Looking Forward to Diversity in Legal Academia

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Meera E. Deo, JD, PhD†

ABSTRACT

The landmark book Presumed Incompetent lays a politically deep and structurally solid foundation for further investigation into faculty diversity. Looking across disciplines and encompassing women of color from a variety of race/ethnic backgrounds, the book collects vignettes, personal narratives, empirical analysis, and theoretical ruminations on the current state of academia, with an interdisciplinary lens focused on women of color. In the past decade, emerging scholarship has reported on diversity in the natural sciences, engineering, and the social sciences. Yet, few empirical studies have investigated diversity among law faculty, and none have focused on women of color as the primary subjects of study. Drawing from Presumed Incompetent and the few existing studies of law faculty diversity, this Article proposes a new direction for future research. The Diversity in Legal Academia (DLA) study will empirically investigate faculty diversity using mixed methods and an intersectional perspective. The central research questions focus on the unique benefits and challenges facing female law professors of color, including concerns about promotion and tenure, work-life balance, and leadership opportunities. This Article also discusses the analytical approach best suited to test the specific hypotheses proposed for future study.

† Associate Professor, Thomas Jefferson School of Law. The author thanks Carmen Gonzalez, Angela Onwuachi-Willig, Catherine Albiston, Herma Hill Kay, Karla Erickson, and Linda Pololi for helpful advice and feedback on the study design, literature, and methodology discussed in this Article. Rudy Hasl also supported this project. Versions of this Article were presented at various conferences and benefited from the feedback received at the 2013 Association of American Law Schools Annual Meeting, the Spring 2013 Southern California Junior Faculty Workshop, and the March 2013 Berkeley Journal of Gender, Law & Justice symposium dedicated to Presumed Incompetent.
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INTRODUCTION

Academic studies of diversity abound, perhaps mirroring ongoing legal battles regarding affirmative action. Empirical researchers studying diversity and related issues have often focused their projects on racial diversity among students. Yet, faculty diversity may be especially critical today based on the unique challenges facing legal academia. With declining application and enrollment numbers at law schools across the country, it is as yet unknown whether student diversity will remain at constant levels. As a result, faculty hiring is decreasing as well, as law schools become less willing to spend their limited resources on hiring new faculty or considering lateral hires. Because both recruitment and retention rates for women of color faculty members are already low, hiring freezes will likely result in decreased numbers of women of color in legal academia. Interestingly, these challenges may also be coupled


3. See generally BRIAN Z. TAMANAH’S, FAILING LAW SCHOOLS (2012) (examining challenges facing legal academia, including dropping enrollment rates, rising tuition, and job uncertainty for law school graduates); Philip G. Schrag, Failing Law Schools—Brian Tamanaha’s Misguided Missile, 26 GEO. J. LEGAL ETHICS 387 (2013) (examining the economic barriers to providing legal services to lower-income individuals); Luz E. Herrera, Educating Main Street Lawyers, 63 J. LEGAL EDUC. 189 (2013) (discussing the economic challenges facing lawyers who serve private individuals rather than corporations).


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with increasing opportunities for leadership in legal education as Deans and Associate Deans retire and senior women of color are poised to step into some of those leadership positions that are so often filled by senior white males.\(^7\)

Unfortunately, there are few contemporary statistics on women of color in legal academia. In the past, the Association of American Law Schools (AALS) regularly released data on the race, gender, age, title, and security of position of American law faculty.\(^8\) Though AALS currently provides data regarding faculty who entered legal academia in 2008 and before, no statistics are available for more recent years.\(^9\)

We also lack qualitative data about faculty diversity. While the qualitative experience of law faculty who are women of color may be more challenging to discern than the raw numbers, it is at least as important. As UCLA School of Law Dean Rachel Moran has said, “Numbers are easy, numbers are specific . . . numbers never force us to look beyond the initial hiring decision to examine the quality of the academic experience for minority and women faculty members.”\(^10\)

Little formal empirical research has been done with law faculty to understand their experiences generally, let alone any unique challenges or opportunities facing women of color within the legal academy.

A useful theoretical framework for approaching this research lies with intersectionality,\(^11\) a product of Critical Race Theory suggesting that particular individuals exist at “an intersection of recognized sites of oppression.”\(^12\) From color have traditionally lower retention rates than their colleagues. See Katherine Barnes & Elizabeth Mertz, Is It Fair? Law Professors’ Perceptions of Tenure, 61 J. LEGAL EDUC. 511, 512 (2012) (“[P]revious research demonstrated that these traditional outsiders were leaving the law school tenure track in greater proportions than were white men.”) (internal quotation marks omitted).

7. For instance, American Bar Association (ABA) statistics show that 78.7% of current Deans and 79.1% of current Associate Deans are white. See AM. BAR ASS’N, TOTAL STAFF & FACULTY MEMBERS 2012-2013 (2013), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admission_s_to_the_bar/statistics/2012_2013_faculty_by_gender_ethnicity.authcheckdam.pdf.


9. Id.


this perspective, it is expected that women of color encounter a unique experience based both on race and gender, especially working within the traditionally white male establishment of legal academia. Though intersectionality has been employed to discuss workplace discrimination, violence against women, and queer justice, academics have rarely published studies that examine how the intersectionality of race and gender affect the experience of law faculty members. This long-overdue empirical investigation is the focus of this Article, which discusses the literature, framework, and analytical approach for the Diversity in Legal Academia (DLA) study.

Part I of this Article presents the limited statistical data currently available regarding faculty diversity in legal academia, highlighting how women of color are underrepresented in those elite spaces. Part II is a brief synthesis of existing scholarship regarding faculty diversity, divided chronologically into “The Classics,” and more contemporary scholarship. The conclusions of these various studies are discussed thematically. Part III presents the study design for Diversity in Legal Academia, a landmark empirical project on law faculty diversity, drawing from existing literature and centering on race- and gender-based similarities and differences between individuals working in legal academia. Part IV provides a preview of how to test particularly salient hypotheses through the Diversity in Legal Academia study.

I. DIVERSITY BY THE NUMBERS

For years, AALS reliably reported annual demographic details about members of the legal academy. Information was presented by race, gender, title, age, job security, and other measures. For reasons that have not been made public, AALS stopped publishing this data in 2009. Though five-year-old

13. See, e.g., Crenshaw, Mapping the Margins, supra note 12.
14. See, e.g., Crenshaw, Demarginalizing the Intersection, supra note 12.
15. See, e.g., Darren Rosenblum, Queer Intersectionality and the Failure of Lesbian and Gay “Victories,” 4 L. & SEXUALITY 83 (1994) (describing how queer identity is intersectional because “queers face multiple aspects of discrimination, as women, as people of color, as poor people, as cross-gendered people, and as sexual subversives”); Id. at 89.
16. See Richard Delgado & Derrick Bell, Minority Law Professors’ Lives: The Bell-Delgado Survey, 24 HARV. C.R.-C.L. L. REV. 349 (1989) (discussing a study of minority law faculty, though the focus was not on intersectional characteristics or women of color law faculty specifically).
17. AALS Statistical Report on Law Faculty, supra note 8. Note that the most recent data available on the website are from 2008-2009.
18. Id.
19. The five-year-old statistics presented here are the most complete data available. The American Bar Association (ABA) has also published data on law faculty. AM. BAR ASS’N, supra note 7. However, the data from the ABA does not track the demographics of those who applied for faculty positions, so it is not particularly useful for comparing the current demographics of law faculty to the pool of faculty candidates, an issue I explore later in this section. See infra pp. 108-12.
statistics may be somewhat outdated, they are the best information available and provide a helpful starting point to investigate law faculty diversity.\textsuperscript{20}

Approximately 62\% of law faculty members are men\textsuperscript{21} and at least 72\% are white.\textsuperscript{22} Of the 10,965 law professors nationwide, only 772 are women of color, comprising only 7\% of the total.\textsuperscript{23} These 772 women include African Americans, Asians or Pacific Islanders (APIs), Latinos, Native Americans, “Others,” and Multiracials.\textsuperscript{24} At least 67\% of all women in the legal academy are white.\textsuperscript{25}

If we look specifically at women of color in legal academia, an interesting picture emerges. While all people of color in legal academia are underrepresented, regardless of their racial or ethnic affiliation, Native Americans are perhaps the most isolated and structurally invisible. There are only twenty-one Native American women in legal academia—out of almost eleven thousand total law faculty members.\textsuperscript{26} Men slightly outnumber women in every racial or ethnic group, with two notable exceptions: whites and Blacks. For Black law professors, the numeric representation of women (409) is slightly higher than that of men (344),\textsuperscript{27} which parallels the gender gap in other academic and career outcome measures for Black professionals.\textsuperscript{28} This is the only racial or ethnic group for which women outnumber men. Whites are also an outlier with regard to the gender gap in legal academia, but in the opposite direction. The number of white men in legal academia (5,090) is almost double that of white women (2,741)\textsuperscript{29}—a significant gender disparity indicating that white women may also be victims of ongoing male privilege.\textsuperscript{30}

The race and gender disparities revealed by these data are exacerbated for tenure-track faculty. Of the 772 women of color faculty identified in the data, 396 are tenured or on the tenure track (about 5.9\% of the total tenure-track law

\begin{itemize}
  \item Data are discussed in the plural form and in present tense, consistent with most scholarship incorporating empirical research.
  \item GENDER AND AGE, \textit{supra} note 6.
  \item RACE AND ETHNICITY, \textit{supra} note 6; \textit{see also infra} Table 1. Note that 13.7\% of respondents did not identify their race, so the percentage of white faculty members could be as high as 85.1\%. \textit{See id.}
  \item GENDER AND AGE, \textit{supra} note 6. Non-white men are similarly underrepresented in legal academia, consisting of only 860 out of 10,965 total (or 7.84\%). \textit{Id}. This is also worthy of further empirical study.
  \item The racial terminology used here is that which AALS includes in its statistics, without definition or commentary. \textit{See id.}; RACE AND ETHNICITY, \textit{supra} note 6.
  \item GENDER AND AGE, \textit{supra} note 6. Taking the non-respondents into account, this number could be over 80\%. \textit{See id.}
  \item \textit{Id.}
  \item \textit{Id.}
  \item \textit{See, e.g.,} Anne McDaniel et al., \textit{The Black Gender Gap in Educational Attainment: Historical Trends and Racial Comparisons}, 48 DEMOGRAPHY 889 (2011).
  \item GENDER AND AGE, \textit{supra} note 6.
  \item For more on privilege generally, see STEPHANIE M. WILDMAN, PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA (1996).
\end{itemize}
faculty).\textsuperscript{31} This disparity comports with the literature indicating that women and people of color are often in positions of lower status as compared to white men.\textsuperscript{32} The numbers of tenured and tenure-track women of color law faculty may also shrink further as law faculty layoffs become more common, especially among the untenured ranks and others in non-secure positions.\textsuperscript{33}

As Table 2 shows, more than half (53\%) of the 772 women of color legal academics are African American. The next most populous group is Latinas (almost 18\%), followed by APIs (14.5\%). Fewer than 3\% of the 772 women of color are Native American.

