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**CRITICALLY RETHINKING THE CONCEPT OF CRITICAL MASS: AN
INSTRUMENTAL CASE STUDY OF THE DIVERSITY CULTURE OF A
PREDOMINANTLY WHITE LAW SCHOOL**

A Dissertation in

Higher Education

by

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ABSTRACT

Race-conscious affirmative action in admission consists of college and university-level policies and programs for recruiting, admitting, and matriculating minoritized students. Previous research has shown that structural racial diversity (the amount of racially minoritized students at a school or in a certain class) is a necessary pre-requisite to achieving any interactional racial diversity, it is not by itself sufficient to achieve that outcome nor can it by itself be a substitute for having the necessary number of students. Much of this research has focused on admissions policies and practices, rather than student experiences. There is much still to learn about how structural diversity is operationalized in a predominantly white setting and the cultural practices such a process produces. Furthermore, the process of how structural diversity leads to interactional diversity is not well known. This instrumental case study sought to highlight the cultural practices that permeated school community's diversity culture. This qualitative project utilized semi-structured interviews, formal classroom observations and informal observations to critically examine the concept of critical mass and the culture of diversity at a predominately white law school. Data reveals that that most of the efforts to advance substantive diversity at the law school were limited to admissions. In the classroom, an increase in minoritized students did not automatically transfer into increased cross racial dialogue. Outside the classroom, the current political environment provoked a contented racial climate, in which minoritized students felt simultaneously welcome and under attack. A philosophy of non-intentionality and individuality dominated the cultural at the law school and impeded their own attempts at achieving their diversity goals.

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DEDICATION

For Denise Cynthia Wright
The best mother a son could ever have
And
To all those who are brave enough
To live a life
Committed to serving others

Chapter One:

Introduction

“I am only one, but still I am one. I cannot do everything, but still I can do something; and because I cannot do everything, I will not refuse to do something I can do.”

-Edward Everett Hale

On a cold December day in 2015 hundreds of people gathered to hear a complex discussion focused around a new way to dissect an old topic. The bitter cold of the Washington D.C. morning was matched only by the stoic atmosphere of the arena that both sides occupied. Each side of this familiar debate dug into their position with war-like efficiency and uncompromising fervor. Each side apparently sought to proudly claim the mantle of gladiators for equality, equity, and justice. Ironically many of the adjudicators of this contest did not have a problem staking out a position within this debate. At least two have since publicly acknowledged receiving benefits from the stance of one side of the argument (Mears, 2009; Flock, 2017).

Everyone selected to referee over this matter was chosen presumably because of their demonstration of ‘merit’. The man ‘in charge’ was a product of an elite institution. A first among equals, this individual claimed to have a very candid view of the rules of the ‘game’ he was now overseeing. During his approval inquiry he cleverly proclaimed, like the smartest kid in the class who was ready to give the teacher the answer everyone else could not, “...it's my job to call balls and strikes and not to pitch or [bat]” (McKee, 2006). So, it was to my surprise when I heard this self-proclaimed empire rattle out a question that both simultaneously burned me with its effectiveness and shocked my conscience with its utter disregard for his privileged position:

CHIEF JUSTICE: What unique perspective does a minority student bring to a physics class?
(Fisher v. University of Texas at Austin (2016))

Good question, right?

The man that uttered that phrase was Chief Justice John Roberts. The case was *Fisher II*, the 2015 edition of U.S. Supreme Court case that was first decided in 2013. Abigail Noel Fisher, a self-proclaimed “white woman” (see Coates, 2015), filed a lawsuit alleging that the University of Texas had discriminated against her because of her race in violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution (Brodin, 2014; Wright & Garces, 2018).

The University of Texas at Austin accepted students in the top 10% of each Texas high school’s graduating class, regardless of their race. Thus, 81% of 2008’s freshman class were admitted under that plan. Applicants who failed to graduate in the top 10% of their high schools could still have gained admission by scoring highly in a process that evaluates their talents, leadership qualities, family circumstances, potential to be very good at a professional sport and, in some instances, race.

Race-conscious affirmative action in admission consists of college and university-level policies and programs for recruiting, admitting, and matriculating students of color, most significantly African Americans but also Latinos and Native Americans (Hirschman, & Berrey, 2017).

Abigail Fisher applied for admission to the University’s 2008 entering class but did not qualify under the 10% plan for automatic admission plan. However, five applicants of color with lower scores gained admissions into the program ahead of her. Indeed, often overlooked by observers of this case was the fact that there were forty-two white applicants with lower numbers than Abigail Fisher that were also admitted instead of her that year, as well (Cashin, 2014).

The U.S. Supreme Court first heard *Fisher v. Texas* (*Fisher I*) in 2012 and decided to remand the case (meaning send back to a lower level of the court system) to better apply a certain aspect of the legal rules governing the issue. The case came back to the U.S. Supreme Court in 2015 (*Fisher II*), and in June of 2016 the U.S. Supreme Court again ruled in favor of the University. It was on this occasion that Chief Justice John Roberts asked the lawyer representing the University of Texas during the oral argument for *Fisher II*: “What unique perspective does a minority student bring to a physics class?”

Setting the Stage

This project does not seek to answer the Chief Justice’s question, at least not directly. The proposition this project seeks to offer is not that interactional diversity (the amount and quantity of cross racial interaction between students) can compensate for numerical (or structural) diversity. While research shows that structural racial diversity (the amount of racially minoritized students at a school or in a certain class) is a necessary pre-requisite to achieving any interactional racial diversity (the amount of interactions racially minoritized students at a school or in a certain class have with students of different races), it is not by itself sufficient to achieve that outcome nor can it by itself be a substitute for having the necessary number of students (Garces & Jayakumar, 2014; Jayakumar, Garces & Park, 2018; Milem, Chang, & Antonio, 2005; Moses, & Chang, 2006). The educational benefits that research shows occur because of having “diversity” in a learning environment requires interactional diversity, and to achieve interactional diversity a prerequisite is the presence of structural diversity.

Moreover, the essential suggestion of this project is not, as others have recently argued (Edelman, 2016; Mueller, 2017; Warikoo, 2016; Berrey, 2015), that the legal rationale for affirmative action needs to change. This is a proposition that I agree with and I believe the

evidence produced by this inquiry does support. However, as important an argument this may be, it is not within the scope of this project to make this argument.

Indeed, the claims I present in this dissertation are narrower than the former and far less ambitious than the latter. Instead, the central argument that this project seeks to advance is that the campaign for diversity in post-secondary/professional education (as it is presently constituted) overly focuses on the number of minoritized students on the school roster. It does this while not putting nearly enough attention on enhancing the diversity of the learning environment for the students that currently attend these educational institutions.

To use the terms offered by former Michigan Law School Dean Evan Caminker (2006), we are still so focused on “first generation” race-based admissions processes that we have neglected the development of “second generation” post admissions programming that is as necessary to advance diversity at a law school.

In plain English, we (including lawyers, educators, and society at large) have become so focused on the *number* of minoritized in a school or university, that we have neglected the major effect that campus climate, *culture* and learning environment have on whether (students) benefit from diversity. To best understand how I got to this conclusion it is best we should start at the beginning.

Contextualizing the Debate

America exists as a society as praised for our accomplishments as we are plagued by our sins. America also stands as nation that many would risk death to get to. However, we have yet to come to terms with the fact that America was built on the backs of free labor. Free labor in the form of African American slavery and genocide (Kendi, 2016). Free labor used as a means of

procuring the land from Native Americans (Brayboy, 2005). So fundamental was the belief of early Americana that those with ‘advanced melanin’ were deemed not just different, not just ‘other’, but inhuman. That the founding document of the nation describes even African American slaves as three fifths of a person (Bell, 1989).

At the end of the American Civil War, the U.S. Constitution was changed to better match the American ideal of equality with its practice. The U.S. Constitution was amended to try and ensure equality going forward for black men (and eventually black women) taking into consideration past societal wrongs (Harper, Patton, & Wooden, 2009). But, you may ask what exactly is meant by equality? If it was wrong to enslave a people because they had been socially assigned a certain race (burden), why was it not viewed as wrong to also to reward these same people because that they had been socially assigned a certain race (benefit)?

This battle between those that believe “in order to treat some persons equally, we must treat them differently” (Justice Blackmun, 1978, cited in *Bakke v. Regents of the University of California*, p. 407) and those that believe “...equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal” (Justice Powell, 1978, cited in *Bakke v. Regents of the University of California*) has been ongoing in our courts for about sixty years and shows no real signs of coming to a resolution any time soon.

Democracy, however, is (ideally) about compromise (Rostbøll, 2017). In this case, the compromise the courts produced regarding race conscious admissions is that a University may consider race (as a last resort) if, and in most cases only if, utilized for the purpose of “obtaining a ‘critical mass’ of minority students *for the purposes* of gaining the ‘educational benefits that flow from a diverse student body’” (Grutter v. Bollinger, 2003). This twenty-two-word

ambiguous statement from a U.S. Supreme Court case was derived from a nearly 100-page document that led to hundreds of follow up cases, a couple dozen books, a made for television movie, and (at least partially) this dissertation project.

If you accept the argument that race, as a criterion for admission, is used *only* if its goal is to achieve a critical mass of underrepresented students and *only* because it is believed that number of students is what is needed to gain the “educational benefits of diversity” for all students in a learning environment. It then must follow that it is important that we recognize both what those “educational benefits of diversity” maybe and what a critical mass really is in the context of how it is operationalized not just how it is theorized.

In this introductory chapter, I highlight the area of research this project falls into and the importance of the general topic. I start by providing the background of the problem which trigger this project. Next, I present the statement of the present research project. This is followed by a description of the purpose of the research project. Here, I highlight the aims of this research project. Subsequently, I share with you my research question. This is followed by a section on the significance of this study. At this point, I go into detail about the contributions this project makes to the practice and theory of higher education. Finally, I provide a roadmap for what you should expect in the following chapters of this project. We begin with the background of the problem.

Background of the Problem

The concepts contained in the research project are interdisciplinary, multifaceted and complex therefore some context and background are necessary for you to be able to undertake this journey with me over the next few chapters of this dissertation.

Fisher v. University of Texas I & II (2012, 2016) clarified the status of the use of race conscious practices in Higher Education admissions. Anytime a state actor (the state, federal, or local government) decides to assign burdens or benefits, using race as a reason, it has the burden of meeting what is known as the “strict scrutiny” level of judicial inquiry (*Fisher v. University of Texas*, 2016). This means the government must have a “compelling interest” in using the racial classification and the way race is used must be “narrowly tailored” to the goal of achieving that interest, utilizing means that are “least restrictive on the rights of innocent parties” that might be burdened by the government action (Winkler, 2006).

The “compelling governmental interest” that is currently best recognized for the use of race in college admissions is the goal of “obtaining a ‘critical mass’ of minority students for the purposes of gaining the ‘educational benefits that flow from a diverse student body’” (Pratt, 2013). These *Grutter* “educational benefits” are described in the case law as the breaking down of racial stereotypes, increase in interracial dialogue among students, and an increase in students racial understanding, etc. (*Grutter v. Bollinger*, 2003). While this is not an exhaustive list of the benefits that the research shows (and the Court recognize) flow from diversity, they are the ones that are specifically mentioned in the *Grutter* case.

The catch-22 is that while schools must be specific enough in their goal to allow the Court to scrutinize them (just stating you want a critical mass of minoritized¹ students is probably not enough) (Pratt, 2013), having a set number that a school would like to reach is

¹ Following Gillborn (2005) and Harper (2012), I use “minoritized” rather than “minority” to emphasize that certain racial-ethnic groups are assigned minority status through the actions of more dominant groups. I find the verb, as opposed to the noun, more appropriate for this project because it places the emphasis for some of the conditions that research subjects find themselves in not on the subjects themselves, but on the institution and structures they exist in. For this study, the use of the expression “minoritized” in preference to “minority” reflects the ongoing social experience of marginalization, even when groups subject to racial-ethnic discrimination end up achieving a numerical majority in a certain population.

considered too much like a quota and is unconstitutional. Thus, most attempts to quantify critical mass are usually met with extreme skepticism. However, a failure to describe critical mass specifically enough may mean a school fails “narrow tailoring”. Thus, a proper definition of “critical mass”, both legally and academically, must be one that includes everything that it seeks to be and excludes everything that it legally cannot be.

The first modern day U.S. Supreme Court case involving post-secondary education and affirmative action was *Regents of the University of California v. Bakke* (1978). In *Bakke*, a white male had been denied admission to the medical school at the University of California at Davis for two consecutive years. (*Regents of the University of California v. Bakke*, 1978).

The Court did not agree on a ruling and its split decision in *Bakke* would come to define “the fork in the road” point at which the Court moved toward its modern understating on the use of race in Higher Education today. Justice Powell’s views provided the architecture for how admissions personnel would use race in the future and would come to define what *Bakke* stood for. Justice Powell’s vote (plus the votes of the four liberal justices) preserved the use of race as only a “plus factor” in college admissions.

The U.S. Supreme Court would next rule on the use of race in the realm of college admissions again in a pair of cases called *Grutter* and *Gratz* (*Grutter v. Bollinger*, 2003; *Gratz v. Bollinger*, 2003). In *Gratz*, the University of Michigan undergraduate admissions policy was based on a point system that automatically granted 20 points to applicants from underrepresented minority groups. The Court found that the policy made race the decisive factor for virtually every “minimally qualified” underrepresented minority applicant (*Gratz v. Bollinger*, 2003).

In contrast to *Gratz* in *Grutter*, rather than imposing “quotas”, the University of Michigan Law School admissions program focused on “academic ability and a ‘flexible’ assessment of applicants' talents, experiences, and potential to contribute to the learning of those around them” (*Grutter v. Bollinger*, 2003). *Grutter* did not define diversity solely in terms of race and ethnicity but considered these as “plus” factors affecting overall diversity.

The theory of critical mass principally comes from *Grutter v. Bollinger* (2003). While some of the *Grutter* “educational benefits” have been concretely described (the breaking down of racial stereotypes, an increase in interracial dialogue, increase in students racial understanding) the concept of critical mass was not (*Grutter v. Bollinger*, 2003).

The idea of critical mass has taken on a life of its own both in the legal front and the higher education realm. But, it was in *Grutter* that the idea of critical mass assumed a prominent role. The Court had occasion to reflect on an aspect of the justification that the law school had advanced for its affirmative action policy: the need to admit a critical mass of students from historically underrepresented groups (Addis, 2007).

Critical mass is (or should be) ideally a tool for achieving diversity. Jeffery Lehman, University of Michigan Law School Dean at the time of *Grutter*, is quoted as having observed that “critical mass is not a numerical quota. It’s an idea, just like the word ‘tall’ is an idea, not a specified height” (Addis, 2007). Critical mass in this sense seems “closer to being a metaphor than an analogy” but there was uncertainty as to whether the phrase was to be used as an analogy or as a metaphor at the time it became part of the case law (Addis, 2007). The question remains: what level of “mass” is “critical” enough and how does a university recognizes that it has reached or surpassed that level?

Statement of the problem

We have yet to come to any academic or legal consensus conclusion as to what a critical mass is or when a university has (or has not) achieved it (Gregory, Daugherty & Corrigan, 2005). Universities with massive racial isolation and a history of segregation often have a clear understanding of what a critical mass *is not*, but there has been little effort or inquiry into whether or how the benefits that are assumed to come from “critical mass” are being achieved or not. Moreover, research has never claimed that assembling a critical mass leads to the educational benefits that result from diversity.

But, without a critical mass, evidence suggests that these benefits will not accrue, and learning environments will suffer from its lack. However, even with a critical mass, a university may still fall short of utilizing diversity in such a way as to achieve the educational benefits promised. This is the problem that this project seeks to take up and for which my qualitative inquiry is based. How can we critically understand the pedagogical and legal concept of critical mass in a way that allows us not to be stuck on the concept but to develop policy and practice which does what critical mass was always intended to do; produce the educational benefits that come from having diversity in a learning environment?

Critical mass, originally envisioned as the key to get into the house in which the educational benefits of diversity are present, has instead become the house itself. Many studies have looked at the numbers of minoritized students in an educational institution and the effect of that number on several student outcomes. However, less attention has been paid to the culture and environment of educational institutions and their classrooms that struggle to recruit and retain minoritized individuals. Moreover, most of the attention focusing on equity and access for minoritized students has focused mostly on admissions, while not enough work has been done to

contextualize and described the culture and learning environment needed in a school setting to achieve “the educational benefits” of diversity, the very thing that the concept of “critical mass” exists to get us to in the first place.

This dissertation is a research project that attempts to fill that gap by taking an in-depth look at the cultural practices surrounding diversity at a law school that acknowledges it has the goal of achieving a “critical mass” of minoritized individuals but has often not been able to achieve that goal for several reasons. I choose to study the culture (meaning the social order, rules, and understandings that connect people (Garcia, 2017)) as a way of exploring how racial and interactional diversity is advanced in certain type of law school (Gurin et. al, 2002). As stated before by racial interactional diversity, I mean specifically the interactions between students of different races inside and outside the classroom. For example, the study group made up of both black and white students; the Fashion Law society headed by co-Presidents, one black and one white; or the debate between a black police officer and a white former inmate over the constitutionality of stop and frisk.

As we advance further into the third century of the United States of America, higher education stakeholders and policy makers have begun to ask what level of diversity is enough to no longer allow an exception to the rule that race is a classification that government should not be using to make decisions.

Additionally, while much work has been done on the understanding of what is a “critical mass” from the institutional perspective, little has been done that emphasizes the crucial role that learning environment, campus climate, and culture play in creating an atmosphere in which students can achieve the “educational benefits of diversity.” This instrumental case study, using ethnographic methods, adds to the current post-secondary diversity and inclusion literature by

capturing and describing the sense making process, voice, and thoughts of students, faculty, staff and administration on the effects low levels of racial diversity have at one school at one educational institution.

Purpose of the Study

This project is an instrumental case study of the culture of diversity (a concept borrowed from Ward, 2008) at a law school to discern how every day cultural practices inform the current body of knowledge about how efforts to maximize interactional diversity are conducted and can be improved. The primary goal of this study is to capture and describe the intricate struggle that comes with increasing racial diversity at a campus. In conducting this research, I sought to contextualize “critical mass”, by providing different perspectives on the lived experiences of law students with the “educational benefits of diversity”. I discovered that these perspectives are as varied as their sources and, as I hope you will see, that variation allowed for a comprehensive and rich story about how an educational institution has dealt with, is dealing with, and can improve on the challenges of increased racial diversity.

Additionally, an explicit outcome desired from conducting this study is to work with the institution I observed to improve the culture of diversity there, both while I was conducting the study and after my findings were presented. Eschewing the traditional, detached, so called objective stance of many researcher, in this project I fully embrace the more radical Stetsenko’s (2015) “transformative activist stance” which assumes a researcher’s the ability to produce knowledge through participation with the culture created and in the lives of those being studied. Situated firmly within the now much recognized tradition of Critical Race Theory, which argues that racism is widespread and deeply rooted in American history and current society and that advances for minoritized populations occur only when the coincide with the interest of the

majority, this study seeks for a reformation in thinking about what policies are needed to advance the original anti-subordination mission of affirmative action.

Data for this project was collected utilizing various qualitative methods. First, though classroom observation I sought to highlight the uneven racial power dynamics in the classroom my “keyhole issue” for me (Hochschild, 2016; Morse, 1994). According to Hochschild (2016), a “keyhole” issue is a qualitative technique that allows the researcher the best opportunity “to [get] to know one group of people in one place [concentrating] on a single issue” (p. 21).

Dialogue is contained and limited in law school classrooms, as compared to some undergraduate classrooms, because professors utilize primarily the Socratic Method² as their preferred method of pedagogy. This presented me with an interesting challenge and an opportunity to observe dialogue in a unique setting and in a unique way.

Thus, I selected a law school as the setting for this study both because of the potential ‘raced’ topics that could be covered and the way the setting would allow such dialogue to be observed in the classroom. As the study grew and evolved, however, the presence/absence of a critical mass of students in that classroom and in the ‘learning’ that took place out of the classroom became a ‘subject’ of research as well. The story of the minoritized members of this community and the institution seeking to reach out to them, created an amazingly complex story in which I was honored to be given a glimpse into.

Study development. I became interested in this project in the Spring of 2015. I was in the last year of law school and was simultaneously designing and teaching my first college level

² The Socratic Method is a standard law school teaching technique whereby the professor calls on one student at a time rather than accepting volunteers; that student is then encouraged (or forced) to participate and often answer a set questions as well as follow-up questions.

course. The unique opportunity that was provided to me to both study affirmative action in law school and experience it as a taught a 400 level African American studies class, sparked an interest in learning about law and practice surrounding the American Affirmative Action debate. That same semester I was in the process of constructing what would become my master's thesis which looked specifically at the historical development of race conscious admissions, to project the potential development of gender and sexual orientation conscious admissions in (what was at that time) a pre-marriage equality America.

Ultimately, the *Obergefell v. Hodges* (2015) decision proved to do much less for U.S. constitutional equal protection theory than I had imagined or hoped for (See Yoshimo, 2015). But, my understanding of how affirmative action should operate in theory began to come into conflict with the assumptions I had from my graduate student and teaching experiences about how the policy worked in practice. It is within this context, merging honest ignorance and cognitive dissonance, that the initial thought for this research project was born and matured.

To gain knowledge and inform practices in the field, I designed this research project to gain the perspective and learn about the sense making process of a particular law school community. The community in question was selected for both its advantages and disadvantages. I sought to situate my inquiry in the context of a law school that (like many) struggled to attract a significant number of minoritized students while utilizing race conscious admissions to try and do so. Through interviews and observation of this schools' administrators, students, faculty, and staff I sought to acquire an authentic view of what is the "culture of diversity" at the law school, how did it come about, and how is can be improved.

My aims are like the those recently articulated by Dowd and Bensimon (2015) "to move beyond a 'diversity' framework that focuses [solely] on 'intercultural understanding' and instead

implement [more] concrete equity initiatives that ‘focus on reversing the college education gap for American Indians, African Americans, Latinos, and other subordinated racial/ethnic groups to reduce racial polarization.’”

Praxis. Theoretically, I utilized sociocultural theory as one of the basis for this study. Currently primarily applied in the study of second language acquisition, sociocultural theory [hereafter SCT] has its origins in the writings of the Russian psychologist L. S. Vygotsky (1896 - 1934) and his colleagues. The theory contends that human mental functioning is a socially facilitated process that is organized by cultural artifacts, activities, and concepts (Lantolf, Thorne, & Poehner, 2015). It posits that humans are understood to utilize existing, and to create new, cultural artifacts (through which knowledge is generated) that allows them to regulate their behavior.

Under the premises proposed by SCT, learning is a social and cognitive process through which individuals become increasingly able to participate in the activities associated with a social context.

The title of Vygotsky’s (1978) classic worked *Mind in Society* amply describes the general notion that the theory is meant to describe. The mind exists, not detached from the material circumstances of the learner, but within it. According to one scholar, sociocultural theory posits that human development is generated by people collaborating within historically evolving social practices as the core condition of their existence (Stetsenko, 2016). Simply put, circumstances change people as much as people change circumstances (Stetsenko, 2016). As social practices as the core condition of human existence, “participation” refers to both the process of learning and its outcome (Baker & Lattuca, 2010).

Thus, access to education, under SCT, is more than the ability to be included in the process of post-secondary but the ability to contribute to and influence its outcome. Under this theory, learning is the result of social interactions with members of a given social group (Baker & Lattuca, 2010). Thus, to truly study learning you must study culture, as much as culture can be properly understood as social interactions among a culture sharing group.

According to Lantolf, Thorne, & Poehner (2015) SCT claims that while human neurobiology is a necessary condition for higher mental processes, the *most* important forms of human cognitive activity develop through interaction within social and material environments, including conditions found in instructional settings. Furthermore, as an outgrowth of Neo-Marxism and continental social theory, SCT emphasizes not only research and understanding of human developmental processes, but also praxis-based/action-based research, which entails *intervening and creating* conditions for development (Lantolf, Thorne, & Poehner, 2015). This theory creates the foundation for my observer/participant stance in conducting my research and is the root I start with to claim the importance of the culture and environment of an institution to the “learning” of minoritized and non-minoritized individuals in a law school.

The idea that learning takes place principally and primarily during social interaction as opposed to within the mind of the atomic individual is not limited to sociocultural theory. In a recent book, Mercier and Sperber (2017) highlight how cognitive reasoning developed via human evolution to help us collaborate as opposed to enabling us to solve logical problems.

Furthermore, sociocultural theory has been used to analyze the racial implications of learning in the past. Nasir and Hand (2006) explored the potential uses and extensions of sociocultural theoretical perspectives for integrating and further developing research on race, culture, and learning in the classroom. More recently, Leonardo and Manning (2017) argued for

a union between Vygotsky and the field of race studies (and what they refer to as Whiteness Studies specifically) to benefit educators insofar as the concept of ‘zone of proximal development’ (a concept while not authored directly by Vygotsky, is attributed to him and his theory) could be applied to the particular ideological development of white identity.

The specific aspect of SCT that I propose to adopt for this study comes from Dr. Anna Stetsenko. According to Stetsenko (2008), the common foundation for most of the varied SCT approaches is dialectically supplanting what she refers to as a relational ontology with the notion that collaborative purposeful transformation of the world is the core of human nature and the principled grounding for learning and development. In other words, a combination of a presumption that reality is constructed in relation with others (and not just individually), supplemented with the belief that to learn people must interact with their “reality” in such a way that allows for acknowledgement of their ability to contribute to the creation of the seemingly permanent environment that they are in.

According to Stetsenko (2008), those who do this are engaged in transformative activist stance (TAS). A transformative activist stance (TAS) suggests that people come to know themselves and their world (as well as ultimately come to be ‘human’) in and through the processes of collaboratively transforming the world in view of their goals. Accepting this premise means “that all human activities are instantiations of contributions to collaborative transformative practices that are dependent on both the past and the vision for the future and therefore are profoundly imbued with ideology, ethics, and values” (Stetsenko, 2008).

Sociocultural theory influenced this study by guiding my observations of a culture and environment at the law school in which I am asking intentionally if minoritized individuals can take a transformative activist stance. Thus, I will be asked myself, while observing the culture of

diversity at a law school, if the environment and culture at the school was one in which minoritized students felt that they were able to contribute to the environment of the school (transforming the law school in view of their goals) versus mere participation (being given token access to an environment in which success is contingent on transforming yourself to suit the environment).

Conceptually, I will use the reframing of the “critical mass” concept presented by Garces and Jayakumar (2014) called dynamic diversity. Garces and Jayakumar (2014) have reframed the concept of critical mass as requiring an understanding of the conditions needed for meaningful interactions and participation among students, given the specific institutional context. To highlight this contextual definition of critical mass (and to avoid further confusions in the legal debate on affirmative action which I describe in detail later) they offer a different term ‘dynamic diversity’ and outline four main components of dynamic diversity that institutions can attend to. Dynamic diversity may offer a better understanding of what a ‘critical mass’ should be, but it does not lead directly to a conclusion of what it is currently.

Dynamic diversity guided my study by providing a mechanism in which influenced my ability to formulate questions for my interviews and an apparatus to guide what I am looking at during my classroom observations. I utilized the components presented by Garces and Jayakumar (2014) to judge if the culture of diversity at the law school is one in which a student can contribute rather than participate. The elements of dynamic diversity also helped me construct my findings in a coherent and policy relevant way.

I contextualize critical mass through the empirical evidence gained by observing ‘diversity at work’ in the classroom and how the lack of a critical mass affects the classroom and to obtain a nuanced, varied perspective about what is the right amount of critical mass needed to

obtain the educational benefits of diversity. The hope was that this process would lead to an emerging theory on Higher Education student diversity that focuses less on the notion of “diversity” per say (numbers driven, admission-based education) toward a what I am calling an ethos of equity and empathy (student development driven, mission-based education). I define empathy using Paulo Freire’s ideas of dialogue, praxis and education (Freire, 1974) which calls for increased dialogue among equals in the classroom.

I articulate this as a move from an ethos of diversity (defined as a focus solely on structural racial diversity for the sake of aesthetics alone) (Bell, 2003) to one of equity and empathy (defined as a focus on the production of a student- lawyer that can identify with those unlike themselves and an admission policy that takes into consideration the current and historical inequities that are part of the particular school context).

This can be best demonstrated via an environment in which the student-lawyer can contribute to (and add themselves into) the fabric of the institution, rather than just participate in the dominant culture (Stetsenko, 2009). Such a theory relies on the proposition presented earlier, that academic learning changes not only what we know, but who we are (Baker & Lattuca, 2010). Learning, under this sociocultural view, has both epistemological and ontological consequences (Baker & Lattuca, 2010; Packer & Goicoechea, 2000). Sociocultural and constructivist theories of learning: Ontology, not just epistemology. *Educational psychologist*, 35(4), 227-241.). As such all learning takes places in the context of culture (Dowd et al., 2011b).

I define equity as a fulfillment of the “educational debt” (Ladson-Billings, 2006) owed not only to the descendants of slaves, but also to women of all colors, immigrants, the LGBTQA community, white rural farmers living in poverty, and all those that have been oppressed by

being the “other” in society. The following research questions will guide my inquiry and are the questions I propose to primarily address with this study.

Guiding Research Question

The following exploratory question guided this study:

How does a predominately white law school that utilizes race conscious admissions carry out racial diversity in the classroom?

Significance of the Study

Because the aspiration of obtaining a “critical mass” to produce the educational benefits of diversity is the only substantial way to use race a factor in college admissions it is important to know what a critical mass is and how to obtain it.

The drawbacks to hyper-homogeny within Higher Education have been documented on many levels. Garces (2013) documented massive losses in medical school enrollment due to affirmative action bans. Laird’s (2005) recent research highlights the connection between students’ development of critical thinking skills (a major stated outcome of Higher Education) and student diverse experiences. Laird (2005) found that students with more experiences with diversity, particularly enrollment in diversity courses and positive interactions with diverse peers, are more likely to score higher on academic self-confidence, social agency, and critical thinking disposition. Antonio et. al, (2004) found a connection between of racial diversity on complex thinking in college students.

By studying “critical mass” we can learn what are the benefits of racial diversity to Higher Education students aside from (or in addition to) the benefits it may give to those previously unexposed to diversity (i.e majority white students). By moving students (both white

students and students of color) from the object of critical mass research to its subject I advance intersectionality (McCall, 2005) and an expansion of the understanding of “diversity” beyond the current black/white binary (Kim, 1999).

This study holds significance to the higher education diversity and inclusion scholarship and literature because its findings will augment current studies that utilize large data sets, surveys, and focus groups to articulate how institutional stakeholders make sense of the culture of diversity in a specific setting. The study also holds practical significance. First to the law school at which the study is conducted by providing the school with findings that will allow them to better improve their culture for all students and better diverse their learning environments.

The study also has practical significance to the development of legal education in general because the findings presented in the pages to follow lends to the development of a stronger theory of equity and access for minoritized individuals. Law school diversity professionals will be able to utilize the findings of this study to improve the culture of diversity in their school and create an environment in which more minoritized students will feel welcome and accepted in.

In summary, the study acts as attempt to discern what is the culture of diversity at a law school that has had a history of low levels of structural racial diversity (number of minoritized individuals attending) but seeks to still maximize its level of interactional racial diversity (informal and formal interactions between students of different races).

Roadmap Going Forward

In the following chapters I will present to you the research background, methods, and results of this dissertation. Chapter two provides a review of the law behind race conscious admission. In this chapter, I will situate this project within the current equal protection

jurisprudence which governs affirmative action. In this chapter, I attempt to advance your understanding of the law and how it directly impacts if, how, why, and to what extent race can be used as a factor in admissions in higher education.

Chapter three presents a review of the educational social science research concerning the didactic benefits derived from racial diversity. This chapter seeks to provide you with an understanding of the current academic conversation occurring around the issue of equitable access to higher education and how campus culture and environment impacts such access.

Chapter four presents the research methodology of this dissertation project. This is an instrumental case study that utilized ethnographic methods to promote an understanding of how structural diversity is operationalized as interactional diversity at a predominately white law school. This chapter presents the research design for this study including what was done to produce the data and how the data was analyzed.

Chapter five is where I present the data from this study. It is here that the voices and perspectives of my research participants are presented. The three sub-subsections of this chapter will seek to take you inside various operations and perspectives at Granite State University Law School (GSU Law). Each of these stands as a context in which diversity will be evidenced and/or enacted structurally and interactionally. In these sections I seek to show a little of “how” GSU Law “does diversity” and the cultural practices related to their operations. The next section will include themes with interpretive tools derived from my theoretical groundings in law, sociocultural pedagogies, Critical Race Theory, dynamic diversity, etc., that appeared to act as impediments to GSU Law’s aspiration of achieving racial interactional diversity.

Finally, I conclude with chapter six. In this final chapter I present the implications gleaned from my data. Data reveals that most of the efforts to advance substantive

diversity at the law school were limited to admissions. In the classroom, an increase in minoritized students did not automatically transfer into increased cross racial dialogue. Outside the classroom, the current political environment provoked a contented racial climate, in which minoritized students felt simultaneously welcome and under attack. A philosophy of non-intentionality and individuality dominated the cultural at the law school and impeded their own attempts at achieving their diversity goals. GSU Law would benefit greatly from adopting the goal of making its diversity “dynamic” in the near future.

What follows immediately from here is a review of literature that will pull from diverse bodies of literature to address the range of issues concerning critical mass, race conscious admissions, and the state of social science research surrounding the nature and quality of educational benefits which flow from racial diversity.

Chapter Two:

A Review of the Legal Literature

“I understand my job under our precedents [is] to determine if your use of race is narrowly tailored to a compelling interest. The compelling interest you identify is attaining a critical mass of minority students at the University of Texas, but you won’t tell me what the critical mass is. How am I supposed to do the job that our precedents say I should do?”

-Chief Justice Roberts in Fisher I (2013)

In this chapter, I present an outline of the current law of equal protection and affirmative action. Following this summary of the law, I bring into focus the research on the legal and political concept of critical mass as it is utilized as a justification for race conscious admissions in higher education. Next, I address the educational benefits that flow from racial diversity as articulated in the *Grutter v. Bollinger* case. Finally, the section ends by presenting and critiquing the diversity rationale and its influence on how we view legal equity in education.

The goal of this chapter is to have you walk away with a suitable understanding of the constitutional law concerning equal protection in America and how it directly impacts if, how, why, and to what extent race can be used as a factor in admissions in higher education. It is my hope that you walk away from this section knowing what the law intends for diversity to do in the classroom and how this expectation effects how a law school creates potentially diverse learning environment.

In its most basic form this study contemplates whether a legal concept (critical mass) designed to increase student equity is doing that in practice at a school that has been struggling to achieve it. This chapter is important because it will provide you with the background information needed to fully comprehend the legal concepts at the heart of this study.

The Law of Equal Protection

The Equal Protection Clause of the Fourteenth (14th) Amendment was passed after the U.S. Civil War to ensure the equality of the newly freed African American slaves. The 14th Amendment provides (in relevant part) that “[n]o state shall...deny to any person within its jurisdiction the equal protection of the laws” (U.S. Const. amend. XIV).

The 14th Amendment was passed in part to ensure that all United States citizens had the same rights regardless of which state of the nation they resided in. In fact, the twelve amendments to the U.S. Constitution before the Civil War Amendments (13th, 14th, 15th) only applied to the federal government when first passed. The 14th Amendment was passed to enable, and has allowed, the selective incorporation of the Bill of Rights³ to apply to the states. Prior to the incorporation of the free speech provisions of the 1st amendment in *Gitlow v. New York* (1925)⁴, there was no rule that each individual state government could not restrict speech. For a more recent example, you may be surprised to learn there was not an individual right to own a firearm (free from state government interference) until *McDonald v. City of Chicago* (2010).

Thus, the reason a public state university is not completely free to select students on whatever criteria it wants is because it cannot violate the equal protection clause of the 14th amendment, which explicitly states that “no state shall...deny to any person...the equal protection of the laws.”

To assess if a government action or policy is indeed a violation of equal protection you must first determine which test a court will evaluate the policy under. There are three levels of

³ The first ten Amendments to the U.S. constitution.

⁴ Where the [Supreme] Court interpreted the 14th Amendment to require that state action must adhere to 1st Amendment jurisprudence.

scrutiny by which government action is judged by courts to be in accordance with the constitutional requirement of equal protection: strict scrutiny, intermediate scrutiny, and rational basis review (Herman, 2007).

Strict scrutiny is applied in two contexts: when a ‘fundamental constitutional right’ is infringed or when government action produces *burdens or benefits* based on a ‘suspect class’ or, more accurately, if based on suspect classifications (Winkler, 2006). A classification means a grouping of people. For example, the U.S. Constitution takes a group of people (those born in the United States) and confers on them certain rights, such as citizenship. That group of people, in this case natural born citizens, possess an identity trait that individuals possess which the government can then use to assign those with that identity benefits (or burdens).

A classification is traditionally considered to be “suspect” if the group that the classification is based on has been historically discriminated against; the members of the group possess an unchangeable and/or highly visible trait; the group is thought of as historically being unable to protect themselves via the ordinary political process (such as voting); and the group’s distinguishing characteristic does not inhibit them from contributing to society (Hutchinson, 2013).

The U.S. Supreme Court has found that race, nation of origin, and (in some cases) citizenship status are among those classifications considered ‘inherently suspect’ and therefore are presumed to be an invalid basis on which to determine government action. Indeed, as articulated in *Grutter v. Bollinger*, strict scrutiny is designed to “smoke out” illegitimate government usage of race.

Once a classification is considered ‘suspect’ and strict scrutiny applies, the government law or policy must be justified by a “compelling” government interest. A compelling interest is usually considered as one that is necessary as opposed to merely convenient. National security is often referenced as the quintessential “compelling” state interest (Braber, 2002).

Furthermore, once the need for the action is proven the government law or policy must also be narrowly tailored to that need. The way the government has chosen to achieve their “compelling” interest must also be the means that is the least restrictive to the rights of those burdened instead of benefited. This means the action or policy must not do anymore than is necessary to accomplish the specific need that the Court has determined is compelling. Also, the government entity instituting the action bears the burden of proving to a court that to a court that there is no alternative method available to accomplish the government action or policy that is less restrictive on the rights of those who do not advantage from the policy. Less restrictive means that the action does the least amount of damage to the rights of those displaced by the action.

In contrast to strict scrutiny, intermediate scrutiny is applied when a government action creates burdens or benefits based on quasi-suspect classifications or content neutral speech (Pollcogt, 2012). This level lives in between the strict scrutiny test (the most rigorous test) and rational basis (the least rigorous test). Quasi-suspect classifications are missing one or more of the elements of suspect classification described above, but still is are identity classifications in which courts should be wary of government using to make decisions (Pollcogt, 2012). These classifications are based on gender and illegitimacy⁵. To meet the intermediate scrutiny test, it

⁵ Meaning whether or not child was the product of a couple that was married at the time of conception/birth.

must be shown that the law or policy being challenged furthers an “important” government interest in a way that is substantially related to that interest (Yoshino, 2011). Important is less than compelling and substantially related is a less close fit than narrowly tailored.

All other classifications get only a rational basis review. Rational basis review is the lowest of three levels of scrutiny applied by courts (Goldberg, 2004). This test requires that government action be only ‘rationally related’ to a ‘legitimate’ government interest. A legitimate government interest is basically anything that is not completely irrational or motivated only by animus. Under this standard of review, the legitimate interest does not have to be the government’s actual interest (Farrell, 1998). If a court can establish (on its own) a ‘legitimate’ interest served by the challenged action, it will withstand rational basis review even if that is not the actual motive of the law, the policy, or the policy makers that construed the law. Additionally, indirect contrast to strict and intermediate scrutiny, the burden of proof for rational basis review falls not on the government to prove that its actions are valid but, on the person(s) challenging the government action to prove its irrationality.

Strict scrutiny is a very high bar to meet and most of cases challenged under strict scrutiny fail (Winkler, 2006). Rational basis, in contrast, is a very low bar to pass and most of the polices challenged under this review are upheld (Farrell, 1998). The Court has adopted this formulation to balance a deference for democracy, in which rule by the majority is the norm, with a need to protect the rights of those are minoritized by society.

Race conscious admission is government action based on a racial classification and thus triggers strict scrutiny. Thus, any university that uses this type of affirmative action, must justify its use by stating a court-approved compelling governmental interest. If it has a reason that is

compelling enough the governmental entity must then prove that the way it is using race is narrowly tailored to achieving that interest with the least amount of damage to the rights of those outside the racial group advantaged.

The Legal Development of Affirmative Action

As a policy and practice that attempts to address persistent racial inequities in education, race-based affirmative action in higher education (i.e., the consideration of race as factor in admissions) has been a politically polarizing and academically controversial issue. In fact, some observers have noted that public debates around affirmative action have been more dividing in America than debates over abortion, the death penalty, or marriage equality (Schuck 2002).

Employment and government contracting. Many of the current restrictions on affirmative action policies in higher education come from restrictions placed on affirmative action in the context of employment (White, 2003). In the 1986 case, *Wygant v. Jackson Board of Education* the U.S. Supreme Court (the Court⁶) struck down a portion of a “layoff provision” that required “teachers with the most seniority ... shall be retained, *except* that at no time will there be a greater percentage of minority personnel laid off than the current percentage of minority personnel employed at the time of the layoff.”

In a splintered opinion, the Court found that the need for such a policy was not supported by the evidence if past discrimination had occurred. The Court, applying strict scrutiny, apparently wanted more from the school district by way of evidence of “actual” past racial

⁶ Typically, the phrase “the Court” acts as an abbreviation for the U.S. Supreme Court and “the court” or courts with a lower case ‘c’ serves as a colloquial/catch all term for all other courts in the American legal system.

discrimination by the school district rather than relying solely on the employers attempt to remedy societal discrimination as a justification for the program.

The Court took its attack on affirmative action further three years later in *City of Richmond v. J.A. Croson Co.* (1989). In *Croson*, the Court struck down Richmond's minority set-aside program, which gave preference to minority business enterprises in the awarding of municipal contracts. The Court held that Richmond had failed to identify the need for the program and that other so called "race neutral remedies" would be insufficient. *Croson* made clear that there would be one standard in which governmental preferences based on race would be adjudicated strict scrutiny.

Finally, the Court put the nail in the coffin into what was known as the "benign" use of race in *Adarand Constructors, Inc. v. Peña* (1995). Principally all *Adarand* does is extend the reasoning of *Croson* (which was a case about a local government's policy) to federal affirmative action programs. *Adarand* overruled a post-*Croson* federal race preference case called *Metro Broadcasting, Inc. v. FCC* (1990).

In *Metro Broadcasting*, the Court held that federal (as opposed to state or local) affirmative action programs should only have to meet intermediate scrutiny when only using "benign racial classifications." In that context, "benign racial classifications" meant the assigning of governmental benefits, using race as a classification for who would receive such as benefit, to help the members of those racial groups that had historically been the victim of government imposed/sponsored racial discrimination. In other words, government's use of racial grouping to assign benefits to help minoritized individuals was a 'benign racial classification'. *Metro*

Broadcasting (1990) held that such federal government action only had to meet the intermediate scrutiny test of judicial review, as opposed to the more stringent strict scrutiny test.

In contrast, *Adarand* (1995) introduced what has become known as the *consistency principle*. After *Adarand*, the same set of standards are applied to both federal and state affirmative action programs. It also dictated that the use of racial classifications to ‘help’ minoritized individuals had to meet the same high legal test as those designed to ‘hurt’ minoritized individuals. *Adarand*’s “consistency principle” stands for the proposition that racial classifications meant to ‘help’ minoritized individuals inherently hurt white people. And thus, *Adarand* represents the codification of Justice Powell’s comment from *Regents of the University of California v. Bakke* (1978) that “[t]he guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color.” Justice Powell’s *Bakke* opinion is described in detail in the next section. The Justice Sandra Day O’Connor, the Court’s “swing vote” from retirement of Justice Powell in 1987 until her retirement in 2006, authored the majority opinion in both *Adarand* (1995) and *Grutter* (2003). As you will see later in this chapter, the Court’s holding in *Adarand* started the process that led to *Grutter*.

Taken to its extreme, *Adarand* stands for the principle that the use of any classifications to help the previously oppressed must meet the same legal test as that which is used to advance white supremacy. Thus, after *Adarand* (1995) the test of judicial scrutiny for government action was decided by the classification the law implores, not the class of people it is applied to. The context of the oppression or the individual identities of the person being harmed play no role in determining the test.

