

# Coloniality, whiteness and invisibility of racial issues in legal education

*TORRES MÂCEDO, Beatriz Maurício<sup>1</sup>*  
*Universidade de Pernambuco, Arcoverde, PE, Brasil*

*CARDOSO, Fernando da Silva<sup>2</sup>*  
*Universidade de Pernambuco, Arcoverde, PE, Brasil*

## ABSTRACT

In the current study had been realized a critical reading of the consideration of the debate on racial issues in the political-pedagogical organization of legal training. We reflect upon the bases of bachelorism, dogmatism, and legal technicality as reactive propositions of whiteness and responsible for the erasure of racial issues in the aforementioned higher education. Thus, the central argument mobilized and developed throughout this text is that the initiatives that currently propose to question the white-Eurocentric-settler prototype of legal education in Brazil are closely linked shyly and insufficiently, and without greater specificity and criticism, the deconstruction of the racist and colonial heritage and, therefore, invisibilize aspects related to racial demands in juridical teaching.

*Keywords:* Coloniality. Whiteness. Racism. Legal education.

## Colonialidade, branquitude e invisibilidade de questões raciais no ensino

1 Graduada em Direito - Universidade de Pernambuco - Campus Arcoverde. Pesquisadora de Iniciação Científica pelo CNPq. Integrante do Grupo de Pesquisa: G-pense! - Grupo de Pesquisa sobre Contemporaneidade, Subjetividades e Novas Epistemologias (UPE/CNPq). Email: beatriz.mauricio@upe.br. Lattes: <http://lattes.cnpq.br/3047545599609231>. Orcid: <https://orcid.org/0000-0002-3899-6507>.

2 Professor Adjunto Nível I do Curso de Direito (Campus Arcoverde) e Professor Permanente do Programa de Pós-graduação em Formação de Professores e Práticas Interdisciplinares (Mestrado Profissional), ambos da Universidade de Pernambuco, e do Programa de Pós-graduação em Educação Contemporânea (Mestrado e Doutorado), Universidade Federal de Pernambuco/Centro Acadêmico do Agreste. Email: cardosodh8@gmail.com. Lattes: <http://lattes.cnpq.br/1087934915290279>. Orcid: <https://orcid.org/0000-0001-8460-0406>.

## RESUMO

No presente estudo realizamos uma leitura crítica acerca da consideração do debate sobre questões raciais na organização político-pedagógica do ensino jurídico. Refletimos as bases do bacharelismo, do dogmatismo e do tecnicismo jurídico enquanto proposituras reativas da branquitude e responsáveis pelo apagamento das questões raciais na referida formação superior. Assim, o argumento central mobilizado e desenvolvido ao longo deste texto é de que as iniciativas que se propõem, atualmente, ao questionamento do protótipo colono-branco-eurocêntrico das formações jurídicas, no Brasil, tangenciam de modo tímido e insuficiente, e sem maior especificidade e criticidade, a desconstrução da herança racista e colonial e, logo, invisibilizam aspectos relacionados às demandas raciais na educação jurídica.

Palavras-chave: Colonialidade. Branquitude. Racismo. Ensino Jurídico.

## **La colonialidad, la blancura y la invisibilidad de las cuestiones raciales en la formación jurídica**

## RESUMEN

En el presente estudio realizamos una lectura crítica de la consideración del debate sobre las cuestiones raciales en la organización político-pedagógica de la formación jurídica. Reflexionamos sobre las bases del bachillerato, el dogmatismo y el tecnicismo jurídico como propuestas reactivas de la blancura y responsables del borrado de las cuestiones raciales en la educación superior. Así, el argumento central movilizado y desarrollado a lo largo de este texto es que las iniciativas que actualmente se proponen cuestionar el prototipo colonial-blanco-eurocéntrico de la educación jurídica en Brasil tangencian tímidamente y de manera insuficiente, y sin mayor especificidad y criticidad, la desconstrucción de la herencia racista y colonial y, por lo tanto, invisibilizan aspectos relacionados con las reivindicaciones raciales en la educación jurídica.

