ARTICLE

Rethinking the Philosophy of Law Curriculum

Critical Race Theory as Methodology

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Abstract

This article examines archetypal philosophy of law curricula in selected colleges and universities in the United States, revealing a problem regarding how the curriculum is set up to portray the view that philosophical discussions about the law ought to be fundamentally abstract with no bearing on material existence. This teaching practice and pedagogical setup proceed from a certain ideological commitment that seeks to portray legal philosophy in idealistic frames of normativity, justice, universality, and shared human aspirations devoid of the entanglement of the law with the social reality of the prevalence of racism in the American society. This article aims to explore two tenets of Critical Race Theory (CRT) as methodology (the interest convergence principle *and* racial realism*), to accentuate how the philosophy of law curriculum can be revamped to embrace other 'voices' and perspectives and, thereby, present a comprehensive view regarding the philosophical thinking about the law.*

Keywords: Philosophy of Law, Critical Race Theory, Legal Idealism, Law and Methodology.

> 'Like many Black students in predominately white schools, if I wanted to see myself reflected in the curriculum, I had to act on my own behalf.'
> – Austin Channing Brown, 2018.

> 'For curriculum to be interdisciplinary, it must encompass various perspectives: historical, political, cultural, racial, gendered, social, theological, and aesthetic.'
> – Theodorea Regina Berry, 2010.

1. Introduction

Today, the teaching of philosophy of law within several institutions in the United States is deeply impacted by two related realities, namely, the teacher's own

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philosophy of the law and the framing of philosophical thinking about the law to embrace legal idealism over realism. The teacher's own philosophy of law is largely a product of the specific philosophical orientation(s) to which they subscribe and propagate in turn. Therefore, we cannot examine a teacher's philosophical perspective about a subject without correspondingly referring to the philosophical orientation(s) or tradition in which such a teacher was trained or immersed. Put differently, a teacher's philosophical tendencies toward education may affect their thoughts and practices regarding the learning-teaching process (Alemdar & Aytac, 2022, p. 270). In 'Philosophies of Law and the Law Teacher', P. J. Harris and J. D. Buckle expand on this idea by arguing that

> every teacher of [philosophy of] law, whether he knows it or not, has a philosophy of his subject; and his formulation of aims and objectives, the design of the syllabuses, as well as his choice of teaching method, can only be fully understood in a context which takes into account the individual teacher's philosophy of his subject. (Harris & Buckle, 1976, p. 1)

This idea is also echoed by Joy Twemlow in her reflections on pedagogical tools for supporting diversity and critical thinking in the legal classroom (Twemlow, 2023, p. 239).

Following this observation, it is quite telling to note that several teachers of philosophy of law courses in American colleges and universities today design their curriculum or syllabi in such a manner that shows an overemphasis on the intellectual works produced by white scholars. The philosophy of law curriculum surveyed for this article within twenty American colleges and universities shows a pattern of privileging the views of white (and mostly male) legal thinkers. These data are captured in Figure 1.

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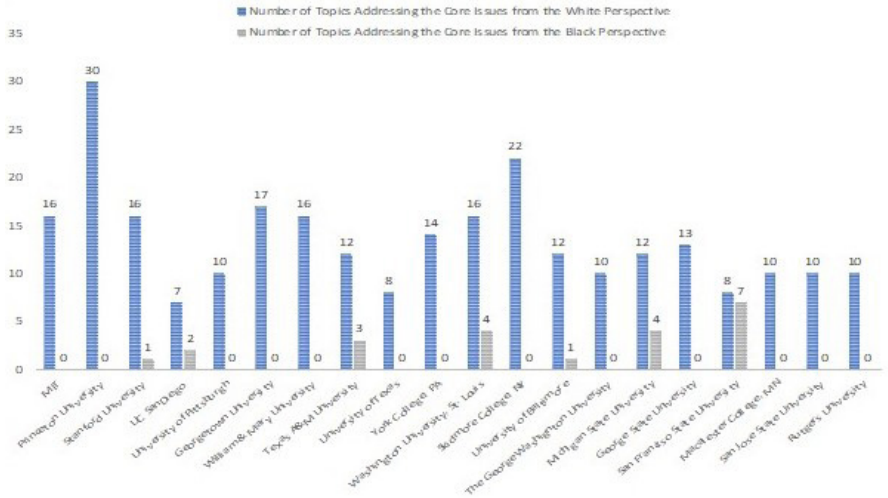
Figure 1 ***White and Black perspectives on philosophy of law curriculum in selected American colleges and universities (between Spring 2012 semester and Spring 2023).***



Some examples of the views that are regarded as canonical within current philosophy of law syllabi/curriculum are those of mostly white male scholars such as H. L. A. Hart, Ronald Dworkin, John Austin, Joseph Raz, John Finnis, Robert P. George, Lon L. Fuller, Peter Westen, just to mention a few. When this reality is critically considered, it raises the question as to why white (and male) voices are overwhelmingly privileged in the curriculum design within this field of inquiry. It also raises the issue as to how teachers of philosophy of law who adopt and utilize such content in their syllabus design, in an uncritical fashion, invariably perpetuate 'whiteness' as philosophy of law. Scholars such as Joy Twemlow and Alexis Hoag-Fordjour talk about how structures and pedagogical instruments, such as the syllabi, that seem neutral reinforce whiteness and white interests by preference selection of instructional materials or content. It is this same notion of preference selection that is evident in how several philosophy of law curricula are designed in such a manner that white European, Anglo-American legal thinkers/intellectuals (mostly males) are portrayed as central figures. In this scheme of things, their thoughts considered as 'core' aspects of the discipline while other non-white or non-normative approaches to the law, like the intersections of the law and the Black experience, and critical feminist critiques of the law, are silenced or positioned as marginal considerations within the discourse.

