

Resist/Defend/Reimagine Pedagogy

LEGAL EDUCATION AGAINST AUTHORITARIANISM

An open-source Guide by the Critical (Legal) Collective Critical Education Committee

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Each Chapter offers concrete educational **frameworks**, **disciplinary** approaches, and up-to-date **modular examples** we may immediately implement in our classrooms.

While it is important to resist the ideas in Project 2025—and its coalition of 100+ organizations backing authoritarian rule—legal education must be also be *reimagined* so that all members of society are prepared to think and debate critically.

The weakening of critical thought and inquiry in our classrooms began well before 2020, in both the “doctrine” (rules and principles) and “skills” schools present as traditional legal education.

Faculty, students, and communities—all have a role in countering attacks on representational democracy whenever we offer legal education to our students and the public.

1. DEMOCRACY & LEGAL NORMS

The catastrophes unfolding across U.S. society and politics pose an **existential question for law**. Law and “rule of law” have failed to provide guardrails against authoritarianism. From the erosion of decades of civil rights gains to election integrity, the crises highlight law’s failures to **define democracy or democratically sustainable legal norms**.

Typically, law school teaches lawyers a narrow, context-stripped notion of “rule of law,” however. Law inadequately explains how legal institutions such as the Supreme Court, and factions with disproportionate power and wealth, undermine democracy and systems of accountability. Emboldened by false claims to legality from prior presidencies, Project 2025 misrepresents the legal authority for government and businesses to ignore racial discrimination in education, employment, housing, policing, and immigration.

Reimagining pedagogy will require all courses to teach the pluralistic natures of law and democracy. Both are highly related to the **teaching modalities** explored in Chapters 2–5 of this Guide. Your colleagues have generously shared some of their teaching material toward reframing key legal concepts and learning outcomes.

We often attribute classrooms’ heavy emphasis on “formal equality” to the the post-WWII era, when legal liberal frameworks enjoyed wide, bipartisan support. But by the end of the 20th century, this framework had been weaponized by conservative ideologues.[i]

[i] Steven M. Teles, *The Rise of the Conservative Legal Movement: The Battle for Control of the Law* (2008).

1. DEMOCRACY & LEGAL NORMS

Legal formalist approaches play a central role in **undermining substantive equality** doctrines: i.e., an analysis of systemic causes of equality, requiring a meaningfully detailed account of context in problem identification and solution.

At the federal and state levels, formalist arguments challenge the legitimacy of substantive equality as a mode of legal interpretation and lawmaking. The “formal” racial logic of the *SFFA v. Harvard* decision—undercutting a major form of race-conscious affirmative action—was predictable after *Korematsu v. United States*, where the 1944 Court set aside structural-racism analysis and relied on historical revisionism. As of 2024, the far-right’s playbook pushes legal formalism to a breaking point, chiefly visible in its claim that *any* consideration of race by government or businesses must be declared unconstitutional.

In a reimagined classroom, Learning Outcomes should expressly include:

- To become familiar with and learn to identify norms for democratic governance, and how the law inscribes relationships of power, including and not limited to constitutional frameworks;
- To examine the relationships among hierarchy, race, and other dimensions of structural injustice, and the legal system;
- To become familiar with historical and theoretical approaches to the study of law and democracy, including anti-racist and other anti-bias approaches that further equity, equality, fairness; and
- To understand law and legal interpretation as non-linear and polycentric, with a concomitant focus on Reconstruction as the “Second Founding.”