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The Critique is on the Glass: The Extension of Museum-Presentation Techniques to Substantively Advance Law School Pedagogy

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THE CRITIQUE IS ON THE GLASS: THE EXTENSION OF MUSEUM-PRESENTATION TECHNIQUES TO SUBSTANTIVELY ADVANCE LAW SCHOOL PEDAGOGY

*Rachel H. Smith**

I. INTRODUCTION

In *The Writing's on the Wall: Using Multimedia Presentation Techniques from the Museum World to Improve Law School Pedagogy*, Professor Cecilia A. Silver demonstrates how traditional law school teaching would benefit from embracing museum techniques.[1] *The Writing's on the Wall* offers museum presentation principles as a corrective to old-fashioned law teaching. And they certainly are. But they can be much more.

The museum techniques that the article describes are a starting point for thinking about museums as a useful analog to law schools, especially in confronting the biases, hierarchies, and injustices of the past and present. *The Writing's on the Wall* starts a conversation about the many ways that museums offer a way forward for law teaching and law schools. This essay seeks to continue that conversation by identifying how the decolonization movement in museums provides a model for teaching students how to critically read cases and learn legal doctrine.

II. BEYOND A CRITIQUE OF TRADITIONAL LAW SCHOOL PEDAGOGY

The Writing's on the Wall contrasts museum presentation techniques with the way legal education "privileg[es]" the text.[2] The article argues that "[i]t's time to welcome 'visualization'—using images, photographs, diagrams, and video to enhance, or even supplant, our near-exclusive reliance on language."[3] In particular, the article

* © 2023, All rights reserved. Vice Dean for Student Success, Mary C. Daly Professor of Legal Writing, St. John's University School of Law.

[1] Cecilia Silver, *The Writing's on the Wall: Using Multimedia Presentation Principles from the Museum World to Improve Law School Pedagogy*, 126 DICK. L. REV. 475 (2022).

[2] *Id.* at 484.

[3] *Id.* at 477.

claims that legal pedagogy has largely remained wedded to words and text alone, rather than embracing the use of images and multimedia.[4] It describes how the "relic" of text-bound pedagogy has been used to the detriment of law students and law teaching and concludes that "[a]n interdisciplinary approach, drawing on art historical principles, is essential."[5]

The article states, "[b]y presenting information in a range of formats to reach a broader audience, we acknowledge–and can energize–our heterogenous student population."[6] The article then offers "five high-impact, low-friction ways to improve the law school classroom through layered modalities, advance organizers, storytelling, labels, and color."[7] For example, Professor Silver recommends presenting the same material in various modalities, so that information is communicated in multiple variations, the way museums often use both text and audio to convey information.[8] And she describes the use of multimedia advance organizers, so the students are introduced to new lessons with a roadmap of what is to come in the form of a visual or audio signpost, the same way museum visitors are often provided with an orientation at the beginning of an exhibit.[9] In a similar vein, she suggests using storytelling to connect the ideas presented to students, as some museums connect visitors to a human narrative as a guide.[10] Professor Silver also recommends using labels on slides and boards to "chunk" information and catch students' attention.[11] And last, she explains that professors should thoughtfully use color, the way museums do, to set a tone and create a theme.[12]

While *The Writing's on the Wall* demonstrates that museum techniques have important lessons to teach about accessibility and inclusivity,[13] especially in how museums allow diverse visitors to learn the same information in different ways, the critique in *The Writing's on the Wall* is primarily focused on a type of teaching that feels part of the distant past for many of today's law professors—even those who are not teaching skills and simulation-based courses. For example, the article's description of the "typical first-year doctrinal course"[14] that features lectures, Socratic dialogue, and a final exam, doesn't account for the many "podium" law

[4] *Id.*
[5] *Id.*
[6] *Id.* at 501.
[7] Silver, *supra* note 1, at 502.
[8] *Id.* at 504.
[9] *Id.* at 507.
[10] *Id.* at 509.
[11] *Id.* at 510.
[12] *Id.* at 511.
[13] Silver, *supra* note 1, at 501. Professor Silver acknowledges that these techniques are critical "to avoid alienating students with learning disabilities." *Id.*
[14] *Id.* at 484.

professors who routinely use slides with images, audio and video clips, and interactive polling as part of their classes.[15]

But this doesn't mean that there isn't a role for museum-informed techniques even in these classes that have moved beyond the "stylistic straitjacket"[16] of hyper-traditional law teaching. Indeed, this is perhaps the most exciting extension of Professor Silver's proposal. While *The Writing's on the Wall* is largely concerned with old-fashioned law professors using museum presentation techniques to teach law students more effectively, the techniques have potential far beyond helping certain professors catch up to the modern realities of today's students, classrooms, and law practice.

