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Beyond the Textbook: Incorporating Popular Non-Fiction Books into the Business Law Curriculum for Teaching Diversity, Equity and Inclusion

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PEDAGOGY

**BEYOND THE TEXTBOOK:
INCORPORATING POPULAR NON-FICTION BOOKS
INTO THE BUSINESS LAW CURRICULUM FOR
TEACHING DIVERSITY, EQUITY AND INCLUSION**

by

Dr. Sean J. Shannon*

ABSTRACT

This article addresses the experience of incorporating legal issues of diversity, equity and inclusion (DEI) into the business law curriculum by having students read popular non-fiction books which directly address salient DEI issues on race and sex discrimination. The purpose of utilizing popular non-fiction books is to create a common read experience across course sections and provide a shared touchstone for business law students in which to facilitate dialogue and create further pedagogical opportunities to address issues related to DEI.

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During the 2020-2021 academic year, all students enrolled in Legal Environment of Business courses were required to read *The Color of Law: A Forgotten History of How Our Government Segregated America* by Richard Rothstein in which they explored DEI issues as they related to business law subjects including, but not limited to, real estate and zoning, banking and insurance, and housing discrimination. The upper-division Commercial Law class read *Because of Sex: One Law, Ten Cases, and Fifty Years That Changed American Women’s Lives at Work* by Gillian Thomas to better understand employment law, sexual harassment, discrimination, equal opportunity, and the legal challenges and progress women have made in the workplace since the passage of Title VII of the Civil Rights Act of 1964.

INTRODUCTION

A cursory review of business law textbooks designed for undergraduate Legal Environment of Business law courses are comprehensive and cover a broad range of legal subject matters that even a law student may not cover in three years of their legal education, let alone 15 weeks in a regular undergraduate semester. Business law faculty are left in the unenviable position of having to cover the canonical topics of contracts, torts, business entities and either eliminate material or provide a relatively superficial discussion of other non-canonical legal topics, which can limit pedagogical creativity and prevent the inclusion of new material. This is an issue not simply confined to business law faculty and, like many disciplines, the course material to be covered in a class has to be prioritized with the

hopes that the material not addressed might be offered in future classes.

The murder of George Floyd in the summer of 2020 brought front and center the ongoing challenges of institutional racism and an increasing awareness in higher education for the necessity to address issues of diversity, equity and inclusion (hereinafter “DEI”) in the classroom. Many law courses address DEI issues in a peripheral manner, but this may not be sufficient for the moment and it is necessary to reprioritize the curriculum and step outside the pedagogical comfort zone to address DEI issues. In order to help facilitate conversation in respects to legal issues related to DEI, two popular non-fiction books were incorporated into the business law curriculum for the 2020-2021 academic year to create a critical mass of business law students who have read the books with the goal of facilitating a broader DEI dialogue in business law.

All students taking Legal Environment of Business were required to read *The Color of Law: A Forgotten History of How our Government Segregated America*¹ (hereinafter *The Color of Law*) by Richard Rothstein and the upper-division Commercial Law class, traditionally designed to prepare accounting majors for the CPA, read *Because of Sex: One Law, Ten Cases, and Fifty Years That Changed American Women’s Lives at Work*² (hereinafter *Because of Sex*) by Gillian Thomas to help facilitate a dialogue of DEI issues related to employment law, sexual harassment and discrimination. The book also created an opportunity to discuss gender and transgender issues in light of the Supreme Court’s recent decision, *Bostock v. Clayton County* (2020), which expanded the definition of “sex” under Title VII of the Civil Rights Act of 1964 to include gender and transgender protection in the workplace.³

There are a number of excellent non-academic popular non-fiction books available for business law faculty to incorporate into their curriculum which focus on the larger narrative of an issue, rather than its constituent legal parts, which can provide important educative value for undergraduate students studying business law by facilitating a more holistic legal and socio-economic understanding of important contemporary legal and public policy issues. Utilizing non-fiction popular texts can address important business law subjects and can be useful in creating a dialogue for developing students' ethical and critical legal thinking skills, preparing students for a diverse society and workforce, both domestically and internationally, and equip them with the skills necessary as future leaders.⁴ Addressing DEI issues in the curriculum and classroom are part and parcel of the larger business school role in educating leaders of tomorrow who can address the needs of a rapidly changing world.