\textbf{Table 1: Law Faculty, by Race, AALS 2008-2009 (N=10,965)}

<table>
<thead>
<tr>
<th></th>
<th>American Indian or Alaskan Native</th>
<th>Asian or Pacific Islander</th>
<th>Black/African American</th>
<th>Hispanic/Latino</th>
<th>White</th>
<th>Other race</th>
<th>More than one race</th>
<th>Race/ethnicity is not identified</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Men</strong></td>
<td>30</td>
<td>158</td>
<td>344</td>
<td>199</td>
<td>5090</td>
<td>67</td>
<td>62</td>
<td>869</td>
<td>6819</td>
</tr>
<tr>
<td></td>
<td>0.4%</td>
<td>2.3%</td>
<td>5.0%</td>
<td>2.9%</td>
<td>74.6%</td>
<td>1.0%</td>
<td>0.9%</td>
<td>12.7%</td>
<td>100.0%</td>
</tr>
<tr>
<td><strong>Women</strong></td>
<td>21</td>
<td>112</td>
<td>409</td>
<td>138</td>
<td>2741</td>
<td>34</td>
<td>58</td>
<td>578</td>
<td>4091</td>
</tr>
<tr>
<td></td>
<td>0.5%</td>
<td>2.7%</td>
<td>10.0%</td>
<td>3.4%</td>
<td>67.0%</td>
<td>0.8%</td>
<td>1.4%</td>
<td>14.1%</td>
<td>100.0%</td>
</tr>
<tr>
<td><strong>Gender is not identified</strong></td>
<td>0</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.0%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>51</td>
<td>270</td>
<td>753</td>
<td>337</td>
<td>7831</td>
<td>101</td>
<td>120</td>
<td>1502</td>
<td>10965</td>
</tr>
<tr>
<td></td>
<td>0.5%</td>
<td>2.5%</td>
<td>6.9%</td>
<td>3.1%</td>
<td>71.4%</td>
<td>9.9%</td>
<td>1.1%</td>
<td>13.7%</td>
<td>100.0%</td>
</tr>
</tbody>
</table>


\textsuperscript{32} Donna E. Young, Two Steps Removed: The Paradox of Diversity Discourse for Women of Color in Law Teaching, 2 AFR.-AM. L. & POL’Y REP. 270, 271 (1995) (explaining that female law faculty of color often “began teaching at significantly lower ranks than the minority men, obtained positions at significantly less prestigious schools, and were significantly more likely to teach low-status courses like legal writing or trusts and estates”) (internal quotation marks omitted).

\textsuperscript{33} For instance, in June 2012, Seton Hall Law School “gave notice to seven untenured professors that their contracts might not be renewed for the 2014-15 academic year.” Jones & Smith, supra note 5.
Quantitative research on female law faculty suggests that women of color may face particular barriers with hiring and promotion because of the bias and discrimination present within legal academia.\(^34\) A report from the AALS Committee on the Recruitment and Retention of Minority Law Teachers ("the AALS Report") indicates that the hiring gap between white and non-white faculty actually increased between 1990 and 1997.\(^35\) Additionally, the AALS Report reveals a widening tenure gap between white faculty members and their colleagues of color.\(^36\) In other words, even after people of color are hired as tenure-track law faculty members, an alarmingly high percentage does not achieve tenure within the anticipated time. For instance, for the 1996-1997 cohort, 73\% of white law professors were granted tenure by year eight, as compared to only 47\% of law professors of color.\(^37\) Even more disconcertingly, from an intersectional standpoint, minority women appear to achieve tenure later than either minority men or white women. In the 1996-1997 cohort, 31.9\% of white men achieved tenure by year five, compared to 26.5\% of white women and 27.3\% of minority men.\(^38\) In the same timeframe, only 9.1\% of minority women achieved tenure.\(^39\)

These disparities cannot be explained away by suggesting that the pool of applicants seeking positions in legal academia is non-diverse. Two sets of statistics are relevant here. First, we can consider the pool of those individuals

\(^{34}\) Deborah J. Merritt & Barbara F. Reskin, The Double Minority: Empirical Evidence of a Double Standard in Law School Hiring of Minority Women, 65 S. CAL. L. REV. 2299, 2357 (1992) ("Minority women suffer a pervasive disadvantage in the job market that cannot be explained by differences in their credentials or personal constraints."). See infra Part II for more studies on racial/gender discrimination in law faculty hiring.


\(^{36}\) Id.

\(^{37}\) Id.


\(^{39}\) Id.
who submit an application to enter law teaching through the formal AALS process. Second, we can look at the entire pool of recent law school graduates, considering them all as potential law faculty members.

The first and more formal pool of eligible candidates may be measured by looking at individuals who actually apply for law teaching positions through AALS. In August of each year, AALS releases the first of three rounds of materials from applicants interested in being considered for law teaching positions around the country. The materials consist primarily of a Faculty Appointments Register (“FAR”) form, which lists applicants’ educational and experiential background, as well as their teaching and research interests, publications, and references. Law schools that seek to hire new faculty consult these materials and contact applicants for interviews during the “Faculty Recruitment Conference.” During this job market event in Washington, D.C., representatives from various schools hold first-round interviews with applicants they have selected based on their FAR forms or for other reasons. Applicants who are favorably received at this first meeting are invited for full-day interviews at the interested law school, where each applicant presents a “job talk” to share his or her scholarship, and also meets with current faculty members, administrators, and sometimes staff and students. After this, applicants will receive news that the school is extending them an offer of employment, or that the school has decided to not extend them an offer.

It is therefore helpful to examine the data for individuals who apply through AALS to determine the pool of applicants seeking positions in legal academia. Again, these data come directly from AALS and cover the time period of 2008 to 2009. The findings, presented in Table 3, indicate that 865 individuals submitted FAR forms that year. Of those, 535 (61.8%) identified as men, compared to 301 (34.8%) who identified as women. Of the 535 men, only 84 (6.4%) identified as men of color. Of the 301 women, almost three-quarters (70.4%) identified as white women, leaving just 64 (21.3%) women of color applicants for law teaching positions. Thus, women of color represent 7.3% (64 of 875) of the total applicant pool, slightly higher than the current representation of women of color in legal academia (7.0%). Men of color represent 10.2% (89 of 875), again higher than

41. Faculty Appointments Register, supra note 40.
42. Id.
44. Id.
45. Id.
46. These data also come from the AALS statistics, supra note 8.
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The 7.8% of current male legal academics of color. These statistics indicate that the applicant pool, as evidenced by the number of FAR applicants, slightly exceeds the current representation of people of color in legal academia. This may be a good sign. Since the pool of applicants has more diversity than the legal academy as a whole, the academy should draw generously from the applicant pool of people of color and increase diversity overall. This evidence of greater diversity in the applicant pool counters the excuse that there are not enough qualified applicants of color to fill current positions in legal academia.

Table 3: FAR Submissions, by Race & Gender, AALS 2009 (N=875)

<table>
<thead>
<tr>
<th></th>
<th>American Indian or Alaskan Native</th>
<th>Asian or Pacific Islander</th>
<th>Black/ African American</th>
<th>Hispanic/ Latino</th>
<th>White</th>
<th>Other race</th>
<th>More than one race</th>
<th>Race/ ethnicity is not identified</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Men</td>
<td>4</td>
<td>28</td>
<td>29</td>
<td>23</td>
<td>385</td>
<td>3</td>
<td>2</td>
<td>64</td>
<td>535</td>
</tr>
<tr>
<td></td>
<td>.7%</td>
<td>5.2%</td>
<td>5.4%</td>
<td>4.3%</td>
<td>72.0%</td>
<td>.6%</td>
<td>.4%</td>
<td>11.4%</td>
<td>100.0%</td>
</tr>
<tr>
<td>Women</td>
<td>1</td>
<td>12</td>
<td>38</td>
<td>12</td>
<td>212</td>
<td>1</td>
<td>0</td>
<td>25</td>
<td>301</td>
</tr>
<tr>
<td></td>
<td>.3%</td>
<td>4.0%</td>
<td>12.6%</td>
<td>4.0%</td>
<td>70.4%</td>
<td>.3%</td>
<td>.0%</td>
<td>8.3%</td>
<td>100.0%</td>
</tr>
<tr>
<td>Gender is not identified</td>
<td>0</td>
<td>1</td>
<td>6</td>
<td>2</td>
<td>13</td>
<td>0</td>
<td>0</td>
<td>17</td>
<td>39</td>
</tr>
<tr>
<td></td>
<td>.0%</td>
<td>2.6%</td>
<td>15.4%</td>
<td>5.1%</td>
<td>33.3%</td>
<td>.0%</td>
<td>.0%</td>
<td>43.6%</td>
<td>100.0%</td>
</tr>
<tr>
<td>Total</td>
<td>5</td>
<td>41</td>
<td>73</td>
<td>37</td>
<td>610</td>
<td>4</td>
<td>2</td>
<td>103</td>
<td>875</td>
</tr>
<tr>
<td></td>
<td>.6%</td>
<td>4.7%</td>
<td>8.3%</td>
<td>4.2%</td>
<td>69.7%</td>
<td>.5%</td>
<td>.2%</td>
<td>11.8%</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

There are some concerns about considering those who submit FAR forms with AALS as representative of all possible law teachers. First, the data in Table 3 may be over-inclusive in the sense that more women of color could be listed there than would realistically be able to accept positions of employment at legal institutions. Some applicants may withdraw from the process after submitting their forms, while others may receive offers that they are unable to accept. Women of color may be more likely to withdraw, as they tend to lack mentoring and may have more personal challenges that interfere with career changes.