The techniques that museums use to layer, contextualize, and critique information and ideas, including metatextual commentary on their own displays, provide a model for law teaching that empowers law students and challenges the biases and injustices that are endemic to the legal foundations of the law school curriculum. Professors who are already comfortable using visual and interactive techniques in their law school classes can look to museums for new ways to substantively question the material and engage their students in deeper discussions about the law. As *The Writing's on the Wall* shows, museums offer already innovative law teachers a suite of tools that will not only get students' attention, but will prepare them to be practicing attorneys who are invested in advancing justice and have been taught the skills to do so.

Viewed in this light, *The Writing's on the Wall* dovetails with scholarship—much of it written by skills professors and critical scholars—that advocates for law schools to progress beyond a tradition based on reading appellate decisions and attending lectures.[17] Critiques of Langdell's case method with its focus on the common law and its reliance on "Socratic dialogue" are longstanding.[18] As are critiques of the "cultural uniformity" of law schools and the way that uniformity

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[15] There is also a wealth of scholarship on the use of images in legal writing. *See, e.g.*, Ellie Margolis, *Visual Legal Writing A Bibliography*, 18 LEGAL COMMC'N & RHETORIC: JALWD 195 (2021).

[16] Silver, *supra* note 1, at 484 (citing to Elizabeth G. Porter, *Taking Images Seriously*, 114 COLUM. L. REV. 1687, 1690 (2014)).

[17] *See, e.g.*, Sherri Lee Keene & Susan A. McMahon, *The Contextual Case Method: Moving Beyond Opinions to Spark Students' Legal Imaginations*, 108 VA. L. REV. ONLINE 72, 77 n.37 (2022) (citing Edward Rubin, *What's Wrong with Langdell's Method, and What to Do About It*, 60 VAND. L. REV. 609, 611 (2007)) ("The great irony of modern legal education is that it is not only out of date, but that it was out of date one hundred years ago."); Lauren Carasik, *Renaissance or Retrenchment: Legal Education at a Crossroads*, 44 IND. L. REV. 735, 738–39 (2011).

[18] Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 NEB. L. REV. 113, 118 (1999) (citing Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 907–08 (1933)); Gerald P. López, *Transform-Don't Just Tinker With-Legal Education*, 23 CLINICAL L. REV. 471, 496 (2017) (describing numerous article and books calling for law school transformation).

reproduces hierarchy, conformity, and formalism.[19] As these scholars have extensively noted, the case method indoctrinates students into a static and hidebound view of the law that accepts, rather than challenges, the perception of American law as neutral, equitable, and fair.[20]

And since the reckoning over racial injustice that followed the murders of Ahmaud Arbery, George Floyd, and Breonna Taylor, many legal educators have agreed that law schools must do more to confront the systemic racism and inequality that infuse American law and legal institutions, including law schools.[21] But that means law professors must continue to identify specific methods for how to do that case-by-case and class-by-class.[22]

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[19] *See* Susan Ayres, *Inside the Master's Gates: Resources and Tools to Dismantle Racism and Sexism in Higher Education*, 21 J. L. SOC'Y 20, 29 (2021) (citing Sheila I. Vélez Martínez, *Towards an Outcrit Pedagogy of Anti-Subordination in the Classroom*, 90 CHI.-KENT L. REV. 585, 586 (2015)) ("[S]chools (including law schools) mirror society's power and hierarchy, and strive to preserve the status quo."); Nantiya Ruan, *Papercuts: Hierarchical Microaggressions in Law Schools*, 31 HASTINGS WOMEN'S L.J. 3, 12 (2020); Olufunmilayo B. Arewa et. al., *Enduring Hierarchies in American Legal Education*, 89 IND. L.J. 941, 949 (2014); Kathryn M. Stanchi, *Who Next, the Janitors? A Socio-Feminist Critique of the Status Hierarchy of Law Professors*, 73 UMKC L. REV. 467, 479 (2004); Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591 (1982).