Popular non-fiction texts that address issues of DEI also present opportunities to enhance our efforts teaching ethical frameworks by addressing salient and challenging issues. Not all issues can be resolved by the law. The late Chief Justice Earl Warren said that, "In a civilized life, the law floats in a sea of ethics."⁵ Much of our society's behavior is shaped by normative and ethical principles, not simply by the law. The required books focus on the law, but they also provide opportunities to discuss the ethics of DEI issues and where the law may be incapable or inappropriate to address such issues.⁶ Adding DEI issues to the business law curriculum will not only help our students to develop the ethical foundations necessary to address these issues, but will also enhance the importance of business law in higher education.

THE COLOR OF LAW

Introduction

Our students are faced with a difficult quandary: they have inherited a society and legal framework that was neither of their making or choosing. Our students will spend much of their lives learning to navigate society's laws and legacy issues, but rarely have the opportunity to spend time to explore and understand the reasons such laws came into being in the first place except while in school. Business law is one avenue to assist in explaining the legal framework the students have inherited and the steps necessary to change it. Perhaps the most obvious set of laws and legacy issues in which students must spend a lifetime navigating is residential housing.

Most undergraduate business law classes will not address insurance and banking and may only address real estate in respects to local zoning laws, but rarely do they spend much time delving into real estate law to appreciate the geographic parameters in which the students reside. There are many good books that address the topic of residential development in the United States⁷, but *The Color of Law* is timely, particularly in explaining the legal foundations for contemporary residential segregation in the United States and its impact on other contemporary social and legal issues. Housing is central to our students' lives and it is one area that they can all personally relate.

In his Pulitzer Prize winning book, *Evicted: Poverty and Profit in the American City*, Matthew Desmond points out that, "The home is the center of life. It is a refuge from the grind of work, the pressure of school, and the menace of the streets. We say that at home, we can be ourselves. Everywhere else, we are someone else. At home, we remove our masks. The home is the

wellspring of personhood. It is where our identity takes root and blossoms, where as children, we imagine, play and question, and as adolescents, we retreat and try. As we grow older, we hope to settle into a place to raise a family or pursue work. When we try to understand ourselves, we often begin by considering the kind of home in which we were raised.” He goes on further to discuss the important role that residential housing plays in a democratic society noting that, “Civic life too begins at home, allowing us to plant roots and take ownership over our community, participate in local politics, and reach out to neighbors in a spirit of solidarity and generosity.”⁸ In some respects *Evicted* is an even more timely popular non-fiction book. As the United States addresses the COVID-related eviction crisis, *Evicted* may be another non-fiction title business law faculty may consider incorporating into their curriculum and classroom discussion.

The basic premise of Rothstein’s arguments in *The Color of Law* is that the residential segregation in the United States is assumed to be the product of *de facto* segregation; residential segregation is just the way it is through the actions of private actors and that the law did not play a role. In fact, Rothstein argues that it was *de jure* action, with local, state, and federal government, in conjunction with private actors, which helped to create the residential segregation and a host of other DEI-related issues confronting society today.

Educational Objectives and Integrating into the Curriculum

Due to the breadth of the material in Legal Environment of Business courses, it is challenging to incorporate additional content into the curriculum, but not impossible. In order to successfully integrate *The Color of Law* into the curriculum,

the class read the book one chapter at a time over 12 weeks. The class spent 30 to 45 minutes a week discussing the book, usually during the second half of the last class of the week. Although it may not seem like a great deal of time to address the many DEI issues and legal topics the book raises, it did permit at least six hours of class time discussing the book over the 12 weeks. This required prioritizing the content in *The Color of Law* for class discussion by focusing on many of the legal issues the book raised such as redlining, zoning, restrictive covenants in deeds, banking, insurance, and legal enforcement.

For many, the topics raised may be difficult to discuss or, more importantly, unless properly prepared, faculty may feel uncomfortable discussing the issue raised due to a lack of specialization in DEI. Having an open and candid dialogue on issues of race, poverty, and privilege presents unique challenges in a classroom of 45 students; even more so when students are online, cameras are off, and students submit comments in the chat box. It takes sensitivity, compassion, patience, and practice in order for the conversation to be productive. Approaching the material from a conical business law perspective provides a relatively neutral approach, but only to some degree.