After *Adarand*, American equal protection law makes no distinction between government's use of race as an animating discriminating object and government's use of race to prevent discrimination being perpetuated and to undo the effects of past discrimination. Both are inherently "suspect" and thus require government to show a lot to justify its use. Also, both must meet the very heavy burden needed to overcome the presumption that race play no role in government decision making. Therefore, after *Adarand*, a majority of the U.S. Supreme Court interpreted the 14th amendment as providing white people a guarantee to the status quo of cultural dominance in America (Tran, 2017; Romero, 1997; Eades, 1995).

A government entity can implement an affirmative action policy as a remedy for proven past discrimination (Spann, 1995). This justification, however, has been limited in that the policy cannot rely only on "general societal discrimination" because of race, but the governmental actor seeking to implement the policy must have engaged itself directly in past discrimination.

Under the U.S. Supreme Court's decision in *City of Richmond v. J.A. Croson Co.*, "a state or local government's race-based affirmative action program is subject to strict scrutiny even though its purpose is to remedy the effects of past racial discrimination for which strict scrutiny was originally employed." By "proven," it seems that courts require a "strong basis in evidence" that prior discrimination has occurred.

This "strong basis in evidence" standard was further strengthened in *Ricci v. DeStefano* (2009). In *Ricci*, the New Haven, Connecticut Fire Department invalidated results of a civil service test because none of the black firefighters who took it scored high enough to be considered for the promotion. Twenty of the city's firefighters (nineteen white and one Hispanic)

claimed that the invalidation of the test was intentional government discrimination after they had passed the test for promotions to management positions and the city declined to promote them.

In *Ricci* (2009), the Court held that before an employer can engage in what they referred as intentional discrimination for the purpose of avoiding or remedying unintentional discrimination (such as a promotion test that results in no blacks being promoted) the employer must first have a “strong basis in evidence” to believe that it will be subject to liability if it fails to take the race-conscious, discriminatory action. As many have written, the Court in *Ricci* seems to require employers to make a case of racial discrimination against themselves to take any action to prevent minoritized individuals from being the victims of race neutral mechanisms that result in negative racial effects (Brodin, 2011; McGinley, 2010; Riccucci & Riccardelli, 2015;).

In other words, unless you can prove that your actions are racist, you can do little up to that point to prevent your actions from being racist. This proposition, of course, relies on the *Adarand* influenced premise that differential treatment of majority and minoritized individuals is as much racism as employment practices that result in very few minoritized people having a job with a certain employer. Such a proposition, while beyond the scope of this dissertation, has been debated for years (Kalunta-Crumpton, 2017).

The second compelling interest for which a race-based affirmative action policy can stand on is “on the ground that [the policy] contributes to the attainment of a diverse student body from which educational benefits flow.” This second justification for the use of race in government action is limited, however, to the higher education context.

Furthermore, there are several interests that educators involved in higher education may find compelling that the law does not. Peter Nicholas (2015) observed that “the Court [has]

rejected the interest in ‘racial balancing’ or the interest in having a workforce or classroom whose racial mix tracks demographics.” Also, rejected as a compelling governmental interest is the idea that “having people of specific races in given professions will allow them to serve as positive role models for children of the same race”. This is the so called “role model theory”, which the court did not find convincing enough make it a compelling governmental interest. Finally, the Court does not accept the theory that by admitting minorities into professional programs they will be more likely to provide those professional services to minority communities as a compelling governmental interest.

Affirmative Action in Higher Education

[t]he Constitution is both color blind and color conscious. To avoid conflict with the equal protection clause, a classification that denies a benefit, causes harm, or imposes a burden must not be based on race. In that sense, the Constitution is color blind. But the Constitution is color conscious to prevent discrimination being perpetuated and to undo the effects of past discrimination. The criterion is the relevancy of color to a legitimate government purpose.

-Judge John Minor Wisdom, United States v. Jefferson County Bd. of Ed. (1966)

Brown v. Board of Education. The story of the use of race in education in America often begins with the seminal case “ending” state sanctioned segregation in secondary schools, *Brown v. Board of Education* (1954). In *Brown*, African American students sought admission to public schools in their community. They had been denied admission to schools attended by White children under laws requiring or permitting segregation according to race. The African American primary school students alleged that such segregation deprived them of the equal protection of the laws under the 14th Amendment.

The trial court denied them relief on the separate but equal doctrine announced by the Supreme Court in *Plessy v. Ferguson* (*Plessy v. Ferguson*, 1896). The African American students

contended that the public schools were not equal and could not be made equal; thereby denying the students equal protection of the law.

The legal question in *Brown* was whether *Plessy* (which applied the so called “*separate but equal*” doctrine in public transportation) should be held inapplicable to public education and whether segregation of children in public schools solely because of race (even though the physical facilities and other tangible factors were equal) deprived the children of a minoritized group of equal educational opportunities.

The U.S. Supreme Court, in a unanimous decision, found for the African American students and overruled the “*separate but equal*” doctrine as applied to secondary and primary⁷ education. *Brown* has come to be known as the case that stands for the fact that a government in the United States (federal, state, or local) cannot assign legal burdens based on race. However, *Brown* did not (directly or indirectly) speak to whether a government can assign state sponsored benefits based on race, especially when it came to “benefits” assigned for the purposes of remedying the negative effects of past government approved racial discrimination.

This is the question that would eventually captivate the Court in the 70’s, 80’s and 90’s and would come to define the use of race-based “affirmative action” in higher education. The term “critical mass” was never mentioned in *Brown*. At this point, the issue was not how colleges and universities needed to justify using race to let students in, but the Court justifying why they can’t use race to keep students of color out.

⁷ The U.S. Supreme Court has already ruled in *Sweatt v. Painter*, 339 U.S. 629 (U.S. 1950) that an African American had to be admitted to a Texas law school, but the Court did this applying the “separate but equal” doctrine rather than overruling it.

The evolution of affirmative action. Affirmative action as a policy directive first appeared in 1935, when in the National Labor Relations Act Congress authorized the National Labor Relations Board to redress an unfair labor practice by ordering the offending party to “cease and desist from such unfair labor practice, and to take such affirmative action ... as will effectuate the policies of this Act” (Schuck, 2002).

President Kennedy's Executive Order 10925 created the President's Committee on Equal Employment Opportunity (PCEEO) in 1961, mandating federal contractors to “take affirmative action to ensure that the applicants are employed, and that employees are treated during employment, without regard to race, creed, color, or national origin” (Schuck, 2002).

President Johnson gave a commencement speech on June 4, 1965 to the graduating class of Howard University. This speech has come to symbolize the ideological birth of the ‘affirmative action’ concept. In this speech, Johnson (1965) stated:

To this end equal opportunity is essential, but not enough, not enough. Men and women of all races are born with the same range of abilities. But ability is not just the product of birth. Ability is stretched or stunted by the family that you live with, and the neighborhood you live in--by the school you go to and the poverty or the richness of your surroundings. It is the product of a hundred unseen forces playing upon the little infant, the child, and finally the man. (p. 767)

Subsequently, President Johnson’s issued Executive Order 11246 on September 24, 1965, which terminated the PCEEO and gave the Department of Labor primary responsibility for enforcing affirmative action (Schuck, 2002). The Labor Department then created the Office of Federal Contract Compliance (OFCC) to assure that all federal contractors took affirmative, pre-contract steps to hire and promote more minority employees, and use more minority-owned subcontractors (Schuck, 2002).

Affirmative action began to assume its contemporary form with the election of (Republican) President Richard M. Nixon, who moved the OFCC into the business of mandating preferences. Schuck (2002) observed that “Nixon was concerned about growing urban unrest and determined to avoid the riots of the Johnson years, [and] hoped that reducing the joblessness of young black men would provide an effective antidote.” The election of a Democratic President, Jimmy Carter, moved affirmative action to new areas. Such as in 1977, when Congress approved a 10 percent minority set-aside program under the Public Works Employment Act.

Regents of the University of California v. Bakke. According to Hirschman and Berrey (2017), by 1972 race conscious admissions for black students was common practice at predominantly white selective colleges and universities across America. This began to change with first modern U.S. Supreme Court case involving post-secondary education and affirmative action was *Regents of the University of California v. Bakke* (1978).

In *Bakke*, a white male had been denied admission to the medical school at the University of California at Davis for two consecutive years. At the time, the medical school's special admissions program allowed disadvantaged members of certain minority races to be considered for 16 of the 100 seats in each year's class. However, members of any race could qualify under the school's general admissions program for the other 84 places in the class. The white male had been denied admission to the school under the general admissions program even though applicants with lower entrance examination scores had been admitted under the special admissions program.

The Court could not agree on a ruling and its split in *Bakke* would come to define ‘the fork in the road’ point at which the Court moved toward its modern understating on the use of race in higher education today.

In one opinion (that did not win a majority of the Court) Justices Brennan, White, Marshall, and Blackmun (the four ‘Liberal’ Justices) expressed the view that; (1) Title VI of the Civil Rights Act prohibited only those uses of racial criteria that would violate the Fourteenth Amendment if employed by a state or its agencies, and *did not* bar the voluntary preferential treatment of racial minorities as a means of remedying past societal discrimination; (2) racial classifications designed to further “remedial purposes” (these are the ‘benign’ racial classifications referenced earlier) *must only meet the intermediate scrutiny test* and any statute must be stricken that stigmatized any group or that singled out those least well represented in the political process to bear the brunt of a benign program; (3) the University's purpose of remedying the effects of past societal discrimination was sufficiently important to justify the use of the voluntary, race-conscious admissions programs, since there was a sound basis for concluding that minority underrepresentation was substantial and chronic, and that the handicap of past discrimination was (at the time) currently impeding access of minorities to the medical school. (Regents of the University of California v. Bakke, 1978).

In a concurring opinion (that likewise did not win a majority of the Court) written by Justice Stevens, joined by Chief Justice Burger, Justice Stewart, and Justice Rehnquist (the four “Conservative” Justices) expressed the view that: (1) the only issue before the court was the validity of the defendant's admissions program as applied to denying admission to the white

male.⁸; (2) the defendant's special admissions program clearly violated Title VI⁹ of the 1964 Civil Rights Act (rather than the Equal Protection clause of the 14th Amendment) by excluding the plaintiff from the medical school because of his race.

The opinion that did win out in *Bakke* was the lone opinion by Justice Lewis F. Powell. Justice Powell's opinion expressed the view that:

(1) for purposes of the equal protection clause, racial and ethnic distinctions *of any sort* were inherently 'suspect' and thus called for the most exacting judicial examination (meaning the strict scrutiny as explained above), because racial and ethnic classifications are subject to stringent examination without regard to whether the group discriminated against was a minority;

(2) when a burdensome classification (including a preferential classification to remedy past discrimination) touched upon an individual's race or ethnic background, he was entitled to "a judicial determination that the burden he was asked to bear on that basis was precisely tailored to serve a compelling governmental interest";

(3) the special admissions program *could not be justified* as serving the purposes of (a) assuring within the student body a specified percentage of a particular racial group, since such racial preference was facially invalid as "discrimination for its own sake," (b) countering the effects of "societal discrimination" since the government has an interest in correcting the effects of specific, identified discrimination only, or (c) increasing the number of physicians who would practice in communities currently underserved, because there is no evidence that the special

⁸ The "conservative" justices in *Bakke* refused to consider whether race could ever be used as a factor in an admissions program

⁹ This title declares it to be the policy of the United States that discrimination on the ground of race, color, or national origin shall not occur about programs and activities receiving Federal financial assistance and authorizes and directs the appropriate Federal departments and agencies to take action to carry out this policy.

admissions program was either needed or geared to promote such goal (Regents of the University of California v. Bakke, 1978).

Justice Powell's opinion permitted instead was the 'diversity rationale'. That is, making race one of several factors in the admissions process to promote the 'educational benefits of diversity' (Wright & Garces, 2018). As an example of a constitutionally permissible admissions program, Justice Powell referred to Harvard College's admissions program, which, according to Powell, did not set rigid quotas for minorities but instead involved the individualized consideration of each student.

Justice Powell's views provided the architecture for how admissions personnel would use race in the future and would come to define what *Bakke* stood for. Justice Powell's vote (plus the votes of the four Liberal justices) preserved the use of race as only a "plus factor" in college admissions. However, it was also Justice Powell's vote (plus the votes of the four conservative justices) that set the stage for the use of race by the government, whether used to the benefit of minoritized individuals or to the burden of minoritized individuals, under the strict scrutiny test. This signaled to colleges and universities that the use of race would be tolerated only under very rare conditions.

Justice Powell famously announced his view that "[t]he guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal." For Justice Powell equal protection of the law meant identical application of the law, regardless of the context that application took place in or the historical situation that the law found individuals.

To this, Justice Harry Blackmun answered in his concurrence/dissent that “[i]n order to get beyond racism, we must first take account of race . . . [a]nd in order to treat some persons equally, we must treat them differently” (Regents of the University of California v. Bakke, 1978). For Justice Blackmun equal protection of the law could not be truly equitable unless it took into consideration the different effects that identical legal treatment would have on minoritized individuals. These two statements would come to crystalize a debate that would rage in the courts and in higher education for the two decades after *Bakke* and well beyond. They represent two very different views of what equality is in America.

The Michigan Cases: Grutter v. Bollinger and Gratz v. Bollinger. During the 25 years between 1978 and 2003 there were major developments in affirmative action in the employment front but not many in education. The federal courts became more conservative under President Ronald Regan and many judges now opposed race-based affirmative action in any form.

A quarter of a century after *Bakke*, the U.S. Supreme Court would again rule on the use of race in college admissions in a pair of cases called *Grutter v. Bollinger* (2003) and *Gratz v. Bollinger* (2003). In *Gratz*, the University of Michigan undergraduate admissions policy was based on a point system that automatically granted 20 points to applicants from “underrepresented minority groups.”

Specifically, the University of Michigan undergraduate admissions process utilized a 150-point scale to rank applicants, with 100 points needed to guarantee an applicant’s admission (Clawson & Perry, 2009). They gave a “plus” to what they termed “underrepresented ethnic groups” (including African-Americans, Asians, Hispanics, and Native Americans) via awarding

an automatic 20 points towards their score (Clawson & Perry, 2009). As a comparison, on the same scale, a perfect SAT score was worth only 12 points.

The Court found that the policy made race the decisive factor for virtually every “minimally qualified” underrepresented minority applicant. Thus, as the policy was “not narrowly tailored” to achieve respondents’ asserted “compelling interest” in diversity (more on this below), it violated the Equal Protection Clause *and* Title VI of the Civil Rights Act of 1964.

Hirschman, Berrey and Rose-Greenland (2016) argue that three internal features of the University of Michigan’s quantified admissions policy contributed to its demise: its transparency (meaning that the way race impacted an admissions decision was clear, unambiguous, and thus easy to attack), the instability of the categories it quantified (because race is self-identified by students and that self-identification could change at any moment) and the existence of qualitative alternatives.

Their analysis challenges the presumed durability and inevitability of “quantification” as a tool to advance equity in higher education. Quantification often allow higher education administrators to offload the political responsibility of making decisions onto the quantitative tools and thus shield themselves from criticisms of bias (Porter & Haggerty, 1997). However, in this context, it was the over reliance on quantification that appeared contribute to the policy being held unconstitutional.

In contrast to *Gratz*, rather than imposing “quotas”, the University of Michigan Law School admissions program focused on “academic ability and a ‘flexible’ assessment of applicants’ talents, experiences, and potential to contribute to the learning of those around them”

(*Grutter v. Bollinger*, 2003). The Court found that it did not define diversity solely in terms of race and ethnicity but considered these as “plus” factors affecting overall diversity.

Thus, the Court went on to hold that the Equal Protection Clause did not prohibit this “narrowly tailored” use of race in admissions decisions to further the school's compelling interest *in obtaining the educational benefits that flow from diversity* (*Grutter v. Bollinger*, 2003). These so called “*Grutter* benefits” are described by the Court as the breaking down of racial stereotypes, increase in interracial dialogue, and increase in students racial understanding, etc. (*Grutter v. Bollinger*, 2003).

The Court found that “[t]he goal of attaining a ‘critical mass’ of underrepresented minority students did not transform the program into a quota” (*Grutter v. Bollinger*, 2003). Because the law school engaged in a “highly individualized, holistic review of each applicant, giving serious consideration to all the ways the applicant might contribute to a diverse educational environment” it ensured that all factors that could contribute to diversity were meaningfully considered alongside race (*Grutter v. Bollinger*, 2003).

Justice Sandra Day O’Connor (the author of the majority opinion in *Grutter*) could not resist the temptation to add a caveat to even this use of race. She declared “[w]e expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.” However, since *Grutter*, the U.S. Supreme Court has changed its composition. A much more conservative Justice Samuel Alito replaced Justice Sandra Day O’Connor in January of 2006. Consequently, the use of race as approved by the Court in *Grutter* has been called into question well short its twenty-five years suggested expiration date.

Parents Involved in Community Schools v. Seattle School District. In *Parents Involved in Community Schools v. Seattle School District* (2007), a parents' association and the parent of a student challenged the Seattle School Districts' plans which relied in part upon racial classifications in making some elementary and high school assignments. The school districts in question in *Parents Involved* adopted plans whereby, after place of residence and availability of space were considered, school assignments were made because of race to ensure that schools were racially balanced (*Parents Involved in Community Schools v. Seattle School District*, 2007).

The U.S. Supreme Court held that the school districts denied students equal protection by classifying students by race and relying upon the classification in school assignments. The Court held that the school districts did not establish a compelling interest in racial diversity since their plans relied on racial classification in "a non-individualized, mechanical" way as a decisive factor. Further, the minimal effect the classifications had on assignments indicated that "other means" would be effective to achieve the districts' goals and that the use of racial classifications was unnecessary.

Parents Involved was not a higher education case thus I mention it only briefly here, but its importance should not be underemphasized. As in *Bakke* twenty-nine years before *Parents Involved*, the Court split 4-1-4. A plurality opinion written by Chief Justice Roberts held that there is no "compelling interest" at all in having secondary schools that were balanced in composition based on race. In the world of Chief Justice Roberts and the three Conservative justices that joined him, *Brown* stood for not only the end segregation in public schools but also for the end of the use of race in selecting schools for students at all (Kim, 2011).

Indeed, Chief Justice Roberts in *Parents Involved* infamously declared that “[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race” (*Parents Involved in Community Schools v. Seattle School District*, 2007). Thus, *Parents Involved* represents the logical conclusion not of *Brown* (which was a unanimous holding of the Court), but of part of Justice Powell’s lone opinion in *Bakke*. At this point the anti-subordination project begun in *Brown* ended, and anti-differentiation jurisprudence (one in which the status quo is persevered, and the rights of whites are privileged over that of the oppressed) is embedded into American equal protection law (Powell, 2008).

Enter Abigail Fisher. *Fisher I* was a case that was a direct result of the interaction between the decisions in a federal circuit court case called *Hopwood* and *Grutter*. In *Fisher v. Texas* (2013), Abigail Fisher sued the University of Texas, alleging that the university’s consideration of race in admissions violated the Equal Protection Clause of the Fourteenth Amendment.

Before *Fisher*, in 1996, the United States Court of Appeals for the Fifth Circuit (allegedly applying *Bakke*) decided a case in Texas that suspended the use of race in higher education admissions for the states that are part of the Fifth Circuit Court of Appeals.

In *Hopwood v. Texas* (5th Cir. Tex. 2000), white Texas residents applied for admission to the University of Texas School of Law. The school had an admission policy that gave racial preferences in its admission program. Upon being rejected, white Texas residents sued under Equal Protection claiming that they were subjected to racial discrimination.

The trial court found that although the law school could continue to impose racial preferences, the admissions program as it stood violated plaintiffs' equal protection rights.

However, it awarded no damages, and did not order that they be admitted. Rather, the trial court ordered that plaintiffs be allowed to reapply without charge.

On appeal the United States Court of Appeals for the Fifth Circuit reversed and concluded that the law school could not use race as a factor in law school admissions, despite the goal of creating greater diversity and correct past discrimination. The Supreme Court refused to review the ruling of the Fifth Circuit in *Hopwood* (2001). However, two years after *Hopwood*, the Supreme Court decided *Grutter* and *Gratz*.

After *Hopwood*, however, the University of Texas halted the use of race in its admissions. As an alternative, the Texas State Legislature instituted a plan whereby the top 10% of all public high schools in Texas received automatic admission into the University of Texas campus of their choice. Many students utilized this option to gain admission the University of Texas at Austin. After the Court decided *Grutter*, the University of Texas at Austin resumed the consideration of race as one of several factors in its undergraduate admissions process. Race was not itself assigned a numerical value for each applicant, but the University has committed itself “to increasing racial minority enrollment on campus”. It referred to this goal as a “*critical mass*.”

Abigail Fisher applied for admission to the University in 2008 and was rejected. She did not qualify under the 10% plan for automatic admission plan, however, five applicants of color with lower scores gained admissions ahead of her (Cashin, 2014). Ms. Fisher argued that this meant her race was the determining factor in her not gaining admission. Often overlooked, however, are the forty-two white applicants with lower numbers than Abigail Fisher that were also admitted instead of her.

The question presented in *Fisher v. Texas* was “Does the Equal Protection Clause of the Fourteenth Amendment permit the consideration of race in undergraduate admissions decisions?” However, the that question had been answered in *Grutter* and Abigail Fisher and her lawyers did not ask the Court to overrule any aspect of the case. In truth, the legal dispute in *Fisher v. Texas* was mainly should the university be allowed to use race when its “race neutral” top ten percentage plan provided some racial and ethnic diversity on its own.

Recall that to satisfy the strict scrutiny test a government entity must show a compelling need to use race. Ms. Fisher and her lawyers argued that the University did not have a need to use race because a race neutral policy had produced an adequate number of minoritized students and that the way the University was using race was not ‘narrowly tailored’ the way *Grutter* required. However, since you don’t get to the narrowly tailoring prong of the strict scrutiny test unless you convince the Court that you have a compelling enough need, the more important part of Fisher’s challenge was to the first prong of the test.

In *Fisher I*, the Supreme Court held that the trial court and court of appeals applied the “strict scrutiny” test in too narrow a way by deferring to the university’s “good faith” in its use of racial classifications. The Court sent the case back to the court of appeals to apply the “correct” standard of strict scrutiny. Meaning that a lower court must make certain that a university has properly articulated its “compelling” governmental interest clearly and (most important to achieve the “narrow tailoring” prong of the strict scrutiny test) that all workable race neutral means of achieving the university’s goal (achieving a critical mass) must be exhausted to explicitly use race. The Court also held that race-neutral alternatives needed to be “workable” and end up working “about as well as” race-conscious ones.

This case came back in *Fisher II*. The Supreme Court, in the return of *Fisher v. University of Texas* (2016), upheld the University's limited use of race in admissions decisions because the University showed it had a clear goal of limited scope without other workable race-neutral means to achieve it.

The Court upheld that the university's rationale for diversity-associated goals was sufficiently articulated, despite a lack of a quota. Second, the Court found that the university presented sufficient evidence to show that in the seven years between the *Hopwood* decision and the implementation of its combined academic-holistic admissions process, race-neutral policies and increased outreach efforts were insufficient to achieve these goals. Third, the Court found that consideration of race has had a meaningful, if still limited, effect on the diversity of the University's freshman class and that such a limited effect should be a hallmark of narrow tailoring, not evidence of unconstitutionality.

Additionally, the Court found that the Fisher failed "to offer any meaningful way in which the University could have improved upon" its prior race-neutral efforts to achieve diversity-associated goals, including expanding the Top Ten Percent rule, which would leave, as quoted from the *Grutter* "a gap in an admissions process seeking to create the multidimensional diversity" envisioned by the *Bakke* decision.

Summary of current law. After the Court's affirmative action cases, ALL uses of race must meet the "strict scrutiny" test. This is the hardest test to meet. To pass strict scrutiny, the government law or policy must be justified by a "compelling" government interest, "narrowly tailored" to that interest, and must be the means of achieving that interest that is least intrusive to the "rights" of others.

In the context of the type of affirmative action/race conscious admissions, the only interests that has been explicitly approved by the Court as “compelling” are (1) the interest in remedying past discrimination proven by a “strong basis in evidence” and (2) the “interest in obtaining the educational benefits that flow from diversity” as articulated by a University having the “goal” of attaining a “critical mass” of underrepresented minority students. This is what is known as the diversity rationale.

Furthermore, after *Fisher I*, having the goal of obtaining the educational benefits from diversity alone is not good enough; a university must likely prove that it has exhausted all “workable race neutral” alternatives before using race in college admissions for the use of race

Finally, we also know that race-conscious admissions are both permissible to employ (under the limited circumstances outlined above) and permissible to forbid (Hirschman & Berrey, 2017). Eight states (through a combination of state ballot initiatives, legislative bills, and executive orders) have banned the use of race as a consideration in college admissions including; California (1996); Washington (1998); Florida (1999); Michigan (2006); Nebraska (2008); Arizona (2010); New Hampshire (2011); and Oklahoma (2013). The U.S. Supreme Court ruled that such bans were constitutional in 2014 case *Schuette v. Coalition to Defend Affirmative Action*. However, the state at which Granite State University Law School was in did not have a ban on the use of race conscious admissions.

“We should probably stop calling it critical mass then, because mass, you know, assumes numbers, either in size or a certain weight.... Call it a cloud or something like that.”

-Justice Scalia in Fisher I

Critical mass. The phrase “critical mass” was used in the University of Michigan Law School’s 1992 admissions policy about which both the Dean of the law school and the Director of its admissions office “testified before the district court” (which led to the *Grutter* case) and which “was the subject of many hours of testimony during trial as well as extensive discovery” (Addis, 2007). The two school officials testified that they understood critical mass to mean “meaningful numbers” or “meaningful representation.” Neither was, however, willing to attach a specific number, or even a “range of numbers or percentages,” to this “meaningful representation” (Addis, 2007).

The term “critical mass” can be defined as the number of students in a classroom, program or school that share common communication modes and characteristics and that is sufficient to support direct interaction opportunities among peers and adults (Johnson & DesGeorges).

Critical mass is (or should be) ideally a tool for achieving (structural *and* interactional) diversity (Smith, 2015). Addis (2007) thoroughly examined “critical mass” discourse in the legal field. And concluded that:

[I]n whatever field of social endeavor the notion of critical mass is invoked, there are certain common elements that define it. First, critical mass is used to understand the processes of relatively sudden social changes and the point of criticality that will bring about those changes. Second, the notion of criticality or threshold is based on the assumption that decisions of individuals or other entities are influenced by the choices that others make or are expected to make. So, critical mass is both about the threshold that triggers a transformation as well as about the nature of collective action or the production of a public good.

Jeffery Lehman, University of Michigan Law School Dean at the time of *Grutter*, is quoted as having observed that “critical mass is not a numerical quota. It’s an idea, just like the word ‘tall’ is an idea, not a specified height” (Addis, 2007). Critical mass in this sense seems

“closer to being a metaphor than an analogy” (Addis, 2007). There was uncertainty as to whether the phrase was to be used as an analogy or as a metaphor at the time at the time it became part of the case law. While analogies might lock one into unconstitutional specificity (quota), metaphors may lead to an unconstitutional generality (vagueness and unconstrained discretion) (Addis, 2007).

Critical mass is not a fixed percentage or number of students. Instead, it is defined by the university as the point at which students in underrepresented minoritized groups no longer feel isolated or like spokespeople for their races. Under the theory, one student alone cannot comprise a critical mass because an entire class cannot expect one voice to represent the heterogeneity of all minority viewpoints. The minimum number of students of color must be enough for all students to “experience the meaningful contact that fosters positive outcomes.”

Hagedorn, Chi, Cepeda, & McLain (2007) observed about ten years ago that “the concept of critical mass has only been applied sparingly to the field of educational research.” In that quantitative study, they found that a relationship between academic success of Latino community college students and the proportion of Latino students and faculty on campus. Data was collected through the Transfer and Retention of Urban Community College Students (TRUCCS) project. Their findings suggest that a critical mass of Latinos may be a positive influence encouraging “minority” students to higher academic performance.

Without a critical mass of minority students and/or faculty, a lack of sensitivity and understanding may result due to a dearth of comfort and minority role models (Hagedorn, Chi, Cepeda, & McLain, 2007). But while an increase in role models is legally not a sufficient reason

to use race in hiring or admissions, critical mass is. Moreover, the lack of a critical mass often fosters feelings of “loneness” and isolation (Laden and Hagedorn, 2000).

Not much has changed about the scope and scale of critical mass in higher education. While some have conducted quantitative studies to establish relationship, research falls short of the generalizability needed to be a definite answer on what constitutes a critical mass.

The lack of a concrete definition of critical mass has not stopped criticism of the theory. Sidhu (2013) highlights some of the main criticisms of so called “critical mass” theory. Sidhu (2013) notes that critical mass is based on the idea that “...students in underrepresented minority groups will express representative racial opinions”. Sidhu (2013) claims critical mass theory presupposes and reinforces the stereotype that there are such shared or common racial viewpoints that may be demanded of, and reflexively articulated by, minoritized individuals. His second criticism is that “critical-mass theory implies that, without an adequate presence of members of the same race, underrepresented minority students are categorically incapable of articulating themselves as individuals.”

Historically, the term “critical mass” originated in the field of physics. The term usually refers to the amount of fissile material required to start and maintain a nuclear fission reaction. In the scientific context, “critical mass” may refer to a specific set of numbers or formulas to achieve an identified reaction (Baez, 2014). However, the term has been used in many different contexts from politics, law, sociology, to business. In these contexts, it can certainly be said that there is no set number or reactions referenced. In these contexts, the term is much more amorphous and vague (Baez, 2014).

Mainly in the political domain, the notion of critical mass has been appropriated as a means of understanding the impact of what noted political theorists such as Iris Young and Anne Phillips have called the “politics of presence” (Addis, 2007). Studies in the political domain appropriating the concept have mainly focused on the presence of women in legislative bodies and whether and how a threshold or critical mass of women in legislative bodies affects the political agenda, public policy, and political culture in those bodies specifically and in society.

In social dynamics, critical mass is a sufficient number of adopters of an innovation in a social system so that the rate of adoption becomes self-sustaining and creates further growth (Krauth, 2011). Social factors influencing critical mass may involve the size, interrelatedness and level of communication in a society or one of its subcultures.

The idea of critical mass has taken on a life of its own both in the legal front and the higher education realm. While the dictionary definition for critical mass indicates that it is “the amount of substance necessary for a reaction to begin” (Longman Dictionary of Contemporary English, p. 327 as cited in Hagedorn, Chi, Cepeda, & McLain, 2007); within the field of education, the term has been adapted to indicate a level of representation that brings comfort or familiarity within the education environment (Hagedorn, Chi, Cepeda, & McLain, 2007). Further, critical mass has been hypothesized to foster a “staying environment” for students aligned with a dominant campus culture, in turn promoting retention and persistence (Myers & Caruso, 1992).

This study takes seriously the legal concept of critical mass as a proxy for a signal that a university and or college has assembled a class with an adequate amount of structural diversity. However, as is discussed in the next chapter, structural diversity is (by itself) inadequate to

achieve a diverse learning environment that allows the educational benefits of diversity to find their way to students.

Therefore, this study takes the concept of critical mass and asks it to not just be what is, but what it was intended to be. I go into to the classroom and into the law school building to explore if the culture is one in which critical mass acts a proxy for breaking down of racial stereotypes, increase in interracial dialogue, and increase in students racial understanding or any of the other *Grutter benefits*.

The *Grutter benefits*. As noted previously the “Grutter benefits” are described as the breaking down of racial stereotypes, increase in interracial dialogue, and increase in students racial understanding, etc. (*Grutter v. Bollinger*, 2003). Bowen (2011) examined whether students enjoy the benefits articulated in *Grutter v. Bollinger*, which rationalized the continuation of affirmative action based on diversity interests. Using survey data of over 370 minoritized students who were majoring in the sciences from twenty-eight states, she found that most minoritized students reported an increase in racial understanding emerges in a diverse classroom. However, decreased racial stereotyping materialized infrequently in a diverse class. Less than a third of students reported a decrease in stigma associated with a reduction in racial stereotyping.

Bowen’s (2011) results do not vary based on the presence of an affirmative action program, such as at a school in a state in which affirmative action is banned. Bowen (2011) claims that affirmative action, however, did play a role when determining whether the *Grutter benefits* (increased student racial understanding and a decrease in stigma associated with racial stereotyping) emerged under conditions of critical mass. Students in affirmative action institutions were more likely to report experiencing both *Grutter benefits* at greater rates than

students in anti-affirmative action institutions. But even with affirmative action and critical mass present, only about a third of the students in the study encountered the benefits of increased racial understanding and decreased racial stereotyping.

Bowen (2011) talks about the *Grutter* benefits but does not itself investigate the critical mass concept. Translated roughly the concept of “critical mass” means having the goal of obtaining “enough students” that are underrepresented minorities so that the school environment will enable all students at the school to obtain “the educational benefits that flow from diversity”. This implies a lot. It implies that there are concrete, accepted educational benefits that flow from diversity. It implies that these benefits are very tightly connected to having students that are currently “underrepresented” on the campus community. I call this the ‘scarcity model’ of diversity.

It further suggests that minoritized students are part of (or maybe even the major representative group) of those “underrepresented” at American colleges and universities. What is also clear is that the justification for this continued use of race in college was not to remedy this “underrepresentation”, but rather to ensure that it was not robbing college students (most of which remain white) of the “benefits” of diversity. Presumably, if these benefits could be obtained from having only two minoritized students on campus, those two students would equal a “critical mass” at that institution.

The diversity rationale. The “diversity rationale” has been operationalized as making race one of several factors in the holistic admissions process to promote the “educational benefits of diversity.” As an example of a constitutionally permissible admissions program, Justice Powell referred to Harvard College’s admissions program. (Goldstein, Hode & Meisenbach,

2017; Wright, & Garces, 2018). Treating each student as an individual, rather than as a member of a group, has thus become a hallmark of all college admissions programs that consider race post-*Bakke*.

However, the diversity rationale is more about the promotion of “free” marketplace of ideals rather than the promotion of education as a social mobility and equity tool. The “diversity rationale” for affirmative action seeks not equity to remedy past outcomes, but diversity for the benefit of “all” students whether they have been “oppressed” or not (Wright, & Garces, 2018). In fact, the diversity rationale for affirmative action in general and the practice of race-conscious admissions that resulted from Justice Powell’s opinion in *Bakke* (and was reinforced in *Grutter*) have been widely criticized in both legal and social science literature as of late mostly from pro-affirmative action scholars (See, e.g., Berrey, 2015; James, 2014). Much of this critique brings attention to the fact that a focus on diversity hinders the type of institutional transformation and acknowledgment of racism that needs to take place to achieve racial equity (Bell, 2003; Weeden, 2004).

Natasha Warikoo (2016) explored how students (both minoritized and majority) think about merit and race after they have gained admittance to one of the world’s top universities (in this case Harvard, Brown, and Oxford). Her findings indicate that many “elite” white students understand the value of diversity, but they ignore the real problems that racial inequality causes and that diversity programs are meant to solve. From her interviews she found that many white students in her study were often in fear of being labeled a racist, but paradoxically were simultaneously quick to complain about ‘reverse discrimination’ should a diversity program appear to hamper *their* own chances for social, cultural, and academic advancement.

Warikoo's (2016) ultimate conclusion (what she provocatively calls the "diversity bargain"), makes the claim that many white students half-heartedly approve of race conscious admissions as part of the college application process only as far as it benefits them by providing a diverse learning environment, is just another articulation (and a prime example) of how the diversity rationale fits squarely in the realm of interest convergence and truly benefits the status quo rather than challenging it (Bell, 1980).

This phenomenon of approving of programs that institute substantive equality only as far as it benefits the individual was called "racial capitalism" by legal scholar Nancy Leong in 2012. Leong defines racial capitalism as the process of deriving social and economic value from racial identity. She highlights affirmative action doctrine as a prime occurrence of racial capitalism. Leong (2012) notes that affirmative action doctrine and policies have led to a preoccupation with notions of 'diversity', which encourages white individuals and predominately white institutions to engage in racial capitalism by deriving value from nonwhite identity.

Warikoo's research findings inform this study because it leads to the question of what the college or university's role is in spreading this "commodification" of the identity of minoritized students. Furthermore, once the commodity is "paid for" (in the form of access and financial aid) and consumed (in the form of the assembling of a critical mass of students and the presentation of an adequate structural diversity to the public) a new question emerges. That question is: what is the responsibility of a college or university to make sure a diverse learning environment benefits all students?

In addition, Cedric Powell (2008) explained that the diversity rationale (and colorblind constitutionalism in general) is premised on "acontextual and ahistorical" approaches to issues of

race and racism. Powell (2008) highlights the modern judicial evolution to this approach marked by a shift in the Court's race jurisprudence from a:

substantive, non-neutral conception of the Fourteenth Amendment in its early race decisions, to now emphasizing [rhetorical] neutrality by focusing almost exclusively on minimizing the impact on white privilege if race-conscious remedies are permitted, or on the marketplace paradigm of the First Amendment as a substitute for the anticaste and anti-subjugation principles [of the Fourteenth Amendment]

In other words, starting with *Bakke* (but being formally codified in *Grutter*), diversity in higher education (as articulated through the concept of the 'diversity rationale') focuses more (if not exclusively) on the First Amendment value of diversity of ideas rather than the Fourteenth Amendment value of substantive equity for all citizens in a post slavery America.

Consequently, the First Amendment value of diversity concentrates on diversity as a 'process' as the appropriate constitutional ground for race conscious remedies by focusing on achieving mere procedural access for students to the marketplace of ideas and not remedying the continuing effects of past discrimination (Powell, 2008). Access, in this instance, is defined as the ability to participate in a conversation already in progress rather than the possibility of a student adding to and transforming that conversation once they are in the learning environment.

This First Amendment value of diversity emphasizes racial and ethnic diversity merely for its ability to add to a 'market place of ideas' and student discussion in and out of the classroom. It devalues diversity as a necessity to remedy unfair underrepresentation in the very institutions many would claim are the tool to insert equality into our society.

Furthermore, Horwitz (2004) explicitly links the outcome of *Grutter* to First Amendment principles (and thus implicitly links the diversity rationale to the First Amendment). As he notes, Justice Powell formulated the diversity rationale in *Bakke* based not principally on *Brown* (or any

other the Fourteenth Amendment case or principle). Rather, Justice Powell based the diversity rationale on a First Amendment case *Sweezy v. New Hampshire* (1957).

Paul M. Sweezy, a professor at the University of New Hampshire, was interrogated by the New Hampshire Attorney General about his suspected affiliations with the Communist Party (Miller, 2016). After refusing to answer questions about his lectures and writings, the Attorney General filed a petition to compel Sweezy to respond. On appeal, the U.S. Supreme Court held that the petition unconstitutionally invaded Sweezy's rights of expression and association (Miller, 2016).

In the *Sweezy* decision, Justice Felix Frankfurter wrote a concurrence which articulated what would come to be known as the "Four Essential Freedoms" that constitute academic freedom and belong to the institution as an organization (Horwitz, 2004). A university has a First Amendment right to determine for itself: who may teach (think tenure), what may be taught (think curriculum), how it shall be taught (think method) and who may be admitted to study (think admission).

It is this latter part that Justice Powell would build upon in writing his *Bakke* opinion. In fact, it was Justice Frankfurter's concurrence in *Sweezy* that Justice Powell cited and quoted in justifying the use of what would become 'the diversity rationale' as a compelling government interest. Thus, the diversity rationale is, and has always been, more about the promotion of the neoliberal mission to increase the amount and variety of ideas in a so called 'free' marketplace of ideas within a university rather than advancing the anti-subjugation mission of the 14th Amendment to remedy the effects of racial discrimination/oppression because of slavery, Jim

Crow laws, mass incarceration, etc. (Archer, 2007; Jones & Mukherjee, 2011; Lentin & Titley, 2011).

By a neoliberal mission, I mean an economic and philosophical orientation towards allowing group and individual burdens (such as not having access to an adequate education) and benefits (such as white students being overrepresented at most Ivy league school compared to their percentage of the population) assigned by the ‘free market’ with the least amount of government oversight, input, and interference as possible (Belcher, 2016).

This neoliberal mission tends to culminate, as Warikoo’s (2016) research points out, not in the “breaking down of racial stereotypes, increase in interracial dialogue, [or] increase in students racial understanding” but in the commodification of diversity as a ‘marketplace item’ for schools to use in their advertisements. This occurs the same way an elite club would advertise having all twenty-seven (27) fortune 500 female CEO’s, not because they want to show they have broken with the past practice of excluding them, but for the purposes of advertising to new (mostly male) members that their possibility of getting a job from these CEO’s increases by being part of the club.

This results in diversity as a goal, and affirmative action as a process, being supported by non-minoritized students if and only if it benefits them by increasing the multiplicity (but not necessarily the equity) of diversity in their learning environment. Thus, therefore increasing their own interests by having access to a diverse learning environment but doing little to support actual change to an unequal system (Bell, 1980; Leong, 2012).

Summary. The preceding was an outline of the current law of equal protection and affirmative action. The focus of the research was on the development of critical mass as it is

utilized as a justification for race conscious admissions in higher education. In this section you have seen how critical mass works in intersection with the diversity rationale. Both concepts have an extraordinary influence on how lawyers and educators both view equity in education. Next, we go into the social science research on the topic of diversity and its benefits to students success outcomes.

Chapter Three:
A Review of the Higher Education Literature

“Who dares to teach must never cease to learn.”

-John Cotton Dana

In this chapter, I present a review of the educational social science research concerning the didactic benefits derived from racial diversity. To begin, I review the taxonomy of diversity to introduce important language and academic concepts that will be crucial in understanding this subject area and the current study’s place within it.

Next, I examine some of the current literature around access to college education. I next delve into the research on institutional culture, climate and environment, particularly when it comes to the affects it may have on student learning. Following that section, I turn my attention to the literature on student outcomes and how access and environment impact the “products” of higher education, the students. This chapter then concludes with a description of the theoretical and conceptual frameworks for this study.

It is my goal that at the end of this chapter you will have an adequate understanding of the current academic conversation occurring around the issue of equitable access to higher education and how campus culture and environment impacts such access. It is my hope that you will also see how the current study fits into and adds to that conversation in a unique and significant way.

The Taxonomy of Racial Diversity

The concept of campus diversity emerged in the 1970s, and typically is framed as a “numbers game” focused almost exclusively on increasing the totals and, to a lesser extent, the

percentages, of racially minoritized students on college campuses (Harris, Barone, & Davis 2015).

Three types of diversity have emerged because of research in the social scientific community as they relate to Higher Education (Gurin et al., 2002). The first type of diversity is structural diversity which means the numerical representation of minoritized students within an institution (Gurin et al., 2002; Hurtado et al., 1999). This is also sometimes referred to as compositional diversity. The concept of structural diversity is often best described via its connection to some specific identity trait students may have.

Under the construct of structural diversity, researchers measure the number of students within an institution compared to the entire American higher education population. For example, the racial and ethnic structural diversity of a College of Education would look at the number of racial and ethnic minoritized students in the college compared to all students in the college. Meanwhile as another example, sexual orientation structural diversity would look at the number of lesbian, gay, bisexual, and transgender students in the college compared to all students in the college. In the law school context, the structural racial and ethnic diversity at a law school is the number of students at that school who are not part of the race which hold numeric majority.

A second type of diversity is known as interactional diversity. This is also referred to in the literature as contact diversity (Gurin et al. 2002) and/or cross-racial interaction (Chang, 1996). This concept refers to the extent and quality of one's engagement with people of different racial and ethnic backgrounds. Under this construct, researchers attempt to measure the frequency and sometimes quality (and/or valence) of contact between individuals from different racial, ethnic, gender, religious, or class backgrounds to evaluate educational outcomes

associated with these types of contacts (Bowman & Park, 2015; Lowe et. al, 2013; Bowen, 2011). The interactions between students of various racial/ethnic backgrounds is what is taken into consideration specifically when specified as interactional racial and ethnic diversity. These were just the types of benefits the *Grutter* Court found as palatable reasons to preserve affirmative action.

The benefits measured because of contact diversity include reducing prejudice, increasing positive attitudes towards the outgroup, and generalizing those attitudes to other out-groups (Bowen, 2011). Some other benefits include the ability to think critically and with open-mindedness, participate in civic engagement as a citizen concerned for the public good, and the willingness to engage in perspective taking with integrative complexity (Bowen, 2011).

A third type of diversity is called classroom diversity. Also, referred to in the literature as content diversity or curricular diversity, this concept encompasses formal exposure of students to diverse peoples and their perspectives through curricular and co-curricular activities, as opposed to the people themselves (Gurin et al., 2002; Hurtado et al., 1999). For example, the reading of a textbook written by a black woman or a feminism course taught by a Latino male. In this situation, social scientists observe classroom student's exposure to diverse cultural issues in a formal academic setting (Bowen, 2011). For instance, researchers examine more narrowly the benefits for students taking required courses in multicultural issues. These educational benefits include reduced racist attitudes and stereotypes. These also were just the types of benefits the *Grutter* Court found as palatable reasons to preserve affirmative action.