[20] Keene & McMahon, *supra* note 17, at 77; Todd D. Rakoff & Martha Minow, *A Case for Another Case Method*, 60 VAND. L. REV. 597, 600 (2007) ("Langdell's case method fails in this mission. It fails because lawyers increasingly need to think in and across more settings, with more degrees of freedom, than appear in the universe established by appellate decisions and the traditional questions arising from them. The Langdellian approach treats too many dimensions as already fixed.").

[21] Rory Bahadur & Catherine Bramble, *Actively Achieving Greater Racial Equity in Law School Classrooms*, 70 CLEV. ST. L. REV. 709, 712 (2022) ("These institutional efforts are commendable and hopefully will facilitate progress towards racial equity in higher education, but true educational equity requires even more than programs, reflection, education, and sensitivity. It requires proactively seeking out solutions to disrupt the norms that keep disadvantaged populations disadvantaged within our spheres of influence."); Teri A. McMurtry-Chubb, *The Law School Curriculum and the Movement for Black Lives*, 31 U. FLA. J. L. & PUB. POL'Y 27, 28 (2020) ("[W]e must face the pandemic of white supremacy that pervades all levels of law school operations.").

[22] Marni Goldstein Caputo & Kathleen Luz, *A Book Club with No Books: Using Podcasts, Movies, and Documentaries to Increase Transfer of Learning, Incorporate Social Justice Themes, Create Community, and Bolster Traditional and Character-Based Legal Skills During a Pandemic*, 20 SEATTLE J. FOR SOC. JUST. 635, 636 (2022) (describing the "Book Club with No Books" that "used various forms of media—including a podcast, a documentary, and a movie—to engage students outside of our 1L Lawyering Skills classrooms"); Sha-Shana Crichton, *Teaching in the Time of Disruption: A Case for Empathy and Honoring Diversity*, 25 LEGAL WRITING: J. LEGAL WRITING INST. 4 (2021) (describing specific changes to legal writing teaching adopted after the Black Lives Matter protests of 2020); Norrinda Brown Hayat, *Freedom Pedagogy: Toward Teaching Antiracist Clinics*, 28 CLINICAL L. REV. 149, 155 (2021) ("As I have ruminated on antiracism in my own teaching and clinic over the last year and a half, I have settled on a non-exhaustive list of principles that I believe should guide my teaching, praxis, and scholarship on the road to antiracism and which may be helpful to others: (1) centering Blackness; (2) mapping critical race theory onto clinical pedagogy; (3) citing Black women; and (4) aligning with Black folx envisioning the Afrofuture where Black Lives Matter is not an aspirational proposition."); Rory Bahadur & Liyun Zhang, *Socratic Teaching and Learning Styles: Exposing the Pervasiveness of Implicit Bias and White Privilege in Legal Pedagogy*, 18 HASTINGS RACE & POVERTY L. J. 114, 176–77 (2021) ("Classroom teaching is only a springboard, from which we attempt

The Writing's on the Wall offers one framework for developing these methods. Professor Silver's argument can thus be expanded beyond an appraisal of the individual teaching methodologies of certain conventional law professors to a structural critique that offers tools to disrupt and update the pedagogical model and substantive curriculum at most law schools. *The Writing's on the Wall* offers the museum as an analogy for how an educational institution can be transparent about its own reliance on and reproduction of bigotry, racism, sexism, and inequality, while also attempting to educate and inform.

III.DECOLONIZING MUSEUMS & LAW SCHOOLS

The Writing's on the Wall tells a compelling story of the transition of museums from "Cabinets of Curiosities" to "Temples of Enlightenment."[23] In particular, the article describes how in the nineteenth century museums became significant public institutions and symbols of "national glory."[24] As national symbols, museums developed techniques to "help the lay person understand and appreciate the collections."[25] And "[t]he museum as educator was born."[26]

As Professor Silver depicts, museums began as a way for wealthy elites to display "plundered artifacts."[27] Beyond this depiction, however, is the ongoing movement to "decolonize" and confront the violent oppression reflected in the collections of many museums.[28] Museums now must contend with collections that include looted objects and human remains.[29] And even museums that don't still must address displays that reflect outdated and offensive depictions of marginalized

to prepare our students to leave the classroom and dive headfirst into the deep end. This requires us to redevelop law school curricula that are experience based, incremental, and multi-sensory.").

