
Gender and the legal academy

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This Foreword examines what we describe as a “gender gap” in the legal academy. The gap can be seen most clearly in the significantly lower proportion of tenured women faculty members than of men faculty members in most parts of the world, but it is evident in many other aspects too, including the fact that women in academia are often clustered in a “pink ghetto” with lower pay, status, and job security. We begin by outlining the nature of the academic gender gap and some of the obstacles to its removal or reduction, before considering the reasons this gap should be a matter for concern. Two kinds of reasons for such concern are offered: consequences-based and justice-based. The Foreword concludes by suggesting a number of ways in which the gender gap might be addressed, arguing for attention to be paid to the risk of pursuing apparent solutions which may have the effect of entrenching or exacerbating aspects of the problem. Ultimately, we argue that what is needed is not just a larger proportion of women in law schools, but a more just and feminist legal academy along multiple intersecting dimensions.

1. Introduction

Gender inequality remains a deep-seated social, economic, and political problem in all parts of the world, even if its nature and extent vary considerably across jurisdictions and contexts. Despite decades of progress, and even in jurisdictions in which gender

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The authors thank Bea Greenberg, Surbhi Kharwa Lauren Mattice, and Niki Nojournian for their excellent research assistance. We are also very grateful to all of the colleagues who attended either virtually or in person at workshops at University of California Los Angeles, the University of New South Wales, and ICON•S Wellington in 2023 for helpful input on previous versions, and to other colleagues who could not attend those workshops for sending valuable comments and advice.

equality is mandated by law, the gap between men and women remains wide along many dimensions, including economic opportunity, subjection to violence, political participation, poverty, social protection, and domestic burdens.¹

In this Foreword, we draw attention to the fact that what we describe as a “gender gap” is also stubbornly persistent within the legal academy, despite the fact that the academy is generally a place of considerable privilege where there is often an explicit commitment to the promotion and achievement of gender equality.² In recent decades, there has been significant improvement in many aspects of gender inequality within academic settings, particularly in certain parts of the world.³ Women in many jurisdictions are more likely today to be in academic leadership roles.⁴ The percentage of tenured women faculty has increased markedly in certain countries, even if not in others, and women are beginning to appear more often on lists of the most published and cited legal scholars.⁵

Despite these improvements, a significant gender gap remains, along several dimensions. Progress toward gender equality in the academy remains highly uneven across different disciplines and different parts of the world, and far from complete even in the jurisdictions which are most advanced in terms of gender equality.⁶ While the figures differ across as well as within countries and institutions, gender disparities in terms of pay, status, conditions of work, and recognition remain remarkably persistent, and recent studies suggest that some of these have been worsened by changes

¹ For some of the statistics, see *Women and Girls: Closing the Gender Gap*, UNITED NATIONS, www.un.org/en/un75/women_girls_closing_gender_gap (last visited Jan. 26, 2024).

² While the academy is a site of relative privilege in all societies, it is certainly not equally privileged in all countries or contexts. To give just two relevant examples: in Sri Lanka, Dinesha Samararatne notes that while women made up 77% of academics at the University of Colombo between 2009 and 2015, academic work was associated with significant teaching and administrative responsibility, and very modest pay. See Dinesha Samararatne, *Gendering the Legal Complex: Women in Sri Lanka's Legal Profession*, 47 J. L. & Soc. 666, 682 (2020). And, in the United Kingdom, higher education academic salaries are lower than most public sector graduates and most other comparable professionals. See James Walker, Anna Vignoles, & Mark Collins, *Higher Education Academic Salaries in the UK*, 62 OXFORD ECON. PAPERS 12, 12 (2010).

³ Angela Melville & Amy Barrow, *Persistence Despite Change: The Academic Gender Gap in Australian Law Schools*, 47 LAW & Soc. INQUIRY 607, 626 (2021); Elizabeth Katz, Kyle Rozema, & Sarath Sanga, *Women in U.S. Law Schools, 1948–2021*, 15 J. LEGAL ANALYSIS 48 (2023).

⁴ See Angel Calderon, *Proportion of Women in Academic Leadership Is on the Rise*, UNIV. WORLD NEWS (Mar. 5, 2022), www.universityworldnews.com/post.php?story=2022030210450152. This is unlikely, however, to be true yet for transgender women.

⁵ But see Fred R. Shapiro, *The Most-Cited Legal Scholars Revisited*, 88 U. CHI. L. REV. 1595 (2021); Lokman I. Meho, *Gender Gap Among Highly Cited Researchers, 2014–2021*, 3 QUANTITATIVE SCI. STUD. 1003 (2022); Hannah June Kim & Bernard Grofman, *The Political Science 400, With Citation Counts by Cohort, Gender and Subfield*, 52 PS: POL. SCI. & POL. 296 (2019).

⁶ See, e.g., Kristen K. Tiscione, *Gender Inequity Throughout the Legal Academy: A Quick Look at the (Surprisingly Limited) Data*, 69 J. LEGAL EDUC. 116 (2019); Jennifer Krebsbach, *Women in Academia: Representation, Tenure, and Publication Patterns in the STEM and Social Sciences Fields*, 24 J. INT'L WOMEN'S STUD. art. 3 (2022), <https://vc.bridgew.edu/jiws/vol24/iss5/3>.

wrought by the COVID-19 pandemic.⁷ Large disparities also remain in ways that reflect the intersection of sexism with other forms of marginalization based on race, class or caste, sexual orientation, age, and disability, among others.⁸

In what follows, we argue that the gender gap in academia is, amongst other things, a problem of injustice and one which should be a matter of serious institutional and societal concern, albeit in ways that differ vastly across different contexts.

We begin with four caveats. First, we use the term “women” throughout this Foreword to refer to both transgender and cis-gender women. Disadvantage on the basis of gender is, of course, also experienced by LGBTQI+ individuals, but we have not collected data about discrimination on the basis of sexual orientation or on non-binary scholars. For this reason, we do not specifically address their situation within the legal academy on this occasion (with a few exceptions), although we recognize that sexual orientation discrimination and homophobia are closely related to the kind of sex and gender discrimination and disadvantage experienced by women. Similarly, while the focus of the Foreword is on gender inequality and on the ways in which it affects women in the legal academy, the experiences of women also vary significantly on the basis of overlapping categories of marginalization which, at the same time, are highly dependent on the societal context.⁹ How race and class play out in the United States, for example, is not the same as how they might do so in other countries. Further, Black women in the academy face an additional, distinct form of misogyny, which has been labeled *misogynoir*,¹⁰ while trans-women are often met with transphobia, and so on. These forms of marginalization merit separate attention, and, in some cases, there is an urgent need to gather more data, so that we can begin to understand the nature and extent of the problem. This is particularly the case with trans and non-binary individuals, as well as with other vulnerable persons, such as international graduate students.

Second, as authors of this Foreword we are aware that we hold relatively privileged positions along various categories and that we are based in Global North academic institutions. While the analysis that follows draws on a mix of existing empirical and theoretical work, and ranges across several jurisdictions, we draw also from our

⁷ See, e.g., Catherine Powell, *Color of Covid and Gender of Covid: Essential Works, Not Disposable People*, 33 YALE J. L. & FEMINISM 1 (2021); Rosalind Dixon & Mila Versteeg, *Unsexed Citation: Closing the Gender Gap in Global Public Law*, 21 INT'L J. CONST. L. 407 (2023); Rosalind Dixon & Amelia Loughland, *Gender Disruption, Amelioration and Transformation: A Comparative Perspective*, in OXFORD HANDBOOK OF FEMINISM AND LAW IN THE U.S. 131 (Deborah L. Brake et al. eds., 2023); Marcela Prieto Rudolph, *Between Predictability and Perplexity*, 20 INT'L J. CONST. L. 1285 (2022); Danielle Docka-Filipek, Crissa Draper, & Lindsey B. Stone, “Professor Moms” & “Hidden Service” in *Pandemic Times: Students Report Women Faculty More Supportive & Accommodating amid U.S. COVID Crisis Onset*, 48 INNOVATIVE HIGHER EDUC. 787 (2023).

⁸ See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, in FEMINIST LEGAL THEORIES 23 (Karen Maschke ed., 2013); BELL HOOKS, TALKING BACK: THINKING FEMINIST, THINKING BLACK 22 (2d ed. 2014); BELL HOOKS, FEMINIST THEORY: FROM MARGIN TO CENTER (2015).

⁹ Crenshaw, *supra* note 8.

¹⁰ See, e.g., Moya Bailey & Trudy, *On Misogynoir: Citation, Erasure, and Plagiarism*, 18 FEMINIST MEDIA STUD. 762 (2018).

personal experience as women at different stages of our careers in the legal academy in the United States, Europe, and Australia.¹¹

Third, our focus is the legal academy. There is a very large scholarship which marshals substantial amounts of data on the gender gap within academia, with numerous studies focusing on particular disciplines or sub-disciplines. While many of the arguments we advance in this Foreword are applicable to the gender gap in academia more generally, most of our studies and examples are drawn from the legal academy. Indeed, the issue of gender inequality within the legal academy is important to address in its own right for a number of reasons.¹² In particular, law schools play a distinct role in society: they are involved in the training of future lawyers, judges, prosecutors, defense attorneys, policy-makers, and others who are likely to have a role in shaping important social practices that may reproduce or challenge existing hierarchies and inequities. Further, as an institutional context which is often explicitly committed to gender equality, the fact that the legal academy cannot address many gender-related inequities suggests that they may be even greater and more entrenched, and the task of dismantling them even more challenging, than previously realized.

Finally, it is important to acknowledge that, since gender inequality is not just a problem within academia but is pervasive across society, some of the deeper structural causes of the gender gap make it difficult for the problem to be addressed within the academic context, unless accompanied by broader processes of social, economic, and political change.

Nevertheless, as we argue in this Foreword, we do not believe that the gender gap is in any way “natural,” and, more importantly, we argue that it is a matter of injustice about which institutions and societies should care. While the problems of gender inequality worldwide are far more severe and acute in many contexts beyond the academic setting, we believe that the gender gap—and gender injustice more generally—in academia is very well worth our attention. At a time when far-right-wing forces are mobilizing together with religious actors to challenge the goals and achievements of gender equality, as well as to undermine or abolish the academic discipline of gender and feminist studies, it is all the more important that we train our attention on the persistence of the gender gap in institutions of knowledge production, teaching, and learning.¹³

As we argue further below, there are many steps which could be taken to improve and reduce those dimensions of the gender gap within academia which are tractable and actionable, even without those processes of wider social change. Of course, what is needed to address this gap will inevitably differ across contexts: experiences are

¹¹ Drawing in part on personal experience resonates with feminist, critical methodological commitments to grounding ideas in lived experience: Crenshaw, *supra* note 8; Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *STAN. L. REV.* 581 (1990).

¹² For previous interventions by the current authors and coauthors on aspects of the broader issue, see Michaela Hailbronner, Marcela Prieto Rudolph, & Gráinne de Búrca, Editorial, *Gender in Academic Publishing*, 17 *INT'L J. CONST. L.* 1025, 1025 (2019); Gráinne de Búrca, Michaela Hailbronner, & Marcela Prieto Rudolph, *Gender in Academic Publishing*, *EJIL: TALK!* (Sept. 25, 2020), www.ejiltalk.org/gender-in-academic-publishing-part-1-postscript-ejil-statistics; Dixon & Versteeg, *supra* note 7.

¹³ See, e.g., ANTI-GENDER CAMPAIGNS IN EUROPE: MOBILIZING AGAINST EQUALITY (Roman Kuhar & David Paternotte eds., 2017); AGNIESZKA GRAFF & ELZBIETA KOROLCZUK, ANTI-GENDER POLITICS IN THE POPULIST MOVEMENT (2022).

likely to vary significantly on the basis of overlapping categories of marginalization,¹⁴ and substantial differences exist between and across jurisdictions and regions as far as the material conditions and the precarization of academia are concerned.¹⁵ These challenges and complexities, however, do not provide reason to avoid the difficult question of how problems of gender justice within legal academia might be addressed, but rather suggest that nuanced, careful, provisional, intersectional, and context-specific approaches are needed. We will return to this further below.

The remainder of the Foreword is structured as follows. It begins in Section 2 by identifying the nature of the continuing gender gap in legal academia, arguing that there are many persistent obstacles which interact with one another and contribute to maintaining the gender gap. Section 3 addresses the question why the gender gap is a matter for concern, and why addressing it within legal academia is a goal worth pursuing. Two types of reasons for addressing the gender gap—consequentialist and justice-based—are identified, before Section 4 moves on to consider a number of responses which have been suggested or implemented to address the gender gap and to promote a more feminist legal academy. Some of these responses and solutions, while well-intentioned and effective in various respects, have also inadvertently reinforced harmful stereotypes or burdens. Accordingly, Section 5 explores a number of other approaches which may be more attentive to these risks, and which aim to address the gender gap and to promote gender justice in the legal academy without reinforcing elements of the problem. In particular, Section 5 explores whether “gender-neutral” policies may be problematic, whether some of the proposed solutions risk creating a “diversity tax” on some women, and whether certain reforms are likely to be ineffective without being accompanied by broader processes of social and institutional change. The Foreword concludes by emphasizing that while gender equality is important and valuable, it is not on its own sufficient to challenge the status quo. Instead, we suggest that a feminist legal academy is needed, though we recognize that different scholars will have varying understandings of what such an academy might entail.

2. Identifying the gender gap and the obstacles to change

2.1. What is the gender gap in academia?

It used to be said that a focus on gender in legal scholarship meant asking the “woman question.”¹⁶ There are, however, two potential difficulties with framing the problem in

¹⁴ Kimberlé W. Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 154–7; Harris, *supra* note 11; PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA (Gabriella Gutiérrez y Muhs et al. eds., 2012); ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* (1990).

¹⁵ Angus Thompson, *Fair Work Changes Not Enough to Boost Academics’ Job Security: University*, SYDNEY MORNING HERALD (Feb. 3, 2022, 7:05 PM), www.smh.com.au/politics/federal/fair-work-changes-not-enough-to-boost-academics-job-security-university-20220203-p59tlh.html; Richard K. Neumann, Jr., *Academic Freedom, Job Security, and Costs*, 66 J. LEGAL EDUC. 595 (2017).

¹⁶ See, e.g., Katherine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 837 (1989), cited in Rosemary Hunter, *Feminist Judging in the “Real World.”* 8 ONATI SOCIO-LEGAL SER. 1275, 1282 (2018).

what may initially sound like narrow terms. First, it is wrong to think about feminism and gender justice as focused solely on the interests and needs of women. Trans-men and non-binary scholars also face discrimination on the basis of their gender that raise pressing concerns for those committed to a project of gender justice.¹⁷ We believe that there can be no true gender justice in the academy without respect for the rights of trans and non-binary scholars.¹⁸

A second possible difficulty with asking the “woman question” is that it may risk downplaying the many intersecting sources of discrimination and inequality that shape the experience of gender in the legal academy. The same might be thought of asking the “gender question.” However, we believe that an intersectional approach to questions of gender is fundamental. In the United States, feminists and critical race scholars have long shown how gender and race intersect in complex ways that reproduce structures of systemic racism and misogyny.¹⁹ And these patterns play out in noticeable ways in the legal academy itself: for example, evidence from the US legal academic job market between 1986 and 1991 shows that minority women began teaching at lower ranks than men and were more likely to teach low-status courses like legal writing or trusts and estates.²⁰ These disparities could not be explained on the basis of differences in credentials, age, work experience, geographic constraints, or family ties.²¹ Another study found that minority women were systematically more likely to receive lower compensation as professors than both black male and white female peers.²² And Meera Deo has extensively documented the marginalization and challenges that women of color face in the legal academy in the United States.²³

Race and other factors also shape the experience of women law professors around the world in complex ways. Indigenous scholars are more likely than non-indigenous peers to experience adverse career and pay outcomes in the Americas and beyond. In some countries, women from certain religious minority backgrounds are more likely to be subject to harsh student and peer evaluations than non-minority women and men peers. Indeed, recent experience suggests that hijab-wearing women face bias and discrimination in a variety of contexts.²⁴ And in South Asia, women from lower

¹⁷ For useful discussion and introduction to this large and important literature on transgender and non-binary rights and discrimination, see, e.g., Stefano Osella & Ruth Rubio-Marin, *Gender Recognition at the Crossroads: Four Models and the Compass of Comparative Law*, 21 INT’L J. CONST. L. 574 (2023); Stefano Osella, “De-Gendering” the Civil Status? A Public Law Problem, 18 INT’L J. CONST. L. 471 (2020).

¹⁸ See Catherine Mackinnon, *A Feminist Defense of Transgender Sex Equality Rights*, 34 YALE J.L. & FEMINISM 88 (2023).

¹⁹ Crenshaw, *supra* note 8; Harris, *supra* note 11.

²⁰ 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, 2300 (1992).

²¹ *Id.*

²² Christopher J. Ryan & Meghan Dawe, *Mind the Gap: Gender Pay Disparities in the Legal Academy*, 34 GEO. J. LEGAL ETHICS 567 (2021).

²³ MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN THE LEGAL ACADEMIA* (2019).

²⁴ Studies show biases/discrimination against women wearing headscarves and/or the hijab in different contexts. See Doris Weichselbaumer, *Multiple Discrimination Against Female Immigrants Wearing Headscarves*, 73 ILR REV. 600 (2020); Jim A.C. Everett et al., *Covered in Stigma? The Impact of Differing Levels of Islamic Head-Covering on Explicit and Implicit Biases Toward Muslim Women*, 45 J. APPLIED SOC. PSYCH. 90 (2015).

caste backgrounds are more likely to face a range of educational and career obstacles than higher caste male and female colleagues.²⁵

In terms of class and economic resources, women scholars in some institutions of the Global North enjoy better pay and conditions than their colleagues at some institutions in the Global South; and often, women scholars in the Global South are left out of efforts by Global North scholars to remedy the underrepresentation of scholars from the Global South in various academic events and publications.²⁶

Sexual orientation and disability are additional sources of structural disadvantage that can intersect with gender in complex ways. As a female scholar who was involved in the drafting of the UN Convention on the Rights of Persons with Disabilities (CRPD) has noted, “[a]bleism frames the way society thinks about who’s a member of society. Ableism drives a conception that there is a norm. . . and so anybody [male or female] who sits outside that norm finds that they encounter barriers to be able to participate within our social structures,” including structures such as universities.²⁷ This echoes broader arguments by feminists about the ways in which notions of different women as “normal” versus abnormal can shape their treatment and hence can shape broader social, political, and economic structures.²⁸

Gender can likewise intersect with age in complex ways: younger women law professors are more likely to be perceived as lacking authority and necessary skills compared to male counterparts and to more senior women colleagues. Yet older women scholars may also be assessed more harshly than their male counterparts due to different forms of intersectional age and gender discrimination.

