VOL. 5 NO. 3

SPRING 2022: UNENDING CONVERSATION

STETSON LAW REVIEW FORUM

I Mua Kākou: A Response to Dean Dickerson's Call to "Abolish Caste"

Kim D. Ricardo*

I. *INTRODUCTION*

I began writing this Essay at the foot of the Koʻolau Mountain Range on the windward side of the island of Oʻahu while on my summer break from teaching. That setting inspired, shaped, and guided the arguments in this Article.[1]

Hawaiʻi was once an independent and sovereign nation. The native inhabitants of the archipelago enjoyed an abundance of natural resources, which they consumed on a communal and subsistence basis, leaving ample time for the pursuit of social and cultural activities such as surfing and hula.[2] After Hawaiians first interacted

---

* © 2022, Kim D. Ricardo. All rights reserved. Professor of Law and Director of the Lawyering Skills Program at University of Illinois, Chicago School of Law. I proposed the kākou model of anti-subordination in my article, *"It's a Kākou Thing": The DADT Repeal and a New Vocabulary of Anti-Subordination*, 3 U.C. IRVINE L. REV. 905, 922–26 (2013).

[1] Outsider scholarship in the tradition of Critical Race Theory frequently breaks with the conventions of the law review article genre. *See, e.g.*, Gary Peller, *The Discourse of Constitutional Degradation*, 81 GEO. L.J. 312, 325 (1992) ("[B]y posing personal, subjective, and impassioned voices, narrative critical race scholarship reveals the way in which identity and emotion have been artificially marginalized in the discursive space, thus revealing how mainstream scholarship is itself a particular kind of narrative of what is important and what is not."); Robert A. Williams, Jr., *Vampires Anonymous and Critical Race Practice*, 95 MICH. L. REV. 741, 755 (1997) (predicting that the "Old Farts" on his faculty would be flabbergasted to learn that his twenty-five-page law review article about vampires with zero footnotes had been published in the MICHIGAN LAW REVIEW). This Essay, for example, begins by telling the reader my exact physical location when I learned that my proposal had been accepted for publication in the inaugural edition of the Unending Conversation on legal scholarship. By telling the story of the illegal overthrow of the Hawaiian Kingdom and the later attempts to repair the historical and ongoing harms of U.S. colonization of the Hawaiian Islands, I am asking the reader to share that space with me before we move to the discussion on equality and education workers in law schools. This path does not follow the traditional Introduction-Thesis-Argument-Proof-Conclusion structure that one might expect. But my proposal, I suppose, was unconventional from the start. The Unending Conversation series asks contributors to respond to extant pieces of legal scholarship and the editors accepted my proposal to provide a critique—not of another law review article or book—but of Dean Darby Dickerson's short President's Message that appeared in the AALS Newsletter in Fall 2020. My sincere thanks to the editors and staff of the *Stetson Law Review Forum* for working with me so closely and patiently to bring this non-conforming law review Essay to the page.

[2] *See* ISAIAH HELEKUNIHI WALKER, WAVES OF RESISTANCE: SURFING AND HISTORY IN TWENTIETH-CENTURY HAWAIʻI 44 (2011).

with Europeans in 1778, however, the native population began to fight disease, high infant mortality rates, and housing and healthcare inadequacies.[3] Military personnel, missionaries, capitalists, and laborers recruited to work on sugar plantations migrated to the islands en masse, and by the end of the nineteenth century, the native population had been overwhelmed and substantially diminished.[4] Then, in 1893, the U.S. military participated in the illegal overthrow of the Hawaiian Kingdom.[5] The indigenous population continues to experience the ongoing harms of colonialization—today Native Hawaiians in Hawaiʻi occupy the bottom rungs of the islands' socioeconomic ladder.[6]

Though threatened with genocide, Native Hawaiians, their language, and culture have survived. Activists and advocates have ensured that indigenous practices continue to thrive, in part by inscribing customary and traditional rights into law.[7] For example, the Hawaiʻi Supreme Court has held that the western concept of absolute land exclusivity does not apply in the state.[8] Native Hawaiians have the right to enter private land and to engage in traditional gathering practices. When courts have placed the values of justice, dignity, and repair at the center of judicial reasoning,[9] litigation for Native Hawaiian rights has produced more equitable remedies. By contrast, when formal equality has been the court's lodestar, efforts to maintain a modicum of sovereignty for Native Hawaiians have fallen victim to ahistorical readings of the Reconstruction Amendments.