[23] Silver, *supra* note 1, at 478.

[24] *Id.* at 479.

[25] *Id.*

[26] *Id.* at 480.

[27] *Id.* at 479.

[28] DAN HICKS, THE BRUTISH MUSEUMS: THE BENIN BRONZES, COLONIAL VIOLENCE AND CULTURAL RESTITUTION *xi* (2020) (translating Aime Cesaire, Discours sur le colonialisme 1955: "And what of the museums, of which Europe is so proud? It would have been better, all things considered, if it had never been necessary to open them. . . . Here racism, no matter if it is declared or undeclared, drains all empathy away.").

[29] *See* SHIMRIT LEE, DECOLONIZE MUSEUMS 17 (2022) ("That museums today are seen by many as 'neutral' is a testament to the extent that the histories of museum spaces have been buried by their modern operators. To examine those histories is to know that museums are really *crime scenes* . . . spaces that house the memories of atrocities committed during the colonial period, including theft, murder, and genocide.").

communities and cultures and fail to acknowledge the living descendants of those depicted.[30]

Decolonization requires museums "to expand the perspectives they portray beyond those of the dominant cultural group, particularly white colonizers."[31] Museum decolonization takes many forms, but it requires museums to change "how they view themselves, from neutral custodians of knowledge to living entities curated by real people with their own biases."[32] Museums have repatriated objects, recontextualized them, and brought marginalized groups into the curating process as part of the decolonizing project.[33] But it has to be more than that. As artist and curator Shaheen Kasmani explains:

> It's not just about inviting indigenous and other marginalized people into the museum to help the institution improve its exhibitions; it's an overhauling of the entire system. Otherwise, museums are merely replicating systems of colonialism, exploiting people of color for their emotional and intellectual labor within their institutions without a corollary in respect and power.[34]

In his book *The Brutish Museums* about objects looted from Africa, and Benin in particular, Dan Hicks, the world archaeology curator of the University of Oxford's Museum of Anthropology and World Archaeology, argues for "meaningful action towards cultural restitution" that is "informed by the understanding that the violence is not some past act, to be judged by the supposed standards of the past, but an ongoing event . . . ."[35]

This same process is necessary for American law schools, especially as they continue to teach and reinforce doctrines that are grounded in the systemic racism and injustice at the center of American law. And it should be an urgent project for all

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[30] Leah Huff, *Museum Decolonization: Moving Away From Narratives Told By the Oppressors*, CURRENTS: A STUDENT BLOG EXPLORING THE INTERSECTIONS OF WATER, PEOPLE, AND THE ENVIRONMENT (May 31, 2022), https://smea.uw.edu/currents/museum-decolonization-moving-away-from-narratives-told-by-the-oppressors/.

[31] Rachel Hatzipanagos, *The Decolonization of the American Museum*, WASHINGTON POST (Oct. 11, 2018, 10:38 PM), https://www.washingtonpost.com/nation/2018/10/12/decolonization-american-museum/.

[32] *Id.*

[33] Elisa Shoenberger, *What Does It Mean to Decolonize a Museum?*, MUSEUMNEXT (Feb. 23, 2022), https://www.museumnext.com/article/what-does-it-mean-to-decolonize-a-museum/.

[34] *Id.*; *Film: How Can You Decolonise Museums?*, MUSEUMNEXT (June 2, 2020), https://www.museumnext.com/article/decolonising-museums/.

[35] HICKS, *supra* note 28, at *xiii*.

legal educators. Like museums, American law schools are built on a foundation of white supremacy, cultural hegemony, and colonial oppression. The enslavement of Black people and genocide of Indigenous Americans are written into the laws that our students study today and their effects persist in the experience of law students from marginalized communities. Like museums, law schools must be transparent about this foundation to serve their educational function. They must find ways to challenge it, be willing to enact substantive changes to correct it, and acknowledge that it is a problem of the present moment—not the past.

The approach that the American Museum of Natural History has taken to a diorama depicting Indigenous Americans provides one model for how law teaching can use museum-presentation techniques to teach students about existing law, while also teaching them how to view that law with a critical lens.