47. Many professions see an increase in diversity at lower ranks while more senior positions (filled by those hired decades ago) reflect greater homogeneity. Unfortunately, this cannot be clearly demonstrated for law teaching. While AALS published statistics on new law faculty in 2009, it did not disaggregate by race and gender. See ASS’N OF AM. LAW SCHS. 2008-2009 AALS STATISTICAL REPORT ON LAW FACULTY, NEW FACULTY (2009), http://www.aals.org/statistics/2009dlt/new.html. In addition, the vast majority of respondents did not identify their race/ethnicity. Id. Thus, it seems there were at least 31 people of color hired into law teaching in 2009 (as compared to at least 119 whites), but an additional 369 did not identify their race/ethnicity. Id. We can say that at least 6.0% of new hires were people of color (as compared to over 14% people of color in legal academia overall), but that gives us no understanding of whether diversity is increasing from the bottom up. See id.

48. Simply filling out a FAR form does not of course suggest an applicant is qualified. See infra note 54 (discussing questions of merit).

49. For instance, law professor Adrien Wing writes about her marriage ending soon after the
However, it is much more likely that this pool is under-inclusive, excluding a large number of women of color who could potentially excel as law faculty. Although few law faculty members secure positions outside of the formal AALS process, 50 many who do not formally apply could be successful legal academics if they received sufficient encouragement to engage in the process. Perhaps we should think more broadly about the pool of possible law professors. 51 Of course, those who formally apply to teach should be considered. But when theorizing the pool of possible applicants, we should also include those who do not think to apply for these positions because law teaching is beyond their habitus 52 or comfort zone.

A second useful mechanism for measuring the pool of possible law professors is to consider all recent law school graduates as potential law teachers. 54 Much has been made of the increasing numbers of women and people of color who began their legal education in the past decade. Academics, journalists, and others proudly announced when there were more female applicants and enrollees in law schools than males, and wondered whether we

birth of her first child, all while she was a new tenure-track law professor. Adrien Katherine Wing, Lessons from a Portrait: Keep Calm and Carry On, in PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA 356, 362 (Gabriella Gutiérrez y Muhls, Yolanda Flores Neimann, Carmen G. González & Angela P. Harris eds., 2012).

50. See AALS Recruitment Conference, YALE L. SCH., http://www.law.yale.edu/academics/candidates_aals.htm (last visited May 1, 2014) (“The vast majority of new law teachers, both academic and clinical, are hired through the annual Faculty Recruitment Conference sponsored by the Association of American Law Schools (AALS).”).

51. Some have suggested targeting recruitment efforts at the bar to increase participation from potential faculty of color who may be practicing rather than pursuing law teaching careers. See, e.g., Rennard Strickland, Scholarship in the Academic Circus or the Balancing Act of the Minority Side Show, 20 U.S.F. L. REV. 491 (1986).


53. Many who fail to graduate from law school because of the challenging climate, lack of support, or for other reasons could also no doubt become excellent law professors if given the proper attention and encouragement. See DOROTHY H. EVENSEN & CARLA D. PRATT, THE END OF THE PIPELINE: A JOURNEY OF RECOGNITION FOR AFRICAN AMERICANS ENTERING THE LEGAL PROFESSION 6 (2013) (discussing the authors’ findings that recognition of academic potential and success motivates students to enter the “pipeline leading to education and employment”).

54. One likely critique of using law school graduates as a pool of possible law professors is that many may not be qualified to enter legal academia. In fact, a redefinition of merit or expansion of the standard prerequisites for entering law teaching may well be overdue; there seems to be no evidence that elite educational credentials, student membership in a law review, a judicial clerkship, or a post-ID degree are directly related to, or even loosely correlated with, the production of excellent scholarship, teaching, and service (which are the standard measures of success in legal academia). This point is outside of the scope of this Article, though it is certainly worthy of further thought and discussion.
had succeeded in eliminating the vestiges of gender discrimination in law. Law schools trumpeted their commitment to diversity, confident that it was paying off with increasing numbers of women and students of color. However, it is unclear whether these same law schools invested in resources to retain women and students of color or to create a climate facilitating their success. Tables 4 and 5 present statistics on law school graduates by gender and race, showing that the pool of potential female law professors of color likely exceeds their paltry representation in the profession. For those graduating from law school in 2009, slightly less than half (45.9%) were female. Though the ABA does not release data disaggregated by race/ethnicity and gender, we see that 22.1% of the total law graduates in 2009 were students of color.

Table 4: JD and LLB Degrees Awarded, by Gender (N=44,004), ABA

<table>
<thead>
<tr>
<th></th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>23,813</td>
<td>54.1</td>
</tr>
<tr>
<td>Female</td>
<td>20,191</td>
<td>45.9</td>
</tr>
<tr>
<td>TOTAL</td>
<td>44,004</td>
<td>100</td>
</tr>
</tbody>
</table>

Table 5: JD Degrees Awarded, by Minority Status (N=44,004), ABA

<table>
<thead>
<tr>
<th></th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-white</td>
<td>9,725</td>
<td>22.1</td>
</tr>
<tr>
<td>White</td>
<td>34,279</td>
<td>77.9</td>
</tr>
<tr>
<td>TOTAL</td>
<td>44,004</td>
<td>100</td>
</tr>
</tbody>
</table>


56. See, e.g., Law School Wins Award for Commitment to Ethnic and Racial Diversity, SCU TODAY (June 12, 2001), http://www.scu.edu/r/news/releases/release/4620/Law-School-wins-award-for-commitment-to-ethnic-and-racial-diversity (highlighting award for increasing racial/ethnic diversity at Santa Clara School of Law).


59. See infra Table 4. I use statistics from 2009 here in order to parallel the statistics available for law faculty from AALS.

60. See infra Table 5. Recent declining enrollment figures indicate that the gains made by female students may already be eroding. See Debra Cassens Weiss, Men Outnumber Women at Most Top Schools, ABA J. (May 9, 2011, 7:14 AM), http://www.abajournal.com/news/article/men_outnumber_women_at_most_top_law_schools _but_the_imbalance_is_greater_at/ (noting the discrepancies between the number of men and women at top law schools).
Some have raised the concern that students and recent graduates are not mentored or encouraged to seriously consider law teaching as a realistic career path. Nevertheless, many of those in this pool could rise to meet the challenges of legal academia with the proper support and mentorship.

Another concern is that the gains attained by these often marginalized populations have not remained constant: studies now indicate that the foothold secured by women and students of color in legal education may be slipping. For instance, although African Americans and Mexican Americans “have been applying to law schools in relatively constant numbers,” individuals from these groups “account for a significantly smaller percentage” of current entering classes when compared to two decades ago. Moreover, as applications have dropped nationally, schools continue to struggle to attract and retain students; these trends may lead to even lower representation of students of color, women students, and others who are traditionally underrepresented in the law school classroom.

Thus, whether we consider recent law school graduates or applicants who submit their FAR forms through the formal AALS process, the pool of possible female law faculty color is greater than the current representation of 7.0%. Many more individuals may be capable of becoming law faculty than actually attain that status; of course a number of those who formally apply for faculty positions are rejected. The next section considers some reasons why women of color remain underrepresented in legal academia.

II. DOCUMENTED LAW FACULTY EXPERIENCES

The academic literature on diversity focuses overwhelmingly on students in the higher education context. Dozens of articles consider the potential contributions of student body diversity in higher education, while others contemplate the meaning and salience of “critical mass,” “microaggressions,” and “diversity” itself. Many of these studies indicate that diversity leads to the

61. See, e.g., Strickland, supra note 51 (discussing that among law students of color, a lack of consideration for law teaching as a potential career path is in part based on a lack of mentorship).
62. See DISTURBING TREND, supra note 4.
63. Id.
64. See Phipps, supra note 4; see also Jones & Smith, supra note 5.
inclusion of broader perspectives, improved learning and outcomes, and better engagement in the classroom. 66

However, recent research suggests that structural diversity (i.e., the existence of raw numbers of students of color on campus) may not automatically translate into diverse interactions or improved classroom learning. Instead, optimal learning outcomes may depend on adept faculty members who are trained and comfortable leading diversity discussions. 67 Women and people of color may be better prepared to facilitate these conversations, and more comfortable doing so. 68

An in-depth review of the relevant literature reveals few studies of legal academia, and of these, only a small percentage center on female law faculty or law faculty of color. 69 In fact, in spite of many excellent and wide-ranging studies involving diversity, there are two disconcerting gaps in the academic literature surrounding diversity in higher education. 70 First, the overwhelming majority of the research has centered on students, excluding perspectives from faculty. While students are clearly an important component when studying...
diversity in higher education, they are not the only piece of the puzzle. In fact, faculty diversity studies may be at least as important, as faculty members better reflect the possibility of diversity as a permanent—or at least long-term—institutional feature.  