Approaching issues of DEI requires business law faculty to spend some class preparation time focusing and reflecting upon their own personal bias and history. Fortunately, there are numerous articles, texts, and trainings to help develop the self-awareness necessary to teach sensitive topics addressing DEI. Two books which proved helpful in addressing concerns about discussing DEI topics are *How to Be an Antiracist*⁹ by Ibram X. Kendi and *White Fragility, Why It's So Hard for White People to Talk About Racism*¹⁰ by Robin Diangelo.

Diangelo is direct in her analysis of the issue and states unequivocally the problem and failure for dialogues is because, “White people in North America live in a society that is deeply separate and unequal by race, and white people are the beneficiaries of that separation and inequality. As a result, we are insulated from racial stress, at the same time that we come to feel entitled to and deserving of our advantage. Given how seldom we experience racial discomfort in a society we dominate, we haven’t had to build our racial stamina. Socialized into a deeply internalized sense of superiority that we either are unaware of or can never admit to ourselves, we become highly fragile in conversations about race. We consider a challenge to our racial worldviews as a challenge to our very identities as good, moral people.”¹¹ The process of preparing to teach and address DEI issues is as much an education for the instructor as it is for the students.

It is important to be candid and honest, and preparatory remarks before engaging in the material are appropriate and necessary. Explaining to the class that these are difficult topics for many to discuss and appreciating, understanding, and respecting the relative different starting points from which the students are approaching the topic helps to provide an environment that is safe, engaging, and respectful.

Understanding the role of racism in residential segregation is necessary to understand the *de jure* policies that have led to the present situation. Kendi writes in *How to Be an Antiracist*, “A racist idea is any idea that suggest one racial group is inferior or superior to another racial group in any way. Racist ideas argue that the inferiorities and superiorities of racial groups explain racial inequalities in society. An antiracist idea is any idea that suggest the racial groups are equals in all their apparent differences – that there is nothing right or wrong with any racial groups. Antiracist ideas argue that racist policies are

the cause racial inequalities.” He goes on further to explain that it is important to “[u]nderstanding the differences between racist policies and antiracist policies, between racist ideas and antiracist ideas, allows us to return to our fundamental definitions. Racism is a powerful collection of racist policies that led to racial inequality and are substantiated by racist ideas. Antiracism is a powerful collection of antiracist policies that lead to racial equality and are substantiated by antiracist ideas.”¹² Rothstein makes the argument that the only way of resolving the problem of residential segregation is by first recognizing the problem of racism and the laws that created the existing situation.¹³

Some students may be reluctant to speak up in class. In addition to questions on the periodic exams in the class, a writing assignment was created to permit the students the opportunity to reflect and analyze some of the issues in the book. There are numerous resources available to assist in the discussion of the book including videos and discussion questions,¹⁴ which were utilized in the class. The essay assignment was designed to provide students with flexibility and ample opportunity to express their thoughts on the subject. Students were allowed to select two questions from a list of four questions provided and, at minimum, responses should be at least 500 words. The following questions were provided:

- 1) What surprised you as you read *The Color of Law*?
- 2) The author sets forth several challenges to undoing residential segregation. Which do you believe is the most pernicious? What steps would you take to address residential segregation?
- 3) Chief Justice John Roberts wrote that residential segregation “is a product not of state action but of private choices, it does

not have constitutional implications.” Do you agree or disagree with this statement? Explain your decision with supporting evidence.

4) If the municipality in which you presently reside, or one in which you have lived, has an online website where you can view the zoning map for the municipality, in which zone do you live or have lived, and can you observe any unique zoning features on the zoning map that supports Rothstein’s arguments on neighborhood segregation? Please explain. If possible, include a copy or link to the zoning map.

Student Responses

The general consensus by the students in response to reading *The Color of Law* is shock and surprise. They did not understand or appreciate the extent of the problem. But the book also provided an explanation for institutional racism and residential segregation of which many who have had, and continue to have, direct personal experience.

Perhaps the most interesting response was from a student who chose to answer the question regarding zoning and researched the zoning of her neighborhood in Rosedale, Queens and compared it to the neighboring community in Valley Stream located in Nassau County on Long Island. Having grown up in Rosedale, Queens, she was completely unaware of the racial hostility in her community in the 1970s. African American families, who had recently moved into the Rosedale section, had their homes bombed and a group of white residents, opposed to integration of their community, created ROAR, Return Our American Rights, an organization committed to preventing the integration of the community.