In this section, we focus on the gender gap in the legal academy, along several dimensions, while noting how these categories of marginalization overlap in different respects.

At its most basic, the gender gap is a problem of both underrepresentation and overrepresentation. Underrepresentation focuses on the negative difference between the percentage of women in the professoriate and/or leadership roles and the percentage of women students in that field or in the general population.²⁹ In the legal academy,

²⁵ See Bhushan Sharma & A.K. Geetha, *Casteing Gender: Intersectional Oppression of Dalit Women*, 22 J. INT’L WOMEN’S STUD. (SPECIAL ISSUE) art. 1 (2021).

²⁶ See Rosalind Dixon, *Feminism and Comparative Constitutional Studies in Comparative Constitutional Studies*, 1 COMP. CONST. STUD. 310 (2023); see also Anna Dziedzic & Dinesha Samararatne, *Asking the Woman Question of Constitutions: Insights from Sri Lanka*, 56 VERFASSUNG IN RECHT UND ÜBERSEE 127 (2023).

²⁷ Rosemary Kayess, 2020 Human Rights Day Oration (Speech delivered on Dec. 10, 2020).

²⁸ Crenshaw, *supra* note 8; MacKinnon, *supra* note 18.

²⁹ Elizabeth Olsen, *Women Make Up Majority of U.S. Law Students for First Time*, N.Y. TIMES (Dec. 16, 2016), www.nytimes.com/2016/12/16/business/dealbook/women-majority-of-us-law-students-first-time.html. For equal graduation, not employment patterns, in Canada, see Alessandra Guiseppina Sodano, *Gender and the Practice of Law in Canada* (Apr. 22, 2020) (B.A. thesis, Mount Royal University), <https://arcabc.ca/islandora/object/mru%3A458>. In Australia, for women’s greater representation at law school and in lower ranks of the profession in Australia, see Jerome Doraisamy, *Female Grads in Firms Outnumber Males 2-to-1*, LAWYERS WKLY. (Mar. 6, 2019), www.lawyersweekly.com.au/biglaw/25191-female-grads-in-firms-outnumber-males-2-to-1. Regarding the gap between women’s share of PhDs earned by US citizens and women’s share of faculty positions, see Martha S. West, *Gender Bias in Academic Robes: The Law’s Failure to Protect Women Faculty*, 67 TEMPLE L. REV. 67, 69 (1994).

women are underrepresented in tenured and tenure-track positions in law schools relative to their presence in the pool of potential candidates, their presence in law schools, or their presence in the general population.³⁰ That is, the gender gap manifests itself in women being underrepresented in tenure-track and leadership positions, as well as in citation rates, while being overrepresented in staff, non-tenure-track, clinical, and legal writing jobs.

In the United States, for example, in 2018 only 38.78% of US law faculty members were women, even though, already by 1985, 40% of law students were women, a figure which had risen to 52.44% by 2018.³¹ More broadly, from the results of a survey conducted in 2022 which yielded data from twenty-eight countries, women appear to be strongly represented amongst law students worldwide.³² Of those twenty-eight countries, only three (Seychelles with 22% female, Guinea with 40% female, and Taiwan with 44.9% female) reported a higher number of male law students than female. In the other twenty-five countries, women law students outnumber men, and in some countries—particularly in Europe—they significantly outnumber male law students. In total, 69.9% of Estonia's law students, 65.7% of Finland's, 71.43% of Latvia's, 65% of Sweden's, and 76% of Croatia's are women. Yet, at the same time, despite being a majority of law students in so many countries, a minority of tenured professors are women. Of those surveyed, only in three countries whose population is under one million is this not true: in the Maldives, where 85.7% of tenured law professors at half of the country's universities are women; in Andorra, where 100% of tenured professors at half of the country's universities are women; and in Fiji, where 100% of all law professors at the University of Fiji are women. Law faculties in most of the other countries surveyed are comprised of between 33% and 47% women.³³ However, some countries fall below even this percentage. In Germany, for example, with a population of over 83 million, only 15.88% of the country's tenured professors within law faculties are women. And according to data recently compiled on Japan, the average percentage of women on law faculties across the country in 2020 was just 15.8%.³⁴ On the law faculty of the University of Tokyo, generally considered to

³⁰ For a definition of the "gender gap," see, e.g., Morgan Thompson, *Explanations of the Gender Gap in Philosophy*, 12 PHIL. COMPASS 1 (2017).

³¹ Renee Nicole Allen, Alicia Jackson, & DeShun Harris, *The Pink Ghetto Pipeline: Challenges and Opportunities for Women in Legal Education*, 96 U. DET. MERCY L. REV. 525, 530, 535 (2018). A recent study of US academia finds that 64% of tenure-track faculty are men. See K. Hunter Wapman et al., *Quantifying Hierarchy and Dynamics in US Faculty Hiring and Retention*, 610 NATURE 120 (2022).

³² Survey of Women in Legal Education (Jan. 2023) (unpublished manuscript) (on file with authors). We are grateful to Bea Greenberg for assistance in conducting and compiling the results of this survey.

³³ More generally, and beyond just the legal domain, a recent UNESCO survey reports that only 30% of the world's researchers at universities are women, with regional averages for the share of female researchers in 2017 at 48.5% for Central Asia, 45.8% for Latin America and the Caribbean, 40.9% for Arab States, 39% for Central and Eastern Europe, 32.9% for North America and Western Europe, 31.1% for Sub-Saharan Africa, 25% for East Asia and the Pacific, and 23.1% for South and West Asia: U.N. EDUC., SCI. & CULTURAL ORG. INT'L INST. FOR HIGHER EDUC. IN LATIN AM. & CARRIB., *WOMEN IN HIGHER EDUCATION: HAS THE FEMALE ADVANTAGE PUT AN END TO GENDER INEQUALITIES?* 22 (Mar. 8, 2021), <https://unesdoc.unesco.org/ark:/48223/pf0000377182>.

³⁴ Mark Levin & Makoto Messersmith, *Presence and Voice: The History and Status Quo of Women Law Professors in Japan*, 23 ASIAN-PACIFIC L. POL'Y J. 177 (2022).

be the most elite of the country's educational institutions, the percentage of women was 5.45%.³⁵

In the Australian legal academy, women are underrepresented in *senior* positions, relative to their percentage in junior positions or as law school students. Data from thirty-eight Australian law schools collected in 2018 indicates that while 51.2% of academics in the data set are women, they are significantly less likely to be appointed in senior posts, with 42.5% of women in the dataset appointed at the associate professor or professor level, compared to 58% of male legal academics.³⁶

While this is changing, women remain the clear minority of law deans in most countries.³⁷ And as we explore further below, not all of this change is positive from a gender perspective: often, women's progress in this domain has occurred at the same time as an increase in the workload and downgrading of the status and power of deans, compared to central university leaders.³⁸ Indeed, it is important to note that the "feminization" of the legal academy, by itself, will not always be a sign of a feminist or gender-equal academy. As the overrepresentation of women in lower paid, less secure academic jobs suggests, feminization can be a reflection of progress in the academy, but also a worsening in the terms and conditions associated with academic work.³⁹ There is also good evidence in several countries that the "massification" of legal education has both helped facilitate the entry of women into law teaching and substantially worsened the terms and conditions of that work.⁴⁰

A second dimension of underrepresentation is in the rate of publication of the work of female scholars in leading law journals by comparison to the rate of publication of their male peers. Consider the current journal, the *International Journal of Constitutional Law* (ICON). In an article coauthored by one of the present authors with Mila Versteeg, it was shown that of all the articles published between 2006 and 2020 in ICON, 35% had at least one female author, and 29% were written by all-female

³⁵ *Id.* at 208. Interestingly, in late 2022, the University of Tokyo announced a goal of increasing the number of female professors and associate professors by 50% by the 2027 academic year. See Editorial: *Female Quotas at Japanese Universities a Step in Right Direction for Diversity*, THE MAINICHI (Jan. 18, 2023), <https://mainichi.jp/english/articles/20230118/p2a/00m/Oop/011000c>.

³⁶ Melville & Barrow, *supra* note 3.

³⁷ In the United States, see, e.g., Katz, Rozema, & Sanga, *supra* note 3. On the glass ceiling in law schools elsewhere, see also Peter Robson, *Gender and Law Teaching in Scotland*, in *GENDERS AND CAREERS IN THE LEGAL ACADEMY* 195 (Ulrike Schultz et al. eds., 2021); Hilary Somerlad, *Patriarchal Discourses in the UK Legal Academy: The Case of the Reasonable Man*, in *GENDERS AND CAREERS IN THE LEGAL ACADEMY*, *supra*, at 531. For a powerful historical account of the obstacles to women becoming law deans, see Mary Jane Mossman, *Complaint at Osgoode Hall Law School*, in *GENDERS AND CAREERS IN THE LEGAL ACADEMY*, *supra*, at 425.

³⁸ Katz, Rozema, & Sanga, *supra* note 3.

³⁹ BARBARA F. RESKIN & PATRICIA A. ROOS, *JOB QUEUES, GENDER QUEUES: EXPLAINING WOMEN'S INROADS INTO MALE OCCUPATIONS* (1990).

⁴⁰ On the connection between the growing size of the legal academy, linked to massification and other factors, and the increasing representation of women in the academy, see, e.g., Omnia Mehanna & Nadia Sonneveld, *Why Aisha Rateb Could Not Become Egypt's First Female Judge, and Became Egypt's First Female Law Professor Instead*, in *GENDERS AND CAREERS IN THE LEGAL ACADEMY*, *supra* note 37, at 373; Rania Maktabi, *First Female Law Student and Law Professor in Kuwait: Badria Al-Awadhi Opens Doors for Women in Law 1967–2020*, in *GENDERS AND CAREERS IN THE LEGAL ACADEMY*, *supra* note 37, at 389.

authors or authorial teams.⁴¹ Of all the solo-authored articles published in *ICON*, 33% were written by women. And of the 1102 author entries, 25% were female authors, compared to the membership of International Society of Public Law (*ICON-S*), the international society of public law which is closely associated with the journal and is 47.5% female. The percentage of articles by women published in *ICON*, however, roughly tracked or even slightly exceeded the rate at which women submitted articles to the journal.

Yet the level of citation to female-authored work is even lower: while 29% of articles are authored by all-female authors, only 18% of citations are to all-female authors—a difference of 11 percentage points. Similarly, while 35% of articles are authored by at least one woman, only 25% of citations include at least one female author; a difference of ten percentage points.⁴² Similar findings exist in political science, with almost all studies finding a gender citation gap, with women being less likely to be cited than all male or mixed gender authorial teams—the gap is muted only in certain sub-fields, where there is a higher proportion of female scholars.⁴³ Other studies have reported similar findings in domestic legal settings, though the results in the domestic setting vary by context and across studies.⁴⁴ And others still have found that female scholars are less likely to be thanked in the acknowledgments of law review articles, which suggests that female scholars and their input are less likely to be viewed as important by authors and reviewers.⁴⁵

Conversely, the gender gap also manifests itself in the overrepresentation of women in non-tenure-track positions (the “pink ghetto”), such as clinical positions and legal writing jobs, relative to the percentage of women as law school students or the percentage of women in tenure-track positions. In the United States, for example, female law professors tend to have lower status and pay, higher workloads, and less job security than men.⁴⁶ In almost all of the twenty-eight countries from which responses were received to the survey conducted for this Foreword, a higher percentage of women amongst non-tenured professors of law than among tenured

⁴¹ Dixon & Versteeg, *supra* note 7. Figures from the *European Journal of International Law* (*EJIL*) show similar patterns in submissions and publication regarding gender, as noted in correspondence with the managing editor, on file with the authors.

⁴² *Id.*

⁴³ Michelle L. Dion, Jane Lawrence Sumner, & Sara McLaughlin Mitchell, *Gendered Citation Patterns Across Political Science and Social Science Methodology Fields*, 26 *POL. ANALYSIS* 312 (2018). For earlier studies finding this same effect, see also Daniel Maliniak, Ryan Powers, & Barbara F. Walter, *The Gender Citation Gap in International Relations*, 67 *INT’L ORG.* 889 (2013); Dawn Langan Teele & Kathleen Thelen, *Gender in the Journals: Publication Patterns in Political Science*, 50 *POL. SCI. & POL.* 433 (2017).

⁴⁴ See Deborah Jones Merritt, *Scholarly Influence in a Diverse Legal Academy: Race, Sex, and Citation Counts*, 29 *J. LEGAL STUD.* 345 (2000). *But see* Ian Ayres & Fredrick E. Vars, *Determinants of Citations to Articles in Elite Law Reviews*, 29 *J. LEGAL STUD.* 427 (2000); Christopher A. Cotropia & Lee Petherbridge, *Gender Disparity in Law Review Citation Rates*, 59 *WM. & MARY L. REV.* 771 (2018) (finding that female scholars in the United States are cited at higher rates).

⁴⁵ Jonathan I. Tietz & W. Nicholson Price II, *Acknowledgments as a Window into Legal Academia Commentary*, 98 *WASH. U. L. REV.* 307 (2020).

⁴⁶ Allen, Jackson, & Harris, *supra* note 31, at 527.

professors was reported.⁴⁷ In the cases of Croatia, Finland, Iceland, the Maldives, New Zealand, Norway, and Seychelles, women make up at least half (50%) of non-tenured law professors.

Of course, some of these numbers might be partly due to historical legacy, insofar as the candidate pool in previous generations of hiring remained predominantly male and most law professors were, as a result, men. Given the low turnover of faculty, the overrepresentation of women in non-tenure-track positions might partially reflect the fact that it is only recently that women have begun to be hired in tenure-track positions in significant numbers. However, there is additional evidence of the “pink ghetto” phenomenon that does not fit the historical legacy explanation. For example, in 2013, 63% of full-time clinical instructors and 70% of legal writing instructors in US law schools were women.⁴⁸ In the Australian legal academy, data from thirty-eight law schools, collected in 2018, indicates that 56% of the staff in the dataset were women.⁴⁹ And the most recent study of the American Bar Association (ABA)-accredited law schools found that by 2021 women constituted 45% of law faculty, but they were also twice to three times more likely to be legal writing or clinical professors.⁵⁰ Further, the fact that the gender gap is the result of historical legacy does not detract from the fact that this legacy was the result of unjust practices of hiring and promotion.

Positions of this kind also attract lower pay, job security, and prestige than equivalent forms of tenure-track employment. In many ways, the rise of this form of employment is associated with broader patterns of casualization or “fissurization” in academic workplaces.⁵¹ Modern universities are no longer institutions comprised largely of tenured and tenure-track academics, with professional and technical staff to support their research and teaching. Instead, they are dominated by casual academic staff and short-term academic employment contracts, and an increasingly managerial approach to university governance, where profit rather than academic freedom, excellence, and equity often becomes the governing ideal.⁵² Indeed, as we note in Section 4, these developments themselves pose a major challenge to combating gender injustice in the legal academy.⁵³

⁴⁷ See also Emily Sanchez Salcedo, *Women Law Teachers in the Philippines Then, Now and Six Decades in Between: The Cheerless Transformation of a Road Less Travelled to a Path Oft-Chosen for Convenience*, in *GENDERS AND CAREERS IN THE LEGAL ACADEMY*, *supra* note 37, at 249; Julie Paquin, *The Feminisation of Legal Academia in Quebec: Achievements and Challenges*, in *GENDERS AND CAREERS IN THE LEGAL ACADEMY*, *supra* note 37, at 79.

⁴⁸ Allen, Jackson, & Harris, *supra* note 31, at 535.

⁴⁹ Melville & Barrow, *supra* note 3.

⁵⁰ Katz, Rozema, & Sanga, *supra* note 3.

⁵¹ See, e.g., DAVID WEIL, *THE FISSURED WORKPLACE* (2017). In an academic context specifically, see, e.g., Colin Long, *Casualisation of University Workforce Is a National Disgrace*, SYDNEY MORNING HERALD (Aug. 3, 2018, 1:58 PM), www.smh.com.au/education/casualisation-of-university-workforce-is-a-national-disgrace-20180803-p4zvcm.html (noting trends in an Australian context); Gabriel Winan, *Grad Students to the Barricades*, DISSENT (2012), www.dissentmagazine.org/article/grad-students-to-the-barricades (noting trends in the United States).

⁵² See, e.g., MICHAEL WESLEY, *MIND OF THE NATION: UNIVERSITIES IN AUSTRALIAN LIFE* (2023).

⁵³ See MARGARET THORNTON, *DISSONANCE AND DISTRUST: WOMEN IN THE LEGAL PROFESSION* (1996).

2.2. Obstacles to closing the gender gap

Many factors contribute to the persistence of inequality within the academy, including obstacles that help to maintain the gender gap. Such obstacles can influence whether women scholars decide to join or leave the academy, as well as their experiences once they are part of it. They can also have an impact on hiring and promotion practices. These obstacles can, then, partially explain *why* there is a continuing gender gap in the academy, along its many different dimensions.

Of course, the plausibility of different explanations and how these obstacles relate to those explanations is likely to vary depending on how and when the gender gap manifests itself. For example, in the United States, women applicants to law-teaching positions constituted 30% of the hiring pool in 2000–01, and 33% in 2001–02 and 2002–03, which is significantly lower than their presence in law schools.⁵⁴ In the 2008–09 period, women remained close to a third of the pool of applicants, with a 34.8 percentage.⁵⁵ The fact that a lower proportion of women than men are applying to be law professors has likely a different explanation than, say, the fact that women are hired at lower levels than similarly credentialed men, or the fact that they are promoted less often than men. It is also possible that the explanations are related.⁵⁶

In this section, we focus on three obstacles, noting that the relative significance and magnitude of each is likely to differ depending on the national and institutional context, and on the intersection of other sources of discrimination and disadvantage, such as race, ethnicity, disability, class, and others.

The three obstacles we focus on are: gender stereotypes and biases, both implicit and otherwise; gendered allocations of “care work” within the home and the academy itself; and gender-based harassment or violence. The available evidence, discussed below, suggests that women face various gender stereotypes and biases during their academic careers, that they disproportionately shoulder care work, both within the family and academic institutions, and that they tend to be victims of sexual violence and harassment within academic contexts. In Section 3 below, we will return to some of these obstacles and explain in which ways they constitute different forms of injustice.

First, women scholars face a number of gender biases—unconscious and otherwise—as well as gendered expectations in the process of hiring, promotion, and the allocation and assessment of academic work.