The curriculum (philosophy of law curriculum) is one of the most important aspects of pedagogical design (Sheridan & Gigliotti, 2023, p. 651). It shapes almost everything that the teacher hopes to achieve in the classroom about a specific subject matter or areas of human inquiry. It is also an important vehicle for transgenerational knowledge transfer, where current instructors attempt to

connect historical formation ideas to the present as well as providing a framework for learners to imagine the future trajectories of such areas of intellectual inquiry. In addition, curriculum design plays an important role in delineating the sources of knowledge or highlighting scholars who wield epistemological authority over a given subject matter and the implications of such portraiture for knowledge formation inside and outside of the classroom. What this implies is that the design of curriculum may be implicated by the politics of knowledge in a society where privileges and burdens are assigned based on group associations. For instance, in a survey of philosophy of law curricula within twenty American colleges and universities, findings display an overwhelming emphasis on the white perspective on legal philosophical thinking over and above the Black perspective or other non-white perspectives.[1] It is quite telling to note that this is the case given the fact that many standard anthologies in philosophy of law include numerous court cases, and dissenting opinions, from diverse perspectives that may bring in more robust, race-conscious, and critical approaches to the field of inquiry.

Contemporary anthologies like *The Blackwell Guide to the Philosophy of Law and Legal Theory*, Prentice-Hall's *Readings in the Philosophy of Law*, and Humanities Press' *Radical Philosophy of Law* offer contemporary challenges to mainstream theoretical formulations and such hegemonic practice in philosophy of law. But why are these types of materials not included in the design of the philosophy of law curriculum? This question touches on the issue this article seeks to address – the problem of whiteness in philosophy of law curriculum. This problem is not elicited by the lack of available published materials (textbooks, articles, court cases, critical opinions on the law, etc.) that can create a more diverse or inclusive content in the philosophy of law curriculum. It is a consequence of the systematic failure or refusal to include other non-white voices in the discourse of knowledge in relation to philosophy and law. So, one of the central aims of this article is to raise critical questions about the taken-for-granted routine privileging of white perspectives in the philosophy of law curriculum that goes unquestioned. It is expected that this critical intervention would prod teachers of philosophy of law and make them rethink their pedagogical designs, in terms of the selection of a broad or diverse spectrum of study materials (that are already out there) for philosophy of law

1 Although the focus of this article is on the teaching of philosophy of law in the American context, this issue of centering the Eurocentric, western, or white perspective in the academic curricula is applicable in the Netherlands and in other societies around the world where hierarchies exist both within and outside the academia, especially in heterogeneous or multiethnic or multiracial populations. For instance, Brazant (2024) notes that the Higher Education sector in Britain, United Kingdom (UK), is currently being taken to task regarding issues of pedagogical frameworks that do not address issues of structural inequality, which creates unfair outcomes for student learners from immigrant populations and those from non-white backgrounds, as well a widening gap in achievement. Similarly, a recent study by the European Commission entitled, 'Institutional racism in the Netherlands', finds that people with a non-Dutch background have access to fewer opportunities than their white counterparts in society, which also negatively impacts the overall experience of students in the educational sector as well as other aspects of social reality (Felten et al., 2021). These are symptoms of practices in contexts where the degrees of difference among human populations and within social systems, including educational settings, are manipulated to negatively impact the lives and outcomes (social, political, and economic) for people within non-dominant groups.

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courses. A reflection on the nature of one's teaching practice is therefore essential to improving it (Hubner, 2023, p. 1301).

2. On the Metaphilosophical Approach to Philosophy of Law

Construed broadly, philosophy of law is concerned with providing a general philosophical analysis of law and legal institutions and how such functions to maintain peace, justice, and tranquility within the society. This also includes considerations from abstract conceptual questions about the nature of law and legal systems to normative questions about the relationship between law, morality, and the rationale for various legal institutions. However, philosophy of law, as a discipline (especially its current setup in the United States), is an upshot of white hegemonic practice (Yancy, 2022). It is implicated in the racialized politics of the academia that demarcates intellectual ideas in terms of what constitutes cardinal and marginal values of disciplinarity. Currently, philosophy of law within the Anglo-American tradition mostly takes a metaphilosophical approach to the law. The field of inquiry is designed to raise certain questions about the nature of the law, the relation of law to morality, analyticity of jurisprudence, the nature of legal rights and duties, and the debates between natural law theorists and legal positivism. This approach considers as its basic premise the fact that analytical discussions about the idea of the law is vital to gaining understanding of the character or nature of the law. This explains why it privileges chronicling the debates between and among white legal scholars on the nature of the law, the ramifications of legal interpretation, and disputes between positivists and naturalists. One consequence of this metaphilosophical approach to teaching philosophy of law is that it reduces the notion of the law, and philosophical engagement with the law, to sheer abstractions – legal idealism.

This legal idealistic approach to teaching philosophy of law becomes even more problematic because it is immersed in whiteness – abstract ideas of white/male scholars 'canonized' as legal philosophy. This situation creates what George Yancy described as the pretensions about the morphology of philosophical assumptions that are portrayed to mask the fact that the canonization of such discourse was shaped by the dynamics of white power and privilege (Yancy, 2022). It is worthy of note that most of the works or study materials selected as the key texts for the teaching of philosophy of law in American colleges and universities today are those primarily written by white males who are 'revered' or designated as canonical figures within the field of philosophy of law. Some examples of such canonized texts are: H. L. A. Hart's *The Concept of Law*, Ronald Dworkin's *Law's Empire*, John Finnis' *Natural Law and Natural Rights*, Roscoe Pound's *An Introduction to the Philosophy of Law*, Lon Fuller's *The Morality of Law*, Joseph Raz's *Practical Reason and Norms*, and John Austin's *The Providence of Jurisprudence Determined*. This provides a frame of reference on the canonization of legal philosophical thought within the Anglo-American tradition – the placement of fundamentals of the philosophy of law within Eurocentric philosophical frames. This practice of approaching the discipline in this manner reeks of whiteness, especially when we

take into cognizance the fact that these designated canonical figures cite other white/male European thinkers such as Cicero, Aristotle, John Locke, Thomas Hobbes, and Kant as historical sources for understanding the foundation and nature of the law. When this reality is examined from a critical perspective, the following questions can be raised: Is philosophical thinking about the law a prerogative of whiteness? Are white males the only group that has seriously contemplated questions concerning the nature, scope, and limitations of the law? My goal in this article is to attempt to answer these questions, showing why this is not the case, and offer an alternative methodology that can lead to pedagogical change through the lens of Critical Race Theory (CRT).