Application of the social science. However, legal conceptions of diversity often focus solely on structural diversity and the fact that the Court in *Grutter* intended structural diversity to

be used solely to get to the educational benefits afforded by interactional diversity seems to have been lost. Critical mass, a concept focused mostly on the adequacy of the amount of structural diversity, has unfortunately come to dominate the legal and educational discourse around affirmative action.

The taxonomy of diversity just presented is not limited to identity characteristics nor should it be understood purely on a macrolevel (looking only at a freshman or 1L class as whole, rather than individual classrooms). You will hear some arguments in this study about viewpoint diversity. Indeed, at the end of the last chapter, I outlined how viewpoint diversity (in contrast to racial diversity) is really at the heart of our current thinking about “diversity” in higher education. Although not often measured, viewpoint diversity can also be described along structural and interactional lines (Pike & Kuh, 2006).

For example, a class can have 300 students evenly divided among Democrat, Republicans, and Independents. This would be “perfect” structural viewpoint diversity. However, if the curriculum was taught mostly by liberal professors with “liberal” articles, casebooks, and materials a school would probably lack viewpoint content diversity. Similarly, if the Law and Economics elective at that law school only had Republicans in it there would likely be no interactional viewpoint diversity in that class, despite the law school’s stellar structural viewpoint diversity.

To understand this study, one must first begin to comprehend the connection between structural racial and ethnic diversity and interactional racial and ethnic diversity. It is also essential to understand the connection between the legal concepts described in the last chapter and the academic research that will be analyzed in the following pages.

The *Grutter* (2006) case was the first time in which a majority of the U.S. Supreme Court affirmed that the goal of achieving “diversity” was in fact a compelling governmental interest. This holding allows a university to overcome the legal presumption against race playing a part in governmental decision making. However, the compelling governmental interest that *Grutter* approved was not “diversity” in and of itself. Indeed, what *Parents Involved* (2007) reminds us is that “diversity for diversity’s sake” or racial balancing is not a compelling governmental interest. Instead *Grutter* and its progeny stand for the proposition that a university must articulate exactly why it needs more diversity than it currently has and why it is unable to achieve that desire via so called race neutral means (Nelson, Pitner, and Pratt, 2016; Pruitt, 2015; Pratt, 2013).

Instead of “diversity for diversity’s sake”, the Court in *Grutter* approved of the use of “diversity” as a tool to help students access “the educational benefits that flow from” diversity. That process, the use of “diversity” to get students the benefits that flow from it, is a procedure that is regulated by the law but is not very well understood by those that make or interpret the law. Research presented to the Court at the time of the *Grutter* decision showed that having structural racial diversity (meaning having sufficient numbers of minoritized students on campus) was a prerequisite to any student being able to experience the “educational benefits of diversity” (Gurin, 2004).

Because of this research, the *Grutter* Court articulated the compelling governmental interest for the use race as a factor in admissions as having the “goal of achieving a ‘critical mass’ of students”. This articulation was formulated as such because the Court took notice that without a sufficient amount of structural diversity the educational benefits that come from having a diverse learning environment would never be able to “flow”.

However, the same research that demonstrated that structural diversity was required for certain educational benefits, also found that, by itself, structural diversity was not enough to allow those educational benefits to “flow” from diversity (Gurin, 2004). Consequently, when the Court articulated the goal of achieving a “critical mass” as the reason a school can use race in admissions, it did so because it wanted to allow schools the tools needed to get an adequate amount of structural diversity. Nevertheless, it did not do this so schools could end their diversity efforts with the achievement of (or the honest attempt to achieve) a “critical mass” of underrepresented students.

A fair reading of both the law and the research on these subjects reveals that the true purpose of the “critical mass” concept was to ensure that schools had the necessary amount of structural diversity in order to allow interactional diversity to cause the educational benefits that come with diversity to “flow” to students (Brown, 2006; Johnson, 2010; Killenbeck, 2009; Pratt, 2006; Thomas, 2007).

In other words, “critical mass” is not just numbers itself but numbers that allow for a culture that fosters a diverse learning environment. Without the numbers you have nothing. However, with the numbers but without the culture you only have half the equation solved. It is for this reason that Garces and Jayakumar (2014) advocated for a move away from the apparently pedagogically and theoretically bankrupt concept of critical mass towards the more robust concept of “dynamic diversity”.

In the following sections I will examine the relevant literature and evidence around three conclusions, to which this study intends to contribute. First, dynamic diversity seems to better represent the intention of the U.S. Supreme Court when it comes to the compelling governmental

interest used to justify race conscious admissions. Second, dynamic diversity is a concept more representative of the research around the educational benefits of diversity than is critical mass. Finally, when viewed through the lens of sociocultural theory, critical mass focuses too much on the individual learner and not enough on the environment that that student is learning in.

Access to Higher Education

Many scholars have examined the equity of educational institutions from the point of view of access to undergraduate, graduate and professional education. Kidder (2003) did a review of African American, Latino, and American Indian students law school admissions from 1950–2000. In this comprehensive review, he concluded that before the 1960's law schools and the legal profession in America were de facto segregated. After 1960, even with affirmative action policies, White students still had higher admissions rates even though structural diversity increased. Furthermore, according to Kidder (2003), since the 1980's race neutral alternatives to affirmative action policies are not working to sustain the gains that were made after the end of de facto segregation. Kidder's (2003) review emphasizes the need for continued study of ways to increase structural racial diversity in American Law Schools. However, because he focuses on the losses made to structural racial diversity gains, Kidder (2003) does touch on interactional racial diversity and attempt to measure it.

Many scholars have utilized quantitative measures to study the relationship between diversity and student outcomes. Locks et. al (2008) utilized quantitative measures to study the relationship between several measures of interactions with diverse peers before joining college and students' feelings of belonging in the sophomore year of college. In testing a model of students' diversity experiences to predict the transition to college for white students and students

of color, Locks et. al (2008) showed that the quality of interaction with peers not merely the presence of (structural diversity) is important.

Posselt et. al. (2012) similarly utilized quantitative measures to model how escalating admissions standards (including test preparation, the growing importance of SAT scores and extracurricular leadership) effectively maintain racial inequality in selective college enrollment over time. They found that although access to postsecondary education has expanded since 1972 for all ethnic groups, Black and Latino students' odds of selective college enrollment have declined relative to White and Asian American students. They infer that the focus on the number of students alone diminishes both structural and interactional diversity potential.

This shows a trend of using large quantitative data sets to show trends in sustaining white dominance of access to Higher Education. While these findings are important, this study seeks to expand on previous quantitative findings that show a lack of access by asking the law school's admissions professionals themselves what is causing and how they are making meaning of a process that to privilege white students.

Furthermore, Jones (2013) asked whether the racial composition of the community college student body was correlated with an institution's normative racial climate. Arising from scholarship concerning the relationship between institutional forces and the experience of minoritized individuals in higher education, the term "campus racial climate" has emerged to describe the degree to which institutions provide welcoming spaces in which minoritized individuals feel like equal members of the campus community (Harper & Hurtado, 2007).

The results from Jones' (2013) study indicate that having a more diverse student body had a positive relationship with student conversations with racially different peers, student

conversations with peers holding different beliefs, and student understanding of racially different others. This finding suggests that community colleges, like 4-year institutions, can be positively influenced by enrolling a more racially heterogeneous student body. However, the findings also emphasize the theme that structural diversity is a necessary, but not a sufficient component of a positive campus racial climate and culture. This study shows the potential transferability of research conducted on four-year undergraduate to other educational contexts informing other types institutions.

Moreover, legal scholar Meera Deo (2014) attempted to provide empirical support for the benefits of educational diversity via proposing three additional compelling state interests for courts to possibly consider. Utilizing a mixed methods approach, Deo (2014) gathered evidence directly from detailed quantitative and qualitative analyses of data collected from an empirical study of students at the University of Michigan Law School (from the Perspectives on Diversity Project), relating to their preferences for diversity, perceptions of campus racial climate, and professional aspirations.

Deo's (2014) findings indicate that students from her sample think that educational diversity should remain a compelling state interest. She also argues that courts should consider the importance of (1) avoiding racial isolation, (2) promoting service to underserved communities, and (3) facilitating diversity in American leadership as compelling governmental interest. While the study's findings are supported by strong empirical evidence, Deo (2014) seems to ignore (or intentionally overlook) the fact that her supposed "additional" compelling governmental interests were specifically rejected by Justice Powell's decision in *Bakke* in 1978.

In addition to the vast amount of studies in this area that are mixed methods and quantitative, Posselt (2014) conducted a qualitative study that attempted to understand faculty reliance upon admissions criteria that undermine program and department diversity goals. A prelude to her book on the same subject (2016), this study examined decision making in 10 highly selective doctoral programs, including the meanings faculty associate with common admissions criteria.

Posselt's (2014) findings indicate that conceptions of "merit" changed throughout the admissions review processes that she observed and reviewed. Posselt (2014, 2016) showed that diversity of students was considered only after initial "race neutral" standards (a usually very high quantitative bar representing conventional markers of "achievement") were considered and used to screen many candidates out. This "race neutral first cut" excluded numerous minoritized students from consideration in many prestigious graduate programs. While the current study is on law school rather than graduate school, Posselt's (2014) findings indicate a need to use more qualitative inquiry methods to further investigate so called race neutral admissions policies and their effect on structural diversity (and therefore subsequently interactional diversity).

Jaquette, Curs, and Posselt (2016) examined whether the growing share of nonresident students at public universities (as a trend) was associated with a declining share of low-income and minoritized students. Their study utilized a quantitative design to show that growth in the proportion of nonresident students was associated with a decline in the proportion of low-income students and minoritized students. The inverse relationship they found was stronger at prestigious universities, universities in states with large minority populations, and universities in states with affirmative action bans. This shows that (at public universities) admissions professionals are often presented with a (implicit) choice between providing more students from

racial and ethnic groups currently underrepresented at the institution access, generating needed revenue for the school or university, and maintaining (or establishing) the prestige of a school (Cheslock & Kroc, 2012).

Additionally, Bastedo et. al (2018) conducted a mixed method study using open-response survey data, focus groups, and an experimental simulation to explore how admissions officers define and use concepts of holistic review in higher education admissions. They found that there are three distinct types of holistic review in the field of college admissions: whole file, whole person, and whole context. In the whole file perspective admissions decisions are determined by reading all parts of the application. In the whole person perspective admissions decisions consider the applicant as a unique person considering their individual characteristics and achievements. In the whole context admissions decisions consider the whole person in light of their environmental contexts, family background, hardships, extenuating circumstances, and/or educational opportunities.

Bastedo et. al (2018) find that admissions officers with a “whole context” view of holistic review are disproportionately likely to admit low socioeconomic applicants. They further argue that inconsistent definitions of a core admissions concepts made it more difficult for the public to comprehend college admissions. They opine that a more consistently contextualized view of holistic review may also have real-world implications for the representation of low-income students at selective colleges. Their research made it possible for me categorize how GSU Law operationalized its own attempt to conduct holistic review.

This subsection shows that the starting point for evaluating equity is at the initial point of access to a quality education. However, there is a need to conceptualize (and critically analyze)

what we are awarding access to and on what criteria. The current study will utilize interviews of the admissions dean in the law school and admitted minoritized students.

Institutional Environment

The following subsection deals with research that has been conducted on the learning environment within post-secondary educational institutions. It is divided roughly into research that affects students' classroom experience in part and research that touches on co-curricular engagement. Emerging from this review is the conclusion the structural racial diversity (and by extension "a critical mass of underrepresented students") is a necessary component to get the benefits that flow from diversity, but by itself is not sufficient.

The importance of culture also emerges in this subsection. It is important to understand racial climate and environment as a subsection of an institution's culture of diversity (August & Waltman, 2004; Chang, 1999; Ledesma & Calderón, 2015). Environment and climate are one aspect of culture that I examine. As Tyrone Howard (2010) observed culture matters because it shapes all aspects of daily living and activities. Culture has been defined as the social order, rules, and understandings that connect people (Garcia, 2017). Jane Ward (2008) studied "diversity culture" and defined it as the practice of difference.

Thus, this study seeks to conduct an inquiry into the diversity culture at a GSU Law School, one aspect of which is the environment and racial climate of a school. This review synthesizes the research on these crucial issues. It shows that the racial climate and the learning environment are critical to understanding student learning outcomes.

In Classroom. We start with research that focus on the environment in the classroom. Before *Grutter*, Allen & Solorzano (2000) conducted a seminal study focusing on the campus

environments encountered by students of color both in selected University of Michigan Law School feeder schools (University of California-Berkeley, Harvard University, Michigan State University, and the University of Michigan) and during their law school years (at the University of Michigan Law School). Utilizing survey and focus group data.

They found that students of color and women¹⁰ often underachieve on campuses characterized by hostile racial or gender climates. This study was unique in that it included data from both students in elite undergraduate programs and an elite law school in the University of Michigan Law School. Conducted three years before the *Grutter* and *Gratz* cases, this study began to show a theme of highlighting the importance of campus racial climate on student learning in “elite” educational environments.

After *Grutter*, Buckner’s (2004) legal analysis previewed many of the arguments that will be made in the current study. She looked at the dissenting opinions in the *Grutter* case and predicted that rhetoric of *Grutter* would need to be more than “aspirational” and would need to be put into practice for *Grutter*’s principles to survive. She stated that by better understanding the cultures and learning styles of diverse students, legal educators could construct a more equitable learning environment that welcomes their unique contributions. The findings of my study confirm her findings and add further that detail as to how legal educators could construct a better and more diverse environment.

Furthermore, adding to the evidence that culture and race matters, Milem, Chang, & Antonio (2005) conducted an extensive review of the empirical research support for the claim that diversity added educational benefits to the experiences of all students in post-secondary.

¹⁰ Presumably, they included white women.

Their findings would come to outline some of the major themes that emerge from the social scientific research in this area. One, they define diversity as engagement across racial and ethnic lines comprised of a broad and varied set of activities and initiatives not merely as the number of racial and ethnic students in a class or school.

Two, attending school with students of a different race and ethnicity produced tangible cognitive benefits by placing students in situations that they have traditionally not been challenged in, thus triggering cognitive dissonance in the student and resulting in growth. Third, structural racial diversity (or obtaining the fabled critical mass of students) is a necessary, but not sufficient part of getting students the educational benefits which come from diversity. Here, we see that is the legal definition of diversity does not align with the social science research of how diversity works to be beneficial to students.

Additionally, focusing specifically on student perceptions of climate, Rankin & Reason (2005) used a campus climate assessment instrument to survey several thousand students from ten (10) campuses to explore whether students from different racial groups experienced their campus climates differently. Their findings showed students of color experienced harassment at higher rates than Caucasian students, although female White students reported higher incidence of gender specific harassment. Also, students of color perceived the climate as more racist and less accepting than did White students, even though White students documented racial harassment at similar rates as students of color. Their study is a prime example of how the perceptions of students differ along racial lines. This is one reason that I have designed my study not just to observe students in the class room but interview them to get their perceptions of the educational benefits of diversity.

Specifically, when it comes to law school curriculum, Christie (2009) argued for intentionality in law school when it comes to promoting both contact and content racial and ethnic diversity in the law school classroom and the law school curriculum. She recommends a mandatory diversity class in the first or second year of law school. She argues that casebooks in most law schools do not do an adequate job of addressing issues of inequality primarily because law schools fail to make it a priority throughout their process of “creating a lawyer.”

The study in the current literature that perhaps most resembles my study is the post-*Grutter* case study of diverse interactions at the University of Michigan Law School conducted by Deo (2011). She utilized the Perspectives on Diversity Study (POD), a survey and focus group study involving over 500 research subjects who were all enrolled as J.D. or L.L.M. students at the University of Michigan Law School during the 2009-2010 academic year. This data set has become a staple for post-*Grutter* research into the perspectives of students on diversity.

Deo (2011) found that there were (in her determination) “sufficient numbers” of minoritized students at the time on the University of Michigan Law School campus to yield diverse interactions and that positive interracial student exchanges are occurring. However, the cross racial discussions drawing from this structural diversity were infrequently taking place within the classroom.

She concluded that by neglecting to intentionally foster “diversity discussions,” the University of Michigan Law School in particular (and law schools in general) were failing to cultivate the academic and professional benefits associated with educational diversity. This mimics the findings of earlier studies that articulated that structural diversity was necessary, but

not sufficient for students to get the educational benefits that come for diversity. My study, although utilizing solely qualitative methods, produced findings of the very similar to the Deo (2011) study. However, by focusing on the voice of students, my study attempts to humanize the data presented here by Deo.

Adding to the literature on the type of diversity interactions that are needed to cause educational benefits, Crisp & Turner (2011) argue that positive psychological and behavioral outcomes will be observed *only* when social and cultural diversity is experienced in a way that challenges stereotypical expectations. This adds to the emerging theme from the literature that not only is structural diversity not by itself enough, but educational institutions must intentionally place students in situations that challenge educational expectations to ensure that all students receive any educational benefits from “diversity”, defined broadly or narrowly.

Moreover, Griffin, Muñiz, & Espinosa (2012) used a campus racial climate framework (Hurtado et. al., 1999) to explore how racial climate affected institutional efforts to increase structural diversity in graduate education. Their study was based on interviews with 14 graduate diversity officers employed at 11 different research universities. They found that while creating the graduate diversity officer position was a way of Graduate schools indicating that they wanted to place diversity as a priority, the success or failure of these positions largely depended on differences in institutional support.

Garces & Bilyalova (forthcoming) found that many postsecondary institutions are responding to a legal and policy environment that seeks to end race conscious admissions in education policies by adopting race-neutral policies and practices in admissions, even when not explicitly required to do so by law. Their study draws from semi-structured interviews of 13

administrators charged with implementing diversity policy at a public flagship institution to investigate how this legal and policy climate has shaped racial diversity work in areas outside admissions. They illustrate how a colorblind approach in policy-making takes hold through seemingly innocuous practices and responses that are reframed as “race-neutral”. These practices, which start in admissions, spill over into other areas of university policy, and shift the nature of diversity-work. Findings point to the importance of intentional efforts to implement diversity policy through a race- and racism-conscious lens. Findings from this research influenced the current project by conceptually influencing the need to investigate of intentionality, or the lack thereof, plays out in how colleges ‘do’ diversity.

In addition, Spanbauer (2013) used examples to argue that law school teaching would be enhanced if professors intentionally adopt what she refers to as a “cross-cultural” approach to teaching first-semester and first-year law students. The “cross-cultural” approach proports to shift the focus in the classroom from the professor (which is common under the Socratic method) to the students to assist them in becoming aware of the cultural contexts they bring to the study of law, enabling them to compare their cultural perspective with the shifting cultural context of the law. Spanbauer’s (2013) argument is based on the premise that the professor who elicits and responds to the cultural perspectives of students in the classroom will better understand societal perceptions of the law, which she argues will provide new avenues for traditional and nontraditional scholarship.

Bowman (2013), utilizing a longitudinal sample of 8,615 first-year colleges and university undergraduate students from the 2006-2009 Wabash National Study of Liberal Arts Education, found that rare or moderate diversity interactions among students are associated with virtually no growth in leadership skills, psychological well-being, and intellectual engagement,

whereas very frequent diversity interactions among students are associated with considerable growth in these outcomes.

This study is significant because, in contrast to most studies, it presented a linear relationship between college diversity racial and ethnic interactions and student growth. This study's findings add more evidence for the argument for intentionality among educational institutions for creating interactional diversity as it appears that it takes very frequent diversity interactions to produce the educational benefits that *Grutter* intended for students.

In addition to research that has looked at student growth and perspectives on diversity, Deo (2015) studied law school faculty perspectives on racial and ethnic diversity. Utilizing the Diversity in Legal Academia (DLA) project, a landmark empirical study of the law faculty experience, Deo (2015) concluded that law school faculty of color appreciate the many benefits of diversity and recognize the educational and professional challenges associated with the lack of diversity currently plaguing many law schools. My study, by combining the perspectives of students and faculty in the same culture and environment, employs qualitative inquiry to examine faculty and students' perspectives on diversity at the same time.

Also, Evans & Moore (2015) recently used interviews to explore the relationship between white institutional spaces, the socioecological concept of emotional labor, and resistance by examining the shared experiences of people of color in elite law schools and the commercial aviation industry.

Utilizing Hochschild's (1983) theory of emotional labor, they addressed the way in which predominately white "institutional spaces" create an intricate environment where minoritized individuals must navigate racial narratives, ideologies, and discourses, while simultaneously

struggling to achieve institutional success to reap the material rewards of these elite institutional settings.

This study further highlights a theme that emerges from this review of the literature that integration (if defined as merely as an increase in structural diversity or limited to what the K-12 literature refers to as “front door” policies (Danns, 2008)) alone does not change the context of oppressive nature of white institutional spaces.

Not all research conducted has landed on the side of affirming the educational benefits that come from diversity. In contrast to the results of most of the research in this area, Rothman, Lipset & Nevitte (2002) conclude that diversity had few positive and even many negative effects on attitudinal and educational outcomes. They found that the proportion of African Americans in the student body does nothing to improve student perceptions of campus life and in some cases, even affects them adversely. Specifically, they found that when structural diversity increased, student satisfaction and perceived quality of education decreased. Additionally, the higher the level of structural diversity, the more likely the students were to report having experienced discrimination themselves.

Out of classroom. In contrast to the last section which focused mainly on in classroom variables the following literature will extend their arguments to out of classroom and co-curricular elements. For example, Solorzano, Ceja, and Yosso (2000) conducted a seminal report on how campus environment affects college students. Their study used thirty-four (34) students who participated in ten (10) focus groups to highlight the way African American students dealt with microaggressions, and importantly for my study, how a negative campus environment had negative effects of student outcomes.

Indeed, the need for an optimized racial environment is not limited to the predominately white campus. Outcalt and Skewes-Cox (2002) conducted research on relationships between the HBCU institutional climate, African American student involvement, and their satisfaction with the college experience. They found that the primary success of the HBCU was in providing supportive environments in which African American students can achieve academic and personal success.

Similarly, Pike and Kuh, (2006) found that the diversity of a student body was positively related to interactions among students from different backgrounds. Interactional diversity was more strongly related to structural diversity than any other institutional characteristic, although both institutional control and institutional mission were related to interactions among diverse groups.

Meanwhile, Mayhew, Grunwald, & Dey (2006) conducted one of the only studies to bring in the perspectives of college and university staff into the diversity discussion. They utilized survey data collected from 437 staff members employed at a large, public, predominantly White university in the Midwest. Their results show that an educational institution's ability to achieve a positive culture for diversity reflects the personal characteristics of the staff member and the staff members perceptions of their immediate work environment. These findings lend themselves to the conclusion that staff are affected by the culture of diversity at a school as much as the students and faculty.

James Sidianuis et. al (2008) conducted one of the largest and most comprehensive studies to date on college campus diversity. They synthesized over five years' worth of research

to explore how a highly diverse environment and policies that promote cultural diversity affect social relations, identity formation, and a variety of racial and political attitudes.

Researchers followed 2,000 UCLA students for five years. They found that racial prejudice generally decreased with exposure to the ethnically diverse college environment. Students who were randomly assigned to roommates of a different ethnicity developed more favorable attitudes toward students of different backgrounds, and the same associations held for friendship and dating patterns. By contrast, students who interacted mainly with others of similar backgrounds were more likely to exhibit bias toward others and perceive discrimination against their group.

Similarly, Park (2009) looked to examine the differences between various racial/ethnic groups when it came to student satisfaction with the racial/ethnic diversity of the student body and faculty at their predominantly white institutions. The data for this quantitative study came from the Fall 1994 Cooperative Institutional Research Program (CIRP) Freshman Survey and the Spring 1998 follow-up survey, the College Student Survey (CSS).

Park found that when considering satisfaction with the community, other peers, and college itself; the racial heterogeneity of the student body was the strongest predictor of student satisfaction with the racial/ethnic diversity for students of all races. Park concluded that these findings points to the need to foster the multiple components that influence the campus climate for diversity at educational institutions.

Additionally, Denson (2009) conducted a meta-analysis on the impact of curricular and cocurricular diversity activities on racial bias in educational institutions. Her findings suggested

curricular and cocurricular diversity activities tended to reduce bias, but the effectiveness of this result depends on the characteristics of the program and characteristics of the students.

Furthermore, Denson & Chang (2009) conducted a quantitative study which examined if different forms of campus racial diversity contribute uniquely to students' learning and education. Their findings are important because they suggest that not only do students benefit from engaging with racial diversity through related knowledge acquisition and/or cross racial interaction but also from simply being enrolled on a campus where other students are more engaged with those forms of diversity, irrespective of the students' own level of engagement with diversity.

More research is needed to confirm and build on their findings because it is unique among the research in this area, but such a finding lends itself to this study because it places even more emphasis on the culture of diversity for an educational institution.

Deo et. al (2009) examined levels of law student support for diversity in law schools and sources for minoritized law students. They showed that having a "critical mass" of students of color may be a means to combat an unwelcoming law school atmosphere. They determined the term "critical mass" relates to structural diversity, the numerical and proportional representation of diverse groups on campus. Their research indicates that the presence of a critical mass of students of color in institutions of higher education improves the educational experience for students of color and white students alike. They did not, however, look specifically at interactional diversity.

Yet, Dowd, Sawatzky, & Korn (2011) called for more research to develop alternative assessment to measure student experiences of racial basis on college campuses and institutional

effectiveness in reducing institutionalized racism. They call for greater institutional responsibility in reducing intercultural barriers. Their critique of current equity work within the higher education context is that it promotes assimilation, as a celebration of diverse cultural values, rather than an agenda that promotes a view of student engagement as equity.

Deo (2012) examined distinctions based on the group type as well as the race of members focusing on the expectations and experiences of members of law student organizations. She theorized, and her results confirmed, that minoritized students joined “affinity groups” (Black Law Students Association, LatinX Law Students Association, etc.) to find support within a white dominated space. She presents these law school “affinity groups” as “counter spaces” (in contrast to the term ambiguous “safe spaces” term used today) as they serve as a buffer between students of color and the hostile environment of the larger campus.

Feingold and Souza (2013) added the concept of “racial unevenness” to literature. This is a concept that was informed by a mixed method study done with a lens to legal analysis. Racial unevenness refers to the presence of any burden that arises solely because of a person’s race. They employ the terms “raced” and “race-normed” to differentiate between the individuals that do and do not bear the contextual burden of unevenness in each setting. They contrast “raced” with “race-normed” to emphasize that the burdens associated with racial unevenness most often arise because of an individual’s distance from the pre-determined racial norm. In situations where whiteness is the norm (such as most Law Schools), white individuals are still mapped (or raced) into a racial category. However, the assumption under the theory is there is no burden associated with this mapping because it occurs with respect to a White baseline (i.e. white is normal). The moment someone is mapped into a non-White racial group, that distance from the

racial norm has the potential to create an incipient burden, or unevenness. A minoritized individual is thereby “raced”, while a non-minoritized individual is “race-normed”.

Feingold & Souza (2013) stated unevenness arises because of any oppressed characteristics such as gender, sexual orientation and socioeconomic status. An individual’s identity in any of these social categories could create burdens unrelated to her inherent talent or abilities. Due to the intersectional nature (Carbado et. al, 2013) of our identities, many of us may simultaneously fall within and outside of identity norms. Constant across each domain, the form of unevenness results from distance from the norm, whether it is male, straight or middle-class.

Racial unevenness (and the concept of “unevenness” in general) contributes to my study by informing the way I saw minoritized students in the law school in which the study took place as “raced” because of the culture of the law school, which lends itself to an examination of culture as the chief component that effects how diversity changes the educational experience.

To acquire a unique perspective on a type of interaction that takes place between students, Lowe et. al. (2013) examined whether frequent interracial dining experiences influenced undergraduate students’ perceptions of the racial climate at a predominantly white liberal arts university in the South. They found that the frequency of interracial interaction during meals at the campus cafeteria predicts students’ perceptions of the racial climate on campus. White respondents state that they rarely think about their race and that they typically do not experience racism in their daily campus interactions.

In contrast, students of color stated that they are consistently made aware of their race, through seemingly colorblind institutional practices, in campus interracial interactions, and through racial microaggressions across a variety of campus contexts. Their research suggests that

observing students in the law school café, for instance may be an appropriate element to observe to advance my study of the culture of diversity at the law school.

Stearns, Buchmann, and Bonneau (2009) investigated changes in the racial composition of friendship networks in the transition from high school to college and how aspects of the college environment are related to such changes. They found that interracial friendships increase for Whites, decrease for Blacks, but show little change for Latinx and Asians. They also showed that the habits of friendship formation that are acquired during adolescence and features of residential and extracurricular college contexts influence the formation of inter-racial friendships. The race of one's roommate, the degree of interracial contact in residence halls, and participation in various types of extracurricular activities are most strongly related to the formation of interracial friendship.

Bowman & Park (2014) used a longitudinal sample of 2,932 undergraduates from twenty-eight (28) institutions to compare predictors of cross-racial interaction (CRI) and interracial friendship (IRF). They found that considerable divergence in factors predicting cross-racial interaction versus interracial friendship. Some variables that were significantly and positively related to cross-racial interaction (such as religiosity, female, and participation in an ethnic student organization) were also significantly and negatively related to interracial friendship. Structural racial diversity was associated with greater cross-racial interaction, but not greater interracial friendship.

Their results point to the significance of structural diversity in institutions, particularly for White students. Students of color in the study had much greater cross-racial interaction and interracial friendship regardless of the structural diversity of an institution, but structural

diversity was the strongest predictor of cross-racial interaction, and one of the strongest predictors of interracial friendship, for White students. The study showed that scholars must delve deeper into the individual components of the campus racial climate to strengthen understanding of how to foster interracial interaction.

Bowman & Park (2015) also recently analyzed the link between cross-racial interaction and student growth. Their findings from this study reflected that regardless of students' race/ethnicity, cross-racial interaction is consistently associated with positive student outcomes, whereas close interracial friendship is often unrelated to same outcomes.

Research focused on undergraduate students has explored the role of campus racial climate in negatively or positively shaping students' college experiences. Ward & Zarate (2015), in contrast, explored the relationship between campus racial climate and graduate student attitudes about the benefits of diversity.

Like most research in the area, their study was a quantitative analysis of the effects of campus racial climate on attitudes about the benefits of institutional diversity. However, it was unique in that they did such an analysis with data on graduate students. They found that White and Asian students who were enrolled in schools where their peers are increasingly in favor of institutional efforts to increase diversity also had more positive attitudes about benefits of diversity. Similarly, White and Asian students at schools that have a higher concentration of minoritized faculty had more favorable attitudes about the benefits of diversity. Furthermore, White and Asian students at schools admitting smaller proportions of applicants (i.e. more selective programs) had more positive attitudes about the benefits of diversity.

Vue et. al (2017) utilized critical race theory to examine how “high-achieving” Black and Latinx college students make meaning of and navigate affirmative action policy discourses in an era of so called colorblind racial politics. Through semi-structured interviews with 46 alumni of two race-conscious college access programs they illustrate how participants employ a race-conscious framework that affirms the reality of race-conscious policies. They argue intersectionality offers a framework for engaging politics of accountability.

Higher Education Outputs

The controversy surrounding race and its use in admissions is largely considered and researched as an “entry” issue. Thus, most discussion of affirmative action, critical mass, or race conscious admissions policy neglect to include discussion about how the implementation of such policies affect student end outcomes such as job placement or graduate/professional school admission. However, by conducting an inquiry into the culture of a law school, the outcome of becoming a lawyer is crucial to any discussion of diversity.

Moreover, when asking students about their perceptions of the benefits of diversity it is helpful to situate the questioning as to if and how these benefits affect student outcomes. Thus, this subsection focuses on research done on student post-graduation outcomes. A theme that emerges is the need to focus on “equity” in higher education as more than an access issue, but as a learning outcome as well.

In 2003, Alicia Dowd presented the case for a theoretical shift from (in the context of community colleges) a focus on an ideology of efficiency over the democratizing mission of the public two-year sector. Dowd (2003) contends that open access in the sense of nonselective, low-cost enrollment has been eroded by the stratification of educational opportunity and by declining

college affordability. Ultimately, after reviewing a vast amount of literature on the subject, Dowd (2003) makes the argument for using performance accountability systems to measure outcome equity in higher education. She concludes that mere “access” is an insufficient standard for ensuring democratic equality, as evidenced by persistent inequities in the rates at which low-income students and minoritized students enroll in college and obtain degrees.

Borrowing from this well-argued concept, my study utilizes the perspective that mere access to law school is not a “gift” that minoritized individuals should be happy to be satisfied with, but rather equity demands a culture and environment in which they are awarded the opportunity to contribute to not just participate in their professional identity development as a lawyer.

Research in this area has not been limited to the community college context. Uma Jayakumar (2008) used survey data from the Cooperative Institutional Research Program (CIRP) to show the relationship between white students’ exposure to racial diversity during college and their post college cross-cultural workforce competencies. Her study is important because it is the first of its kind that connects (directly or indirectly) diversity experienced in college to post college attributes, such as expanding white students “pluralistic orientation”.

Utilizing a unique structural equation modeling method, Jayakumar (2008) shows that for Whites students post college leadership skills and level of pluralistic orientation are related to the structural diversity and racial climate of their postsecondary institutions, as well as their level of cross-racial interaction during the college years. This leads to the conclusion that a diverse academic environment produces graduates that are measurably better for employers than those who are not exposed to diversity, at least when it comes to cultural competency.

Baker and Lattuca (2010) merged developmental networks theory and sociocultural perspectives on learning to develop an approach to the study of doctoral education as a path to academic and personal identity development. Utilizing a review of the literature on both theories, Baker and Lattuca (2010) presents an analysis of doctoral graduate education as an experience that both imports content skills to the student and transforms the student as a person.

The study that Deo and Griffin (2011) conducted explores first-year law students' motivation in forming peer mentoring relationships and the roles peer mentors play in students' lives. Continuing a theme that emerges in this area of research, they utilized survey and focus group data collected from 203 first-year law students at eleven institutions.

Their findings reveal that most first-year law students appear to rely on peer support via forming formal, informal, and "organizational" peer-mentoring relationships. If this finding is to be taken at face value, it raises a concern (when placed alongside other research) that if peer network groups are limited by race, that most racially minoritized law students have a limited ocean at which to fish from to succeed in law school.

Haley, Jaeger, & Levin (2014) examined the career choice process for graduate minoritized students. Utilizing the qualitative method of the semi-structured interview, they found that graduate students' cultural social identities influenced their career choice beyond work-life balance as they sought what the authors referred to as an "integrated life" that included values, beliefs, and perspectives that represent their cultural community. This finding helped led to assumptions of my study that most post-undergraduate experiences for racially minoritized individuals is a struggle between balancing assimilating to a cultural and maintaining their own cultural identity.

Legal scholars Shin, Carbado, & Gulati (2014) proposed a complicated diversity ecosystem with the intent of arguing for the merger of the justifications for workplace affirmative action and educational affirmative action. In *the Diversity Feedback Loop*, they argue that if a university (through its admissions policy) assembles a diverse student body (or not) upon graduation that class becomes a key supply of labor for potential employers. Then to the extent that employers hire diverse students from the supply of graduates, the level of diversity that exists in that supply is reproduced or “reiterated” in the workplace.

The employer's diversity hiring criteria exert a demand for employees who have characteristics, which can influence the criteria that universities use to determine the students they admit. This system offers to the literature an interesting way to look at the many ways that racial and ethnic diversity should be looked at beyond just the admissions process of the university (or in the case of this current study) a law school.

Furthermore, continuing her work in this area, Uma Jayakumar (2015) investigated the impact of student experiences with segregation and/or racial diversity prior to and during college on “colorblind ideological orientation” among white adults. Utilizing quantitative longitudinal data from a survey conducted by the UCLA Higher Education Research Institute covering ten years she reveals that, for whites from segregated and diverse childhood neighborhoods, some experiences in college may increase colorblind thinking. This study doesn’t aim to problematize colorblind ideology per se, but what this study does add to the literature is the damage done (if you concede that colorblind ideology is a normatively negative trait) to white students from a segregated space by maintaining throughout undergraduate, graduate, and professional school a segregated culture and environment.

Theoretical Framework

A theoretical framework is the “blueprint” for a dissertation inquiry. It serves as the guide on which to build and support a study and introduces and describes the theory that explains why the research problem under study exists (Grant & Osanloo, 2014).

This study is grounded theoretically within the framework of sociocultural theory. Sociocultural theory (SCT) has its origins in the writings of the Russian psychologist L. S. Vygotsky and his colleagues and contends that human mental functioning is a facilitated process that is organized by cultural artifacts, activities, and concepts (Lantolf, Thorne, & Poehner, 2015). It posits that humans are understood to utilize existing, and to create new, cultural artifacts (through which knowledge is generated) that allows us to regulate our behavior.

According to sociocultural theory (SCT), learning is a social and cognitive process through which individuals become increasingly able to participate in the activities associated with a social context. Thus, “participation” refers to both the process of learning and its outcome. (Baker & Lattuca, 2010). Under this theory, learning is the result of social interactions with members of a given social group (Baker & Lattuca, 2010).

Sociocultural theory claims that while human neurobiology is a necessary condition for higher mental processes, the *most* important forms of human cognitive activity develop through interaction within social and material environments, including conditions found in instructional settings (Lantolf, Thorne, & Poehner, 2015). Furthermore, as an outgrowth of Neo-Marxism and continental social theory, SCT emphasizes not only research and understanding of human

developmental processes, but also praxis-based/action-based research, which entails intervening and creating conditions for development (Lantolf, Thorne, & Poehner, 2015).

Vygotsky himself further addresses the idea of learning from others and with tools, positing that learning is fundamentally social in nature. In effect, Vygotsky flipped conventional understandings of learning upside-down, claiming that learning happened from the outside-in, not from the inside-out (Petrova, 2013). Therefore, sociocultural theory sees development as a social endeavor (i.e. “actual relationships between human individuals”) which means that development as process is dialectical. This means that if learning happens from the outside-in, then society is acting on an individual (through these mediations) as s/he develops, but the individual is also an actor (John-Steiner & Mahn, 1996). And through his/her action, s/he also acts on society, making dialectical change in individuals and society simultaneously (i.e. revolutionary, transformative learning).

The specific aspect of sociocultural theory that I adopt for this study comes from Anna Stetsenko. According to Dr. Stetsenko (2008), the common foundation for most of the varied SCT approaches is dialectically supplanting relational ontology with the (some) notion that collaborative purposeful transformation of the world is the core of human nature and the principled grounding for learning and development. In other words, a combination of a presumption that reality is constructed in relation with others (and not just individually), supplemented with the belief that to learn people must interact with their “reality” in such a way that allows for acknowledgement of their ability to contribution to the creation of the permanent environment that they are in. A student or researcher that does this is, according to Stetsenko (2008), is engaged in a transformative activist stance (TAS).

A transformative activist stance (TAS) suggests that people come to know themselves and their world (as well as ultimately come “to be human”) in and through the processes of collaboratively transforming the world in view of their goals. Accepting this premise means that all human activities are instantiations of contributions to collaborative transformative practices that are dependent on both the past and the vision for the future and therefore are profoundly imbued with ideology, ethics, and values (Stetsenko, 2008).

This theory guided my study because it gave birth to the presumption guiding my observations that I was looking for a culture and environment at the law school in which minoritized individuals can take a transformative activist stance. This meant specifically that I had to continuously ask myself, while observing the culture of diversity at a law school, if the environment and culture at the school is one in which minoritized students felt that they are able to contribute to the environment of the school (transforming the law school in view of their goals) versus merely participating in an environment they had no control over or say in (being given token access to an environment in which success is contingent on transforming yourself to suit the environment).

The cohesion of this complete theoretical framework was crafted during my data collection and analysis into a theory of praxis. As Lantolf & Poehner (2014) explain, “[Vygotsky’s] theory no longer functioned independently of practice and practice was no longer ‘the application’ of theory” (p. 27). Instead, each is dialectically intertwined with the other so that a stated theory in practice must be studied and defined in action.

Conceptual Frameworks

Similar to a theoretical framework, a conceptual framework is the current version of the researcher's map of the territory being investigated. Miles and Huberman (1994) stated a conceptual framework "lays out the key factors, constructs, or variables, and presumes relationships among them." Conceptual frameworks may, and often do, evolve as the research evolves (Leshem & Trafford, 2007). This research employed the theory of dynamic diversity, conceived by Garces & Jayakumar (2014).

Dynamic diversity focuses on the interactions among students within a particular context and under appropriate environmental conditions needed to realize the educational benefits of diversity. In presenting dynamic diversity, Garces & Jayakumar (2014) have reframed the concept of critical mass as requiring an understanding of the conditions needed for meaningful interactions and participation among students, given the institutional context.

To highlight this contextual definition of critical mass (and to avoid further confusions in the legal debate on affirmative action which is described in previous chapters) they outline four main components of dynamic diversity that institutions should attend to. These components are: Assessing the racial climate of an institution; Attending to institutional history and context; Breaking down barriers to cross-racial engagement; and Nurturing quality cross-racial interactions.

While dynamic diversity may successfully offer a better understanding of what a "critical mass" should be, but it does not lead directly to a conclusion of what it is currently. Dynamic diversity will guide my study by providing a mechanism to formulate questions for my interviews and a mechanism on what to observe for during observations. Furthermore, in chapter

six, I will attempt to offer how the diversity culture at Granite State University Law School would be different if they adapted dynamic diversity as the goal.

To determine whether dynamic diversity has been achieved, Garces & Jayakumar (2014) suggest that institutions gather evidence through both quantitative and qualitative measurement tools (e.g., online surveys, focus groups, interviews) of the campus racial climate, the experiences of students of color in classrooms and other campus environments, and the interactions among various racial and ethnic subgroups on campus. As a result, I utilized the components presented by Garces & Jayakumar (2014) to judge if the culture of diversity at the law school is one in which a student can contribute rather than merely participate.

My understanding of dynamic diversity is influenced by my conceptualization of its as part of the critical race theory movement. Critical race theory is a body of work that first emerged in American legal scholarship in the late 1980s and has since spread to other disciplines. Critical race theory emerged as a product of political, intellectual, and sociological developments in American legal academia. Its central target of critique has been state law, and its primary methodological innovations in legal scholarship have been the use of “storytelling,” fictional or anecdotal, to criticize legal reasoning and legal doctrine (Harris et. al, 2012)

Critical Race Theory model consists of five elements focusing on: the centrality of race and racism and their intersectionality with other forms of subordination, the challenge to dominant ideology, a commitment to social justice, the centrality of experiential knowledge, and the transdisciplinary perspective (Tate, 1997).

Each of these five themes is not new in and of themselves, but collectively they represent a challenge to the existing modes of academic scholarship. Writers who associate themselves

with critical race theory take the position that racism is ordinary and normal in American society (Delgado, 1994).

Critical Race Theory informed this project by allowing me to bring to light the voices and experiences of those that had previously been ignored and forgotten (Solorzano, Ceja & Yosso, 2000). Accordingly, when the ideology of racism is examined, and racist injuries are named, victims of racism are allowed to find their voice. My hope is that, more than anything else, this project provides another opportunity to bring to light the struggle of those who have for years preserved in the darkness of Americas most troubling dilemma: endemic and systemic racism.

Summary. The proceeding chapter was an outline of the social science research concerning the connection between student body diversity and educational benefits that flow from that diversity to students. The research shows that while having a requisite number of minoritized students is a necessary component of providing students with educational benefits that come from student body diversity, it is not by itself sufficient. Those educational benefits come from interactional diversity, which does not flow automatically from having a ‘critical mass’ of minoritized students. Therefore, any school that does nothing (after assembling a critical mass) to facilitate interactional diversity is not doing enough to make sure its students achieve the educational benefits that come from diversity. Next, we will look at the methodology for this study. Including the study’s research design.

Chapter Four:

Methodology

“Truth has nothing to do with the conclusion, and everything to do with the methodology.”

-Stefan Molyneux

Education research can be described, in its most basic form, as producing knowledge about the world of educational practice (Merriam, 1998). Research activities should ideally be geared toward culturally derived and historically situated interpretations of the social life of certain places, people or groups (Crotty, 1998). Therefore, a qualitative research design was used to address the research question(s) in this study. A research design is the logic that links the research purpose and questions to the processes used for empirical data collection, data analysis, and data-driven inference making (Bloomberg & Volpe, 2008).

I begin this section with the research purpose. This sub section reiterates to the reader what the study seeks to add to the literature, the real-world problem(s) it seeks to solve, and the theory of equity it seeks to advance. Next, I describe the study’s research paradigm. The research design of a study often implies or relies on a chosen research paradigm. This study adopts a constructivist/interpretative paradigmatic orientation because of the belief that reality and knowledge are socially constructed and influenced in an ongoing way by social relationships.