Second, most diversity studies focus primarily on race. Again, while racial diversity is clearly an important aspect of diversity, it is not the only relevant feature. Many consider white women to be the “primary beneficiaries of affirmative action,” even though white women have often led litigation efforts challenging affirmative action. The few studies of law faculty primarily represent white men, since this population reflects the overwhelming majority in legal academia. Empirical studies of racial diversity in higher education rarely focus on women; conversely, studies that focus on women rarely give women of color center stage. Refocusing the lens to highlight intersectional characteristics—both race and gender—could therefore shed more light on the issue of diversity overall, revealing differing challenges and opportunities facing women as compared to men, and people of color as compared to whites.

Current scholarship includes a small but growing body of literature on the importance of faculty diversity, yet very few of these pieces of scholarship draw from empirical data. One recent empirical study excludes pre-tenured faculty, although it does include some analysis of race and gender. Overall, the existing literature lays a foundation for current scholarship on female faculty of color at the margins of legal academia. This section of the Article thus begins with early scholarship on faculty of color in legal academia, from scholars

71. Because faculty diversity would potentially more permanently diversify an institution than student diversity, it could also be used as a measure of institutional support for diversity as a “core” value rather than a “surface” (or token/nominal) one. See Rebecca K. Lee, Core Diversity, 19 TEMP., POL., & CIV. RTS. L. REV. 477, 479-80 (2010) (discussing “surface” versus “core” diversity ideals in the workplace).


73. As of 2008-2009, the most recent year for which data are available, approximately 62% of law faculty members were men and at least 72% were white. RACE AND ETHNICITY, supra note 6.

74. There are some empirical research studies focusing on women; however, most of these studies do not focus on race in addition to gender, and all could be updated to reflect current trends and patterns from the past decade. See, e.g., Marina Angel, Comments in Reply: It’s Becoming a Glass House, 50 J. LEGAL EDUC. 454 (2000); Marina Angel, The Glass Ceiling for Women in Legal Education: Contract Positions and the Death of Tenure, 50 J. LEGAL EDUC. 1 (2000) [hereinafter Angel, Glass Ceiling]; Marina Angel, Women in Legal Education: What It’s Like to Be Part of a Perpetual First Wave or the Case of the Disappearing Women, 61 TEMP. L. REV. 799 (1988) [hereinafter Angel, Women in Legal Education]; Merritt & Reskin, supra note 34, at 2356-57; Judith Resnik, A Continuous Body: Ongoing Conversations About Women and Legal Education, 53 J. LEGAL EDUC. 564 (2003).


76. See Barnes & Mertz, supra note 6.
LOOKING FORWARD TO DIVERSITY IN LEGAL ACADEMIA

including Richard Delgado, Derrick Bell, and Rachel Moran. Their research provides the groundwork for our contemporary understanding of marginalization and alienation in the academy for underrepresented groups. This section then examines more recent literature, including emerging scholarship, on contemporary barriers to achieving diversity in legal academia and challenges facing those who are diversifying legal academia with their presence.

A. Themes from the Classics

Thirty years ago, the University of San Francisco School of Law sponsored a symposium that collected many faculty of color together to reflect on the state of the professoriate. Resulting from that conference was a symposium volume examining a host of issues, from Derrick Bell’s Strangers in Academic Paradise: Law Teachers of Color in Still White Schools,77 to Rachel Moran’s commentary on Being a Society of One.78 Collectively, the articles in that volume formalized what had already been an ongoing conversation about the lack of diversity in legal academia at the faculty level. Two themes stand out from that volume, which captured the challenges of diversity in legal academia at the time. The first theme deals with a lack of representation overall, documenting how few faculty of color and female faculty existed in the legal academy. The second theme involves the challenging qualitative experience of the few legal academics of color and women in legal academia.

1. Representation

Moran’s article exposes a depressing lack of diversity in legal academia. She notes a then-recent study showing that 30% of participating law schools reported no minority faculty on the tenure track, and 75% of law schools had less than 15% female faculty.79 Yet, the negative experiences of these underrepresented faculty members were even more disconcerting than the paltry numbers. Because the “structural limits on meaningful participation in the academic community are systematically ignored, . . . the isolation of minorities and women [is perpetuated].”80

While the landmark article Becoming Gentlewomen focuses on female students, it identifies a broader theme that applies equally poignantly to women faculty and to faculty of color: alienation of the “other.”81 Guinier suggests mentorship as a way of improving outcomes for women in legal education,

78. Moran, supra note 10.
79. Id. at 504-05.
80. Id. at 506.
pointing to numerous benefits that tend to accompany mentor relationships in law school.\textsuperscript{82} Faculty of color and female faculty may need mentors to help guide them through the “acculturation” process of adjusting to the norms and values inherent in traditional legal academic circles.\textsuperscript{83} However, “minority and women law professors are less likely to find mentors” than their white male colleagues, though they are simultaneously “burdened with disproportionately heavy administrative duties.”\textsuperscript{84} Even when professors do find mentors, their “attempts to adopt academic values, attitudes, and behaviors will not necessarily lead to meaningful participation in scholarly circles.”\textsuperscript{85} This is especially true if those already within those circles are unwelcoming or even hostile. Ultimately, these faculty members may be more likely to leave legal academia altogether because of a lack of support.

The assertions and experiences expressed in the University of San Francisco symposium are magnified in Richard Chused’s published findings from his study of law faculty (“The Chused Report”).\textsuperscript{86} The Chused Report reveals that there was a distressing lack of diversity in legal academia in the 1980s, especially with regard to faculty of color.\textsuperscript{87} Though there had been some progress in terms of the numbers, he laments that “[c]hange has been occurring at a snail’s pace,” and therefore entreats “all American law schools to recruit, hire, and tenure black, Hispanic, Asian and other minority persons aggressively.”\textsuperscript{88} Chused notes that higher rates of turnover for faculty of color might indicate lack of institutional support, as law schools were likely not expending the resources necessary to retain many of the faculty of color they initially hired.\textsuperscript{89}

### 2. Professional (E)Quality

Legal scholarship has long documented the challenges facing the few people of color and women who do enter the legal academy. The Ivory Tower may be “awe-inspiring” and “[f]rom a distance, it might be Camelot;”\textsuperscript{90} yet, “entry is extremely difficult,”\textsuperscript{91} its capitalistic “essence is exploitation,”\textsuperscript{92} and

\textsuperscript{82} See id. at 73 n.194.
\textsuperscript{83} See Moran, supra note 10, at 507-08.
\textsuperscript{84} Id. at 508.
\textsuperscript{85} Id. at 507-08.
\textsuperscript{86} See Chused, supra note 69. The Society of American Law Teachers (SALT) contributed to the study.
\textsuperscript{87} Id. at 539 (“Racial tokenism is alive and well at American law schools.”).
\textsuperscript{88} Id. at 555.
\textsuperscript{89} See id. at 545 (noting that “more non-tenured black teachers shift schools after their hiring but before their tenure decisions and that more tenured black teachers leave teaching altogether after surviving the tenure gauntlet”).
\textsuperscript{90} Bell, supra note 77, at 385.
\textsuperscript{91} Id. at 386.
\textsuperscript{92} Id. at 388.
even those few faculty of color and female faculty who are invited to join the exclusive club have often “gained access (though not acceptance).”

If underrepresented law faculty succeed, in spite of the challenging environment and their paltry numbers, they are “deemed a happy exception to the general rule” because others from their background are unlikely to perform as well. If these academic pioneers fail, they are merely fulfilling expectations.

The legal academy places “a myriad of demands” on faculty of color, even above and beyond those placed on other law faculty. One article from the University of San Francisco symposium compares the legal academy to a circus: the very few people of color who successfully jump through the requisite hoops to gain access to legal academia are akin to “virtuoso performers, acrobatic high-wire walkers who can also juggle at the same time.” Another article asks whether the challenging professional environment is to blame even for the untimely death of some law faculty. Whether fielding overwhelming service requests from students of color, enduring confrontations from white students who have come “[f]ace to face for possibly the first time in their lives with a minority person in a position of authority,” or dealing with additional obstacles from the administration and unsympathetic colleagues, calmly managing these “special burdens” may be essential to maintaining well-being.

The qualitative experience of American legal academics of color reveals that numerical disparities were not the only challenges facing this group. Drawing from the momentum of the quantitative research studying faculty of color and female faculty, Richard Delgado and Derrick Bell conducted a landmark survey of American law faculty of color in order to also assess their qualitative experience. Out of the 300 faculty of color they contacted, just over 100 responded. The authors reported on findings that are formally representative only of the respondents themselves, but the implications of the study could apply to many other faculty of color. The study revealed that law professors of color in the mid-1980s faced discrimination in hiring and
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Promotion, \textsuperscript{103} alienation among their colleagues, \textsuperscript{104} hostility from students, \textsuperscript{105} and a lack of support for their research. \textsuperscript{106} For instance, one Black professor said his offer to teach at a Southern law school was “retracted . . . when they learned he was married to a white woman.” \textsuperscript{107} In addition, “many believed that [their] scholarship . . . was devalued.” \textsuperscript{108} Relationships with students were colored by the fact that “many of the law students had never seen a black woman ‘out of uniform’—outside of domestic service;” a full 10.5\% of respondents reported that white students had “strong resistance” to their authority in the classroom. \textsuperscript{109} The authors concluded their article with the following haunting prediction:

It seems unlikely that relief will come soon, however—the professors we canvassed sensed little urgency on their institutions’ parts to redress the conditions they described. Yet, recognition of the magnitude of the problem may one day spur the search for constructive responses. Without that recognition, plainly nothing will happen. This Article is offered with the hope, admittedly not great, that that day will come sooner rather than later. \textsuperscript{110}

Contemporary scholarship on diversity in legal academia, discussed thematically in the section that follows, confirms this dismal prediction of little improvement.