---

[3] S. REP. NO. 108–405 (2004).

[4] *See, e.g.,* Imani Altemus-Williams & Marie Eriel Hobro, *Hawaiʻi Is Not the Multicultural Paradise Some Say It Is,* NAT. GEO. (May 17, 2021), https://www.nationalgeographic.com/culture/article/hawaii-not-multicultural-paradise-some-say-it-is.

[5] Act of Nov. 23, 1993. Pub. L. No. 103–150, 107 Stat. 1510, 103d Congress (1993) (apologizing for the principal role that the United States played in the coup d'etat against Queen Liliʻuokalani's sovereign government). Native Hawaiians resisted the overthrow, annexation, statehood, and the continuing and present-day occupation of Hawaiʻi. *See, e.g.*, HAUNANI-KAY TRASK, FROM A NATIVE DAUGHTER: COLONIALISM AND SOVEREIGNTY IN HAWAIʻI (2d ed. 1999) (articulating a theory and praxis of modern Native Hawaiian activism against colonialism); NOELANI GOODYEAR-KAʻŌPUA, ET AL., A NATION RISING: HAWAIIAN MOVEMENTS FOR LIFE, LAND, AND SOVEREIGNTY (2014); NOENOE K. SILVA, ALOHA BETRAYED: NATIVE HAWAIIAN RESISTANCE TO AMERICAN COLONIALISM (2004) (using primary sources in ʻŌlelo Hawaiʻi (the Hawaiian language) to demonstrate that Native Hawaiians actively opposed the overthrow and other attempts to destroy native culture).

[6] Jon M. Van Dyke & Melody K. MacKenzie, *An Introduction to the Rights of the Native Hawaiian People*, HAW. B.J., July 2006, at 3.

[7] *See, e.g.*, HAWAIʻI CONST. art. X, sec. 4 (Hawaiian education program); art. XII, sec. 7 (traditional and customary rights); art XI, sec. 7 (public trust doctrine); art. VI, sec. 4 (Hawaiian and English as official languages); HAWAIʻI REV. STAT. §5-7.5 (codifying the aloha spirit as a lawmaking value and principle); § 7-1 (traditional gathering rights); ch. 205A (coastal zone management).

[8] *See* Kalipi v. Hawaiian Tr. Co., 656 P.2d 745, 748 (Haw. 1982); Pele Defense Fund v. Paty, 837 P.2d 1247, 1271 (Haw. 1992); Pub, Access Shoreline Haw. v. Haw. Cty. Planning Comm'n, 903 P.2d 1246, 1268 (Haw. 1995).

[9] HAWAIʻI REV. STAT. §§ 5–7.5 (permitting courts to utilize the aloha spirit in judicial decision making).

Twenty-eight years after statehood, Hawaiʻi voters amended the state constitution to create the Office of Hawaiian Affairs (OHA), a state agency charged with promoting and protecting the interests of Native Hawaiians. Under the amendments, only Native Hawaiians were eligible to vote in the elections for the OHA Board of Trustees. In 1996, a non-Hawaiian resident sued the state, arguing that the Hawaiian-only clause was a race-based classification. The Supreme Court of Hawaii found that the OHA voting scheme violated the Fifteenth Amendment, reasoning that it impermissibly discriminated on the basis of race.[10]

In doing so, the Court conflated a native people's exercise of self-determination with race-based voting restrictions, ignoring the history of subordination that had produced two distinct remedies. The Fifteenth Amendment was enacted to ensure that Black citizens could exercise the franchise after the Civil War while Hawaiʻi's constitutional amendments provided a modest measure of autonomy for native Hawaiians after the illegal overthrow. The majority had also failed to perceive that OHA and the Hawaiian-only clause existed precisely because, by voting to approve the 1978 constitutional amendments, non-Hawaiian residents had made an explicit commitment to promote native autonomy. After *Rice v. Cayetano*, state laws were amended to make OHA elections available to all eligible voters. In the end, a state program designed to acknowledge the continuing harms of the overthrow and dispossession of native Hawaiian land and culture was thwarted by the Court's adherence to a formal vision of equality.