*Palabras clave: Colonialidad. Blancura. Racismo. Educación jurídica.*

## INTRODUÇÃO

The legal training, in Brazil, is marked by whiteness and structural racism. Whether in relation to the organization of legal courses, the actors involved, or in relation to the teaching practice articulated in Bachelor of Law degree, historically, such spaces have reproduced given knowledge characterized by eurocentrism and the narcissistic sense common to the technicality and the normative-reductionist logic of thought in this field of knowledge.

Therefore, as to what concerns the training of professionals in this field and who work directly and indirectly with the appreciation and promotion of human diversity, legal training is an area that, over time, and in an opposite way, reserved the continuous and empty reproduction of uncritical norms and senses in detriment of critically thinking about the curriculum and pedagogical projects of Bachelor of Law degree.

The Resolution nº 5, dated December 17, 2018, establishing the National Curricular Guidelines for Undergraduate Law, shows the Curriculum Guidelines for the bachelor course of law degree in Brazil to fill these gaps and highlight the role of legal training in facing social inequality and injustice. In this regulation, some competencies, skills, and basic curricular contents are articulated as a way to guide Higher Education Institutions about the desired profile for those graduating from legal education courses.

Hence, the question of difference, associated with human rights, is articulated by the Resolution as a strategy for the transversal treatment of critical content and themes, among them racial issues. The linked questions to ethnicity and race field are contemplated in association with other subjects (environmental education policies, human rights education, education for the elderly and histories, gender questions and Afro-Brazilian, African, and Indigenous cultures, among others).

However, we argue in this text that the initiatives that currently propose to question the white-eurocentric-settler prototype of legal formations in Brazil, closely linked shyly and insufficiently, and without greater specificity and criticality, the deconstruction of the racist heritage and colonial and, for that reason, invisibilize aspects related to racial demands in law's degree courses.

Thereby, the present study situates and reflects that, historically, legal education was associated to the formation of bourgeois elites in large urban centers and, specific manner, their expansion has not started to consider and act in favor of a new scenario of linked questions related to social minorities. In this sense, we run a critical reading of the presence of the racial debate in the political-pedagogical formulation of legal education, in order to question the bases of legal bachelorism and technicality as reactive propositions of whiteness and responsible for the erasure of racial issues in that higher education.

At first, the survey starts from a critical reading (GERHARDT; SILVEIRA, 2009) as a way to situate the invisibility of racial themes in legal education, so that, we highlight some aspects of the debate arising from the studies of whiteness, the history and epistemic-political construction of Brazilian legal education. With a qualitative approach (ZANELLA, 2013), the research suggests reading theoretical that circulate on the elected subjects.

On the other hand, the bibliographic research is guided by books, scientific articles, and other academic publications, extracted from online search engines that thematize the historical-political-epistemological formation of legal courses in Brazil in interface with the thematic categories 'whiteness', 'coloniality of power' and 'of knowing'. In our view, the chosen theoretical approach contributes in a double dimension, to confer political significance to the arguments constructed and to guide the assumptions of the discussion.

We intend, therefore, to highlight present aspects in the theoretical universe in question and, hence, contribute to (re)thinking political-pedagogical outlines for legal courses that problematize and elucidate, in fact, the thesis of whiteness and racism in the training of legal professionals.

## **COLONIALITY OF POWER AND KNOWLEDGE: NOTES FOR THINKING ABOUT WHITENESS AND RACIAL ISSUES IN HIGHER EDUCATION**

Brazil, despite possessing the largest black population outside of Africa (CAVALLEIRO, 2005), is marked by practices that disqualify, hide and marginalize knowledge, know-how, and cultural practices that do not involve the Eurocentric understanding of rationality and the idea of the subject.

The university, equally, as a space forged from the erasure of non-white experiences, is also responsible for and debtor to actions that overcome the negation of certain non-eurocentric knowledge in the arrangement of the syllabus and in the organization of higher education courses. Thereby, higher education has, in the course of time, represented one more of the spaces in which the coloniality of power and knowledge (QUIJANO, 2014) are responsible for forging and determining the circulation of monocultural, classist, and racist experiences and learning.

Historically, in Brazil, higher education was designed by and for white elites and, systematically, excluded black and poor students - as well as other social minorities - from these spaces of knowledge. The implementation of the quota policy for students from such groups, in this sense, is part of the project that aims to repair and make higher education a mechanism to overcome the subalternities imposed by colonialism (COUTO; CARDOSO, 2022).