After presenting my research questions, I next delve into my methodology. Methodology is the strategy or plan of action which lies behind the choice(s), use(s) of techniques, and procedures utilized to collect and analyze data (methods) (Crotty,1998). The methodology of this research project is described in detail below, but to generalize here I present this study as a critical instrumental case study. I addressed my research question by imbedding myself for seven months in the day to day lived experience at the law school. In addition, I conducted a semester

long observation of a first-year law class. Subsequently, I interviewed students from that class and the class teacher.

A central characteristic of qualitative research is that individuals construct reality in interaction with their social worlds (Merriam, 2002). Thus, I used participant-observation as a qualitative research method, to enter the world of the people I wished to study (Taylor & Bogdan, 1998; Wolcott, 2008). In doing so, I follow Cohen et. al. (2007) who argued that observation is a superior method to experiments or surveys where research is concerned with analyzing cultural practices.

I further augmented my data with interviews of law students (from outside the class I observed), faculty, administrators and staff. Finally, to triangulate emerging findings (Merriam & Tisdell, 2015), I conducted unstructured observations in the law school and analyzed documents related to the school's diversity efforts.

Research Purpose

This study seeks to add to the literature on law school racial diversity specifically and higher education racial diversity in general, through the conducting of qualitative inquiry into the cultural practices and events related to diversity (conceptualized broadly) at one law school. This study adds to existing literature by providing an in depth, behind the scenes look at what students, faculty, and administrators are thinking about racial/ethnic diversity 'beyond the numbers'.

The problem that I seek to address for higher education diversity and inclusion professionals, as well as admissions professionals, is the complex question of how (after assembling a class that aspires to contain a 'critical mass' of minoritized and marginalized

students) can the school's classroom learning environment be set up best to further induce interactional diversity between students of different races and ethnicities. This type of diversity has been called many things: "beyond access" diversity (Dowd, 2007; Dowd, 2003); the "dynamic" version of diversity (Jayakumar & Adamian, 2015; Garces & Jayakumar, 2014); "second generation" post admissions diversity (Caminker, 2006).

Additionally, the study seeks to advance theories of diversity and inclusion for Higher Education professionals by allowing practitioners and scholars alike to learn from the individual stories about how diversity aspirations in law shape various functions of the school including admissions, class section assembly, classes, student affairs, and career services.

This study analyzes the legal, cultural, and educational concept of 'critical mass'. 'Critical mass' means having the goal/aspiration of obtaining 'enough' minoritized students so that the school environment (racial climate, classroom learning environment, etc.) would be of the sort that enables all students at the school to obtain "the educational benefits that flow from diversity" (*Grutter v. Bollinger*, 2003). These educational benefits have been defined in the case law as an increase in racial understanding when learning in a diverse environment and decreased racial stereotyping among students (Bowen, 2011).

It may help you to recall that critical mass has been functionally operationalized as a quantitative measure: it looks at the number of minoritized students a law school has or does not have. However, as a legal concept that allows for an exception to the current "default" rule that race should not be a factor in government decision making (see Wright and Garces, 2018), critical mass exists only to get to a reality that must be observed qualitatively (i.e an increase in racial understanding when learning in a diverse environment and decrease in racial stereotyping among students) (Brown, 2006).

Methodologically, this study is unique in that it links sociocultural student development theory (See Evensen, 2003; John-Steiner, & Mahn, 1996) and the dynamic diversity framework (e.g. Garces & Jayakumar, 2014) to argue that the culture of an institution, which includes the actions and interactions that occur within a specific educational culture, is the primary factor affecting whether students perceive that they are obtaining the “educational benefits” that flow from the presence of racial and ethnic interactional diversity (Dowd et al., 2011b).

Thus, this research advances the argument that the concept of diversity, as “practiced” today by educational institutions, has resulted in an uneven focus on structural diversity, usually achieved through admission policies, rather than on interactional diversity that would lead to the desired educational benefits within a more democratic environment. As *New York Times* opinion writer Frank Bruni (2018) points out “[e]nvironment hinges on what happens after admissions”. Legal scholar Lani Guiner articulated this as a need to return to “mission driven education” from the current emphasis on “admission driven education” (Guinier, 2016).

Research Paradigmatic Orientation

Positioning a research project within a paradigmatic framework is a meaningful task that will lead researchers to “reflect upon the broader epistemological and philosophical consequences of their perspective” (Perren & Ram, 2004) and led me to critically scrutinize the conventions behind my research. Each research paradigm has certain assumptions, strategies, methods, and limitations, and the way the quality of the research is then evaluated differs paradigm to paradigm (Flick, 2014). Also, how case study researchers contribute to their readers’ experience depends on their notions of knowledge and reality (Stake, 1995). According to Scotland (2012) a research paradigm consists of the following components: ontology,

epistemology, methodology, and, methods. In this subsection, ontological and epistemological assumptions are addressed.

Every research paradigm is based upon its own ontological and epistemological expectations. Different paradigms characteristically contain divergent ontological and epistemological understandings. They have opposing assumptions of reality and knowledge which underpin their research style. Furthermore, a research paradigm outlines a researcher's pre-research philosophical assumptions about the relationship between the research subject's identity, ability to contribute to the construction of knowledge, and their position in the power structure of the culture they are inhabiting that is being investigated. Levinson et. al (2015) highlights the fact that social position and social possibilities are strongly shaped (even determined) by the sense of who we are in relation to others (identity), by what we know about ourselves and the world (knowledge), and by what we can do with ourselves and others in the world (power).

Thus, social researchers are often asked to take a position regarding their perceptions of how things "really" are and how things really work (Scotland, 2012). For this research study, I adopted a constructivist/interpretative paradigmatic orientation because, as noted by Merriam (1998, p. 6), "the key philosophical assumption upon which all types of qualitative research are based is the view that reality is constructed by individuals interacting with their social worlds".

Generally, constructivists believe that there is no single reality or truth, and consequently reality needs to be interpreted (Patel, 2017). As such, those that adopt an interpretative frame for their research are more likely to use qualitative methods to get participants' descriptions of these multiple realities (Patel, 2017).

Related to the constructivists frame, ontology is considered the study of being (Crotty, 1998 as quoted in Scotland, 2012). Ontological assumptions are concerned with what constitutes reality (Packer, 2017). The researcher's view of reality has been referred to as the "corner stone" to all other research assumptions and is therefore crucial to research design and execution (Holden & Lynch, 2004). For this project, I adopted the position of the critical paradigm of historical realism as an ontological view. Historical realism is the view that reality has been shaped by social, political, cultural, economic, ethnic, and gender values (Guba & Lincoln, 1994). Thus, the "realities" are individually constructed and are under constant external influence or change.

Closely connected to ontology (what is 'reality'), epistemology is concerned with the nature and forms of knowledge (Scotland, 2012). Epistemology asks how one can know and grasp 'reality' of ontological positions. Epistemological assumptions are furthermore concerned with how knowledge can be created, acquired and communicated, in other words what it means to know (Scotland, 2012). Most contemporary qualitative researchers hold that knowledge is constructed rather than discovered (Stake, 1995). Thus, the interpretive/constructivist epistemology has been described as one of subjectivism (Scotland, 2012) which claims (among other things) that the world does not exist independently of our knowledge of it (Grix, 2004).

Subjectivism is the belief that reality is not a firm absolute, but a fluid indeterminate realm which can be altered, in whole or in part, by the consciousness and the activities of the perceiver. It is the position that perception (or consciousness) *is reality*, and that there is no underlying, 'true' reality that exists independent of perception. Legal scholar Angela P. Harris has noted "[k]nowledge, truth, objectivity, and reason are actually merely the effects of a particular form of social power, the victory of a particular way of representing the world that then presents itself as beyond mere interpretation, as truth itself." In other words, what we know

is a product and function of institutional, structural, and cultural circumstances. Reality, therefore, changes person to person or even moment to moment.

One of the important philosophical assumptions of this research project is the proposition that knowing within an educational setting is both individually construed and simultaneously influenced by power relations from within society (Blau, 1986; Banks, 1993). By individually constructed, I refer not to the atomic, distinct singular “right answer” that is often thought of (in banking models of education) as a vessel needing to be filled, but rather the “knowledge person” as a collection of material social and political relations. This project was designed and developed on the explicit premise that the outcome of learning (even the “professional development” that occurs in law school) should (ideally) be that which provides or empowers the learner with an increased erudition of their own agency and ability to utilize action to affect their everyday lived situation (hooks, 1994; Stetsenko & Arieivitch, 2010).

As an example, Cohen et al. (2009) described this as the view that “what counts as knowledge is determined by the social and positional power of the advocates of that knowledge.” Thus, an interpretive/constructivist epistemology answers the question how one can know ‘reality’ by asking the researcher to learn the different perspectives of those that are living in the reality being studied. This research thus proceeds on the presumption that knowledge produced is “manufactured” and can be observed in its system of mutual construction between people in the real world.

As a critical case study, this study draws heavily from the theoretical perspectives of critical theory and the praxis objectives of critical inquiry (Glass, 2001). Critical cultural ideas originated from the work at the Institute for Social Research within the Frankfurt School in 1923 (Hanks, 2011, p. 81). Forerunners such as Karl Marx brought to light the ways in which market

values placed power in the hands of few (Levinson, Gross, Link, & Hanks, 2011, p. 26). Critical theory as an analytical framework builds on the assumptions of Marxist and Neo-Marxist philosophy (Gottesman, 2016). Edward Said (1993), among others, have criticized the Frankfurt School for its lack of attention to race and colonial issues within its critical theory, foreshadowing the critical legal studies movement that lead to critical race theory.

The bedrock principle is that the “status quo” is never neutral and always is the way it is because it benefits somebody and is maintained by those it benefits. This can be manifested as intentional actions (Carbado & Harris, 2008), benign neglect (Bonilla-Silva, 2017), so called “liberal” constructs of merit (Baez, 2006), rhetorical neutrality (Powell, 2008) and/or homophily and derivative discrimination (DiTomaso, 2013; Woodson, 2016). However, the advantage is kept in place in that, as Fredrick Douglass once told us “power concedes nothing without a demand” and even when the demand is present struggle is required for progress or change to occur (Douglass & Dewey, 1857).

This research project actively and consciously seeks to embody to that demand. Being critical is being political (Sim & Loon, 2012). Many researchers avoid such an obvious stance going out of fear that it may present themselves (as thus their work) as biased and non-objective (Katz, 2015). But as Zeus Leonardo (2013) has noted, neutrality is different from objectivity. Objectivity (in research) is the ability to analyze social processes as they transpire (or, to be truer to this project’s research paradigm, as the research subjects perceive them as transpiring), whereas lack of neutrality is the capacity to take a stand on observed those social processes (Leonardo, 2013).

I agree wholeheartedly with Leonardo (2013) that accomplishing the former does not prevent an educator from taking a position on these dynamics. Vygotsky (1997) once stated that

“[p]ure objectivity in the educator is utter nonsense.” Furthermore, American philosopher William James (1949) told us that “[p]urely objective truth...is nowhere to be found” because “the trail of the human serpent is...over everything.” While I am not as radical as Vygotsky nor as philosophical as James, I did not go into this research feigning neutrality, for knowledge is not neutral and reflects the power and social relationships within society. I did, however, strive to be objective in my data collection and my analysis as to present the most accurate story I could from as many perspectives as I could.

An explicit goal of this research project is to produce an accurate depiction of how diversity culture is defined by the law, with attention to the experiences of school’s minoritized students. However, that depiction is filtered through my own experiences as a black male who went to law school, as well as a black male who participated in the day to day cultural practices of a predominantly white law school to produce this research project.

Research Question

The following exploratory question guided this study:

How does a predominately white law school that utilizes race conscious admissions carry out racial diversity in the classroom?

For the purposes of the research project the school in question was called Granite State University Law School. It is a predominately white institution because over two thirds of its students self-identify as white students and these demographics have stayed mostly consistent for the last decade. Through interaction with senior administrators and staff, I was able to confirm that Granite State University Law School does use race as a factor in its admissions policies. Thus, this case study seeks to find out how the diversity culture at GSU Law is affected by these demographic realities and administrative policy decisions.

Previous Pilot Work

I conducted a pilot project in the spring semester of 2017 in the same site of the current study. The purpose of the pilot project was to test if the pilot study's preliminary research methodology (primarily critical discourse analysis of classroom dialogue) could address the research questions presented at the time.

I observed a single course in the law school for the major part of the semester and looked for explicit or implicit signs of uneven racial power dynamics. I wanted to supplement these data with interviews of students to indirectly present them with the findings of the observations and get their opinions and perspectives of how the presence (or lack thereof) of a "critical mass" of minoritized students affected their ability to obtain the "educational benefits of diversity" as defined in the *Grutter v. Bollinger* (2003) case.

I observed the class for nine class sessions. I sought to interview the class professor and some students. Because of the nature of the original research questions the goal was to interview racial/ethnic minoritized students, as well as white students who may experience another forum of oppression (low socioeconomic status, member of the LGBT community, etc).

I choose a class in which I was familiar with both the content and the teacher. The class I choose, criminal procedure explores the relationship between the criminal justice system and the United States Constitution. The teacher was a white female, over 60 years old, with a stellar legal background. The class consisted of 55 students; 30 males, 25 females. There were 10 visible racial/ethnic minoritized students: 7 males, 3 females. There were no Black males in the class and two Black females.

Research Design

In a naturalistic study the setting and the people in the setting are the data and the researcher are the “instrument” which obtains, analyzes, and represents the data (Patton, 2001). Further, data is collected primarily through in-depth interviews and participant-observation. This study utilizes a critical instrumental case study methodology to for this research design. An ethnographic style of qualitative inquiry was chosen because the study was designed to look at the culture of diversity at a law school as a sociocultural process (Taylor & Bogdan, 1998). That is, the study sought to uncover and describe the beliefs, values, and attitudes that structure the behavior of a culture sharing group, in this case students, teachers and administrators at the selected law school.

The study is also a case study because it is an intensive, holistic description and analysis of a single functioning unit (the Law School at Research 1 Land Grant University) that circumscribes the investigation (Merriam & Tisdell, 2015). Case study is often used as a research strategy to contribute to our knowledge of an individual, group, organizational, social, political, and related phenomena (Yin, 2003). A qualitative case study is a description and analysis of a bounded phenomenon such as a program, an institution, a person, a process, or a social unit (Merriam, 1998).

For Merriam (1998), the defining characteristic of case study research is the delimitation of the case (as cited in Yazan, B. (2015). Merriam (1998) sees “the case as a thing, a single entity, a unit around which there are boundaries” (p. 27). This qualitative project was organized within the boundaries of a case study developed to learn about the culture of diversity with the bounds of the law school alone and not “follow” that culture if/when it extended beyond the physical school building (Stake, 1995).

The holistic unit of analysis would be the law school, while the embedded units of analysis include the admissions office, the class selected for observation, the student affairs office, the Deans' offices, student study groups, etc. It was also selected to limit the inquiry to the period in which the data collection took place. This project is a single site case study. Scholars, however, such as Dietrich Rueschemeyer (2003), have defended the theoretical gains obtainable from the analysis of even a single case as a kind of research that permits close attention to the complexities of historical developments as well as production of hypotheses that may be tested in other, more numerous cases. Theorizing from a single case allows a deep exploration of particular dynamics, but it necessarily entails speculative conclusions. Thus, the research design selected necessarily effected the data analysis and interpretations.

The purpose of a case study is to understand human interaction within a social unit, a single instance bounded by the case worker in the process of designing the research (Stake, 1995). An instrumental case study is the study of a case (e.g., person, specific group, occupation, department, organization) to provide insight into a particular issue, redraw generalizations, or build theory. In instrumental case research the case facilitates understanding of something else.

While an intrinsic study may be undertaken to learn about a person or phenomenon that we simply want to know more about, an instrumental case study is developed to promote an understanding of specific issues. This paper is an example of an instrumental case study because it is the intersection between the implicit articulation of a desire to have interactional diversity (as expressed through the use of race in a law school's admission process) and how an educational institution goes about operationalizing that aspiration that this I wished to understand (Stake, 1995).

In this type of investigation, details of the experiences of the particular law school selected here contribute to the understanding of the uniqueness and complexity of the case but are less important than the fact that the school serves to illustrate the how diversity is operationalized in the predominately white setting (Wolcott, 2008).

The study is also ‘critical’ because its purpose is to examine, expose, and develop an “ability to dismantle power asymmetries, institutionalized inequalities that perpetuate discriminatory practices, and the systematic reproduction of privilege, wealth, and status (Dowd, Bishop, & Bensimon, 2015). Critical research follows an explicit agenda to ‘empower the powerless and transform existing social inequalities and injustices’ (McLaren, 1994).

Setting and Sample

An understanding of the setting within which the events and experiences of the students, faculty, and staff take place is integral to data collection and data analyses in critical case study research. The school site for this study is predominantly white institution located in the rural Midwest region of the country. Founded in the mid nineteenth century, the site is located within a public, land-grant, research-intensive university with campuses and facilities throughout the state it operates within. The surrounding area in which the university is situated can be considered a “rural college town”.

The two major metropolitan hubs of the state are each more than three hours away by car and the largest city by population is almost an hour and a half away. The overall university enrolls approximately 50,000 undergraduate and graduate/professional students (75% White, 6% Asian, 5% Hispanic/Latino, and 4% Black, with about 10% of students designated as “international” students). The study site traces its roots to the mid-1800’s, but did not acquire its current academic status until the early 2000’s.

According to the American Bar Associations required 509 disclosures, prior to the Fall 2018 Law School in this study (which I will refer to from now on by the pseudonym Granite State University Law School, Granite State law, or GSU Law) enrolled approximately 400 Juris Doctor (J.D) students (290 White students, 13 Asian American students, 32 Hispanic students of any race, and 26 Black students)¹¹ and approximately just over 100 LLM/SJD students or pre-LLM students.¹² This study focused mostly on J.D. students as my focus was on the level of domestic interactional racial diversity, rather than global diversity.

In 2017, Granite State Law hired a new Dean after four years with an interim holding that position. This provided a policy change window that was a great opportunity to so this study and partner with the law school. At the end of the 2016 -2017 school year, Granite State University Law School graduated 114 J.D. students (73 white, 1 Asian American, 12 Hispanic students of any race, and 14 black).

For the 2017 -2018 school year, tuition and fees at GSU was around \$50,000 and living expenses are approximated at \$23,000 for both on campus and off campus living. Of the school's 400 current students, 395 received some type of grant or scholarship. Of those students, 174 were receiving a grant or scholarship that covered full tuition or more than full tuition and only 91

¹¹ This does not include students J.D. students that were nonresident aliens, those that listed two or more races, or students whose race is unknown.

¹² The Juris Doctor degree (J.D.) also known as the Doctor of Jurisprudence degree is a professional degree in law and is earned when completing law school primarily in Australia, Canada and the United States. Entry into the study that leads to a Juris Doctor requires the candidate to have already completed a bachelor's degree and a J.D is required to take the bar examine in all but a few states. However, in most of the rest of the world, the more typical route to the practice of law is achieving an undergraduate degree in law (LL.B.) followed by the Master of Laws (LL.M) prior to professional license. Indeed, until 1997 the J.D. was unique to law schools in the U.S. Because, I did not get to ask all of them I did not know, but I suspect that most students that I am categorizing here as "Asian/Arab" fall into the LLM or Pre-LLM category, meaning they are studying to achieve a (or to get into the program to study for) a Master of Laws.

received a grant or scholarship of less than ½ tuition. I could not get access to this information disaggregated by race.

The class that I observed for this study was a first-year law class¹³, Criminal Law. The course deals with what is called substantive criminal law. A primary focus of the course is the use and interpretation of criminal statutes. It is a required course for all first-year law students at Granite State Law and is a staple of the first-year law curriculum in most American law schools. The teacher was a white female in her late 60's. The class meet Wednesday and Friday in the Fall of 2017, 11:15 to 12:30pm starting on August 16th and ending November 27th. I observed 17 sessions, attending every class from September 26th, 2017 to November 17th, 2017.

Data Gathering

I submitted an Institutional Review Board application for this project on August 15th, 2017 and was given final approval on September 26th, 2017. The data for this project was then collected during the period from September 26th, 2017 to March 3rd, 2018. Interviews were also conducted during this time period. Initial interviews with students, faculty, and staff utilized a common semi-structured interview protocol and follow up interviews (if conducted) were done in an unstructured manner customized to address the responses given in the first interview by the interviewee.

I utilized semi-structured interviews that contained a mix of more- or less-structured questions (Oppenheim, 1992). I used a topical protocol and established open-ended questions for initial interviews and used answers from those questions to develop questions for follow up

¹³ According to the Criminal Law Professor the class consisted of mostly Juris Doctor candidates but did have at least ten "LLM" or "Pre-LLM" students. These students are lawyers already in their home country but have come to the U.S. for advanced legal study.

interviews. The questions used were open-ended and flexible. The interviews were guided by the researcher's interest in a topic and subsequent subtopics but the exact wording of the questions and the order in which the questions are asked are not determined ahead of time. Flexibility in the interview process allows the interviewer to explore the perceptions of the respondent and to follow-up on current ideas as they are presented by the respondent (Seidman, 2006). The unstructured or informal mode of interviewing is more like a conversation on a topic. This interview format is often used as a preliminary exercise to determine some of the subtopics that could be explored (Merriam, 2009).

Data gathering for this project was divided into three phases--I, II, III--for explanatory purposes at the request of the IRB, these phases are a good vantage point from which the reader can understand the various topics and themes that governed collection to subsequently analyzed.

Phase I consisted of interviews of students from the Law School 1L Class of 2020. My purpose was to learn about their impressions of the culture of diversity and inclusion at the Law School prior to their arrival, and how it affected (or did not affect) their choice to attend the school. I was able to conduct five of these interviews between October 2018 to December 2018.

The sample for Phase I consisted of three (3) black males, one (1) white male, and one (1) Latinx female from the Law School class of 2020 of 120 students. An email was sent out via the office of the Associate Dean of Academic Affairs of Granite State Law. The email was sent to the entire one L (first year class), explaining the research that I was doing and soliciting them to contact me if they wanted to participate. The email was sent twice between October 2018 to December 2018. Seven (7) students replied to the email. One student was unable to settle on a time for the interview and one student asked that their interview not be used after it was conducted.

Initially, I intended to interview only minoritized students for this phase but as the study progressed I decided that having the input of white students, particularly when it came to pre-attendance assumptions about the diversity culture of the school, would be informative as well. A semi-structured interview protocol (see Appendix A) was prepared for the interviews in this phase to make sure that all participants answered similar questions to allow for some comparison during the data analysis stage of the research. A demographic questionnaire (see Appendix B) was provided to all students to gather additional individual information on each participant for further analysis.

Table 1			
Study interview participants in Phase I.			
Student	Year	Race	Gender
Jacob ¹⁴	1L	Black	Male
Kevin	1L	Black	Male
Derrick	1L	White	Male
Jennifer	1L	Latina	Female
Jack	1L	Black	Male

Phase II consisted of a semester long observation of a 1L Criminal Law class. The focus of observations was to look for racial or racialized dialogue and interaction between students in the class during the class or between the teacher and students in the class during the class. As previously stated, the class met for an hour and 15 minutes starting on August 16th and ending

¹⁴ All student names are pseudonyms selected by in collaboration with the participants.

November 27th. I observed 17 sessions, attending every class from September 22nd, 2017 to November 17th, 2017. From September 22nd until October 18th I observed the class without them knowing why I was there or what I was looking for.

On October 18th, I made an announcement at the beginning of the class explaining what I was doing why I was doing it (see Appendix C for the script used in that announcement) and soliciting informed consent from the participants to use the data gathered until that point, along with data to be gathered going forward and solicit individual interviews.

The classroom observations in phase II of this study were conducted and I produced fieldnotes during and (primarily) immediately afterwards. Classroom verbal and nonverbal discourse were observed and noted in a notebook. I also took note of the race and gender of the student who made a comment in class. In addition, I changed my seat in the back of the class every class session as to vary the vantage point I observed the class from (see Appendix D for a diagram of the classroom seating chart).

As previously stated on October 18th, I was able to secure 10 minutes at the beginning of the class session to explain to the class what I was doing and solicit their informed consent for IRB purposes. In this case, informed consent (see Appendix E for the IRB approved informed consent document that was distributed to students) meant that I 1. informed students about what I was observing them for up until that point (namely discourse in the classroom that touched on racial issues), 2. asked for their consent to use the pre-announcement data gathered before the announcement in my research, 3. asked for their consent to use the data gathered going forward after the announcement in my research. I observed eight class sessions after my announcement and my solicitation of informed consent.

The class consisted of 51 students of which about 45 were First Year Law Students and six (6) were LLM or pre-LLM students. The class consisted of 51 students of which about 45 were First Year Law Students and six (6) were LLM or pre-LLM students. The class demographic composition consisted of seventeen (17) White Females, sixteen (16) White Males, three (3) black males, two (2) black females, nine (9) Asian/Arab Females, two (2) Asian/Arab males and two (2) Latino/Hispanic males. Thirty (30) students granted me permission to use their observational data. I was able to interview from that class seven (7) students. Two (2) White males, one (1) black male, two (2) white females, and two (2) Latino/Hispanic males (one of which asked for the interview not be included in the research after it was conducted). I was also able to interview the class teacher for about an hour at the end of the semester and followed up again at the beginning of the following semester.

Of the 51 students in the class, thirty-two (32) students agreed to allow me to use both their pre-announcement and post announcement class discourse information. Five additional students agreed to allow me to use their individual pre-announcement data, but not their post-announcement data. No students opted to allow me to use their post announcement data only. Of the thirty-seven (37) students that opted into the study by allowing to me use their observational data, only nineteen students (19) also indicated they would be open to being interviewed and of those nineteen students nine (9) were eventually interviewed.

Table 2			
Study interview participants in Phase II.			
Student	Year	Race	Gender
Kimberly	1L	White	Female

Mark	1L	White	Male
Seth	1L	Black	Male
Bianca	1L	White	Female
Toni	1L	White	Female
Jessica	1L	White	Female
Elizabeth	1L	White	Female
Khadija	LLM	Arab	Female
Douglass	1L	Black	Male
Professor Smith (Criminal Law Professor)	Tenured Professor	White	Female

Phase III consisted of a sort of a "catch all" section for everything else going on in the study, including: interviews with administration at the GSU law, interviews with 2L and 3L students (some of whom had participated in my pilot study), open ended observations of "affinity" group meetings at GSU Law, as well as attendance at and observation of "diversity and inclusion" focused events.

Table 3			
Study (student) interview participants in Phase II.			
Student	Year	Race	Gender
Fatima	2L	Arab	Non-Binary
Abigail	2L	Black	Female

Eduardo	2L	Latino	Male
Mario	3L	Black	Male
Maria	3L	Latina	Female

In this phase, I conducted ten interviews with members of the administration at GSU Law and five interviews with students. I attended six “diversity and inclusion” focused events at the Law School, three of which focused on issues of racial and ethnic diversity or racially and ethnically minoritized populations. I also attended and observed one meeting each of the Law School’s chapter of the Black Law Students Association, Outlaw and the Federalist society. Furthermore, I conducted ten hours of “informal” open ended observations in Granite State University Law School in which I was walking around the building, taking notes and having informal conversations. These observations/interview took place between January 29th and the March 3rd, 2018 and amounted to about 12 hours of observations.

Table 4			
Study (non- student) interview participants in Phase II.			
Administrator	Department	Race	Gender
Jill Taylor	Office of the Dean of Law School	White	Female
Brent Bines	IT	White	Male

Yun Wo	Academic Affairs	White	Female
Robert Long	Career Services	Black	Male
Greg Park	Student Affairs	White	Male
Diana Slay	Financial Aid	White	Female
Theresa Hanes	Student Affairs	White	Female
Mary Bennet	Admissions	White	Female
Mike Lance	Academic Affairs	Pacific Islander	Male
Yolanda Wright	Diversity Committee	South Asian	Female

During all phases, I utilized the racial participation dynamics of the class I observed as a “keyhole issue”. This technique was borrowed from the ethnographic technique of Hochschild (2016). According to Hochschild (2016), a keyhole issue allows the investigator to get a ‘deep story’ by getting to know “one group of people in one place, focusing on one issue”.

Hochschild (2016) choose environmental protection in Louisiana as her ‘place and keyhole’ issue for her book concentrating on the American political divide. As the keyhole issue for my project, racial participation dynamics in the classroom will be the one issue that I ask all participants about in every interview (Mertz, 2007; Guinier et. al, 1994). All participants in all phases was asked at least one question about the racial participation dynamics in the classroom at Granite State Law, either in the class that I observed or in a class they participated in independent of this research.

The documents I collected were primarily official documents and included budget data from the school on diversity events (see Appendix F) and the Law School's contribution to the overall university's diversity strategic plan.

Data Analysis

This research adopted an iterative approach to analyzing data (Berkowitz, 2013). Such an approach demanded that I utilize a looped approach to analyzing data (Scott, 2017) in which I undertake multiple rounds of revisiting data in the hope of identify new and emerging questions about phenomena, as well as, unearthing new connections between contrasting data sets. At each phase of this research, as well as within phases, data was simultaneously collected and analyzed.

The analyses in this study comprised of several different data sources, including document review, interviews, and direct and indirect observation. The interviews were digitally recorded on my personal phone device (Iphone X, via the built in Voice Memo App). Half of the interviews where professionally transcribed by a local service and about half I transcribed myself.

Each interview, direct classroom observation, open ended informal observation generated handwritten notes. These notes where then developed into fieldnotes utilizing the NVivo a qualitative data analysis (QDA) computer software package produced by QSR International. NVivo is designed for qualitative researchers working with very rich text-based and/or multimedia information, where deep levels of analysis on small or large volumes of data are required. For this, study NVivo was utilized to digitally enter fieldnotes, interview transcripts and documents in anticipation of analyzing these pieces of data.

As the data interpretation process began, memoing became one of the primary methods of analysis (Emerson, Fretz, & Shaw, 2011). Much of the analysis focused on developing sound interpretations of the data through recursive memoing and reflexive journaling that concentrate on the researcher's role as participant observer.

Once data was entered in NVivo, I made four memos (a pre-coding accounts memo, a pre-coding impressions memo, a post coding descriptive memo, and a post coding analytical memo) for each piece of data. The pre-coding accounts memo was composed after each data-collection session and detailed my accounts and summaries of situations (Khan & Fisher, 2014). Accounts are meant to be a strict account of what happened in the interview or the observation, while the impressions are researchers sense of what happened (Khan & Fisher, 2014). Thus, in addition to a pre-coding accounts memo, a pre-coding impressions memo was produced which detailed my sense of what happened.

My fieldnotes and each memo were then coded using open coding (Saldaña, 2015). Open coding includes labeling concepts, defining and developing categories based on their properties and dimensions. After each piece of data was coded, a descriptive (detailing the process of coding) and analytical (relating the results of coding to the overall research question) memo were also developed to further help analyze the data set. Triangulation of data from the personal interviews and class and open ended informal observations sought to establish credibility to the information provided. Through the process of inductive analysis, I was able to build concepts and themes from the observations and understandings gleaned from being in the field (Merriam, 2002).

During the fieldwork process, data was collected using cyclical data collection methods that allowed me to engage in an extended reflective and reflexive analysis process. The analysis

process began as the data was being collected through my handwritten notes, interview transcription and reading transcripts. Observer's comments and interviewer's notes were also further assembled. The process continued into the writing phase which took place after the conclusion of data collection in March of 2018. "First- order" analysis comprised the reading of each transcript and set of notes several times and making detailed notes in memos to highlight potentially significant issues and experiences (Patton, 2002).

This served to familiarize me with the data and to begin the process of organizing and structuring the data and increases the researcher's awareness of the patterns, themes, and categories in the data. Some of the initial open codes were inductively generated or were carried over from pilot work, other codes were gleaned from the study's theoretical (sociocultural theory), and the conceptual (dynamic diversity) frameworks. Yet, others came from the data collection myself. Approximately seventy-five (75) codes were generated, which were grouped into about 25 "first- order" themes at the end of Fall 2017 (see Table 5 below).

The twenty-five (25) "first- order" themes were generated, then grouped into five (5) "second- order" themes. These themes were shared with my dissertation advisor and committee for comment and review. These "second-order themes" were utilized to construct the story of diversity culture of Granite State University Law School in relation to the school's desire to maximize its interactional racial and ethnic diversity among its students.

For example, one participant "Jack", in response to a question about if Granite State Law recognized the worth of black students responded that he felt as if black students were "[r]ecognized just enough to be ignored." This was coded "in vivo", and a "recognized just enough to be ignored" code was generated as an initial code. During the iterative process, this code was synthesized into the theme of the law school projecting the impression of being unable

to deal with the effects of societal and institutional racism because of the restrictions placed on them by the current law. This was because I felt the comment reflected the student’s frustration of not having programs at GSU Law that took the academic and social capital disadvantages that minoritized students come into law school with. Eventually, this theme was further synthesized into the overall theme “In Admissions, Everything Counts”, which is one of the five themes that will be presented in the next chapter.

Table 5		
List of codes and themes derived from data.		
Initial Codes	First Level Themes	Final Themes
<ul style="list-style-type: none"> • Critical Mass • Educational Benefits of Diversity • Diverse Learning Environments • Unequal Beginnings • White Privilege • Legacy of Slavery • Token • Isolation • Financial Aid • Holistic Admission Review • Power • “Recognized just enough to be ignored” 	<ul style="list-style-type: none"> ▪ Everything counts, so not one thing is determinative ▪ The Complexity of Diversity ▪ Balancing Access and Opportunity ▪ Holistic Admission Review ▪ Paying Back Debts ▪ Colorblindness ▪ Reimagining the possible ▪ Money counts above all else 	<ul style="list-style-type: none"> ❖ Admissions is about race and everything else

<ul style="list-style-type: none"> • Neoliberal • Multiculturalism • Admission • Game of Thrones • Admission Funnel • <i>Bakke</i> • <i>Grutter</i> • <i>Gratz</i> • <i>Fisher</i> 	<ul style="list-style-type: none"> ▪ Legal inability to deal with the effects of societal racism 	
<ul style="list-style-type: none"> • Microaggressions • Implicit Basis • “Window Dressing” • Federalist Society • Racism • Implicit Basis • Silence • Strategic Ignorance • Your ideas should not attack my existence • Cultural Hegemony • Allyship • “Short memories equal weak polices” • Pizza at a weak incentive 	<ul style="list-style-type: none"> ▪ Comments should not go unaddressed in the classroom by the teacher ▪ Respecting “both” sides of all arguments ▪ The solution to “bad” speech is more ▪ Silence equals assent ▪ Your ideas should not attack my existence ▪ No mandatory attendance at diversity events ▪ No diversity requirement in the curriculum ▪ No real need for white students to get out of their comfort zone ▪ Easy Come, Easy go 	<ul style="list-style-type: none"> ❖ Argue with people that disagree with [their] ideas, not [their] existence.

<ul style="list-style-type: none"> • “No one listens unless a crisis occurs” • Hurt people, hurt people • Many students come to Law School never interacting with a minoritized student in undergrad • Micro-segregation v. Macro-segregation • Self-segregation • Exclusion • “Curated” Diversity • Exceptions to the rules for majority students • Easy come, Easy go • Can’t force people to talk to each other • Professional v. Undergraduate school 	<ul style="list-style-type: none"> ▪ Can’t force people to talk to each other ▪ Professional v. Undergraduate school 	
<ul style="list-style-type: none"> • Lack of support from Career Services • Difficulty getting a job after the recession • Bar Passage 	<ul style="list-style-type: none"> ▪ Diversity Feedback Loop ▪ Employers don’t come to GSU to look for Diversity ▪ Lack of On Campus Interviews 	<ul style="list-style-type: none"> ❖ A Break in the Diversity Feedback Loop

<ul style="list-style-type: none"> • Lack of diversity in the legal profession • Lack of role models of color • Minority Mentorship Program • Diversity Feedback Loop 	<ul style="list-style-type: none"> ▪ Law School does not empathize their lack of diversity as a strategic weakness 	
<ul style="list-style-type: none"> • Ahistorical • A lack of Intentionality • No campus climate survey • Socratic Method • Vicarious Learning • Lack of expertise around diversity student affairs at the school • Only school at the university without a Chief Diversity Officer • Lack of pedagogical principles in Law School teaching • Propaganda not a commitment to diversity 	<ul style="list-style-type: none"> ▪ We do not do anything specifically for our underrepresented students ▪ We can't force people talk to each other ▪ Uncoordinated diversity events ▪ No campus climate survey in over five years ▪ No standards on how faculty addresses racial issues ▪ A lack of intentionality ▪ A-historicism 	<ul style="list-style-type: none"> ❖ A lack of intentionality when it comes to diversity
<ul style="list-style-type: none"> • Colorblindness • Race neutrality 	<ul style="list-style-type: none"> ▪ Treat all students equally ▪ I don't let racism bother me 	<ul style="list-style-type: none"> ❖ Uber individuality

<ul style="list-style-type: none"> • I am an individual before black • Critical race theory • Get yours before you help other people • Activism outside the classroom • Hyper-individuality • Complexity as an excuse for not dealing with racism • Imposter Syndrome 	<ul style="list-style-type: none"> ▪ We try to provide services that benefit “all” our students ▪ I don’t see color ▪ Imposter Syndrome 	
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Researcher Positionality and Bias

In qualitative studies, it is important to recognize that the researcher is a tool of data collection and instrument of analysis (Maxwell, 2013). Therefore, research bias is not something to be ignored, nor can it be eliminated. Rather, qualitative researchers work to make biases explicit, so that they can become part of the analysis process. It is important to recognize that qualitative findings are interpretations, and so bias is inherent. The researcher brings a construction of reality to the research situation, which interacts with other people’s constructions or interpretations of the phenomenon being studied (Merriam, 1998).

In this study, the researcher is explicit about the goal of being in partnership (not in opposition or apart from) the leaders of law school community with the purpose and aim of helping them improve their diversity culture. My research methodology, coming from a critical

lens and supported by Vygotsky's sociocultural theory and Garces and Jayakumar's dynamic diversity, is explicitly democratic and emancipatory in its goals. Therefore, this position is necessary to the theoretical foundation and study framework.

Embracing the transformative activist stance (TAS) (Stetsenko, 2016), this research project eschews the traditional dichotomy between the subjective and objective positions of the researcher. The transformative activist stance argues that people come to know themselves, their world and ultimately come "to be human" in and through (as opposed to in addition to) the processes of collaboratively transforming the world in view of their goals (Stetsenko, 2016). As such the goal of improving the lived experience of students of color at Granite State University Law School was foremost in my mind at every point of this research project.

Chapter Five:

Results

“The aim of education is the knowledge, not of facts, but of values”

- William S. Burroughs

On August 12th, 2017 members of what has been referred to as the “alt-right”¹⁵ assembled for the second day of the “Unite the Right rally.” Organizers stated the goal of the rally was to oppose the removal of a statue of Confederate General Robert E. Lee from Emancipation Park, a local public park in Charlottesville, Virginia (which houses the University of Virginia). The renaming and statue removal was part of the national trend at the time in which localities reexamined the existence of many monuments to the late confederacy an effort heightened after the massacre at the Mother Emmanuel AME Church that took place on June 17th, 2015 in downtown Charleston, South Carolina. The shooter in that incident, Dylan Roof, has since been convicted and sentenced to death. He stated that he “wanted to start a race riot” (Block, 2015).

The massacre left nine African Americans dead at the Mother Emmanuel AME Church, Charleston, SC and the “Unite the Right Rally” left one white women dead in Charlottesville, VA. On August 15th, just three days later, the 1L Class of 2020, one of the more racially “diverse” classes in Granite State University Law (GSU Law) School’s history began their classes.

I started my journey in the Granite State University Law School on September 25th, 2017. On that night, the Dean of the Law School (new to the post) had organized what was billed

¹⁵ According to the Southern Poverty Law Center, the Alternative Right, commonly known as the “alt-right”, is a set of far-right ideologies, groups and individuals whose core belief is that “white identity” is under attack by multicultural forces using “political correctness” and “social justice” to undermine white people and “their” civilization.

as a “community forum” to “create an opportunity for respectful discussion about the complexity of supporting diversity and dialogue across difference and how our community can do so more effectively.” The event was entitled “The Road from Charlottesville.”

I attended this forum and made a few comments in my role as a participant observer. Some days later, I was approached by a first-year white male student from Utah, who shared with me that he was a Mormon. He was one of the only white students that answered my solicitation email to be interviewed for the first phase of this project. Our conversation went well, but his purpose for accepting my interview invitation became clear as we reached the end of the interview. The student, Derrick, self-identified as a conservative white male, and had made a comment during the Charlottesville Forum about “not excluding white males from the conversation” regarding diversity and inclusion. He agreed to participate in my interview because, as he said, “sometimes you need to make a step to meet people half way.”

The 1L Class of 2020 at the GSU Law had 22 percent of the students self-identifying as racially minoritized.¹⁶ As I engaged in the data collection and subsequent analysis at the heart of this study, I remained mindful of my goal to look at the culture inside of the school from different views and perspectives afforded by other informants to see if the law school’s aspirations had a chance of becoming realities.

¹⁶ As stated earlier in Chapter 1, in this study I use the verb “minoritized” as opposed to the noun “minority” because the verb better describes the process by which certain racial-ethnic groups are assigned minority status through the actions and non-actions of more dominant groups. Minoritized is a contextual word and thus the same group of people may be minoritized under one set of circumstances and the ones doing the minoritization under a different set of circumstances. In this chapter you will also see the word “underrepresented” utilized as it is the word that the institution uses to describe students whose percentage of the student body is low. While the two words do have much overlap, I think their intentions can be very different depending on the context. So, I do not use and do not intend these two terms to be used interchangeably in this chapter.

The chapter proceeds as follows. I present three sub-subsections in which I describe and analyze various ambiguities uncovered by the research process that I will argue strongly influence the operations and perspectives at Granite State University Law School. Each of these creates a context in which diversity is evidenced and enacted structurally and interactionally.

I begin with supplying context for the current situation in which GSU Law finds itself. This should provide some understanding of where to situate GSU Law's current demographics within the larger context of American legal education. Next, I move on to admissions. Here, I will illustrate particular aspects of the admissions process relevant to the topics of diversity and critical mass mainly by way of information provided by an assistant dean with knowledge of admission policies and practices. In this subsection, the reader will reencounter concepts already introduced from the literature reviews in chapter two and three, such as 'critical mass' and 'holistic review'. I contend that these concepts interact at GSU Law to form a unique set of cultural practices that, to various degrees, call into question the school's commitment to equity and social justice.

The next section deals with the concept of individuality within diversity, on its face an oxymoron. This section will provide some perspectives from the GSU Law classroom by way of the voices of several students. Here, I attempt to display how individual students are living through their law school classroom experiences.

Following that I analyze further contradictions and complications surrounding the GSU Law diversity culture. This sub-section offers perspectives from a law school classroom teacher and on career services at GSU Law principally through the views and opinions of a senior administrator in Career Services. Furthermore, this sub-section also delves into the ahistorical

nature of the diversity culture at GSU Law and revisits the uber-individuality that underlines its pedagogical strategies and day-to-day cultural practices.

Within each of these sub-sections, I provide my interpretation of the “diversity story” of GSU Law, crafted from the extant data describing the context the law school exists, then, beginning with the tools afforded by my chosen theories noted above, I critically “re-view” each theme arriving at an assertion supported by the data and one intended to be useful to law school itself.

Context: Where does GSU stand?

GSU Law applications declined sharply after the 2008 recession, and like some other law schools, the competition for “the right kind” of student, especially those that come from minoritized and marginalized backgrounds, is fierce and continues to intensify. This competition over students creates a “crunch of extremes”. Minoritized students with only what tend to be called “decent” numerical credentials (Law School Admission Test (LSAT) score and academic grade point average) are rigorously recruited by all law schools (see Baker, 2017).

Consequently, law schools ranked in the top 30 frequently ‘reach’ and admit into their classes minoritized students who would have previously likely gone to lower ranked law schools. Meanwhile, schools ranked below the top 30 are unable to do this because lower LSAT scoring students disproportionately affect their overall ranking thus jeopardizing the reputation of the school among the larger pool of law schools and among employers (Robbins, 2014). Rankings impact not just who comes to law school but what they do when they leave (Stake, 2006). Hence, lower-tiered schools must embrace more risk in admitting a diverse cohort.

Admissions is about race and everything else

Does race matter? GSU Law is currently ranked below 50, but above 100 of the 146 US law schools ranked annually by in the U.S. News World and Report. It has about a 40 percent acceptance rate. But the enrollment rate from offers of admissions, meaning what percentage of those offered admissions enroll, was only 17% for the Class of 2020.