B. Contemporary Themes

Law school diversity—both among the student body and the faculty—has increased since the early literature documented the unique challenges for the few underrepresented faculty of color. \textsuperscript{111} Unfortunately, in spite of some progress,

\textsuperscript{103} Id. at 361-62.
\textsuperscript{104} Id. at 357-59.
\textsuperscript{105} Id. at 359-61.
\textsuperscript{106} Id. at 363.
\textsuperscript{107} Id. at 362.
\textsuperscript{108} Id. at 357.
\textsuperscript{109} Id. at 359-60.
\textsuperscript{110} Id. at 369-70 (citations omitted).
female faculty and faculty of color remain significantly underrepresented in legal academia, and their experience remains less positive than their white and male colleagues. Rachel Moran wrote thirty years ago that “a vision of equal participation for minorities and women in the American legal education system [is a] dream long-envisioned but only partially realized.”\(^{112}\) Sadly, this remains true today. Work from past decades has made clear that women in legal education face a glass ceiling.\(^{113}\) In spite of incremental progress, we largely remain in medias res—a time of great opportunity for change to occur, but with little substantive improvement.\(^{114}\) Even more problematic, though the raw numbers of faculty of color have increased some in past decades, the negative quality of their experience remains much the same. Past research has documented racial and gender “disparities in terms of pay, tenure denials, and employment at the most elite law schools, in addition to double standards in assessing identical credentials.”\(^{115}\)

Most of the current studies of the legal academy focus broadly on general trends, with only passing attention given to women of color faculty.\(^{116}\) One marked exception is *Presumed Incompetent*, a recently published anthology focused wholly on women of color in academia that draws primarily from personal narratives.\(^{117}\) The book captures the experience of women of color in diverse disciplines—law, psychology, feminist studies, and engineering, among others.\(^{118}\)

A few chapters in *Presumed Incompetent* focus specifically on women of color in legal academia.\(^{119}\) Though none of these chapters includes an empirical study, the personal narratives and normative scholarship included in these works make clear that legal academia reflects the challenges apparent in other areas of

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112. Moran, supra note 10, at 503.
113. See Angel, *Glass Ceiling*, supra note 74, at 2 (finding that men in law schools tend to fill the higher-status tenured or tenure-track positions while women tend to hold the non-tenure-track contract positions).
114. Resnik, supra note 74, at 565-66 (noting that “the gender, race, and ethnicity of those who stand at the front of the classroom has [not] shifted . . . substantially”).
115. Barnes & Mertz, supra note 6, at 512 (citations omitted).
116. See, e.g., Merritt, supra note 70 (which includes some race and gender variation, but focuses broadly on potential bias in student evaluations).
117. See *PRESUMED INCOMPETENT*, supra note 49.
118. The Contributors section identifies the academic disciplines of the various contributors to the book. Id. at 541-54.
the Ivory Tower. Two themes stand out in the book as especially poignant challenges confronting women of color in legal academia: hostile campus climate and institutional bias.

1. Hostile Climate

One manifestation of hostility on campus is that women of color are made to feel unwelcome or unable to succeed as law faculty members. For instance, one contributor to Presumed Incompetent provides a painfully honest assessment of the lack of care her colleagues displayed at a time when she was facing great personal challenges. She writes, “I have no words to describe the way it felt when little by little I sensed that someone was trying to pull away the welcome mat as I stepped through the doorways of my first workplace as an assistant professor.” Although, at first, she “naively believed that hard work would earn [her] credit, recognition and acceptance,” she quickly came to see that no amount of effort on her part would gain her coworkers’ full approval, since her position as a woman of color in legal academia was “precarious and tentative.”

A second way that hostility towards women of color faculty manifests on the law school campus is through the silencing of female faculty of color, mirroring in many ways the silencing of female law students. For instance, Angela Onwuachi-Willig’s piece, Silence of the Lambs, discusses the multiple meanings that can be drawn from silence. Women of color and others who are “outsiders” in legal academia often choose to remain silent, in part because “silence may be key to their survival in academia.” However, by not speaking, they allow those who do speak to continue on in ignorance, perhaps believing that those who are silent have nothing meaningful to contribute. Thus, “to speak or not to speak becomes the question.” Even in the classroom, where the professor is ostensibly “the most powerful person in the room,” some faculty of color “[feel] somewhat powerless” in their ability to press students to truly

120. See, e.g., Arriola, supra note 119, at 372 (discussing the author’s personal challenges as a woman of color at an unsupportive predominantly white institution); see also Angel, Glass Ceiling, supra note 74, at 11-13 (describing similar trends in gender-discriminatory hiring at the university level as in the legal academy).
121. See Arriola, supra note 119.
122. Id. at 375.
123. Id. at 376.
124. Id. at 378.
125. See, e.g., Guinier et al., supra note 81 (documenting the causes and effects of silencing women in law school classrooms).
127. Id.
128. Id. at 143.
129. Id. at 145.
130. Id. at 142.
confront racial inequality or other sensitive issues. This constant self-questioning about when to talk and when to remain silent can make a woman of color faculty member feel exhausted; it can also make her “feel like a clown. You smile when you do not feel like smiling. You bite your tongue and make no sound when you want to speak.”

A third form of hostility pressures many women of color faculty to exhibit a lack of individuality, because they feel they are expected to perform for or even entertain their colleagues. For instance, one contributor to Presumed Incompetent writes that early in her career, she understood that there was a requirement that African Americans “must be entertaining to have a place with other faculty.” Because she was “too private,” she ran the risk of alienating colleagues who felt that they did not know her well enough to permanently promote her to their ranks. Students said that they could not relate to her either, though “[i]many suggested if I came into class and gave them a big, warm smile every morning and continued smiling throughout the class, then perhaps they could accept me—a black female teacher—better.” She was expected to embody diversity and put it on display, but her lack of enthusiasm for this role alienated her colleagues and students alike. This perception also feeds into the increased service obligations many faculty of color are expected to endure. As one writer explains, “It seemed as if everyone wanted me to do everything.”

2. Institutional Bias

A second, and especially complex, theme from Presumed Incompetent and other contemporary scholarship on law faculty diversity is institutional bias, which begins at the hiring stage and continues throughout the career of the law professor. One qualitative study of two elite law schools concludes that legal education is “fundamentally connected to the political system and to the political economy of race,” and therefore reproduces racism institutionally, with women of color at the bottom of the hierarchy.

131. Id. at 148. See also Deo, supra note 67, at 78-79 (discussing the ability of faculty of color, female faculty, and others with personal experience involving issues of race, gender, and sexual orientation to better lead classroom discussions on those topics).
132. Kupenda, supra note 97, at 23. This observation invokes Rennard Strickland’s comparison of legal academia to a circus. See Strickland, supra note 51.
133. Id. at 20.
134. Id. at 22.
135. Id. at 26 (detailing how one white male colleague accused her of spending too much time with people of color, when he really just “wanted to show [her] off more to white people”).
136. Wing, supra note 49, at 357.
137. As discussed earlier, challenges continue past tenure that can even affect the health of faculty of color. See Brooks, supra note 96.
Often, institutional bias begins at the hiring phase, which is the first opportunity for law schools to screen out undesirables. Research has hinted at potential bias in law school hiring for decades, though few formal studies have confirmed this bias. Women of color face particular obstacles in hiring that ultimately decrease their representation in legal academia. Bias in the hiring process itself may play a role in the continuing lack of faculty diversity at many institutions. Many women of color have documented their own personal encounters with “otherness” in legal academia. In her contribution to Presumed Incompetent, Adrien Katherine Wing mentions how the lobby of her first tenure-track law school was filled with portraits of “dead white males and some living ones,” which were akin to silent watchdogs of the campus’ racial homogeneity; upon her entry as a faculty member, she felt that these portraits “seemed to be silently screaming—intruder alert.”

Once female faculty of color pass the hiring hurdle, they continue to face institutional challenges on the way to tenure and promotion. For instance, Sylvia Lazos highlights various studies showing that students reward attractive women of color with higher teaching evaluations than those they find less attractive. Presentation style seems to matter more than substance, with a charming gibberish-talker capturing more positive student reviews than a straight-talking master of the material. Even more shocking, distributing chocolate may be the key to scoring high marks from students. All of this is to show that one institutional hallmark of measuring success in legal academia—student evaluations—may be seriously flawed, if at all useful. Yet, student evaluations are used for tenure and promotion purposes, and poor marks on student

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142. See Merritt & Reskin, supra note 34 (comparing the paths of minority men and minority women in legal academia).
144. See, e.g., Teri A. McMurtry-Chubb, Writing at the Master’s Table: Reflections on Theft, Criminality, and Otherness in the Legal Writing Profession, 2 DREXEL L. REV. 41 (2009).
146. Id. at 360.
148. Id. at 168-69.
149. Id. at 170.
150. As Angela Onwuachi-Willig writes in her contribution to Presumed Incompetent, “I understood [as an untenured Black female faculty member] that everything was riding on my evaluations in these courses.” Onwuachi-Willig, supra note 126, at 150.
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Evaluations are routinely cited as the reason for denials of advancement and tenure.\textsuperscript{151} Tenure has long been recognized both as “that important gateway to professional success and stability,” and “as the crucial institutional process through which the legal academy could block or open the doors to gender and racial integration.”\textsuperscript{152} Unfortunately, the doors to the legal academy remain somewhat blocked. A recent empirical study of law faculty that considers race and gender (as well as the intersection of the two) is instructive.\textsuperscript{153} Though that project investigated the experience of only tenured faculty members, it provides additional support for the proposition that “despite significant progress toward more diversity, women and scholars of color face continued difficulties.”\textsuperscript{154} For instance, 35% of women of color professors believe that the tenure process is unfair, compared to only 12% of white male professors.\textsuperscript{155} Similarly, the study found that 61% of women of color professors “disagreed with the statement that the tenure process was easy, as compared with one-third of white male professors.”\textsuperscript{156} The qualitative analysis from that study also reveals the “effects of implicit bias in the tenure process,”\textsuperscript{157} and the “differential impacts on women and on scholars of color of the law school’s pre-tenure institutional structures and cultures.”\textsuperscript{158} Thus, in spite of an increase in the numeric representation of faculty of color and female faculty, existing literature suggests that roadblocks remain to prevent their access and acceptance in legal academia.