She discovered the tensions were the center of a documentary titled, “Rosedale: The Way It Is,” produced and narrated by Bill Moyers in 1976.¹⁵ The student was shocked to learn about her community, but also came to understand the *de jure* underpinnings that have created two very different communities: Rosedale, Queens and Valley Stream, two municipalities that share the same border but have very different demographics and racial composition. Students also found similar trends in rural and suburban communities. Although primarily focused on racial segregation, the book also addressed segregation of communities based on income, nationality, and religion and the inter-connectedness of these issues in segregated residential housing patterns that exist to this day.

BECAUSE OF SEX

Introduction

Legal issues related to DEI are not simply limited to race. An important area of the law addressed in Legal Environment of Business is the area of Employment Law and sex discrimination in the workplace. In light of the recent Supreme Court decision in *Bostock v. Clayton* (2020)¹⁶ in which the Court held that “sex” under Title VII of the Civil Rights Act of 1964 includes gay and transgender protection, most people are unfamiliar with how “sex” came to be included in Title VII and the long legal fight to give “sex” meaning and enforcement against discrimination “because of sex.”¹⁷ Gillian Thomas’ book, *Because of Sex, One Law, Ten Cases, and Fifty Years That Changed American Women’s Lives at Work* addresses the subject by first discussing the last-minute addition of “sex” to the legislation and the subsequent Supreme Court jurisprudence over the next 50 years to provide legal protection for women in the workplace.

***Educational Objectives and
Integrating into the Curriculum***

Since some of the students had already read *The Color of Law* in the Fall of 2020 in their Legal Environment of Business class, an alternative popular non-fiction book was required. Commercial Law is an upper-level course offered in the spring semester traditionally intended to prepare students who wish to take the CPA exam and enter the accounting profession, although there are many students who take the class because of their interest in law. As future professionals, *Because of Sex* is an opportunity to explore topics of employment law, particularly as it relates to sexual harassment and equal opportunity, and to prepare the students for their professional careers in which they may encounter some of the legal issues addressed in the book. The ten cases discussed all address employment discrimination “because of sex” and the evolution of the Supreme Court’s jurisprudence on the subject.

Due to the time constraints and need to cover a great deal of material in the semester, the course follows the same pattern of instruction used to teach *The Color of Law*; the class reads a chapter a week, which covers one landmark case in detail, over 10 weeks for 30 to 45 minutes a week. Due to the nature of the cases, some of the facts and circumstances women encountered in the ten cases are quite disturbing and it is necessary to prepare students by giving them warning that the book contains stories of sexual harassment and violence that may be upsetting to some students.

Even though some might consider residential segregation and employment discrimination and sexual harassment as unrelated, in respects to issues of DEI, they are quite connected. Title VII of the Civil Rights Act of 1964 addresses

discrimination in the workplace based on race, color, ethnicity, religion, and sex and the 1968 Fair Housing Act was added to the 1964 Civil Rights Act to address the same discrimination, but in residential housing. The two civil rights acts are also an opportunity to explain the difference between common law and statutory law to the students.

The students were assessed via questions in periodic exams and were provided ample opportunity to express their thoughts on the subject and book by responding to two of three questions from the following list:

- 1) Which case(s) surprised you and why as you read *Because of Sex*?
- 2) In light of Title VII of the 1964 Civil Rights Act, compare and contrast the Supreme Court Justices' legal analysis in two cases discussed in the book and how the Court addressed discrimination "...because of sex."
- 3) The Supreme Court recently ruled that "sex" also includes gay and transgender protection under Title VII. How does the case of *Bostock v. Clayton County* (2020) fit within the precedential cases discussed in the book?

Student Responses

There were a variety of responses by the students to the book, but interestingly, being surprised or shocked was not one of them. Whereas many of the students were shocked by the content in *The Color of Law*, *Because of Sex* did not elicit the same responses from the students. Perhaps it was a reflection of the recent Me Too movement and the high profile conviction of celebrities for sexual harassment and assault. The different responses to the two books are worthy of further study and may

shed some light on our responses to certain systemic DEI issues and not others.

CONCLUSION

Faculty are limited in the content they can cover in a semester and utilizing popular non-fiction books are one pedagogical approach of addressing both business law related topics and exposing students to issues of DEI. *The Color of Law* and *Because of Sex* are not only interesting books for the students to read, but they also created opportunities to discuss DEI further on a host of issues. Students were not only engaged by the content of the books, but also appreciative of the opportunity to learn something they might not otherwise have read in a traditional business law course. Time is limited, but assigning such general non-fiction books to the curriculum, even if only certain chapters, enhances the courses and provides an opportunity to explore important DEI issues in the classroom.

