# 2024 New Legal Realism Abstract

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Session: NLR & Legal Education II:  Pluralizing Professional Identities and Purposes

As the hidden historical and cultural sources of exclusionary structures in formal legal educational institutions become clearer, there is an opportunity to expand in new directions. This panel explores the promising possibilities that open up for legal education when professional identity is conceptualized outside of a monocultural and individual-centered vision.  As NLR has long contemplated, better understandings of people in context can sharpen policy aimed at improving institutional or organizational structures. When we pluralize professional identities and purposes, we can shake loose sedimented assumptions about ethical horizons and how legal training and the legal profession “should” operate.

Abstract: The Disconnect: What the Student Experience and Their Anticipations Tell Us About the Short Fall of the Current Professional Identity Formation Interpretations

Professional identity formation provides an opportunity in legal education to intentionally focus on the development of who students will be as lawyers or legal leaders, a shift from the traditional sole focus of legal education being to teach students how to “think like a lawyer.” In this moment, one of the many realities that need to be acknowledged and addressed is the context in which this opportunity can unfold.

Legal education is presented as neutral, where many law classes are “conducted as if it is possible to evaluate rules and arguments that do not reflect or privilege any particular perspective”.[[1]](#footnote-2) Students learn to identify a legal problem, extract the relevant facts, identify the legal rule, and apply the rule to a legal problem in a vacuum, making the implicit “adoption of the rules of property, contract, and torts, look as though it flows from legal reasoning rather than from politics and economics”.[[2]](#footnote-3) However, as Crenshaw wrote 30 years ago, this objective and neutral perspective, the adoption of the Langdell model, is the embodiment of a white middle-class world view, which Crenshaw calls the “perspectivenessless” perspective.[[3]](#footnote-4) As a result, minoritized law students are placed in a difficult situation, where in order to participate in a discussion, they must “stand apart from their history, identity, and their immediate circumstances,” and become “colorless legal analysts”.[[4]](#footnote-5) If students incorporate their racial identity and experiences into their class contributions, their comments are disregarded as just subjective opinions. As a result, many minoritized law students tend to feel inferior, which silences their voices in the classroom.[[5]](#footnote-6)

This approach to legal education and the experience in the law school classroom described by Crenshaw (and others) have not changed much in the last 30 years[[6]](#footnote-7) and yet today we are in a moment when law schools can, if committed, intentionally “‘provide substantial opportunities … for the development of professional identity’”[[7]](#footnote-8) which entails, according to the ABA interpretation, a focus “’on what it means to be a lawyer and the special obligations lawyers have to their clients and society.’”[[8]](#footnote-9) This is an opportunity where finally subjectivity and introspection (and vulnerability) are needed, but there is a disconnect between what the interpretations say (or don’t say) and the actual experience in law schools and the profession that would facilitate meaningful and transformative professional identity formation.

Current interpretations of professional identity formation fall short in that they are based on old systems and expectations of who can and should be a lawyer, how they should act, and how they should react to law. Currently, most schools teach towards a certain formation—professional often centered on the white middle class world view—which disallows complexity in experience and identities. The short fall of the current interpretations is evidenced in how marginalized law students experience the law school environment and culture,[[9]](#footnote-10) and a reality that even prospective law students are anticipating.

In LSAC’s latest knowledge report, recent prospective law students, particularly Black or African American, Native American or Alaska Native, Hispanic or Latina/é/o/x, Middle Eastern or North African/Arab, first-generation college graduates, and LSAC fee waiver recipients reported at the highest rates that they or people like them will not be valued in law school and that they will be underestimated.[[10]](#footnote-11) For example, nearly double the proportion of LSAT test takers who identify as Black/African American (8%), Hispanic or Latiné (9%), and American Indian or Alaska Native (8%) strongly disagreed or disagreed that people like them are valued in law school as compared to their white peers. Close to two-fifths of Black/African American and Hispanic or Latina/é/o/x (38% for both) and 34% of American Indian or Alaska Native test takers agreed or strongly agreed that people would be surprised if they or someone like them were admitted to law school. This is double the rate of their white peers. More than one in three first-generation college students (34%) agreed or strongly agreed that people would be surprised if they or someone like them were admitted to law school, a rate 70% higher than their continuing-generation college students peers. More than one-third of Hispanic or Latiné (37%), Black/African American (36%), and American Indian/Alaska Native (33%) respondents agreed or strongly agreed that people would be surprised if they or someone like them were successful in law school. This is more than double the proportion of white test takers (15%) who reported this. More than one in three first-generation college students (34%) agreed or strongly agreed that people would be surprised if they or someone like them were successful in law school, a rate almost 90% higher than their continuing-generation college peers (18%). Marginalized individuals posed to apply and potentially enroll in law school anticipate an unwelcoming environment in law school.

Generally, these patterns are consistent with research in higher education that shows how students from racially and ethnically minoritized groups are stereotyped and often perceived negatively by others.[[11]](#footnote-12) Given their lived experiences, it is not surprising that recent LSAT test takers/prospective law applicants from marginalized communities anticipate that they will not be valued and will be underestimated in law school. As legal education faces a possibility to train and develop law students differently through professional identity formation, the student-lived experience in the context of legal education and in the profession must be addressed in how the curriculum is developed and implemented in law schools today. Professional identity formation offers an opportunity to level up the rigor of legal education and change how students are professionally socialized in requiring them to have a much more complex understanding of the law, which in turn enhances the ability of the profession to address the needs of its underserved communities. If done well, the opportunity may also finally open the space for students from marginalized communities that historically were explicitly excluded to explore who they are holistically—freely— as a lawyer and what it means to them when executing their skills in the profession and for justice.

