standard 303 to require the integration of bias, racial justice, and cultural competence.⁵⁶ Revised Standard 303, requires law schools to integrate racial justice during the first year and “at least once before graduation.”⁵⁷

Legal education, however, should think broader than reforming the traditional curriculum. One way is to offer students co-curricular opportunities to learn about social justice. In the wake of the racial reckoning, several law schools established research centers focused on racial justice.⁵⁸ Law school-based centers and institutes serve an important function in supporting racial justice research, scholarship, and

⁵² LINDSEY ET AL., *supra* note 10, at 148

⁵³ *Id.* at 148–49.

⁵⁴ NURI-ROBINS & BUNDY, FISH OUT OF WATER, *supra* note 10, at 49.

⁵⁵ Groome, *supra* note 27 (manuscript at 5–6).

⁵⁶ A.B.A. RESOLUTION, *supra* note 5; A.B.A. REVISIONS *supra* note 5.

⁵⁷ A.B.A. RESOLUTION, *supra* note 5; A.B.A. REVISIONS *supra* note 5.

⁵⁸ *See, e.g., Addressing Racial Justice Through Research and Advocacy*, ALBANY L. SCH. (Jan. 31, 2022), <https://www.albanylaw.edu/about/addressing-racial-justice-through-research-and-advocacy> [<https://perma.cc/9PZZ-R9WG>]; *Center for Law, Equity and Race at the Northeastern University School of Law*, NE. UNIV. SCH. L., <https://law.northeastern.edu/academics/centers/clear/> [<https://perma.cc/7GHN-RB5R>] (last visited Feb. 9, 2022); *Benjamin L. Crump Center for Social Justice*, ST. THOMAS UNIV. COLL. L., <https://www.stu.edu/crump-center/> [<https://perma.cc/XQC8-TKGC>] (last visited Feb. 9, 2022). Hopefully, these new centers can help advance the important work of existing centers, such as the Center for the Study of Race and Race Relations at the University of Florida (<https://www.law.ufl.edu/areas-of-study/centers/csrrr>), the Thurgood Marshall Civil Rights Center at Howard University School of Law (<https://thurgoodmarshallcenter.howard.edu/>), the Fred T. Korematsu Center for Law and Equality at Seattle University School of Law (<https://law.seattleu.edu/centers-and-institutes/korematsu-center/>), and many others.

programming.⁵⁹ These centers are exploring innovative ways to integrate racial and social justice into legal education. For example, the new Benjamin L. Crump Center for Social Justice at the St. Thomas University College of Law established an incubator program to support students interested in practicing civil rights law.⁶⁰ Centers and institutes based at law schools are uniquely positioned to collaborate with community stakeholders and engage law students in social justice work in a deep and sustainable way.

In summer 2021, my colleague andré douglas pond cummings and I co-founded the Center for Racial Justice and Criminal Justice Reform at the University of Arkansas Little Rock, William H. Bowen School of Law (the “Bowen Center”).⁶¹ In founding the Bowen Center, we have been guided by the cultural proficiency paradigm.⁶² The essential elements have helped us value diversity by connecting students and their powerful life experiences, as early in their law school career as possible, to opportunities to work on projects directly related to social justice.

As a state with a dearth of legal resources⁶³ and only two law schools,⁶⁴ we wanted to create an institution to engage students interested in racial justice and public service.⁶⁵ Part of our mission is to empower students to bring their identities into a justice-informed law practice. Our current programs focus on community engagement, criminal justice reform, environmental justice, law school diversity,

⁵⁹ See, e.g., *Center for Race, Inequality, and the Law*, N.Y.U., <https://www.law.nyu.edu/centers/race-inequality-law> [<https://perma.cc/77CT-Y97N>] (last visited Feb. 9, 2022) (currently co-directed by Deborah N. Archer and Vincent M. Southerland).

⁶⁰ Aaron Morrison, *Florida Law School Creates Ben Crump Social Justice Center*, U.S. NEWS (Dec. 2, 2021, 8:59 PM), <https://www.usnews.com/news/us/articles/2021-12-02/florida-law-school-creates-ben-crump-social-justice-center#:~:text=By%20Associated%20Press-,Dec.,2021%2C%20at%208%3A59%20p.m.&text=A%20South%20Florida%20law%20school%20on%20Thursday%20announced%20the%20creation,police%20brutality%20and%20vigilante%20violence> [<https://perma.cc/KK3Z-4UTQ>]; *St. Thomas University College of Law, Ben Crump announce Center for Social Justice*, ST. THOMAS UNIV., <https://www.stu.edu/blog/press-release/st-thomas-university-college-of-law-ben-crump-announce-center-for-social-justice/> [<https://perma.cc/7XQS-ZJQB>] (last visited Apr. 21, 2022). The Crump Center was established under the leadership of Dean Tamara Lawson Morrison, *supra*.