¹ Richard Rothstein, *The Color of Law, A Forgotten History of How Our Government Segregated America* (Liveright Publishing Corporation 2017).

² Gillian Thomas, *Because of Sex, One Law, Ten Cases, and Fifty Years That Changed American Women's Lives at Work* (St. Martin's Press 2016).

³ *Bostock v. Clayton County, Georgia*, 590 U.S. ____ (2020), 140 S. Ct. 1731; 207 L. Ed. 2d 218; 2020 WL 3146686; 2020 U.S. LEXIS 3252

⁴ Johan Roos, *The Renaissance We Need in Business Education*, Har. Bus. Rev., July 2, 2014

<https://hbr.org/2014/07/the-renaissance-we-need-in-business-education>. Johan Roos reflected on the need to change business education and stressed that, “Business leaders who will succeed in the coming decade will be notable for their holistic thinking, global perspectives, international experience, multilingual capabilities, technological familiarity, entrepreneurial mindset, creativity, and ability to deal productively with complexity and chaos. Many corporations already say they cannot find the type of employees they need, so we must begin acting now to transform our business schools. It is our job as educators to produce graduates who can thrive in a radically changing world, and who can shape it in positive ways. We must educate a new generation of renaissance leaders.”

⁵ *Warren Favors Profession to Give Advice on Ethics*, N.Y. Times, November 12, 1962 at Page 1, Col. 3.

⁶ Robert C. Bird, On the Future of Business Law, *Journal of Legal Studies in Education*, Vol. 35, No. 2 (Summer 2018). “Business ethics are moral values and principles that guide the conduct of business toward promotion of the common good. This simple explanation of business ethics belies a deeper and broader understanding of how business ethics evolves. Business ethicists are not cordoned by discipline, but rather share a common application of critical thinking and analysis to challenge established norms and values in society.” At pp. 301-302.

⁷ There are excellent books on residential development in the United States, but they tend to be assigned outside the legal discipline in areas such as architecture and planning. Two titles stand out for additional information: Kenneth T. Jackson, *Crabgrass Frontier, The Suburbanization of the United States* (Oxford University Press 1985) and James Howard Kunstler, *The Geography of Nowhere, The Rise and Decline of America’s Man-Made Landscape* (Touchstone 1993).

⁸ Matthew Desmond, *Evicted, Poverty and Profit in the American City* (Crown Publishers 2016) at pp. 293-294.

⁹ Ibram X. Kendi, *How To Be An Antiracist* (One World 2019) at p. 20.

¹⁰ Robin Diangelo, *White Fragility, Why It's So Hard for White People to Talk about Racism* (Beacon Press 2018).

¹¹ *Id.* at pp. 1-2.

¹² *Kendi* at p. 20.

¹³ *Rothstein* at pp. XIV – XV.

¹⁴ This list is not exhaustive, but some websites with information that will be helpful to facilitate discussion include the following: W.W. Norton & Company, the parent company of the publisher - <https://wwnorton.com/books/The-Color-of-Law/about-the-book/reading-guide>; California State PTA - <https://capta.org/book-club-discussion-the-color-of-law/>

¹⁵ Rosedale: The Way It Is (Bill Moyers Journal 1976).

<https://vimeo.com/33669898>. Since many of my students are from Long Island and the metropolitan area, although somewhat dated, I show them the first part of the video.

¹⁶ *Bostock v. Clayton County, Georgia*, 590 U.S. ____ (2020) 140 S. Ct. 1731; 207 L. Ed. 2d 218; 2020 WL 3146686; 2020 U.S. LEXIS 3252 Another topic to discuss with the class is statutory language and that the Opinion was written by Justice Neil Gorsuch, appointed to the Supreme Court by President Trump. Justice Gorsuch focuses on the statutory language: “Ours is a society of written laws. Judges are not free to overlook plain statutory commands on the strength of nothing more than suppositions about intentions or guesswork about expectations. In Title VII, Congress adopted broad language making it illegal for an employer to rely on an employee’s sex when deciding to fire that employee. We do not hesitate to recognize today a necessary consequence of that legislative choice: An employer who fires an individual merely for being gay or transgender defies the law.” At 33.

¹⁷ Civil Rights Act of 1964, Title VII, Pub. L. No. 88-352, § 7, 42 U.S.C. § 2000e et seq (1964).