III. THE DLA STUDY DESIGN

Drawing from Presumed Incompetent and other faculty diversity literature, as well as an intersectionality framework, the time is ripe for a thorough, empirical, interdisciplinary study of faculty diversity.\textsuperscript{159} As Rachel Moran asserted thirty years ago: “It is, after all, much easier to assess how many minority and women are on the faculty than to determine how satisfied they are with their careers, how successful they are in the academic world, and how

\textsuperscript{151} See generally Lazos, supra note 147 (discussing ways in which implicit bias against female faculty of color may result in poor student evaluations, and consequently, fewer advancement opportunities).

\textsuperscript{152} See Barnes & Mertz, supra note 6.

\textsuperscript{153} Id. at 511.

\textsuperscript{154} Id. at 512.

\textsuperscript{155} Id. at 516-17.

\textsuperscript{156} Id. at 519. “[A]bout half of male professors of color and white female professors” also disagreed that the tenure process is easy. Id.

\textsuperscript{157} Id. at 521-22.

\textsuperscript{158} Id. at 522.

\textsuperscript{159} There appears to be only one recent empirical project involving law faculty that directly includes women and people of color as research subjects, but it did not focus on race and gender and it excluded all pre-tenure faculty. See Barnes & Mertz, supra note 6.
important they are in the operation of the law school." The Diversity in Legal Academia (DLA) study will draw extensively from the existing literature on diversity in higher education to formulate hypotheses that will then be tested through empirical analysis. Through use of an intersectional framework, the DLA study will emphasize how those who have historically been and remain underrepresented, based on both race and gender, may face unique challenges and opportunities in legal academia.

The DLA study is a multi-method study involving tenured and tenure-track law professors in the United States. Data collection is expected to yield approximately 80-100 participants, including women of color, men of color, white women, and white men. Each research subject will complete a short online survey through the research tool Survey Monkey. In addition, subjects will share their experiences through in-depth, one-on-one interviews, many of which will take place in person. A brief content-analysis component, reviewing participant CVs, is also included in the study design. A mixed-method approach is especially well-suited to this study, as it allows for triangulation of the data and an opportunity to fully explore the law faculty experience from multiple angles. In general, the quantitative data will be largely demographic information used to frame the more personal, experiential qualitative data. Collecting the quantitative data in advance gives the researcher an “introduction”

160. Moran, supra note 10, at 505-06.
161. All formal empirical projects must be approved by institutional review boards (IRBs), which seek to ensure that the risks of participation by any research subjects are explained in detail and are outweighed by the potential benefits of the study. More information on the history and requirements of IRB approval can be found on the Department of Health and Human Services website. Institutional Review Boards (IRBs), U.S. DEP’T HEALTH & HUMAN SERVVS., http://www.hhs.gov/ohrp/assurances/irb/ (last visited May 1, 2014). The DLA study has received a formal regulatory opinion of IRB exemption from Western IRB (the certification for this study is on file with the author).
162. See infra Part III.A.1 for a detailed definition of which faculty will be included in this study.
163. Most academics currently acknowledge that race is a social construct rather than a reflection of biological reality, and accordingly, defining race or ethnicity can be a challenging endeavor. See, e.g., Ian F. Haney-López, The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice, 29 HARV. C.R.-C.L. L. REV. 1 (1994). For this reason, DLA participants will self-identify both their race/ethnicity and gender on the survey instrument as well as during interviews. This Article uses the terms “African American” and “Black” interchangeably to refer to those who characterize themselves in the study using those terms. The terms “Latino” and “API” are used to refer to those who self-identify as Hispanic/Latino and Asian/Pacific Islander, respectively. Individuals who identify with two or more racial backgrounds are considered “multiracial” for purposes of this study. The term “whites” refers to participants who identify as white (non-Hispanic) in the study.
164. For more information on this standard data collection tool, see How It Works, SURVEY MONKEY, www.surveymonkey.com (last visited May 1, 2014).
165. See JOHN W. CRESWELL & VICKI L. PLANO CLARK, DESIGNING AND CONDUCTING MIXED METHODS RESEARCH 1 (2007) (explaining the benefits of “bring[ing] together both quantitative and qualitative data to tell the story”); ABBAS TASHAKORI & CHARLES B. TEDDLE, MIXED METHODOLOGY: COMBINING QUALITATIVE AND QUANTITATIVE APPROACHES 5 (1998) (explaining that “most major areas of research in the social and behavioral sciences now use multiple methods as a matter of course”).
to the subject before the private meeting where more intimate and sensitive details can be discussed. Thus, both the survey and the interview are essential components in the study design.

A. Study Population and Research Questions

1. Sample

Law professors eligible to participate in the DLA study are tenured or tenure-track faculty employed at ABA-accredited and AALS-member schools. Although an increasing number of librarians, clinicians, and legal writing professors are tenured or tenure-track, they are excluded from this study because of the substantial differences in professional expectations and experiences that distinguish them from other tenured and tenure-track faculty.

The DLA study will focus on women of color (non-white women), including women who identify as Black, Latina, Asian/Pacific Islander, Native American, Multiracial, and “other.” In order to better understand the

166. The ABA standards for approving law schools are similar, but not identical, to the standards used to elect schools for membership in the AALS. According to Professor Herma Hill Kay, “The [ABA] is concerned with ensuring competence to train law students and uses more quantitative measures, while the [AALS] is more concerned with faculty scholarship and uses more qualitative measures.” E-mail from Herma Hill Kay, Professor of Law, Univ. of Cal., Berkeley, Sch. of Law, to author (Jan. 7, 2013) (on file with author). Using these dual credentials as a standard for eligibility in a study of law faculty will “ensure[] that women professors at ABA-AALS schools have met the most rigorous standards used in legal academia.” Id.

167. Other studies of law faculty have drawn on a similar pool of participants. See, e.g., Herma Hill Kay, U.C.’s Women Law Faculty, 36 U.C. DAVIS L. REV. 331, 337 n.27 (2003) (“My definition of a ‘professor’ includes only tenure or tenure-track assistant, associate, and full professors. It excludes librarians, clinicians, adjunct professors, and legal writing teachers, even though some of the women who were law librarians during this period held professorial appointments.”); Angel, Women in Legal Education, supra note 74, at 803 (including “only those teachers with visibility and power within their school; namely, tenured or tenure track regular assistant professors, associate professors, or professors”); Deborah Jones Merritt & Barbara F. Reskin, Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring, 97 COLUM. L. REV. 199, 206 (1997) (“We chose tenure-track law professors as the subject of our study because those faculty members hold influential posts, shaping both the next generation of lawyers and the development of legal doctrine.”); Elyce H. Zenoff & Kathryn V. Lorio, What We Know, What We Think We Know, and What We Don’t Know About Women Law Professors, 25 ARIZ. L. REV. 869, 872 (1984) (counting only tenure-track faculty, defined as “professor, associate professor, or assistant professor, unmodified by any other term such as adjunct, clinical, visiting, or emeritus,” and noting that “[l]ibrarians, although usually on a tenure track, were excluded because they constitute a distinct career line”). Certainly, a distinct study focusing on law librarians, legal clinicians, and legal writing professors would add a layer of understanding to our conceptions of legal education.

168. Because these are the categories employed by AALS in their statistics, they will also be used in the DLA study. See GENDER AND AGE, supra note 6; RACE AND ETHNICITY, supra note 6. Participants will self-identify their race/ethnicity on both the survey instrument and in the course of the interview process.
experiences of women of color, the DLA study will include groups that provide for comparison. Thus, the study will also gather data from white women, white men, and men of color. Anticipated participation in the DLA study includes roughly 60-80 women of color and 20-30 individuals drawn from comparison groups (with roughly equal numbers of white women, white men, and men of color).

2. Research Questions

This empirical project begins with broad research questions that will be honed and refined during data collection and ongoing analysis. The study examines the unique challenges facing women of color law faculty, as well as the potential opportunities available to them based on their race and gender. The three central research questions are:

1. How do women of color navigate to and through legal academia?

2. What are the unique challenges facing tenured and tenure-track female faculty of color in legal academia?

3. What are the unique opportunities available to tenured and tenure-track female faculty of color in legal academia?

These research questions will drive the survey instrument and interview schedule that will be used in data collection.

B. Data Collection Methods & Analytical Approach

1. Data Collection

The DLA survey will begin with questions regarding participants’ demographic background, personal experiences, and career path (i.e., date of birth, year of law school graduation, date of first tenure-track employment, etc.). The survey will also ask experiential and attitudinal questions on a range of subjects relevant to legal academia, including the frequency and quality of contacts with students and faculty from diverse backgrounds, the likelihood of the subject remaining in legal academia, and the campus climate at the participant’s institution. In addition, the survey will collect participant CVs for content analysis on demographic and professional data.

In-depth interview data will be the heart of the DLA study, with survey

169. The DLA project will employ “emerging theme analysis,” coding and analyzing the data during the data collection process, in order to continuously hone and narrow the research focus and specific interview protocol. See ROBERT EMERSON, CONTEMPORARY FIELD RESEARCH PERSPECTIVES AND FORMULATIONS 284 (2001) (explaining the rationale behind using emerging theme analysis).
data and content analysis used to frame the qualitative data. Each subject will
share her experience with particular topics, including mentor relationships, the
tenure and promotion process, and challenges balancing personal obligations
with research, teaching, and service expectations at work. As examples,
participants will be asked to share whether/how their personal values conflict or
coincide with expectations in the workplace, their aspirations and expectations
regarding institutional leadership, and experiences leading diversity discussions
in the classroom.\footnote{170} Research participants will also be asked specifically to
reflect on any obstacles or opportunities that they believe may be attributable to
their race and/or gender.