The teacher's role in the shaping of the thinking pattern of students and the influence on their ideology formulation or worldview is crucial. Teachers can paint pictures in the impressionable minds of students on how to think about questions, ideas, concepts, and problems within the world. To this end, the curriculum or syllabus becomes a pivotal tool by which teachers can greatly influence and shape how students form beliefs and worldviews on a given subject matter. In the context of this discourse, when teachers of philosophy of law design their curriculum in such a manner that it subscribes to a particular philosophy of teaching that seeks to perpetuate white intellectual supremacy, it invariably suggests that only 'white voices' matter when it comes to understanding the nature, scope, and function of the law. Apart from the fact that this approach does not prioritize the experience of non-white students in the learning process, it also poses a great danger to their intellectual development. It communicates the impression that the white philosophical perspective is the dominant and normative way of looking at philosophical concepts and ideas about the law. Many teachers of philosophy of law tend to subscribe to this philosophy of the law and proceed to teach from such a standpoint. This explains why most teaching philosophies/curricula concerning the philosophy of law within the Anglo-American tradition have similar orientations. They are similar in their dogmatic subscription to the assumption of white intellectual supremacy and, thus, the canonization of whiteness as philosophy of law that is replicated in their curriculum. In this instance, whiteness then becomes a heuristic by which the philosophy of law curriculum is designed and taught. In this regard, Phil Smith is right to point out that whiteness is a normative, dominating, unexamined power that underlies the rationality of Eurocentric culture and thought that serves to push to the margins those views defined as not white (Smith, 2004, p. 1).

As far as the discourse of philosophy of law in American institutions is concerned, it is unfeasible to evade the historic roots and contemporary manifestations of the intersections between racism and American law. When courses are designed to silence this reality, it suggests a methodical attempt on the part of teachers – who seek to maintain this status quo – to evade truth and to sever the experience of non-white students, especially those of Black students from the discourse of philosophy of law within the American academia. Such teaching practice in the academia that continues to perpetuate the mental colonization of Black students through what is disguised as the 'canonization' of discourse in philosophy of law needs to be transformed. This is what necessitates

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the proposal of CRT as a pedagogical tool to confront this anomaly in the teaching of philosophy of law.

3. The Philosophy of Law Curriculum and the Problem of Whiteness

The teaching of philosophy of law today in American colleges and universities is overwhelmingly informed by the liberal philosophical standpoint or the promise of liberalism. Charles W. Mills describes the promise of liberalism as one that privileges

> the granting of equal rights to all individuals, destroying the old social hierarchies and establishing a new social order where everybody, as an individual [as well as plural philosophies], could flourish (Mills, 2017, p. xxi).

Thus, the liberal pedagogical framing of the philosophy of law curriculum proceeds with some specific normative assumptions about the nature of the law, such as the belief that all persons share some morally significant basic freedom and equality, including the fact that the true path to historical and moral progress is one that is marked by the rule of law. This is an unmistakable feature in how philosophy of law courses are designed and taught in American universities and colleges.

One feature that the philosophy of law curriculum has in common today is the overemphasis on the legal philosophical debates between/among white/male philosophers and their varying conceptions of the law. A good example of such is the 'celebrated' debate between Ronald Dworkin and H. L. A. Hart, which features prominently in most philosophy of law syllabi. As R. Martin and D. Reidy observes,

> one of the dominant issues in philosophy of law since Hart's main entry was published has been the dispute between Hart and Ronald Dworkin about the best way to characterize a legal system and the modes of legal reasoning (especially by judges) most appropriate to it (Martin & Reidy, 2006, p. 458).

White instructors teach philosophy of law as an embodiment of liberal values mostly patterned after Dworkin's, classic rule of law as a liberal principle. In a very insightful research work on how white liberal values lead to the maintenance of white perspectives in teaching and learning, Carol Schick emphasizes the power of instructors within dominant groups exercises to resist oppositional pedagogies that problematize the potential for whiteness to affirm itself, even as a virtue, in sites of liberal teacher education. This then occasions the normalizing function of whiteness – reproduction of whiteness in teaching practices (Schick, 2000, p. 83). Similarly, Ricky Lee Allen describes such teaching curriculum that makes the reproduction or affirmation of whiteness in teaching practices possible as 'the hidden curriculum of whiteness' (Allen, 1999).

What this suggests is that philosophy of law is seen as, largely, a content-based analysis of the debates on the nature of law between and among white scholars, especially with the predominant citing of white scholars as authorities on the law

(the affirmation and reproduction of whiteness). In such teaching practice, the literature produced by the canonized Anglo-American philosophers of the law is often cited by other white teachers in positions of authority, who can therefore consecrate the white authors of such legal philosophical ideas as primary sources on the notions about appropriate content and method of teaching and theorizing on philosophy of law. While writing about the role of law in American culture, Paul D. Carrington, in his essay titled, 'Butterfly Effects: The Possibilities of Law Teaching in a Democracy', affirms that 'the teaching of philosophy of law in America is restricted to the white cultural perspective and that this demonstrates the disciplinary narrowness of this field of inquiry' (Carrington, 1992, pp. 741, 746). A typical philosophy of law curriculum features such issues/topics concerning methods of inquiry in philosophy of law, the distinction between Austin's positivism and Hart's positivism, formal natural law theory, the natural duty of justice, and so on. Not much consideration is given to the existential or empirical import of such idealistic considerations within this field of inquiry. Thus, the narrowness of this method of inquiry consists in the characterization of philosophical thinking about the law as if existential realities do not deeply influence the character of the law, especially in connection with democratic ideals like justice, fairness, equity, freedom, and racial issues within the social order. It could be argued that such idealistic representations in the philosophy of law curriculum are designed to create the impression in the minds of students that the character of the law and philosophy about the law ought to be merely abstract, an embodiment of pertinent theoretical formulations deliberated upon by philosophers.