1. Crenshaw, Kimberlé, Neil Gotanda, Gary Peller, and Kendall Thomas, eds. 1995. *Critical Race Theory: The Key Writings that Formed the Movement.* New York: The New Press. [↑](#footnote-ref-2)
2. Kennedy, Duncan and Paul D. Carrington. 2004. *Legal Education and the Reproduction of Hierarchy: a Polemic against the System.* New York: New York University Press [↑](#footnote-ref-3)
3. Crenshaw, Kimberlé, Neil Gotanda, Gary Peller, and Kendall Thomas, eds. 1995. *Critical Race Theory: The Key Writings that Formed the Movement.* New York: The New Press. [↑](#footnote-ref-4)
4. Crenshaw, Kimberlé, Neil Gotanda, Gary Peller, and Kendall Thomas, eds. 1995. *Critical Race Theory: The Key Writings that Formed the Movement.* New York: The New Press. [↑](#footnote-ref-5)
5. Elizabeth Mertz, *Inside the Law School Classroom: Toward a New Legal Realist Pedagogy,*60 Vand. L. Rev. 483, 511 (2007); *see also* Carrie Yang Costello, Professional Identity Crisis: Race, Class, Gender, and Success at Professional Schools (2005); Meera E. Deo et al., Power, Legal Education, and Law School Cultures (2020); Robert Granfield, Making Elite Lawyers: Visions of Law at Harvard And Beyond (1992); Lani Guinier et al., Becoming Gentlemen: Women, Law School, and Institutional Change (1997); Elizabeth Mertz, The Language of Law School: Learning to “Think Like A Lawyer” (2007); Wendy Leo Moore,Reproducing Racism: White Space, Elite Law Schools, and Racial Inequality (2008); Wendy Leo Moore & Joyce M. Bell, *The Right to Be Racist in College: Racist Speech, White Institutional Space, and the First Amendment*, 39 Law & Policy 99, 99–120 (2017); Yung-Yi Diana Pan, Incidental Racialization: Performative Assimilation in Law School (2017); Robert B. Stevens, Law School: Legal Education in America from the 1850s to the 1980s (1983); William M. Sullivan et al., Educating Lawyers: Preparation for the Profession of Law (2007). [↑](#footnote-ref-6)
6. Bodamer, E. (2020). Do I belong here? Examining perceived experiences of bias, stereotype concerns, and sense of belonging in U.S. law schools. *Journal of Legal Education*, *69*(2), 455-490. <https://www.jstor.org/stable/27073498>; Deo, M. E., & Christensen, C. (2020). *Diversity & exclusion: 2020 annual survey results*. Indiana University Center for Postsecondary Research. [↑](#footnote-ref-7)
7. [Interpretation 303-5](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2024-2025/2024-2025-standards-chapter-3.pdf). [↑](#footnote-ref-8)
8. [Interpretation 303-6](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2024-2025/2024-2025-standards-chapter-3.pdf). [↑](#footnote-ref-9)
9. Bodamer, E. (2020). Do I belong here? Examining perceived experiences of bias, stereotype concerns, and sense of belonging in U.S. law schools. *Journal of Legal Education*, *69*(2), 455-490. <https://www.jstor.org/stable/27073498>; Deo, M. E., & Christensen, C. (2020). *Diversity & exclusion: 2020 annual survey results*. Indiana University Center for Postsecondary Research. [↑](#footnote-ref-10)
10. [LSAC’s 2024 Knowledge Report: 2023-2024 Test Takers | The Law School Admission Council](https://www.lsac.org/data-research/research/lsacs-2024-knowledge-report-2023-2024-test-takers#:~:text=Using%20data%20collected%20through%20PLQ%20responses,%20LSAC%20researchers) [↑](#footnote-ref-11)
11. Carter, P. L. (2005). *Keepin’ it real: School success beyond Black and White*. Oxford University Press; Blair, I. V., & Banaji, M. R. (1996). Automatic and controlled processes in stereotype priming. *Journal of personality and social psychology*, *70*(6), 1142; Bonilla-Silva, E. (1997). Rethinking racism: Toward a structural interpretation. *American sociological review*, 465-480.; Fiske, S. T. (1998). Stereotyping, prejudice, and discrimination. In D. T. Gilbert, S. T. Fiske, & G. Lindzey (Eds.), The handbook of social psychology (4th ed., pp. 357–411). McGraw-Hill; Murphy, M. C., Steele, C. M., & Gross, J. J. (2007). Signaling threat: How situational cues affect women in math, science, and engineering settings. *Psychological science*, *18*(10), 879-885.; Steele, C. M. (1997). A threat in the air: How stereotypes shape intellectual identity and performance. *American psychologist*, *52*(6), 613; Steele, C. M., & Aronson, J. (1995). Stereotype threat and the intellectual test performance of African Americans. *Journal of personality and social psychology*, *69*(5), 797; Steele, C. M., Spencer, S. J., & Aronson, J. (2002). Contending with group image: The psychology of stereotype and social identity threat. In *Advances in experimental social psychology* (Vol. 34, pp. 379-440). Academic Press. [↑](#footnote-ref-12)