

Radicalizing Curriculum

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In the late 1970s, a group of law professors and legal practitioners began to question the social role of law and the ways that law legitimated forms of injustice. This group came to be known as “Critical Legal Studies” (also known as “Crits” or “CLS”), and initially took form through the organizing efforts of Harvard Law professor Duncan Kennedy. Drawing on the energy and insights of the civil rights, feminist, and anti-war movements of the 1960s and ‘70s, CLS scholars critiqued the role of courts, legal statutes, and legal education in creating and maintaining systems of oppression. Crits and their theories were immediately controversial; law faculties developed pro- and anti-Crits groups that squared off on decisions regarding hiring, tenure, and course assignments.¹ It was during this period that the conservative Federalist Society formed at Harvard, Yale, and the University of Chicago to combat the perceived Leftist turn in legal academia.²

Since the 1970’s other bodies of critical legal thought have developed to expand, and at times challenge, the CLS critique. These include Critical Race Theory, LatCrit Theory, Asian American Jurisprudence, Feminist Legal Theory, Critical Race Feminism, and Queer Theory. Sometimes these bodies of thought developed out of organizing on law school campuses by students of color, women, and queer students, demanding a more progressive legal pedagogy. For example, the development of Critical Race Theory (CRT) is rooted in student protests at Harvard in the early 1980’s after preeminent CRT scholar Derrick Bell left and students demanded that the school hire a professor of color to replace him and teach a course on racial issues. When Harvard instead hired two white civil rights litigators, students organized their own “Alternative Course” to explore the relationship between the law and racial power.³

While the CLS school of thought was never homogenous, there are several themes running through the work of people who identify as Crits, including analyses of the “politics of law,” a critique of the notion of the autonomous individual, and the belief that law is designed to serve the interests of the wealthy and powerful at the expense of the poor and the marginalized. According to David Kairys, an NLG member who edited the seminal CLS collection, *The Politics of Law: A Progressive Critique*, law is powerful because “it enforces, reflects, constitutes, and legitimizes dominant social and power relations without a need for or the appearance of control from outside and by means of social actors who largely believe in their own neutrality and the myth of nonpolitical, legally determined results.”⁴ Critical race theorists expand the CLS critique by analyzing the role of law in legitimizing a regime of white supremacy and subordination of people of color, and seeking “not merely to understand the vexed bond between law and racial power but to change it.”⁵

The Crits were also interested in critiquing and reforming legal education. Kennedy’s classic article, *Legal Education and the Reproduction of Hierarchy* (1982), argued that law school was designed to indoctrinate students to accept their role as power elite, rightfully controlling access and knowledge in U.S. society. Law school curriculum, teaching styles, grading and ranking practices,

the law firm hiring system, and the lifestyle all worked together to train students to accept and participate in social hierarchies. The discomfort many left-leaning law students feel as they are told to discount their ethical intuitions about just outcomes in favor of the “rational” results provided by legal reasoning is a critical opportunity for the introduction of CLS and related critiques. Critical Race Theorists such as Patricia J. Williams have written powerfully about the acceptance of racist logics required to reach a “correct” legal result on law school exams or in classroom hypotheticals, and about the personal cost of doing so when one’s own identity and/or experiences must be suppressed in order to understand and advocate for the proper legal result.⁶ Some of the authors found the most interest in extra (critical) readings came from students who felt most like they “just didn’t get it” or couldn’t do “legal logic” or fantasized constantly about dropping out. These readings and conversations provided a lifeline to the real world outside of law school, and also formed a community that supported each other in challenging oppressive logics and arguments within classrooms.

Despite such necessary critiques made decades ago, little has changed in how law schools teach students about the law and legal reasoning, meaning CLS and Critical Race Theory are as relevant and important as ever. As Brian Tamanaha has pointed out, many of the CLS scholars who wrote such critical analyses of law and legal education were quite conformist in their own roles as tenured professors at elite law schools. He writes: “Seduced by the allure of prestige and material comforts, Crits and progressive law professors have become part of the system they set out to reform.”⁷ Perhaps because of the comfort offered by most legal professorship positions, few of the remaining, self-identified CLS scholars have spoken up about the rise of law school tuition, economic barriers to entering the legal profession, or the exorbitant rates of student debt. Nevertheless, Crit insights can help law students who are looking to challenge the both the structures and the culture of law schools and the legal profession. Critical legal studies and related strains of scholarship can provide vital alternative perspectives to those encountered in law school classrooms, and for some students, make all the difference in keeping them in the legal profession.