Following the neoliberal imagination that all persons share some morally significant basic freedom and equality, many white teachers of philosophy of law want to talk about the 'beauty' of the principle of equality in American legal system without also talking about the 'sins' of the law as a primary tool for segregation. For instance, the U.S. Supreme Court's decision in *Brown v. Board of Education* of 1954 is hailed and taught to students as one of the hallmarks of the Civil Rights Movement that laid the foundation for post-racialism and affirmation of equality in the American society while ignoring the racial implications of the political and economic motivation for *Brown*. The *Brown* decision is a definitive example of how perceived white interests are placed over and above the racial injustices suffered by Blacks in racial-remediation policies (Bell, 2004). Thus, such pedagogical attempts to teach the law and the philosophy of the law as something that upholds the equality of all within America evade the truth of the racism that is at the base of the founding of the law and the legal system in the United States. It also ignores how racism has continued to impact the manifestations and interpretations of law in contemporary society. It is impossible to deny or silence the legacy of racism that continues to drive inequality in how the justice system is experienced by so many Americans (Obama, 2017, pp. 811, 815). This liberal pedagogical approach to the philosophical analysis of *Brown* also systematically ignores the linkage between *Brown* and Jim Crow laws like *Plessy* of 1896 that was designed to uphold and sustain racial discrimination and the denial of rights to Black people in America. As Gerald Postema observes in *Racism and the Law*,

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> throughout the Southern United States in the 1880s and early 1890s, Jim Crow was planted deep in the institutions, practices, and laws of Nineteenth Century American life. *Plessy* merely made manifest the new form that racism had taken in American life after the demise of slavery. Yet, *Plessy* marks a significant point in American history because it gave new life to the cancer of racism in the U.S. constitution and the American public mind, undermining the efforts of the Reconstruction Amendments to cut it out. (Postema, 1997).

However, the attempt by white teachers of philosophy of law to portray the discipline in a neoliberal garb of critical reflection on the abstract nature of law does little to shield it from the narrowness of the western/Anglo-American philosophical orientations/traditions. Martin Krygier argues that law and considerations about the law are a profoundly traditional social practice and it must be understood in this way (Krygier, 1986, p. 237). Traditionality is to be found in almost all legal systems, and not as a peripheral characteristic, but as a central feature of them. It is common for law to be conceived as a species of some other more pervasive social phenomenon: commands, norms, rules, rules and principles, rules, principles, and policies, and so on. This is apparent in how philosophy of law is being defined as 'a branch of philosophy that is concerned with a set of specifically philosophical general questions about the law: questions about its nature, relationship to morality and proper role in the social structure' (White, 1986, p. 563). This is the portrait of what is being referred to as the normative character of philosophy of law – essentially, normative and abstract claims about the law that are often regarded as apodictic claims made by white philosophers who see the law as an embodiment of general rules and principles. This phenomenon is what Charles W. Mills describes as the seemingly color-less abstraction, which is really a generalization from the white experience and an accentuation of the pretensions of whiteness as philosophy.

> The pretensions of philosophy are to illuminate the world, factually and normatively, to show us what it is like and how it should be improved. But the abstraction that is structurally central to the discipline has, as a result of its overwhelming demographic whiteness, mutated into a lethal cognitive pattern of collective white self-deception and group evasion that inhibit the necessary rethinking long underway in other subjects. (Mills, 2017, p. 200).

Many teachers of philosophy of law have treated the normative orientation and abstract character of law as a given. They have approached problems such as the character of legal philosophical reasoning, the nature of rights or freedoms, and the definition of the legitimate judicial functions in a democracy as though these were reducible to fundamental questions of white normative judgment. Today, 'the white normative orientation remains the unspoken dominant mode of analysis in philosophy of law scholarship' (Delgado, 1991, p. 933). For instance, in his essay 'Philosophy of Law', William McBride argues that the mention of 'foundational' principles and rules in philosophy of law conjures up the name of white thinkers like Ronald Dworkin and H. L. A. Hart. McBride further affirms the primacy of

whiteness as the basis of espousing the nature of abstraction in philosophy of law. This is the idea of

> philosophical thinking about the law as principles and rules conceived by white men, including such figures as Kant, Savigny, and John Austin wrote works that are clearly identifiable as treatises in the philosophy of law well over a century. (McBride, 1980, p. 775).

Thus, in a situation where the pedagogical practice in philosophy of law is restricted to the lens of whiteness, other non-white students (especially Black students) are unable to have a rewarding learning experience because 'whiteness has become – in effect, if not de jure – more structurally central to the very self-conception of the field' (Mills, 2017, p. 181). The Black students' experience is centered, as a foil, to highlight the cardinal problematic that constitutes the fulcrum of this article – that is, the immersion of the current teaching practice in philosophy of law in white idealistic structures that guarantees the disciplinary exclusion of the Black perspective and the contributions of Black philosophers to the discourse on the nature and function of the law, especially in the Anglo-American disciplinary context. In my view, such epistemological positioning is directed to silence the Black perspective on philosophy of law (including other non-canonized perspectives) and to invariably mask the tyranny of the law against Black folks in America. In this regard, Jerome M. Culp is right to point out that legal philosophical scholarship remains one of the last vestiges of white supremacy in civilized intellectual circles. Literature, art, and occasionally even politics have been changed significantly by legal efforts, even as law, and the philosophy of law itself, has remained indifferent to the import of those changes. Most legal scholars and philosophers of law do not know that they approach the question of law from a perspective that excludes Black concerns (Culp, 1999, p. 39).

In what follows, I offer CRT as an alternative pedagogical model that has the potential to address this problematic – the idealist posture and the exclusion of Black concerns – in the discourse of philosophy of law. That is, teaching philosophy of law through the lens of CRT can, on the one hand, benefit non-white students to transcend the veil of ignorance imposed on them through the design of philosophy of law courses and curricula to uphold whiteness or white men as epistemic authorities on such matters. On the other hand, the deployment of a CRT methodology in teaching philosophy of law can be beneficial to white students, by forcing them to question the assumptions they hold about the intersection of laws, ethics, and culture (Brown, 2018). It can also offer a critique of the underbelly of patriarchy, class, and gender-based discrimination and its intersections with the law in the United States. Especially noting how genuine critical thinking about philosophy of law, in the context of America, exposes the reality of racism, sexism, and homophobia in America contradicts the ideals of freedom, justice, and fairness, and how the idea of the law does not merely exist as pods of philosophical abstractions.

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4. Critical Race Theory as Methodology

Currently, in the United States, there is an ongoing debate about CRT as a field of inquiry and its usefulness within the academia – especially its substantial focus on how the structures of inequality and systems of injustice implicate the legal system. To some, especially among those who associate with the ideologies of the far right, CRT is nothing but a method that promotes divisiveness while others consider it as a tool for achieving racial, social, and economic justice (Ertas & McNight, 2024, p. 1). Although CRT has been a popular theory in the academy for over two decades, it is not new to controversy (Crenshaw, 2011, p. 1253). Nevertheless, the level of outrage and vitriol that CRT and its adherents have faced is quite different. As a result of highly publicized anti-CRT propaganda from a past U.S. president and anti-CRT legislation across the nation, CRT has become a household name beyond the walls of the ivory tower (Tichavakunda, 2024). White suburban mothers are forming enclaves, going in large numbers to disrupt school board meetings, against what they believe as CRT being taught in their schools (Vollers, 2023). University professors, especially those who belong to non-dominant groups, are being fired and denied promotion for daring to teach courses on CRT.