However, whiteness persists as a colonial and racist mark in these spaces and is the axis that, within the institutional bureaucracies, reaffirms, in the present, the absences produced by the violence of Eurocentrism. This dynamic, in turn, must be thought of from the constitution and domination of America, the first process of the colonality phenomenon, which inaugurated a certain pattern of power on the continent from a Western perspective (DUSSEL, 2005). This historical moment and process, violently, organized the structure and social existence of subaltern groups and was incorporated into the dynamics of the hegemonic institutions derived and developed by the colonizers themselves, among them, the university.

What we argue, in such a way, is that the predominant sociocultural imposition and part of the European domination project failed to completely eradicate the cultural and historical structures of the colonized, but that was implanted, as Quijano (2014) suggests, a unique and violent model of social practices in relation to the Other. There was, therefore, the normalization of the imaginary and social practices based on the dominant ideal of the West.

It is important to emphasize the difference between colonialism and colonality, the first being relative to the political, economic, and administrative domination of an empire/State over a certain people/territory. Colonality, which is not broken with the revolutionary processes of political independence, refers to the impacts of the imposition of hegemonic Eurocentric logics and values, together with the negation of other non-universal forms of culture and knowledge, which remain strong until the current day and reject everything that does not derive from the dictates of the colonizer (man, white and european) (DUSSEL, 2005).

Dussel (2005, p. 27) reiterates, in this way, that "this Modern Europe, since 1492, 'center' of World History, constitutes, for the first time in history, all other cultures as its periphery", thus, the conquest of America brings with it the myth of modernity. In the ethnocentric world view, the civilization self-denominated as modern and superior is seen as a form of evolution of the societies denoted as 'barbaric' and 'marginal'. For this purpose, the colonial project imposes a given Eurocentric culture and customs in a process of supposed emancipation of the peoples and traditions assimilated as inferior (DUSSEL, 2005). This assumption is called colonality of power, the false superiority of some societies and peoples to the detriment of others, and had, inside the idea of science and university, several arguments of subordination.

In this context, the differentiation between dominators and dominated came about, above all, from the concept of race. Quijano, in "Cuestiones y horizonte", resumes the debate on the colonality of power and points out that "la idea de raza, em su sentido moderno, no tiene historia conocida antes de América" (2014, p. 778), as the race would biologically justify the inferiority of

certain peoples in relation to others. Especially because the idea of European - which used to be a geographical origin - started to have a racial connotation and began to spread based on the social classification of the world population. So, from the idea of race, and, consequently, as an instrument of domination, racial groups seen as inferior were marginalized with regard to the base of the social power structure (QUIJANO, 2014).

Ballestrin (2013) affirms that, inside the coloniality of power, is observed the ramification of epistemic racism in the figure of the coloniality of knowledge. The subaltern becomes a hostage of coloniality because he sees himself as incapable of producing science as his colonizer as if Eurocentered knowledge were the perfect and complete expression of rationality. This aspect, in the university, was responsible for building the idea that it is not only about privileging the imperialist/colonizing narrative as the predominant one, but "how an explanation and a narrative of reality were established as normative" (SPIVAK, 2010, p. 48). This normatization, however, ends up disqualifying and taking as inadequate all other knowledge outside the hegemonic sphere of white-bourgeois academicism.

Allied to issues of subordination of the colonized, whiteness can be approached as "a performative silencing of white raciality" (BORGES, 2021) and points out that the impacts of racism and coloniality, in Brazil, are always impositions and violence based especially on the excluding image of the black person. Therefore, the impacts and resonances in the Brazilian academy are notable, since "the white academic community is characterized by not racialize and can remain silent before the privileges that are systematically guaranteed to them by the symbolic and material discrimination of black people in the space of production of knowledge" (BORGES, 2021, p. 833).

Behold, even the whiteness that publicly declares itself anti-racist, has enormous difficulties in placing itself as the responsible party and beneficiary of racism, since, almost always, it is not willing to renounce the advantages and privileges structurally ensured by the implicit and systematic coloniality of power and knowledge that make up the university and society.

For Law, particularly, resizing the boundaries and the modern/colonial imaginary that predominates in this field of knowledge presents itself as a necessity and a way out of the control of knowledge, the dominance of the coloniality of knowing (TONIAL; MAHEIRIE; GARCIA JUNIOR, 2017) that, in legal training and teaching, are based on epistemes that systematically highlight the intellectual, political, and economic colonization machine.