In the experience of the current residents of Hawaiʻi—kānaka maoli and settler colonialists alike—reckoning with historical wrongs has proven to be a recursive process. Attending to the ongoing injury to native Hawaiians and their homelands has required dedication to a continuous and evolving practice of reparations to address past harm. The reparations efforts in Hawaiʻi serve as both a model and a cautionary tale for equity and repair work elsewhere and in other contexts.[11]

In this Essay, I address Dean Darby Dickerson's call to "end the caste system" in law schools.[12] It is no longer a secret that non-tenure-track (NTT) faculty are precarious workers with lower status and lower pay than their tenured and tenure-track colleagues. It is also well-documented that women are overrepresented in these

---

[10] Rice v. Cayetano, 528 U.S. 495, 523 (2000).

[11] *See, e.g.*, Catharine MacKinnon, *Substantive Equality: A Perspective*, 96 MINN. L. REV. 1, 10–11 (2011) (illustrating how Canada utilizes the substantive equality approach). *But see* Williamson B.C. Chang, *The "Wasteland" in the Western Exploitation of "Race" and the Environment*, 63 U. COLO. L. REV. 849, 860–62 (1992) (arguing that U.S. race and racism discourse is not useful framing for the struggles of indigenous peoples who demand sovereignty, not civil rights).

[12] Darby Dickerson, *President's Message: Abolish the Academic Caste System*, AALS https://www.aals.org/about/publications/newsletters/aals-news-fall-2020/presidents-message-abolish-the-academic-caste-system/ (last visited April 11, 2022) (citing Kent Syverud, *The Caste System and Best Practices in Legal Education*, 17 J. LEGAL COMM. & RHETORIC 12, 13 (2002) (using the word "caste" to describe seven different classes—tenured and tenure-track faculty, deans, clinical faculty, law library directors, legal writing directors and faculty, adjunct faculty, and professional staff)).

low prestige positions which are mostly concentrated in legal writing and clinics, even though the ABA (which serves as the accrediting body for law schools) has increasingly emphasized the importance of skills and experiential education as preparation for the practice of law.[13]

In response to her calls for a more egalitarian approach to faculty configuration and income inequality, Dean Dickerson received immediate, negative feedback on the law school blogs. In a blog post titled "It's a good thing the President of the AALS doesn't really matter to legal education," one law school maven complained: "[T]here is not even the pretense of a substantive analysis and critique of the division of labor and responsibility in Dean Dickerson's letter."[14] Published as the President's Message column in the Fall 2020 AALS Newsletter, it is possible that Dean Dickerson's proposal had farther reach than it did depth. But she had a later opportunity to expand on strategies "to dismantle caste" when she moderated an AALS webinar on that topic in May 2021.[15] Moreover, her arguments build on the research and advocacy of at least a generation of law professors advocating for status equity.[16]

To be clear, I support Dean Dickerson's call to end unequal treatment among full-time teaching faculty at law schools. "Abolish[ing] the academic caste system" is not as easy as declaring it to be so, however, even if you are the dean. Drawing on feminist and critical race theory (CRT) scholarship, I argue that Dean Dickerson's proposal to abolish caste fits squarely within the liberal democratic tradition of formal equality and is therefore an inadequate response to institutional subordination of certain classes of full-time law faculty.[17] Comparing her proposal to other failed experiments in formal equality, I argue that substantive equality for legal writing professors and other members of "the lower castes"[18] demands that law

---

[13] *See, e.g.*, Renee Nicole Allen, Alicia Jackson & DeShun Harris, *The "Pink Ghetto" Pipeline: Challenges and Opportunities for Women in Legal Education*, 96 U. DET. MERCY L. REV. 525, 538 (2019); Rachel López, *Unentitled: The Power of Designation in the Legal Academy*, 73 RUTGERS L. REV. 923, 924–25 (2021).