Critical Legal Studies in the Curriculum

Unless you attend a law school that has a number of critical legal or critical race scholars on the faculty, the insights of CLS and CRT are not likely to be emphasized in the curriculum.⁸ There are, however, numerous ways to bring these voices and analyses to the students at your law school, either through an extra-curricular study group, alternative supplements to courses offered at your school, or curriculum diversity initiatives to expand the official curriculum.

Part 1: CLS Reading Groups and Supplemental Materials

Many schools create study groups that read CLS/CRT pieces and then meet to discuss the ideas and how they apply to or challenge their main coursework. Students and faculty can work together to choose readings, plan discussions, and create materials. For more on how to set up a CLS reading group, see the best practices and sample syllabus and discussion group readings below. These are based on the experiences of NLG students at Northeastern University School of Law (“NUSL”) in Boston. The syllabus includes a six-semester list of topics and readings that can be adapted for use at your school, while the reading group provides a range of topics that can be used at any time.

An additional way to incorporate CLS work into your law school curriculum is to create alternative supplements to address issues that come up in required classes. These materials can provide alternative perspectives and raise critical questions for students to take with them into the classroom to challenge the business-as-usual approach to legal pedagogy.

Some possible topics to include in a radical legal studies curriculum and/or course supplement:

- Anti-Oppression work within Law School and the Legal Profession
- Curriculum and Structure of Law School
- Movement Lawyering
- Critical Race Theory
- Feminist Legal Theory
- Queer Theory
- Critical Perspectives on Property, Torts, Contracts, Civil Procedure, and other 1L doctrinal classes

Best Practices for CLS Reading Groups

The student-led NUSL CLS sessions provide a range of example topics and readings to create a radical alternative curriculum. Our experience also offers a number of best practices for those of you looking to start a similar program at your law schools:

- 1) **Incorporate faculty.** Faculty members are great resources to assist in finding readings, leading discussions, and bringing in more students. Find faculty at your institution who have written or taught from a critical legal studies perspective and ask them to work with your group to create an alternative curriculum. If you do not have CLS/CRT faculty members at your law school, contact the NLG National Office for help getting in touch with critical scholars.
- 2) **Include many different kinds of writing in your radical legal curriculum.** Critical legal studies and Critical Race Theory books, articles, case law, popular articles and blogs, and studies from other related disciplines (e.g. sociology, anthropology, political science) can all work together to bring a more nuanced analysis to your discussions. Reach out to other graduate departments at your university to collaborate with thinkers trained in disciplines other than the law.
- 3) **Include student-led discussions as well as presentations by faculty, attorneys, and organizers.** Students should create a unique syllabus tailored to the needs of their school community and choose topics they want to address. Presentations should allow plenty of time for discussion and debate...unlike law school classes. This is the time to analyze the implicit meanings and effects of the law, and possibly to recharge or strategize about how to raise these issues in those larger classrooms.
- 4) **Work with other student groups to discuss topics of interest.** Invite groups like Black Law Student Association (BLSA), La Raza/Latino/a Law Students Association (LLSA), OutLaw, and Law Students for Reproductive Justice to co-develop and participate in discussions on critical race, feminist, and queer perspectives.⁹

- 5) **Plan dinner/potluck events to end semesters.** This is a fun way to spend time with other students in a more relaxed atmosphere. One of the important results of these discussion groups is to create an intentionally critical and supportive intellectual community within your law school. Social events can help to solidify these connections. Plus, everyone's got to eat, which can help individuals find time to attend even when otherwise busy.

Sample CLS (and CLS-influenced) Reading Group Topics: Northeastern NLG

Click here for [CLS Reading Group Topics \(including readings!\)](#)

1. Intro to Critical Race Theory
2. Community Lawyering
3. Intersectionality in Legal Discourse
4. Radical Law Practice and Connections to Public Health Discourse
5. Feminist Legal Thought and Queer Theory
6. Art, Activism, and the Practice of Law
7. Critical Race Theory, Women, & Poverty
8. Accent, Masking, and Legal Discourse
9. Law School and Legal Pedagogy
10. Environmental Justice & Environmental Racism
11. Gender Policing, Transphobia, Criminalization, and the Prison Industrial Complex
12. Critiques of Rights Discourse & the "Perpetrator Perspective"
13. MLK Day and Law Student Organizing
14. Enforcement of Gender Norms through the Criminal Legal System and Prison Industrial Complex
15. The Welfare Rights Movement with Lucy Williams MLK Day 2015 (incl. Civil Disobedience, CRT, #BlackLivesMatter)