⁶¹ Tina Medlock, *Law School Creates Center for Racial Justice and Criminal Justice Reform*, UA LITTLE ROCK NEWS (Sept. 1, 2021), <https://ualr.edu/news/2021/09/01/bowen-center-for-racial-justice-and-criminal-justice-reform/> [<https://perma.cc/44EV-LMS7>].

⁶² Dr. Kikanza Nuri graciously agreed to serve as our consultant as we moved the Bowen Center from intention to reality.

⁶³ A.B.A. PROFILE, *supra* note 4, at 3 (listing Arkansas as among the least resourced state based on lawyers per capita).

⁶⁴ The two Arkansas-based law schools are the University of Arkansas at Little Rock and the University of Arkansas School of Law (in Fayetteville, Arkansas). *Arkansas Law Schools*, FINDLAW (May 31, 2017), <https://lawstudents.findlaw.com/choosing-a-law-school/arkansas-law-schools.html> [<https://perma.cc/UA2K-3B6E>].

⁶⁵ Bowen has a phenomenal group of legal educators focused on clinical and experiential education. The Bowen Center is meant to provide student opportunities in addition to the traditional course structure.

leadership development, police reform, procedural justice, and veteran's rights. We were able to hire a two-year visiting assistant fellow to focus on racial justice research, and will soon convene a community advisory board. Eventually, we plan to scaffold the Bowen Center's programs with curricular enhancements such as new courses and certificate programs. Almost fifty law students, pre-law students, and recent alumni have worked with us in the first six months of the Bowen Center's founding. These are all students gaining exposure and experience outside of the traditional conception of the legal education curriculum.

We believed a law school court observation program could achieve the dual goals of serving our home state while engaging our students in concrete social justice work.⁶⁶ As Professor Jessica Steinberg explains:

Although the term “court watch” is colloquial, it refers to a serious form of research taking place in a naturally occurring environment: the courtroom Court watch projects can advance our understanding of important issues such as judicial behavior, litigant capacity, the role of procedure in decision making, the role of counsel, and the divide between the law on the books and the law in action.⁶⁷

In addition to creating a valuable data set, Steinberg argues that court watch programs anchored in law schools can serve a host of pedagogical goals, such as empowering students' professional identity development, exposing students to the social context of the black letter law, and empowering students to both “critique and design” the future of the justice system.⁶⁸ Several educators, both in law and other disciplines, are exploring the use of court observation as a pedagogical tool.⁶⁹

We believed a court observation project would combine our goals of providing our students with opportunities to learn about racial justice while serving the Arkansas community. In summer 2021, the Bowen Center received a \$1 million grant to fund Court Observation Arkansas (“COAR”), a multi-year court observation

⁶⁶ Law students have been involved in several important court observation programs around the country. For example, law student volunteers support the work of CourtWatch NOLA, a nonprofit organization that has collected objective court observation data in New Orleans since 2007. *So You Want to CourtWatch?* CMTY. JUST. EXCH. 7, https://static1.squarespace.com/static/60db97fe88031352b829d032/t/60dcd90f28a0bc210572cd52/1625086227389/CJE_Courtwatching_FINAL.pdf [https://perma.cc/56UW-VJ9L] (last visited Feb. 2, 2022).

⁶⁷ Jessica K. Steinberg, *Law School Clinics and the Untapped Potential of the Court Watch*, 6 IND. J.L. & SOC. EQUAL. 176, 177 (2018).

⁶⁸ *Id.* at 178.

⁶⁹ See, e.g., Myra Berman, *Portals to Practice: A Multidimensional Approach to Integrating Experiential Education into the Traditional Law School Curriculum*, 1 J. EXPERIENTIAL LEARNING 157, 165–67 (2015) (discussing court observation programs at the Touro College Jacob D. Fuchsberg Law Center); Elizabeth Callaghan, *What They Learn in Court: Student Observations of Legal Proceedings*, 33 TEACHING SOCIO. 213 passim (2005) (describing a court ethnography assignment for sociology students).

project in Arkansas state courts.⁷⁰ COAR students will serve as neutral court observers of criminal proceedings. They will not interact with judges, attorneys, court staff, the parties, or the public beyond what is necessary. The COAR grant has allowed us to hire a full-time program manager and will employ students as researchers and court observers as they collect data about court proceedings and learn about the criminal justice system in Arkansas state courts. Students will also be involved in analyzing the data, crafting policy recommendations, and engaging community stakeholders in solutions. Most importantly, our COAR students will further develop their professional identities with an experience not available in the traditional law school curriculum.