[14] Brian Leiter, *It's a good thing the President of the AALS Doesn't Really Matter to Legal Education . . .* , BRIAN LEITER'S LAW SCHOOL REPORTS (Dec. 7, 2020), https://leiterlawschool.typepad.com/leiter/2020/12/its-a-good-thing-the-president-of-the-aals-doesnt-really-matter-to-legal-education.html.

[15] Darby Dickerson, *Ensuring Equality in Legal Academia: Strategies to Dismantle Caste*, YOUTUBE (May 10, 2021), https://www.youtube.com/watch?v=XcaCfEUNbW0 (moderating a webinar as President of the American Association of Law Schools).

[16] *See* Teri A. McMurtry-Chubb, *On Writing Wrongs: Legal Writing Professors of Color and the Curious Case of 405(c)*, 66 J. OF LEGAL ED. 575, 575 n.1 (2017) (citing advocacy in scholarship since 1997); Kristen K. Tiscione & Melissa H. Weresh, *Building Bridges Across Curricular and Status Lines: Gender Inequity Throughout the Legal Academy*, 69 J. OF LEGAL ED. 3, 4 n.4 (2019).

[17] Dickerson, *supra* note 14, at 4:10–4:12.

[18] Kent D. Syverud, *The Caste System and Best Practices in Legal Education*, J. OF THE ASSN. OF LEGAL WRITING DIRECTORS 12, 14 (2002). A note about terminology: Dean Dickerson and others use the analogy of caste—the antiquated but enduring Hindu religious practice of dividing society into

schools in transition to a more equitable system must attend to the particular needs of faculty members who were previously excluded from the benefits and privileges of tenure-line status. Substantive equality for all law faculty requires completely reimagining legal education.

II. The Allure of Equality Discourse

Dean Dickerson frames both the problem and the solution to differential treatment of tenure-line and NTT faculty in equality terms. For her, the problem is that NTT faculty are treated differently from tenure-line faculty, and the solution is to eliminate those differences.

Equality discourse certainly is alluring. During the Civil Rights Movement, activists demanded access to the political and legal systems that controlled the distribution of public goods such as education, elections, and social support. The civil rights insurgency aimed to defeat systems of racial subordination then buttressed by de jure discrimination, and equality was the insurgency's clarion call. Civil rights lawyers won landmark cases by demonstrating that discriminatory exclusions violated constitutional guarantees of equal protection.

Realizing that civil rights equality discourse had led to their defeat, conservative actors who had defended racially discriminatory laws went back into the trenches. After reassessing strategy, conservatives evidently decided to contain equality in a bear hug. Now fully embraced by the conservative movement, equality became the preferred mode of rights rhetoric and became weaponized against social justice programs designed to remedy past discrimination. Transformed, the new fundamentalist equality of the right had become the very means by which the momentary gains of the civil rights movement were eviscerated. Programs such as affirmative action in education and in hiring—designed to provide opportunities for women and minoritized racial groups that had previously been shut out—immediately became the targets of conservative legal challenges based on the idea of formal equality. The Supreme Court has come to embrace this perverted version of equality and to reject the original remedial function of civil rights-era social justice programs.[19]

---

rigid castes according to professions—to draw attention to the subordinating practices that slot education workers in a law school into a stratified hierarchy. As much as I appreciate the power of metaphor to facilitate communication and to emphasize meaning, I am not convinced that the caste comparison is appropriate, so I will refrain from using the caste analogy in this Essay, except when explicitly referencing the arguments of others.