Structural racial diversity (meaning the total number of minoritized students in each class) has been a challenge for the GSU Law, which only five years ago did not have a single black male amongst its first-year class and last year only had one (an individual who later left mid-year). The current 2L class, the Class of 2019, has 148 students and lists only five blacks (3%), eleven Hispanics (7%), and three Asian Americans (2%). The current 3L class, Class of 2018, has 131 students. This class has seven black students (5%), seventeen Hispanics (13%), and six Asian Americans (4%).

This year, however, GSU Law has reported that about one quarter of all its first-year students could be identified as minoritized (or “underrepresented” to use the law school’s official terminology). Out of a total of 120, 28 self-identified as minoritized including: fourteen black students (12%), four that self-identified as Hispanic of any race (3%), four Asian Americans (3%), and six reporting association with two or more races (5%). The higher percentages are an indication of a lower overall student body but are also an indication of a greater quantity of diverse student recruitment for this year.

I began my interview with Mary Bennett, an associate dean linked with admissions at GSU by congratulating her on having so many minoritized students in her most recent, 2020 1L class and asked what her secret was. She replied with a laugh, “It’s the money stupid.”

GSU Law began significantly discounting their tuition prior to the 2009-2010 school year and was relying heavily on that discount to attract minoritized students. In addition, every minoritized student that I talked to stated that, to some degree, the financial aid package that the school gave them was a motivating factor in them coming to the school. Mary outlined the admission process used at GSU as a spiral that included three stages – an outreach stage, an applicant stage, and a yield stage. This process is summarized via the figure below (see figure 1).

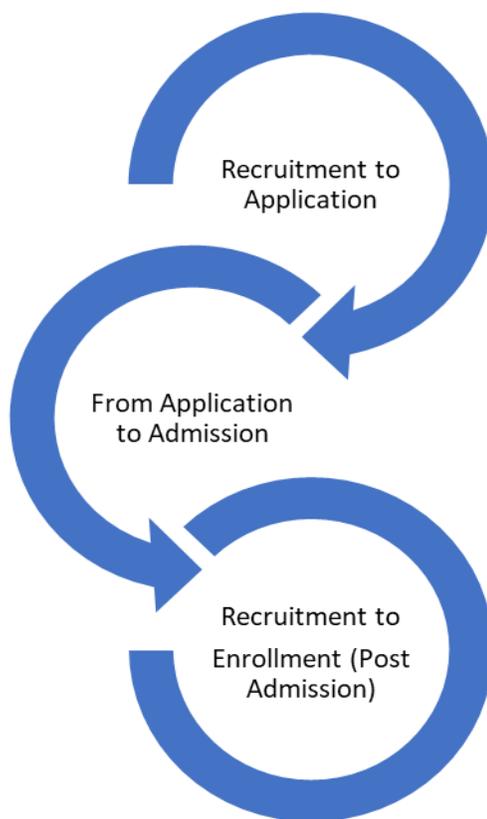


Figure 1. A Summary of the Granite State University Law Admissions process

Mary was unable to say during our interview exactly where GSU “lost” their minoritized students in the funnel created by the attrition within the stages she described. She mostly concentrated on the “admit-to-yield” stage admitting that “money was the determining factor for

students.” Every student (minoritized or otherwise) that I was able to interview for this project said that money was a major contributing factor, if not the determining factor in them coming to the law school. In addition, the minoritized students said that they felt that GSU Law “made them feel wanted” as well as giving them the best financial package available. This was evidenced for most at the at the “applicant stage.”

For example, Kevin, an African American first year student, stated that “this was the only school that made me feel that they were interested in me, rather than just interested in getting me to say that I wanted to come and join them.” He had planned to apply for all the law school’s in the state which offered him the cost of attendance scholarship, however, as he put it “GSU Law got back to me so fast after I applied and with enough of a generous scholarship that it no longer became meaningful to apply anywhere else. Plus, any money I would have been given would have been extra anyway since the [state] was covering everything. So, once I got the yes, it was a no brainer.”

While it was clearly an economic decision for Kevin, he also talked about how warm and accepting the environment was when he visited GSU Law. “I visited all three schools and GSU Law was by far the most welcoming and looked as if it would be the most supportive environment,” he said. Kevin by the way, stated that this positive impression of GSU caused him to refuse two schools that would charge him no tuition. Additionally, both of these schools, were in major metropolitan cities.

Jacob, another African American first year student who immigrated from Haiti, stated that there was a week during the previous year (when he was deciding which Law School to go to) when he talked more to the Director of Admissions for GSU Law than he did his own mother.

Finally, Seth, one of the African American males I interviewed from the Criminal Law class I observed, told me how good it was to have one black alumni from GSU Law, who was a member of the same historically black fraternity he was in, call him and encourage him to come.” Like many of the students I talked to in the study, Seth stated that “The biggest reason was the scholarship, that was 51.1 percent of the reason he came to GSU Law was because of the scholarship he was given” and “other major factor had to do with how good their outreach was.”

From the above excerpts it appears that GSU does a good job reaching out to get minoritized students to apply to the school. However, admissions involve a deeper review and all of these students needed to compile the usual admission package that would include a personal statement, undergraduate transcripts, LSAT score, etc. A question remains as to whether “race matters” at this stage of the admission process.

Everything else matters. Early in our first interview Mary stated,

We look at the person as a whole and ask, “What is this student’s experience? A lot of our diverse students may write [in their application] about adversity they have, whether it is racism and that sort of thing or coming from low socioeconomic status, and that kind of plays into grit and persistence and those sort of things. At the end of the day the most [important] thing is, “Will this person succeed in this law school?”

It can be seen from this quote that although race functions as a factor in the application-to-admit stage at GSU Law, it is qualified as evidence of overcoming “adversity,” within which racism is considered. Everything else was also coupled with low SES, but it should be noted that Mary implies that low SES affects more than minoritized people. In addition, none of these factors will matter according to Mary’s assertion unless a question aimed at predicting the future can be positively answered. Mary referred to this overarching principle of likelihood to succeed or perform well academically as dominating a “holistic review.”

What appeared to be a prioritizing of academic credentials and perhaps predictive indicators like the LSAT did not appear to be problematic, or contradictory, to admission's officers. It would seem that the people most qualified to make decisions based on academic or aptitude metrics would be faculty or statisticians. What was made very clear was that it was the admission's office that played a major role in the process. In short, the faculty at GSU Law did not seem to invest much time in the admissions process. There was an admissions committee that was made up of faculty, but they did not read the majority of applications; the admissions staff did that themselves. The only admission applications faculty read were those in which the student was borderline. When pressed for more specificity as to what predictors of success might look like, Mary's response was boilerplate, GSU Law sought "bright students, with High LSAT scores, that will help us move up in the rankings."

What became apparent to me was that 'holistic review' in the GSU Law admissions process meant two, somewhat contradictory, things. First, everything matters, meaning that the law school took everything about an applicant and every part of her application into consideration. Thus, race did matter in the GSU law process. Secondly, nothing doesn't matter, meaning the GSU Law admissions process had no limit (that I came across) as to what an application reviewer could take into consideration when making an admissions decision. Thus, if an applicant put something unusual or unanticipated in a part of their application, GSU Law would consider it as a plus or minus in their admissions decisions, no matter what it was.

Thus, in operation at GSU Law, holistic review meant simultaneously nothing matters in isolation and nothing doesn't matter that is in an application. This became a key feature in how race played its way into the admissions process at GSU Law School. While I could not find an instance in which a student was ever selected over another student because of any one

‘outstanding criteria’ in their application, I did come across examples of when an application was read and a student who was not a “perfect fit” because of, for example, the character and fitness disclosure of the applicant.

I could not tell if race was not a determining factor in the GSU Law admissions process because they did not want it to be or if race was simply not a determining factor because GSU Law had crafted an admissions process which did not allow anything at all (or appeared not to allow anything at all) to be the determining factor in the admission decision of any candidate.

Critical Review

Selection Effect v. Treatment Effect institution. In 2005, Malcolm Gladwell analogized that select institutions like Harvard are less like the U.S. Marine Corps and more like a Modeling Agency. He argued that, “You don’t become beautiful by signing up with an agency. You get signed up by an agency because you’re beautiful.” Just so, you don’t get smart by ‘getting into’ Harvard, you get into Harvard because someone thinks you are ‘smart’.

One of the filters that plays a part in deciding who gets into law schools like GSU Law is aimed at achieving cultural change through diversity, but admissions officers seem primarily to attend to prognosticators of academic success. So, the question becomes does Granite State Law admit a diverse group of ‘smart’ students or does it set out to provide a supportive academic and a progressive social environment that produces law students who dialogue across differences by “meeting each other halfway?” Did GSU Law want to be a selection effect institution or a treatment effect institution?

It appears that they desired to be both. The admissions process at GSU Law did not explicitly utilize critical mass as a concept that motivated its outreach and recruitment strategy.

The outcome of the GSU Law admissions process apparently all boiled down to if the reviewer believed that the applicant could succeed at the law school and go on to contribute to their community.

The GSU Law admissions process seemed to be walking a tight rope. It was balancing: 1) the need to screen out students (of all colors and with all type of privileges) who she (and her team) did not think would succeed at GSU Law school (as to not put someone in the debt of law school for ‘no reason’) (see Carbado, Turetsky, & Purdie-Vaughns, 2016); against 2) the desire not to screen out potential students who could succeed at the law school but, for various reasons, lacked the social/cultural and academic indicia to demonstrate to a decision maker that they have that potential right now (Jack, 2016).

I could not understand how if race was a factor at all in the GSU Law School’s admissions process, it could also be true that a ban on the use of race would not change the process fundamentally. But perhaps, that is exactly what “holistic review” is meant to do, camouflage the use of race in an admission process so that you cannot see how it works nor will you notice when it is gone. From a sociocultural perspective, however, this smokescreen takes away rather than adds to the potential development that non-minoritized students could experience (both academically and professionally) in law school (Leonardo & Manning, 2017). However, because GSU Law did not admit its students with a unified pedagogical vision, or even much input from teaching faculty members, this connection was not made during the admissions process.

Accordingly, it can be interfered that race did play a factor in GSU Law admissions process, but it was not clear how it was a factor. It was possible that how (and even if) race provided a ‘plus’ in admissions that would be different from situation to situation, from applicant

to applicant. Furthermore, GSU law went out of its way to make sure that, however race did play a factor in admissions, race was not the determining factor in any admissions decisions. In other words, a reviewer would need to point to other factors beyond race to admit a student without academic credentials as strong as the average admitted students. According to Mary, that might be a “soft” indicator such as grit or persistence. It might also be low SES, but it probable that DSU could not show preference for minoritized students in this area. In other words, they might balance such an admitted minoritized student with a majority, low SES student. Hence, the way race mattered to the GSU Law admissions process was remains ambiguous.

A race-conscious admission is unarticulated as a policy and highly ambiguous as a practice. After my interview with Mary, I walked away with a greater understanding of what the GSU Law admission process was and how it was conducted. What I did not walk away with a good sense of was how race impacted the admissions process and why the school thought it was indeed considering race as a factor in their admission process. Some of this, I suppose, is a result of the ambiguity inherent in holistic review after *Grutter*.

Race (more specifically an understanding of the present-day effects of structural and institutional racism) was taken into consideration during the application process. But the most important variable to the process was a determination of whether a particular student be successful at the law school.

Wright and Garces (2018) outlined three differing perspectives on how we should attempt to strive for equity in the United States. Their categories are relevant if we aim to achieve equity in educational areas through admission processes. The color-blind perspective believes that race should never matter, and it is never necessary to increase racial equity; the race-neutral perspective notes that the consideration of race is not necessary if other characteristics can be

used to produce as much, if not more, diversity; and the color-consciousness perspective argues that the use of race is necessary if we are to address racial inequity.

However, this last position requires a pedagogical imperative in that it becomes the responsibility of educational institutions to provide pedagogical structures, particularly supportive structures, to provide systematic means of success for those admitted when, for example, race-conscious policies weigh more heavily than academic pre-requisites. A pedagogy built on the principles of sociocultural theory such as the idea that “through others we become ourselves” (Vygotsky, 1986) recognizes the mediational support that would be needed when law schools admit students less prepared than others due to lack of access to quality schools. In addition, because SCT is sensitive to the role of history to the development of sociocultural group, a race-conscious admission policy would value race as a notable admission category in cultures identified as multiracial.

Nonetheless, the current U.S. Supreme Court prefers race neutrality, to achieve the goal of color blindness one day in the future but will allow color consciousness if (and only if) a University can prove that race neutrality cannot produce “enough” racial and ethnic diversity. Moving through the admissions process at GSU Law I found their admission practices much more influenced by the law than any pedagogical imperative.

While still not eschewing the use of race, GSU Law seems to embrace a race-neutral perspective. This seems to be preventing it from considering a whole context view on holistic review, even though the words of the admissions officer would seem to indicate this is where GSU Law wants to be. Mary Bennet used words like “quality pool” and “qualified applicants.” These words trigger a reasonable interpretation that application decisions are based on numbers associated with academic performance or prognosticators.

New York Times reporter Nicole Hannah-Jones has offered the concept of the concept of *curated diversity* (Douglas, 2017). She defines curated diversity, developed mainly in the K-12 context, as white parents supporting a type of diversity “so they’ll still be the (white) majority and there won’t be too many black kids.” This concept harkens back to a theory developed by critical race legal scholar Derrick Bell called *interest convergence*. Interest convergence claims that the interest of minoritized individuals are only advanced when they coincide with the interest of white people.

Diversity at GSU Law seemed rather “curated.” The law school wanted diversity, but it was not very clear what they were willing to risk getting it (if they were willing to give up anything, likely for their majority constituents, at all). While I would not say that they wanted a “white majority,” they seemed not very ‘bothered’ by being a predominately white law school. Indeed, the law school seems committed to looking like they are committed to diversity, but the exact substance of that commitment appeared hard to decipher.

I do not know if a more concerted, intentional effort to yield more African American and LatinX students would benefit GSU Law as far as structural diversity. Their geographic location is a major barrier to encouraging minoritized students to come the school and they exist in a very competitive market for those students. GSU law’s rhetoric says it’s committed to providing a “diverse learning environment” for all its students. Nevertheless, this commitment was sandwiched within what critical race scholar Cedric Powell has called “rhetorical neutrality,” which is “a literal conception of equality where not treating any students ‘differently’ is the guiding touchstone.” This position clearly benefits majority whites.

However, as legal scholars Devon Carbado and Cheryl Harris (2008) have noted, a preference in the admissions process for color blindness or racial neutrality is a viewpoint

preference, which favors those students who choose not to make race a major part of their application (and by extension their academic lives). This may have influenced the sample of students in this study, as many minoritized students choose not to volunteer for inclusion. In addition, the president of the Latinx Law Student Association stated that as the percentage of Hispanic students at the law school went up, student participation in LatinX Law Student Association went down.

Diversity and critical mass. In chapter two it was highlighted that critical mass should be ideally a tool for achieving diversity (both structural and interactional). However, what my inquiry inside the admissions process at GSU Law uncovered was that as a tool for allowing a public law school to know how to use race in its admissions process, the legal concept of critical mass was in operation possibly becoming theoretically bankrupt. It is useful, maybe, as a way for a university General Counsel's Office to explain to a law school Dean what to do to avoid getting sued (i.e., safely increase your numbers of URMs by making race one of many, race-neutral factors considered). But, in admissions operations, critical mass appeared to be not very helpful to front-line admissions workers as advice on how race could (or should) be legally used or not used in the admissions process.

Structural diversity is needed, but is not by itself sufficient, to achieve a learning environment in which students get the educational benefits from diversity. Research tells us that interactional diversity is also required. As such, you would think that critical mass as a concept would tell a law school that it must move beyond admissions and do more to increase interactions and the improve the quality of interactions between students of different races.

What I observed at GSU Law was an example of what critical historian Carol Anderson (2016) refers to as the American national narrative of “aspiration that masquerades as

achievement.” The aspiration to have more minoritized students and the good faith attempt to operationalize that aspiration stands as a proxy for the attainment of that goal before any real achievement is ever accomplished. A slight increase in racial structural diversity, being so hard to achieve under the GSU Law’s complicating factors described earlier, becomes the accomplishment. It is the equivalent of American football team reaching the 50-yard line and asking the referee to award the points for a “touchdown” because they had to try hard to get to that point.

Because the goal of achieving a critical mass is the compelling governmental interest, a lot of what is needed to happen after you assemble that critical mass has been taken for granted or flat out ignored. This is not to say that GSU Law had a critical mass (more on this in the next section). But it is to say that the admissions office, which is tasked with assembling larger proportions of minority students and thinking that they have achieved the sought-after critical mass, does not seem to understand (from anything other than a legal perspective) *why* they are assembling a class with improved structural racial diversity (call it a critical mass or not).

Holistic review plays out as “conservativism” in admission outcomes. You may recall from chapter two that the University of Michigan Law School’s admissions process was approved by the Court when challenged in *Grutter v. Bollinger* (2003). In contrast, the University of Michigan’s undergraduate admissions process when challenged in *Gratz v. Bollinger* (2003) was ruled unconstitutional by the same Court.

The difference between *Grutter* and *Gratz* was the fact the University of Michigan undergraduate admissions process automatically assigned a certain amount of points to an applicant’s total admissions application score, when a certain score guaranteed an applicant admission. In contrast, the University of Michigan Law School assigned no numerical values in

its admissions process, did not quantify its racial “plus” factor, and (however it was applied) the “plus” went to some minoritized students, but not to others (Hirschman, & Berrey, 2017).

The Court in *Gratz* said that the awarding of points solely for being a member of a minoritized group was too mechanical and thus operated too much like a quota (which had already been disapproved of in *Bakke*). The Court furthermore found that the process of awarding points made race the determining factor in an application decision for many minoritized applicants (Hirschman, Berrey, & Rose-Greenland, 2016).

In contrast, holistic review emphasizes ‘individualized’ consideration for each applicant, such that any advantage or disadvantage is earned by the applicant herself and not bestowed because of membership in any racial group. Another hallmark of holistic review is that, while race is a factor, it is not the *determining* factor why any applicant does or does not receive an offer of admission to the educational institution (Bastedo, Bowman, Glasener, & Kelly, 2018).

Following both *Grutter* and *Gratz* in 2003, universities across America that continued to use race conscious admissions scrambled to make their programs and policies more like that in *Grutter* (which the Court had approved) and less like the program described in *Gratz* (Hirschman, & Berrey, 2017; Hirschman, Berrey, & Rose-Greenland, 2016). Thus, many schools made their use of race much more ambiguous and much less easy to understand from an outside perspective, largely as a shield against legal liability.

Like the diversity rationale itself, holistic review has been criticized as a way to signal to disadvantaged minoritized students that stories of disadvantage will work to increase their likelihood of admission. Thus, some minoritized students will choose to include such stories in personal statements (Carbado, & Harris, 2008). Thus because it is the means of using race that

during the admissions policy upheld in *Grutter*, holistic review has become almost synonymous with race conscious admissions in modern higher education practice.

Bastedo et al. (2018) presented a typology of holistic admissions practices. They categorized admissions professionals using holistic review into three perspectives: the whole file perspective (in which admissions decisions are determined by reading all parts of the application); the whole person perspective (admissions decisions consider the applicant as a unique person in light of their individual characteristics and achievements); and the whole context perspective (admissions decisions consider the person in light of the whole of their environmental contexts, family background, hardships, extenuating circumstances, and/or educational opportunities).

Admissions work is narrowly exercised at GSU Law. The GSU Law admissions process can be examined in several ways. First, if holism is a valued concept it would seem imperative to involve others in the GSU Law community who are positioned to evaluate both academic and social potentialities. Sociocultural theory (Vygotsky, 1978) conceptualizes teaching as one of the important leading activities of intellectual development. In fact, what is developed through teaching/learning within systems of education are things like “thinking like a lawyer” (Schwartz, 2013) and learning the language of the law (Mertz, 2007). Hence it would seem imperative, indeed there should be a “pedagogical imperative,” (see Lantolf & Poehner, 2014) that GSU Law faculty, those who are tasked with relying on diversity to yield educational *Grutter* benefits, would have a primary role in the GSU Law admissions process.

But, as illustrated above, this is not the case at GSU Law. There, five people in the admissions office seem to be solely responsible for the admissions process. The faculty had an

admissions committee, but from what I could discern the committee only read some applications and only those that the admissions staff needed guidance on whether to say yes or no.

Furthermore, if success during and after law school includes finding a job, you would anticipate that GSU would craft an admission process that took into consideration the evolving legal market. However, I found no evidence of this at GSU Law outside of Mary having worked in Career Services herself. Also, it appeared to me that minoritized students were admitted to GSU Law without much contemplation as to whether that student would succeed by going on to contribute to their community *as a minoritized student* or legal practitioner. To do this they could rely on personal statement of community aspirations, but also on data that Career Services might collect and make available.

Summary

In this section, the GSU Law admissions process was enabled for recruitment and enrollment of some (but not many) minoritized students. Many minoritized students appreciated the outreach GSU Law gave to them via the admissions office. This was a major factor in bringing minoritized students to the school. The other major factor was money, with minoritized students I talked to in this study naming the scholarship that GSU Law gave them as the main factor they came (and stayed) at GSU.

However, the data indicates that GSU Law needs to work from a better articulated concept of structural diversity and gear their review of applications to intentionally find ways of assessing potential in class, out of class, and beyond law school. Currently, the process is extremely self-contained. Because of legal precedent the process is intentionally ambiguous which makes its intentions somewhat ambiguous as well. More care should be placed on

designing an admissions process that can be assessed for its ability not just to pay enough money to get a few minoritized students in the door but add to the discourse taking place in the classroom.

Individuality within Diversity

The main benefit of diversity, in general, is that each individual in a social setting stands as a composite of various sociocultural contexts in which he or she has lived, and brings the history, practices, and values of that context to the new settings in which she resides. Yet, if this person is alone in the new setting, this individual, especially if he or she is a member of a marginalized group, it is unlikely that the cultural benefits of diversity will become manifest. For this reason, we speak of the necessity of achieving a critical mass.

Through the admissions process that produced the “diverse” 2020 class at GSU Law, it could be assumed that critical mass, or structural diversity would have been achieved. Nonetheless, structural diversity may not change the lived experiences of minoritized or the majority students in a learning environment (Griffin et. al., 2016; Jayakumar, 2015) such as the one met in law school.

Structural diversity is not necessarily sufficient. Also needed are interactions in the primary educational setting, the classroom, and also in other, less formal spaces within the law school itself. In this section, I report data collected in these contexts to assess whether GSU classrooms and informal social contexts contained incidents of *interactional diversity* during a time when an increase in structural *diversity* was being celebrated by GSU Law.

The Classroom. My primary observational setting for this study was a Criminal Law class that consisted of 51 students, one-third of whom would fit the minoritized category. Each

day the teacher, Professor Smith, stood behind a podium at the front of the amphitheater and it was her voice that typically began and ended the class.

The dialogue in this classroom took place between the teacher and individual students as would in a “traditional” law school class in which all talk passes through teacher. This (intentionally or unintentionally) tends to mimic the practice of lawyer dialogue in the courtroom, in which lawyers confine their comments to “going through” judges rather than addressing opposing counsel.

Professor Smith moved at a brisk pace. She frequently started asking questions about 5 to 10 minutes into a class session and continued to ask questions throughout. For most of the classes that I observed, she relied mostly on securing voluntary responses. She did call on students, but this was rare. Students responded to the teacher and even if referring to another student, did so indirectly. Thus, ‘argument’ in this classroom was facilitated through the professor and there was rarely much back and forth between individual students on a topic, unless the teacher made a point to ask a student to respond.

Despite the proportional representativeness of gender and minoritized members in the class, white males still dominated the participation in the class. During my time observing the class, white males raised their hands more and countered the points made by each other and the teacher more than any other singular group.

Topics related to race did come up, but interestingly these were usually initiated by white females. It was during this period that there was a significant increase in the number of black males shot and killed by police officers in the US. One would imagine that in a course on criminal law students would make connections with such instances. Only one time, however, was this issue raised and it was done so by a white woman. This occurred during a class session

when the topic was on guns and this one, white female student brought up the Philando Castile¹⁷ case without being prompted by the teacher or any other student.

Overall, there were few instances when contemporary racial issues arose in the Criminal Law class and they rarely developed into discussions that brought multiple perspectives to bear on the legal issue at the heart of the class. What follows are some examples of when racialized talk occurred.

I rise and fall by myself. Seth was one of three African American male students in the class I observed. Seth, a native of Tennessee and a Navy veteran, liked his Criminal Law class and commented that “[a]s opposed to my other classes she [Professor Smith] really encouraged us to talk and ask questions about the facts and the law.” Still, he saw Professor Smith as different in that she would say, “This is the information and the law. What do you think about it?” He seemed to be implying that this professor welcomed students’ opinions and connections to social events related to criminal law.

He stated that the conversation was always good but did bring up the fact that in class it felt as if some people “held back,” and he went on to opine, “...out of the ‘fear’ of offending other people.” I asked him if he ever held back from saying or contributing on a certain topic out of that fear, he stated, “Not often, but I wouldn’t say I was as free and open in the classroom as I would have been by myself in my home.” By this he meant that if he were with people from his hometown he would speak up more. Nonetheless, he said that that the numbers of white or black people in the room did not determine whether he was going to speak up on racial issue. I asked

¹⁷ On July 6, 2016, African American male Philando Castile was shot and killed by Jeronimo Yanez, a St. Anthony, Minnesota, police officer, after being pulled over in Falcon Heights, a suburb of Saint Paul. Castile was in a car with his girlfriend, Diamond Reynolds, and her four-year-old daughter when he was pulled over by Yanez and another officer.

Seth if having two other black males in the classroom affected the things he said in class at all, his answer was “yes and no.” He went on to say, “Had they not been there I would have said it regardless. I rise and fall by myself.”

He did, however, refer to an incident in a class that took place earlier in the semester during which the class was going over a case and he and Douglass, one of the other African American students in the room that Seth happened to sit right next to,¹⁸ raised their hands to react to a question at the exact same time. According to Seth, “I looked at [Douglass] and said, ‘Do you want to take this or should I?’, and he said you can take this one. So, I think by them being there it was cool to have the support.” In other words, Seth felt himself a member of a group, but also willing to go it alone.

Individual defenders of diversity. What I came to understand after spending some time in the Criminal Law class was that diversity, in numbers, was making a difference. Many times, students would look around before raising their hands to answer questions on certain topics, and when those topics had to do with race many majority students looked at the minoritized students prior to raising their hands. But minoritized students rarely spoke.

At the end of the class on November 8th as I approached Seth to schedule his interview, Elizabeth, a white female student, approached him and thanked him for having the courage to speak up in class despite “many people not being happy that he was [speaking up].” I found this comment curious, so I asked her if I could also talk to her about the comment.

In her interview, she talked about how much of the dialogue that I observed in class was influenced by conversations among study groups and social groups (which she acknowledged to

¹⁸ Students selected their own seats in the class, but seating stayed consistent throughout the semester.

be largely racially segregated) that takes place out of class. According to Elizabeth people don't talk in class because they've already discussed important or controversial issues outside of class. She pointed out several students, who came across as very liberal in class, but once they were "downtown at a bar" started to say, "a lot of crazy things." Elizabeth seemed to be saying a couple of things here. First, she was indicating that students might feel more comfortable discussing positions that could become controversial in a classroom setting. Second, she seemed to be implying that a student might be able to "pass" as a liberal in class but was unafraid to engage in racial slurs outside of class.

I went on to ask Elizabeth about her comment to Seth. She shared that "It wasn't anything serious. Seth, well Seth, is very vocal in class about the position that black people are in today and how that should be taken into consideration. Which I support..." But she added, "...but I just overheard in the hallway some folks' comment about how he was 'over aggressive' and came across 'very angry and maybe needed to get laid' or something like that." She stated that "...I like Seth and believe that he is a very nice guy. I don't always agree with what he says and often disagree with how strongly he comes across, because he is not that way one-on-one, but that class would be different if he was not in it..."

Seth, to Elizabeth was an individual who was unjustly perceived as a member of a stereotyped group by people she saw as phony liberals. Diversity, for Elizabeth was not an issue in the classroom, but individual members of diverse groups needed support from an individual defender like her.

The student who was responsible for bringing up the comment about police shootings introduced earlier, was a 24-year-old white female named Jessica. She explained her motivation by saying, "I think that structural and institutional racial discrimination is real in America and

needs to be talked about. If white students like me don't do it, I think we are doing nothing but sitting on our white privilege." Jessica positioned herself as a singular voice for diversity and perhaps was taking on that role because she saw GSU a place of "abundantly white faces."

Owning one's individual perspective. I interviewed another one of the three African American males in the Criminal Law class I observed, Douglass, a 23-year-old from the District of Columbia. Douglass told me that "I am sure that there are things said in the classroom because [the black students] are there and things that would be said that are not because we are there..." In the classroom (see Appendix D for a seating chart of the class) Douglass sat right next to Seth and an African American Female was also in their same row.

Seth had earlier described a classroom incident about he and Douglass raising their hands at the exact same time to address a question. I asked Douglass whether he ever felt "token" at the law school or felt like he had to be a "spokesperson" for his racial group. After some back and forth between us, Douglass stated:

I do not think whether I feel as if I will be mistaken as 'a representative' for the views of everyone that is Black hinges on how many Black people are in the room.... But, if anything I think...I believe it is more about how many white people are in the room and what type of white people are in the room. 'Cause there can be a hundred of 'us' there and if a white person thinks that all Black people think alike they are going to still think that without...any of the others speaking. You know what I mean? But, yea, if you get the white person that knows we are all not just a part of one big club, they are going to hear [Douglass] and be like that is what Douglass thinks, not what [Seth] or Ryan think...

In addition, Douglass seemed perplexed and genuinely intrigued as to why the success of critical mass, as I had described it to him, seemed to be based on the feelings of minoritized students in the school at the time. Applying a concept, he undoubtedly had recently learned in one of his classes he asked me “Is that a reasonable person standard or a reasonable black man standard? Does Al Sharpton need to feel comfortable or will [the Court] be satisfied if Omarosa said ‘I’m good, the two of us got this?’” By this Douglass meant to assert that he thought it absurd that the use of race in admissions would be tied to if the students that already got in feel like representatives of their race or not.

On what is being said, rather than who is saying it. Mark, a self-identified, moderately conservative white male, participated in one of my interviews. Mark admitted early in our conversation that there were some debates in class that he felt got “too heated” for him to get into. When pressed to provide an example of a “heated” discussion, he used the death penalty debate and the class discussion on felony murder. He said he felt that “people were yelling at each other” and he didn’t feel the desire “get in between them.” He said he felt that as if the back and forth on the debate reached a level of animosity then he did not feel comfortable enough to interject his voice.

We talked also about the gender diversity in the class and Mark stated that, when I shared with him my observation that white men dominated the conversation in the classroom, he was “surprised. He went on to name a few minoritized males that he thought talked up a lot in his view. He admitted, however, that he had not been paying close attention to classroom participatory patterns. Mark told me, “Honestly, unless the topic is one in which the identity of the speaker matters a lot, I concentrate more on what is being said rather than who is saying it”

When asked about the racial diversity of the class, Mark expressed the view that many of the white students who participated in this study expressed, saying that while the class was not very visibly diverse, it was one of the more racially diverse learning environments he had been in in his post-secondary school career. In the next chapter, I refer to this as a sort of “relative proximate view of diversity,” in which students acknowledge that the numbers of racial minoritized students is small, but also articulate that even with the small number the learning environment was the most diverse they had ever been in.

Perceiving racial talk differently. Kevin, a young African American male first year student, was in a section of criminal law that I did not the one I observed. He relayed to me a story about a class meeting where a Professor introduced a hypothetical situation in which a white man killed four black minors out of a fear of perceived danger. The hypo¹⁹ appeared to me to be testing the legal principle of self-defense drawn from the content of the class and appropriate as a topic for discussion within the class.

Kevin described participating in the classroom conversation at the time and thinking nothing of the back and forth between his classmates on the issues. However, after talking with other black students from the class, he became aware that some of them had taken offense to a few white students who were sympathizing with the white male’s defense in killing the four unarmed black teens featured in the hypo.

Kevin told me, “Nothing outrageous was said at the time from my perspective...but many of my [black] friends did not see it the same way.” Kevin also said that one of the white students had been known to repeatedly express his view in out-of-class meetings that he often feels

¹⁹ Law school professors often use hypothetical situations to test legal rules and apply a rule learned in one case to the facts of another situation.

discriminated against for “being white.” Thus, Kevin thought that the reaction to the “few white students” during the classroom discussion invoking race might have had more to do with the black students’ negative perception of this one white student rather than a general view of other white students.

Kevin comes from a mostly middle-class background, and at the beginning of the interview he stated that his father is a professor, as are three of his uncles, and his mother was a registered nurse. Kevin also attended “mostly white schools throughout [his] life” before attending an HBCU for undergraduate studies.

In contrast to Kevin, who saw race raised in his classes, discussed civilly among class participants, but subjected to criticism among minoritized students afterwards, Jacob, presented a different individual perspective. When asked if and how race had come up in the classroom, Jacob responded, “[o]f course race comes up in the classroom discussion all the time.” But he went on to say that “...from my experience whenever there is a key discussion about race, people don’t talk about it.” Kevin and Jacob were in the same “section” and took all their first-year doctrinal classes together. Yet, they perceived how racial topics arose and functioned in the classroom differently.

Unlike Kevin who visited GSU Law before he applied and again after he was accepted, Jacob never had the opportunity to visit. This was likely related to the contrast between the two law students. While both are first generation Americans, Jacob’s economic background was not as privileged as Kevin’s. While Jacob was on scholarship it wasn’t “anywhere near a full ride”.

Jennifer, a Latina student whose parents were professionals – her father a lawyer and her mother a part-time, substitute teacher - was aware of observing the topic of race coming up in the classroom, but because of academic pressures, felt that she could not “commit.” By “commit”

she meant how other minoritized students “committed” to bring their own individual perspective into play in the classroom. Thus, Jennifer felt that if she had to choose between inserting her perspective and performing well in law school.

Part of the difference between Kevin and Jacob when it came to an opinion of the class racial dialogue appeared to be a difference on the perspective that the two young men took in who they were representing when they “spoke up” in class. Although he never explicitly stated it, Kevin represented a view that he was speaking for himself as an individual.

On the other hand, Jacob very proudly stated that when he spoke he “got to represent the Haitian community and when I speak I am also representing black people” and “...it kind of put a burden on me that if I do say something wrong or if I do say something that is not right, like I’m representing...my people badly.”

Kevin had also talked about a similar burden, but he talked about it being self-imposed due to his competitive nature, rather than having any relation to a feeling of representing one’s race or one’s “people. The burden perceived by Jennifer was weighed as too costly to bear. Thus she prioritized her student self above her racialized self.

Informal Places of Student Interaction.

During my time at GSU Law, I visited the general student body meeting and the events of some “affinity” groups. These visits gave me insight into how diversity “worked” in more informal learning spaces at the GSU Law and provided me with access to many students that shared with me their thoughts about diversity at the law school in an informal way. At one such of these meetings, an informal observation of the Law School’s Black Law Student Association

meeting, an African American female student described to me an incident that had occurred in a class she was taking at the time.

Apparently one of her classmates, an older white female student, had expressed support for the use of blackface (the practice of white people putting on makeup or paint to darken their face as to appear a different race) in a class about legal issues in Higher Education.

When pressed by me as to why she didn't engage with the idea and try to argue with the legal ideas that the student was proposing by offering other, better legal ideas, the student expressed what I think is a very important statement in this project: "I will argue with those that disagree with my ideas, I will argue with people that don't understand what I am saying and how I am saying it. I am not going to argue with anyone that disagrees with my existence, and to be honest I shouldn't ever have to."

This quote would stay with me throughout my time spent in the GSU Law. Both the quote itself and the incident in question, represent the dissonance between where many minoritized law students are and where many law professors are on the issue of views in and out the classroom that other students may seem to think should not be given the respect of being sanctioned (even via silence) by the institution or university.

A senior administrator at GSU Law school, whom I shall call Greg, happened to also be the teacher for the class in question in which the incident above happened. When asked about the incident, Greg clarified that the situation "wasn't about a hypothetical" but was instead an actual case about whether parody was protected speech. While not remembering the exact words said in class, Greg expressed that he could see how "...someone, even disagreeing with blackface, could

make the argument that [wearing blackface] reached the level of protected speech under the First Amendment.”

The student was operating under the assumption that the white woman who was ‘accepting of blackface’ was not recognizing African Americans as a people. Administrators at GSU Law appeared to be very reluctant to make this assumption or, indeed, any assumption based on anything but intentional acts of students toward other students. It should be noted that the white women who defended blackface in the class in question apparently did not say it was ‘ok’, just that it shouldn’t be illegal. But the nuance of her argument seemed to be lost on the African American female student that was offended by her comment.

I spoke to the Jill Taylor, a senior administrator at GSU Law and asked her if it would be considered a “failure” if GSU Law produced students that couldn’t “separate what they believed from who they are.” She stated that it was not a “failure or else” priority to make sure students have such ‘soft skills’. By soft skills she meant all skills not directly related to passing the bar examination or getting a job. “I wouldn’t put it in such dire of a category as you are” she said. “Whether a student graduates and passes the bar and whether a student can get a job after. Those two things I would put in that box. But the other ‘soft skills’ [while a priority] do not raise to the same level.

This was interesting to me as the ABA relevant standards and interpretations section 302 (d), states “[a] law school shall establish learning outcomes that shall, at a minimum, include competency in the following: ... [o]ther professional skills needed for competent and ethical participation as a member of the legal profession.” I would think that the ability to be sensitive to racially conscious discourse fits in this skill category.

A senior Academic Affairs administrator when presented with the class scenario above said that he couldn't respond to a particular incident unless he had personally witnessed it but did go on to say "...in reality, the truth is we are going to hear a lot of difficult things in life. So, it seems to me the best place to develop your skill at being able to understand where people come from, which I think is a key part of being an effective lawyer, ...is in a law school classroom." So is he saying that it is incumbent upon a law teacher to recognize when a comment rises to the category of "difficult thing."

This was a cultural practice that I began to observe as common at GSU Law, many incidents that students saw as racialized but left undiscussed, were correspondingly viewed by faculty, administrators, and some staff as "learning experiences"²⁰ that would benefit all of the students in the long run. Furthermore, I asked the senior administrator what exactly the line between disagreeing was "with ideas" and "disagreeing with someone's existence" and what comments if any would be out of bounds if said in the classroom. She replied, "I think if it was a direct personal attack...because that is the only way that you would know." He expressed the fact, as a Law Professor, he often challenged all views expressed in his classroom regardless of the level of controversy around the view, but he wouldn't feel the need for teacher intervention in any incident that wasn't a persona attack by one student against another.

All the administrators in GSU Law that I talked to support the line drawn as not intervening with a comment a student made unless it was a "personal attack". This appeared to me to indicate, on some level, that the GSU Law culture favored principles of free speech over the emotional comfort of its students when those two principles came into conflict.

²⁰ But according to sociocultural theory, learning experiences are not learning experiences unless action is taken (immediately or delayed like as future curriculum).

From the data collected I was able to draw a few inferences. First, minoritized students mostly see themselves as individuals – speaking for themselves. Second, minoritized students perceived their classes differently – as balanced equitable places in and of themselves, but comments are subject to being more broadly interpreted where, for example, a minoritized student couches a white student’s comments in relation to what this person has said outside the classroom. Second, minoritized students can see the classroom as a hostile place where any mention of what might be considered racist on its face functions that way unless specifically recognized as “sensitive” by the teacher or fellow student.

Critical Review

GSU’s “diversity” culture focuses mainly on the individual. The establishment of U.S. higher education was deeply rooted in racism/white supremacy, the vestiges of which remain in place today (Patton, 2016). Furthermore, the functioning of U.S. higher education is linked to imperialistic and capitalistic efforts that fuel the intersections of race, property, and oppression (Patton, 2016). Perhaps nowhere is this truer than at a predominately white law school.

At GSU Law, individuality seems to be utilized as a ‘cure all’ for racial bias. Both the school and students attending the school seem to think the more they treat students as individuals, rather than an individual member of ‘a group’ that is valued to provide desired perspective to classroom interactions. In other words, individuality assures that every student has a voice, but that that voice will always be informed by the law under study rather than biased by personal opinions, experiences, or biases.

This was illustrated was through the administration, which frequently reacted to my questions of what they did for minoritized students by insisting that the school sought to meet the

needs of all its students as ‘individuals’. It was illustrated by Kevin who, although he recognized that race played an issue around him, made the conscious choice to not let it affect him as an individual. It was illustrated by Eduardo who was very careful to answer any questions asked of him not as a Latino but as an individual.

Individual teacher discretion and diversity played out in the classroom. Fatima, a non-binary Arab second year student who first participated in my pilot study and came back to do a follow up interview for this study, told me during her interview:

The teacher has a lot of power in the classroom that [they] seem to be afraid to use or just choose not to use. Not choosing is a choice. Many professors in Law School, because they are more Lawyer than Teacher. They seem to think that choosing to do nothing is the ‘neutral’ way to act. But in certain cases, in many cases...silence in the face of racism equals acquiescence at best, assent at worst...

Mary told me that she learned to teach by teaching. Her preference for how to deal with racial issues in the classroom was first to see if various opinions came from the students in the class and, only if that did not happen, might she interject views that could stimulate response. She depended on voluntary responses for controversial topics.

At times her method proved to achieve her goals. For example, during the class discussion on the death penalty, she positioned her stats on the uneven application of the death penalty to different races on her two last Power point slides. During the class many students (all white) mentioned the uneven racial application of the death penalty before she even got to those slides. Many times, however, her method resulted in some students, usually the same white males, dominating certain controversial topics class to class.

Simply put, the faculty of GSU Law should be trained to better utilize the race of students in their classrooms in a way that encourages cross racial interaction. The Socratic Method as currently utilized may be a very poor way of doing this (Abrams, 2015), because as stated earlier,

all dialogue filters through the professor. If that is the case, it falls on the leadership of GSU Law to provide professional development opportunities for faculty in this area.

In her 2018 AERA Presidential address entitled, “*Just Dreams and Imperatives: The Power of Teaching in the Struggle for Public Education*”, Deborah Loewenberg Ball addressed what she called the paradox of constraint and discretion in teaching. Ball highlights how teaching is constrained by policies, curriculum, and testing regimes, etc. and at the same time is highly idiosyncratic with numerous instances of opportunities for the insertion of pedagogical discretion.

The constraints on teaching can support efforts to ensure inequity and at the same time reproduce racism and other forms of oppression. On the other hand, teacher discretion can enable teachers to connect school to the world, while simultaneously allowing topics like racism and other forms of oppression to flow into schools. It would benefit GSU Law greatly to take stock of this paradox of constraint and discretion in teaching.

As teaching is, as Deborah Ball states, “dense with ‘discretionary spaces’”, it is incumbent on those that are supervising the teaching at GSU Law to make sure that those spaces are filled with a way of enacting a set of teaching/learning activities supportive of interactional diversity. These activities should be designed with the sociocultural goal of the development of law students who are more practiced and sensitive to a socially just and racially conscious discourse.

Summary

In this section, I have sought to introduce you to some voices from inside the GSU Law classroom experience. I observed a Criminal Law class for an entire semester and interviewed

students from that class. I also interviewed students outside the class that I observed to explore their classroom experiences as well.

I found that the environment of classroom in GSU Law was very dependent on the classroom professor, with students within the same year indicating radically different learning environments from subject to subject. The information relayed in teaching is told from the perspective of the professor and thus, the race, gender, and experiences of the professor matter greatly. When it comes to students, there was much variation to what students experienced. Depending on socioeconomic status and upbringing, minoritized students reacted to the learning environment differently.

Furthermore, when it comes to majority students, their approximation of how diverse the class was, and the benefits of that diversity appeared to be considered relative to a student's past learning environment and how diverse that was. This complicates the operation of critical mass, as what it means is that individual majority students will need more (or different) minoritized students to achieve the educational benefits of diversity for themselves, especially in the absence of an institutional plan to facilitate those benefits.

White students, like the predominately white institution they were attending, also seemed to measure diversity strictly by the numbers and get a 'feel good diversity rush' when they see more minoritized classmates than they had in previous educational settings. However, when classroom interactions include the students labeled 'diverse', this perception made it such that white students were unable to see the lack of diversity in the classroom and only see the fact that the learning environment was more diverse than they were used to.