II. USING THE CULTURAL PROFICIENCY CONTINUUM TO GUIDE POLICY CHANGES

The cultural proficiency continuum is an analytical tool used to examine interactions, behaviors, and policies.⁷¹ The utility of the continuum is the provision of common language to guide reform discussions. There are six points along the continuum: (a) cultural destructiveness, (b) cultural incapacity or cultural intolerance, (c) cultural blindness, (d) cultural pre-competence, (d) cultural competence, and (e) cultural proficiency.⁷² Progression along the continuum is not linear. In fact, the very nature of cultural proficiency requires constant change and reevaluation.

The first point, *cultural destructiveness*, includes “any policy, practice, or behavior that effectively eliminates all vestiges of another peoples’ cultures.”⁷³ Culturally destructive legal education admission policies have caused and perpetuated the historical and modern exclusion of Black students from law school admission.⁷⁴ Recent scholarship suggests that Black students are denied law school admission at higher rates, even with comparable qualifications.⁷⁵ Law school classes

⁷⁰ Tina Medlock, *Bowen Law School Receives \$1 Million from Walmart to Fund Court Observation Project*, UA LITTLE ROCK NEWS (Sept. 21, 2021), <https://ualr.edu/news/2021/09/17/walmart-bowen-justice-initiative/> [<https://perma.cc/NPL4-XYNA>].

⁷¹ See NURI-ROBINS ET AL., CULTURALLY PROFICIENT INSTRUCTION, *supra* note 10, at 79.

⁷² *See id.* at 78–79.

⁷³ *Id.* at 79.

⁷⁴ Statistics on diversity in the legal profession are found in the annual reports of the American Bar Association. *See, e.g.*, A.B.A. LEGAL EDUC., *supra* note 3 (describing historical underrepresentation of Black students); A.B.A. PROFILE, *supra* note 4, at 33 (noting that, despite efforts to increase racial diversity in the legal profession, the number of lawyers of color remains low with less than 3% growth for all lawyers of color, and no increase in the total percentage of Black lawyers).

⁷⁵ Taylor, *supra* note 3; A.B.A. PROFILE, *supra* note 4, at 33 (noting less than 3% growth for all lawyers of color, and no increase in the total percentage of Black lawyers).

and curriculum that construct a normative view of the law as racially neutral are plainly culturally destructive.⁷⁶

The continuum's second point, *cultural incapacity*, is "[e]ducating in a way that trivializes other cultures and seeks to make the cultures of others appear to be wrong."⁷⁷ Culturally incapacitated educational practices embody the belief that one culture is superior to another and include negative stereotyping and tokenism.⁷⁸

The danger of the continuum's third point, *cultural blindness*, confuses many legal educators. Cultural blindness is "any policy, practice, or behavior that ignores existing cultural differences or that considers such differences inconsequential."⁷⁹ The law school curriculum is culturally blind to the extent that the law is painted as neutral and devoid of racial context. From a culturally blind perspective, law school is simply a meritocracy with culturally different students "discounted or invisible" or viewed as "deficient."⁸⁰

At the point of *cultural pre-competence*, educators start to develop an awareness of cultural difference but may respond inadequately or inconsistently.⁸¹ For example, responses are typically nonsystemic and haphazard, often requiring little or no change in regular school or classroom operations to meet the cultural needs of students. "Examples include quick fixes and short-term programs, delegation of diversity work to those who have been historically underserved or disenfranchised, and acknowledging culture superficially through events such as Black History Month, Women's History Month, Cinco de Mayo, etc."⁸² Dr. Nuri-Robins and her colleagues have traditionally defined cultural pre-competence as the first point of proactivity on the continuum.

While good intentions may animate culturally pre-competent actions, these responses are often unsustainable or inadequate. In their book, *Fish Out of Water*, Drs. Nuri-Robins and Bundy warn that culturally pre-competent responses may be "superficial, shallow, ineffective, or inadequate," especially when "a commitment is made to become diverse and inclusive" without cultural understanding and collaboration.⁸³

Indeed, too many law schools have been stagnated in cultural pre-competence for too long. In the current era, superficial and inconsistent responses to racial justice in legal education can be just as harmful as culturally destructive responses.

⁷⁶ See generally NURI-ROBINS ET AL., CULTURALLY PROFICIENT INSTRUCTION, *supra* note 10, at 80 (describing the culturally destructive practice of omitting historical racism from modern textbooks).