[19] *See, e.g.*, Adarand Constructors, Inc. v. Peña, 515 U.S. 200, 218 (1995) (adopting a formal equality view when it comes to imposing strict scrutiny review on race-based state actions); Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 748 (2007) (declaring: "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race"); Ricci v. DeStefano, 557 U.S. 557, 562 (2009) (adopting a new interpretation of Title VII that ahistorically restricts the

Feminist and critical race legal scholars have exposed this rhetorical sleight of hand and provide a critical framework distinguishing formal equality from substantive equality.[20] Formal equality is the abstract notion that the law ought to impose the same rules and standards on everyone. This formulation privileges the individual as the measuring stick and downplays disparities that exist at the group and community level. Paired with a devotion to colorblindness, formal equality doctrine permits facially-neutral laws to harm subordinated classes while at the same time preventing the state from remedying harms inflicted on these same groups.[21] By focusing on what a challenged law says rather than what it actually does, formal equality considers what things look like but does not attend to how things are nor does it allow for reinventing systems and structures to make them less hierarchical and more fair. CRT asserts that formal equality is an ahistorical affront to the civil rights activists who sought to use the law to remedy past and ongoing injuries resulting from the subordination of groups of people on the basis of race, gender, and political status as a colonialized people.

Substantive equality, by contrast, consists of efforts to maximize social justice by mitigating historic and continuing harms in large part by acknowledging that those past harms continue to impact marginalized groups today. Substantive equality not only treats the symptoms of injustice but aims to eradicate the root causes. Therefore, a substantive equality approach "changes not only the outcomes of discrimination cases but, as importantly if not more so, alters the circumstances that are identified as giving rise to equality questions in the first place."[22]

III. ABOLISH CASTE: A FORMAL EQUALITY ARGUMENT

Dean Dickerson's argument is deceptively straightforward—law schools should treat all full-time faculty equally. NTT faculty are not "compensated fairly for their contributions," Dickerson acknowledges, noting that they are paid a fraction of the average salary received by tenure-line faculty.[23] Her solution to pay inequity is

statute's disparate impact theory of racial discrimination); Shelby Cnty. v. Holder, 570 U.S. 529, 544 (2013) (limiting the federal oversight invalidating Section 4 of the Voting Rights Act, essentially eliminating the federal preclearance procedure for changes or updates in state voting laws).

[20] *See, e.g.*, Kimberlé W. Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331. 1336 (1988); Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 CALIF. L. REV. 741, 742–43, 761 (1994); Neil Gotanda, *A Critique of "Our Constitution is Colorblind"*, 44 STAN. L. REV., Nov. 1, 2–3 (1991).

[21] Darren Lenard Hutchinson, *Critical Race Histories: In and Out*, 53 AMER. U. L. REV. 1187, 1194–96 (2004).

[22] MacKinnon, *supra* note 10, at 11.

[23] Dickerson, *supra* note 11.

for "deans to develop plans to equalize the pay of NTT faculty."[24] She urges law schools to eliminate and equalize the differences in pay, job security, and respect that currently separate NTT faculty from tenured and tenure-track faculty.[25] Dean Dickerson also urges law schools to consider converting NTT faculty to tenure-line positions. Importantly, she draws attention to the ways different status metes out materially dissimilar benefits—title, job security, and pay are not insignificant parts of a law teacher's compensation package.[26]

Dean Dickerson's proposal is significant in that it specifically names some of the material consequences of the differential treatment among full-time faculty, but it does not go far enough. The call to action is wrapped in the intoxicating promises of formal equality. Rooting her law school revolution in formal equality, the assumption is that equal status and equal pay will automatically result in equal treatment and equal dignity. Dean Dickerson's idea is that through conversion of all faculty to equal status, the signifiers of difference—title, job security, and pay—would be erased and the problem solved.

As *Rice v. Cayetano* illustrates, resolving injustice through the imposition of formal equality has not made things better for marginalized groups.[27] On the contrary, formal equality regimes preserve the existing power structures and hierarchies that create the social conditions for group marginalization. Even worse, the rhetoric of formal equality camouflages structures of subordination under a veneer of fairness and equal opportunity, prohibiting institutions from recognizing and repairing the ongoing negative impacts of past harms.[28] The ABA Standards, for example, contain broad equality, diversity, and non-discrimination policies which extend to faculty and staff. Taken at face value, the standards governing law schools give the impression that all law school workers enjoy equality and do not face discrimination. The uncontroverted experience of undervalued NTT faculty belies that fantasy. In fact, Mary Beth Beazley has argued that despite its equality rhetoric, the standards themselves have created and maintained the caste-like hierarchy that organizes full-time law faculty.[29]