Data collection will proceed through the utilization of target sampling, a
variation of snowball sampling. Snowball sampling is a standard data collection
tool in statistics and various fields in the social sciences. Statistician Leo
Goodman, a pioneer of this methodological technique, explains snowball
sampling in this way:

A random sample of individuals is drawn from a given finite population. . . .
Each individual in the sample is asked to name \( k \) different individuals in the
population, where \( k \) is a specified integer . . . . The individuals who were not in
the random sample but were named by individuals in it form the first stage.
Each of the individuals in the first stage is then asked to name \( k \) different
individuals.\footnote{171}

The initial sample forms the “seed” group, and as individuals at each stage
nominate potential participants, these new participants form the next stage and
nominate others.\footnote{172} Just as a snowball gathers snow as it rolls, so too does the
snowball sample gather names of possible research participants as the study
continues.

Snowball sampling is considered especially useful in studies where the
target population may be difficult for external researchers to identify, or when
the research questions cover topics that are sensitive for a vulnerable
population.\footnote{173} When the research population cannot easily be identified or is
unlikely to participate through uninvited (“cold”) contact, the social network
aspect of snowball sampling provides an extra boost to data collection. Because
possible research subjects are nominated by peers, colleagues, or friends who
themselves have participated in the project, new recruits are more likely to join
due to of the social connection, in spite of any initial hesitancy.\footnote{174}

\begin{footnotes}
\footnote{170} See supra note 67 (explaining the term “diversity discussions”).
\footnote{172} \textit{Id.}
\footnote{174} See \textit{id.} at 50.
\end{footnotes}
While snowball sampling is used extensively in both statistics and the social sciences, it has faced some critique. Much of the concern stems from whether a bias in the original sample will create ungeneralizable results.\textsuperscript{175} For instance, a snowball sample that began with a seed group of people in the Midwest would likely be challenging to use in generalizing about the entire U.S. population because the social networks of those in the Midwest would likely be comprised largely of other Midwesterners.

To combat this potential for bias in snowball sampling, some researchers have begun to utilize a variant of snowball sampling referred to as target sampling.\textsuperscript{176} With target sampling, the original participants are selected to be broadly representative of the target group and the study sample is reviewed and corrected periodically to ensure broad representation.\textsuperscript{177} Regular monitoring allows for immediate corrections to oversampling of a particular sub-group or underrepresentation of another sub-group to ensure a final study sample that remains truly representative.\textsuperscript{178}

The DLA study will use target sampling for a number of reasons. First, while women law faculty of color are not exactly a hidden population, they are a group likely reluctant to share their experiences with external researchers.\textsuperscript{179} While empirical research comes with professional assurances of strict confidentiality, many potential research subjects are nevertheless concerned about how the data will be used and whether they will be identifiable in any resulting publications.\textsuperscript{180} Recruiting through target sampling allows the study to draw on the social networks of law faculty, not only to identify likely


\textsuperscript{176}See John K. Watters & Patrick Biernacki, \textit{Targeted Sampling: Options and Considerations for the Study of Hidden Populations}, 36 SOC. PROBS. 416, 420 (1989) (defining targeted sampling as “a purposeful, systematic method by which controlled lists of specified populations within geographical districts are developed and detailed plans are designed to recruit adequate numbers of cases within each of the targets”).

\textsuperscript{177}See id.

\textsuperscript{178}See id. at 421 (explaining that targeted sampling is “an ongoing and interactive process in which data are constantly analyzed and used to adjust the recruitment and sampling techniques”).

\textsuperscript{179}While female faculty of color are not a “hidden” population, identifying them through published resources would take considerable effort and be unlikely to yield a fully comprehensive listing of eligible participants.

\textsuperscript{180}The Introduction to \textit{Presumed Incompetent} includes an entire section explaining that many women were uncomfortable publishing their stories, and therefore did not participate by submitting non-anonymous narratives to the anthology. Some of these women were too emotionally exhausted to think critically about their experiences and share them publicly; many others feared professional repercussions of “outing” their negative experiences and the institutions in which those experiences occurred. Angela P. Harris & Carmen G. González, \textit{Introduction} to \textit{Presumed Incompetent}, supra note 49, at 10-14. The DLA study will rigorously protect confidentiality, publish data in aggregate form, and otherwise ensure that participants are not identifiable through publication.
participants, but also to encourage those individuals to join peers who are already involved in the study.

The DLA project will begin with careful selection of a seed group of participants that reflects a number of domains, including race/ethnicity, age, tenure status, leadership status, type of institution, and employment region. Carefully selecting participants that reflect the diversity of these domains creates an opportunity to draw from various networks. For instance, the seed group will include Black, Latina, API, Middle Eastern, Multiracial, and white law faculty from both public and private institutions. Age ranges should run from the early-thirties to the late-sixties at least. Seed participants will include both tenured and untenured faculty, as well as those in administrative leadership positions (including at least one Dean and one Associate Dean). All seed participants will be asked to nominate others who fit broad study eligibility characteristics. This request for nominations of other potential research subjects will be formalized as the penultimate question on the survey.

The majority of interviews for the DLA study will take place at national and regional conferences with a high representation of female faculty of color. Conducting interviews at specific conferences will provide a unique opportunity to reach a number of women of color faculty at one location, and therefore to conduct multiple interviews at each site.

Data collection will also be conducted through “local” travel throughout California and neighboring states to conduct interviews with female faculty of color who work near the Principal Investigator of the study (the Author of this Article). While many interviews will be conducted in person, up to half will be conducted by telephone. The use of telephone interviews allows the study to include the perspectives of individuals who may not have the opportunity to travel to conferences, including individuals on maternity leave, those with health issues preventing travel, and others on sabbatical or otherwise working abroad. All interview participants will complete the survey portion of the study online before beginning in-person interviews. All participants will be assigned

181. See supra Part III.A.I (explaining DLA study eligibility characteristics).
182. As examples, the study design plans for interviews to take place at the following meetings:
   Association of American Law Schools (AALS) Annual Meeting
   Coalition of Asian Pacific American Law Faculty Conference (CAPALF)
   Latino Critical Race Theory Conference (LatCrit)
   Law & Society Annual Meeting
   Mid-Atlantic People of Color Meeting (MAPOC)
   Northeast People of Color Conference (NEPOC)
   Society of American Law Teachers (SALT) Annual Meeting
   Southeast/Southwest People of Color Conference (SE/SWPOC)

183. Methodologically, face-to-face interviewing is considered “the best form of data collection when one wants to minimize nonresponse and maximize the quality of the data collected.” Isaac Dialsingh, Face-to-Face Interviewing, in Encyclopedia of Survey Research Methods 259, 259 (Paul J. Lavrakas ed., 2008).
pseudonyms that will be used in lieu of actual names to protect confidentiality and anonymity in dissemination.

2. Data Analysis

Upon completion of data collection, the recorded interview files will be transcribed and then checked for error and clarity of context. Next, the transcriptions will be coded and analyzed using ATLAS.ti software.\textsuperscript{184} A code key will be developed to list the names of interview participants who will be assigned pseudonyms so that identities will be kept confidential. The principal purposes of the analyses will involve the coding, description, and interpretation of the qualitative data collected as part of the interviews. Through descriptive content analyses of interview transcripts, the data will reveal general themes, as well as interpretations of findings from aggregate analyses of survey data. There will be coordination between analyses of interview transcripts with Stata data analyses of surveys to provide the fullest and richest examination possible of key research questions.\textsuperscript{185} Specifically, results from qualitative analyses will help to contextualize themes, patterns, and findings from the survey portion of the study. The analytical approach will be to evaluate salient links between characteristics, i.e., race, ethnicity, gender, social class, region, and diversity of attitudes, while considering the contextual attributes and topics of the interview.

IV. Future Directions for Diversity in Legal Academia

The DLA study represents an opportunity to take a huge step toward filling a number of gaps in the academic literature not only regarding diversity and law faculty, but also including work/life balance, employment discrimination, mentorship and support, and the law school curriculum. By collecting empirical data from women of color, white women, white men, and men of color who teach at legal institutions across the country, DLA will add a faculty perspective to the diversity debate. The intersectional lens—emphasizing the combination of race and gender effects—adds a multidimensional element to the conversation, drawing out nuances that may apply to all women, regardless of racial background, people of color whether men or women, and especially to women of color. By including white women, white men, and men of color, the study can directly compare and contrast the experiences of women of color in legal

\textsuperscript{184} ATLAS.TI, http://www.atlasti.com/index.html (last visited May 1, 2014); see also ANN LEWINS & CHRISTINA SILVER, USING SOFTWARE IN QUALITATIVE RESEARCH (2007) (explaining the functions of the major software programs that are generally used in studies of this kind, including ATLAS.ti).

\textsuperscript{185} Stata is a statistical software package developed and sold by StataCorp. See STATA, http://www.stata.com/ (last visited Apr. 22, 2014); see also ALAN C. ACOCK, A GENTLE INTRODUCTION TO STATA (4th ed. 2014) (providing an introduction to Stata for researchers working in psychology, social sciences, and other fields that require quantitative analysis).
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academia with those of their colleagues. This comparison will more clearly reveal patterns that have to do with race, others that are gender-specific, and still more that are unique to women of color. As is generally the case with new and exciting research projects, the DLA study builds on a number of existing and ongoing studies; it is in dialogue with them and seeks to propel the conversation forward by providing empirical data about how race and gender affect the law faculty experience.

While interaction with the data itself will help determine hypotheses and directions for further analysis, there are some hypotheses that can be formulated from existing scholarship alone, even before data collection and analysis begin. Three of these hypotheses are presented here.

A. Hypothesis #1: Unique Challenges in Work/Life Balance

The first hypothesis is that women of color will face greater pressures with regard to work-life balance than those in the control groups (white women, white men, and men of color). This hypothesis draws in part from statistics documenting that women of color tend to have increased obligations for child care and elder care, as compared to others. These obligations generally hold true even when we control for individual socioeconomic status, perhaps because persistent wealth disparities by race place additional financial obligations on people of color toward their extended family, regardless of their individual educational or professional position. Women of color are more likely than white women and men of all races to be single parents, adding to the family obligations that pull them away from meeting workplace expectations and push them toward work-life imbalance.