GSU Law, once it assembles a class, needs to do much more to enable the number of minoritized students they recruit to contribute to each classroom in such a way that the school will be satisfied they are interacting with students of other races, at least in the classroom. GSU Law should develop a system that monitors (if not measures) interactional diversity in the classroom and directly tie the results of this assessment to its admission process and strategy. Finally, faculty must be empowered to and held accountable for facilitating interactional diversity in the law school classroom. This is especially the case when a school like GSU is boasting about (and using as a recruiting tool) its 22 percent minoritized student number this year. If the GSU Law is satisfied with just having structural diversity, but it is doing nothing to affirmatively encourage and facilitate interactional diversity, it is not doing much at all.

Additional Constraints and Contradictions.

“...until the lions have their own historians, the history of the hunt will always glorify the hunter.”

- African Proverb

As stated earlier the current U.S. Supreme Court prefers race neutrality, to achieve the goal of color blindness one day in the future but will allow color consciousness if (and only if) a University can prove that race neutrality cannot produce “enough” racial and ethnic diversity. The following sub section shows aspects of the GSU Law’s culture that served as impediments to the law school’s ability to use its recent increase in structural diversity.

The subsection highlights the views and opinions of faculty, staff, and students that show the ahistorical nature, the admission-centricity of diversity culture at GSU Law, and career

services. Building off the last sub section, this section also touches upon the role and operation of the ethos of individuality on the cultural practices of people in GSU Law.

The ahistorical nature of the diversity culture at GSU Law. It is now without dispute that the Russian Federation attempted to interfere with the 2016 U.S. Presidential election (Allcott, & Gentzkow, 2017). Throughout my time at GSU Law, I was often inundated with news stories and scholarly talks about Russia. I was left wondering how difficult it would be to tell the story of Russia today without referencing what came before it.

Presumably would look something like this: Russia, ~~a nation formerly the only other super power in the world~~, sought to reestablish herself ~~to pre-1990 influence~~. Lead by a ~~former KGB agent~~ who has managed to stay in power ~~for almost fifteen years (15)~~ (atypical in what is supposed to be a democracy, ~~but not much longer than Stalin and Khrushchev before him~~). The ~~former Soviet Union~~ has in the matter of ~~a half a decade~~ annexed Crimea, invaded Ukraine, and managed to be a major party (if not decisive) in selecting the leader of the free world, throwing ~~its former World War II ally~~ into internal and external chaos.

Strange?

Well this is how I felt during my time at GSU Law. Almost no one I talked to knew about the history of racial exclusion at GSU or GSU Law. When asked directly (or indirectly) no one had the slightest guess as to whether blacks had been excluded from GSU Law in the past and, if so, when that exclusion had stopped. It was not that it did not matter to these administrators, it was just not something that had ever come up before I asked about.

Founded in the mid 1800's right before the outbreak of the American Civil War, Granite State University did not graduate its first "colored" student until 1905. GSU Law did not admit a

non-white student until 1908, however, it took until 1923 for the first “recorded acts of racial discrimination” to be preserved for history. The first black female did not graduate until 1932, sixty-seven years after the end of the civil war and twelve years after women had won the fight to vote in America through passage of the nineteenth amendment. The school was “acquired” by GSU in 2000 and the current iteration of the moved into the building I observed the school in in 2006.

As was discussed in chapter two, the diversity rationale as a compelling government interest for race conscious admissions (see *Grutter*) has rendered ‘affirmative action’ free of any remedial principles. We now use race conscious admissions primarily to ensure that all students get the educational benefits that come from learning in a diverse learning environment and not because U.S. universities were largely built with free labor stolen from the ancestors of minoritized individuals (Barnes & Chemerinsky, 2010; Fuentes, 2015).

Recently, some (mostly private schools, such as Georgetown University) have begun to use a more “right the wrongs” approach to their plans to allow certain students access to their university. For example, Georgetown has recently researched and now plans to offer a tuition free education to students who are the direct decedents of slaves that built many of the buildings at that university (Swarns, 2016).

With that as context, I asked Mary Bennett, the person in charge of GSU’s admissions, what would happen if an applicant claimed that she had descended from someone that had been denied admission either to the GSU Law and/or from the law school’s ‘mother’ university, GSU. She said that she had never encountered an instance like that and didn’t really know how she would react to it if she did. The fact that the law school uses race in its admissions process but has no contingency if a candidate claims their ancestors were discriminated by the institution was

telling. In other words, race in the GSU Law admissions process was not a proxy for the university efforts to create a more racially just society.

Furthermore, there was not one student who I talked to (1L or otherwise) who was familiar with either the history of racial and ethnic exclusion at GSU Law or the history of the law school in general. Jack, who self-described himself as a Marxist/Radical Black activist, did not know if knowing the history would have either changed his decision to come to the school.

He stated:

You know I hadn't thought of that at all. But as you bring it up, I got to think, that I wouldn't have wanted to know that. I don't think it would have helped me make a 'better' decision now because history doesn't change the way things are now. And knowing it now would just probably make me angry.

While the historical context appeared to be lost on many at the school, history itself was not completely without consequence. For example, Maria, the current President of the Latinx Law Student Association (LLSA), relayed to me her understanding that the influx of minoritized students at GSU Law School created the presence of the highest number of Latinx students attending GSU Law in her three years at the school. But, she also told me that she was witnessing the lowest participation that LLSA had had during the same period.

'Forward thinking' appeared to dominate the character of GSU Law on the surface, although there did appear to be at least some understanding of how things changed over time. Accordingly, I was struck by the amount of times staff, faculty, and administrators used recent history to justify its current policy. GSU Law sets up its 1L class sections by evenly dispersing its minoritized students. This was justified by Yun Wo from the academic affairs office by her saying "that's how we have always done it." Likewise, in an interview with the financial aid director Diana Slay, rather than speculating on how GSU might justify a race conscious

admissions policy, simply stated, “You know...we have never done that before.” The lack of attention to history may be a byproduct of the diversity rationale itself, which asks law schools (and seems to be successful in getting schools) to look forward (not backward) in dealing with race relations at the school.

An Admission Centric Diversity Culture. I talked to Yun Wo and Diana Slay about the thing that happens right after admissions work, the development of Law School sections. They explained to me that once a class is admitted the class is divided up into various 1L sections. These sections are “evened out” based on gender, citizenship (U.S. citizenship or not), race/ethnicity, and LSAT score.

But there appeared to be to no reason why let’s say race was included in this ‘evening out’ process, rather than gender identity or socioeconomic status or undergraduate GPA or part of the country a student’s undergraduate school was located in. Nor could the Yun Wo tell me why the GSU Law decided to distribute the minoritized students evenly over the 1L sections rather than clustering them in one or two sections to “maximize” the critical mass of underrepresented students on campus.

Furthermore, one of the main things that stood out during my time at the GSU Law was how much ‘space’ the admissions sphere took up within the diversity discussion at the school. What I mean by that is so much of the discussion and the discourse around diversity at GSU focused on admissions and the number of minoritized students the school had from year to year. Many people that I talked to at GSU Law used the terms “admissions” and “diversity” nearly interchangeably. This was true more of faculty/administrators than of students.

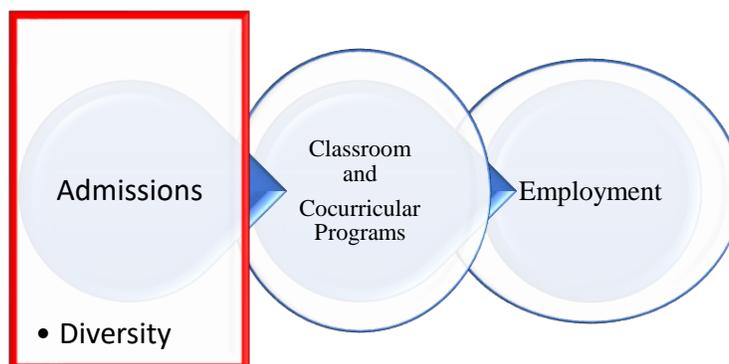


Figure 2. An illustration of the “gate” surrounding admissions at GSU Law.

What the image (figure 2) above describes is what, during my time at GSU Law, I began to interpret as the ‘gate’ surrounding admissions and GSU Law’s admissions efforts, and thus also ‘surrounded’ much of its efforts to increase diversity. Diversity was seen mostly through the eyes of admissions and the ‘number’ of students admissions produced.

To understand a little more about why this might be, I talked to Greg Park, the administrator in charge of student affairs at GSU Law. and he distinguished between student services at a law school and student affairs on the scale of the larger university. He explained how student affairs was different on the university wide level as opposed to the law school level.

In legal education student services is much more about professional development and much less about entertainment factor (Darling-Hammond, 2008; Hafner & Candlin, 2007). Greg acknowledged that he was not “an expert on multicultural affairs” and he assumed (but could not

confirm) that many of the questions I asked him were more appropriate for the GSU Law faculty diversity committee.

The problem was that the GSU Law School diversity committee was a lot less comprehensive than Greg seemed to believe it to be. Many of the diversity issues at the GSU Law were handled by the diversity committee, but I would learn that the truth was the committee was comprised of only a few members of the faculty and was dedicated to issues of diversity broadly, not race specifically.

I interviewed the Yolanda Wright, Chair of the Diversity Committee, and she explained to me how the committee operates with the assistance of few staff, a small budget, and thin portfolio (she said they usually take on only one major project per semester.) This was a far cry from what Greg appeared to think the committee did. However, the diversity committee was the organizational tool by which the law school's major non-admission diversity effort was derived, a mentorship program for minoritized students. Every administrator and faculty member that I talked to for this project mentioned the program when diversity was brought up.

The mentorship program seemed to be a point of pride in at GSU Law, at least amongst the administration. Some students seemed less impressed about the program than the administrators that had set it. For example, Jack, who has participated in the program since entering the Law School in August of 2017, called it "window dressing" and cautioned that "having the program often allows the school to appear better than it actually is."

Window dressing on the multicultural salad. Started in 2016, the Minority Mentor Program (MMP) offers GSU law students the "opportunity to establish a mentoring relationship with both internal and external mentors who are professionals in the legal field." The school

claims the program provides its students with the support to help them achieve academic success and emotional well-being during law school and after entering the legal profession.

Students voluntarily self-identify as a ‘minority’ and sign up for the program. Each student is assigned an external and internal mentor through the program. Internal mentors are GSU Law faculty and senior administrators. In contrast, external mentors are alumni of GSU and/or GSU Law who identify as American Indian/Alaska Native, Asian, Black/African American, Hispanic/Latino, Native Hawaiian/Other Pacific Islander, Lesbian, Gay, Bisexual, Transgendered and Questioning (LGBTQ) or physically disabled. Meaning you did not have to be racially minoritized to participate in this program at the school.

Yolanda informed me to the history of the Minority Mentor Program (MMP). The program was the result of a GSU internal educational opportunity grant and was the brainchild of the diversity committee during a year in which the committee had not received a formal charge from the dean or the faculty. The previous Dean at GSU Law had asked Yolanda to take on the role and form a faculty diversity committee that was separate from the Student Bar Association’s (law school equivalent of student government) diversity committee.²¹ Her first “charge” was for the committee to benchmark faculty and staff diversity against other schools that GSU Law consider their “competitors”. The impetus for this initial charge, according to Yolanda, was to gather information for a part of a report that was to be submitted to the GSU administration regarding their strategic planning efforts.

²¹ The Student Bar Association coordinates student activities sponsors many academic, social, athletic and community events, allocates funds to the student organizations, and serves as the liaison to the faculty, administration, and alumni for all students.

The following year the committee had no charge, so the committee itself came up with the idea of designing and implementing a mentorship program. According to the CDC, the committee intentionally identified a gap within the services provided to students that were already at GSU Law. “We know that the [Mary] was doing good things in admissions, and we had seen proven success from our bar preparation out of student services, so we wanted to do something for the students while they were here rather than on the way in or on the way out.”

The MMP program appeared to be receiving mixed reviews from the minoritized students. Some, like Seth, did not participate in the program because he thought it would be “overkill”. GSU Law was unique in that it offers each one of its 1L’s (regardless of race) a mentor as part of a massive program run by a fulltime Mentorship Program and Outreach Manager overseen by the office of GSU Law Career Services. Some minoritized students, like Douglas, had never heard about the program. Others, like Jack, participated in the program but was mostly disappointed with the results.

“It’s like window dressing to me” Jack stated, “I don’t see how it is meant to address the material circumstances that black people find themselves in law school”. For her part, the CDC admits that the MMP was never meant to be a ‘remedy’ for past discrimination or an academic support program, but rather it “was convened and funded just to provide positive role models to students that research shows might not have them.”

All in all, the minority mentorship program seemed to be a step in the right direction. It was the only diversity program that breached the ‘iron curtain’ of admissions at GSU law. It can be described as a modest step that was implemented to improve the lived experience of minoritized students at GSU Law.

However, the program was not funded directly by GSU Law, but by a grant given by GSU itself. In other words, will funds eventually run out and there is currently no pledge given by the law school to pick up funding after grant period. While the program seems to be doing good work, its limited scope and minor impact can rightfully be questioned by minoritized students as much more is needed to make meaningful change to the diverse learning

The Perspective of the Professor. In addition to my observations I had the opportunity to interview the Professor Smith of the class that I observed. She has been teaching since 1985 and teaching at the current school since 2006. Several times during the interview she went out her way to remind me that she was “not a PHD” and was counting on me to tell her what she was doing wrong or not.

Most law professors (the good ones and the bad ones) have no pedagogical training (Schwartz, 2013) and, as I will discuss later, this appears to limit how they are able to critically think creatively about ways to use racial diversity in the classroom. In fact, Professor Smith remembered no workshops being offered during her tenure there, nor did teaching “count” much in the tenure review. She stated, at the present-day law school promotion is “almost exclusively based on what you write (i.e., scholarly research) and how well you write it.”

. Several things stood out to me when I was engaged in observing the class. First, from what I observed many of the same students were active from class to class. My notes indicated on average about twenty (20) students raised their hands and participated at least once each class period. Professor Smith used a modified version of the Socratic Method, in which she asked for volunteers but did occasionally call on students when silence dominated the room. “If I do call on someone it will probably be someone who did not usually speak up” and “if two or more

people volunteer for a question, I am likely going to call on the person that does not talk as much.” I did observe this occurring as well near the end of the semester.

I asked the Professor Smith if race played a role in her classroom and she told me “that I try my best to make sure it does not, but the material covered in the class definitely shows the existence of racial inequality.” Professor Smith never silenced any student who attempted to talk about race, and when clearly racial topics came up and race was not mentioned she brought it up herself.

It was interesting how race neutral principles seemed to constrain the Professor Smith’s attempts to be conscious of race in her classroom, a place in which she seemed to have unmatched autonomy. She wanted to include race in her discussion of the criminal law because the curricular material objectively related to social situations where race-based inequities operated, but she still articulated goals to not make race matter as much as possible while teaching.

A Voice on Career Services. Between August 2017 and March 2018, the President of the United States attacked several celebrities on social media platform, Twitter. One of those celebrities was Jay Z (See realDonaldTrump, 2018). This feud had to do with a comment Jay Z (real name Sean Carter) made in an interview on the cable news network CNN during a taping of the *Van Jones Show*.

During the show Jay Z was asked if, since unemployment among African-Americans was dropping under the President, whether President Trump was delivering on what Democrats had long been promising African-Americans but seemingly unable to produce. Jay Z responded that “[i]t's not about money at the end of the day. Money doesn't equate to happiness, that's missing

the whole point...treat people like human beings, that's the main point. It goes back to the whole thing, 'Treat me really bad and pay me well. It's not gonna lead to happiness'" (Kreps, 2018).

As I spent time in Granite State University Law School, I got the sense that the minoritized students had come to the school to enter a profession. They came here with the expectation of one day participating in graduation and passing a bar exam. They came hoping one day to get a job and pay off their student loans, which in some instances, was substantial. What they were not expecting, as far as I could discern, was a job to 'cure' racism for them. In fact, it appeared that many were going after acceptance into this profession even though they knew they would encounter racism (Chung, 2017). If our leaders were indeed expecting racism to be 'cured' by jobs, the message was not getting through to those they wanted it to.

Difference is a great thing. Robert Long, the only African American Dean at the GSU Law, lead head Career Services. We began our discussion talking about his unique background and how he went into corporate law versus what he wanted to do, public interest. This decision had a great effect on him when he decided to get into legal career services. His story reminded me a lot of Jay Z's, a sort of "rags to riches tale" of starting out one way and ending up going in an another completely different route.

Robert described his philosophy when it came to providing career advice to students as "believing that there was something innately talented and special in each of us" and his approach was to "identify the person and their talents, identify the passion, and then identify the overlays between them." I asked him how it was to be the highest 'ranking' African American male at GSU Law and he stated that "in many ways in the law school context it is an awesome thing...I find that it helps me connect with a lot of students in general, the fact that I am different and can

have a deeper level conversation of about difference and diversity is a great thing because it feels like I have to address that issue a lot.”

An interesting quote that the Robert gave me was in response to a question about what the process and cycle of legal admissions to career services was like and how they might be connected. I prompted the question by mentioning the concept of the “diversity feedback loop”, in which Shin, Carbado, and Gulati (2014) describe a procedure in which the university and the workplace are not separate institutional settings in which diversity is or is not achieved, but are part of an unified system established by three central features: a supply effect (which is the diversity the university provides to the particular labor market), a reiteration effect (which is the extent to which diversity supplied to the particular labor market can be echoed into the workplace), and a demand effect (which is described as the influence an employer’s request for particular kinds of employees has on the university’s admissions criteria) completing the circle or loop.

In short, what I wanted to know what role did employer desire (or lack thereof) for diversity play in the Law Schools admissions process. Robert stated as a hypothetical that he thought that the other Deans would be “receptive” if he made suggestions on “curriculum and/or admissions” based on legal marketplace information, but the opportunity hadn’t presented itself yet. He described being on the “curriculum committee” on in another school he had been at and that that was very helpful. He stated that racial diversity provided the chance for a law school to “produce” a student that is more exposed to different views, but the actually work of doing that “must be done by the individual student.”

His answer echoed the much-repeated notion from the research that while structural diversity is necessary, it is never sufficient by itself to get to a point in which the school

producing lawyers that learned from “many different perspectives”. However, he also stated that most of the questions about diversity came from “big law firms” and “public interest firms” and others “don’t often ask about it.

Critical Review

A lack of intentionality is preventing GSU Law from achieving its full diversity potential. One of the major things that became more and more apparent to me as a spent time at GSU law was how little intentionally was done to by the school for minoritized individuals. In fact, aside from the school’s minority mentorship program, I found nothing in my time at GSU Law that was done uniquely for their minoritized students.

Many of the initiatives that occurred at the law school were, instead, targeted to ‘all students’. You could say that the law school had adopted ‘a rising tide raises all boats’ mentality toward helping their minoritized students once they are admitted. At the same time, diversity initiatives seemed to be ‘locked’ into admissions. Indeed, it is hard to find (outside the admissions context) even find the words “racial diversity” used anywhere in the law school. The diversity section on the law school’s website contains a list of affinity groups, links to university wide resources, and a link to the minority mentorship program,

Dafina-Lazarus Stewart (2017) argued that by substituting diversity and inclusion rhetoric for transformative efforts to promote equity and justice, colleges were avoiding recognizable institutional change. Ze goes on to say that students with minoritized identities continue to face the same indignities and hostile campus climates, despite moderate increases in the structural diversity of the campus. Stewart (2017) compares diversity and equity by highlighting the different questions that each concept asks. For example, diversity asks, “[w]ho’s

in the room?” while equity responds: “[w]ho is trying to get in the room but can’t? This was representative of the ‘diversity’ concept at GSU Law, focused more on a celebration of multiculturalism than on influencing social equity (Case & Ngo, 2017). GSU Law has no diversity requirement in its curriculum. However, GSU Law does many requirements for their students to graduate. The school requires 88 credits, at least one “upper level writing seminar”, a passing grade in a professional responsibility course, and six “experiential learning credits”.

A lack of intentionality is one way that higher education institutions minimize racist institutional norms (Harper, 2012). Indeed, Carbado and Harris (2008) argued that an institutional decision to favor a so-called race neutral way of approaching students is a preference for whiteness, via operating as a preference for the status quo. Harper and Quayle (2015) have said that any educational that does not purposely attempt to address racial issues among its student body and seek to increase interactional diversity in its classrooms are allowing themselves to be tools of white supremacy.

I do not consider GSU Law as a tool of white supremacy, but as Patton (2016) has stated, U.S. higher education institutions often serve as venues through which formal knowledge production rooted in racism/white supremacy is generated. Thus, GSU law is severely limiting the potential of its diversity by not purposefully designing programing and initiatives to uniquely serve the needs of its minoritized students. While the school has many things that it is doing for “all students”, the effects of these programs are not trickling down as much as they suspect or hope.

Scholars of higher education student affairs have begun to form a consensus around the need to purposeful and intentional intervention to increase student development (Cabrera, Watson, & Franklin, 2016; White, 2016). It would greatly benefit GSU if instead of trying to

attack clearly racialized issues with a race neutral philosophy they should endeavor to stop ‘half stepping’ in the realm of race conciseness and enact programs design decisively to improve the lived condition of minoritized students on its campus.

You can’t asses what you do not measure. You can’t measure what you don’t look for. According to *Grutter*, colleges and universities can use race in their admissions process to assemble a class with what they determine to be an adequate number of minoritized students so that the educational benefits of the diversity that results from such a class can be operationalized in the classroom.

If this legal holding is truly accepted as educational canon today it should follow that colleges (or in this case law schools) that use race as a factor in admissions would be trying to asses if the educational benefits are actually being operationalized in their classrooms. It is now industry standard that both academic programing and learning outcomes in educational practice require measurement and assessment to maximize student learning (Astin, 2012).

GSU Law uses race as one, combined factor in the admissions, but in my study, I concluded that the law school made no real attempt to evaluate whether they had interactional diversity in or out of the classroom. Professor Smith did not (and was not asked) to appraise the level of interactional diversity in her Criminal Law class. In fact there was no comprehensive plan among the faculty to utilize the influx of minoritized students to increase (or even maintain) interactional diversity at GSU Law.

It appeared GSU Law was using diversity in a way that was contrary to the research. Much of the research on maintaining a diverse learning environment is clear that structural diversity is a necessary, but insufficient component of providing students with the educational

benefits of diversity. Yet, in observing the GSU Law classroom, I found that the focus was not on assuring interactional diversity, but on achieving enough of a degree of structural diversity that would lead to interactional diversity (Swan, 2010).

Jill Taylor described GSU Law's priorities as making sure students graduate, pass a bar exam, and get a job. What I took from this interaction was that GSU Law, the time of my interview in January 2018, did not appear to have a plan on how to increase its interactional diversity, because interactional diversity simply was not a current priority at the school. This is demonstrated by the comments of both the faculty and the administration. This is further demonstrated by the fact that GSU Law did not monitor or assess, indeed it did not even appear to recognize interactional diversity in their classroom at any point.

Yet, recall the comments that Elizabeth made concerning her classmates' assessment of Seth's aggression in class. Seth's speaking up in class, on a level equal to or less than how many white males spoke up in class, was (according to Elizabeth) viewed as 'over aggressive'. Elizabeth could not think of any other students that her classmates categorized in the same manner yet did not think the categorization was based on race. Furthermore, her classmates did not just classify Seth as angry, but further went on to hypersexualize him by saying that he "...needed to get laid." Whether Elizabeth's classmates knew it or not, they were employing an often-used stereotypical trope that devalues black male legitimacy to participate in debate by equating 'intellectual passion' to some unfilled need for sexual gratification (Chang & Davis, 2010; Ferber, 2007; Howard, 2013; Staples, 1978).

Usually the object of this unfilled need is presented as the 'white woman'. This trope operates by devaluing the intellectual voice of the black male in a debate (or in this class within class dialogue) and dismissing it as nonintellectual, almost animalistic, desire (Bowleg et. al,

2017). I wonder if the Jill Taylor would be satisfied if every student in the group that made the comment about Seth graduated, passed the bar, and got a job at a top law firm, but still held these views.

A need for conceptual coherence. Rowan-Kenyon et. al (2017) has offered the concept of conceptual coherence as a tool for integrating disparate parts of an educational organization's efforts to improve student success. This concept calls for more of an alignment between different parts of an organization, as well as an alignment between noncognitive skills and student success and career readiness. My conversation with the members of the Career Services office showed me that need for conceptual coherence at GSU Law.

Many students told me during my time at GSU Law that Career Services was the aspect of they were concerned about. There were many reasons for this. First, law school is very expensive and, even with the major level of financial assistance that the GSU Law was giving its students, the prospect of having an adequate job after law school reasonably made students very nervous. Also, however, it appeared that students felt that the law school was not doing enough to ensure that they were maximizing all their possible opportunities for career advancement. You would think, if sufficiently executed, that Robert's plan of uniquely meeting each students' needs individually would be working to solve this issue. Perhaps the solution lies in formulating a plan for conceptual coherence that connects admission and career services.

Conclusion

The preceding chapter sought to present themes drawn from my data collected at GSU Law. The story that emerged from this field work was not necessarily an unexpected one. I was able to see that the currently, a lot of how the admissions, teaching and learning, and career readiness preparation at GSU Law was influenced and motivated by how the law operated.

Pedagogy in the law school was symbiotic of, rather than independent from, with its risk management strategies. This made for a diversity culture that was rather peculiar and at times may even be described as bi-polar. For example, race was a factor in the GSU Law admission process but exactly how it made a difference in the classroom was unclear. The school also has a minority mentorship program to supplement its overall mentorship program, but several students I talked to raised questions about what exactly the program's goals are.

Meanwhile, how diversity was carried out in the classroom at GSU was hard to discern. It appears that rather than one shared set of cultural practices surrounding racial diversity, many individual members of the community had carried out diversity in individually determined ways. For example, many students seemed to view and experience racial diversity in the classroom through the perspective of how much racial diversity they had encountered in previous educational settings. In the end, GSU Law did not have much of an intentional plan to facilitate interactional racial diversity, while being very committed to doing everything possible to increase structural racial diversity (as long as those efforts did not in any way cause them risk of a lawsuit). This produced a diversity culture in which members of the community are simultaneously happy that minoritized students are there and unsure of what to do with them.

Chapter Six: Implications

“A story has no beginning or end: arbitrarily one chooses that moment of experience from which to look back or from which to look ahead.”

-Graham Greene

In this chapter, I present implications from the data and assertions presented to you in chapter 5. I begin with admissions, next I focus on the classroom, and finally make some comments on career services. This is followed by a thought experiment on how the diversity culture at GSU Law would be different if dynamic diversity was the goal rather than, for example, critical mass. Next, I proceed to offer some further recommendations and areas of further research. I end this chapter with a conclusion to this research project.

For Admissions

The need to allow admissions to move beyond admissions. As was shown through an analysis of in chapter five, admissions at GSU Law was very much limited to the functions and operations of its admissions office. As a result, there was very little connection between the assembling of a ‘critical mass’ of minoritized students at GSU Law and the operationalization of that increase in structural racial diversity to increase interactional racial diversity in and out of the classroom.

Mitchell Chang (2002) noted that the “discourse of preservation” aimed at affirming the use of race tends to focus primarily on admissions as the main goal and underestimates the impact of diversity on student learning. This critique is similar, yet distinct, from the critique that Dafina-Lazarus Stewart (2017) has lobbied on to current “diversity and inclusion” initiatives at American colleges and universities, which accuses them of participating in a “language of

appeasement” in which these institutions are substituting diversity and inclusion rhetoric for transformative efforts to promote equity and justice, thus avoiding institutional change.

Chang (2002) notes that efforts to improve the enrollment of minoritized students may have negative effects on the psychological aspects of the campus culture if a school fails to simultaneously address socio-psychological issues as it increases racial structural diversity. What usually happens is that, as enrollment of minoritized students increases, all students perceive (and at times also experience) greater racial tension and hostility. According to Chang (2002), this occurs largely because faculty have not been trained to effectively educate a more diverse student population and white students are also not prepared to engage successfully in diverse communities. In addition, Dian Squire (2017) found that faculty also perceive and experience greater racial tension and hostility during times of national and local racial tension on campus. Therefore, diversity and inclusion rhetoric without more substance not only does not work but could cause more harm than good to an educational institution.

Consequently, a diversity culture at GSU law which focus primarily on admissions and, thus, structural racial diversity as the main goal is both insufficient to fulfil the legal obligations the university has because of using race as a factor in its admissions process (as noted below) and inadequate to provide for the pedagogical needs of its law students. Adopting Stetsenko’s (2015; 2014) transformative activist stance, the goal for GSU Law should be to empower students with the necessary tools to purposefully encourage development that provides students with the necessary agency to participate in their learning environment and simultaneously augment the development of that learning environment. This teaching/learning project would affect and require changes within all constituencies – teachers, students, and administrators.

A school that has a diversity culture that does this would be filled with instances of cultural practices in which students were appreciated from the uniqueness of their potential intellectual contribution and not just for their potential to cosmetically improve the racial composition of the school for ABA reporting purposes. But even more so, they would be part of a cultural project aimed at infusing all (teacher and student, conservative and liberal) with the agency required to adopt a transformative activist stance in which they are able to co-create the world on the level of ontological equality, not subordination (Stetsenko, 2011; 2016b).

This transformative activist stance position capitalizes not only on dynamics of participation in community practices, but also on unique individual contributions to collaboratively transforming these practices as the grounding for both identity and learning. As a theory of practice, it draws on research in the same tradition of knowledge formation through “high-order cultural tools” as an important gateway for development (Vianna & Stetsenko, 2011).

Yet, what I observed at GSU Law was a culture that really cares about racial diversity when it came to admissions but struggled to show the same type of appreciation (in the same way) once the students were admitted. This was best highlighted by the numerous students in this study that felt and described a dissonance between the warm, welcoming feeling that they had when being recruited by GSU Law admissions and the cold, robotic atmosphere they encountered when they started to attend. This was by no means a universal feeling held among all students that I engaged with in this study. However, many (indeed the majority of the minoritized) students that I talked to express this feeling through their views.

Thus, there appears to be a crucial need to allow the diversity efforts of admissions at GSU Law to move beyond admissions. This could take place in many different forms. One

concrete way would be for the admissions office to survey its graduating 3L class to see if their experiences matched the expectations they had coming. This information may, in fact, provide useful information for the admissions office when recruiting minoritized to GSU Law. Further concrete steps that could be made would include (but are not limited to) survey the law school faculty to see which views are not being expressed by students in the classroom annually at a faculty meeting and/or meeting directly with affinity groups to learn why they would (or would not) recommend GSU Law to their similarly situated minoritized counterparts.

GSU Law is opening itself up to potential legal attack. Diversity was first recognized as a compelling governmental interest in *Bakke* and was further confirmed by a majority of the Court in *Grutter*. The main author of *Grutter*, Justice Sandra Day O'Connor relied on social science evidence presented *in amici* briefs and expert testimony presented at the trial stage to inform her majority opinion that affirmed the use of race in college admissions (Perry, 2007).

The evidence and the testimony presented the argument that race was needed in the admission process of colleges and universities for the purposes of providing the necessary tools to engage in the pedagogy that allows for students in a learning environment to benefit from diversity (Gurin, 1999). Patrica Gurin et. al. (2002) offered expert testimony at the trial level stating that most high-level learning takes place when students' well-established ideas are challenged by views that are not their own. The cognitive process of dealing with this intellectual conflict is what leads to growth.

It was because of these arguments that the goal of achieving a critical mass became a compelling governmental interest. However, if a law school does no more than assemble a numerical critical mass of students, they have no way of knowing and are making no attempt in ensuring that the real goal of the *Grutter*, that is, creating a culture and environment that allows

for interactional diversity. This is because without interactional diversity there are no educational benefits of diversity flowing to students. Therefore, there would be no compelling governmental reason for a university to use race in their admissions process. Consequently, when a law school uses race conscious admissions to assemble what it believes is a critical mass but does nothing past that to make sure or find out if that critical mass is resulting in increased interactional diversity, it is opening itself up to potential legal attack inasmuch as it is not fulfilling its legal obligations under *Grutter* (Brown, 2006). By not analyzing whether its structural racial diversity leads to interactional diversity, GSU Law is opening itself up to potential legal attack.

Summary. The admissions process at GSU was intricate and filled with complex components. The admissions staff does an excellent job of recruiting minoritized students and making them feel wanted. Rather than utilizing critical mass as a goal, the law school used a holistic review somewhere in between a “whole file perspective” and the “whole person perspective”. However, by not analyzing whether its structural racial diversity leads to interactional diversity, GSU Law is opening itself up to potential legal attack. GSU Law should provide its admissions office with the tools to monitor exactly how its use of race in admissions affects interactional diversity in the classroom. Finally, admissions practices at GSU Law seems to be limited to admissions. Thus, because diversity at GSU Law was seen by many as ‘only admissions’, diversity initiatives seemed to be locked in behind an iron curtain of admissions. The diversity culture at GSU Law would benefit greatly from tearing down this metaphorical wall.

From the Classroom

Envisioning a more radical classroom. The classroom that I observed at GSU Law held the typical characteristics of a traditional law school classroom. The teacher was the focal point of dialogue in the classroom. Professor Smith spoke first in the classroom and utilized a modified Socratic Method to run the class. This type of classroom organization limits the possibility of interactional diversity because students' direct interactions with each other are few and far between.

This does not have to be the case. Law school professors often teach how they have been taught (Schwartz, 2001). But this default proposition, forecloses many teaching avenues that would be better suited to increasing interactional diversity in the classroom and utilizing race in the classroom as another teaching tool (Davis, 2009). A law school that is fully committed to using the structural diversity to maximize interactional diversity would be open to reconsidering all aspects of pedagogical practice that are accepted simply as adherence to tradition and mimetic isomorphism to pursue such a goal (Davis & Francois, 2005).

To pursue an equity agenda, GSU Law school could encourage or mandate that Professors form study groups with their students which are form with the purpose to produce cross racial interaction (Bohl, 2008; Christensen, 2006; Evensen, 2003). They could perform a null curriculum review on the school required and elective course selection to determine what is being taught, what is being left out and why (Hafferty & Gaufberg, 2013).

GSU Law could take a page from the City University of New York (CUNY) Law school which mandates its students, in the first year of their course work, to take a class called "Liberty, Equality, and Due Process (LEDP)." According to CUNY Law, the LEDP course claims to provide "legal and historical perspectives on liberty and equality by examining the law's impact

on racial and gender equality and sexual orientation. The historical, social, political, and economic context - particularly the development of the Bill of Rights, slavery, the anti-slavery movement and Reconstruction, the rise and fall of white supremacy, the labor movement, and the emergence of gender equality..." GSU Law had aspects of this course dispersed throughout its course catalogue but did not have one mandatory diversity course for its students to take.

White students tend to see ‘diversity’ relative to where they came from, not as it is.

Recall from my interview with Mark that most of the white students I interviewed held the perception that the numbers of racial minoritized students at GSU Law is small, but also articulated that even with the small number the learning environment was the most diverse they had ever been in.

I refer to this phenomenon as a relative proximate view of diversity. The “relative proximate view of diversity” complicated the analysis of interactional diversity in this study, because it leads to the inference that the quality (if not quantity) of interactional diversity varied student-to-student based on the law student’s previous exposure to diversity in high school and/or undergraduate school (Bonilla-Silva & Forman, 2000). This results in one of the problems being that structural and interactional are treated synonymously.

Scholars contend that students’ cognitive and social development are intertwined, and as students’ approach college age they are more likely to apply cognitive abilities and skills to interpersonal situations and social problem-solving. Minoritized students, who for the most part all seemingly came in with some level of experience dealing with the majority, experienced the exact same learning environment vastly different than majority students who were describing a class that had five blacks and two Latino students as “the most diverse class” they have learned in. This also begs the question that if the goal of having a critical mass is achieving the sufficient

amount of interactional diversity so that the educational benefits of diversity occur to students, which students' interactions are used to determine what a 'proper' amount is?

For example, from Mark's "relative proximate view of diversity" the five Black and Latino students in his Criminal Law class provided more than enough structural diversity to provide him with the opportunity to interact with more views from minoritized students than he ever had had previously. Thus, for Mark, there may have been a "critical mass" in this class at GSU Law. But Mark did not ever mention that something happened or was said in his class by a minoritized student that resulted in his realizing the "educational benefits of diversity".

But, what if Mark, instead of coming from a rural area of the country and doing his undergraduate work at a geographically rural school (GSU) came from Los Angeles, California and attended an Historically Black University (HBCU) for undergrad? Would then the same learning environment that was determined to have a "critical mass" for Mark be adjudicated the opposite for Mark 2.0 based solely on changing nothing about him except where he lived prior to post-secondary school and the university he went to?

Free speech versus consequence free speech. Open dialogue across difference lies at the heart of the vision higher education institutions in America (Gudeman, 2000). This belief that knowledge or understanding flourishes best in a climate of vigorous debate dates to the Socratic tradition, but it is also a part of current multicultural and post-modern perspectivism in higher education (Maruyama & Moreno, 2000).

You may remember that Denson and Chang (2009) found that students benefit from engaging with racial diversity through related knowledge acquisition or cross-racial interaction and (to a certain extent) from being enrolled on a campus where other students are more engaged

with those forms of diversity. However, Fries-Britt and Griffin (2007) reminds us that even minoritized “high achievers” (such as law students) often feel that they are being judged based on prevalent social stereotypes regarding the academic abilities of minoritized students. These external perceptions often pushed students to engage in various behaviors and actively resist stereotypes with their behaviors both in and outside of classroom. Currently, some of these resistance strategies have been to refuse to engage in debate with fellow students that they believe are expounding views that attack their existence and wellbeing.

Furthermore, Maruyama and Moreno (2000) add that if faculty members view diversity as either unimportant or irrelevant to teaching and learning, they likely will ignore it in their classes, with the result that students will be likely to derive little (if any) benefit from student body diversity. Often, however, law professors are as dedicated to the possibly antiquated principle that the remedy for ‘bad speech’ is ‘more speech’ as they are to developing ways to utilize structural diversity in the classroom to increase interactional diversity.

What the data from my time at GSU Law reveals is that the diversity culture would benefit from a clear distinction between ‘free’ speech and ‘consequence free’ speech at the law school. Of course, you would expect any law school, especially a public flagship state law school, to uphold the principles of the First Amendment. However, the internal, implicit cultural debate at GSU Law that I observed did not appear to be between those that believed in free speech and those that did not. Everyone, including students, faculty, and staff, believed in and utilized their free speech rights at GSU Law. The forum that opened the previous chapter of this dissertation is testament enough to that.

However, the tension seemed to have instigated from a philosophy extolled by some members of the community (mostly white) that ‘free’ speech somehow means that they should

be able to express any viewpoint free from organizational critique by faculty or staff. Furthermore, those members of the community at GSU Law who bought into this philosophy seemed to be as (or even more offended) by the offense of minoritized students to their expression of these views (Gerald, 2017). This leads to a culture which in practice was often listening to each other in formal settings they were required to be in (such as in the classroom), but in practice were rarely listening to each other in informal settings (such as student group meetings and study groups outside the classroom).

Recently in America, certain ‘conservative’ ideologies have reframed the meaning of ‘liberty’ as almost exclusively freedom from government and government interference (or support) in an individual’s life (Garces, 2015). As Garces (2015) and others (Ewing, C. (forthcoming; Fahs, 2014; Franklin, 2014) have articulated, this conception of liberty as ‘government-less’ is often in direct conflict with providing substantive equality for minoritized individuals, which often must be enforced by government.

It is this theoretical tension between philosophies that privilege liberty as freedom from government (and government in this context is frequently viewed as synonymously with the administration at a public school) and those that privilege substantive equality as freedom provided by government that has spilled over into the practice of student affairs at GSU law in the era of the Presidency of Donald Trump. Unfortunately, this tsunami of metaphysical conflict seems to have caught administrators and faculty at GSU Law off guard. To better the culture of diversity at the school, members of the community must recognize this conflict and structure the pedagogical and co-curricular activities accordingly.

Summary. The classroom at GSU Law represented a traditional law school class. The class operated through and was facilitated by the teacher. Class dialogue for the most part went

through the teacher and students regularly volunteered to answer her questions. However, diversity operated differently in the class person to person. White students seemed to mostly compare the number of minoritized students to their previous educational experiences. This resulted in viewing the classroom as more diverse than minoritized students because of the lack of diversity they have been around in their academic career (K-12 and undergraduate institutions). Furthermore, while law school is designed to train students to manage many different viewpoints, under the current political atmosphere, many students appeared to have difficulty separating who they are from what they believe. This resulted in many legal debates being internalized as personal which complicates the atmosphere for dialogue across difference at GSU Law.

About Career Services

Career Services should have some impact on Admissions. In 2001, Anthony Lising Antonio (2001) showed us that casual interracial interactions were particularly beneficial among students with more racially homogeneous friendship circles, especially in regard to the development of leadership skills that employers so regularly desire. In addition, his findings indicated that frequent interracial interaction among students may be more important in developing cultural knowledge than involvement in formal activities such as “cultural awareness workshops.”

Subsequently, Zuniga, Williams and Berger (2005) found that interactions with diverse peers, participation in diversity-related courses, and activities inspire students to challenge their own prejudices and promote inclusion and social justice. Moss and Tilly (2001) highlighted that these “diversity related” skills are exactly what employers are seeking after in a post 9/11 world. However, evidence from my time at GSU Law leads to the conclusion that the law school’s

recruitment (admission) and pedagogical (curricular and co-curricular) teaching efforts are completely unrelated what it saw as the desire of employers or hiring trends it saw in the market.

But, as currently designed, educational outcome production at GSU Law was separate as five fingers on an outstretched hand, when it needed to be a first. Rowan-Kenyon et. al (2017) refer to this need a “conceptual coherence,” regarding aligning college admissions, academic success, and career readiness. In other words (to a certain extent), the articulated desires of those that will employ an educational institution’s students once they graduated should impact who that institution admits and why. It should also impact how the learning environments at such an institution are designed. Such a process was articulated by Shin, Carbado and Gulati (2014) via their articulation of the “diversity feedback loop’s” demand effect can be described as the influence an employer’s request for particular kinds of employees has on a university’s admissions criteria.

Such a design should purposefully utilize structural racial diversity (derived from student body diversity) to maximize interactional racial diversity in and out of the classroom. The purpose of this design would be to infuse all students with a requisite level of agency necessary to allow students to collaboratively transform of their world. This is the core of human nature and the principled grounding for learning and development (Stetsenko & Arieviditch, 2014). Because of this Career Services at GSU Law should have an impact on admissions. One possibility for the operationalization of this concept could be including members of the Career Services office in the admissions process.

Summary. Much like admissions, career services at GSU Law appeared to be very isolated from the other components of the institution. While the Jill Taylor placed a lot of emphasis of getting students employed in my interviews with her, many students appeared to be

dissatisfied with career services assistance with their job search. GSU law would benefit from an internal diversity feedback loop, in which the professional counselors in career services were consulted and their admission strategies were strategically targeted to attract a class with characteristics in which employers would be attracted to. Such a strategy may offer further credence to the GSU Law use of race in its admissions process.

Dynamic Diversity

In 2014, Garces and Jayakumar offered a reframing of the concept of critical mass they named ‘dynamic diversity’. Unlike critical mass, this new concept explicitly requires an understanding of the conditions needed for meaningful interactions and participation among students, given a specific institutional context.

In replacing (or expanding depending on how you want to look at it) critical mass with dynamic diversity, instead of attempting to simply achieve a certain amount of “underrepresented minority students to obtain the educational benefits that flow from diversity” an educational institution would attempt to measure its performance on four variables. The elements of dynamic diversity are; assessing the racial climate of a college campus, attending to institutional history and context; breaking down barriers to cross-racial engagement; and nurturing quality cross-racial interactions among a college’s students.

In this subsection, I attempt to reimagine how the diversity culture at GSU law would be different if the law school adopted the goal of achieving dynamic diversity as opposed to achieving a critical mass. Assume, for this thought experiment, that going after the goal of dynamic diversity would be considered by the Court as a legal way of advancing an already recognized compelling government interest. Below I walk through each element of dynamic diversity and offer examples of how GSU Law could go about achieving success on each

element. I also hypothesize how success on each element could impact cultural practices at GSU Law.

Assessing the racial climate. Garces and Jayakumar (2016) claim institutions need to consider the importance of a positive racial climate to instigate productive interactions among their students. However, GSU Law has not conducted a racial climate survey since at least 2011 according to the Associate Dean for Academic Affairs. Because this was taken before the election of President Donald Trump, at least four graduating classes have entered and exited GSU Law since the last survey, and the law school recently hired a new Dean, it would spear time is overdue for another assessment of the GSU Law racial culminate.