Sample CLS (and CLS-influenced) Study Session Topics: Northeastern NLG

Semester 1

Introduction to Critical Legal Studies
Critical Race Theory
Critical Queer Theory

Semester 2

What is critical legal theory?
(Post) Identity and the Law
Who Fits the Profile?: Thinking about Race, Class, and Property

Semester 3

HIV, Feminism, Sex Work and Criminal Law: Unintended Consequences
Legal Reasoning as Rhetorical Strategy--Lessons from Torts to Contracts!
Duncan Kennedy on Alternative Legal Education

Semester 4

Critical Perspective On Contracts: A Workshop
CLS and Legal Education Dinner Discussion
Student-led Critical Torts Workshop
Critical Property

Semester 5

Critical Civil Procedure
Critical Contracts Workshop
Critical Constitutional Law
Critical Race Theory Goes Global

Semester 6

Critical Criminal Law Workshop
Queer Theory and the Critique of Law

Part 2: Curriculum Diversity Initiatives

In addition to introducing Critical Legal Studies into your law school through the creation of study groups and radical supplemental materials, another avenue to action is to challenge the diversity of your school's curriculum. The following are suggested steps to consider as you work toward ensuring the courses offered at your institution represent and welcome a wider (and more radical) set of views. You will likely need to tailor some of them to your own school's situation, but all can be valuable starting points for discussing how to proceed. Finally, the Lewis and Clark NLG chapter's curriculum diversity proposal is also included as an example of what you might want to work toward!

Steps to Bring a Curriculum Diversity Initiative

1. Identify the need

Your NLG chapter can host a series of trainings on your campus on subjects such as combating racism or sexism, or the underrepresentation of minority voices. Solicit conversations, either using such trainings or otherwise, about students' feelings about (un)willingness on the part of professors and classmates to delve deeply into issues of race, gender, and other critical social topics within substantive law courses. If your school has a Diversity Working Group (DWG) or analogous institution, it may be able to administer a survey to students of color, female students, or LGBTQ students to help identify diversity programming needs. That information can be used to set goals and be shared with concerned NLG students as your law school chapter begins to discuss the possibility of a diversity curriculum proposal. Your instincts about precisely what kinds of increased diversity are necessary might not match exactly what the student body identifies. Take their voices into account while also appropriately using your own experience to inform the process.

2. Strive for inclusivity

Any conversation about curricular changes on your campus should be inclusive. Consider having student representatives survey the leaders of other student groups on campus to inquire about support for a diversity curriculum initiative.

3. Prepare for initial backlash from students

It is quite possible that other student group leaders may respond to these first emails with immediate criticism at the thought of additional graduation requirements and the idea that NLG would want to impose a political or doctrinal agenda on all students. This may become the most difficult line to walk in developing the initiative: how to express your group's desire to reach all students—including and especially those who would not normally seek out diversity or inequality-focused law courses—without alienating those students you are trying to reach.

4. Recruit allies

Despite some backlash, you can also probably expect to receive a number of supportive messages from like-minded student groups. Work with these groups to develop a proposal addressed to your school's Curriculum Committee. Your proposal should go through several revisions as you seek advice and support from various people. Seek out other groups, either student-run or within your school's administration, that are likely to be supportive of your goals. Continue to collaborate with these groups as you create new goals for diversity planning. Your NLG chapter can also encourage individual students to approach professors to express the desire to engage with topics of privilege, bias, and diverse viewpoints in substantive law courses. Faculty members are actually more likely to address these concerns if they come from the students, rather than from their colleagues.

5. Build awareness

While working on the proposal, you can also host campus events to get people talking about these ideas. One NLG chapter hosted an event titled "Rethinking Professionalism in a Diverse World," intended to frame cultural competence in terms of professionalism, which it was felt would bring more people to the table than confronting the community with terms such as "structural inequality." (From the event description: "Knowledge of diversity issues is a core tenet of service to clients. Come hear local attorneys talk about preconceptions that clients and attorneys both bring to the table, and how knowledge of diverse perspectives, privileges and biases is important to attorneys' professional conduct.") Again, you will likely need to try to balance a need to not alienate allies with a need to remain true to your ultimate goals and ideals. For example, professionalism may be a part of your ultimate proposal with broad support, but you might also want to include the suggestion of an academic graduation requirement centered on diversity even if some of your allies might consider that suggestion too radical and/or logistically difficult to achieve.