IV. ONE EXAMPLE: RECONSIDERING A SCENE

In 2018, the American Museum of Natural History in New York City visually addressed the inaccuracies in a diorama that purported to depict a meeting between the colonial Dutch and the indigenous Lenape in the seventeenth century.[36] The diorama, located on the museum's first floor as part of the Theodore Roosevelt Memorial Hall, is titled: "Old New York Diorama."[37]

The diorama is one that will be familiar to anyone who has seen any museum diorama of colonial interactions with indigenous people. The diorama suggests that the modern and more "civilized" Dutch colonists were welcoming to the primitive and exotic Lenape. The Lenape men are wearing loincloths. The women are topless. They are all barefoot and carrying leaves, beads, a wooden pipe. The Lenape are unarmed. In contrast, the Dutch are fully clothed, wearing hats, coats, tights, and shoes. The Dutch ships are shown in the background, along with a windmill. The diorama shows the Dutch leader with an outstretched hand, next to a man with a weapon on his shoulder and a metal helmet.

The museum's website explains the diorama's shortcomings: "This 1939 diorama depicts Dutch leader Peter Stuyvesant receiving a delegation of Lenape, including Oratamin, a sachem (leader) of the Munsee branch. But the depiction of the Lenape reflects common clichés and a fictional view of the past that ignores how complex and violent colonization was for Native people."[38]

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[36] *Old New York Diorama*, AM. MUSEUM NAT. HIST., https://www.amnh.org/exhibitions/permanent/theodore-roosevelt-memorial/hall/old-new-york-diorama (last visited Apr. 3, 2023).
[37] *Id.*
[38] *Id.*

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In an effort to address the diorama's problems, the museum has added a layer of visual commentary to the glass in front of the diorama.[40] This layer identifies and contextualizes the diorama's inaccuracies and biases.[41] The layer is labeled "Reconsidering this scene," and ten text boxes point out some of the specific ways the diorama reflects cultural stereotypes at the expense of historical accuracy and includes a quote from a contemporary Lenape elder.[42]

An article in the New York Times summarized the highlights of the text boxes as follows:

> The labels say, for instance, that if the scene had been historically accurate, the Lenape would have been dressed for the occasion in fur robes and adornments that signified leadership positions. Canoes would have been seen in the water next to the European ships. These were vital to colonial trade, providing access to items

[39] *Id.* (capturing a new interpretation of the 1939 Old New York Diorama).
[40] *Id.*
[41] *Id.*
[42] *Id.* ("New label copy describes the history of the Lenni-Lenape and includes a quote from a contemporary Lenape elder, in addition to offering a snapshot of where the Lenape, who were driven from their ancestral homeland, live today.").

> found further inland, where the larger ships could not navigate. The women did not wear impractical skirts. Further, some are likely to have been part of the negotiations, as women in Lenape societies (past and present) typically hold leadership roles. While only Stuyvesant was originally identified, the new labels also take note of Oratamin, a respected leader of the Hackensack, a Munsee branch of the Lenape.[43]

The museum had long been aware of the diorama's problems, but began to work on addressing them at least in part in response to calls from indigenous activists to decolonize the museum's displays.[44] The museum's choice to add visual commentary to the exhibit, rather than remove or revise it, was an effort to be transparent about how the diorama was problematic and how depictions of history reflect the subjectivity of their creators.[45] It was also intended to spur dialogue and engage museum visitors.[46]

In addition to pointing out problems in the exhibit, the museum added information about what happened to the Lenape and where they are now:

> A new panel placed on the wall near the diorama addresses an often-overlooked question: Where are the Lenape now? Before the arrival of the Dutch, around 30,000 Lenape lived in their homeland, territory that is now the northeastern United States. Forced to move repeatedly over several generations, the roughly 16,000 remaining tribe members now live across Canada and in Kansas, Oklahoma and Wisconsin. The panel shows a map with arrows starting in the regions they had to leave, and pointing to their new locations.[47]

This modern information was especially important to Bradley Pecore, a visual historian of Menominee and Stockbridge Munsee descent who consulted on the changes to the exhibit.[48] He explained: "I've walked through different museums, and

[43] Ana Fota, *What's Wrong With This Diorama? You Can Read All About It*, N.Y. TIMES (Mar. 20, 2019), https://www.nytimes.com/2019/03/20/arts/design/natural-history-museum-diorama.html.
[44] DECOLONIZE THIS PLACE, https://decolonizethisplace.org/ (last visited Apr. 3, 2023).
[45] HERMES CREATIVE AWARDS, https://hermesawards.com/ (last visited Apr. 3, 2023).
[46] Fota, *supra* note 43.
[47] *Id.*
[48] *Id.*

when you see Native people, they're in the corner playing with stones. We never arrive to be fully modern humans."[49]