In the case of the pink ghetto and wage segregation, Margaret Thornton connects these to gender biases and norms which lead men to be constructed as “knowers” and women as “handmaidens” to male research and knowledge-production.⁵⁷ For instance, Thornton suggests that “the familiar scenario in law schools and the academy

⁵⁴ Richard K. Neumann Jr., *Women in Legal Education: A Statistical Update*, 73 UMKC L. REV. 419, 435 (2004).

⁵⁵ Meera E. Deo, *Looking Forward to Diversity in Legal Academia*, 29 BERKELEY J. GENDER L. & JUST. 352, 360 (2014).

⁵⁶ For explanations of the underrepresentation of women of color in US legal academia, see *Id.*

⁵⁷ THORNTON, *supra* note 53, at 111–12. See generally GENDERS AND CAREERS IN THE LEGAL ACADEMY, *supra* note 37.

generally is that men, as the ‘knowers’, create knowledge and women teach it.”⁵⁸ This can result in men’s overrepresentation in secure, high-paid, research-focused academic roles, and women’s overrepresentation in casual, low-paid teaching positions.⁵⁹

Gender biases and stereotypes can also affect how senior scholars talk about and promote the work of peers and more junior colleagues, and can cause students to assess male and female instructors differently.

In the case of students’ assessment of women professors, there is extensive empirical evidence that testifies to gendered evaluations on a cross-national basis.⁶⁰ Women scholars are consistently less likely to receive favorable teaching evaluations compared to male colleagues.⁶¹ An article that systematizes and analyzes existing research on teaching and course evaluations finds that these are significantly biased due to the demographics of students who complete them and due to prejudice against the instructor.⁶² Academic evaluations are biased against women instructors: women academics receive consistently lower scores in certain areas regardless of their performance; expectations are different on the basis of gender; and the analyses indicate that the highest scores are awarded in subjects filled with young, white, male students being taught by white English first-language-speaking, able-bodied, male academics between thirty-five and fifty years of age, and who students believe are heterosexual.⁶³ Anyone who deviates from this standard gets lower evaluations, but women from ethnically diverse backgrounds are graded more harshly than men from similar backgrounds.⁶⁴ For instance, a study based on teaching and course satisfaction data collected at an Australian university over a seven-year period found that the instructor’s gender and cultural background has a negative effect on their teaching scores, with women from non-English-speaking backgrounds being the most affected group, and that male students give lower scores to women teachers.⁶⁵ There are also informal and formal sanctions against those who incorporate gender and race issues

⁵⁸ THORNTON, *supra* note 53.

⁵⁹ Allen, Jackson, & Harris, *supra* note 31, at 527.

⁶⁰ See, e.g., Debra Austin, *Leadership Lapse: Laundering Systemic Bias through Student Evaluations* 65 VILL. L. REV. 995 (2020); Yanan Fan et al., *Gender and Cultural Bias in Student Evaluations: Why Representation Matters*, 14 PLoS ONE 11 (2019).

⁶¹ Anne Boring, *Gender Biases in Student Evaluations of Teaching*, 145 J. PUB. ECON. 27 (2017).

⁶² Troy Heffernan, *Sexism, Racism, Prejudice, and Bias: A Literature Review and Synthesis of Research Surrounding Student Evaluations of Courses and Teaching*, 47 ASSESSMENT & EVALUATION HIGHER EDUC. 144 (2022). For more country-specific analyses, see also, e.g., Liz Duff & Lisa Webley, *Gender and the Legal Academy in the UK: A Product of Proxies and Hiring and Promotion Practices*, in GENDERS AND CAREERS IN THE LEGAL ACADEMY, *supra* note 37, at 63; Maria da Gloria Bonelli, *Women, Difference and Identities in the Brazilian Legal Professoriate*, in GENDERS AND CAREERS IN THE LEGAL ACADEMY, *supra* note 37, at 95; Swethaa S. Ballakrishnen & Rupali Samuel, *India’s Women Legal Academics: Who They Are and Where You Might Find Them*, in GENDERS AND CAREERS IN THE LEGAL ACADEMY, *supra* note 37, at 115; Beatriz Kohen, Sonia Ariza Navarrete, & Maria de los Angeles Ramallo, *Women in the Legal Academy at the Law School of the University of Buenos Aires*, in GENDERS AND CAREERS IN THE LEGAL ACADEMY, *supra* note 37, at 133; J. Jarpa Darwuni, *Breaking the Veil of Masculinity? Women and the Legal Academy in Ghana*, in GENDERS AND CAREERS IN THE LEGAL ACADEMY, *supra* note 37, at 151.

⁶³ Heffernan, *supra* note 62, at 148.

⁶⁴ *Id.* at 149.

⁶⁵ Fan et al., *supra* note 60, at 6, 11.

into their pedagogy.⁶⁶ And even though there is evidence that these evaluations benefit a certain group of men and hurt women and other minorities, they are still used by institutions to assess teaching competence, hiring, and promotions.⁶⁷

Similarly, biases and stereotypes can contribute to gendered differences in access to mentoring, coauthorship, and the formation of broader scholarly networks. From the outset of their career, women scholars are less likely to be identified as producing “brilliant” or influential research.⁶⁸ This is in part because women are less likely to be associated with brilliance as opposed to competence; and even basic competence is less likely to be perceived in women than men.⁶⁹ In science, this is known as the “John” versus “Jennifer” effect.⁷⁰

Perceptions of this kind can influence hiring, promotion, and a range of intermediate decisions about mentoring and the distribution of professional opportunities. Senior scholars may perceive junior scholars as (less) worthy of mentoring and support based on a gendered assessment—even if implicit or unconscious—of their prior contributions and/or intellectual ambition. They may likewise make these decisions based on a judgment about the “likeability” of certain colleagues as potential interlocutors and mentees, and there is again extensive empirical evidence of a “likeability” gap for professional men and women.⁷¹

Even when women are acknowledged to have contributed to the production of high-quality work, gendered biases may lead their contributions to be downplayed compared to male peers and colleagues. This is often referred to as the “Mathew” or “Mathilda” effect: the Mathew effect is the tendency for certain ideas to be (over) credited to male authors and speakers, and the Mathilda effect the tendency for the arguments and ideas of women authors to be overlooked or downplayed.⁷²

Effects of this kind help explain why arguments made by male scholars tend to be more readily “heard” and noticed than those made by women scholars, in ways that directly affect their respective chances of having work cited and credited to them.⁷³ On a personal level, each of the authors of this Foreword can testify to the experience

⁶⁶ See, e.g., Meera Deo, Maria Woodruff, & Rican Vue, *Paint by Number? How the Race and Gender of Law School Faculty Affect the First-Year Curriculum*, 29 CHICANA/O LATINA/O L. REV. 1, 33 (2010); Margalynne J. Armstrong & Stephanie M. Wildman, *Teaching Race/Teaching Whiteness: Transforming Colorblindness to Color Insight*, 86 N.C. L. REV. 635, 656 (2007).

⁶⁷ See Heffernan, *supra* note 62 (noting that student evaluations are overtaken in over 16,000 higher education institutions).

⁶⁸ On the gendered use of adjectives such as “brilliant” in the writing of academic references, see Sarah Nouwen, *On My Way In II: Countering Gender Stereotypes in Letters of Reference and Shifting Academic Valorization While We Are at It*, EJIL: TALK! (July 13, 2021), www.ejiltalk.org/on-my-way-in-ii-countering-gender-stereotypes-in-letters-of-reference-and-shifting-academic-valorization-while-we-are-at-it/.

⁶⁹ Daniel Storage et al., *Adults and Children Implicitly Associate Brilliance with Men More Than Women*, 90 J. EXPERIMENTAL SOC. PSYCH. (2020).

⁷⁰ Corinne A. Moss-Racusin et al., *Science Faculty’s Subtle Gender Biases Favor Male Students*, 109 PROCEEDINGS, NAT’L ACAD. SCI. 16474 (2012).

⁷¹ Leonie Gerhards & Michael Kosfeld, *I (Don’t) Like You! But Who Cares? Gender Differences in Same-Sex and Mixed-Sex Teams*, 130 ECON. J. 716 (2020).

⁷² *Id.* For helpful discussion and analysis, see Dion, Sumner, & McLaughlin Mitchell, *supra* note 43.

⁷³ Margaret W. Rossiter, *The Matthew Matilda Effect in Science*, 23 SOC. STUD. SCI. 325 (1993) cited in Dixon & Versteeg, *supra* note 7, at 413.

(more than once) of having made an argument or point in an academic meeting or event that went unnoticed or ignored, but was picked up immediately when subsequently repeated by a male colleague without reference to its earlier articulation.

Access of women to academic positions, and particularly to more senior positions, can also be affected by gender biases based on the assumption that women will be more likely to be less productive academically or less present at work due to family responsibilities. To return to a personal example: one of us was recently involved in interviews for a senior academic position where the eventual choice was between a male and a female candidate, and where two senior male colleagues separately voiced the view that the male candidate (who did not have children) would be likely to be a much more present and available colleague than the female candidate (who had children), and—without explicitly referring to the childcare situation—noted that the female candidate had had more constraints on her interview availability. The male candidate was ultimately appointed.

Another way in which gender stereotypes and biases might play a role relates to a perceived confidence gap between men and women, whereby women might tend to have more negative views of their own abilities, within certain domains, than men.⁷⁴ This “confidence gap,” including gendered differences in the ways in which many men and women tend to express themselves and to behave, is likely to have been influenced and reinforced by early education and socialization, to the extent that boys have been rewarded for expressions of confidence and ambition, and girls for caution, modesty, and care. There is no doubt some general truth in the suggestion that there still tend to be differences in perceived and felt levels of confidence between men and women. There may well be some difference in the extent to which male and female colleagues respectively experience feelings of self-doubt as academics, especially about the quality and value of their writing, which could affect the production and publication of their work in different ways. Some of the tasks that require substantial confidence within academic life include choosing ambitious projects, presenting at conferences, and promoting one’s work, whether by submitting it for conferences or to prestigious journals, sending it to colleagues, or promoting it on social media or otherwise. There is also clear evidence of a gender gap in the willingness to engage in professional self-promotion.⁷⁵ This might not necessarily be due to a lack of confidence, but rather due to the way self-promotion is perceived on the basis of gender, whereby self-confidence and self-promotion by women might be perceived in a more negative light than self-confidence and self-promotion by men.⁷⁶

A confidence gap, fueled by factors such as gendered differences in student evaluations and by being in a minority within a predominantly male legal academy,

⁷⁴ For an early study on the gendered confidence gap, see Joyce Ehrlinger & David Dunning, *How Chronic Self-Views Influence (and Potentially Misperceive) Estimates of Performance*, 84 *GENDER PERSONALITY & SOC. PSYCH.* 5 (2003).

⁷⁵ Christine L. Exley & Judd B Kessler, *The Gender Gap in Self-Promotion* (Nat’l. Bureau of Econ. Rsch. Working Paper No. 26345, 2021), www.nber.org/papers/w26345.

⁷⁶ Laurie Rudman, *Self-Promotion as a Risk Factor for Women: The Costs and Benefits of Counterstereotypical Impression Management*, 74 *J. PERSONALITY & SOC. PSYCH.* 629 (1998).

may also affect how much time female scholars feel they need to devote to teaching and to various service roles.⁷⁷ Good teaching requires appropriate preparation, but excessive preparation may be driven by anxiety about unforeseen, esoteric questions from students, including from students who may (as the authors of this Foreword have occasionally experienced) be motivated to challenge a teacher who does not resemble the expected image of a university professor. All academics, and perhaps particularly at the start of their career, may face challenges in the classroom to their authority and knowledge, but women in general and women of color in particular are likely to experience this to a much greater degree.⁷⁸

Similarly, such differences in expectation and reaction, as well as women's concern to dispel any prejudice or perception that they are less accomplished or less deserving of academic appointment, may affect how much time female scholars devote to certain forms of academic service. Reading, teaching, grading, reviewing, and writing references take time to do well. But if a scholar lacks confidence and feels a particular responsibility to demonstrate their competence, they may spend more time than necessary on such tasks, at the cost of time spent on other personal and research-related activities.⁷⁹ Further, this might be compounded by gendered expectations of what women owe to students, colleagues, and institutions in terms of carework and service. We will return to this in Section 3.

There may also be differential social-cultural responses to expressions of confidence by male and female scholars, with male authors who present early ideas on new and ambitious topics being viewed as bold and innovative, while female authors may be seen as overreaching and underprepared.⁸⁰ Similarly, male authors who generalize may be rewarded for their contribution to theory building, whereas female authors may be encouraged to limit and qualify their claims and do more work to support them. This phenomenon might be related to gendered expectations about who counts as a *knower* in certain circles, as we will discuss further below, in the context of epistemic injustice (Section 3.2).⁸¹ And these are not mere hypotheses, as

⁷⁷ Indeed, the way in which confidence and performance are negatively affected by the fact of being a woman in a minority within a male-dominated institution or profession provides one of the consequence-based justifications for promoting gender diversity and being concerned about the gender gap. See further Section 3.1.

⁷⁸ See, e.g., Chavella Pitman, *Race and Gender Oppression in the Classroom: The Experiences of Women Faculty of Color with White Male Students*, 38 *TEACHING SOCIO.* 183 (2010); See also C. Lampman, E. C. Crew, S. Lowery, K. A. Tompkins, & M. Mulder, *Women Faculty Distressed: Descriptions and Consequences of Academic Contrapower Harassment*, 9 *J. WOMEN HIGHER EDUC.* 169 (2016).

⁷⁹ See, for example, the advice given by Joseph Weiler, *Best Practice: Writing a Peer-Review Report*, *EJIL: TALK!* (Jul. 22, 2019), www.ejiltalk.org/best-practice-writing-a-peer-review-report (urging scholars to provide detailed referee reports that do justice to the task of reviewing); Joseph Weiler, *On My Way Out IV: Teaching*, *EJIL: TALK!* (Jan. 25, 2017), www.ejiltalk.org/on-my-way-out-iv-teaching (urging scholars to destroy their teaching notes each year to promote freshness in teaching).

⁸⁰ On perceptions of and consequences of risk-taking by men and women in the workplace, see Thekla Morgenroth, Michelle Ryan, & Cordelia Fine, *The Gendered Consequences of Risk-Taking at Work: Are Women Averse to Risk or to Poor Consequences?*, 46 *PSYCH. WOMEN Q.* 257 (2022).

⁸¹ See KATE MANNE, *DOWN GIRL: THE LOGIC OF MISOGYNY* (2019); MIRANDA FRICKER, *EPISTEMIC INJUSTICE: POWER AND THE ETHICS OF KNOWING* (2007).

research in various fields has shown that there are gendered biases about female vs male competence.⁸²

The second factor that can explain the gender gap is the fact that women are disproportionately burdened with care work within the home and within academic and institutional settings. Of course, to talk of care as a “burden” could itself be seen as problematic or unfeminist: care is a fundamental human need, and a source of purpose and connection, which should be viewed as a positive social good. But to recognize that something is valuable does not mean that it does not involve burdens or sacrifices. And the difficulty of our current economic and social arrangements is that these burdens are borne differentially by women in ways that contribute to overall patterns of structural gender inequality, or “misogyny.”⁸³

Inside academic institutions, the evidence suggests that service and administrative responsibilities are distributed unequally on the basis of gender.⁸⁴ Margaret Thornton labels this the construction of women scholars as “Dutiful Daughters.”⁸⁵ “All women in bureaucracies,” Thornton suggests, “are meant to be Dutiful Daughters,” and in a law school setting, that means teaching large compulsory classes, taking responsibility for student pastoral care, problems, and complaints, “institutional caring and housekeeping roles,” such as conference-organizing, and service on a “plethora of . . . time-consuming advisory committees.”⁸⁶

Our own institutional experiences suggest very strongly that female scholars are more likely than male scholars to perform informal “care work,” including meeting with and mentoring students and colleagues, and institutional responsibilities of this kind.⁸⁷ In terms of formal service roles within the legal academy, women often perform a disproportionate number of time-intensive service roles as opposed to intellectual and other leadership roles within law faculties.

One possible explanation is that female faculty are more likely to feel a sense of responsibility or obligation to perform care work of this kind when asked, and that students and colleagues are likely to turn to them to do so because of their “experience” performing care at home, and because of expectations of care created by broader social norms and patterns.⁸⁸

Male faculty, in contrast, are more likely to be perceived as authoritative, natural leaders, and are more likely to have the time available to devote to more prominent

⁸² The classic study of implicit gender bias in assessing competence (the John/Jennifer study) was done in the sciences: Moss-Racusin et al., *supra* note 70.

⁸³ See, e.g., JULIE SUK, *AFTER MISOGYNY: HOW THE LAW FAILS WOMEN AND WHAT TO DO ABOUT IT* (2023).

⁸⁴ See DEO, *supra* note 23; Yolanda Flores Niemann, Gabriella Gutiérrez y Muhs, & Carmen G. González, *Introduction to PRESUMED INCOMPETENT II: RACE, CLASS, POWER, AND RESISTANCE OF WOMEN IN ACADEMIA 3* (Yolanda Flores Niemann et al. eds., 2020); Mary A. Lynch & Andrea A. Curcio, *Institutional Service, Student Care-Work, and Misogyny: Naming the Problem and Mitigating the Harm*, 65 VILL. L. REV. 1083, 1119 (2020).

⁸⁵ THORNTON, *supra* note 53, at 113–14.

⁸⁶ *Id.*

⁸⁷ MYRA HAMILTON, ALISON WILLIAMS, & MARIAN BAIRD, GENDER INCLUSIVE PRACTICES AND WORK-LIFE BALANCE IN AUSTRALIAN UNIVERSITIES 33 (2022), www.universitiesaustralia.edu.au/wp-content/uploads/2023/03/Gender-inclusive-practices-and-work-life-balance-in-Australian-universities_Dec-2022.pdf.

⁸⁸ Angela Onwuachi-Willig, *The Intersectional Race and Gender Effects of the Pandemic in Legal Academia Essays*, 72 HASTINGS L.J. 1703 (2020).

leadership roles rather than the more low-profile, less visible, and less prestigious (though by no means less valuable) care-type work.