6. Create a roadmap for next steps

Submit a final proposal to the Curriculum Committee. One element of the proposal could be a five-year plan to be implemented by a student task force in collaboration with faculty and staff at your law school. You can ask for institutional support in the creation and facilitation of the task force and long-term plan. A sample proposal, from the Lewis & Clark NLG

student chapter, is included below. Your school may find it helpful in planning your own efforts to engage your law school community in meaningful discussion about inequalities in the law and the need for more diversity in legal education.

Sample Diversity Curriculum Proposal: Lewis and Clark NLG

Curriculum Committee Lewis & Clark Law School

Re: Curriculum Diversity Initiative

To the Curriculum Committee:

We are writing to express our desire to see Lewis & Clark lead other law schools in the development of a long-term initiative to better integrate diversity education into the school's legal training in order to prepare Lewis & Clark students to be professional, knowledgeable advocates in a diverse world.¹⁰

The National Lawyers Guild's mission is to safeguard the rights of people marginalized by poverty and discrimination and to effect structural change to vindicate people's rights. To that end, our student group has attempted to stimulate discussion on campus about the inherent injustices of our legal system, which we believe is built on and still serves a majority culture. We feel that learning how to recognize issues of privilege, bias, diversity, and discrimination is a critical professional skill for all new lawyers—not just those lawyers who seek out such education in extra-curricular forums. We see diversity education as both a tool of professionalism and a value unto itself that has intrinsic importance.

Our own experiences and stories shared by our peers make it apparent that students sometimes feel unsupported in raising gender, race, poverty, or other social issues in their classes. A recent survey conducted by the school confirmed that students of color in particular feel uncomfortable raising race and ethnicity in their classes, despite a desire to discuss the implications of race and ethnicity in the law. [*Footnote with redacted internal survey information*]. We want to feel comfortable talking about these issues with our peers and professors, learning to have frank discussions while being sensitive to different cultural perspectives and points of view. We believe that the suggestions outlined below can help our school community reach that place of open and honest learning.

Numerous undergraduate programs have recognized the importance of diversity requirements in fulfilling their academic missions.¹¹ Further, Oregon's legal community has made education about inequality and diversity a priority. For example, the Oregon State Bar's Diversity & Inclusion Section seeks to remove barriers to justice in part by "educating attorneys about the cultural richness and diversity of the clients they serve."¹² The Bar requires Oregon lawyers to take access to justice credits to meet continuing education requirements. Also, many law firms now have diversity managers who carry out internal diversity initiatives. Diversity education is clearly a component of professionalism that should not only run through existing courses but should be taught in law schools as a specific requirement of legal training.

To meet these goals, we hope the Curriculum Committee will take the following suggestions under consideration. We suggest that the school work with students to design and implement a structured five-year plan with increasing integration of diversity education. The need for staff and faculty

support for an ongoing plan is critical to achieving these goals, as student turnover could otherwise frustrate the process.

- 1 The school should support the creation of a diversity education student task force, made up of representatives from identity-based groups, public interest student groups, and other interested students not affiliated with student groups. This task force could interact with and report to the Curriculum Committee and the existing Diversity Working Group made up of faculty, staff, and students.¹³ The task force should not be treated as another student club. It should receive institutional support, working closely with faculty and administration to implement a five-year plan.
- 2 The task force, Diversity Working Group, and Curriculum Committee should host a community forum with participation from staff, faculty, and students to agree upon a five-year plan.
- 3 The five year plan could include:
 - Yearly anti-racism or other inequality trainings, with school-wide participation.
 - Incorporating a required diversity component into existing Professionalism and Ethics courses.
 - Creating a library database of diversity materials pegged to law school subjects to assist faculty with incorporating diversity concepts into existing classes through syllabus supplements.¹⁴
 - Incorporating diversity education into Legal Elements.
 - Incorporating a question into course evaluations about the extent to which a professor addressed issues of diversity and social justice during the course.
 - Encouraging faculty-directed reading groups on relevant topics and further faculty support for student-directed reading groups on social justice topics.
 - Creating stronger ties to the Oregon State Bar's Diversity and Inclusion section and encouraging law student participation in community diversity initiatives.
 - Creating a course or forum for recent alumni to reflect on the challenges and changes to their values during law school and in legal practice.
 - Creating an academic requirement apart from Professionalism courses, requiring students to take at least one class in a category of diversity-oriented courses in order to graduate.