The Writing's on the Wall describes how museums effectively layer information in different formats, especially to connect images to text.[50] The Old New York diorama does this by keeping the visually arresting, but deeply flawed diorama in place, and adding a layer of textual commentary. In doing so, the exhibit spans centuries. The exhibit captures the 1600s in the substance of the scene, 1939 in the problematic choices made in how to depict it, and 2018 when the textual layer was added—asking the visitor to think about those time periods in conversation with each other.

V. RECONSIDERING A CASE

This example of a museum addressing its non-neutrality explicitly and visually is a model for how case reading should be taught in law schools. Sherri Lee Keene and Susan A. McMahon propose a way to do this that they call "The Contextual Case Method."[51] In the contextual case method,

> we must assign additional materials—perhaps other documents in the case, like briefs, or legal scholarship or non-legal writing that provide a different perspective on the questions answered in the opinion. We must surround the opinion with other voices, other arguments, other approaches, to open the students' minds and allow them to envision other modes of legal argument or new frameworks for the law.[52]

Combining this contextual case method with Professor Silver's suggestions to use visual and multimedia museum presentation techniques is a way to teach students about the law while teaching them to critique the law.

Many of the cases law students are asked to read, even those decided recently, are like the Lenape diorama—monuments to outdated thinking, racial and cultural hierarchy, and unquestioned assumptions based on a white-male perspective. Contextualizing such cases with multidimensional and multisensory information based on a "Reconsidering this scene" model provides law professors the chance to go beyond the case method and its many faults and limitations.

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[49] *Id.*
[50] Silver, *supra* note 1, at 502–03.
[51] Keene & McMahon, *supra* note 17, at 72.
[52] *Id.* at 82.

For example, in 2020, the Supreme Court decided *McGirt v. Oklahoma*, a case that required the Court to contend with the past and present treatment of the Muscogee Nation.[53] *McGirt* was widely viewed as a win for the Nation because the Court held that, for purposes of the Major Crimes Act, land in eastern Oklahoma that had been reserved for the Nation since the nineteenth century was Native American territory. But the Court's opinions rely heavily on demeaning descriptions and racist opinions about Native Americans. A "Reconsidering this scene" approach to teaching *McGirt* would help students to learn about the case independently and critically, rather than relying solely on the Supreme Court's flawed opinion. What follows are suggestions about how this would be possible, using the contextual case method and Professor Silver's suggestions as a guide.

First, *McGirt* is a case about geographic boundaries, in particular whether the land described in nineteenth century treaties between the federal government and the Muscogee Nation remain under the control of the Muscogee today.[54] As such, the case in many ways is all about maps. Petitioner McGirt filed an appendix with numerous maps and the Muscogee Nation appended a map to its amicus brief.

The Supreme Court's opinion, however, provides no map of the territory at issue. A law professor teaching the case with "Reconsidering this scene" in mind would provide students with maps as a starting point for understanding the dispute. Maps are powerful visual depictions that are often used in museum presentations. The "Reconsidering this scene" exhibit includes two maps of where in New York City the diorama takes place and where the "Lenape people, then and now" are located.[55] And a slide presentation from the Smithsonian National Museum of the American Indian uses maps, photographs, and interviews with members of the Muscogee Nation to tell the story of the Nation's removal to the territory in eastern Oklahoma that is at issue in *McGirt*.[56] As a demonstration of the power of maps, after the Supreme Court's decision in *McGirt*, Google Maps was updated to show the tribal boundaries.[57] In an interview, Cherokee Nation citizen Joseph Erb told Native News Online: "It is an exciting step forward to be included on the map. This is a visual reminder that our nation is still here and a contemporary Indigenous nation of the continent."[58]

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[53] McGirt v. Oklahoma, 140 S. Ct. 2452, 2452 (2020).
[54] *Id.*
[55] *Old New York Diorama*, supra note 36.
[56] *The Removal of the Muscogee Nation*, SMITHSONIAN NATIONAL MUSEUM OF THE AMERICAN INDIAN, https://americanindian.si.edu/nk360/removal-muscogee/index.html (last visited Apr. 3, 2023).
[57] *Google Maps Recognizes Boundaries of Oklahoma Reservations Following McGirt Ruling*, NATIVE NEWS ONLINE (Sept. 23, 2020), https://nativenewsonline.net/currents/google-maps-recognizes-boundaries-of-oklahoma-reservations-following-mcgirt-ruling.
[58] *Id.*