⁷⁷ LINDSEY ET AL., *supra* note 10, at 130.

⁷⁸ See NURI-ROBINS ET AL., CULTURALLY PROFICIENT INSTRUCTION, *supra* note 10, at 83.

⁷⁹ *Id.* at 87.

⁸⁰ LINDSEY ET AL., *supra* note 10, at 136.

⁸¹ See *id.* at 137.

⁸² FRANKLIN CAMPBELLJONES, BRENDA CAMPBELLJONES, & RANDALL B. LINDSEY, THE CULTURAL PROFICIENCY JOURNEY: MOVING BEYOND ETHICAL BARRIERS TOWARD PROFOUND SCHOOL CHANGE 23 (2010).

⁸³ NURI-ROBINS & BUNDY, FISH OUT OF WATER, *supra* note 10, at 44–45.

Culturally pre-competent efforts are especially detrimental to diverse students. For example, poorly-handled classroom discussions about race aimed primarily at educating white students about historical wrongs, versus including all students in naming those wrongs, perpetuate the marginalization of diverse students. Previously, I urged that “inclusion efforts cannot end at one event, one hiring, or one change in policy.”⁸⁴ The warning from the past two years is that inclusion efforts cannot end at any one effort.

Cultural competence is the first point on the continuum that begins to address the needs of diverse students. “At the point of Cultural Competence, schools and educators accept and respect differences; carefully attend to the dynamics of difference; continually assess their own cultural knowledge and beliefs; continuously expand their cultural knowledge and resources; and variously adapt their own belief systems, policies, and practices.”⁸⁵ Culturally competent law schools use the essential elements as “standards for practice” and actively collaborate with diverse groups to ensure cultural change.⁸⁶

Drs. Nuri-Robins and Bundy offer an inspirational description of the final point on the continuum, *cultural proficiency*: “[t]he Continuum looks like a line segment with cultural proficiency as an endpoint. In reality, it is a ray; it signifies a lifetime journey . . . Resources are distributed equitably, the process of engagement is cocreation, and the result for all in the environment is transformation.”⁸⁷

In the traditional literature, the first three points—cultural destructiveness, cultural incapacity, and cultural blindness—are “reactive” and tend to problematize cultural difference.⁸⁸ Responses along the beginning of the curriculum operate from a “deficiency” mindset.⁸⁹ The next three points are “proactive.”⁹⁰ At the stage of cultural pre-competence, cultural competence, or cultural proficiency, interactions and policies can shift to viewing excluded cultures as “underserved” versus “underperforming” or deficient.⁹¹

Culturally destructive, incapacitated, or blind responses are often defensive and derogatory towards suggestions of inclusivity. For example: “*We do not need to act. The problem isn’t us; it’s them.*” Culturally pre-competent responses err on the side of self-congratulation and are complacent in incomplete progress: “*We acted and solved the problem!*” Additionally, culturally pre-competent responses fail to sustain progress for lack of strategic planning, distribution of responsibility, and

⁸⁴ Boles, *Valuing the “Race Card,” supra* note 11, at 42.

⁸⁵ See generally LINDSEY ET AL., *supra* note 10, at 138.

⁸⁶ NURI-ROBINS & BUNDY, *FISH OUT OF WATER, supra* note 10, at 45.

⁸⁷ *Id.*

⁸⁸ See LINDSEY ET AL., *supra* note 10, at 129.

⁸⁹ Allison N. Ash, Redgina Hill, Stephen N. Risdon & Alexander Jun, *Anti-Racism in Higher Education: A Model for Change*, 4 RACE & PEDAGOGY J. 1, 11–12 (2020) (surveying literature on “deficit thinking”); *id.* at 12 (“Based on this mindset, many diversity initiatives are intended to bring a solution to what is perceived as [an individual student’s] problem when the root of the problem is actually systemic issues, policies, and procedures.”).

⁹⁰ See LINDSEY ET AL., *supra* note 10, at 129.

⁹¹ LINDSEY ET AL., *supra* note 10, at 129.

collaboration: “*Our Black Law Students Association used to host a wonderful program for Black History Month. I wonder what happened.*” Culturally competent and proficient responses, however, are humble, reflective, and committed to constant re-evaluation and change: “*We are listening and acting. We know we need to do more, so we have a plan. We will continue to reassess and act.*”

We can illustrate each continuum point to examine the need to reform the traditional upper-level law school curriculum. Table 1 uses the cultural proficiency continuum to map some common responses to the inclusivity conversation using racial justice as an example.