The extent to which CRT is being targeted in the United States today is quite alarming.[2] The attempt to expunge discussions of racism or strategies from public school curriculum under the guise of eliminating CRT has also

> led conservative state legislatures across the country to invent laws to ban books dealing with topics on race and structural inequality and to ban CRT from being taught in public schools because they have bought into the narrative that its central goal is to demonize white people as bigoted and portray America without its all too familiar garb of patriotism, flawlessness, and exceptionalism ideals. (Oluwayomi, 2022, pp. 5, 7)

These efforts have also led legislatures in states such as Arkansas, Idaho, Tennessee, Texas, and Oklahoma, and Florida (to mention a few) to pass bans, with some restricting the teaching of CRT in public colleges, in addition to lower-level

2 Some scholars are of the persuasion that the current far-right attack on CRT in the United States is a consequence of the backlash against the massive global protests against the death of George Floyd in the summer of 2020. After the police murder of George Floyd, the right-wing media machine began to turn its attention to a scholarly field little known outside of law schools and other academic outposts: critical race theory. This was happening at a time when there was massive scrutiny and cognizance of white police violence against Black people, and with communities of color suffering disproportionately from COVID-19, Americans were opening to the idea that racism could be systemic and deadly. In response, those who are of the far-right persuasion began to manipulate public discourse to change the subject. This was done by promoting a distorted version of CRT by influential right-wing leaders and media who wanted to manufacture a menacing boogeyman that can broadly discredit the campaigns for racial justice (Lempinen, 2021).

classrooms.[3] A total of 3,362 books were banned in the 2022-2023 school year. In the majority of cases, the books banned were written by women, people of color, and/or LGBTQ+ authors (Meehan et al., 2023).

The situation also targets the K-12 education system (primary education that begins in kindergarten through secondary education that ends in grade 12). Across 24 state legislatures, a total of 54 different bills have been introduced to restrict education and training in K-12, higher education, and state agencies and institutions. Most of these bills target CRT and gender studies (Coates, 2023, p. 53). In response to such laws, which are contrary to the spirit of academic freedom and the free exchange of ideas, many institutions are now canceling classes on race theory, including those that critically engage with the problem of structural or systematic racism in America. This was precisely one of the goals of the attack on CRT. They explicitly want to dictate what, how, and when American history should be taught and dictate the tenor of academic and educational discussions, by imposing state rules on how teaching is done. Nevertheless, this targeting is not for what CRT is doing; instead, it is for what it might do if it continues to provide antiracist critiques of our institutions and society. The sad part of the faux outrage against CRT is that it is based on what it is not rather than what it is. What, then, is CRT?

CRT has its origins in legal analysis but increasingly has been used by educational researchers to analyze the continued salience of institutional racism in educational settings (Powers, 2007, p. 151). The CRT movement is a collection of activists and scholars interested in studying and transforming the relationship between race, racism, and power; it questions the very foundations of the liberal order, including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law (Delgado & Stefancic, 2012). It is important to state that CRT is committed to a radical critique of the law, philosophical thinking about the law, and the examination of the intersections between racism and the law. It also investigates the possibility of transforming the relationship between law and racial power and, more broadly, pursues a project of achieving racial emancipation and anti-subordination. As a matter of principle, CRT proposes that white supremacy and racial power permeate the American society and the law plays a significant role in this process. Thus, my task in this article is to show how CRT can be employed as methodological tool to explore the intersections of the Black experience with philosophy of law, particularly exploring how Black people are afflicted by the exclusionary legacy of the disciplinary focus within the philosophy of law curriculum (Burns, 1973, p. 156).

CRT's popularity has also increased significantly within the academy. Although CRT began in the legal field, CRT is now being employed across disciplines, from public health to social work to education. CRT as a methodology is also gaining

3 For examples of such laws, see the following: Texas legislature, House Bill 3979. https://capitol.texas.gov/BillLookup/History.aspx?LegSess=87R&Bill=HB3979; Arkansas Senate Bill 627, https://www.arkleg.state.ar.us/Bills/FTPDocument?path=%2FBills%2F2021R%2FPublic%2FSB627.pdf; and State of Oklahoma, House Bill 2988; http://webserver1.lsb.state.ok.us/cf_pdf/2021-22%20INT/hB/HB2988%20INT.PDF.

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momentum in international education contexts. The theory is being used within such settings to improve the learning experience of international students, students studying abroad for short- and long-term programs, and to generally account for the racialized experiences of international students of color (Yeo, 2023, p. 23). As Elizabeth Buckner et al. observe,

> in higher education, critical race theorists explore how policies and structures impact how race and racism are experienced on campus and point to the need to analyze how institutions discuss and engage with race and racism. (Buckner et al., 2021, pp. 31, 34).

When applied to educational research, CRT affords scholars across transnational boundaries the ability to critically examine the historical and societal impacts of education policies and practices and to identify, name, and address the inequities arising from historical and contemporary education laws, policies, and practices. In this sense, CRT is an inter-, multi-, and trans-disciplinary approach – that includes law, sociology, history, and so on – to address the role of race, social hierarchies, and racism in education law, policy, and practice (Nelson, 2020, p. 303). Drawing on CRT, the related field of whiteness studies seeks to unpack and denaturalize the norm of whiteness and points to the ways in which current social, economic, political, and ideological structures privilege white people and disadvantage people of color (Gillborn, 2005, p. 485).

CRT, as a methodological framework within the context of higher education, engages with how racial, political, and institutional structures can impact multiple societal areas. Although higher education scholars in particular have employed CRT as a theoretical framework for decades, CRT as a legal theory of race and racism is increasing in popularity throughout the academy and beyond (Tichavakunda, 2024). As I wrote in 'Not for the Faint of Heart: Becoming an Antiracist Philosopher in a Society Polarized by Critical Race Theory' –

> a central focus of CRT is the examination of both historical and contemporary legal thoughts and doctrines from the viewpoint of law's role in shaping society, unravelling the attributions of schemas of power and practices of subordination and domination of peoples within a given social context. (Oluwayomi, 2022, pp. 5, 8).