## **THE ABSENCE OF RACIAL ISSUES IN TEACHING AND CURRICULUM OF LAW COURSES**

Coloniality and whiteness directly interfere in the almost total absence of racial issues in the curriculum and pedagogical projects organized and carried out in Brazilian higher education, especially in legal courses. Taking into account that the creation of law courses, in Brazil, coincides with the formulation of the Brazilian university itself, as Gomes (2019) points out, the gaps and inconsistencies in this field persist, over time, in the emptiness of training routes and non-criticality of the curriculum.

Hence, the implementation, upon being problematized, of the first legal course in the state of Pernambuco, the Recife Law School, is an imperfect copy of the University of Coimbra, since the curriculum, in teaching methodology and in books adopted (GOMES, 2019). The break with the metropolis, even in one of the first courses in Brazil, whereby almost nothing changed at the beginning of academic production in the country, since there was a deep dependence on the Portuguese university model, which is perpetuated until today.

And, by your colonizing roots, it is not surprising that the Law School was the scene of several racist debates and thoughts. There was thus the institutionalization of these ideas with the entry of the positivist-Darwinist model in the 1870s, which sought not only to "eradicate" the black man from Brazilian society by encouraging immigration and miscegenation but also to blame black people for the country's underdevelopment (GOMES, 2019).

For this reason, "the [Brazilian] intellectuality already considers 'the Brazilian black problem' solved either from the perspective of miscegenation, on the one hand, or of whitening" (BERTULIO, 1989, p. 49, author's emphasis), on the other. It is plausible to state that the erasure of racial issues in Brazilian universities, particularly in law courses, is, above all, the result of the construction and maintenance of colonialist, racist, sexist, and misogynist knowledge structures and positions (CARDOSO; GALINDO; ALMEIDA NETO, 2022) within the academy itself.

Accordingly, for non-hegemonic proposals and ideas that come from marginalized knowledge to prosper in legal education and Brazilian universities, it is not enough for students, professors, and managers to propose specific changes, as if they were not part of society. For this reason, "the decolonizing struggle of academics must begin in the colonized academy" (CARVALHO, 2018, p. 3).

And, thus, decolonizing acquires meaning in the direct intervention in all spaces and in the very constitution of the university, especially in the content taught, through the disciplines, schedules, workloads, articulation between teaching, research and university extension and how the content is shared with

the students.

The decolonizing task is complex and difficult, given that, with the arduous struggle of the Black Movement, there has been the expansion of institutional incentives for the admission of black students into higher education, as in the case of Law Nº 12.711/2012, which reserves part of the admission spaces for black, brown and indigenous students, and such decolonizing actions are now encountering varied resistance. This is because, even though the presence of non-white students is essential in the project of a decolonized university, the issue of the subordination of knowledge is still little discussed in the dens of knowledge, mainly in legal courses.

That is why, this [recent] model of the academy, "characterized by the recent entry of a diversity of subjects that historically were left out of it [...], needs to have to circulate in it, also, the diverse knowledge produced by the history and culture of these subjects" (SILVA, 2017, p. 244). It is not enough, however, that the insertion of students is accompanied by the maintenance of Eurocentric methodologies of knowledge, after all, the intervention needs to take place in all aspects of the academy and daily life.

So, in the gaps and frontiers of knowing, categories and fundamental markers of difference can point to the questioning of standards and about occupying other spaces and the appreciation of experiences present in countries of the black diaspora, such as Brazil (COSTA; MENDONÇA, 2022). After all, when it comes to valuing knowledge related to racial issues,

[...] initiatives to establish epistemic sites of thoughts-other [...] are illustrations of critical border positioning that offer the possibility of placing 'other' pieces of knowledge and worldviews in critical dialogue with them (WALSH, 2005, p. 31).

On the other side, according to Silva, the curricula of law courses continue to be one of the greatest exponents of coloniality, since the preponderance of views and/or silencing of reality "[...] contribute to configuring ethnocentric mentalities, mentalities that tend to explain everything by using hierarchical comparisons or exclusive dichotomies between good and bad" (2011, p. 165).