We understand that there may be many logistical hurdles to realizing these goals, but those hurdles will be much larger for students to tackle without institutional support. We hope this letter can at least begin a dialogue with the school and help establish a plan of action to move forward.

With your help, we can make affirmative efforts to educate ourselves about how others view the world and to become well-rounded lawyers in our increasingly diverse state and society. Our clients and colleagues will be of many races, gender identities, and cultures, and we want to be able to relate to them as sensitive, educated lawyers.

Thank you for your consideration. We look forward to your response. [*Contact information*].

Sincerely,

National Lawyers Guild, Lewis & Clark Law
School Student Chapter

With support from:

Minority Law Students Association • Latino
Law Society • Jewish Legal Society • OutLaw •
ACLU • Black Law Students Association •
Women’s Law Caucus • Asian/Pacific
American Law Student Association • Native
American Law Students Association • Public
Interest Law Project • Christian Legal
Fellowship • Family Law Society • American
Constitution Society • Law Students for
Reproductive Justice • Students for Sensible
Drug Policy • Coalition Advocating for
Transportation Solutions

cc: Associate Dean of Faculty
Curriculum Committee Chair
Diversity Working Group Chair
Interim Diversity Working Group Chair

Further Resources

David Kairys, ed. *The Politics of Law: A Progressive Critique*. Basic Books (1998).

¹ David Kairys, *Philadelphia Freedom: Memoirs of a Civil Rights Lawyer* (University of Michigan, 2008).

² Michael Avery and Danielle McLaughlin, *The Federalist Society: How Conservatives Took the Law Back From Liberals* (Vanderbilt University, 2013).

³ Kimberlé Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas, eds., *Critical Race Theory: The Key Writings that Formed the Movement* xx-xxi (1995).

⁴ Kairys, *Philadelphia Freedom*, 15.

⁵ Crenshaw, *supra* note 3, at xiii.

⁶ “Williams mentions ‘a constitutional law exam in which students are given the lengthy text of a hate-filled polemic entitled ‘How To Be a Jew-Nigger’ and then told to use the First Amendment to defend it.’ Williams makes the point that students taking such an exam, in this case especially Jewish and African-American students, are required to write against their own personal knowledge and experience. She notes that a student who refuses to do this will receive a lower grade, and guesses that ‘everyone, including perhaps the students of color, will rationalize this result away as an inability to ‘think like a lawyer.’” Angela P. Harris and Marjorie M Shultz, “(A)nother Critique of Pure Reason: Toward Civic Virtue in Legal Education” 1773., *quoting* Patricia J. Williams, *The Alchemy of Race and Rights: Diary of a Law Professor*, 84 (1991).

⁷ Tamanaha, “The Failure of Critics and Leftist Law Professors to Defend Progressive Causes,” 343.

⁸ Law schools in the U.S. known for CLS work include Harvard Law School, Georgetown University Law Center, Northeastern University, and the University at Buffalo.

⁹ Note that this suggested collaboration should never take the form of students from a dominant identity (for example, a mostly white NLG group) inviting students from oppressed identities (for example, BLSA) to educate the first group on oppression. It is crucial that everyone, including law students, who does not experience a form of oppression take an active role in educating themselves and not rely on others to do this work for them.

¹⁰ This issue is separate from admissions diversity, although the inclusion of many viewpoints in our school community is important to our goal.

¹¹ See Loyola University Maryland’s requirement that students take Global Awareness, Justice Awareness, and Domestic Diversity Awareness courses (<http://bit.ly/Uljmt2>), Rutgers’ School of Arts and Sciences requirement that students take courses meant to “enable an understanding of an increasingly globalized world” (<http://bit.ly/PQNbFl>), Fairfield University’s Core Curriculum Diversity Requirement aimed at helping students “develop a critical consciousness of self and society” (<http://bit.ly/UE63V4>), and Colby College’s Diversity Academic Requirement which helps ensure that students “learn how people different from oneself have contributed to the richness and diversity of society, how prejudice limits such personal and cultural enrichment, and how each individual can confront intolerance” (<http://bit.ly/T15tV2>).

¹² See <http://www.osbar.org/diversity/programs.html#mission>.

¹³ Representatives of our group have met with the Diversity Working Group, whose members have expressed support for a student-driven initiative that will complement and amplify but not duplicate that group’s own goals.

¹⁴ See “Diversity Readings Related to First-Year Courses,” compiled by Mary Whisner, reference library at the Gallagher Law Library, University of Washington School of Law. Available at: <https://lib.law.washington.edu/content/guides/Diversity1L>.