5. How Critical Race Theory Can Transform Pedagogy in Philosophy of Law

In the view of Taifha Alexander et al., CRT is an interdisciplinary practice and a critical approach to understanding the foundations and maintenance of categories of race and racial subordination in the legal system throughout history. Since its genesis in U.S. law schools in the mid-1980s, CRT has explored how racial, and other, hierarchies have endured despite advancements in racial justice made during times of racial progress (Alexander et al., 2024).

In what follows, I highlight two important tenets or principles within the method of CRT that would be helpful in charting a different pedagogical approach from the so-called normative or mainstream approaches to teaching philosophy of law, namely, *the interest convergence principle* and *racial realism*. These two principles were originally coined by the Derrick Bell, the doyen of CRT. I also show how the principle of interest convergence exposes the shortcomings of the current pedagogical methods in philosophy of law. Next, I highlight how racial realism can be employed as an alternative pedagogical method to correct the anomalies identified with the teaching of philosophy of law within the United States. The principle of interest convergence refers to the ubiquitous practice in America where Black interests or rights are sacrificed to satisfy the interests of whites whether in terms of education, policy, governance, law, rights protection, and the distribution of social goods. In *Silent Covenant*, Derrick Bell describes the rules that inform the idea of the principle of interest convergence thus:

> *Rule 1*: The interest of [B]lacks in achieving racial equality will be accommodated only when that interest converges with the interests of whites in policy making positions. This convergence is far more important for gaining relief than the degree of harm suffered by [B]lacks or the character of proof offered to prove that harm.
>
> *Rule 2*: Even when interest convergence results in an effective racial remedy, that remedy will be abrogated at the point that policymakers fear the remedial policy is threatening the superior societal status of whites, particularly those in the middle and upper classes. (Bell, 2004, p. 69).

In the syllabi examined for this article (from twenty American colleges and universities), it was discovered that this interest convergence principle is what mostly informs the designing of philosophy of law curriculum, such that the white perspectives on the law are prioritized and the black perspectives on law are either absent or depicted as a perspective with fringe significance. Some teachers of this discipline engage in what is known as conceptual tokenization while selecting topics on the Black perspective on the law to include in the syllabus. Charles W. Mills describes this idea of conceptual tokenization as a situation where 'a black perspective is included but in a ghettoized way that makes no difference to the overall discursive logic of the discipline, or the subsection of the discipline in question' (Mills, 2017, pp. 188-189). An example of such tokenization is where philosophy of law teachers assume that the issue of race is taken care of in the aspect of constitutional law when they merely talk about *Brown* as a corrective to *Plessy v. Ferguson*, to demonstrate the redemptive qualities of the U.S. Supreme Court on civil rights issues but not the years of racial injustice against Blacks that transverses between such laws. This marginal inclusion of race leads to arrogance on the part of white teachers of philosophy of law, as philosophy of law teachers tends to believe that the 'race thing' is taken care of in its appropriate place (Culp, 1991, p. 539).

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By ignoring the experiences of Black people through such pedagogical design, the vision and tenets of philosophy of law are limited to one that reflects the white (male) perspective. It is not possible to think neutrally about these questions; philosophy of law teachers either include or ignore Black people in the world that they have created by their individual assumptions and personal teaching philosophies (Culp, 1991, p. 539). Bell's argument is that Black rights and interests are recognized and protected when and only so long as white policymakers and those wielding institutional power perceive that such advances will further interests that are of their primary concern (Bell, 2004). When this *interest convergence hypothesis* is applied to the context of higher education, it postulates that educational policies or curricula interventions and promising improvements for Black Americans are enacted only to the extent they advance white Americans' interests (Starck et al., 2024, p. 272). Thus, the white teacher merely tokenizes the Black perspective in order to achieve institutional requirements for 'diversity' (mainly posturing an appearance of diversity), whereas Black students continue to suffer the consequences of evasion of truth, miseducation, racialized education, micro aggressions, racial discrimination, and the feeling that their experiences in terms of intellectual quantification are marginal.

The principle of interest convergence exposes how the philosophy of law curriculum is orchestrated to perpetuate white supremacy and the dominance of white intellectual perspectives about the law. This explains why Curry argues that 'philosophy has made the existence of racism, and the actual suffering of racism's victims, concerns outside of philosophy's scope' (Curry, 2009, p. 6). Thus, in a situation where racism is an integral part of a society, like America, the interests of blacks are always subordinated to that of whites that filter into practices within the academia. Also, the academic interests of black students are generally accommodated only when it marginally converges with the interests of white teachers and students (Taylor et al., 2023; Hoag-Fordjour, 2020; Starck et al., 2024, p. 272). One possible interpretation of this oppressive practice in curriculum design is that white philosophers have no real motivations to make the philosophy of law curriculum truly 'diverse' and robustly critical and comparative. Another interpretation could be that they are suffering from some kind of pedagogical *akrasia* – either they do not buy into a philosophy of law pedagogy that significantly includes the perspective of minorities or they are afraid to face the professional consequences that comes with nonconformity with the prominence of white supremacy within the academia. How can this problem of white hegemony of the philosophy of law curriculum be resolved or tackled? I imagine *racial realism*, the second principle under CRT, as a possible corrective to this problem.

In his path-breaking essay titled 'Racial Realism', published in the *Connecticut Law Review*, Derrick Bell argues that he coined the notion of racial realism as 'a legal and social mechanism on which [B]lacks can rely to have their voice and outrage heard' Bell, 1992a, pp. 363, 364). Ungirding Bell's notion of racial realism is his conviction that racism is an integral, permanent, and indestructible component of the American society (Bell, 1992b). He takes a realistic viewpoint about the prevalence of racism in America that ruptures the illusion of post-racialism

and integrationist ethics. This sentiment on the permanence of racism, expressed by Derrick Bell, is also shared by Haywood Burns. According to Burns,

> the American legal system [and philosophy of law, which feeds off on this] has not managed to escape the racism that permeates American life; both historically and contemporaneously, the law has been the vehicle by which the generalized racism in the society has been made particular and converted in policies and standards of social control. (Burns, 1973, p. 156).

So, a CRT perspective to the teaching of philosophy of law would take a realistic approach in pointing out the persistence of racism in America and its entanglement with the law, including its influence on philosophical thinking about the law (Purcell, 2022, p. 141; Aceves, 2022, p. 80).