Inside the family, and particularly within heterosexual couples, there is extensive evidence that women, on average, are likely to do significantly more household labor, childcare, and eldercare than men.⁸⁹ This phenomenon is widely known as “the gendered division of labor,” and it was aggravated further during the height of the COVID-19 pandemic with the closure of many schools and childcare facilities.⁹⁰

The gendered division of labor, whereby women are disproportionately burdened with caregiving responsibilities, has a range of implications for women in the academy. It may mean faculties are reluctant to hire women, assuming that they will become caregivers, or that women may suffer a competitive disadvantage in terms of research productivity. A study by Mason and Goulden, for example, concludes that early-career babies have an important negative impact on women’s academic careers, but that they have no effects or even positive effects on academic men.⁹¹ A more recent article on the impact of parenthood on publications found that although the size of the productivity penalty for mothers appears to have shrunk over time, parenthood explains most of the gender productivity gap by lowering the average short-term productivity of mothers, but generally not of fathers (even though parents tend to be slightly more productive than non-parents).⁹² In middle-class and upper-class households, however, these tasks are often externalized, frequently to migrant women or women from less privileged backgrounds at low levels of pay.

Further, the workplace itself might be structured to the detriment of caregivers,⁹³ given that workplaces tend to replicate societal norms. And society itself operates in many respects on the basis of “the breadwinner specialization assumption,” functioning as if there is always a couple, one of whom specializes in paid labor and another who specializes in caregiving.⁹⁴ The implicit assumption is, then, that “workers have wives at home,” which translates into expectations, scheduling, and hours of operation that do not account for the fact that both parents might have jobs or that there are single-parent households.⁹⁵

⁸⁹ Gaëlle Ferrant, Luca Maria Pesando, & Keiko Nowacka, *Unpaid Care Work: The Missing Link in the Analysis of Gender Gaps in Labour Outcomes*, ORG. ECON. CO-OPERATION & DEV. DEV. CTR. (Dec. 2014), www.oecd.org/dev/development-gender/Unpaid_care_work.pdf.

⁹⁰ Onwuachi-Willig, *supra* note 88. See also Meera E. Deo, *Investigating Pandemic Effects on Legal Academia Symposium: Mental Health and the Legal Profession*, 89 *FORDHAM L. REV.* 2467 (2020); Prieto Rudolph, *supra* note 7.

⁹¹ Mason & Goulden, *infra* note 87. This study also finds that gender disparities in academia cannot solely be explained on the basis of babies.

⁹² Allison C. Morgan et al., *The Unequal Impact of Parenthood in Academia*, 7 *SCI. ADVANCES* 1 (2021).

⁹³ In this latter case, the explanation is referred to as the “work versus family” school. See Mary Ann Mason & Marc Goulden, *Do Babies Matter?: The Effect of Family Formation on the Lifelong Careers of Academic Men and Women*, 88 *ACADEME* 23 (2002).

⁹⁴ See GINA SCHOUTEN, *LIBERALISM, NEUTRALITY, AND THE GENDERED DIVISION OF LABOR* (2019); SUSAN MOLLER OKIN, *JUSTICE, GENDER, AND THE FAMILY* 5 (1989).

⁹⁵ OKIN, *supra* note 88, at 5.

Third, women in particular⁹⁶ face sexual harassment at different stages of their academic careers.⁹⁷ There is limited evidence on this question within the legal academy, although Meera Deo's work certainly suggests patterns of sexual harassment on the basis of race and gender.⁹⁸ These patterns are also present in other professional settings,⁹⁹ and in academia more broadly,¹⁰⁰ where victims are often reluctant to report their experiences.¹⁰¹

In fact, the evidence suggests that the problem of sexual harassment in academia may be pervasive and worse than in many other work environments. For example, the academy in the United States has the second highest average incidence rate of sexual harassment, ranking below the military, but above the private sector and the government, with 58% of women faculty and staff experiencing sexual harassment.¹⁰² In a 2016 survey of graduate students, 38% of women and 23.4% of men self-reported sexual harassment from faculty or staff and 57.7% of women and 38.8% of men reported sexual harassment from other students.¹⁰³ Sixty-two percent of college students say that they have been sexually harassed, with 5% of college students aged eighteen to twenty-four reporting that they have been forced to do something sexual other than kissing.¹⁰⁴ In college students, rates of victimization are similar between men and women, but women students are more likely to experience sexual harassment that involves physical contact.¹⁰⁵ Sexual harassment is also experienced by women teaching assistants from their own students, who might make sexually charged

⁹⁶ This does not mean that it is exclusively men who harass, or mainly women who are the targets of harassment. Apart from the statistics of reported harassment of both male and female students in the text above, see for example the high-profile case discussed by Zoe Greenberg, *What Happens to #MeToo when a Feminist Is the Accused*, N.Y. TIMES (Aug. 13, 2018), www.nytimes.com/2018/08/13/nyregion/sexual-harassment-nyu-female-professor.html.

⁹⁷ Ulrike Schultz, *Gender and Careers in the Legal Academy in Germany: Women's Difficult Path from Pioneers to a (Still Contested) Minority*, in GENDER AND CAREERS IN THE LEGAL ACADEMY, *supra* note 37, at 39; Ulrike Schultz, *Introduction: Gender and Careers in the Legal Academy: Overview and Synthesis*, in GENDER AND CAREERS IN THE LEGAL ACADEMY, *supra* note 37, at 1, 8 (discussing the responses received to questions posed to female scholars during interviews conducted with faculty over a five-year period).

⁹⁸ See DEO, *supra* note 23.

⁹⁹ In the context of NSW parliamentary workplaces, see, e.g., ELIZABETH BRODERICK & CO., LEADING FOR CHANGE: INDEPENDENT REVIEW OF BULLYING, SEXUAL HARASSMENT AND SEXUAL MISCONDUCT IN NSW PARLIAMENTARY WORKPLACES (2022); Sue Williamson, *The Broderick Report: Overcoming Power Imbalances, Entitlement and Privilege*, THE MANDARIN (Aug. 15, 2022), www.themandarin.com.au/197022-the-broderick-report-overcoming-power-imbalances-entitlement-and-privilege. See also CATHARINE MACKINNON, THE SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION (1979).

¹⁰⁰ See, e.g., Erica van Roosmalen & Susan A. McDaniel, *Sexual Harassment in Academia: A Hazard to Women's Health*, 28 WOMEN & HEALTH 33 (1999); Lilia M. Cortina et al., *Sexual Harassment and Assault: Chilling the Climate for Women in Academia*, 22 PSYCH. WOMEN Q. 419 (1998); SEXUAL HARASSMENT OF WOMEN: CLIMATE, CULTURE, AND CONSEQUENCES IN ACADEMIC SCIENCES, ENGINEERING, AND MEDICINE (Paula A. Johnson et al. eds., 2018).

¹⁰¹ See, e.g., Anne Catherine Kirkner, Katherine Lorenz, & Laurel Mazar, *Faculty and Staff Reporting & Disclosure of Sexual Harassment in Higher Education*, 34 GENDER & EDUC. 199 (2022).

¹⁰² Remus Iliès et al., *Reported Incidence Rates of Work-Related Sexual Harassment in the United States: Using Meta-Analysis to Explain Reported Rate Disparities*, 56 PERS. PSYCH. 607 (2003).

¹⁰³ Marina N. Rosenthal, Alec M. Smidt, & Jennifer J. Freyd, *Still Second Class: Sexual Harassment of Graduate Students*, 40 PSYCH. WOMEN Q. 364, 364–77 (2016).

¹⁰⁴ CATHARINE HILL & ELENA SILVA, AM. ASS'N U. WOMEN, DRAWING THE LINE: SEXUAL HARASSMENT ON CAMPUS 14 (2005).

¹⁰⁵ *Id.* at 17.

comments in person or anonymously, in teaching evaluations.¹⁰⁶ In fact, sexual harassment from students to faculty members is far from an uncommon occurrence.¹⁰⁷

Rates of sexual harassment are also higher among gay, bisexual, transgender, queer, intersex, or asexual women and multiracial students.¹⁰⁸ There is almost no research on campus sexual violence that affects international students or graduate international students, even though they are often in vulnerable positions, given visa requirements and immigration status.¹⁰⁹ A recent study finds that, among international graduate students, there is increased risk for harassment by a professor.¹¹⁰

The National Academies of Sciences, Engineering, and Medicine's study on sexual harassment lists certain factors that create conditions under which sexual harassment is likely to occur in science, engineering, and medicine programs in academia: first, there is often a perceived tolerance of sexual harassment in academia; second, environments where men outnumber women, leadership is male-dominated, or jobs are considered atypical for women have more frequent incidents of sexual harassment for women; third, hierarchical environments with strong dependencies on those at higher levels or where people are geographically isolated are more likely to foster and sustain sexual harassment; among others.¹¹¹ These factors are not exclusive to the sciences, and they are present in many academic settings. Further, graduate students are in particularly vulnerable positions: they are highly dependent on mentors and advisors for career advancement and tend to have precarious working conditions.¹¹²

As the #MeToo movement gained momentum in 2017, Karen Kelsky, an academic-career adviser, created an online survey in which academics and former academics could submit their stories about sexual harassment and misconduct.¹¹³ Twelve days later, more than 1 600 people had submitted their stories.¹¹⁴ Asked about any patterns

¹⁰⁶ See Ann E. Bartos & Sarah Ives, *More Than "Silly Stories": Sexual Harassment as Academic Training*, 5 *GeoHUMANITIES* 342 (2019).

¹⁰⁷ Eros DeSouza & A. Gigi Fansler, *Contrapower Sexual Harassment: A Survey of Students and Faculty Members*, 48 *SEX ROLES* 529 (2003). The survey found that although male and female professors experienced similar rates of sexual harassment from students, the psychological outcome was worse for women than for men. See also Elizabeth Grauerholz, *Sexual Harassment of Women Professors by Students: Exploring the Dynamics of Power, Authority, and Gender in a University Setting*, 21 *SEX ROLES* 789 (1989); Claudia Lampman, Alissa Phelps, Samantha Bancroft, & Melissa Beneke, *Contrapower Harassment in Academia: A Survey of Faculty Experience with Student Incivility, Bullying, and Sexual Attention*, 60 *SEX ROLES* 331 (2009).

¹⁰⁸ Kaitlin M. Boyle & Asleigh E. McKinzie, *The Prevalence and Psychological Cost of Interpersonal Violence in Graduate and Law School*, 36 *J. INTERPERS. VIOLENCE* 6319 (2021). See also Tara E. Sutton, Elizabeth Culatta, Kaitlin M. Boyle, & Jennifer L. Turner, *Context as Risks for Sexual Harassment Among Female Graduate Students*, 8 *SOC. CURRENTS* 229 (2021).

¹⁰⁹ Emily J. Bonistall Postell, *Violence Against International Students: A Critical Gap in the Literature*, 21 *TRAUMA, VIOLENCE, & ABUSE* 71 (2020).

¹¹⁰ Sutton et al., *supra* note 108.

¹¹¹ *SEXUAL HARASSMENT OF WOMEN: CLIMATE, CULTURE, AND CONSEQUENCES IN ACADEMIC SCIENCES, ENGINEERING, AND MEDICINE*, *supra* note 100.

¹¹² See Erin O'Callaghan, Veronica Shepp, Anne Kirkner, & Katherine Lorenz, *Sexual Harassment in the Academy: Harnessing the Growing Labor Movement in Higher Education to Address Sexual Harassment Against Graduate Workers*, 28 *VIOLENCE AGAINST WOMEN* 3266 (2022).

¹¹³ Nell Gluckman, "A Complete Culture of Sexualization": 1,600 Stories of Harassment in Higher Ed, *CHRON. HIGHER EDUC.* (Dec. 12, 2017), www-chronicle-com.libproxy2.usc.edu/article/a-complete-culture-of-sexualization-1-600-stories-of-harassment-in-higher-ed.

¹¹⁴ *Id.*

in the survey, Kelsky replied: “What I keep seeing is that women are getting hounded out of the academy. . . .”¹¹⁵

The risk of harassment, abuse, or gender-based violence, as well as actual instances of it, may be sufficient for women to decide to leave the academy. This might be by deciding not to pursue or dropping out of a PhD program, deciding not to go on the academic job market, resigning from a position, or accepting a less influential academic position at an institution that is better at addressing and preventing these forms of violence.¹¹⁶ Further, several studies show the negative impact of sexual harassment on mental health and health generally.¹¹⁷

These three obstacles—gender bias and stereotyping, the unequal care burden, and the risk of harassment or violence—are not the only obstacles that women face in legal academia, nor the only explanations for the persistence of the gender gap, along its different dimensions. Whether all the evidence canvassed here points specifically to implicit or unconscious biases (that is, unconscious stereotypes and attitudes encoded by years of exposure to certain dominant arrangements, expectations, and tropes, that might impact a person’s behavior or decision-making without the person being aware),¹¹⁸ conscious biases, gender stereotypes, or gendered expectations is not fully settled, and we do not aim to try here.

But whatever the mechanisms by which they occur, the available evidence nonetheless paints a clear picture of gendered patterns within the legal academy. And those patterns may intersect in complex ways: for instance, a gender confidence gap or social expectations as to women’s behavior may affect the willingness and ability of some female scholars to call out and challenge instances of implicit and explicit bias. It may likewise play a role in the willingness of male as opposed to female scholars to *ask* to join both formal and informal networks. Repeated instances of sexual objectification by peers and mentors might erode a woman’s confidence in her academic achievements. Similarly, if every time a woman speaks in a meeting, no one pays any attention to her point until a man repeats it, it is quite plausible that a woman in this position might wonder whether she is speaking clearly or being an effective communicator. The same applies regarding challenges in conferences, the results of teaching evaluations, and so on. Such experiences are likely to erode women’s self-perception and undermine their confidence, as well as requiring them constantly to rebut the presumption of under-competence through over-preparation and disproportionate service work.

Differential care burdens may affect the ability of female scholars to travel for work and attend conferences and workshops of the kind that help build informal scholarly

¹¹⁵ *Id.*

¹¹⁶ Aaron Cohen & Yehuda Baruch, *Abuse and Exploitation of Doctoral Students: A Conceptual Model for Traversing a Long and Winding Road to Academia*, 180 J. BUS. ETHICS 505 (2022).

¹¹⁷ See Boyle & McKinzie, *supra* note 102.

¹¹⁸ Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124, 1129 (2011); Tony Greenwald, Mahzarin Banaji, & Brian Nosek, *Preliminary Information*, PROJECT IMPLICIT, <https://implicit.harvard.edu/implicit/takeatest.html> (last visited Jan. 31, 2024).

networks and connections.¹¹⁹ And differential institutional care work burdens, including service roles, may affect the degree to which scholars are able to attend such conferences.

There are likewise important feedback loops and mutually reinforcing relationships between academic networks, conferences, and patterns of publication and citation. Scholars who are prolific, who publish in prestigious journals and are highly cited, are more likely to be invited to conferences and to join informal research networks. They are more likely to be known by their peers, and to be perceived as able to make a high-quality, timely contribution to a joint project. This, in turn, amplifies their chances of continued scholarly success. At the same time, “the trend [towards incentivizing scholarship at the expense of pedagogy] imposes a disproportionate cost on women faculty who carry a much greater share of the caregiving and household responsibilities.”¹²⁰

The result is a vicious circle of implicit bias and gendered expectations and allocations of responsibility within law faculties which contributes to creating and maintaining the gender gap, along its many dimensions.

3. Why should we care about the gender gap in legal academia?

Thus far we have discussed the continued existence of what we have termed a gender gap in the legal academy, along different dimensions, as well as some of the possible reasons for its persistence. We turn now to a different question, that focuses mostly, but not only, on one dimension of the gender gap: the composition of legal academia. Does the (gender) composition of legal academia matter, and in which ways? Although there is widespread consensus that diversity in academia, including gender diversity, is a goal worth pursuing, less attention has been paid to developing a systematic and cohesive account that explains why this is so and that is tailored to legal academia.¹²¹

In the context of affirmative action in US university admissions before it was ruled impermissible by the Supreme Court, for example, two rationales were offered in favor of race-conscious affirmative action: first, to diversify the student body, which provides educational benefits all around; and second, to remedy past discrimination.¹²² While this framework provides a useful starting point, it is somewhat narrow and is also not

¹¹⁹ Paula A. Monopoli, *Gender and the Crisis in Legal Education: Remaking the Academy in Our Image*, 2012 MICH. ST. L. REV. 1745, 1747, cited in Dixon & Versteeg, *supra* note 7, at 414.

¹²⁰ Monopoli, *supra* note 119.

¹²¹ In the context of workplace gender diversity, see Cordelia Fine, Victor Sojo, & Holly Lawford-Smith, *Why Does Workplace Gender Diversity Matter? Justice, Organizational Benefits, and Policy*, 14 SOC. ISSUES & POL'Y REV. 36, 36 (2020).

¹²² In the US Supreme Court, the first rationale prevailed until it ruled against race-based affirmative action in higher education admissions in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 143 S. Ct. 2141 (2023). See Kevin R. Johnson & Angela Onwuachi-Willig, *Cry Me a River: The Limits of a Systemic Analysis of Affirmative Action in American Law Schools*, 7 AFR.-AM. L. & POL'Y REP. 1, 8 (2005); Paul Brest & Miranda Oshige, *Affirmative Action for Whom?*, 47 STAN. L. REV. 855, 898–9 (1995).

tailored to *faculty* diversity in the *legal* academy. The framework does, however, suggest why diversity deficits in academia are worth addressing and in what terms.

The fact that there is a gender gap, or the fact that there is a disproportionately low number of women in legal academia, may not at first sight appear problematic. But it *can* be problematic either if it has negative effects on a broad or discrete group of individuals or if, regardless of its effects, there is intrinsic value in addressing it. Based on this, two kinds of rationales for addressing the gender gap can be distinguished: (i) consequentialist justifications and (ii) justice-based ones.¹²³

Consequentialist justifications focus on the positive consequences that addressing the gender gap would have relative to the status quo, be it for students, women, the institution, or society at large, and/or the negative consequences that the current gender gap has in those domains. A justice-based justification, by contrast, does not focus primarily on consequences, although it might still be responsive to them. It focuses on the fact that the gender gap itself is at least in part the result of unjust behaviors, practices, and norms, and *because* it is the result of unjust behaviors, social practices, and norms, there is reason to worry about it, independent of the negative consequences that a gender gap in legal academia might have.

These two kinds of justification provide markedly different types of reasons for caring about, and addressing, the gender gap and are likely to have a different scope. As we will see, some justifications will come close to arguing for the gender gap to be entirely closed (i.e., gender parity), while others would point only to a commitment to roughly proportionate numbers of women in the senior ranks of the profession, and in high-paying, tenure-track and leadership roles, compared to the numbers who enter the profession.¹²⁴

These justifications can, of course, be complementary and, indeed, to some extent overlapping, given the reality of the academy in many places. Although the pervasiveness and persistence of the gender gap and biases may be cause for pessimism, they also provide a reason for optimism. As we will argue, there are many reasons why the gender gap in legal academia should be addressed, and possibilities for intervention are everywhere.¹²⁵ Further, these different kinds of reasons are compatible with different moral outlooks and can thus appeal to individuals with different moral commitments.