It is coherent to state that there is, thus, a given power-to-know relationship about who is or may come to be represented or included in the university and, consequently, in the legal academy. This relationship is permeated by the omission and/or stereotyping of subjects and groups not covered by Eurocentric knowledge and, in particular, regarding racial issues.

The political-pedagogic and institutional projects of higher education institutions, in this case, should signal ways for the decolonizing practice of legal education to be consolidated, especially as regards public higher education.

The hierarchical and pedagogical subordination present in legal education tends to be increasingly confronted thanks to the growing presence of non-white students in the university, which has been increasing with the consolidation of racial quotas, principally in public universities (MUNIZ, 2022). With the consolidation of the presence of social movements in institutions of higher education, the critical and political force that contributes to the positioning of different subjects in the face of exclusionary and racist processes in the academy is also growing.

In such a way, the process of decolonizing legal education is a slow one and involves profound questioning of the hegemonic matrix of legal education, in addition to the difficult task of awakening colonized subjects to the notion of intellectual subordination imposed by the coloniality of knowledge. As if their academic and scientific productions were not enough to enter the university, and to the extent that they, substantially, need the Eurocentric knowledge of the colonizer, legal education needs to be opposed and read through new lenses, particularly those of race and whiteness.

This perspective may, thus, contribute to the reformulation that is expected of legal education in universities, specifically in terms of the content taught, pedagogical actions, and teaching methodologies. The logic of coloniality today calls for strategies that, by means of the participation of subordinated subjects, give rise to Higher Education as a space of revolution, criticism, and deconstruction of colonial-racist-bourgeois shades and paradigms.

## **WHAT IS THE ROLE OF LEGAL EDUCATION IN THE APPRECIATION OF DIFFERENCES? THINKING ABOUT RACIAL ISSUES**

In view of a larger, growing and necessary agenda of mobilization about the confrontation of racism and its implications in the university and particularly in legal education, the greatest challenge to higher education in Law courses is surely related to the fragile adoption of anti-racist policies and practices in these spaces. The majority of the actors involved and who seek, in this context, to engage in the anti-racist struggle, however well-intentioned they may be, are sometimes unaware of how prejudice against color is rooted in the various stages of education. The uncritical valorization and appropriation of aspects of technical and dogmatic dimensions as the core of legal education (MOREIRA; ALMEIDA; CORBO, 2022; ALMEIDA NETO, 2022) articulates several

mechanisms, implicit and explicit, of racialization and whitening of knowledge.

The fact that racial matters are, almost always, neglected in the formative dynamics employed in legal education refers to the fact that the predominant pedagogical posture is totally alien to the (racist) social reality that organizes Law itself. By contrast, higher education and the production of knowledge, in these courses, are often read as "a search for truth, or a will to truth, that prevents the jurist from imagining something different from the dogmatic construction of law" (ALMEIDA NETO, 2022, p. 39)

Law schools in Brazil continue to prepare students for high-level careers, aiming for high salaries and positions in public power and in competitions with technical functions. Through a strictly formalist pedagogy, limited and reproducer of norms and empty doctrines, learning in Law has been organized away from the "need for the construction of a plural education, which can understand the dynamics and social struggles, aiming at collective consciousness" (MANTELLI; NINOMIYA; SILVA, 2022, p. 104).

Law schools' engagement with racial diversity depends, therefore, on valuing a multicultural lens and deconstructing the traditional pedagogical practice - merely technical and dogmatic - that sustains and contributes to the daily maintenance of racist principles and practices. The emancipatory character of knowledge needs to be associated, thereby, with the organization of actions and teaching methodologies that are conducted in a way that breaks with the roots of the colonial heritage (hooks, 2013).

It is essential to problematize the uncritical and encasement character of legal education in order to, then, raise debates that escape the reading of the mere bureaucracy that crosses the field in question (MOREIRA; ALMEIDA; CORBO, 2022). Because of the clash between social reality and the legal norm, critically analyzing the bases of legal education becomes vital for a legitimate and continuous change in teaching and doing law.

It seems to us, however, that this dynamic is initiated and irradiated through the political-pedagogical projects adopted in each course and university. First of all, because the referred document can be considered as a mirror that guides and values, from the conception of the curriculum, discussed and elected, the recognition of abilities and perspectives inherent to critical education and committed to social aspects.