A formal equality framework does additional harm; while propping up the illusion of equality, it further obscures the negative impacts experienced by NTT faculty, in particular women. The numbers of women teaching in higher education institutions has increased over time, but these same women are not equally

[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] 528 U.S. 495; *see also Adarand Constructors, Inc.*, 515 U.S. 200; *Parents Involved in Cmty. Schs.*, 551 U.S. 701; *Ricci*, 557 U.S. 557; *Shelby Cnty.*, 570 U.S. 529.
[28] MacKinnon, *supra* note 10, at 12.
[29] Mary Beth Beazley, *Shouting into the Wind: How the ABA Standards Promote Inequality in Legal Education, and What Law Students and Faculty Should Do About It*, 65 VILL. L. REV. 1037, 1063 (2020) (comparing ABA Standards and Rules of Procedure for approval of law school Chapter 2's anti-discrimination stance to Chapter 4's tri-partite rule on the status and treatment of law faculty).

represented in full-time tenure-line positions. Renee Allen, Alicia Jackson, and DeShun Harris suggest that the ABA's diversity policies are mere window-dressing.[30] They observe: "Once women have secured a skills teaching position through the various hiring pipelines, they often encounter more work, less pay, and gendered expectations not expected of their male colleagues."[31] That is, the faculty hierarchy is also gendered; and the social reality of this gendered hierarchy is that women in that system experience both lower status and significantly higher workloads.

Derrick Bell warned us to be on the lookout for symbolic gestures of equality and conciliation that could distract us from achieving real change.[32] Pay and status are admittedly important markers of progress. But equalizing pay and status alone will not destroy the gendered and subject-based hierarchies in legal education. To "abolish the caste system" and truly transform the legal education, we need to do more.

IV. Substantive Equality?

Dickerson urges law schools to convert all NTT faculty positions to tenure-line positions. But how would that work? And would it result in more equitable treatment of NTT faculty? If conversion is the only option presented to NTT faculty, some could lose their jobs if they decline the dual-sided opportunity and burden of joining the tenure track. If conversion requires that each NTT line be opened to a national search, experienced NTT faculty could lose their jobs to less costly entry-level hires.[33] If NTT faculty convert but the methods for evaluating their tenure applications remain unchanged, and if the new tenure-line faculty are not given the professional development resources to succeed, they could lose their jobs in an unsuccessful tenure bid.

Equality of status sounds good, on the surface. Yet digging deeper exposes the vulnerabilities of NTT faculty. Without strategies to support them, imposing a formal equality regime could actually cause more harm to NTT faculty. The promise of pay equity is not meaningful without information sharing and salary transparency, for instance. Teaching loads and administrative responsibilities may have to be rebalanced in significant ways to give tenure-line converts true opportunities to succeed. If status and job security are conditions for equality, then deans have to think creatively about how to provide those basics for NTT faculty who opt not to convert.

---

[30] Allen, et al., *supra* note 12, at 538–39 (on the illusion of equality).
[31] *Id.* at 538.
[32] *See* DERRICK BELL, FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM 19 (1992) (warning that symbolic gestures of progress provide only the illusion of change).
[33] During the May 2021 AALS webinar, Dean Danielle Conway from Dickinson Law gave some details about how she has guided the tenure conversion process at her school. Dean Conway's approach provides NTT faculty with advance time and support to prepare them to be competitive during a national search. *See* Dickerson, *supra* note 14, at 41:46.

Moreover, equalizing status through tenure conversion reinforces the notion that hierarchy is the preferrable way of structuring relationships in the law school ecosystem and does nothing to challenge the underlying conditions that create the rank ordering of different law faculty. Rather, to succeed, new tenure-line converts would seemingly be expected to assimilate themselves into the existing hierarchy.