It is not our aim to foreclose which justification may, overall, be better, but instead to present a framework for thinking about the reasons or justifications for addressing the gender gap in legal academia by building on the previous work of a number of scholars.

¹²³ Roughly following this distinction, see Sara Clavero & Yvonne Galligan, *Delivering Gender Justice in Academia Through Gender Equality Plans? Normative and Practical Challenges*, 28 *GENDER, WORK & ORG.* 1115, 1118 (2021).

¹²⁴ Anita Raj et al., *Achieving Gender and Social Equality: More Than Gender Parity Is Needed*, 94 *ACAD. MED.* 1658 (2019) (emphasizing the distinction between representation and pay/remuneration in a broader professional context).

¹²⁵ See Dean Spade, *Notes Toward Racial and Gender Justice Ally Practice in Legal Academia*, in *PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA* 186, 188 (Gabriella Gutiérrez y Muhs et al. eds., 2012).

3.1. Consequentialist justifications

Consequence-based justifications for pursuing gender diversity reflect a concern, precisely, with consequences. They can be roughly divided into two main categories: on the one hand, based on the kind of positive consequences gender diversity causes, and on the other, based on who primarily benefits from those positive consequences. In the latter case, we can distinguish between justifications that are concerned with benefits to individuals, to institutions, and to society.¹²⁶ Following Milem, individual benefits can be understood as those that accrue to students, in terms of their educational experiences and outcomes, and faculty, in terms of their professional experiences and outcomes; institutional benefits as those that accrue to an organization or institution; and societal benefits as those that accrue to society at large, often conceived in terms of democratic ideals and social integration.¹²⁷ Justifications whereby gender diversity benefits everyone—or society—might be easier to agree upon. They are, however, subject to important objections, which will be discussed below.

Consequentialist justifications also vary in relation to the kind of positive effects they attribute to gender diversity. Below, six positive effects of this kind—economic, pedagogical, role-modeling, symbolic-expressive, democratic-citizenship, and epistemic—are outlined, and their shortcomings are then briefly addressed.

a) *The economic argument*

The economic argument claims that gender diversity produces economic gains, be it in terms of efficiency, research productivity, and so on, and offsets the economic cost of *not* having enough women in the workforce, which is sometimes referred to as a problem of “loss of talent.” These economic effects are generally assumed to accrue to society as a whole, at the macroeconomic level, although they might also benefit more discrete groups, such as women or a specific institution. They can thus take slightly different forms. Some arguments emphasize that women’s skills and participation in the workforce are essential for macroeconomic growth.¹²⁸ Others argue that ensuring equal access to the labor market and to leadership positions plays a role both in reducing the barriers which impede women from accessing the goods of paid work and in reducing their material disadvantages.¹²⁹ The latter type of claim can incorporate elements of distributive justice, which will be discussed later.

¹²⁶ See Jeffrey F. Milem, *The Educational Benefits of Diversity: Evidence from Multiple Sectors*, in *COMPPELLING INTEREST: EXAMINING THE EVIDENCE ON RACIAL DYNAMICS IN HIGHER EDUCATION* 126 (Mitchell J. Chang, Daria Witt, James Jones, & Kenji Hakuta eds., 2003) (employing this framework in the context of diversity).

¹²⁷ *Id.*

¹²⁸ See, e.g., Anna Elomäki, *The Economic Case for Gender Equality in the European Union: Selling Gender Equality to Decision-Makers and Neoliberalism to Women’s Organizations*, 22 *EUR. J. WOMEN’S STUD.* 288, 292 (2015), citing Comm’n of the Eur. Communities (1990), *Equal Opportunities between Women and Men: The Third Medium-Term Community Action Programme 1991–1995*, COM (90) 449 final (1990).

¹²⁹ See Fine, Sojo, & Lawford-Smith, *supra* note 115, at 45.

Many studies purport to show that gender diversity correlates with benefits in an organization's performance.¹³⁰ A study by McKinsey suggests that companies with a more diverse workforce, on the basis of race, gender, and ethnicity, are more likely to have financial returns above their respective national industry medians.¹³¹

Some of these rationales appear to translate well to the academy, like the argument based on “loss of talent.” But others are harder to parse in terms of economic or financial gains, such as the impact of a researcher's gender on their academic output or success. Nonetheless, there are studies in science and in law that seem to indicate there are advantages which accrue from having diverse groups—broadly understood—in terms of research¹³² and in terms of citations.¹³³

b) The pedagogical or educational benefits argument

It has been suggested that diversity might have positive consequences for students in terms of its educational benefits.¹³⁴ Gender diversity, in particular, might benefit all students, or it could benefit marginalized students. In the latter case, the argument often takes the form of “the role-model argument,” which suggests that women law professors might serve as visible role models for (women) law students or for other women faculty. Due to its specificity, this latter argument will be separately addressed in the next subsection. As far as the first and more general argument is concerned, it has been suggested by Algar that the educational benefits of racial and ethnic diversity accrue to all racial and ethnic groups in the academy—both students and faculty—extending thus to the entire academic community, and particularly to white

¹³⁰ See, e.g., Ioanna Boulouta, *Hidden Connections: The Link Between Board Gender Diversity and Corporate Social Performance*, 113 J. BUS. ETHICS 185 (2013); Sundiatu Dixon-Fyle, Kevin Dolan, Vivian Hunt, & Sara Prince, *Diversity Wins: How Inclusion Matters*, MCKINSEY & CO. (May 19, 2020), www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters; Sangeetha Bharadwaj Badal, *The Business Benefits of Gender Diversity*, GALLUP (Jan. 20, 2014), www.gallup.com/workplace/236543/business-benefits-gender-diversity.aspx. But many of these studies should be treated with caution: Kimberly D. Krawiec, *What Does Boardroom Diversity Accomplish?*, N.Y. TIMES (Apr. 1, 2015, 6:50 AM), www.nytimes.com/roomfordebate/2015/04/01/the-effect-of-women-on-corporate-boards/what-does-corporate-boardroom-diversity-accomplish. Many show a clear correlation between company performance and gender diversity, but do not demonstrate a clear causal connection. It is quite possible that high-performing companies have greater scope to prioritize concerns such as diversity, so that it is high performance that drives diversity and not diversity that drives high performance in these contexts.

¹³¹ Dame Vivian Hunt, Dennis Layton, & Sara Prince, *Why Diversity Matters?*, MCKINSEY & CO. (Jan. 1, 2015), www.mckinsey.com/business-functions-organization/our-insights/why-diversity-matters.

¹³² See Kendall Powell, *These Labs Are Remarkably Diverse: Here's Why They're Winning at Science*, 558 NATURE 19 (2018).

¹³³ See Jonathan Adams, *The Fourth Age of Research*, 497 NATURE 557 (2013); Richard B. Freeman & Wei Huang, *Collaboration: Strength in Diversity*, 513 NATURE 305 (2014). See also Adam Chilton, Justin Driver, Jonathan Masur, & Kyle Rozema, *Assessing Affirmative Action's Diversity Rationale*, 122 COLUM. L. REV 331 (2022) (addressing diversity on the editorial teams of student law reviews at US law schools).

¹³⁴ This argument has been explored in affirmative action cases, from the perspective of having a diverse student body—not a diverse professoriate. See *Grutter v. Bollinger*, 539 U.S. 306, 308 (2003) (speaking of racial diversity in the student body and its “substantial educational benefits”).

students who might have, until coming to university, lived in a predominantly white social context.¹³⁵

The likely benefits that racial diversity in the student body in US colleges and universities might have for students have been examined by Gurin and her coauthors.¹³⁶ Their study showed that student experiences of diversity are correlated with greater engagement in active thinking processes, self-reported growth in intellectual engagement and motivation, and growth in subjectively assessed intellectual and academic skills.¹³⁷ As the study notes, the existence of interactions between diverse students is critical for the impact on student outcomes: a diverse student body, by itself, is insufficient.¹³⁸

The educational benefits of diversity have also been discussed in the context of the legal academy. Johnson suggests that a diverse student body might provide a richer learning environment for students than a homogenous one, as they will be later better prepared to succeed and thrive as lawyers in modern society, and that a diverse law faculty promotes a better learning environment for students and contributes to scholarship.¹³⁹ Lovell Banks adds further to the argument by suggesting that the absence of a particular marginalized group from legal academia impoverishes the imagination of students and of other academics.¹⁴⁰

Further, the legal academy plays a key role in educating future generations of lawyers and many lawyers go on to have influence in government and policymaking. At its best, law teaching is about encouraging students to develop their capacity for analytic and critical thinking. This also means learning to understand, appreciate, and criticize a range of viewpoints. Good law teaching, therefore, should offer students diverse viewpoints to consider, and should encourage students to share their own viewpoints.¹⁴¹

These arguments are supported by some empirical studies. In a pioneering early study, *Becoming Gentlemen*, Guinier, Fine, and Balin examined the experiences and educational outcomes of women students in the University of Pennsylvania law school enrolled between 1987 and 1992.¹⁴² From the data, the authors conclude that the law school experience differed markedly for women in relation to their male peers: they found strong academic differences between graduating men and women despite identical entry-level credentials; and women self-reported lower rates of participation

¹³⁵ Jonathan Alger, *When Color-Blind Is Color-Bland: Ensuring Faculty Diversity in Higher Education*, 10 *STAN. L. & POL'Y REV.* 191, 191, 195 (1998).

¹³⁶ See, e.g., PATRICIA GURIN ET AL., *DEFENDING DIVERSITY: AFFIRMATIVE ACTION AT THE UNIVERSITY OF MICHIGAN* 97, 98 (2004).

¹³⁷ *Id.* at 119.

¹³⁸ *Id.* at 117.

¹³⁹ Kevin R. Johnson, *The Importance of Student and Faculty Diversity in Law Schools: One Dean's Perspective*, 96 *IOWA L. REV.* 1549, 1552 (2010).

¹⁴⁰ Taunya Lovell Banks, *Two Life Stories: Reflections of One Black Woman Law Professor*, 6 *BERKELEY WOMEN'S L.J.* 46, 47 (1990).

¹⁴¹ See Johnson, *supra* note 139, at 1562.

¹⁴² Lani Guinier, Michelle Fine, & Jane Balin, *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 *U. PA. L. REV.* 1, 2 (1994).

in class than men, among other things.¹⁴³ According to the authors of the article, one of the factors that could explain these empirical findings was the feeling of alienation, which might be partially explained by the lack of women in the faculty.¹⁴⁴ And Meera Deo finds that women faculty and faculty of color are more likely to discuss issues of diversity in the classroom, and that some students tend to prefer that approach rather than ignoring or minimizing these issues.¹⁴⁵

c) *The role model argument*

The role model argument focuses on the positive effects that the presence of women can have in academia for other women or for other marginalized communities. The idea is that “women faculty members can serve as positive role models to women law students,”¹⁴⁶ and as role models to other more junior faculty women.¹⁴⁷ Presumably, women faculty would be more likely to mentor women, and women students would perceive women faculty as more approachable.¹⁴⁸ Women law professors then would model for their students what it means to be part of the legal profession, as well as making them feel that “they belong” by mentoring them (and also due to the symbolic or expressive effect of their presence in law schools, as discussed below), or simply by being an example of what is possible.

Some evidence supports the role model argument. For example, Bettinger and Long studied the impact that having a female instructor has on students’ interest in the subject.¹⁴⁹ The results suggest that female instructors have a positive influence on course and major selection in some disciplines (e.g., mathematics and statistics, geology, sociology, and journalism) but the study failed to find positive and significant effects in some male-dominated fields (e.g., engineering and computer science).¹⁵⁰ In fields where men are underrepresented, the analysis was repeated to determine whether having a male faculty member in a female-dominated discipline had any impact in course and major selection, and strong effects of this kind were found in education.¹⁵¹

d) *The symbolic or expressive argument*

The presence of female scholars in law schools might also play a symbolic or expressive role:¹⁵² it might signal to others—whether to female or male students or to

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 77–8.

¹⁴⁵ Deo et al., *supra* note 66, at 17.

¹⁴⁶ Johnson, *supra* note 139, at 1557.

¹⁴⁷ See, e.g., Anita L. Allen, *On Being a Role Model*, 6 BERKELEY WOMEN’S L.J. 22 (1990); Enrique R. Carrasco, *Collective Recognition as a Communitarian Device: Or, of Course We Want to Be Role Models*, 9 LA RAZA L.J. 81 (1996). Both also criticize and press several objections against the role model argument.

¹⁴⁸ Guinier, Fine, & Balin, *supra* note 136, at 77–8.

¹⁴⁹ Eric P. Bettinger & Bridget Terry Long, *Do Faculty Serve as Role Models? The Impact of Instructor Gender on Female Students*, 95 AM. ECON. REV. 152 (2005).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² In politics, some studies have explored the symbolic dimension of female representation. See FLAVIA FREIDENBERG ET AL., *WOMEN IN MEXICAN SUBNATIONAL LEGISLATURES: FROM DESCRIPTIVE TO SUBSTANTIVE REPRESENTATION* 33 (2022).

everyone—that women belong in the legal professoriate, in law school, or in the legal profession.¹⁵³ The mechanism through which this is achieved is likely to vary with the intended audience. Presumably it works with female students through a process of self-identification. With male—and also with some female—identifying students, the presence of female law professors can contribute to challenging stereotypes about what women are capable of and where they belong.

It might also contribute to challenging gender stereotypes about who counts as a knower, or about who belongs in the legal profession, and hence to reducing gender biases and stereotypes which impede women's access to the academy, as discussed in Section 2.2 above.¹⁵⁴

The symbolic argument can be understood as a consequences-based argument—i.e., that what matters is that the message is received and internalized, or it can be understood as a non-consequentialist one—i.e., that what matters is simply sending the message. The study mentioned above about the positive impact of having a female instructor on students' choice of major suggests that the consequentialist argument may be relevant in this instance.¹⁵⁵

e) *Democracy/citizenship arguments*

Some arguments about diversity focus on the positive consequences that it might achieve in society, in terms of creating better citizens who are fit for participating in a diverse and pluralist society.¹⁵⁶ For example, a study of teaching and course evaluations has found that when there are large proportions of women teachers, as has often been the case in the arts and social sciences, there is less gender bias in student evaluations of teaching.¹⁵⁷ This suggests that the presence of women in academia might play a role in challenging or eroding gender biases and stereotypes, at least in this limited context. If the effects are persistent, and not limited to the classroom, they might translate into less gender bias in society at large.

In legal academia, this argument has particular resonance. Lawyers in all sorts of positions contribute directly to debates over law and public policy, and often play a central role in defending and reforming existing models of democratic constitutionalism, and the exercise of public power. Ensuring that a diverse range of perspectives are reflected in this debate is also important to ensuring a just society, or one in which social power is exercised in a way that is mindful of, or attentive to, the perspectives of all citizens.¹⁵⁸ This is true for all minorities but also for women, who constitute a statistical

¹⁵³ See, e.g., Johnson, *supra* note 139, at 1558.

¹⁵⁴ See Alger, *supra* note 135, at 194.

¹⁵⁵ Bettinger & Long, *supra* note 149, at 156–7.

¹⁵⁶ In the context of affirmative action, the rationale was that diversity in the student body would be instrumental in helping students become better citizens in a racially and ethnically diverse America, producing more empathetic citizens and leaders. See, e.g., Nancy Cantor, *Introduction to PATRICIA GURIN ET AL., DEFENDING DIVERSITY: AFFIRMATIVE ACTION AT THE UNIVERSITY OF MICHIGAN* 97, 98 (2004).

¹⁵⁷ Fan et al., *supra* note 60, at 11.

¹⁵⁸ Carrie Menkel-Meadow, *Feminist Legal Academics: Changing the Epistemology of American Law Through Conflicts, Controversies and Comparisons*, in *GENDER AND CAREERS IN THE LEGAL ACADEMY*, *supra* note 37, at 475.

majority in many countries yet at the same time are a group that has historically been underrepresented both at the level of descriptive and substantive representation.¹⁵⁹

f) *An epistemic justification*

Epistemic arguments focus on our capacities as knowers and producers of knowledge. In the context of legal academia, the argument would be that insofar as gender is a condition that affects our access to knowledge, the low proportion of women in academia can produce gaps in the production of knowledge itself. The latter can, of course, have negative consequences, but it is plausible that knowledge itself is intrinsically valuable and should be pursued on that basis.

Feminist standpoint theory has long argued that members of marginalized groups in society, which include women, “are more likely to have had experiences that are particularly epistemically salient for identifying and evaluating assumptions that have been systematically obscured or made less visible as the result of power dynamics.”¹⁶⁰

Feminist standpoint theory is subject to considerable debate and controversy.¹⁶¹ Nevertheless, it offers two main theses. The first is that our social positions systematically influence our experiences and shape and limit what we know, so that knowledge is achieved from a particular standpoint (the situated knowledge thesis).¹⁶² The second is that the standpoints of marginalized groups are epistemically advantaged in some contexts, because they have access to knowledge that might be obscure to others (the epistemic advantage thesis).¹⁶³ Marginalized groups in society might thus hold a particular claim to knowing.¹⁶⁴ The idea then is that “some nonepistemic features related to an agent’s identity”—in this case, broadly speaking, gender—“make a difference to what an epistemic agent is in a position to know.”¹⁶⁵ For Hartsock, for example, it is the sexual division of labor that forms the basis for a (feminist) standpoint.¹⁶⁶ Because women’s lives differ structurally from men’s, they make available a particular and privileged viewpoint or perspective on male supremacy, which can potentially ground a critique of the patriarchal order.¹⁶⁷

However, the mere fact of being a woman does not necessarily confer these epistemic advantages. Standpoint then refers not only to a certain perspective or experience, but also to a certain understanding of that perspective and experience that is earned through political consciousness or collective political struggle, such

¹⁵⁹ See HANNA F. PITKIN, *THE CONCEPT OF REPRESENTATION* (1972).

¹⁶⁰ Kristen Intemann, *25 Years of Feminist Empiricism and Standpoint Theory: Where Are We Now?*, 25 *HYPATIA* 778, 791 (2010). For related arguments about the relationship between representation and knowledge production, see also Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 *U. PA. L. REV.* 561 (1984).

¹⁶¹ Lina Gurung, *Feminist Standpoint Theory: Conceptualization and Utility*, 14 *DHAULAGIRI J. SOCIO. & ANTHROPOLOGY* 106, 107 (2020).