Specific questions on the DLA interview guide will ask faculty to discuss their work-life balance. Other questions will seek to gauge objective measures of work-life balance by asking about time spent on professional work obligations, time spent on personal obligations, and other support given and received by family, friends, and professional colleagues. For instance, women of color faculty may spend more time than their male colleagues on family child care in

188. See generally Melvin T. Oliver & Thomas M. Shapiro, White Wealth/Black Wealth: A New Perspective on Racial Inequality (1997).
189. See Kreider & Ellis, supra note 186, at 4.
the home, lessening opportunities for them to devote themselves to scholarship or other professional obligations. African American and Latina women may be especially likely to provide financial support to extended family suffering economic hardship, thereby threatening their own long-term financial security. Analysis of the work-life balance questions on the survey and in the in-person interview will reveal any inter-group disparities, even when participants themselves do not see their imbalance as connected to race/ethnicity or gender.

B. Hypothesis #2: Ongoing Institutional Bias/Structural Discrimination

A second hypothesis is that structural discrimination will be evident within legal institutions, affecting tenure, promotion, and leadership for women of color (and perhaps for men of color and white women as well). For example, APIs may be seen as a “model minority” who are expected to quietly appreciate their opportunities even without much tangible institutional recognition or

190. Structural discrimination shows the ongoing existence of privilege for some groups over others—privilege that is built into the very structure of institutions rather than simply existing as a matter of individual preferences. For more theory on privilege, see WILDMAN, supra note 30, at 29 (Privilege is a “systemic conferal of benefit and advantage . . . [based on] affiliation, conscious or not and chosen or not, to the dominant side of a power system.”). For more theory on structural racism, see MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1990S 79 (2d ed. 1994) (“The major institutions and social relationships of U.S. society—law, political organization, economic relationships, religion, cultural life, residential patterns etc.—have been structured from the beginning by the racial order.”).

191. The term “model minority” refers to a “popular notion [used] to explain the success of various Asian immigrant groups” as based on their own hard work and other cultural traits. Vinay Harpalani, DesiCrit: Theorizing the Racial Ambiguity of South Asian Americans, 69 N.Y.U. ANN. SURV. AM. L. (forthcoming 2014) (manuscript at 64), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2308892. Implicit in this label of the Asian American community as a “model” is the suggestion that non-Asian people of color should follow their example and work hard to improve their own situation in the U.S. However, the label ignores the structural differences between various groups, falsely attributing success solely to hard work when benefits of language, education, and social capital have clearly played a role in the financial success of various Asian immigrant groups. See generally JOHN U. OGBO, MINORITY EDUCATION AND CASTE: THE AMERICAN SYSTEM IN CROSS-CULTURAL PERSPECTIVE (1978). The term also ignores the diversity within the Asian American community, as not all Asian ethnic groups have attained similar levels of success. See ASIAN PAC. AM. LEGAL CTR. & ASIAN AM. JUSTICE CTR., A COMMUNITY OF CONTRASTS: ASIAN AMERICANS IN THE UNITED STATES: 2011, at 4 (2011), available at http://napca.org/wp-content/uploads/2012/11/AAJC-Community-of-Contrast.pdf (noting that, while Asian Americans as a community enjoy financial success, “Hmong, Bangladeshi, and Cambodian Americans have poverty rates that approach those of African Americans and Latinos”). For more on the “model minority” generally, see RONALD TAKAKI, STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS 474–84 (1989); FRANK WU, YELLOW: RACE IN AMERICA BEYOND BLACK AND WHITE 39–77 (2002). For more information on Asian American law professors specifically, in an article that draws from the DLA data set, see Meera E. Deo, Beneath the Bamboo Ceiling in Legal Academia, ASIAN AM. L.J. (forthcoming) (on file with author).
reward. Drawing on broad literature on structural discrimination/institutional bias, the study hypothesizes that Black women may face biased teaching evaluations that could impact opportunities for promotion. Gender discrimination will likely be evident as well, perhaps through microaggressions rather than overt sexual harassment.

Specific questions on the DLA interview guide will ask faculty to discuss their personal experience with tenure/promotion, satisfaction with opportunities for professional development, and the faculty hiring process for themselves as well as other candidates. Other questions will seek to gauge objective measures of institutional bias/structural discrimination by asking about opportunities for leadership advancement, general trends in faculty hiring, and curricular and pedagogical challenges in the classroom. For instance, there may be lingering examples of outright discrimination with particular colleagues unwilling to hire applicants with whom they are uncomfortable, whether that discomfort is based on implicit racial bias (e.g., against African Americans) or purposeful religious discrimination (e.g., against Muslims readily identified by a headscarf or hijab). Teaching evaluations may be cited as reasons for tenure or promotion denials, in spite of evidence indicating that they are flawed at best and useless at worst. Female faculty of color may be overlooked for leadership positions by superiors who automatically turn to the white male colleagues they expect will continue to fill those roles. These questions will reveal the existence and extent of institutional bias within the legal academy.

### C. Hypothesis #3: Unique Benefits Based on Race and Gender

The third and final hypothesis presented here is more optimistic than the others. Most, if not all, of the existing literature on the experience of women of

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194. *Microaggressions are “subtle verbal and non-verbal insults directed toward non-[w]hites, often done automatically or unconsciously. They are layered insults based on one’s race, gender, class, sexuality, language, immigration status, phenotype, accent, or surname.” Daniel Solórzano et al., *supra* note 66, at 17 (2002); see also Peggy C. Davis, *supra* note 66, at 1576 (1989).*

195. “Implicit biases—by which we mean implicit attitudes and stereotypes—are both pervasive (most individuals show evidence of some biases), and large in magnitude, statistically speaking. In other words, we are not, on average or generally, cognitively colorblind.” Jerry Kang & Kristin Lane, *Seeing Through Colorblindness: Implicit Bias and the Law*, 58 UCLA L. Rev. 465, 473 (2010).

196. *See supra* Part II.B.2 (discussing dangers inherent in using teaching evaluations as a standard for advancement opportunities).
color in legal academia focuses on the challenges facing this group. One unique hypothesis for the DLA study is the expectation that survey and interview data will reveal opportunities available to women of color that are not as prevalent among the control group of whites and men of color. These benefits may range from focused mentorship by other women and people of color, to the opportunity to publish work that is intensely personal, and even particular networking opportunities that may be elusive for those in the control group.

Specific questions on the DLA interview guide will ask faculty to discuss any specific benefits they may have received as law faculty that are based on their race and gender. Other questions will seek to gauge objective measures of race and gender benefits, including questions inquiring into mentor relationships with various colleagues, opportunities to present and publish their work, invitations to participate in conferences or university-wide committees, and sources of support both on- and off-campus.

V. CONCLUSION

We are long overdue for a systematic analysis of legal academics. The time is ripe for a formal empirical study that pays particular attention to intersectional characteristics in order to reveal whether and how race and gender combine to create unique challenges and opportunities for law professors across the country.

Literature from a few decades ago exposed numerous barriers facing law faculty of color. Though people of color were shamefully underrepresented in legal academia at the time, the paltry numbers told only half the story. At least as troubling was the qualitative experience of the few law faculty of color, who endured daily slights and other microaggressions from colleagues, students, and others. In those days, law faculty of color were tolerated but not accepted, burdened by overwhelming service demands, and not valued for their scholarly contributions.

While recent years have seen increasing numbers of law faculty, structural diversity remains appallingly low. Even now, white men make up almost half of the total law faculty in the United States, and they outnumber women of color law faculty by more than six to one. The pool of eligible faculty candidates of color cannot be wholly to blame. Even more disconcerting is the possibility that the quality of the experiences of faculty of color and female faculty may be improving even more slowly than their numeric representation. Recent literature on women of color faculty specifically notes the hostile climate and institutional bias that continue to plague academia even today. Hard work has not earned...

197. See supra Part II (reviewing the literature on women of color in legal academia).
198. See supra note 194 (defining “microaggressions”).
199. See supra Part I (giving current statistics on law faculty diversity).
200. See GENDER AND AGE, supra note 6.
201. See supra Part ILB (discussing the hostile climate and institutional bias that women of color
women of color legal academics full recognition or appreciation. These traditional outsiders are routinely silenced and their contributions ignored, while both colleagues and students expect them to perform according to accepted stereotypes. From the hiring stage through tenure and promotion, women of color face structural discrimination that makes their presence in legal academia even more precarious and uncertain. Whether this bias surfaces in teaching evaluations or through cultural expectations, it remains omnipresent.

It is from the existing body of scholarship that the DLA study emerges. Through quantitative (survey) and qualitative (in-depth interview) data analysis, the DLA study will reveal the ongoing challenges and potential opportunities that exist in the personal and professional lives of legal academics. By oversampling women of color as the “core” sample, DLA will compare their experiences to those of white men, white women, and men of color in order to determine intersectional effects.202

This Article has presented three of the hypotheses driving the DLA study. First, because of their special family circumstances, it is likely that women of color face additional challenges navigating work/life balance, and that this reality will have adverse consequences in the professional realm. Second, ongoing institutional bias or structural discrimination is also likely to be a barrier to professional development and career success. Third, in spite of the many challenges discussed, there may be unique benefits that women of color legal academics enjoy—benefits that are based primarily on their race and gender.

Of course, the first steps in the DLA study involve collecting the surveys and conducting the interviews that will reveal the actual experience of law faculty. A lengthy coding and data analysis component will follow, during which DLA data will be thoroughly reviewed for identifiable patterns and obvious distinctions based on race, gender, and other characteristics. Once the quantitative and qualitative data analyses are complete, the findings will be disseminated; at that stage, administrators in legal education, state and federal policy-makers, regulatory bodies, and legal academics themselves will have a deeper understanding of the unique challenges and opportunities facing women of color law faculty, as well as those similarities of experience that transcend race and gender. Only with such an understanding can we work toward making the structural changes necessary to achieve equality in legal academia.

202. See supra notes 11-15 and accompanying text (explaining intersectionality).