Next, the tribe involved in the case is properly called the Muscogee Nation. The Nation's amicus brief identifies it as the "Muscogee (Creek) Nation." Creek was what the Nation was called by the British (likely due to the many waterways on its land), not how members referred to themselves.[59] After the Supreme Court's decision, the Nation removed (Creek) from its name with a spokesperson explaining that it was a misnomer.[60] Nevertheless, the Nation is called the Creek throughout the majority and dissenting Supreme Court opinions.[61] With "Reconsidering this scene" in mind, a law professor could include historical context about the name of the Nation, including from Muscogee Nation sources, to highlight the problems with using the name for the tribe that was imposed by white colonizers. Just as the glass in front of the Old New York diorama points out how the diorama was informed by bias in its depictions of the Lenape, a law professor can highlight the use of "Creek" by the Court. In doing so, the professor can use visual sources, including the past and current logos and seals used by the Nation, to highlight the Nation's self-identification.

Further, the majority and dissent refer to the Muscogee as one of the "five civilized tribes" covered by the Five Civilized Tribes Act of 1906.[62] Not surprisingly, "civilized" was a term imposed by white colonizers and based on how closely tribes emulated and assimilated European and American cultural norms.[63] Again, a law professor could present this term as something to be interrogated, not simply adopted. In doing so, the professor could use visual depictions of the culture of the Muscogee at the time—including drawings and photographs of Muscogee Nation leaders, members, and homes.[64] The Oklahoma Historical Society has photos from the time that would allow students to envision things as they were, rather than relying on extrapolations from the Court's incomplete description.[65]

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[59] *The Muscogee Creek*, NAT'L PARK SERV., https://www.nps.gov/liri/learn/historyculture/the-muscogee-creek-1600-1840.htm (last visited Apr. 3, 2023).

[60] Keegan Williams, *Muscogee Nation Drops Colonial Era Name in Rebranding*, CRONKITE NEWS ARIZONA PBS (May 6, 2021), https://cronkitenews.azpbs.org/2021/05/06/muscogee-nation-drops-colonial-era-name-in-branding/.

[61] McGirt v. Oklahoma, 140 S. Ct. 2452, 2459 (2020).

[62] *Id.* at 2466, 2483.

[63] Nia Clark, *Ep 1: The "Five Civilized Tribes" And The Complicated History Between Blacks and Native Americans*, DREAMS OF BLACK WALL STREET (Jan. 28, 2020), https://www.dreamsofblackwallstreet.com/post/black-wall-street-1921-episode-1-the-five-civilized-tribes.

[64] *See The Removal of the Muscogee Nation*, *supra* note 55.

[65] *See, e.g.*, Pleasant Porter (photograph), *in* OKLAHOMA HISTORICAL SOCIETY, THE GATEWAY TO OKLAHOMA HISTORY, https://gateway.okhistory.org/ark:/67531/metadc1620734/m1/1/?q=creek%20nation (last visited Apr. 3, 2023).

Last, as is often true in cases involving Indigenous Americans, the opinions in *McGirt* rely on authorities that are explicitly racist.[66] The use of racist precedent is not unusual in cases involving Native Americans. As one scholar has noted, "[j]urisprudence loaded with grotesque 19th-century racist stereotypes and factual errors about American Indians remains valid precedent."[67] For example, the majority cites to *Lone Wolf v. Hitchcock*,[68] a case described as "the American Indian Dred Scott,"[69] as it held that Congress could abrogate treaties with tribal nations.[70] The opinion also relies on the Indian Removal Act of 1830, § 3, 4 Stat. 412, and quotes its language "that such lands shall revert to the United States, if the Indians become extinct, or abandon the same."[71]