¹⁶² Intemann, *supra* note 154, at 783.

¹⁶³ *Id.*

¹⁶⁴ Gurung, *supra* note 155, at 106–07.

¹⁶⁵ Briana Toole, *From Standpoint Epistemology to Epistemic Oppression*, 34 *HYPATIA* 598, 599 (2019).

¹⁶⁶ Nancy C. M. Hartsock, *The Feminist Standpoint: Developing the Ground for a Specifically Feminist Historical Materialism*, in *KARL MARX* 565 (Bertell Ollman & Kevin B. Anderson eds., 2017).

¹⁶⁷ *Id.*

as consciousness raising.¹⁶⁸ Consciousness raising helps members of an oppressed group “to critically examine the relationship between one’s social situatedness and one’s oppression.”¹⁶⁹

Feminist standpoint theory provides another reason to worry about, and address, the gender gap in academia, insofar as the absence of women in an epistemic community—in this case, within legal academia—can result in important knowledge gaps as to the function and role of law in society. The role of law in society is something with which law schools are, obviously, explicitly concerned, and, as Jackson has argued, universities understood as “knowledge institutions” are also an essential component of constitutional democracy.¹⁷⁰

And, in fact, much of feminist legal theory has filled gaps in knowledge in the context of law. Feminists, for example, have asked the “woman question” about existing and seemingly gender-neutral legal doctrines, emphasizing those elements that leave out or disadvantage women and other oppressed groups.¹⁷¹ If we focus on public law, federalism could be seen as a topic quite removed from gender justice, and yet federalism often relegates issues of greatest concern to women to the lowest levels of government, where public attention, funding, and public power is at its least concentrated.¹⁷² The protection of voting rights and reproductive rights are of obvious concern to women, but so too are socio-economic rights that reduce the chances of women and female-headed households living in poverty.¹⁷³ Further examples of a feminist reevaluation of public law can be seen in the growth of scholarly literature on gender and constitutionalism, and an exploration of care as a constitutional and legal value.¹⁷⁴

¹⁶⁸ Gurung, *supra* note 155, at 107.

¹⁶⁹ Toole, *supra* note 159, at 600.

¹⁷⁰ Vicky Jackson, *Knowledge Institutions in Constitutional Democracies: Preliminary Reflections*, 7 *CAN. J. COMP. & CONTEMP. L.* 156 (2021).

¹⁷¹ See Katharine T. Bartlett, *Feminist Legal Methods*, in *FEMINIST LEGAL THEORY* 370, 831 (Katharine T. Bartlett & Rosanne Kennedy eds., 1991); Judith A. Baer, *Feminist Theory and the Law*, in *THE OXFORD HANDBOOK OF LAW AND POLITICS* 306, 307 (Gregory A. Caldeira et al. eds., 2008). Some examples are Catharine A. MacKinnon, *Toward Feminist Jurisprudence*, 34 *STAN. L. REV.* 703 (1982); Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 *SIGNS: J. WOMEN CULTURE & Soc’y* 515 (1982); Hilary Charlesworth & Christine Chinkin, *The Gender of Jus Cogens*, 15 *HUM. RTS. Q.* 63 (1993).

¹⁷² Judith Resnik, *Categorical Federalism: Jurisdiction, Gender, and the Globe*, 111 *YALE L. J.* 619 (2001).

¹⁷³ See, e.g., SANDY LIEBENBERG, *SOCIO-ECONOMIC RIGHTS: ADJUDICATION UNDER A TRANSFORMATIVE CONSTITUTION* (2010).

¹⁷⁴ On gender and constitutionalism, see, e.g., RUTH RUBIO MARIN, *GLOBAL GENDER CONSTITUTIONALISM AND WOMEN’S CITIZENSHIP* (2022); BEVERLEY BAINES, *DAPHNE BARAK-EREZ & TSVI KAHANA, FEMINIST CONSTITUTIONALISM: GLOBAL PERSPECTIVES* (2012); HELEN IRVING, *GENDER AND THE CONSTITUTION* (2009); *GENDER IN CONSTITUTIONAL LAW* (Catherine MacKinnon ed., 2018). On care as a public law value, see Jaclyn Neo, *Constitutionalizing Care: How Can We Expand Our Constitutional Imaginary after Covid-19?* 20 *INT’L J. CONST. L.* 1307 (2022); Heekang Kim, *Care as a Constitutional Value*, 25 *KOREA SOC. POL’y REV.* 5 (2018); Marcela Prieto Rudolph, *Between Predictability and Perplexity*, 20 *INT’L J. CONST. L.* 1285 (2022); Sandra Fredman, *Challenging the Frontiers of Gender Equality: Women at Work*, in *FRONTIERS OF GENDER EQUALITY: TRANSNATIONAL LEGAL PERSPECTIVES* 38 (Rebecca Cook ed., 2023).

Some feminists have focused their attention on developing feminist-inspired casebooks, treatises, and other legal education materials.¹⁷⁵ Others have argued in favor of considering emotion in legal thought and in legal education.¹⁷⁶ Feminists have also, along with critical legal studies and critical race theorists, challenged what they saw as the dominant view regarding law's neutrality, and have emphasized the experiences of the marginalized in legal scholarship and teaching.¹⁷⁷ The latter strategy helps counter the alienation of marginalized students when faced with what Crenshaw calls "perspectivelessness" in legal education, or, in other words, a reluctance to engage with conflicting values, worldviews, and diversity-related issues that can arise in the classroom, in pursuit of a "particular kind of objectivity."¹⁷⁸ The epistemic argument is not primarily an argument based on the positive benefits for marginalized students, although these no doubt exist and are valuable, but rather on the knowledge gaps that something like perspectivelessness creates in the legal academy. The argument is that what is understood and taught as "neutral" is often, in fact, "the embodiment of a white middle-class world view."¹⁷⁹ Further, if the notion that law is socially constructed is accepted,¹⁸⁰ then questions about whose perspectives construct law become particularly significant, not only epistemically but also in terms of justice.

Epistemic arguments then provide reason to be concerned about, and address, the gender gap because the gender gap is likely, in turn, to generate knowledge gaps. Although knowledge is, plausibly, intrinsically valuable, the argument for caring about the gender gap due to the knowledge gaps it creates can still be consequentialist: it aims at creating better conditions for the production of knowledge. Insofar as the low proportion of women in the academy threatens or undermines those conditions, there is reason for addressing it.

g) The limits of consequentialist justifications

The arguments explored so far offer a range of possible justifications for the pursuit of gender diversity in academia on the basis of the consequences that gender diversity

¹⁷⁵ See, e.g., Mary Irene Coombs, *Crime in the Stacks, or a Tale of a Text: A Feminist Response to a Criminal Law Textbook*, 38 J. LEGAL EDUC. 117 (1988); Mary Joe Frug, *Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook*, 34 AM. U. L. REV. 1065 (1984); Carl Tobias, *Gender Issues and the Prosser, Wade, and Schwartz Torts Casebook*, 18 GOLDEN GATE U. L. REV. 495 (1988); Julieta Lobato & Victoria Flores Beltrán, *El enfoque invisible: Perspectivas feministas en la enseñanza del derecho del trabajo*, 17 ACADEMIA: REVISTA SOBRE ENSEÑANZA DEL DERECHO DE BUENOS AIRES 229 (2019); 1 MANUAL DE DERECHO CONSTITUCIONAL ESPAÑOL CON PERSPECTIVA DE GÉNERO (Asunción Ventura Franch & Mercedes Iglesias Báñez eds., 2020); 2 MANUAL DE DERECHO CONSTITUCIONAL ESPAÑOL CON PERSPECTIVA DE GÉNERO (Asunción Ventura Franch & Mercedes Iglesias Báñez eds., 2022).

¹⁷⁶ Angela P. Harris & Marjorie M. Shultz, *A(nother) Critique of Pure Reason: Toward Civic Virtue in Legal Education*, 45 STAN. L. REV. 1773 (1992).

¹⁷⁷ See, e.g., Baer, *supra* note 171; Banks, *supra* note 140; Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7 (1989); NANCY LEVIT & ROBERT R. M. VERCHICK, *FEMINIST LEGAL THEORY: A PRIMER* (2d ed. 2016).

¹⁷⁸ Kimberlé W. Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 4 S. CAL. REV. L. & WOMEN'S STUD. 33, 34–6 (1994).

¹⁷⁹ *Id.* at 35–6.

¹⁸⁰ See Felipe Jimenez, *Some Doubts About Folk Jurisprudence: The Case of Proximate Cause*, U. CHI. L. REV. ONLINE (Aug. 23, 2021), <https://lawreviewblog.uchicago.edu/2021/08/23/jimenez-jurisprudence>.

would achieve. What action or reforms these arguments justify varies, but, generally speaking, whether they can justify seeking to ensure a “critical mass” of women, the full closure of the gender gap, or something else depends solely on the number of women that would be required to achieve those consequences.¹⁸¹ Thus, within this consequentialist framework, the questions why gender diversity in academia matters and how many women there should be in academia are primarily empirical questions.

Consequentialist justifications can have important limitations. This is so because an exclusive concern with consequences, at least in the short term, might make it difficult to justify and advance the costly and difficult goal of changing unjust social structures that underlie and explain the gender gap (as we will see below). Financially, the costs of doing so might be higher than the gains, at least in the short term, and gender equality goals that result in no financial gain might be deprioritized.¹⁸² Socially, sanctions (such as reactive attitudes in the family of hostility)¹⁸³ can also be difficult to prevent, and it might be less “costly” to achieve certain positive consequences by perpetuating, rather than challenging, gendered norms and expectations.¹⁸⁴

Consequentialist justifications can also be compatible with assumptions of inferiority on the part of women, which can remain unchallenged.¹⁸⁵ Women are hired, following the logic of some versions of the consequentialist account, for the benefit of others,¹⁸⁶ which tends to create a contrast between those who are hired to create benefits for others—for example, women—and those who are hired on the basis of their own supposed “merit”—for example, men.¹⁸⁷ The idea that current understandings and perceptions of merit are unbiased or gender- or race-neutral should, of course, be challenged, not least because merit standards have historically been developed by members of dominant groups and might, as a consequence, end up favoring the latter.¹⁸⁸

Of course, it is possible that certain accounts of consequentialism can appropriately deal with these issues, particularly if they hold the position that all hiring, including

¹⁸¹ On the idea of critical mass, see FREIDENBERG ET AL., *supra* note 152, at 25–6. In the context of legal academia, see Johnson, *supra* note 139, at 1563.

¹⁸² See, e.g., Elomäki, *supra* note 128. See also Kelly Gerard, *Rationalizing “Gender-Wash”: Empowerment, Efficiency and Knowledge Construction*, 26 REV. INT’L POL. ECON. 1022, 1023 (2019); Valeria Esquivel, *Efficiency and Gender Equality in Growth Theory: Simply Add-ons?*, 38 CAN. J. DEV. STUD./REVUE CANADIENNE D’ÉTUDES DU DÉVELOPPEMENT 547 (2017).

¹⁸³ See, e.g., MANNE, *supra* note 81; Sally Haslanger, *How to Change a Social Structure*, in CONVERSATIONS IN MORAL, LEGAL, AND POLITICAL PHILOSOPHY (Ruth Chang & Amia Srinivasan eds., forthcoming 2024), manuscript at www.ucl.ac.uk/laws/sites/laws/files/haslanger_how_to_change_a_social_structure_ucl.pdf (last visited Jan. 31, 2024).

¹⁸⁴ On the danger of the role-model argument of entrenching, rather than challenging, gender stereotypes, see Allen, *supra* note 147, at 25; Lani Guinier, *Of Gentlemen and Role Models*, 6 BERKELEY WOMEN’S L.J. 93 (1990); Richard Delgado, *Affirmative Action as a Majoritarian Device: Or, Do You Really Want to Be a Role Model?*, 89 MICH. L. REV. 1222 (1991).

¹⁸⁵ See Allen making this point in the context of the role model argument, *supra* note 147, at 37–8.

¹⁸⁶ See, e.g., *id.* at 33–4; Delgado, *supra* note 177, at 1226.

¹⁸⁷ See similar criticisms in Allen, *supra* note 147; Carrasco, *supra* note 144; Guinier, *supra* note 177; Delgado, *supra* note 177.

¹⁸⁸ Daria Roithmayr, *Deconstructing the Distinction Between Bias and Merit*, 10 LA RAZA L. J. 363, 365–66 (1998).

that of men, should pursue the best consequences, or if they focus on the long term and provide a better account of which consequences matter (say, by focusing also on the positive consequences for the women who are hired and promoted). A fully developed consequentialist account for gender diversity that would not be subject to these objections cannot be provided here, and so we leave this open. But given that unjust social systems like patriarchy create a multitude of wrongs and harms that are felt primarily, though not exclusively, by women, it is not implausible that dismantling such systems might in the long term be beneficial to everyone.

3.2. A justice-based justification

A different way to justify concern about the gender gap in academia is to think about it in terms of justice. While it can be acknowledged that addressing the gender gap might have positive effects, the primary reason for doing so within a justice framework is not centered on those effects, but on remedying and preventing injustice.

Justice-based arguments require, in principle, a wrong or some kind of injustice. That is, a justice-based argument can only take off once we make a plausible case that the gender gap is—at least in part—the result of injustice. In this section, we will explain in which ways the obstacles we discussed in Section 2 (gender biases and stereotypes, the gendered division of labor, and sexual harassment and violence) can be understood as different forms of injustice, some of which will often overlap.¹⁸⁹ If this argument is successful, then there will be justice-based reasons to address the gender gap in the legal academy.

Traditional treatments of justice, based on Aristotle, often distinguish between corrective and distributive justice.¹⁹⁰ Corrective justice is broadly understood to be concerned with the rectification of interpersonal wrongs, while distributive justice worries about the distribution of resources in any given society.¹⁹¹ In this section, we do not follow entirely this traditional distinction. Indeed, we will argue that there are several kinds of injustice that have explanatory potential regarding the gender gap in legal academia, which often overlap: corrective justice, distributive justice, epistemic injustice, and structural injustice.

In employing these categories, we are following the work of several contemporary feminist thinkers who have elaborated on the distinct form that gender injustice takes. There is a further (and more difficult) question as to whether epistemic and structural injustice are some kind of distributive or corrective injustice. We do not aim to answer

¹⁸⁹ For example, as we will argue, the gendered division of labor might initially be viewed through the lens of corrective justice (when it manifests in discriminatory hiring and promotion) or the lens of distributive justice (when it manifests in the unfair distribution of caregiving inside and outside academic institutions), but it must also be viewed through the lens of structural injustice (when it responds to a social structure that makes gender-neutral lifestyles relatively more costly than gendered ones).

¹⁹⁰ John Gardner, *What Is Tort Law For? Part 1: The Place of Corrective Justice*, 30 *LAW & PHIL.* 1, 8 (2011).

¹⁹¹ See David Miller, *Justice*, in *THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY* (Edward N. Zalta & Uri Nodelman eds., 2023), <https://plato.stanford.edu/archives/fall2023/entries/justice/>.

this difficult question, as we do not think that it is, at this moment, relevant to our purposes.¹⁹²

Let us begin with corrective justice.

a) *Corrective (in)justice*

Corrective justice is the strand of justice concerned with rectifying interpersonal wrongs and is “correlatively structured.”¹⁹³ It operates primarily by depriving the wrongdoer of a wrongful gain and remedying the injured party’s loss.¹⁹⁴

At least part of the gender gap is the result of interpersonal (moral) wrongs and individual instances of discrimination, and can thus be understood as a problem of corrective justice. Two of the obstacles we mentioned in Section 2.2 can be understood in these terms. First, this is the case with sexual harassment, which is obviously unjust and can also hinder women’s careers and advancement. Second, gendered expectations and stereotypes that result in discrimination on the basis of gender can also be understood as a problem of corrective justice. As we saw in Section 2.2, these biases and stereotypes are of different kinds: they relate to perceptions about women’s competence and professionalism, and have an impact on teaching evaluations, citation practices, the assessment of women’s work, etc. There is a well-known line of scholarship devoted to understanding what is wrong with each of these practices.¹⁹⁵

Because these wrongs are interpersonal and correlatively structured, they require an identifiable “wrongdoer” and a “victim.” But gender injustice is not always structured in such a way and to understand it merely as the result of interpersonal wrongs is unsatisfactory. Indeed, persistent gender inequality might not always be the result of interpersonal wrongs, or of discrimination or discriminatory processes,¹⁹⁶ and some of the obstacles we discussed in Section 2.2 fall outside of the parameters of corrective justice.

b) *Epistemic (in)justice*

When discussing obstacles to closing the gender gap, we mentioned gender stereotypes and expectations that determine who counts as a “knower” in society, as a result of which there might be a failure to treat someone as an equal peer on the basis of their gender.¹⁹⁷ This can be understood as a problem of misrecognition or recognitional

¹⁹² On the difficulty of understanding the relationship between corrective and distributive justice, see Miller, *supra* note 191. On the similar question as to whether gender injustice (or the patriarchy) and racial injustice (or white supremacy) are metaphysically the same kind of injustice, see Robin Dembroff, *The Metaphysics of Injustice*, in *CONVERSATIONS IN PHILOSOPHY, LAW, AND POLITICS* (Ruth Chang & Amia Srinivasan, eds., forthcoming 2024) <https://philpapers.org/rec/DEMTMO-6> (last visited Jan. 31, 2024).

¹⁹³ Ernest J. Weinrib, *Corrective Justice in a Nutshell*, 52 U. TORONTO L.J. 349, 349–50 (2002).

¹⁹⁴ *Id.* at 350.

¹⁹⁵ On sexual harassment, violence, etc., see, e.g., MACKINNON, *supra* note 99; MANNE, *supra* note 81. On discrimination, see, e.g., Sophia Moreau, *What Is Discrimination?*, 38 PHIL. & PUB. AFF. 143 (2010); DEBORAH HELLMAN, *WHEN IS DISCRIMINATION WRONG?* (2008); TARUNABH KHAITAN, *A THEORY OF DISCRIMINATION LAW* (2015). See, e.g., Gina Schouten, *Discrimination and Gender*, in *THE ROUTLEDGE HANDBOOK OF THE ETHICS OF DISCRIMINATION* 186 (Kasper Lippert-Rasmussen ed., 2017).

¹⁹⁷ See MANNE, *supra* note 81; FRICKER, *supra* note 81.

injustice,¹⁹⁸ and when it concerns the capacity of someone as a knower, it can be understood, following Fricker, as a problem of “epistemic injustice.”