The results from this study confirm the findings from other research (eg., Chang, 1999; Hurtado, 2001; Roksa et. al., 2017) which say simply admitting more minoritized students does not produce substantial changes in teaching approaches or content. Especially in the context of a law school, in which traditional approaches to teaching and curriculum dominate all but a few institutions. Representation does matter, of course (Day & Christian, 2017). But as Garces and Jayakumar (2016) point out increasing the number of minoritized in a law school building does not on its own result in students' choosing to interact with people from different racial backgrounds. As the results from this stud show, interactional diversity and the subsequent long-term educational benefits only happen when there is numeric diversity and a encouraging campus racial climate.

Furthermore, as sociocultural theory teachers us, the most important forms of human cognitive activity grow through human collaboration within social and material environments, including the conditions found in instructional settings (Roychoudhury, Gardner, & Stetsenko,

2014). Thus, it would make sense for those instructional settings to be routinely assessed for institutions to learn about and address the experiences of historically excluded students.

While I am sure some at GSU Law were, in fact racist or bigoted, the majority of what I observed could best be described as what legal scholar Kevin Woodson (2016) has recently labeled as “Derivative Racial Discrimination”. Woodson defines derivative racial discrimination as a process of institutional discrimination in which certain social and cultural dynamics impede the careers of minoritized individuals in predominantly white settings even in the absence of racial biases and stereotypes. He articulates derivative racial discrimination as a manifestation of cultural homophily, the universal tendency of people to gravitate toward others with similar cultural interests and backgrounds. This concept is similar to the concepts expressed by Eduardo Bonilla-Silva (2017) in his book *“Racism without racists: Color-blind racism and the persistence of racial inequality in America”*.

As such, a lack of explicit racial incidents or visible racial tension should not be an excuse for GSU Law not to assess their racial climate. Assessing the racial climate at GSU Law would improve the diversity culture at the school by providing administrators at the school quantitative and qualitative insight into how their current students are experiencing the racial climate on campus and how atmosphere is impacting student learning. The law school could go (for consistency sake) back to the firm that conducted its last survey seven years ago. However, how the assessment takes place is much less important than if it takes place.

Attend to institutional history and context. Garces and Jayakumar (2014; 2016) further claim colleges and universities should attend to historical legacies of exclusion and other important signals they might be giving as to whether students are welcome on their campus. These signals include historical patterns regarding the entrance of minoritized students, specific

state and institutional contexts, and policies that indicate whether certain students are more welcome than others.

The results from this study indicate a diversity culture at GSU Law that is largely ahistorical. Very few students, faculty, and staff knew about the history of demographic exclusion at GSU Law (see chapter five). Just having a black face doesn't change a racial dominance of a predominately white space (Yancy, 2016). Thus, having an African American as the Dean of Career Services did not by itself change the institutional history and context of the school.

Students' educational experiences occur within a racialized context determined by socio-historical forces on campus and the larger policy context on both the state and federal level (Garces and Jayakumar, 2016). Removing the context from a struggle does as much to silence the salience of struggle as if you cut out the tongue from those bodies that are in the struggle (Keegan, 2016; Light, 2015).

Thus, GSU Law should endeavor to attend to its institutional history and context. It can operationalize this desire by, at a bare minimum, making sure that senior leadership is familiar with the history of racial, gender, and sexual orientation exclusion at GSU law and GSU. This would improve the diversity culture at GSU Law by making sure decisions are informed, if not influenced, by this historical context.

Intentionally break down barriers to cross-racial engagement. Garces and Jayakumar (2014) also suggest that educational institutions should address impediments for productive interactions in learning environments, such as the harmful effects of racial isolation (Deo, 2012) and stereotype threat (Erman, & Walton, 2014), which undermine cross-racial interaction and

classroom participation, and diminish the positive outcomes associated with student body diversity. These barriers to cross-racial engagement and participation and their subsequent detrimental impact on productive interactions are exacerbated at the classroom level and other co-constructed sub-environments of curricular and co-curricular learning on a campus.

The results from this study indicate that racial diversity efforts at GSU Law mostly operated without any intentionality. Outside its recently created minority mentorship program and student run affinity organizations, GSU law had no programs or initiatives directed at assisting minoritized students or improving their day to day lived condition. Rather than purposefully design learning environments to ensure minoritized student success, the law school instead has chosen to adopt a strategy of attempting to meet the needs of each student individually. I do not offer an opinion on whether this ambitious goal is possible or not, but I do wonder if there was any reason for this strategy disconnected from a fear that intentional programming for minoritized students might bring the risk of lawsuit.

Perhaps unintentionally, the GSU Law's lack of intentionality espouses an ethos of institutional colorblindness. A color-blind institutional perspective believes race should never matter, and it is never necessary to increase racial equity (Wright & Garces, 2018). Iftikar (2016) described colorblindness as the inability to deal with the reality of race and lists the contours of color-blind discourse as the belief (operationalized in policy) that: race and racism are declining in significance; racism is largely isolated, an exception to the rule; racism can be individualized as irrational and pathological (thus able to be 'cured' on the person to person level); success and failure be individualized; minoritized people are to be blamed exclusively for their limitations and behaviors. Such discourses can be readily inferred from the strategy toward meeting student

needs individually that GSU Law was adopting. Such a strategy is as likely to increase barriers to cross-racial engagement as it is to break them down.

As such, Garces and Jayakumar (2016) appeal to educational institutions to help break down these barriers by empowering campus administrators and faculty to more effectively facilitate interactions across race and implement tools in their classrooms to help students understand different experiences of discrimination and privilege.

This could be operationalized at GSU Law via the implementation of cultural sensitivity training for campus membership to heighten cultural awareness (Moss, 2018). Faculty could also be strongly encouraged to maximize interactional diversity and curriculum diversity in the classroom. This would help improve the GSU Law diversity culture by constructing a learning environment that is more open to open exchange and better able to empower students with the agency to contribute to the co-creation of the world they will work and live in during and after their law school experience.

As Garces and Jayakumar (2016) further note, such a change in strategy would benefit both minoritized and race-normed students (see Feingold & Souza, 2013) students. For minoritized students, racial isolation creates the feeling of racialized vulnerability, alienation and tokenization. But for race-normed (i.e white) students racial isolation is harmful because it impairs their capacity to interact across race and to perceive racial bias and discrimination.

Therefore, GSU Law should attempt to break down barriers to cross-racial engagement. Such efforts should be intentional as to increase the chances of their effectiveness and to allow for the efficiency of these effects to be adequately measured. This would improve the diversity at

GSU Law by moving its primary focus off avoiding litigation and on to designing the best learning environment for its students.

Nurture quality cross-racial interactions. Finally, Garces and Jayakumar (2014) also suggest educational institutions should nurture cross-racial interactions that contribute to learning and reduce prejudice. Such a suggestion mimics the language used by the Court in *Grutter*. Nevertheless, knowledge gleaned from social science research, also tells us that cross-racial interactions contribute to student learning and growth only insofar as these encounters challenge students' preexisting stereotypes, beliefs and world views (Bowman & Park, 2014; 2015).

The results from this study indicate that there was not a universal effort to among the administrators and faculty of GSU Law to nurture quality cross-racial interactions in and out of the classroom. If it happened, they were pleased that it occurred. But, if it did not, the culture at the school was one of indifference at best and denial of their responsibility cultivate cross-racial interactions at worst.

Garces and Jayakumar (2014) point out that a failure to attend to the nature of cross-racial interactions and intergroup conditions can increase racial tensions and the potential for negative cross-racial interactions. Such negative interactions are associated with unfavorable outcomes, such as reductions in civic engagement, self-confidence and moral reasoning skills. However, when the nature of cross-racial interaction allows for full participation, it triggers the desired "dynamic diversity" by activating more lively discussion, challenging stereotypes, and promoting innovation and an expanded range of perspectives and solutions. Garces and Jayakumar (2016) also note that efforts to nurture quality cross-racial interactions require generating greater awareness among race-normed students and predominantly white student organizations about systems of privilege.

Hence, GSU Law should attempt to nurture quality cross-racial interactions among its students. There are many ways in which this can be done. One way is that the Dean of the Law School could set aside money that student organizations would only have access to if they collaborated with an organization on the opposite ideological perspective. Another way the school could do this is by requiring one group or collaborative assignment in each class after the first year and requiring that those groups be racially mixed (as well as mixed along gender lines). Given the current level of structural diversity at GSU Law enforcing such a requirement would be difficult. But, that fact would just serve as evidence for an empirically derived compelling interest for the continued use of race as a factor in the GSU Admissions process.

Summary. Garces and Jayakumar (2016) argue that institutions can gather evidence towards measuring whether they have reached dynamic diversity through quantitative and qualitative measurement tools (e.g., online surveys, focus groups, interviews) of the campus racial climate, the experiences of students of color in classrooms and other campus environments, and the interactions among various racial groups on campus.

Institutions can further gauge their progress toward achieving the conditions necessary for fostering dynamic diversity by periodically assessing the disparities in outcomes by race on important equity indicators such as retention rates (Feingold, & Souza, 2013). It appears that dynamic diversity could be a more workable aspiration for GSU Law to pursue than the critical mass as currently conceptualized. It fulfills the goals of that the Court articulated in *Grutter* and *Fisher* but is a more concrete and measurable concept. Furthermore, as was illustrated above, dynamic diversity was designed with concrete elements (informed both by social science and the law) which allows admissions counselors, faculty, student affairs professionals, and career

services to know exactly what they need to do in order to raise the level of an institutions “diversity” up to dynamic.

Additional Recommendations

The following subsections collect my additional recommendations for the administrators at GSU Law. Following the presentation of this dissertation, each dean that participated in this project will be provided with a report on my findings and recommendations customized to their office. Here, however, I offer a few theoretical and pragmatic recommendations that (if adopted) would improve the diversity culture at GSU Law.

Theoretical

Move from an ethos of diversity to one of equity and empathy. Carbado and Gulati (2003) defined diversity as the idea that a relationship exists between race and social experiences, on the one hand, and knowledge and practices, on the other. Diversity is an intellectual concept which serves as a proxy for difference. To say that a school is diverse is to say that it contains, appreciates, and, indeed, celebrates difference. This is expressed via both rhetoric and action. For example, educational institutions have imbedded diversity into their mission statements and websites.

But the rhetoric of diversity can be as destructive as it can prove helpful (Ward, 2017). Goldstein Hode and Meisenbach (2017) recently found that even pro-affirmative action arguments engaged the concepts of diversity and race in ways that reproduced the structural power of Whiteness, drawing upon individualism and market-driven rationales as discursive resources. Their analysis suggests that even arguments supporting race-conscious admissions may inadvertently contribute to the reproduction of problematic racial hierarchies when swallowed in the capsule of diversity.

Diversity in higher education has evolved to be more about the promotion of free marketplace of ideals rather than the promotion of education as a social justice and equity tool (Santelices, Horn, & Catalán, 2015). Iftikar (2016) argued that the “diversity neoliberal subproject” articulates race and racial difference with economic value. In other words, the modern concept of diversity capitalizes on racial difference (Leong, 2012). For example, Iverson (2008) found that a marketplace discourse was prominent in an analysis of twenty-one university diversity plans. This discourse positioned minoritized students as commodities that benefitted the institutions. Thus, one of the major elements of diversity for these educational institutions is the value it can bring them.

However, an institutional commitment to diversity is different from a commitment to simply appear committed to diversity. Diversity work in higher education today has devolved into a competition over who can celebrate the most cultures and viewpoints the loudest. It has become detached from any effort to increase substantive equality into our society. Thus, I would recommend a move away from the concept of “diversity” (numbers driven, admission-based education) toward a what I am calling an ethos of equity and empathy (learner driven, mission-based education). I would define empathy using Paulo Freire’s (1974) ideas of dialogue, praxis and education which calls for increased dialogue among equals in the classroom. I articulate this as a move from a philosophy of diversity to one of equity and empathy. The focus of this new ethos would be on the production of a student-lawyer that can identify with those unlike themselves.

Relying on the proposition that academic learning changes not only what we know, but who we are (Edwards, 2017; John-Steiner & Mahn, 1996; McCaslin & Hickey, 2001) this change in philosophy would be highlighted by an admission policy that takes into consideration

the current and historical inequities that are part of the particular school context. This can be best demonstrated via an environment in which the student-lawyer can contribute to the fabric of the institution, rather than just participate in the dominant culture (Stetsenko, 2009).

Pragmatic

GSU Law should hire a Chief Diversity Office. Because of the results of my research I am suggesting that GSU Law hire a chief diversity officer for the upcoming 2018 to 2019 school year. This person would be responsible for working with administration, faculty and staff to improve the diversity culture of the school. I believe that this hire is needed because of the lack of coordination around the various diversity efforts at GSU Law. If possible, this person would be a faculty member, as most of the most important decisions at GSU Law are decided by the faculty.

If not the current chair of the diversity committee, this person would assume the responsibilities of chairing the faculty diversity committee and, when appropriate, working with the student bar association (student government in law school) diversity committee. This person would also work closely with the GSU Law Associate Director of Admissions and J.D. Diversity Recruitment to both assemble a class with an adequate amount of structural racial diversity and convince their colleagues to design learning environments as to intentionally improve interactional and curriculum racial diversity.

Areas for further research

Post Trumpism in law school. Higher Education would benefit from some more research on what effect if any the election of Donald Trump has had on classroom discourse in both undergraduate and professional contexts. During my time at GSU Law, I picked up on

many instances of dialogue in which the President Trump was the “unspoken person in the room” so to speak. Many comments that students made or that students heard of other students making appeared to be viewed through the lens of what the President had said on the issue or had done recently. Perhaps a phenomenological study on how it is to be a minoritized student at a predominately white law school during the presidency of Donald Trump is necessary to highlight in detail how exactly the day to day events of yes presidency is changing the lived experience of certain students.

Comparative case studies on the operationalization of critical mass. This instrumental case study informs the literature by providing a rich description of one instance of a diversity culture at a predominately white law school. More research is needed to confirm the findings of this study in other contexts. Further studies in different a geographic location, an urban environment versus rural, or perhaps at a minority serving institution will inform the literature as to the limitations of the knowledge gleamed from this study. Additionally, a comparative case study at which the same class at different locations would be observed could be used to build on certain concepts gleamed from the data in this study such as the relative proximate view of diversity and the feasibility of operationalizing a move to an ethos of equity and empathy.

The need to study more radical classroom. Finally, this project has brought out the need for more empirical research on classrooms in law schools that do well at using the structural diversity in the class to increase interactional racial diversity. This could look like qualitative or quantitative research which looks at day-to-day practices in classrooms with high levels of structural diversity, for the purposes of seeing how interactional diversity plays out in those classrooms. Such research would look at schools in both urban and rural settings. It would also not be research limited to the setting of the predominately white law school. Such research would

give us a glimpse of best practices that law professors can use to effectively utilize race in the classroom.

Conclusion

Limitations. While the site was chosen because of its familiarity to the researcher and representative characteristics of, it should be recognized that generalizability is not the purpose of qualitative research (Creswell, 2013). Unique contexts must be taken into consideration, and with this caveat the research can be used to inform other ethnographic studies of educational institutions. Further, this qualitative study does not allow for specific claims of the effect that the aspiration for a maximum level of interactional racial diversity has on the culture of a law school with low continuous low levels of structural racial diversity in the same way that quantitative studies would claim. There is no causal relationship being hypothesized, but rather questions are posed to better understand the law school culture and process racial diversity is secured from the point of student admission to the point of graduation.

Also, the design to keep the data collection and analysis in a complex, narrative, may prohibit wide use of findings in several different ways. It may be difficult to report to a wide, non-academic audience. Additionally, practitioners may not have a synthesized, usable list of best practices, but rather a narrative explanation. However, a systematic discussion of the findings and analysis should mitigate this somewhat once a different institution's data are collected.

The end. We are now only ten years away from expiration of Justice O'Connor's blessing of the goal of achieving a 'critical mass' as being a compelling governmental interest. However, we may not have to wait until 2028 to get the next big challenge to race conscious admissions.

Between Fisher I and II, in November 2014, an organization called the Students for Fair Admissions (SFA) filed dual lawsuits against Harvard University and University of North Carolina at Chapel Hill alleging that both schools were using race in their admissions processes in an unconstitutional way. These cases are unique for a few reasons. First, the Harvard University case is a challenge to a private (not public) university's admissions policies. Although a public school must follow the regulations under the Fourteenth Amendment, any school (public or private) that accepts federal money must also follow the regulations of Title VI of the 1964 Civil Rights Act.

The U.S. Supreme Court has never definitively said whether the rules that apply to the Fourteenth Amendment are the same as those that apply to Title VI. The cases are also unique because the plaintiffs recruited for this case include not just White students but Asian Americans. Proponents of a color-blind perspective, such as Edward Blum and SFA, have begun to use Asian American students to advance what they see as a key weakness of the diversity rationale; that it pits minoritized groups versus minoritized groups in a zero-sum game to determine who is better to 'help' majority students learn better.

In my seven months at Granite State University Law I learned a lot. But what I was most struck by was how the law school wanted to be so many things to so many people. It sought to meet the individual needs of all its students, while recognizing that likely meant having 200 different strategies for student success. It wanted to tell me, possibly because I am a black male, that it thought race was important enough to include it as a factor in its admissions process. But the way race was used in that process was evidently strategically designed, not just to be legal, but to be as acceptable to the opponents of race conscious admissions as possible. GSU Law decided to have a minority mentorship program, but the program's design was so board that it

appeared some students found it ineffective at doing anything but allowing the school to say it had it.

My research question for this study was: how does a predominately white law school that utilizes race conscious admissions carry out racial diversity in the classroom? What I can tell you is that GSU Law did a great job of overcoming some built-in restrictions. Its geographic location made it hard to recruit minoritized faculty and students. It was not ranked high enough in the law school rankings so that it could “reach” and get more minoritized students at will. Furthermore, the amount of structural diversity that GSU Law was able to produce was already highly financially subsidized. Therefore, GSU Law could not solve its diversity problem by ‘throwing more money at it’.

However, none of what was just said should excuse a school from its responsibility under the current law to make sure the educational benefits of diversity flow to all students. The research is clear. As hard as assembling a critical mass of minoritized students may be for a rural predominately white law school, just having a critical mass or trying very hard to get a critical mass does nothing on its own. For the educational benefits that come with having a diverse class to accrue a school must do what it can to facilitate interactional diversity in and out of the classroom. This would be difficult, under normal circumstances. It is even harder since the election of President Donald Trump, as many views that were once on the fringe have now been brought to the forefront of debate in America, even in a school. Students interactions, even at a school which was based on learning how to debate, could not escape being processed through the prism of the results of the 2016 election.

Thus, as a predominately white law school that utilizes race conscious admissions, GSU Law sought to carry out its racial diversity in the classroom with much complexity. There was no

central pedagogical plan or theory at GSU Law. Each school professor carried out diversity and facilitated interactional diversity (if they did) different from the other. Furthermore, each student viewed the sufficiency of the racial diversity at GSU Law through the prism of their own previous academic experiences. In short, when it came to diversity they may have been as many cultures as they are individuals at the law school.

While they are opting for a race neutral stance, that is the legal purpose of *Grutter*. A limited use of race, only if a school can show they need it because nothing else works, for eliminating stereotypes and making a world in which race doesn't matter. In practice, it's not the operation of the use of race that makes an admissions policy race neutral or color conscious. It's the goal and intent. Race neutral means that the use of race as a factor in admission is done because the determination has been made that nothing else works to achieve the diversity desired and you want a world in which students see race as no longer mattering. Race consciousness, on the other hand, refers to the use of race as a factor in admission is done because the institution has made the determination that race (independent of other factors such as socioeconomic status) is important and race will never not matter in American society. This latter claim is a basic tenant of Critical Race Theory. On the other end of the extreme, a colorblind ideology means that there should be no use of race in admissions at all, because race shouldn't matter in society and the way to get to that goal is to act as if it doesn't matter right now.

GSU Law diversity culture could greatly benefit from an updated philosophy on how it looked at its strategy to get racial diversity. Critical mass is not a concrete enough concept to offer much guidance on the issue. Perhaps, dynamic diversity could offer a more nuanced, research-based concept that could lead the GSU law classroom to the type of classroom that *Grutter* and *Fisher* are trying to get it to be. Or, it may be diversity itself that is the culprit and a

concept that needs to be replaced. Further research is needed to flesh out the findings enclosed in this project, but the results of this research add qualitative insight on exactly how a 'critical mass' actually plays out in one particular learning environment.

References

- Abrams, J. R. (2015). Reframing the Socratic method. *Journal of Legal Education*, 64(4), 562-585.
- Adarand Constructors v. Pena, 515 U.S. 200, 227 (1995).
- Addis, A. (2007). Concept of Critical Mass in Legal Discourse, *The. Cardozo L. Rev.*, 29, 97.
- Aguirre, A., & Martinez, R. (2003). The diversity rationale in higher education: An overview of the contemporary legal context. *Social Justice*, 30(1 (91), 138-152.
- Allen, W. R., & Solorzano, D. (2000). Affirmative action, educational equity and campus racial climate: A case study of the University of Michigan Law School. *Berkeley La Raza LJ*, 12, 237.
- [American Educational Research Association]. (2018, May 4). *AERA 2018 Presidential Address: Deborah Loewenberg Ball* [Video File]. Retrieved from <https://youtu.be/JGzQ7O SIYY>
- Anderson, C. (2016). *White rage: The unspoken truth of our racial divide*. Bloomsbury Publishing USA.
- Antonio, A. L. (2001). The role of interracial interaction in the development of leadership skills and cultural knowledge and understanding. *Research in Higher Education*, 42(5), 593-617.
- Antonio, A. L., Chang, M. J., Hakuta, K., Kenny, D. A., Levin, S., & Milem, J. F. (2004). Effects of racial diversity on complex thinking in college students. *Psychological Science*, 15(8), 507-510.

Archer, L. (2007). Diversity, equality and higher education: a critical reflection on the ab/uses of equity discourse within widening participation. *Teaching in higher Education*, 12(5-6), 635-653.

August, L., & Waltman, J. (2004). Culture, climate, and contribution: Career satisfaction among female faculty. *Research in Higher Education*, 45(2), 177-192.

Baker, T. N. (2017). How Top Law Schools Can Resuscitate an Inclusive Climate for Minority and Low-Income Law Students. *Geo. JL & Mod. Critical Race Persp.*, 9, 123.

Baker, V. L., & Lattuca, L. R. (2010). Developmental networks and learning: Toward an interdisciplinary perspective on identity development during doctoral study. *Studies in Higher Education*, 35(7), 807-827.

Baez, B. (2006). Merit and Difference. *Teachers College Record*, 108(6), 996-1016.

Baez, L. (2014). Finding Critical Mass: How Fisher v. University at Austin Could Undermine Diversity in Higher Education.

<https://jsri.msu.edu/upload/NEXOExcerptSpring2014.pdf>

Banks, J. A. (1993). The canon debate, knowledge construction, and multicultural education. *Educational researcher*, 22(5), 4-14.

Barnes, M. L., & Chemerinsky, E. (2010). The Once and Future Equal Protection Doctrine. *Conn. L. Rev.*, 43, 1059.

Bastedo, M. N., Bowman, N. A., Glasener, K. M., & Kelly, J. L. (2018). What are we talking about when we talk about holistic review? Selective college admissions and its effects on low-SES students. *The Journal of Higher Education*, 1-24.

Braber, L. (2002). Korematsu's ghost: A post-September 11th analysis of race and national security. *Vill. L. Rev.*, 47, 451.

Belcher, C. (2016). There Is No Such Thing as a Post-racial Prison: Neoliberal Multiculturalism and the White Savior Complex on *Orange Is the New Black*. *Television & New Media*, 17(6), 491-503.

Bell, D. (1980). *Brown v. Board of Education* and the interest-convergence dilemma. *Harvard Law Review*, 518-533.

Bell, D. (1989). Racism: A prophecy for the year 2000. *Rutgers L. Rev.*, 42, 93.

Bell, D. (2003). Diversity's distractions. *Colum. L. Rev.*, 103, 1622.

Bernal, D. D. (2002). Critical race theory, Latino critical theory, and critical raced-gendered epistemologies: Recognizing students of color as holders and creators of knowledge. *Qualitative inquiry*, 8(1), 105-126.

Berkowitz, S. D. (2013). *An introduction to structural analysis: The network approach to social research*. Elsevier.

Blau, P. (2017). *Exchange and power in social life*. Routledge.

Block, M. (2015). *Dylann Roof Said He Wanted To Start A Race War, Friends Say*. Retrieved May 5, 2018, from <https://www.npr.org/2015/06/19/415809511/dylann-roof-said-he-wanted-to-start-a-race-war-friends-say>

Blommaert, J., & Bulcaen, C. (2000). Critical discourse analysis. *Annual review of Anthropology*, 447-466.

Bloomberg, L. D., & Volpe, M. (2008). *Completing your qualitative dissertation: A roadmap from beginning to end*. Thousand Oaks, CA: Sage.

Bonilla-Silva, E., & Forman, T. A. (2000). "I Am Not a Racist But...": Mapping White College Students' Racial Ideology in the USA. *Discourse & society*, 11(1), 50-85.

Bonilla-Silva, E. (2017). *Racism without racists: Color-blind racism and the persistence of racial inequality in America*. Rowman & Littlefield.

Bohl, J. C. (2008). Generation X and Y in law school: Practical strategies for teaching the MTV/Google generation. *Loy. L. Rev.*, 54, 775.

Bowen, D. M. (2011). American Skin: Dispensing with Colorblindness and Critical Mass in Affirmative Action. *U. Pitt. L. Rev.*, 73, 339.

Bowleg, L., del Río-González, A. M., Holt, S. L., Pérez, C., Massie, J. S., Mandell, J. E., & A. Boone, C. (2017). Intersectional epistemologies of ignorance: How behavioral and social science research shapes what we know, think we know, and don't know about US Black men's sexualities. *The Journal of Sex Research*, 54(4-5), 577-603.

Bowman, N. A. (2013). How much diversity is enough? The curvilinear relationship between college diversity interactions and first-year student outcomes. *Research in Higher Education*, 54(8), 874-894.

Bowman, N. A., & Park, J. J. (2014). Interracial contact on college campuses: Comparing and contrasting predictors of cross-racial interaction and interracial friendship. *The Journal of Higher Education*, 85(5), 660-690.

Bowman, N. A., & Park, J. J. (2015). Not all diversity interactions are created equal: Cross-racial interaction, close interracial friendship, and college student outcomes. *Research in Higher Education*, 56(6), 601-621.

Brayboy, B. M. J. (2005). Toward a tribal critical race theory in education. *The Urban Review*, 37(5), 425-446.

Brodin, M. S. (2011). *Ricci v. Destefano: The New Haven Firefighters Case & and the Triumph of White Privilege*. *S. Cal. Rev. L. & Soc. Just.*, 20, 161.

Brodin, M. S. (2014). The Fraudulent Case Against Affirmative Action-The Untold Story Behind *Fisher v. University of Texas*. *Buff. L. Rev.*, 62, 237.

Brown, D. A. (2006). Taking *Grutter* Seriously: Getting Beyond the Numbers. *Hous. L. Rev.*, 43, 1.

Bruni, F. (2018). Opinion | The Lie About College Diversity. [online] *Nytimes.com*. Available at: <https://www.nytimes.com/2015/12/13/opinion/sunday/the-lie-about-college-diversity.html> [Accessed 19 Mar. 2018].

Buckner, C. J. (2004). Realizing *Grutter v. Bollinger*'s "compelling educational benefits of diversity"—transforming aspirational rhetoric into experience. *UMKC Law Review*, 72, 877-946.

Cabrera, N. L., Watson, J. S., & Franklin, J. D. (2016). Racial arrested development: A critical whiteness analysis of the campus ecology. *Journal of College Student Development*, 57(2), 119-134.

- Caminker, E. (2006). Post-Admissions Educational Programming in a Post-Grutter World: A Response to Professor Brown. *Hous. L. Rev.*, 43, 37.
- Carbado, D. W., & Gulati, M. (2003). What exactly is racial diversity? *California Law Review*, 91(4), 1149–1165.
- Carbado, D. W., & Harris, C. I. (2008). The new racial preferences. *Cal. L. Rev.*, 96, 1139.
- Carbado, D. W., Crenshaw, K. W., Mays, V. M., & Tomlinson, B. (2013). Intersectionality. *Du Bois review: social science research on race*, 10(02), 303-312.
- Case, A., & Ngo, B. (2017). “Do We Have to Call It That?” The Response of Neoliberal Multiculturalism to College Antiracism Efforts. *Multicultural Perspectives*, 19(4), 215-222.
- Cashin, S. (2014). *Place, not race: A new vision of opportunity in America*. Beacon Press.
- Chang, M. J. (1996). Racial diversity in higher education: Does a racially mixed student population affect educational outcomes? Unpublished doctoral dissertation, University of California, Los Angeles.
- Chang, M. J. (1999). Does racial diversity matter?: The educational impact of a racially diverse undergraduate population. *Journal of College Student Development*, 40(4), 377.
- Chang, M. J. (2002). Preservation or Transformation: Where's the Real Educational Discourse on Diversity? *The Review of Higher Education*, 25(2), 125-140.
- Chang, M. J. (2005). Reconsidering the Diversity Rationale. *Liberal Education*, 91(1), 6-13.

Chang, R. S., & Davis, A. D. (2010). An Epistolary Exchange Making Up Is Hard to Do: Race/Gender/Sexual Orientation in the Law School Classroom. *Harv. JL & Gender*, 33, 1.

Chung, R. (2017). Diversity In The Legal Profession Has Flatlined Since The Great Recession; Who Is To Blame? Retrieved March 26, 2018, from <https://abovethelaw.com/2017/01/diversity-in-the-legal-profession-has-flatlined-since-the-great-recession-who-is-to-blame/>

Cheslock, J. J., & Kroc, R. (2012). Managing college enrollments. In R. Howard, B. Knight & G. McLaughlin (Eds.), *The handbook for institutional researchers* (pp. 221–236). San Francisco: Jossey-Bass.

Christie, C. A. L. (2009). Law school: a multicultural curriculum design for living in the 21st century. *Multicultural Education*, 17(1), 15.

Christensen, L. M. (2006). Legal reading and success in law school: An empirical study. *Seattle UL Rev.*, 30, 603.

Clawson, R. A., & Perry, B. A. (2009). The Michigan Affirmative Action Cases. *Perspectives on Politics*, 7(3), 669.

Coates, T. N. (2015). *Between the world and me*. Random House.

Cohen, L., Manion, L., & Morrison, K. (2007). *Research methods in education: Sixth edition*. London: Routledge

Crenshaw, K. (1995). *Critical race theory: The key writings that formed the movement*. The New Press.

Crisp, R. J., & Turner, R. N. (2011). Cognitive adaptation to the experience of social and cultural diversity. *Psychological bulletin*, 137(2), 242.

Danns, D. (2008). Racial Ideology and the Sanctity of the Neighborhood School in Chicago. *The Urban Review*, 40(1), 64-75.

Davis, P. C. (2009). Desegregating Legal Education. *Ga. St. UL Rev.*, 26, 1271.

Davis, P. C., & Steinglass, E. E. (1997). A dialogue about Socratic teaching. *NYU Rev. L. & Soc. Change*, 23, 249.

Davis, P. C., & Francois, A. B. (2005). Thinking Like a Lawyer. *NDL Rev.*, 81, 795.

Day, F., & Christian, A. J. (2017). Locating black queer TV: Fans, producers, and networked publics on YouTube. *Transformative Works and Cultures*, 24.

Delgado, R. (1994). Bibliographic essay: critical race theory. *SAGE Race Relations Abstracts* 19, 3-28.

Delgado, R., & Stefancic, J. (2012). *Critical race theory: An introduction*. NYU Press.

Delgado, R., Wing, A. K., & Stefancic, J. (2015). Rodrigo's Final Chronicle: Cultural power, the law reviews, and the attack on narrative jurisprudence. In *Law Unbound!* (pp. 64-80). Routledge.

Denson, N. (2009). Do curricular and cocurricular diversity activities influence racial bias? A meta-analysis. *Review of Educational Research*, 79(2), 805-838.

Denson, N., & Chang, M. J. (2009). Racial diversity matters: The impact of diversity-related student engagement and institutional context. *American Educational Research Journal*, 46(2), 322-353.

Deo, M. E. (2011). The Promise of Grutter: Diverse Interactions at the University of Michigan Law School. *Mich. J. Race & L.*, 17, 63.

Deo, M. E. (2012). Separate, unequal, and seeking support. *Harv. J. Racial & Ethnic Just.*, 28, 9.

Deo, M. E., (2014). Empirically Derived Compelling State Interests in Affirmative Action Jurisprudence. *Hastings Law Journal*, Vol. 65, No. 3, p. 661, 2014; Thomas Jefferson School of Law Research Paper No. 2315787. Available at SSRN: <https://ssrn.com/abstract=2315787>

Deo, M. E. (2015). Faculty Insights on Educational Diversity. *Fordham Law Review*, 83(6), 3115.

Deo, M. E., Allen, W. R., Panter, A. T., & Daye, C. (2009). Struggles & Support: Diversity in US Law Schools. *Nat'l Black LJ*, 23, 71.

Deo, M. E., & Griffin, K. A. (2011). The Social Capital Benefits of Peer-Mentoring Relationships in Law School. *Ohio NUL Rev.*, 38, 305.

DiTomaso, N. (2013). *The American non-dilemma: Racial inequality without racism*. Russell Sage Foundation.

Douglass, F., & Dewey, C. P. (1857). *Two Speeches, by Frederick Douglass;: One on West India Emancipation, Delivered at Canandaigua, Aug. 4th, and the Other on the Dred Scott Decision, Delivered in New York, on the Occasion of the Anniversary of the American Abolition Society, May, 1857*. CP Dewey, printer, American Office.

Dowd, A. C. (2003). From access to outcome equity: Revitalizing the democratic mission of the community college. *The ANNALS of the American Academy of Political and Social Science*, 586(1), 92-119.

Dowd, A.C. (2007). Community colleges as gateways and gatekeepers: Moving beyond the access “saga” toward outcome equity. *Harvard Educational Review*, 77(4), 407-419.

Dowd, A. C., & Bensimon, E. M. (2015). *Engaging the “Race Question”: Accountability and Equity in U.S. Higher Education*. New York, NY: Teachers College Press.

Dowd, A. C., Bishop, R. M., & Bensimon, E. M. (2015). Critical action research on race and equity in higher education. In *Critical Approaches to the Study of Higher Education: A Practical Introduction*, 174.

Dowd, A. C., Sawatzky, M., & Korn, R. (2011). Theoretical foundations and a research agenda to validate measures of intercultural effort. *The Review of Higher Education*, 35(1), 17-44.

Dowd, A. C., Bishop, R., Bensimon, E. M., & Witham, K. (2011b). Accountability for equity in postsecondary education. *Urban education: A model for leadership and policy*, 170-185.

Eades, B. C. (1995). The United States Supreme Court Goes Color-Blind: *Adarand Constructors, Inc. v. Peña*. *Creighton L. Rev.*, 29, 771.

Edwards, A. (2017). Researching pedagogy: a sociocultural agenda. In *Introduction to Vygotsky* (pp. 200-222). Routledge.

Edwards, H. T. (1992). The growing disjunction between legal education and the legal profession. *Michigan Law Review*, 91(1), 34-78.

Emerson, R. M., Fretz, R. I., & Shaw, L. L. (2011). *Writing ethnographic fieldnotes*. University of Chicago Press.

Erman, S., & Walton, G. M. (2014). Stereotype threat and antidiscrimination law: affirmative steps to promote meritocracy and racial equality in education. *S. Cal. L. Rev.*, 88, 307.

Ewing, C. (forthcoming). *With Dignity and Justice for All: The Jurisprudence of Equal Dignity and the Partial Convergence of Liberty and Equality in American Constitutional Law* (June 1, 2016). *International Journal of Constitutional Law*. Available at SSRN: <https://ssrn.com/abstract=2657586>

Evans, L., & Moore, W. L. (2015). Impossible burdens: White institutions, emotional labor, and micro-resistance. *Social Problems*, 62(3), 439-454.

Evensen, D. H. (2003). To group or not to group: students' perceptions of collaborative learning activities in law school. *S. Ill. ULJ*, 28, 343.

Fahs, B. (2014). 'Freedom to' and 'freedom from': A new vision for sex-positive politics. *Sexualities*, 17(3), 267-290.

Fairclough, N. (2013). *Critical discourse analysis: The critical study of language*. Routledge.

Farrell, R. C. (1998). Successful Rational Basis Claims in the Supreme Court from the 1971 Term Through *Romer v. Evans*. *Ind. L. Rev.*, 32, 357.

- Feingold, J., & Souza, D. (2013). Measuring the Racial Unevenness of Law School. *Berkeley J. Afr.-Am. L. & Pol'y*, 15, 71.
- Ferber, A. L. (2007). The construction of Black masculinity: White supremacy now and then. *Journal of Sport and Social Issues*, 31(1), 11-24.
- Fisher v. University of Texas, 570 U.S. 297 (2013)
- Fisher v. University of Texas, 579 U.S. ____ (2016)
- Flick, U. (2014). *An introduction to qualitative research*. Sage.
- Flock, E. (2017) Clarence Thomas Suggests Affirmative Action Is Like Jim Crow. U.S. News & World Report. U.S. News, 24 June 2013.
- Frank, J., & Bix, B. H. (2017). *Law and the modern mind*. Routledge.
- Franklin, C. (2014). Marrying Liberty and Equality: The New Jurisprudence of Gay Rights. *Virginia Law Review*, 817-891.
- Freire, P. (1974). *Education for Critical Consciousness*.
- Fries-Britt, S., & Griffin, K. (2007). The Black box: How high-achieving Blacks resist stereotypes about Black Americans. *Journal of College Student Development*, 48(5), 509-524.
- Fuentes, M. V. (2015). *Campus Racial Climate, the Diversity Rationale, and Affirmative Action Policy: Towards a Socially Just and Socially Engaged Democratic Citizenship*. University of California, Los Angeles.
- Garces, L. M. (2013). Understanding the impact of affirmative action bans in different graduate fields of study. *American Educational Research Journal*, 50(2), 251-284.

Garces, L. M. (2015). Balancing Liberty and Equality: Justice Kennedy's Decisive Vote in *Fisher v. University of Texas, Part II*. *Educational Researcher*, 44(8), 442-447.

Garces, L. M., & Bilyalov, D. (forthcoming). Navigating the quicksand: How postsecondary administrators understand the influence of affirmative action developments on racial diversity work. *Teachers College Record*.

Garces, L. M., & Jayakumar, U. M. (2014). Dynamic diversity toward a contextual understanding of critical mass. *Educational Researcher*, 43(3), 115-124.

Garces, L., & Jayakumar, U.M. (2016). Dynamic Diversity: How Campus Leaders Can Respond to Student Protests - Higher Education Today. Retrieved from <https://www.higheredtoday.org/2016/04/20/dynamic-diversity-how-campus-leaders-can-respond-to-student-protests-across-the-country/>

Garcia, G. A. (2017). Defined by Outcomes or Culture? Constructing an Organizational Identity for Hispanic-Serving Institutions. *American Educational Research Journal*, 54(1_suppl), 111S-134S.

Gerald, C. M. (2017). Negative and positive freedom. In *Power, Authority, Justice, and Rights* (pp. 107-128). Routledge.

Gillborn, D. (2005). Education policy as an act of White supremacy: Whiteness, critical race theory, and education reform. *Journal of Education Policy*, 20(4), 485–505.

Gladwell, M. (2005) "Getting In: The Social Logic of Ivy League Admissions." *The New Yorker*, October 10, 2005, pp. 80-86.

Glass, R. D. (2001). On Paulo Freire's philosophy of praxis and the foundations of liberation education. *Educational Researcher*, 30(2), 15-25.

Goldberg, S. B. (2004). Equality without tiers. *Southern California Law Review*, 77(481).

Goldstein Hode, M., & Meisenbach, R. J. (2017). Reproducing whiteness through diversity: A critical discourse analysis of the pro-affirmative action amicus briefs in the Fisher case. *Journal of Diversity in Higher Education*, 10(2), 162.

Gottesman, I. (2016). *The critical turn in education: From Marxist critique to poststructuralist feminism to critical theories of race*. Routledge.

Grant, C., & Osanloo, A. (2014). Understanding, Selecting, and Integrating a Theoretical Framework in Dissertation Research: Creating the Blueprint for Your "House". *Administrative issues Journal*, 4(2), 4.

Gregory, M. A., Daugherty, E. J., & Corrigan, D. M. (2005). The search for a critical mass of minority students: Affirmative action and diversity at highly selective universities and colleges. *The good society*, 14(2), 51-57.

Griffin, K. A., Muñiz, M. M., & Espinosa, L. (2012). The influence of campus racial climate on diversity in graduate education. *The Review of Higher Education*, 35(4), 535-566.

Griffin, K. A., Cunningham, E. L., Mwangi, G., & Chrystal, A. (2016). Defining diversity: Ethnic differences in Black students' perceptions of racial climate. *Journal of Diversity in Higher Education*, 9(1), 34.

Grix, J. (2004). *The foundations of research*. London: Palgrave Macmillan.

Grutter v. Bollinger, 539 U.S. 306 (June 23, 2003).

- Guba, E. G., & Lincoln, Y. S. (1994). Competing paradigms in qualitative research. *Handbook of qualitative research*, 2(163-194), 105.
- Gudeman, R. H. (2000). College missions, faculty teaching, and student outcomes in a context of low diversity. *Diversity*, 37.
- Guinier, L. (2016). *The tyranny of the meritocracy: Democratizing higher education in America*. Beacon Press.
- Guinier, L., Fine, M., Balin, J., Bartow, A., & Stachel, D. L. (1994). Becoming gentlemen: Women's experiences at one Ivy League law school. *University of Pennsylvania Law Review*, 143(1), 1-110.
- Gurin, P. (1999). Expert report of Patricia Gurin. In *The compelling need for diversity in higher education*, Gratz et al. v. Bollinger et al. No. 97-75231 (E.D. Mich.) and Grutter et al. v. Bollinger et al. No. 97-75928 (E.D. Mich.) (pp. 99-234). Ann Arbor, MI: The University of Michigan.
- Gurin, P., Dey, E. L., Hurtado, S., & Gurin, G. (2002). Diversity in higher education: Theory and impact on educational outcomes. *Harvard Educational Review*, 72(3), 330–366.
- Gurin, P. (2004). *Defending diversity: Affirmative action at the University of Michigan*. University of Michigan Press.
- Haeringer, M. (2017, August 14). Watch VICE News Tonight's full episode "Charlottesville: Race and Terror" [Video file]. Retrieved from https://news.vice.com/en_us/article/qvzn8p/vice-news-tonight-full-episode-charlottesville-race-and-terror

Hafferty, F., & Gauferg, E. H. (2013). The hidden curriculum. In *A Pract. Guid. Med. Teach.*. Elsevier, New York, Churchill Livingstone.

Hagedorn, L. S., Chi, W. Y., Cepeda, R. M., & McLain, M. (2007). An investigation of critical mass: The role of Latino representation in the success of urban community college students. *Research in Higher Education*, 48(1), 73-91.

Haley, K. J., Jaeger, A. J., & Levin, J. S. (2014). The influence of cultural social identity on graduate student career choice. *Journal of College Student Development*, 55(2), 101-119.

Hanks, C. (2011). The double-edge of reason: Jürgen Habermas and the Frankfurt School. In B.A.U. Levinson (Ed.), *Beyond critique: Exploring critical social theories and education* (pp. 80-112). Boulder, CO: Paradigm Publishers.

Harper, S. R. (2012). Race without racism: How higher education researchers minimize racist institutional norms. *The Review of Higher Education*, 36(1), 9-29.

Harper, S. R., & Hurtado, S. (2007). Nine themes in campus racial climates and implications for institutional transformation. *New Directions for Student Services*, 2007(120), 7-24.

Harper, S. R., & Quayle, S. J. (2015). Making engagement equitable for students in US higher education. *Student engagement in higher education: Theoretical perspectives and practical approaches for diverse populations*, 1-14.

Harper, S. R., Patton, L. D., & Wooden, O. S. (2009). Access and equity for African American students in higher education: A critical race historical analysis of policy efforts. *The Journal of Higher Education*, 80(4), 389-414.

Harris, A. P. (1994). The jurisprudence of reconstruction. *Cal L. Rev.*, 82, 741.

Harris, A. P., Crenshaw, K., Gotanda, N., Peller, G., & Thomas, K. (2012). Critical race theory. *International Encyclopedia of the Social & Behavioral Sciences*.

Harris, J. C., Barone, R. P., & Davis, L. P. (2015). Who benefits?: A critical race analysis of the (d) evolving language of inclusion in higher education. *Thought & Action*, 21, 38.

Herman, D. A. (2007). Juvenile curfews and the breakdown of the tiered approach to equal protection. *NYUL Rev.*, 82, 1857.