So, what should this pedagogical intervention look like, practically speaking? Suppose an instructor is interested in starting off a class on the following topics – the nature of law and constitutional interpretation. The standard pedagogical practice is to assign John Austin's *The Province of Jurisprudence* and H. L. A. Hart's *The Concept of Law* as the canonical works on the nature of law. While both of these texts deal with abstract issues concerning the conceptualization or definition of law, their determination of the essence or nature that is common to all laws does not directly speak to how socio-empirical realities influence the idea of the law. In other words, they do not provide an experiential understanding of the concept of law. However, the pedagogical approach of racial realism can correct this lacuna by reading these texts alongside other works offering critical perspectives on the concept of the law, like Stephen Griffin and Robert Moffat's *Radical Critiques of the Law* and Derrick Bell's *Race, Racism, and American Law*. These kinds of CRT readings by Griffin and Moffat and Bell offer a more nuanced understanding of the nature of law that focuses not only on conceptual issues but also on the social dimensions of the law. Bell's text is particularly striking in its defense of the view that as far as the concept of law within America is concerned, it is impossible to conceptualize this without recourse to the prevalence of racism in this society.

Additionally, a topic on constitutional interpretation is often taught through the lens of works like Antonin Scalia's *A Matter of Interpretation* – which advocates textualism – the doctrine that interpreting the text of written law must not go beyond the intent of those politicians who made the law (who were mostly slave owners and defenders of the American slavery system). The emphasis on textual analysis in this respect suggests the law as an analytical document that involves the direct transcribing of the spoken words in the spirit of their original articulation. However, the law does merely exist as an analytical document; it is also a sociological document. This is why racial realism advocates a pedagogical methodology that entails the view that philosophical considerations about the nature and significance of the law should not be merely abstract but also practical.

The instructor can challenge such textual positioning offered by Scalia with some of the philosophical thoughts of Fredrick Douglass on the ideals of freedom, justice, and liberty enshrined into the American constitution. For instance, Douglass's famous essay, 'What to the Slave Is the Fourth of July?' as well as his

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numerous speeches can be beneficial here because they challenge such narratives of textualism and point out the hypocrisy of America's Declaration of Independence and the idea of universal political freedoms guaranteed in the laws of the United States. Although Douglass is not recognized in the Anglo-American philosophical tradition as a legal philosopher par excellence, his treatises concerning the nature of the law, constitutionalism, political equality, rights, justice, freedom, and slave laws were greatly influential in the abolition of slavery. The impact of Douglass in championing a legal philosophical worldview of equality for all was far-reaching, especially for women. The *North Star* of May 1848 reports that Douglass was the only man to play a prominent part in organizing the world's first gathering for women's rights. Thus, employing such a comparative pedagogical approach to teaching philosophy of law will help to give students a different understanding of the law as that which is not merely abstract but also material. The law is not only about the ideal but also about the real. Likewise, philosophy of law should not just be about the ideal but also about the real existential ramifications and connotations of the law.

In a related manner, an instructor of philosophy of law can elect to extend the discourse of natural law beyond the 'normal' or 'classical' textual referencing of John Finnis' *Natural Law and Natural Rights*, Oliver Wendell Holmes' 'The Path of Law', and Ronald Dworkin's *Taking Rights Seriously*, to include other nontraditional texts like David Walker's *Appeal, in Four Articles: Together with a Preamble to the Coloured Citizens of the World, but in Particular, and Very Expressly, to Those of The United States of America*. Although these texts are often regarded as 'classical philosophical texts' on natural law theory, offering reasons for considering general descriptions of law fruitful only if their basic conceptual structure is derived from the understanding of good reasons, the ruminations of Walker on the natural rights tradition, in relation to America's declaration of independence, offer insights into the practical implications of natural law theory and how it over-determines the lives of Black people. The four articles in Walker's *Appeal* also critically consider the questions of freedom and human rights for Black folks within American law.

Additionally, this racial realistic approach to philosophical thinking about the law ought to take seriously the issues concerning the oppression of women in society, which has been the domain of critical race feminism. In an essay published in the *Encyclopedia of Curriculum Studies*, Theodorea Berry (2010) argues that critical race feminism is a feminist perspective of CRT. As an outgrowth of critical legal studies and CRT,

> critical race feminism acknowledges, accepts, and addresses Black experiences as different from those of critical race theory and feminist theory. Critical race feminism focuses on the issues of power, oppression, and conflict centralized in feminist theory. (Berry, 2010, p. 152)

Thus, such critical readings within the province of critical race feminism can be allocated as part of the assigned texts or as course/term writing assignments assigned in the syllabus that challenges the centering of white male voices in the current philosophy of law curriculum. Bruce A. Arrigo notes that within the

systematization of the philosophy of law discipline, white masculinist ideological constructions are deeply embedded (Arrigo, 1995). The critical posture of critical race feminism generally offers a different account of the way in which legal philosophical outcomes were structured. Focusing on the subordinate position of women and racial minorities in society, they found it easier to accept accounts of domination cast in terms of the immediate self-interest of dominant groups, that is, men and whites (Tushnet, 2005). Since critical race feminism incorporates an experientially grounded, oppositionally expressed, and transformatively aspirational concern with race and other socially constructed hierarchies, it has the potential to offer a richer and diverse perspective on the teaching of philosophy of law (Berry, 2010).

However, noting that racial realism sees racism as a permanent feature of American society is often interpreted as a pessimistic challenge to the liberal optimism of traditional civil rights discourse. However, the view is not merely a negative critique; it has its own implications for pursuing racial and social justice. Once one abandons the politically naïve view that racial justice comes about primarily through the moral transformation of previously immoral institutions or individuals, one can refocus on identifying, articulating, and perhaps even expanding the areas of overlapping interest among whites and non-whites (Pierce, 2016, p. 507). Thus, even white students can benefit from a CRT approach to teaching philosophy of law by gaining new insights and a fresh perspective of looking at the law through an examination of the contributions of Black thinkers to the Black struggle for freedom, its intersection with the law, and its value to white Americans – shaping an understanding of how theoretical legal philosophies are deployed in practice to generate inequalities in the society (Bell, 1987). Unfortunately, while most departments of philosophy teaching courses in philosophy of law in America today will describe themselves as being 'diverse', the reality is that such approaches to diversity are commonly based on certain narrow interests. So, the CRT pedagogical approach seeks to challenge the practice of teaching philosophy of law from a monocultural perspective, based on the supposition that it is possible to open the legal landscape to all members of American society – that is, to broaden the perspectives of legal philosophizing – such that it can include non-white perspectives like the Black perspective on law and also include female voices in the center of discourse (Banks, 2013, p. 46).