Epistemic injustice is “a wrong done to someone on their capacity as a knower.”¹⁹⁹ Fricker identifies two kinds of epistemic injustice. The first is testimonial injustice, when one’s credibility is deflated due to prejudice, as for example when someone’s legal expertise is doubted because she is a woman,²⁰⁰ or as related to the presumption of incompetence that women, and particularly women of color, experience in academia, while white men face a presumption of competence.²⁰¹ The second is hermeneutical injustice, when a gap in collective interpretive resources puts someone in a disadvantaged position when it comes to making sense of their own experiences (for example, suffering sexual harassment in a culture that still lacks that concept).²⁰² Hermeneutical injustice is related also to *gaps* in knowledge, and so it is related to the epistemic argument explored in Section 3.1. In other words, there are certain gaps in knowledge that in addition to being an epistemic problem are also a justice problem, when those gaps place certain individuals at a disadvantage in terms of understanding their own experiences.

Epistemic injustice, especially in its testimonial variety, can plausibly provide a partial explanation of some of the phenomena and evidence that we discussed in Section 2.2, on account of which women are likely to have their credentials, expertise, and knowledge questioned and doubted, both by peers and by students. In turn, these perceptions can have an impact in hiring and promotion. That is, epistemic injustice can be the result of (unconscious and conscious) gender stereotypes and it can result in a misperception of women’s competence, which can, in turn, have an impact on promotion and hiring.

In one sense, epistemic injustice is an issue of recognitional injustice, that is, a misrecognition of women as equals or peers because they are women. But epistemic injustice can also be understood as a problem that concerns the (gendered) distribution of credibility across society, whereby women suffer from credibility deficits because they are women.²⁰³ This dimension of epistemic injustice—i.e., as a problem of *distribution*—leads us to the third kind of injustice which might be involved in the creation and persistence of the gender gap: distributive injustice.

c) *Distributive (in)justice*

Distributive justice is concerned with the distribution of benefits and burdens within a society. There will be instances of distributive injustice when benefits such as jobs

¹⁹⁸ See Nancy Fraser, *Feminist Politics in the Age of Recognition: A Two-Dimensional Approach to Gender Justice*, 1 *STUD. SOC. JUST.* 23 (2007).

¹⁹⁹ FRICKER, *supra* note 81, at 1.

²⁰⁰ *Id.*

²⁰¹ Brenda J. Allen, *Introduction to PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA* 17, 18 (Gabriella Gutiérrez y Muhs et al. eds., 2012); Margalynne J. Armstrong & Stephanie M. Wildman, *Working Across Racial Lines in a Not-So-Post-Racial World*, in *PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA*, *supra* at 224.

²⁰² FRICKER, *supra* note 81, at 1.

²⁰³ Credibility deficits, Manne suggests, serve the function of “*buttressing dominant group members’ current social position, and protecting them from downfall in the social hierarchy.*” MANNE, *supra* note 81, at 194.

or promotions, or more broadly, power and burdens, such as credibility, service, and caregiving, are distributed unequally on the basis of gender, independently of whether particular instances of interpersonal wrongdoing can be identified. What matters, from the perspective of distributive justice, is the end-distribution of those goods and whether it complies with the demands of distributive justice.

As we just argued, there is a dimension of epistemic injustice that can be understood as an issue of the (mis)distribution of credibility across society. But among the obstacles discussed in Section 2.2, the most obvious one to understand in terms of distributive justice is the gendered distribution of care work, inside both the family and academia.

As we noted in Section 2.2, the fact that women are disproportionately burdened with caregiving responsibilities might have an impact on the time they have available to conduct research, which can also create a competitive disadvantage in relation to their male peers, among other implications. If caregiving is a responsibility that is distributed on the basis of gender, inside or outside academia, one might plausibly argue that this constitutes a distributive problem in terms of justice.

However, at least in some contexts, the gendered division of labor is likely to be the result of women's own choices.²⁰⁴ This might be the case inside the academy, where women might have genuine preferences for mentoring students and participating in service work,²⁰⁵ and inside the family, where women might choose to prioritize caregiving over their careers.²⁰⁶

When gendered distributions of caregiving result from women's own preferences or choices, it is harder to understand the resulting gendered distribution of care work as a problem of distributive injustice.²⁰⁷ Of course, these choices may not be entirely free, as they are a product of social practices and environments,²⁰⁸ and insofar as they are somewhat coerced, they can be unjust on account of that reason. But *every* choice we make is constrained by social practices and environments. Unless the position is adopted that nothing we do is free or that everything we do is coerced, it is not immediately obvious why choices to prioritize caregiving are an instance of distributive injustice,²⁰⁹ or the result of discrimination.²¹⁰

This leads us to the final kind of injustice that might be at stake in the obstacles we canvassed in Section 2.2: structural injustice.

d) Structural (in)justice

Structural injustice renders certain individuals and social groups vulnerable to oppression.²¹¹ Oppression itself is also a structural phenomenon “that positions certain

²⁰⁴ See SCHOUTEN, *supra* note 94; Schouten, *supra* note 196.

²⁰⁵ See DEO, *supra* note 23.

²⁰⁶ Schouten, *supra* note 196, at 187.

²⁰⁷ Against seeing the gendered division of labor as a distributive issue, see SCHOUTEN, *supra* note 88; Gina Schouten, *Is the Gendered Division of Labor A Problem of Distribution?*, in 2 OXFORD STUDIES IN POLITICAL PHILOSOPHY 185 (David Sobel et al. eds., 2016).

²⁰⁸ Schouten, *supra* note 196, at 190.

²⁰⁹ Anea Gheaus, *Gender Justice*, 6 J. ETHICS & SOC. PHIL. 1, 4, 9 (2011).

²¹⁰ Schouten, *supra* note 196.

²¹¹ Maeve McKeown, *Structural Injustice*, 16 PHIL. COMPASS 2 (2021).

groups as disadvantaged and other as advantaged or privileged in relation to them.”²¹² Oppression results from the “normal processes of everyday life,” due to the everyday practices of society that remain unquestioned.²¹³ This kind of injustice is particularly resilient, as social structures tend toward self-reproduction, and even seemingly benign choices within the structure can perpetuate the oppression or marginalization of certain groups.²¹⁴ Structural injustice contrasts with corrective injustice in that the latter focuses on interpersonal wrongs, where there is a wrongdoer and a victim, while the former focuses on the social system as a whole: its rules and its mechanisms of enforcement.²¹⁵

Within the framework of structural injustice, when thinking about the gendered division of care work that results from women’s own choices, one must also consider the social structure in which these choices take place. When women choose to prioritize caregiving over their careers, they are often making the least costly choice: gender-equal domestic arrangements are very costly, and gendered domestic arrangements are less so.²¹⁶ It is the social structure itself that makes the pursuit of gender-neutral lifestyles costly relative to gendered lifestyles.²¹⁷ The (gendered) social structure is then sustained in part by individual choices that, although rational within the constraints of the social structure, nonetheless perpetuate those same gendered norms that explain why gendered lifestyles are costly in the first place.

In the case of a choice to prioritize caregiving within the academy, for instance, it might be argued that, due to gendered stereotypes and expectations, caregiving in the form of service is *expected* from women, so that refusing to undertake it can have significant costs, while providing it can be unrewarded.²¹⁸ There is some evidence that this phenomenon takes place: as we noted in Section 2.2, women of color often have genuine preferences for participating in some service within universities, but it is also often the case that they are penalized if they refuse to do so, and frequently remain unrewarded for undertaking service in tenure considerations and promotions.²¹⁹ This is, of course, related to the devaluing of caregiving in all sorts of contexts.

As Schouten argues, what is unjust in these cases then is the fact that the social structure makes gender-neutral lifestyles costly relative to gendered ones, i.e., the fact that the social structure constrains individual choices in a way that is unjustly gendered.²²⁰ In general, this will make it more costly for women than for men to obtain certain valuable things, and the social recognition that comes with them.²²¹ And it will limit their scope for meaningful professional and personal choice, in ways that undermine commitments to distributive justice.

²¹² Haslanger, *supra* note 176, at 39.

²¹³ IRIS MARION YOUNG, JUSTICE AND THE POLITICS OF DIFFERENCE 41 (1990).

²¹⁴ See Haslanger, *supra* note 176.

²¹⁵ See, e.g., MANNE, *supra* note 81.

²¹⁶ Schouten, *supra* note 196, at 190.

²¹⁷ Gheaus, *supra* note 209, at 1.

²¹⁸ On the idea of caregiving as an obligation owed by women, see MANNE, *supra* note 81.

²¹⁹ See, e.g., DEO, *supra* note 23.

²²⁰ Schouten, *supra* note 196, at 202; SCHOUTEN, *supra* note 94.

²²¹ Gheaus, *supra* note 209, at 9.

This can be understood as a form of structural injustice premised on gender oppression, because it limits and shapes women's choices and circumstances, and is at the same time sustained by many individual actions, norms, habits, and institutions.²²² The fact that gender-neutral lifestyles are costly has implications beyond caregiving, particularly if a broad conception of costs is adopted.²²³ Given the biases and obstacles women face in legal academia, succeeding in it is also subject to costs, which may lead women not to incur them by, say, not applying to certain positions or leaving the legal academy.

Understanding the problem of gender injustice in society purely as several instantiations of interpersonal wrongdoing (i.e., as a pure matter of corrective justice) is thus reductive and incomplete. Structural injustice can explain what is unjust about the social structure itself (why, for example, it is unjust that women's caregiving is expected yet unrewarded) even when there is no interpersonal wrongdoing in the picture, either because one of the parties is not blameworthy (e.g., they are operating under unexamined or unconscious biases) or because the woman has made a choice that is less costly under the constraints of the social structure in question (which makes gendered lifestyles relatively less difficult or costly).

The obstacles we canvassed in Section 2.2 can now be understood not simply as challenges to women's hiring and success in the academy that partially explain the persistence of the gender gap, but also as issues of justice, whether in its corrective, distributive, epistemic, or structural dimensions.

The fact that these obstacles are forms of injustice is enough reason to respond to them, regardless of their role in explaining the gender gap in legal academia. Of course, if the gender gap is a consequence of injustice, addressing injustice would result in the gender gap being closed, or at the very least in it being smaller. In this utopian scenario, if a gender gap in legal academia remained, it could be explained as the result of women's choices, which would no longer take place in an environment that makes gender-neutral lifestyles costly.

Still, even in this utopian state of affairs, there would be continued cause to worry about the *effects* or *consequences* of the gender gap in academia. First, because a low number of women in legal academia could plausibly have effects on social norms and might eventually lead back to gendered stereotypes and expectations regarding women's role in society, which in turn might translate into re-generating a problematic gender gap. This implies that a large gender gap might be unstable, in terms of maintaining justice, in the long term. And, second, because (as discussed in Section 3.1), there are additional consequences to care about the gender gap in legal academia.

²²² Serena Parekh, *Getting to the Root of Gender Inequality: Structural Injustice and Political Responsibility*, 26 *HYPATIA* 672, 677 (2011).

²²³ Supporting a broad conception of costs, see Gheaus, *supra* note 209.

4. A feminist legal academy and some responses to the gender gap

Justice-based arguments provide not only a reason to care about the gender gap but a reason to care about and address injustice itself. In that sense, justice-based arguments require not just a concern with the gender gap, in its various manifestations, or the adoption of a set of discrete practices, but rather addressing and ultimately dismantling the unjust structure and practices that are responsible for the gender gap in the first place—that is, the dismantling of the patriarchal social structure underpinning it. The aim is to end injustice, in all its forms.²²⁴

There are arguably many different ways in which that goal could be pursued. While all three authors of this Foreword believe that what is required is a feminist legal academy,²²⁵ we had different views in terms of what exactly that should entail. Certainly, the complete dismantling of gender injustice would require the abolition of patriarchy, which is an unjust structure, as well as the abolition of other unjust structures that interact and overlap with patriarchy, like white supremacy or homophobia. But there are also deep controversies within feminism itself—for example, regarding pornography and parental custody rights²²⁶—some of which might point in different directions in the design of a feminist legal academy. There are also arguments about what constitutes genuine feminism, particularly in the context of debates about the rights and dignity of trans persons. And even in spaces committed to feminism, there are likely to be challenges that lack straightforward solutions, where different needs and interests will need to be balanced.²²⁷

Nevertheless, even though a feminist rethinking of legal academia should be a diverse and pluralist enterprise and is likely to take quite different forms,²²⁸ there are certain general features we believe would be broadly necessary—though perhaps not sufficient—for a feminist legal academy, namely: an academy that is attentive to questions of gender justice and distribution in research, teaching, and pedagogy, and in the design of universities and law faculties as workplaces. In what follows, we make some specific suggestions concerning each of these aspects.

We also focus specifically on what universities, law faculties, and legal institutions could achieve, within the confines of existing structural constraints. Some of the

²²⁴ As Deo and others have noted, achieving critical mass or diversity—however understood—in the student body or in the professoriate does not guarantee any particular outcome or benefits in terms of gender equality or justice. Meera E. Deo, *The Promise of Grutter: Diverse Interactions at the University of Michigan Law School*, 17 MICH. J. RACE & L. 63, 65 (2011); Milem, *supra* note 126, at 31; Patricia Gurin, Biren (Ratnes) A. Nagda & Gretchen E. Lopez, *The Benefits of Diversity in Education for Democratic Citizenship*, 60 J. Soc. ISSUES 17 (2004).

²²⁵ It is *feminism*, as bell hooks says, that has “the power to transform in a meaningful way all our lives”: HOOKS, *supra* note 8, at 28.

²²⁶ Joanne Conaghan, *Reassessing the Feminist Theoretical Project in Law*, 27 J. L. & Soc’y 351, 358 (2000).

²²⁷ See, e.g., Elizabeth A. Sharp & Kristin Messuri, *A Reprieve from Academia’s Chilly Climate and Misogyny: The Power of Feminist, Women-Centered Faculty Writing Program*, 30 GENDER, WORK & ORG. 1236, 1242 (2023).

²²⁸ In the context of primary and secondary education, see, e.g., Irene Martínez Martín & Gema Ramírez Artiaga, *Des-patriarcalizar y des-colonizar la educación: Experiencias para una formación feminista del profesorado*, 6 REVISTA INTERNACIONAL DE EDUCACIÓN PARA LA JUSTICIA SOCIAL (RIEJS) 81 (2017).

measures proposed below are short term and easily implemented, while others involve more ambitious, long-term goals that are only likely to be achieved through significant institutional and societal reform. Some of the limits and difficulties that a project of developing a feminist legal academy must face are also discussed in the next part.

It is important to note that some academic organizations and institutions have already begun to take steps to address some dimensions of gender inequality. From the field of global public law, for example, organizations such as the International Association of Constitutional Law (IACL) and ICON-S have taken a range of steps to address the gender gap and gender inequity within their structures and operation.

IACL, for example, has explicit and written policies concerning gender diversity among speakers at conferences and in IACL commissions. Further, gender and geographical balance are pursued in seeking candidates for the Executive Committee, and there is a new IACL Commission on Sustainability and Inclusion which proposes new strategies and initiatives concerning gender balance.²²⁹

ICON-S, together with its national and regional chapters, has adopted mentoring and networking programs. The Society has likewise adopted principles of parity, or at least minimum quotas for gender representation, in its governance structures. ICON-S has two co-presidents, one male and one female, and a requirement that 30% of Council members are women. Gender balance is also an explicit requirement for the approval of new national and regional chapters of the Society. Both ICON-S as well as its sister journal, ICON, have also adopted principles of gender balance in the proposal of symposia to ICON, and in the proposal and constitution of panels at ICON-S. And ICON-S has adopted an explicit anti-harassment policy covering all ICON-S events, and on several occasions offered childcare at its annual conference.

The European Society of International Law (ESIL) has a number of initiatives to support underrepresented groups, including a mentoring network and capacity-building workshops. In addition, the ESIL Board has in the past collaborated with its Interest Group on Feminism in International Law to organize networking events during the Annual Conference. ESIL has likewise adopted a Statement of Principles on Diversity, Equality and Inclusion that provides that “when convening conferences and events, organizing committees, selection committees and interest groups will make every effort to reflect diverse perspectives, in particular, from groups which are underrepresented within the Society.”²³⁰ ESIL’s guideline for organizing annual conferences also states that “the programme should be balanced” in regard to several factors including gender. ESIL’s Annual Conference and Research Forum are scheduled to avoid conflict with school holidays within Europe, where most members are based, and ESIL offers “carers’ grants [of EUR 200] to encourage and facilitate attendance of members with parental or other caring responsibilities at its Annual Conferences and Research Forums.”²³¹ According to ESIL, they have “formalised a commitment to facilitate, when practicable, hybrid attendance, not only for those with caregiving/

²²⁹ Information provided in personal correspondence with the presidency of the IACL.

²³⁰ *Statement of Principles on Diversity, Equality and Inclusion*, EUR. SOC. INT’L. L., <https://esil-sedi.eu/diversity-equality-and-inclusion/> (last visited Jan. 26, 2024).

²³¹ *ESIL Carers’ Grants*, EUR. SOC. INT’L. L., <https://esil-sedi.eu/carers-grants-2/> (last visited Jan. 26, 2024).

family responsibilities.” In addition, ESIL regularly organizes hybrid and online events supplementary to their main conference.

The American Society of International Law (ASIL) has adopted guidelines to govern nominations to its Council which require “maximum efforts” to ensure a Council that is diverse along multiple dimensions including gender, and in 2022 established a Diversity, Equity and Inclusion Committee.²³² All panels at events organized or co-sponsored by the Society are required to meet ASIL’s diversity requirements, including gender parity on such panels. While virtual participation in ASIL annual or mid-year meetings after the pandemic is not currently considered by the Society to be financially or practically feasible, ASIL regularly organizes other events and webinars which are held online. There is an active Women in International Law Interest Group which is committed to helping the Society to break down gender barriers, and which organizes a Women in International Law Mentoring program, connecting experienced female international law professionals with female law students and attorneys interested in working in the field of international law. Since 2013, over 600 women have enrolled in ASIL’s Mentoring Program as both mentors and mentees in fifteen countries and thirty-eight cities worldwide. The ASIL Annual Meeting also confers the “Prominent Woman in International Law Award” to recognize a female recipient’s contribution to the development of international law. Linked to the work of the Society, the editors of the *American Journal of International Law* (AJIL) in 2022 published a Diversity Statement and Agenda expressing AJIL’s commitment to diversity, equity, and inclusion in all aspects of the Journal’s work.