In contrast to the explicit racism of the legal authorities relied on in *McGirt*, the opinion avoids using direct language about the violence that permeated the treatment of the Muscogee. The majority, for example, gestures to the Trail of Tears,[72] describes the Nation's removal to Oklahoma as "ostensibly voluntary,"[73] eludes to broken promises,[74] identifies "pressures"[75] that were brought to bear, and states that "serious blows"[76] were dealt to the Muscogee. It also hints at the Nation's history when it remarks that "the Tribe could tell more than a few stories of its own."[77] And remarks casually that "[w]hatever else might be said about the history and demographics placed before us, they hardly tell a story of unalloyed respect for tribal

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[66] Adam Crepelle, *Lies, Damn Lies, and Federal Indian Law: The Ethics of Citing Racist Precedent in Contemporary Federal Indian Law*, 44 N.Y.U. REV. L. & SOC. CHANGE 529, 532 (2021) ("Attorneys in the present-day United States routinely use cases based on white supremacy to argue against American Indian rights, and judges unblinkingly cite these opinions in federal Indian law cases. Furthermore, many of the restrictions placed upon tribes by Congress are rooted in antiquated jurisprudence. Federal Indian law jurisprudence is often nothing more than racism cloaked as law.").
[67] *Id.*
[68] McGirt v. Oklahoma, 140 S. Ct. 2452, 2462–63 (2020) (citing Lone Wolf v. Hitchcock, 187 U.S. 553 (1903)).
[69] Crepelle, *supra* note 66, at 579 (citing Sioux Nation of Indians v. United States, 601 F.2d 1157, 1173 (Ct. Cl. 1979), *aff'd*, 448 U.S. 371 (1980) (Nichols, J., concurring)) ("The day *Lone Wolf* was handed down, January 5, 1903, might be called one of the blackest days in the history of the American Indian, the Indians' *Dred Scott* decision.").
[70] Bethany R. Berger, *Race to Property: Racial Distortions of Property Law, 1634 to Today*, 64 ARIZ. L. REV. 619, 647 (2022) ("The Court expanded this power in 1903 in *Lone Wolf v. Hitchcock*, holding that Congress could unilaterally abrogate treaties with tribal nations to parcel out their lands. Not only did Congress have 'full administrative power . . . over Indian tribal property,' but whether it had appropriately exercised that power was a political question not subject to judicial review.").
[71] *McGirt*, 140 S. Ct. at 2460 (citing Indian Removal Act of 1830, § 3, 4 Stat. 412).
[72] *Id.* at 2459.
[73] *Id.* at 2460.
[74] *Id.* at 2462.
[75] *Id.* at 2463.
[76] *Id.* at 2466.
[77] *Id.* at 2470.

interests."[78] But it never endeavors to tell this story of colonization directly or from the Muscogee Nation's perspective. And it avoids any language that would acknowledge that thousands of Muscogee died as a result of the interactions with the federal government that are at the heart of the Court's decision.[79]

Again, a "Reconsidering this scene" approach to teaching *McGirt* in a law school class would have a variety of methods to ameliorate the blind spots and obfuscations in the opinion. Students could watch videos of historians who are members of the Muscogee Nation; they could learn about the current leadership of the Nation and its governmental institutions; and they could see the impacts of the removal to Oklahoma across the centuries through photos, artwork, and storytelling.[80]

VI. CONCLUSION

Professor Silver is absolutely right that "[l]aw schools should emulate museums."[81] And that museums can "change attitudes, modify behavior, and increase the availability of knowledge."[82] Law professors should thus use museum-presentation techniques to contextualize and challenge legal authorities while they are being taught. As Professors Keene and McMahon explain:

> Failure to contextualize the opinion, leaving the actual drivers of the decision unacknowledged; leads students to trust that the rules are all that matter and that the system is fair and just. It presents a veneer of objectivity and neutrality over a system that is in fact deeply unequal and unfair.[83]

Museums that have started the work of decolonizing their displays are a model for how to do this. Museum techniques, used to contextualize what students read, are an engaging way for law professors to meet the needs of students who want to learn more than just how to read and repeat legal doctrine. These museums reflect that education is never neutral. And that law professors can and should harness the power of museum techniques to engage students in looking critically at the law we teach.

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[78] *Id.* at 2473.
[79] *See The Removal of the Muscogee Nation*, *supra* note 55.
[80] *Id.*
[81] Silver, *supra* note 1, at 489.
[82] *Id.* at 476 (citing DAVID DEAN, MUSEUM EXHIBITION: THEORY AND PRACTICE 3 (2002) (ebook)).
[83] Keene & McMahon, *supra* note 17, at 77.