Table 1

Reactive - Defensive	Culturally Destructive	<ul style="list-style-type: none"> • <i>Racism is not a problem, Black students are the problem.</i>⁹² • <i>Black students do poorly in law school because their communities do not value education.</i>⁹³ • <i>The race of the parties [or the historical context] is not relevant to our discussion of the case.</i>⁹⁴
	Cultural Incapacity	<ul style="list-style-type: none"> • <i>If diverse students cannot succeed in the traditional law school curriculum, they should not be in law school or become lawyers. They need to work harder.</i>⁹⁵ • <i>Law school should focus on developing core legal skills, not indoctrinating law students with liberal philosophies like critical race theory.</i> • <i>Law professors have academic freedom. We cannot force them to discuss race in their courses.</i>⁹⁶
	Cultural Blindness	<ul style="list-style-type: none"> • <i>I do not see race, I just see my students.</i>⁹⁷ • <i>Our curriculum already focuses on all forms of equality, not just racial equality.</i>

⁹² See generally LINDSEY ET AL., *supra* note 10, at 134.

⁹³ See generally *id.*

⁹⁴ See generally NURI-ROBINS ET AL., CULTURALLY PROFICIENT INSTRUCTION, *supra* note 10, at 80.

⁹⁵ See generally LINDSEY ET AL., *supra* note 10, at 135.

⁹⁶ See Carliss N. Chatman & Najarian R. Peters, *The Soft-Shoe and Shuffle of Law School Hiring Committee Practices*, 69 UCLA L. REV. DISC. 2, 5 (2021) (“[T]he legal academy is one of the last safe spaces for white supremacist ideas to flow freely under the cover of academic freedom and distorted First Amendment arguments.”).

⁹⁷ See generally NURI-ROBINS ET AL., CULTURALLY PROFICIENT INSTRUCTION, *supra* note 10, at 87.

		<ul style="list-style-type: none"> • <i>When we talk about integrating diverse perspectives into the curriculum, we also need to include diversity of thought, or political diversity.</i>
Proactive - Complacent	Cultural Pre-Competence	<ul style="list-style-type: none"> • <i>We recognized the need to make our curriculum more inclusive, so we have several seminar courses where diverse perspectives are discussed.⁹⁸</i> • <i>We do not want to speak for marginalized communities, so we have asked minoritized students/faculty/staff to take the lead on curricular changes.</i> • <i>Race may be relevant in other courses, but it is not relevant in business law courses.</i> • <i>We are so thankful that Professor X (faculty of color) has agreed to lead this effort in addition to all of his other responsibilities. We would not know where to start otherwise.</i>
Proactive - Reflective - Committed	Cultural Competence	<ul style="list-style-type: none"> • <i>Cultural inclusion is one of the guiding values informing our curriculum development and assessment.</i> • <i>We understand this work is complex and requires input and engagement from all members of the law school community.</i> • <i>It is important that all administrators, faculty, and staff share the responsibility of making the curriculum more inclusive. We are mindful that those from diverse communities might be carrying a disproportionate share of the burden.</i> • <i>Reforming our curriculum is only one component of making our school more inclusive. We commit to working with the entire law school community on all efforts to make our culture inclusive of diverse perspectives.</i>
	Cultural Proficiency	<ul style="list-style-type: none"> • <i>We recognize that integrating racial justice into the law school curriculum requires continual commitment, assessment, and accountability.</i>

⁹⁸ See generally LINDSEY ET AL., *supra* note 10, at 139.

The distinction between reactive and proactive responses is apparent in the language an institution (or individual) uses to describe or justify its processes. The cultural proficiency continuum is used to label conversations, behaviors, decisions, and policies, *not* people or institutions. The continuum can still be a useful compass when navigating difficult discussions about racial justice and curriculum reform, as well as a way to analyze past interactions, behaviors, and policies.

CONCLUSION

The last two years have been filled with various pressures. Many law school communities have engaged in difficult, but important, conversations about much-needed reforms to legal education. In his influential book, *How to Be an Antiracist*, Ibram X. Kendi urged belief “in the possibility that we can transform our societies to be antiracist”:

Racist power is not godly. Racist policies are not indestructible. Racist inequities are not inevitable. Racist ideas are not natural to the human mind.⁹⁹

The tools of cultural proficiency are not magical; it will take resolve to pivot legal education. Legal education has a new opportunity to permanently shift the culture of law school hallways. The use of the cultural proficiency paradigm can help the legal education community build a stronger, and more inclusive, foundation for change. I hold hope that our generation of legal education community members can be a part of a cultural pivot that will destabilize racism in the legal system.

⁹⁹ IBRAM X. KENDI, *HOW TO BE AN ANTIRACIST* 238 (2019).