Teachers of philosophy of law interested in teaching the course from the perspective of CRT can, through the deployment of such readings, explore issues such as recent developments in CRT and legal pluralism, questions of the compatibility of civil rights and civil liberties, issues concerning discrimination in the administration of justice, fair employment, assaultive speech and the first amendment, and transformation and legitimation in antidiscrimination law, including international law of human rights.

CRT also enables a discourse about the 'hidden' or evaded truths on the intersection between racism and the law in the United States. In this instance, rather than engaging in mere abstract thinking about the law (as in current practice), Black and white students can actually learn about the reality of racism and the law, especially how the law and legal institutions in America continue to be

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discriminatory against Blacks and other minoritized populations. In this respect, the philosophy of law curriculum may engage issues from the Black perspective by exploring the thoughts of Black thinkers like Fredrick Douglass who wrote volumes on the nature of the law, constitutionalism, civil rights law and reconstruction, slave laws, and American democratic norms; the writings of W. E. B. DuBois on law and socio-economic policies, equality, and Americanization; the question of human rights, including more contemporary treatises of Derrick Bell on race, racism, and American law; slavery in America and conflict of laws; discrimination in the administration of justice; the struggle for equality, among others.

A CRT interrogation of the current culture of teaching in philosophy of law reveals the reality that is evaded in many curricula in most American colleges and universities – the theoretical beliefs grounded in a set of assumptions and a view of history that has ignored how racism is entangled with the formulations of laws, edicts, and ideals of justice. At the foundation of American law are both the promise of democracy and its profound disappointment. The inherent contradiction of the founding document – the U.S. Constitution – in which rights against government tyranny were enshrined while simultaneously the human rights of Black people were trampled (Harris, 1992, p. 331). Racial realism points out the contradictions surrounding the idea of the law in the United States, which is portrayed as upholding the ideals of freedom, equality, justice, and constitutional rights, but has been discriminatory, and continues to discriminate, against Black people. Whether we are talking about voting rights, criminal justice, police brutality, mass incarceration, jury bias, tort law, punishment and retribution, or constitutional law, Black people have continued to suffer varying degrees of injustice and racialization, including death. What makes racial realism extremely useful from the pedagogical perspective is its emphasis on the critical and the empirical orientation toward the issues in philosophy of law.

From the foregoing, it is important to state that deploying CRT as pedagogy in the teaching of philosophy of law will be relevant in two notable respects. First, it will provide Black students with a critical lens to engage with issues in the philosophy of law and also provide substantial challenge to hegemonic practices within the academy that utilizes whiteness as the criterion for determining what legal philosophical ideas can be characterized as either cardinal or marginal. Second, it opens up an intellectual space for the discussion of issues in philosophy of law from the Black perspective that has been ignored so far. This will have a significant and positive impact on the overall learning experience of Black students who cannot separate who they are from what they are learning in the classroom, which is why the CRT pedagogical approach consolidates rather than marginalizes the Black perspective on the teaching of philosophy of law. Black students have no use for the abstract conception of the law when it has no bearing on the realities of Black experience. Fredrick Douglass is opposed to such abstract conception of the law that undergirds the current teaching of philosophy of law in the United States. In his view, 'law is not merely an arbitrary enactment with regard to justice, reason, or humanity. All the presumptions of law and society are against the Negro' (Douglass, 1860, p. 386).

Thus, CRT approach to teaching philosophy of law advances the relevance of the Black experience (including other minoritized perspectives) in the discussions concerning the idea, nature, and social function of the law or jurisprudence within the American tradition. It can also help to foster a learning environment that not only highlights the relevance between law and race but also helps non-white students, as well as white students, to find meaning and bring themselves, as they are, to legal philosophical scholarship. This is the ultimate significance of teaching philosophy of law through the lens of CRT.

6. Conclusion

What this article advocates is an alternative approach to the teaching of philosophy of law distinct from the current pedagogical setup in most American colleges and universities that places the white philosophical perspective concerning the law over and above other non-white perspectives. In situations where issues of race, racism, and legal discrimination were included in the curriculum, it was done only marginally. Such marginal inclusion of issues of race and racism in philosophy of law curriculum tends to suggest that the experiences of non-whites (especially the experience of Blacks), as it intersects with the law, are marginal and mediocre. In order to confront this anomaly, two tenets of CRT, that is, *the principle of interest convergence* and *racial realism*, were suggested as a template for the development of an alternate pedagogical lens through which philosophy of law should be taught to include the perspectives of Black people. It also explores how CRT can be used in teaching philosophy of law to Black students in such a way that the significant contributions of Black intellectuals to the history of philosophizing about the law in America will be duly acknowledged.

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Suggested Reading List

Some good scholarly texts that teachers of the discipline can assign on the syllabus to introduce students to the black perspectives and gendered perspectives on philosophy of law are as follows:

Alexander, M. (2012). The New Jim Crow: Mass incarceration in the age of colorblindness. New York: The New Press.
Berry, M. (1995). A history of constitutional racism in America. New York: Penguin Books.
Douglass, F. (2022). Writings and Speeches. New York: Library of America.
Gilmore, G. E. (1996). Gender and Jim Crow. Chapel Hill, NC: The University of North Carolina Press.
Goine, D. (1973). White man's justice, Black Man's grief. New York: Kessington Books.
Gray-Ray, P., Ray, M. C., Rutland, S. & Turner, S. (1995). African Americans and the criminal justice system. Humboldt Journal of Social Relations, 12(2), 105-117.
Haney-Lopez, I. (2006). White by law: The legal construction of race. London: New York University Press.
Kennedy, R. (1998). Race, crime and the law. New York: Vintage Books.
Quadagno, J. (1994). The color of poverty. Oxford: Oxford University Press.
Subotnik, D. (2005). Toxic diversity: Race, gender, and law talk in America. New York: New York University Press.

Note: While the list of textual references is not exhaustive, it provides concrete prescriptions for how to remedy some of the shortcomings identified in this article, in the contemporary philosophy of law curriculum, especially engaging with a broad range of issues.

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