In the case of legal courses, particularly, the process of emptying curricula is directly related to the massification of bachelor of law degree, which, according to Cardoso, Galindo and Almeida Neto, values quantity over quality in higher education, as well as the lack of institutional stimulus to critical methodologies, which currently results in the training of thousands of Law operators who are unprepared and without citizen and political awareness of their social work (2022, p. 3).

The presence of themes related to racial issues is aroused, in this pedagogical dynamic, in face of a teaching process strongly directed towards the prioritization of learning processes that privilege the mere exegetical interpretation of codes and manuals, merely. The aforementioned epistemic emptying, in turn, directly affects the future performance of professionals in this area, which is strongly marked by the reproduction and silencing of countless forms of discrimination and violence.

Faced with the debate and instrumentalization of antiracist practices, Law graduates need to give prestige to a political-scientific vocation that critically deconstructs traditionalism and legal veneration (ALMEIDA NETO, 2022), that expands the role of research and university extension in the training of bachelors (CARDOSO, 2022) and, furthermore, discusses and problematizes the structural absence of studies on social issues (CARDOSO; GALINDO; ALMEIDA NETO, 2022), among them those of a racial nature, in the technical-dogmatic and propaedeutic curricular components.

In this respect, legal education, as a place for the signification of social phenomena in all its processes, is an instrument through which students have the possibility of developing anti-racist thought and individual and collective action on behalf of difference. The racial criticism of legal education, therefore, permeates the dissemination of decolonial learning, the democratization of knowledge, and the training of professionals who are aware of the privileges of whiteness.

In particular, we raise and refer to ways of adding social and political transformation to teaching, research and extension practice, relating such flows to direct work with structural aspects of inequality. Also, the role of legal education in promoting differences depends, a priori, on the valorization of learning methods and processes that signify in the resistance to positivist and uncritical neoliberal teaching. After all, higher education and legal education are privileged spaces for students to approach intervention in favor of racially-oriented demands.

## FINAL CONSIDERATIONS

From this discussion, we can make some assumptions related to the main argument initially presented. Firstly, that pedagogic instruments, such as the political-pedagogic project and the syllabus for the course, may be important in demarcating elements of an epistemic and pedagogic type that are important to the critical-decolonial enchainment of education in Law, in the sense of problematizing the presence of social questions that are essential to the actions

of professionals in this field, particularly and especially with regard to the demands of the black population, for example.

In contrast, the dimensionality of racial issues in legal education, strongly, depends on overcoming the baccalaureate and technical that represent the Law course curriculum. In other words, committed and conscious work on the theme in question is articulated with an agenda that seeks, in a broader sense, to articulate the presences and absences of the educational model adopted in Law undergraduate courses.

It's about, then, making demands of the academy about historically established privileges and how criticism of structural racism and whiteness may contribute to the deconstruction of the dynamics of power-knowing that are part of the epistemological and dogmatic dynamics adopted as the core of legal education and as regards the racial debate, for example.

The appeal to difference suggested here is, thus, cogitated from the recognition of the colonizing, white, eurocentric structure implanted and maintained in legal education. It goes through a struggle of a political-epistemic nature, and the questioning of scientific authority figures that, routinely, invisibilize subjects and their struggles based on a merely formalistic view of knowledge and uncommitted to the daily experiences of resistance.

It is necessary to discuss, from anti-racist lenses and practices, how the white-colonial-modern project of knowledge influences the perspectives on which bodies and experiences are likely to occupy Law, whether semantically or on a daily basis. Thinking about how the processes of systematic exclusion in relation to the black population and other social minorities are strengthened within higher education in Law demonstrates to what extent the project of an anti-racist university and legal education is still a fact to be achieved. This explains, finally, how coloniality operates in these spaces and, in turn, updates, extends and reaffirms the challenges in favor of knowledge that is emancipatory and linked to social struggles.

After all, structural racism, intrinsically rooted in legal academia, is underlined, especially, through omissions, absences and the silencing of subaltern experiences and narratives. The allusion to an anti-racist legal education is related to the affirmation that racism, as a system of social domination, marks the brazilian history of law education and gives rise to a new way of reflecting on and teaching and doing legal education in Brazil.

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