Angela P. Harris has questioned whether equality can or should be achieved by expecting conformity to the existing structure. As she puts it: "Equality . . . demands transformation of the existing structure, not just tolerance of or remediation for those who are 'different.'"[34] In other words, remedial actions are necessary but insufficient on their own to achieve true equity for NTT faculty. Substantive equality for NTT faculty requires more than forcing the existing system to bend, it needs to break and be re-formed.[35]

Tenure provides job security and academic freedom, but on many law faculties the only form of an acceptable tenure application is that which contains multiple law review articles on expounding on doctrinal puzzles. Recognizing the value that NTT faculty bring to their institutions—a baseline goal for Dean Dickerson—requires that faculty tenure committees recognize and support varying research interests, including scholarship about pedagogy and the bar exam, for example.[36] This might also mean that the acceptable forms of scholarship should be broadened to include books, amicus briefs, policy white papers, or co-written law review articles.[37] As others have argued in detail, creating the conditions for substantive equality among law faculty who teach different subjects and course topics would also lead to significant improvements in the quality of legal education, a benefit to both students and consumers of legal services.[38]

---

[34] Harris, *supra* note 19, at 762.

[35] *See, e.g.,* Elizabeth Berenguer, Lucy Jewel & Teri A. McMurtry-Chubb, *Gut Renovations: Using Critical and Comparative Rhetoric to Remodel How the Law Addresses Privilege and Power*, 23 HARV. LATINX L. REV. 205, 206 (2020); George Critchlow, Brooks Holland & Olympia Duhart, *The Call for Lawyers Committed to Social Justice to Champion Accessible Legal Services Through Innovative Legal Education*, 16 NEVADA L.J. 251, 253 (2015).

[36] While championing equality of status for all full-time faculty, the Legal Writing Institute and the Association of Legal Writing Directors provides their members with scholarship support. The creation of innovative programs like the Lou Sirico Scholars' Workshop, "We Write" retreats, Peer Scholarship Exchanges, and Scholar Fora and Workshops has spurred the development of excellent scholarship on rhetoric, legal storytelling, metacognition, and more. Resources like these have also effected a cultural change in the discipline, resulting in increased scholarly output on the many topics that fall within the varied expertise of legal writing professors.

[37] UIC Law recently updated its faculty norms for promotion and tenure to account for the specific contributions of law librarians. The most significant amendment involves the inclusion of librarianship as a standard for evaluating law librarians, which considers both individual as well as collaborative achievements such as co-authored scholarly articles. *Promotion and Tenure Norms*, UIC LAW, 2, 5 (amended Nov. 12, 2021).

[38] *See, e.g.*, Syverud, *supra* note 18, at 12; Beazley, *supra* note 28.

Not all law schools will be able to convert NTT faculty immediately or even in the short term. In the meantime, a process of substantive equality requires that all full-time faculty are afforded voting rights on governance issues, including hiring and promotion decisions. Restricting the franchise to tenure-line faculty creates no incentives for law faculties to challenge or change the existing hierarchy, but even NTT faculty with voting rights remain compromised because their presence depends in large part on the dean's good graces. All full-time faculty should be encouraged to share their ideas, opinions, and expertise on matters of governance without fear of reprisal. Substantive equality means not only extending the ability for all faculty to participate in meaningful ways about how the law school is run, but also explicitly removing barriers to each faculty member's ability to vote their conscience unimpeded by job security concerns.

None of these suggestions standing alone would lead to transformative change, but a commitment to multiple and evolving strategies to ensure that all law faculty enjoy the benefits of substantive equality might.

V. Conclusion

In the same way that the Civil Rights Movement had indirect impacts on Native sovereignty struggles by developing a public discourse and raising awareness about racism as a social problem, substantive equality discourse has had a salutary effect on egalitarian thinking about job status and security issues in legal education. Although it is a different one from the liberation movements of minoritized racial groups or the sovereignty movements of native peoples on occupied land, the idea that all full-time law faculty should receive equitable treatment is itself an anti-subordination struggle. And law school deans and other decisionmakers with the sincere desire to disrupt the status quo and to bring transformational equity can adopt the lessons learned elsewhere.

If legal education is to seriously confront, restructure, and remedy the hierarchies that have subordinated certain classes of faculty in unfair and inappropriate ways, equal treatment is not the answer. Instead, deans must commit to completely reimagining legal education.