Hirschman, D., Berrey, E., & Rose-Greenland, F. (2016). Dequantifying diversity: affirmative action and admissions at the University of Michigan. *Theory and Society*, 45(3), 265-301.

Hirschman, D., & Berrey, E. (2017). The Partial Deinstitutionalization of Affirmative Action in US Higher Education, 1988 to 2014. *Sociological Science*, 4, 449-468.

Hochschild, A. R. (1983). *The managed heart: Commercialization of human feeling*. Univ of California Press.

Hochschild, A. R. (2016). *Strangers in their own land: anger and mourning on the American Right*. The New Press.

hooks, b. (1994). *Teaching to transgress*. Routledge.

Horwitz, P. (2004). Grutter's First Amendment. *BCL Rev.*, 46, 461.

Howard, T. C. (2010). *Why race and culture matter in schools: Closing the achievement gap in America's classrooms*. Teachers College Press.

Howard, T. C. (2013). *Black male (d): Peril and promise in the education of African American males*. Teachers College Press.

Hurtado, S., Milem, J., Clayton-Pedersen, A., & Allen, W. R. (1999). Enacting diverse learning environments: Improving the climate for racial/ethnic diversity in higher education. ASHEERIC Higher Education Report, 26(8). Washington, DC: George Washington University Graduate School of Education and Human Development.

Hurtado, S. (2001). Linking Diversity and Educational Purpose: How Diversity Affects the Classroom Environment and Student Development.

Hutchinson, D. L. (2013). Not without Political Power: Gays and Lesbians, Equal Protection. *Ala. L. Rev.*, 65, 975.

Iftikar, J. S. (2016). Articulated Racial Projects: Towards a Framework for Analyzing the Intersection Between Race and Neoliberalism in Higher Education. *Journal of Critical Scholarship on Higher Education and Student Affairs*, 3(1), 9.

Iverson, S. V. (2008). Capitalizing on change: The discursive framing of diversity in U.S. land-grant universities. *Equity & Excellence in Education*, 41(2), 182–199.

James, O. R. (2014). White Like Me: The Negative Impact of the Diversity Rationale on White Identity Formation. *New York University Law Review*, 89(2), 2013-04.

James, W. (1949). *Pragmatism: A New Name for Some Old Ways of Thinking; Together with 4 Related Essays Selected from the Meaning of Truth*. Longmans, Green.

Jaquette, O., Curs, B. R., & Posselt, J. R. (2016). Tuition rich, mission poor: Nonresident enrollment growth and the socioeconomic and racial composition of public research universities. *The Journal of Higher Education*, 87(5), 635-673.

Jayakumar, U. (2008). Can higher education meet the needs of an increasingly diverse and global society? Campus diversity and cross-cultural workforce competencies. *Harvard Educational Review*, 78(4), 615-651.

Jayakumar, U. M. (2015). The shaping of post college colorblind orientation among Whites: Residential segregation and campus diversity Experiences. *Harvard Educational Review*, 85(4), 609-645.

Jayakumar, U. M., & Adamian, A. S. (2015). Toward a critical race praxis for educational research: Lessons from affirmative action and social science advocacy. *Journal Committed to Social Change on Race and Ethnicity*, 1(1), 22-58.

Jayakumar, U. M., Garces, L. M., & Park, J. (2018). Reclaiming diversity: Advancing the next generation of diversity research toward racial equity. *Handbook of Theory and Research*, 33, 11-79.

John-Steiner, V., & Mahn, H. (1996). Sociocultural approaches to learning and development: A Vygotskian framework. *Educational psychologist*, 31(3-4), 191-206.

Jones, B., & Mukherjee, R. (2010). From California to Michigan: Race, rationality, and neoliberal governmentality. *Communication and Critical/Cultural Studies*, 7(4), 401-422.

Jones, T. (2005). The Diversity Rationale: A Problematic Solution. *Stanford Journal of Civil Rights and Civil Liberties*, 1.

Jones, W. A. (2013). The relationship between student body racial composition and the normative environment toward diversity at community colleges. *Community College Review*, 41(3), 249-265.

John-Steiner, V., & Mahn, H. (1996). Sociocultural approaches to learning and development: A Vygotskian framework. *Educational psychologist*, 31(3-4), 191-206.

Johnson, C. D., & DesGeorges (2016). J. Hands & voices: Articles. Retrieved October 26, 2016, from Hands & Voices, http://www.handsandvoices.org/articles/education/ed/V11-4_Criticalmass.htm

Johnson, K. R. (2010). The importance of student and faculty diversity in law schools: One dean's perspective. *Iowa L. Rev.*, 96, 1549.

Johnson, L. B. (1965). commencement address at Howard University. To Fulfill These Rights.”(June 4, 1965). <http://www.lbjlib.utexas.edu/johnson/archives> (accessed February 22, 2013).

Kalunta-Crumpton, A. (2017). Is There No Such Thing as Non-White Racism?. *Comparative Sociology*, 16(5), 656-684.

Katz, J. (2015). A theory of qualitative methodology: The social system of analytic fieldwork. *Méthod (e) s: African Review of Social Sciences Methodology*, 1(1-2), 131-146.

Keegan, C. M. (2016). Tongues without Bodies: The Wachowskis’ Sense8. *Transgender Studies Quarterly*, 3(3-4), 605-610.

Khan, S. R., & Fisher, D. (2014). *The Practice of Research: How social scientists answer their questions*. Oxford University Press.

Kidder, W. C. (2003). The struggle for access from Sweatt to Grutter: A history of African American, Latino, and American Indian law school admissions, 1950-2000. *Harv. BlackLetter LJ*, 19, 1.

Killenbeck, A. M. (2009). Bakke, with Teeth: The Implications of Grutter v. Bollinger in an Outcomes-Based World. *JC & UL*, 36, 1.

Kim, J. Y. (1999). Are Asians Black?: The Asian-American Civil Rights Agenda and the Contemporary Significance of the Black/White Paradigm. *The Yale Law Journal*, 108(8), 2385-2412.

Kim, S. (2011). Judicial Opinion as Historical Account: Parents Involved and the Modern Legacy of Brown v. Board of Education. *Yale JL & Human.*, 23, 159.

Krauth, B. (2011). Notes for a history of the critical mass model. Retrieved October 26, 2016, from <http://www.sfu.ca/~bkrauth/papers/critmass.htm>

Kreps, D. (2018, January 28). Jay-Z's 'Van Jones Show' Interview Elicits Donald Trump Tweet. Retrieved March 15, 2018, from <https://www.rollingstone.com/music/news/jay-zs-van-jones-interview-elicits-donald-trump-tweet-w515986>

Laden, B. V., and Hagedorn, L. S. (2000). Job satisfaction among faculty of color in academe: Individual survivors or institutional transformers? In: Hagedorn, L. S. (ed.), *What contributes to job satisfaction among faculty and staff*, Jossey-Bass, San Francisco, pp. 57–66.

Ladson-Billings, G. (2006). From the achievement gap to the education debt: Understanding achievement in US schools. *Educational researcher*, 35(7), 3-12.

Laird, T. F. N. (2005). College students' experiences with diversity and their effects on academic self-confidence, social agency, and disposition toward critical thinking. *Research in Higher Education*, 46(4), 365-387.

Lantolf, J. P. & Poehner M. E. (2014). *Sociocultural theory and the pedagogical imperative in L2 education: Vygotskian praxis and the research/practice divide*. New York: Routledge.

Lantolf, J., Thorne, S. L., & Poehner, M. (2015). *Sociocultural Theory and Second Language Development*. In B. van Patten & J. Williams (Eds.), *Theories in Second Language Acquisition* (pp. 207-226). New York: Routledge

Ledesma, M. C., & Calderón, D. (2015). Critical race theory in education A review of past literature and a look to the future. *Qualitative Inquiry*, 21(3), 206-222.

Lentin, A., & Titley, G. (2011). *The crises of multiculturalism: Racism in a neoliberal age*. Zed Books Ltd.

Leonardo, Z. (2013). *Race frameworks: A multidimensional theory of racism and education*. Teachers College Press.

Leonardo, Z., & Manning, L. (2017). White historical activity theory: toward a critical understanding of white zones of proximal development. *Race Ethnicity and Education*, 20(1), 15-29.

Leong, N. (2012). Racial capitalism. *Harv. L. Rev.*, 126, 2151.

Leshem, S., & Trafford, V. (2007). Overlooking the conceptual framework. *Innovations in education and Teaching International*, 44(1), 93-105.

- Levinson, B. A., Gross, J. P., Hanks, C., Dadds, J. H., Kumasi, K., & Link, J. (2015). *Beyond critique: Exploring critical social theories and education*. Routledge.
- Levinson, B.A.U., Gross, J.P. K., Link, J., & Hanks, C. (2011). Forerunners and foundation builders: Origins of western critical social theory tradition. *Beyond critique: Exploring critical social theories and education* (pp. 25-50). Boulder, CO: Paradigm Publishers.
- Light, C. (2015). Sense8 and the Failure of Global Imagination. *The Nerds of Color*, 10.
- Locks, A. M., Hurtado, S., Bowman, N. A., & Oseguera, L. (2008). Extending notions of campus climate and diversity to students' transition to college. *The Review of Higher Education*, 31(3), 257-285.
- Lowe, M. R., Byron, R. A., Ferry, G., & Garcia, M. (2013). Food for thought: Frequent interracial dining experiences as a predictor of students' racial climate perceptions. *The Journal of Higher Education*, 84(4), 569-600.
- Manning, K. (1997). Authenticity in constructivist inquiry: Methodological considerations without prescription. *Qualitative inquiry*, 3(1), 93-115.
- Maruyama, G., & Moreno, J. F. (2000). University faculty views about the value of diversity on campus and in the classroom. Does diversity make a difference? Three research studies on diversity in college classrooms, 9-35.
- Mayhew, M. J., Grunwald, H. E., & Dey, E. L. (2006). Breaking the silence: Achieving a positive campus climate for diversity from the staff perspective. *Research in Higher Education*, 47(1), 63-88.

- Maxwell, J. A. (2013). *Qualitative research design: An interactive approach* (3rd ed.). Thousand Oaks, CA: Sage.
- McCall, L. (2005). The complexity of intersectionality. *Signs*, 30(3), 1771-1800.
- McCaslin, M., & Hickey, D. T. (2001). Self-regulated learning and academic achievement: A Vygotskian view. *Self-regulated learning and academic achievement: Theoretical perspectives*, 2, 227-252.
- McGinley, A. C. (2010). Ricci v. DeStefano: A Masculinities Theory Analysis. *Harv. JL & Gender*, 33, 581.
- McKee, T. A. (2006). Judges as Umpires. *Hofstra L. Rev.*, 35, 1709.
- McLaren, L. (1994). Rethinking critical theory and qualitative research. In, N. K. Denzin & Y. S. Lincoln (Eds.). *Handbook of Qualitative Research*. Thousand Oaks, California: Sage
- Mears, B. (2009). Sotomayor says she was 'perfect affirmative action baby' Retrieved June 08, 2017, from <http://www.cnn.com/2009/POLITICS/06/11/sotomayor.affirmative.action/index.html?iref=24hours>
- Mercier, H., & Sperber, D. (2017). *The enigma of reason*. Harvard University Press.
- Merriam, S. B. (1998). *Qualitative Research and Case Study Applications in Education*. Revised and Expanded from "Case Study Research in Education.". Jossey-Bass Publishers, 350 Sansome St, San Francisco, CA 94104.
- Merriam, S. B. (2002). Introduction to qualitative research. *Qualitative research in practice: Examples for discussion and analysis*, 1, 1-17.

Merriam, S. B., & Tisdell, E. J. (2015). *Qualitative research: A guide to design and implementation*. John Wiley & Sons.

Mertz, E. (2007). *The language of law school: learning to “think like a lawyer”*. Oxford University Press.

Milem, J. F. (2001). *Increasing Diversity Benefits: How Campus Climate and Teaching Methods Affect Student Outcomes*. <https://files.eric.ed.gov/fulltext/ED456202.pdf>

Milem, J. F., Chang, M. J., & Antonio, A. L. (2005). *Making diversity work on campus: A research-based perspective*. Washington, DC: Association American Colleges and Universities.

Miles, M. B., & Huberman, A. M. (1994). *Qualitative data analysis: An expanded sourcebook*. sage.

Miller, V. (2016). *59 Years of Commemorating Academic Freedom: The Legacy of 'Sweezy v. New Hampshire'*. Retrieved April 02, 2018, from <https://www.thefire.org/59-years-of-commemorating-academic-freedom-the-legacy-of-sweezy-v-new-hampshire/>

Morse, J. M. (1994). *Critical issues in qualitative research methods*. Sage.

Moses, M. S., & Chang, M. J. (2006). *Toward a deeper understanding of the diversity rationale*. *Educational Researcher*, 35(1), 6-11.

Moss, C. (2018). *Understanding Students' Perceptions of Cultural Diversity* (Doctoral dissertation, Walden University).

Moss, P., & Tilly, C. (2001). *Stories employers tell: Race, skill, and hiring in America*. Russell Sage Foundation.

Myers, K. A., & Caruso, R. (1992). The diversity continuum: Enhancing student interest and access, creating a staying environment, and preparing students for transition. *Multicultural education: Strategies for implementation in colleges and universities*, 2.

Nasir, N. I. S., & Hand, V. M. (2006). Exploring sociocultural perspectives on race, culture, and learning. *Review of Educational Research*, 76(4), 449-475.

Nelson, E. S., Pitner, R., & Pratt, C. D. (2016). Assessing the Viability of Race-Neutral Alternatives in Law School Admissions. *Iowa L. Rev.*, 102, 2187.

Obergefell v. Hodges, 576 U.S. ____ (2015).

Oppenheim, A. N. (1992). *Questionnaire design, interviewing and attitude measurement*. Bloomsbury Publishing

Outcalt, C. L., & Skewes-Cox, T. E. (2002). Involvement, interaction, and satisfaction: The human environment at HBCUs. *The Review of Higher Education*, 25(3), 331-347.

Packer, M. J. (2017). *The science of qualitative research*. Cambridge University Press.

Packer, M. J., & Goicoechea, J. (2000). Sociocultural and constructivist theories of learning: Ontology, not just epistemology. *Educational psychologist*, 35(4), 227-241.

Park, J. J. (2009). Are We Satisfied?: A Look at Student Satisfaction with Diversity at Traditionally White Institutions. *The Review of Higher Education*, 32(3), 291-320.

Patel, S. (2017). The research paradigm – methodology, epistemology and ontology – explained in simple language. Retrieved March 15, 2018, from <http://salmapatel.co.uk/academia/the-research-paradigm-methodology-epistemology-and-ontology-explained-in-simple-language>

Patton, L. D. (2016). Disrupting postsecondary prose: Toward a critical race theory of higher education. *Urban Education*, 51(3), 315-342.

Patton, M. Q. (2002). *Qualitative Evaluation and Research Methods* (3rd Ed.). Newbury Park, CA: Sage.

Perren, L., & Ram, M. (2004). Case-study method in small business and entrepreneurial research: Mapping boundaries and perspectives. *International Small Business Journal*, 22(1), 83–101

Petrová, Z. (2013). On the relevancy of using Vygotsky's theoretical framework to legitimize dialogic teaching/learning. *Journal of Pedagogy/Pedagogický časopis*, 4(2), 237-252.

Pike, G. R., & Kuh, G. D. (2006). Relationships among structural diversity, informal peer interactions and perceptions of the campus environment. *The Review of Higher Education*, 29(4), 425-450.

Pollcogt, S. W. (2012). Unconstitutional Animus. *Fordham L. Rev.*, 81, 887.

Porter, T. M., & Haggerty, K. D. (1997). Trust in numbers: the pursuit of objectivity in science & public life. *Canadian Journal of Sociology*, 22(2), 279.

Posselt, J. R. (2014). Toward inclusive excellence in graduate education: Constructing merit and diversity in PhD admissions. *American Journal of Education*, 120(4), 481-514.

Posselt, J. R. (2016). *Inside graduate admissions: Merit, diversity, and faculty gatekeeping*. Cambridge, MA: Harvard University Press.

Posselt, J. R., Jaquette, O., Bielby, R., & Bastedo, M. N. (2012). Access without equity: Longitudinal analyses of institutional stratification by race and ethnicity, 1972–2004. *American Educational Research Journal*, 49(6), 1074-1111.

Powell, C. M. (2008). Rhetorically Neutrality: Colorblindness, Frederick Douglass, and Inverted Critical Race Theory. *Clev. St. L. Rev.*, 56, 823.

President Lyndon B. Johnson's commencement address at Howard University: "To fulfill these rights" June 4, 1965. (2007, June 6). Retrieved October 26, 2016, from LBJ Library, <http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/650604.asp>

Pratt, C. D. (2006). Taking diversity seriously: affirmative action and the democratic role of law schools: a response to professor Brown. *Hous. L. Rev.*, 43, 55.

Pratt, C. D. (2013). End of Indeterminacy in Affirmative Action, *The. Val. UL Rev.*, 48, 535.

Rankin, S. R., & Reason, R. D. (2005). Differing perceptions: How students of color and White students perceive campus climate for underrepresented groups. *Journal of College Student Development*, 46(1), 43-61.

realDonaldTrump. (2018, January 28th). Somebody please inform Jay-Z that because of my policies, Black Unemployment has just been reported to be at the LOWEST RATE EVER RECORDED! [Tweet]. <https://twitter.com/realDonaldTrump/status/957603800579297280>

Regents of the University of California v. Bakke, 438 U.S. 265 (1978)

Richmond v. J. A. Croson Co., 488 U.S. 469 (1989).

Ricci v. DeStefano, 557 U.S. 557 (2009).

Riccucci, N. M., & Riccardelli, M. (2015). The use of written exams in police and fire departments: Implications for social diversity. *Review of Public Personnel Administration*, 35(4), 352-366

Romero, V. C. (1997). The Congruence Principle Applied: Rethinking Equal Protection Review of Federal Alienage Classifications After *Adarand Constructors, Inc. v. Peña*. *Immigr. & Nat'lity L. Rev.*, 18, 33.

Rothman, S., Lipset, S. M., & Nevitte, N. (2002). Does enrollment diversity improve university education? *International Journal of Public Opinion Research*, 15, 8-26.

Roksa, J., Trolan, T. L., Pascarella, E. T., Kilgo, C. A., Blaich, C., & Wise, K. S. (2017). Racial inequality in critical thinking skills: The role of academic and diversity experiences. *Research in Higher Education*, 58(2), 119-140.

Rostbøll, C. F. (2017). Democratic respect and compromise. *Critical Review of International Social and Political Philosophy*, 1-17.

Rowan-Kenyon, H. T., Savitz-Romer, M., Ott, M. W., Swan, A. K., & Liu, P. P. (2017). Finding Conceptual Coherence: Trends and Alignment in the Scholarship on Noncognitive Skills and Their Role in College Success and Career Readiness. In *Higher education: Handbook of theory and research* (pp. 141-179). Springer, Cham.

Rowley, J. (2002). Using case studies in research. *Management Research News*, 25(1), 16-27.

Roychoudhury, D., Gardner, L. M., & Stetsenko, A. (2014). Theorizing activism: Hip hop and human development – The eternal dance between theory and practice. In B. Portfilio, D.

Roychoudhury, and L. Gardner (eds.), *See you at the crossroads: Hip hop scholarship at the intersections. Dialectical harmony, ethics, aesthetics, and panoply of voices* (pp. 181-194). Rotterdam, The Netherlands: Sense Publishers.

Rueschemeyer, D. (2003). Can one or a few cases yield theoretical gains?. *Comparative historical analysis in the social sciences*, 305-336.

Said, E. (1993). *The politics of knowledge. Race, identity and representation in education*, 306-314.

Saldaña, J. (2015). *The coding manual for qualitative researchers*. Sage.

Santelices, M., Horn, C., & Catalán, X. (2015). *Equidad en la Admisión Universitaria: Teorías de Acción y Resultados*. Santiago: FONIDE Grant, (811340).

Schuck, P. H. (2002). Affirmative action: Past, present, and future. *Yale Law & Policy Review*, 20(1), 1-96.

Schuette v. Coalition to Defend Affirmative Action, 572 U.S. ____ (2014).

Schwartz, M. H. (2013). *What the best law teachers do*. Harvard University Press.

Scotland, J. (2012). Exploring the philosophical underpinnings of research: Relating ontology and epistemology to the methodology and methods of the scientific, interpretive, and critical research paradigms. *English Language Teaching*, 5(9), 9.

Scott, J. (2017). *Social network analysis*. Sage.

Seidman, I. (2013). *Interviewing as qualitative research: A guide for researchers in education and the social sciences*. Teachers college press.

Shin, P., Carbado, D., & Gulati, M. (2014). The Diversity Feedback Loop. *U. Chi. Legal F.*, 345.

Shulman, L. S. (1986). Those who understand: Knowledge growth in teaching. *Educational researcher*, 15(2), 4-14.

Sidanius, J., Levin, S., Van Laar, C., & Sears, D. O. (2008). *The diversity challenge: Social identity and intergroup relations on the college campus*. Russell Sage Foundation.

Sidhu, D. S. (2013, February 18). A critical look at the “critical mass” argument. Retrieved October 26, 2016, from The Chronicle of Higher Education, <http://www.chronicle.com/article/A-Critical-Look-at-the/137369/>

Sim, S., & Loon, B. V. (2012). *Introducing critical theory: A Graphic Guide* London: Icon.

Smith, D. G. (2015). *Diversity's promise for higher education: Making it work*. JHU Press.

Solorzano, D., Ceja, M., & Yosso, T. (2000). Critical race theory, racial microaggressions, and campus racial climate: The experiences of African American college students. *Journal of Negro Education*, 60-73.

Spanbauer, J. M. (2013). Using a Cultural Lens in the Law School Classroom to Stimulate Self-Assessment, 48 *Gonz. L. Rev.* 365.

Spann, G. A. (1995). Affirmative Action and Discrimination. *Howard LJ*, 39, 1.

Squire, D. (2017). The vacuous rhetoric of diversity: exploring how institutional responses to national racial incidences effect faculty of color perceptions of university commitment to diversity. *International Journal of Qualitative Studies in Education*, 30(8), 728-745.

Stake, R. E. (1995). *The art of case study research*. Sage.

Staples, R. (1978). Masculinity and race: The dual dilemma of Black men. *Journal of Social Issues*, 34(1), 169-183.

Stearns, E., Buchmann, C., & Bonneau, K. (2009). Interracial friendships in the transition to college: Do birds of a feather flock together once they leave the nest?. *Sociology of Education*, 82(2), 173-195.

Stetsenko, A. (2008). From relational ontology to transformative activist stance on development and learning: expanding Vygotsky's (CHAT) project. *Cultural Studies of Science Education*, 3(2), 471-491.

Stetsenko, A. (2009). Teaching–learning and development as activist projects of historical Becoming: expanding Vygotsky's approach to pedagogy. *Pedagogies: An International Journal*, 5(1), 6-16.

Stetsenko, A. (2011). From relational ontology to transformative activist stance: Expanding Vygotsky's (CHAT) project. In P. Jones (Ed.), *Marxism and Education. Renewing the Dialogue, pedagogy, and culture* (pp. 165-192). London: Palgrave MacMillan (reprinted from *Cultural Studies of Science Education*, 2008)

Stetsenko, A. (2014). Transformative activist stance for education: Inventing the future in moving beyond the status quo. In T. Corcoran (Ed.), *Psychology in Education: Critical Theory~Practice* (pp. 181-198). Rotterdam, The Netherlands: Sense Publishers.

Stetsenko, A. (2015). Theory for and as social practice of realizing the future: Implications from a transformative activist stance. In *The Wiley Handbook of Theoretical and Philosophical Psychology* edited by Jack Martin, Jeff Sugarman, and Kathleen Slaney. NY: Wiley.

Stetsenko, A. (2016). *The transformative mind: Expanding Vygotsky's approach to development and education*. Cambridge University Press.

Stetsenko, A. (2016b). Moving beyond the relational worldview: Exploring the next steps premised on agency and a commitment to social change. *Human Development*, 59, 283–289.

Stetsenko & Arieivitch, I. (2014). Vygotsky's collaborative project of social transformation. In A. Blunden (ed.), *Collaborative Projects* (pp. 217-238). Leiden, The Netherlands: Brill Publishers.

Stetsenko, A. & Arieivitch, I. M. (2010). Cultural-historical activity theory: Foundational worldview, major principles, and the relevance of sociocultural context. In J. Martin and S. Kirschner (Eds.), *The sociocultural turn in psychology: The contextual emergence of mind and self* (pp. 231-252). New York: Columbia University Press.

Stewart, D.L (2017). Colleges need a language shift, but not the one you think (essay) | Inside Higher Ed. Retrieved June 4, 2018, from

<https://www.insidehighered.com/views/2017/03/30/colleges-need-language-shift-not-one-you-think-essay>

Swarns, R. L. (2016). Georgetown University Plans Steps to Atone for Slave Past. Retrieved May 5, 2018, from <https://www.nytimes.com/2016/09/02/us/slaves-georgetown-university.html>

Sweezy v. New Hampshire 354 U.S. 234 (1957).

Tate IV, W. F. (1997). Chapter 4: Critical race theory and education: History, theory, and implications. *Review of research in education*, 22(1), 195-247.

Taylor, S. J., & Bogdan, R. (1984). *Introduction to qualitative research methods: The search for meaning*.

Thomas, E. C. (2007). Racial Classification and the Flawed Pursuit of Diversity: How Phantom Minorities Threaten Critical Mass Justification in Higher Education. *BYU L. Rev.*, 813.

Tran, H. V. (2017). Diversity's twilight Zone: how affirmative action in education equals 'discrimination' in the colorblind era. *Race Ethnicity and Education*, 1-15.

Turow, S. (2010). *One L: The turbulent true story of a first year at Harvard Law School*. Farrar, Straus and Giroux.

U.S. Const. amend. XIV.

Vianna, E., & Stetsenko, A. (2011). Connecting learning and identity development through a transformative activist stance: Application in adolescent development in a child welfare program. *Human Development*, 54(5), 313-338.

Vue, R., Haslerig, S. J., & Allen, W. R. (2017). Affirming Race, Diversity, and Equity Through Black and Latinx Students' Lived Experiences. *American Educational Research Journal*, 54(5), 868-903.

Vygotsky, L. S. (1978). *Mind in society*. Cambridge, MA: Harvard University Press.

Vygotsky, L. S. (1986). *Language and thought*. Massachusetts Institute of Technology Press, Ontario, Canada.

Vygotsky, L. S. (1997). *Educational psychology* (R. Silverman, trans.). Boca Raton, FL: St. Lucie Press (originally published in 1926).

Ward, J. (2008). *Respectably Queer: Diversity Culture in LGBT Activist Organizations*. Vanderbilt University Press.

Ward, K. M., & Zarate, M. E. (2015). The influence of campus racial climate on graduate student attitudes about the benefits of diversity. *The Review of Higher Education*, 38(4), 589-617.

Ward, L. W. (2017). *Arguing Race, Advocating Racism: A Critical Race & Discourse Analysis of Higher Education Race-Conscious Supreme Court Oral Arguments* (Doctoral dissertation, Indiana University).

Warikoo, N. K. (2016). *The diversity bargain: and other dilemmas of race, admissions, and meritocracy at elite universities*. University of Chicago Press.

Weeden, L. D. (2004). After *Grutter v. Bollinger* higher education must keep its eyes on the tainted diversity prize legacy. *BYU J. Pub. L.*, 19, 161.

White, J. V. (2003). What is affirmative action. *Tul. L. Rev.*, 78, 2117.

White, K. (2016). Black lives on campuses matter: reflecting on the rise of the new Black student movement. *Soundings*, 63(63), 86-97.

Winkler, A. (2006). Fatal in theory and strict in fact: An empirical analysis of strict scrutiny in the federal courts. *Vanderbilt Law Review*, 59, 793.

Wizner, S., & Aiken, J. (2004). Teaching and doing: the role of law school clinics in enhancing access to justice. *Fordham L. Rev.*, 73, 997.

Woodson, K. (2016). Derivative Racial Discrimination. *Stan. JCR & CL*, 12, 335.

Wolcott, Harry F. (2008). *Transforming Qualitative Data: Description, Analysis, and Interpretation* (3rd Ed.). Thousand Oaks, CA: Sage.

Wright, D. K., & Garces, L. M. (2018). Understanding the controversy around race-based affirmative action in American higher education. In J. Blanchard (Ed.). *Controversies on Campus: Debating the Issues Confronting American Universities in the 21st Century* (pp. 8-17). Santa Barbara, CA: Praeger.

Wygant v. Jackson Bd. of Education, 476 U.S. 267, 270-73 (1986).

Yancy, G. (2016). *Black Bodies, White Gazes: The Continuing Significance of Race in America*. Rowman & Littlefield.

Yazan, B. (2015). Three approaches to case study methods in education: Yin, Merriam, and Stake. *The Qualitative Report*, 20(2), 134-152.

- Yin, R. K. (1981). The case study as a serious research strategy. *Knowledge: Creation, Diffusion, Utilization*, 3, 97-114.
- Yin, R. K. (2003). *Case study research: Design and methods* (3rd ed.). Thousand Oaks, CA: Sage.
- Yin, R. K. (2009). *Case study research: Design and methods* (4th ed.). Thousand Oaks, Calif.: Sage.
- Yoshino, K. (2011). The new equal protection. *Harvard Law Review*, 124(3), 747-803.
- Yoshino, K. (2015). A New Birth of Freedom?: *Obergefell v. Hodges*. *Harv. L. Rev.*, 129, 147.
- Yosso, T. J., Parker, L., Solorzano, D. G., & Lynn, M. (2004). From Jim Crow to affirmative action and back again: A critical race discussion of racialized rationales and access to higher education. *Review of Research in Education*, 28, 1-25.
- Zuniga, X., Williams, E. A., & Berger, J. B. (2005). Action-oriented democratic outcomes: The impact of student involvement with campus diversity. *Journal of College Student Development*, 46(6), 660-678.

Appendix A: Phase I- Interview Protocol

- 1. Why did you choose [GSU Law]? What other schools did you consider?**
- 2. What are your aspirations for after law school?**
- 3. How diverse did you think [GSU Law]? would be upon applying?**
- 4. How much or how little did the racial and ethnic diversity of [GSU Law]? affect your decision to applying to [GSU Law]?? Your decision to accept an offer to come to [GSU Law]??**
- 5. What has been your experience so far as a minority at [GSU Law]and in _____**
- 6. Do you except your race or ethnicity to have any effect on your legal education?**

Appendix B: Demographic Questionnaire

CONTACT INFORMATION

1. Preferred Pseudonym: _____
2. Email Address: _____
3. Phone Number: _____

PERSONAL BACKGROUND (ANSWERS WILL ONLY BE SEEN BY ME)

4. Race: _____
5. Gender:
 - a. Birth Sex: _____
 - b. Current Gender Identity: _____
6. Nationality: _____
7. Sexual Orientation: _____

FAMILY PERSONAL BACKGROUND

8. What is your Age: _____
9. How would you describe your family's economic background?
 - a. Low-income
 - b. Lower Middle Class
 - c. Middle Class
 - d. Upper Middle Class
 - e. Upper class

10. What is the highest level of education completed by your parents(s) or guardian(s),
(please circle)?

Mother or Guardian 1	Father or Guardian 2
N/A	N/A
Some High School	Some High School
High School Diploma or G.E.D.	High School Diploma or G.E.D.
Some College	Some College
Associates Degree	Associates Degree
Bachelor Degree	Bachelor Degree
Some Graduate School	Some Graduate School
Terminal Degree (Ph.D., E.D., MBA, JD etc.)	Terminal Degree (Ph.D., E.D., MBA, JD etc.)

11. What is the highest level of education completed by your brother(s) or sister(s) (please
circle)?

Brother(s)	Sister(s)
N/A	N/A
Some High School	Some High School
High School Diploma or G.E.D.	High School Diploma or G.E.D.
Some College	Some College
Associates Degree	Associates Degree
Bachelor Degree	Bachelor Degree
Some Graduate School	Some Graduate School
Terminal Degree (Ph.D., E.D., MBA, JD etc.)	Terminal Degree (Ph.D., E.D., MBA, JD etc.)

12. What is your best estimate of your household's total income (please circle)?

- a. Under \$ 20, 000
- b. \$20, 001 - \$40,000
- c. 40, 0001 – 60,000
- d. 60, 001 – 80,000
- e. 80,000 – 100,000
- f. Over 100,001

13. What is your Mother/Guardian occupation (e.g. professor, teacher, sales associate or other)? (Please leave blank if not applicable)_____

14. What is your Father/Guardian occupation (e.g. professor, teacher, sales associate or other)? (Please leave blank if not applicable)_____

ACADEMIC BACKGROUND

15. What is your current academic year standing (please circle)?

a. 1L

b. 2L

c. 3L

16. What was your undergraduate major? _____

17. What was your Undergraduate cumulative GPA? _____

18. What are your career goals after aw school?

FRIENDS AND RELATIONSHIPS

19. Please list the names and race/ethnicity of 5 of your closest friends?

Name	Race/Ethnicity
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.

20. Are you a member of any organizations at the law school , if so please identify or list by name?

a. _____

b. _____

c. _____

d. _____

21. Do you work after school, what business and how many hours do you work per week?

a. Yes or No: _____

b. On-campus or Off-campus: _____(specify business or industry name off campus)

c. Number of hours working after school per week: _____

d. How many hours per day do you study after class? _____

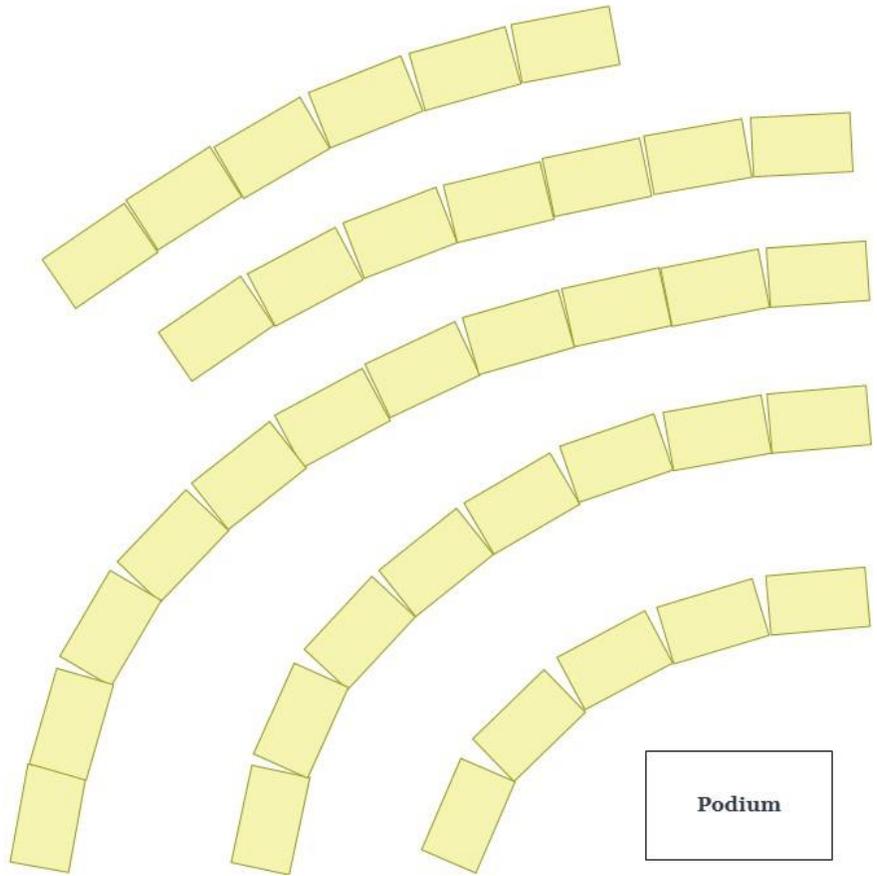
Appendix C: Phase II Debriefing Verbal Script

I will have 10 minutes at the beginning of a class during one of the class sessions that will occur sometime between 10/16/17 and 10/27/17.

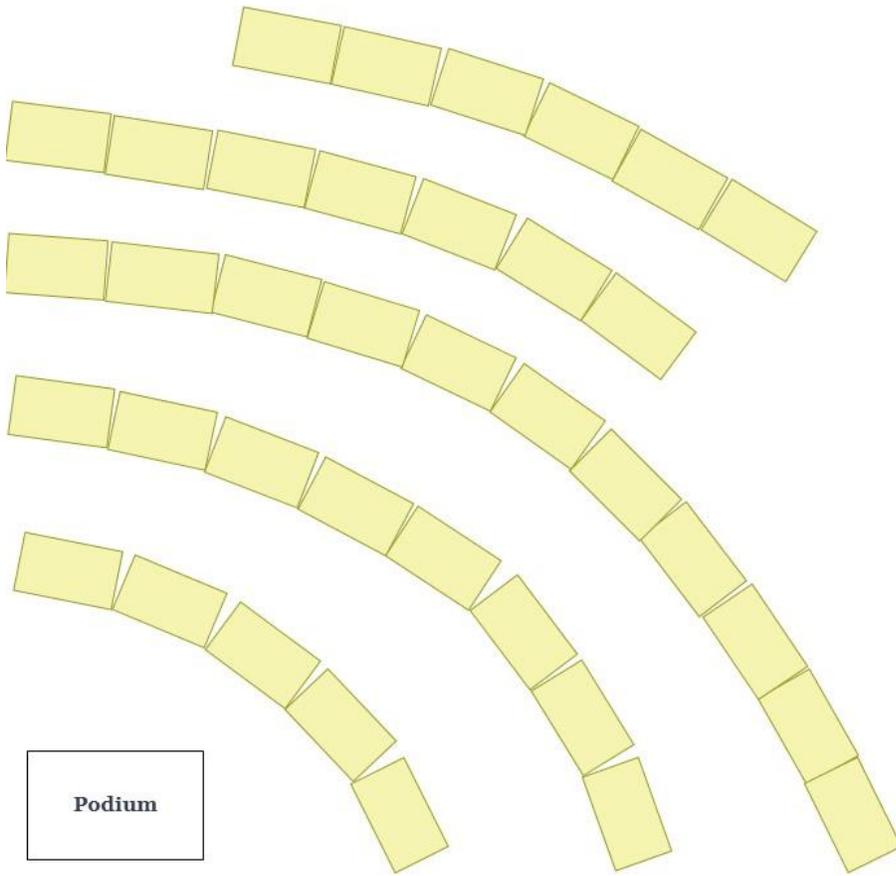
1. I will begin by explaining to the class what has been going on so far:
 - a. The observation project
 - b. What has been looked for
 - c. Why the project is being done
2. Questions and Answer period
3. I will then place the consent form on the computer projector screen at the front of the class and will have the opportunity to explain the consent form and explain the three things that they are being asked to give consent to:
 - a. Pre-Debriefing Observations
 - b. Post Debriefing Observations
 - c. Post- Debriefing Interviews
4. Questions and Answer Period
5. The Debriefing will end by allowing the students to return the form to me at the end of the class period and/or any time before the end of the course semester.

Appendix D: Classroom Diagram

Left Side
(74 total seats)



Right Side
(74 total seats)



Appendix E: Informed Consent Request



CONSENT FOR RESEARCH

Title of Project: A Critical Ethnographic Case Study of the Culture of Diversity in a Predominately White Law School

Principal Investigator: Dwayne Kwaysee Wright

Telephone Number: 213- 394- 8035

Advisor: Dr. Alicia Dowd

Advisor Telephone Number: (814) 865-8278

Subject's Printed Name: _____

We are asking you to be in a research study. This form gives you information about the research.

Whether or not you take part is up to you. You can choose not to take part. You can agree to take part and later change your mind. Your decision will not be held against you.

Please ask questions about anything that is unclear to you and take your time to make your choice.

This research is being done to find out what the culture of diversity at your Law School is like. As has been described to you, this part of the research project consists of two parts: an observation of your class to see if any racial dialogue takes places and interviews with any student who wishes about these observations. Observations have been going on since _____ and will continue until the end of the class this semester.

We are requesting now from you three things: your consent to using data collected in observations so far, your consent to using data collected in observations going forward, and your interest in conducting an out of class interview about the data collected.

We are asking you to be in this research because you a member of the Class of 2020, who has been assigned to section 201, which contains your Criminal Law class taught by

There is a risk of loss of confidentiality if your information or your identity is obtained by someone other than the investigators, but precautions will be taken to prevent this from happening. The confidentiality of your electronic data created by you or by the researchers will be maintained to the degree permitted by the technology used. Absolute confidentiality cannot be guaranteed, but your confidentiality will be protected to the best of our ability.

Your dialogue in class has not been recorded and will not be connected to your name. A number has been created, and you will be identified only by your race and gender for the purposes of the data collected from the observation.

You may decide not to participate in this research. If you agree to take part, it will take you about an hour of your time to complete this part of this research study. In the event of any publication or presentation resulting from the research, no personally identifiable information will be shared. The results of this research will allow Law School's in general (and your Law School in particular) to better understand and optimize their learning environments to best create and use diversity and inclusion. Participation is limited to persons that are 18 years or older only.

If you decide to do the interview, you will be identified using only the pseudonym (fake name) that you select for yourself. Fake Names will only be used for those interviewed, and are not necessary for those ONLY consenting to the observation.

We will do our best to keep your participation in this research study confidential to the extent permitted by law. However, it is possible that other people may find out about your participation in this research study. Some of these records could contain information that personally identifies you. Reasonable efforts will be made to keep the personal information in your research record private. However, absolute confidentiality cannot be guaranteed.

This study will allow and to better get a full assessment of the culture of diversity at the Law School and how such a culture, if need be, can be improved. This study is my dissertation project and all information obtained in the study is being utilized towards the production of such. If you agree to take part, the interview will take you about an hour (60 minutes) to complete this part of the research study. You may also be asked to conduct follow up interviews as well.

Taking part in this research study is voluntary:

- You do not have to be in this research.
- You will not be paid for your participation in this study.
- If you choose to be in this research, you have the right to stop at any time.
- If you decide not to be in this research or if you decide to stop at a later date, there will be no penalty or loss of benefits to which you are entitled.

If you have questions or concerns about this research study. Please call the head of the research study Dwayne Kwaysee Wright at 213-394-8035 if you:

- Have questions, complaints or concerns about the research.
- Believe you may have been harmed by being in the research study.

You may also contact the Office for Research Protections at if you:

- Have questions regarding your rights as a person in a research study.
- Have concerns or general questions about the research.
- You may also call this number if you cannot reach the research team or wish to offer input or to talk to someone else about any concerns related to the research.

Appendix F: GSU Law Diversity Events SpendingDiversity Expenses 16-17

Minority Mentor Program	7406	
Diversity Banquet and speaker	4184	
Conference attendance for Students	<u>2620</u>	BLSA, LLSA, Lavender, Outlaw
	14210	

VITA – Dwayne Kwaysee Wright

EDUCATION

Doctor of Philosophy, Higher Education, *The Pennsylvania State University*, 2018
Master of Education, Higher Education, *The Pennsylvania State University*, May 2015
Juris Doctor, The Dickinson School of Law (Penn State Law), *The Pennsylvania State University*, May 2015
Bachelor of Arts, Political Science, *The Norfolk State University*, December 2011

PROFESSIONAL EXPERIENCE

The Pennsylvania State University

- The Learning Edge Academic Program (LEAP), Assistant Mentor Coordinator, June 2018 (anticipated)
- Higher Education Program, Graduate Assistant, August 2017 – May 2018
- Center for Education and Civil Rights, Graduate Research Assistant, August 2016– July 2017.
- Department of African American Studies, Adjunct Lecturer, January 2015 – May 2015

SELECTED PUBLICATIONS

Wright, D. K., & Garces, L. M. (2018). Understanding the controversy around race-based affirmative action in American higher education. In J. Blanchard (Ed.). *Controversies on Campus: Debating the Issues Confronting American Universities in the 21st Century* (pp. 3-21). Santa Barbara, CA: Praeger.

PRESENTATIONS

- Twelfth Annual Meeting of Law School Diversity Professionals (May 2018)- Invited Speaker and Presenter Second
- Annual Dickinson Law Intersectionality Panel (April 2018)- Invited Speaker and Presenter
- Balancing the First Amendment with Diversity and Inclusion in Higher Education, Dickinson Law Symposium (November 2017)- Invited Speaker on the First and Fourteenth Amendments
- Penn State Black Male Empowerment Symposium (March 2014; April 2015) - Invited presenter on Black Male Self-Empowerment
- 2014 NAACP Daisy Bates Education Institute (May 2014) - Invited panelist on the legacy of Brown v. Board of Education during the 60th Anniversary
- Penn State Gender Conference (April 2014)- Presenter on the Employment Non-Discrimination Act