The American Political Science Association (APSA) has a Committee on the Status of Women,²³³ a Women’s Caucus,²³⁴ and the Women Gender and Politics research section, all of which organize scholarly and networking events,²³⁵ as well as a Project on Women and Minorities that gathers data on diversity in the profession. APSA also created a Mentor Program in 2003.²³⁶ It has a commitment to diversity in the composition of its Council, and gender parity in the organization of panels.²³⁷ It has offered subsidized on-site childcare, and now offers modest child grants to those attending the Annual Meeting. It has also moved toward increased hybrid offerings: the 2020 meeting was fully virtual, the 2021 meeting was hybrid, and the 2022 meeting offered all plenary sessions and theme panels virtually as well as in person.²³⁸ APSA

²³² We are grateful to Michael Cooper and Taylor Kilpatrick, respectively Executive Director and Program Officer of the American Society of International Law, for providing the information on which this summary is based.

²³³ *Committee on the Status of Women in the Profession*, AM. POL. SCI. ASS’N., www.apsanet.org/statuscommitteewomen (last visited Jan. 26, 2024).

²³⁴ *What Is the WCPSP?*, WOMEN’S CAUCUS POL. SCI., <https://connect.apsanet.org/wcps/> (last visited Jan. 26, 2024).

²³⁵ *Women, Gender and Politics Research (Section 16)*, AM. POL. SCI. ASS’N., www.apsanet.org/section16 (last visited Jan. 26, 2024).

²³⁶ *APSA Mentoring Program*, AM. POL. SCI. ASS’N., www.apsanet.org/mentor (last visited Jan. 26, 2024).

²³⁷ *Bylaws of the Association of the American Political Science Association*, AM. POL. SCI. ASS’N., www.apsanet.org/Portals/54/governance/APSA%20Bylaws_2017.pdf (last visited Jan. 26, 2024).

²³⁸ *Annual Meeting Papers*, AM. POL. SCI. ASS’N., www.apsanet.org/EVENTS/Past-Annual-Meetings (last visited Jan. 26, 2024).

also currently offers many virtual events and meetings.²³⁹ And in 2015, in response to a survey from members, APSA committed to a willingness to hold its Annual Meeting on a date other than the Labor Day weekend starting in 2020 (as those meetings had not yet been contracted).²⁴⁰ In addition, APSA has an Anti-Harassment Policy, and procedures for raising complaints under that policy.

The European Union Studies Association likewise has formalized a code of conduct protecting against “unwelcome solicitation of emotion or physical intimacy,” “prejudicial actions [including related to gender],” and other forms of harassment, and includes a process for addressing complaints.²⁴¹

In what follows, we explore related and additional practical steps that international associations, law faculties, and universities could take to address some of the problems of gender inequity, at the same time noting some of the potential limits and downsides of such steps.²⁴²

4.1. Practical responses

a) *De-biasing hiring and promotion*

Implicit bias is notoriously hard to counter. Indeed, there is some evidence that attempts to educate people about, and train people to avoid, implicit bias can have exactly the opposite effect: they can cause a form of resentment or “whiplash” that worsens explicit and implicit bias against women and minority groups.²⁴³ Any training of this kind needs to be extremely carefully designed and targeted—for instance, to encourage ongoing reflection about the relevance of particular patterns to specific academic settings, and the various sources of bias operative in those settings.

Linked to these efforts will also be the need for law schools and universities to re-think how they define and measure academic “merit” and success, so that it is less likely to be shaped by implicit bias and more capable of capturing the importance of academic service, citizenship, and care work.

For instance, if there is clear evidence suggesting that female or culturally and linguistically diverse (CALD) teachers tend to be evaluated more harshly by students than male or non-minority peers, universities could choose not to rely on student evaluations in processes of promotion, or to scale or re-weight evaluations in ways designed to remove the identifiable gender or CALD penalty in evaluations. However, given the amount of evidence which has been gathered about biases which affect teaching evaluations, as well as about what an inadequate measure of teaching quality

²³⁹ *Virtual Teaching Workshops*, AM. POL. SCI. ASS’N., www.apsanet.org/TEACHING/Teaching-in-Political-Science/Virtual-Teaching-Workshops (last visited Jan. 26, 2024); *APSA Virtual Events*, AM. POL. SCI. ASS’N., www.apsanet.org/EVENTS/APSA-Virtual-Events (last visited Jan. 26, 2024).

²⁴⁰ *Women, Gender and Politics Research (Section 16)*, *supra* note 235.

²⁴¹ *Constitution of the European Union Studies Association of the United States*, EUR. UNION STUD. ASS’N., <https://eustudies.org/about/amendments> (last visited Jan. 26, 2024).

²⁴² We thank Bea Greenberg for help in compiling and summarizing this data.

²⁴³ Tiffany L. Green & Nao Hagiwara, *The Problem with Implicit Bias Training*, SCIENTIFIC AM. (Aug. 28, 2020), www.scientificamerican.com/article/the-problem-with-implicit-bias-training/.

they are, there is a strong case for doing away entirely with such evaluations.²⁴⁴ One of the current authors, for example, works at a law school that has recognized the biased nature of teaching evaluations and these are no longer used as metrics of teaching quality in promotion assessments.²⁴⁵ Abandoning the current system of teaching evaluation however would require coming up with a new and more effective method of evaluation, which may be a challenging task but which would hopefully avoid the biases which have afflicted the existing system.

Similarly, if implicit bias means that female and CALD scholars face greater obstacles to publishing in top-tier law journals, hiring and promotion committees could take that into account in assessing the ranking of journals in which male and female, or non-minority and minority, applicants have placed their research. If citation and impact measures are infected by bias against women, promotion committees could respond to that by reducing the weight they place on citation measures in promotion decisions, or by seeking to adjust for the relevant bias. For instance, recent research has shown that articles in *ICON* by female authors or authorial teams suffer approximately a 11% reduction in citation rate compared to articles by male authors.²⁴⁶ Promotion committees could also take that into account, and use gender de-biased citation measures, in assessing the impact of a scholar's work (for example, by increasing a scholar's estimated Google Scholar citation count to adjust for the relevant gender bias discount implicit in their nominal reported count).

Any policy of this kind is likely to be overinclusive in certain cases: there are female scholars who consistently command high peer and student evaluations. This may be because they are such outstanding teachers that even biased evaluations of them are consistently positive, or because they teach electives that attract students with less gender-biased attitudes, or because they teach in a style that is performative of their gender and hence satisfies gender expectations (such as that women should be kind and caring in manner). In either event, attempts to re-weight teaching evaluations in their favor would tend to be overinclusive, and would not cure many of the weaknesses of reliance on teaching evaluations within the current system.²⁴⁷ Similarly, there are female scholars who are highly published and cited, including in the leading journals in the field, for whom a gender-adjusted citation rate would be unnecessary. And there are journals, such as *ICON* itself, that take a sufficiently active gender-conscious approach to editorial decisions that an approach of this kind might in fact over-enforce commitments to gender equality.

To be fair and effective, an approach of this kind would therefore need to be closer to a standard than a rule, or a rebuttable rather than an ironclad presumption. But

²⁴⁴ See Justin Esarey & Natalie Valdes, *Unbiased, Reliable, and Valid Student Evaluations Can Still Be Unfair*, 45 *ASSESSMENT & EVALUATION IN HIGHER EDUC.* 1106 (2020)

²⁴⁵ For the suggestion that universities might open themselves to legal action for using known discriminatory or biased measures for evaluating teaching, see Troy Heffernan & Paul Harpur, *Discrimination Against Academics and Career Implications of Student Evaluations: University Policy Versus Legal Compliance*, 48(8) *ASSESSMENT & EVALUATION IN HIGHER EDUC.* 1283 (2023).

²⁴⁶ Dixon & Versteeg, *supra* note 7.

²⁴⁷ See Heffernan & Harpur, *supra* note 245.

with this caveat, the adoption of such practices could at least contribute in part to overcoming the current effects of implicit bias in the legal academy.

The key test for institutional changes of this kind will be whether they can help counter certain forms of gender bias, or injustice, without creating new forms of bias. One danger, for example, is that efforts to de-bias existing standards of merit or success may have limited effect, yet add to a perception that existing frameworks or yardsticks are in fact fair and *un*biased. In some continental systems, for instance, there are now models of “objective” testing in the hiring process that give the impression of greater gender justice. And often those tests are coupled with more subjective forms of performance evaluation that leave ample scope for gender bias to play a backdoor role, while giving the impression of gender-neutral processes of evaluation. This is also the kind of change that is likely to do little, if anything, to advance the position of female scholars within the legal academy.

b) Mentoring, networking, and education

Another important intervention universities and law schools can make is in how they approach the role of mentors and teachers. Mentoring, for instance, can help identify the existence of a confidence gap and provide the support and encouragement necessary to help reduce it in various settings. Mentoring is also closely related to “sponsorship,” which involves a mentor or sponsor actively seeking to promote the work of a mentee, and to make connections that can help increase the visibility and recognition of their work.²⁴⁸ Increasingly, sponsorship of this kind can also occur across borders: it can involve the use of social media to make connections, or draw the attention of global scholars to another (in this case female) scholar’s work.

An important way for law faculties and international organizations to address current problems of gender bias is therefore to help create and encourage mentoring and sponsorship arrangements of this kind, as ASIL has done for Women in International Law. It is not always easy to create formal mentoring and sponsorship programs that achieve the same benefits as more organic, informal models that arise in the course of joint academic endeavors. But nonetheless, programs of this kind can help overcome gendered networks and sources of implicit bias, in ways that make them an important tool for redressing current gender imbalances.

Similarly, an important way in which to create less gendered professional and scholarly networks is for women to organize and be part of both mixed-gender and women-only networking events.²⁴⁹ One particular challenge for women-only events is they must be carefully designed so as not to exclude non-binary and transgender colleagues, and work toward promoting solidarity with and change for both men and women. But they can serve an important purpose in forming strong connections among women, which can increase citations and invitations for junior female scholars. The

²⁴⁸ Janice Omadeke, *What’s the Difference Between a Mentor and a Sponsor?*, HARV. BUS. REV. (Oct. 20, 2021), <https://hbr.org/2021/10/whats-the-difference-between-a-mentor-and-a-sponsor>.

²⁴⁹ Virginia Gewin, *Women Can Benefit from Female-ed Networks*, NATURE (Dec. 20, 2018), www.nature.com/articles/d41586-018-07878-w.

current “gap” in the citation of female scholars in global public law is driven largely by patterns of under-citation by male scholars. Female scholars tend to cite other female scholars at a rate that corresponds to the rate of publication; and without this female-peer-citation pattern the gendered nature of current citation patterns would be much worse.²⁵⁰

Gender-specific networking events can also serve an important purpose in helping create solidarity and shared consciousness among female academics about the common obstacles they face, and the need for institutional and structural change. This may also be especially valuable in countries where there is otherwise less discussion of or exposure to these same kinds of ideas.²⁵¹

Mentoring can likewise be a means by which senior scholars can transmit new and different norms and values around gender to undergraduate and graduate students, as future legal scholars. But for undergraduate students especially, an even more powerful intervention will involve attempts to change the way gender is performed and reproduced in the classroom—for example, through more gender-equal norms of class participation²⁵² and benchmarks for assessment, and more egalitarian modes of teaching in general. As Crenshaw notes, traditional legal education can be alienating to minorities, simultaneously putting them on the spot while aiming for “perspectivelessness.”²⁵³ One of the ways in which she has tried to counter some of these issues is by “creating the conditions for students to participate in the construction of a dialogue that was, to a certain extent, theirs,” while embracing critical and constructive methodologies.²⁵⁴

Additional measures to create egalitarian and inclusive classrooms are also important for promoting a more gender-just and feminist academy: they offer a means by which future scholars can be encouraged to reject implicit racialized and gendered notions of hierarchy and superiority/inferiority.²⁵⁵ More generally, the promotion of a fairer and more feminist legal academy involves challenging a wide range of norms and expectations in law and legal institutions. These include how we approach the tasks of teaching and research, the design of courses and course materials, the structure of the legal curriculum,²⁵⁶ and the adoption of rules and practices that are more likely to ensure the success of all students, for instance by preferring open access materials to expensive casebooks.²⁵⁷ Additionally, for example, within a feminist legal academy, the treatment of certain issues often associated with women and minorities, traditionally

²⁵⁰ Dixon & Versteeg, *supra* note 7.

²⁵¹ We are grateful to Cora Chan for highlighting this point, with special reference to the experience of female scholars in Asia.

²⁵² Kenneth Khoo & Jaclyn Neo, *Gender Gaps in Legal Education: The Impact of Class Participation Assessments* (July 10, 2023), <https://ssrn.com/abstract=4227446>.

²⁵³ Crenshaw, *supra* note 178, at 35–6.

²⁵⁴ *Id.* at 49.

²⁵⁵ *Cf.* HOOKS, *supra* note 8, at 5.

²⁵⁶ Rosemary Auchmuty, *Agenda for a Feminist Legal Curriculum*, 23 *LEGAL STUD.* 377 (2003).

²⁵⁷ *See, e.g.*, Anabel Morina, *Inclusive Education in Higher Education: Challenges and Opportunities*, 32 *EUR. J. SPECIAL NEEDS EDUC.* 3 (2017); Kevin Gannon, *The Case for Inclusive Teaching*, *CHRON. HIGHER EDUC.* (2018), www.chronicle.com/article/the-case-for-inclusive-teaching/.

left to specialized courses, would find a central place in the core curriculum,²⁵⁸ and the way issues of gender injustice are taught would be informed by trauma-informed teaching strategies.²⁵⁹

c) *Childcare*

Another small but practical step which could help reduce the problem of exacerbation of existing burdens or injustice is the provision of childcare as part of conference and other academic activities. Law faculties and universities could also play a role by including the cost of childcare in research funding aimed at supporting travel and attendance at conferences.²⁶⁰ And universities could play an even greater role, by ensuring high-quality, affordable, onsite childcare accessible to all staff and students; and care that operates on a timetable that mirrors the university's own calendar and teaching and meeting schedule. There is little point in having university childcare, for example, if it closes at precisely the same time as the last class of the day ends.

As we note above, some academic organizations, including ICON-S, ESIL, and APSA, have already been working to achieve this and have successfully implemented it at their conferences.²⁶¹ But there is also an important difference between models that involve the provision of free, high-quality onsite childcare during a conference, and a modest subsidy toward arranging one's own childcare. One comes with a guarantee of quality, safety, and reliability, whereas the other can be hard to rely on, especially in an unknown jurisdiction or context.

It is also important to note that most current policies do not cover anything like the full costs involved, which can include the costs of airfares for children, a room big enough to accommodate them, and childcare for all relevant periods including receptions and dinners, not just core panel discussions. This is not necessarily something that can be achieved in current budgetary conditions, or that should come at the expense of funding attendance for those who need it. But it is important to view existing policies with this in mind: it is unrealistic to think that scholars can bring children to conferences, given these policies, without significant expense. And this means either changing those policies, or finding other ways to recognize the differential challenges imposed by caregiving responsibilities.

Another factor to note is the ways in which these policies and their limits intersect with the racialized and class-based divide among women in their experience of the gender gap in the legal academy and beyond: poor women, and women from poorly resourced institutions, will generally be less able to afford to supplement institutional forms of support of this kind, and hence may be further limited in their

²⁵⁸ Auchmuty, *supra* note 256.

²⁵⁹ See, e.g., Janice Carello & Lisa Butler, *Potentially Perilous Pedagogies: Teaching Trauma Is Not the Same as Trauma-Informed Teaching*, 15 J. TRAUMA & DISSOCIATION 153 (2014).

²⁶⁰ For this to be maximally effective, tax laws would have to be reformed in many countries to remove tax penalties for support of this kind. But this is itself another form of gender reform that public law scholars could help promote.

²⁶¹ ICON-S, the International Society of Public Law, has worked for some years toward this goal, and successfully implemented it at the annual conference in Wroclaw, Poland, in July 2022.

opportunities for participation relative to female colleagues with children and greater financial resources. Whatever form paid childcare takes, in many countries it is also often performed by women of color, at a low wage, in ways that further exacerbate forms of intersectional race, class, and gender inequality beyond the academy, even while ameliorating it within it.²⁶²

d) *Hybrid attendance*

Another step which could have significant benefits for female academics, in particular, but also for others, would be for academic organizations, and scholars more generally, to retain a commitment following the COVID-19 pandemic to permitting hybrid attendance at all academic events, even while continuing to fund the possibility of attending in person. As noted above, this has been the policy of ESIL and APSA, though many organizations are reviewing these policies as we write, and some such as ASIL have concluded that it is not financially or administratively feasible to continue permitting hybrid attendance.

Maintaining hybridity comes at a cost: it is logistically far more complex than events that take place either wholly online or wholly in person. Without investment in the relevant technology and logistical planning, hybrid events are often unsatisfactory for all concerned.

Further, online attendance can have clear limitations and disadvantages, especially for early-career scholars who are still building their academic connections and networks. It limits the chance for scholars to enjoy and generate informal connections and networks, to share ideas informally off-line, and to build communities of mutual support. At the same time, hybrid events do not necessarily preclude these opportunities, as the recent pandemic has demonstrated that fully online events can generate many practical benefits for scholars.²⁶³ And our emphasis on hybridity acknowledges that most scholars will benefit from attending—and indeed want to attend—events in person. Our point is simply that this will not be possible in all cases, at all times, and hence hybridity should be seen as increasing substantive equality of opportunity within the academy, not as a replacement for attempts to promote inclusive forms of in-person community-building.

Our argument in this respect is simple: hybrid events can create significant benefits for those seeking to combine work and childcare or elder-care responsibilities, as well as those who have disabilities, and those who have fewer resources to travel.²⁶⁴ Online attendance may be possible *while* caring for children, even if these are not ideal conditions. Further, online attendance is more readily compatible with short-term,

²⁶² On the United States, see Laura Linnan et al., *The Health and Working Conditions of Women Employed in Child Care*, 14 INT'L J. ENV'T RSCH. & PUB. HEALTH 283 (2017).

²⁶³ One of the authors of the present Foreword, Rosalind Dixon, organized and ran a three-month global junior scholars forum wholly online in 2022. Most participants reported (by email, Aug. 2022) a significantly increased sense of virtual scholarly community and connection.

²⁶⁴ On the advantages and disadvantages of online participation for scholars with disabilities, see Clare Williams, "Un-Disabled by Covid": *Reflections of a (Usually Disabled) Socio-Legal Scholar*, 20 INT'L J. CONST. L. 1326 (2022).

affordable childcare, which allows a scholar to attend an event for several hours, without the need to be traveling for days or weeks leaving children or other relatives in need of care. The opportunity to attend academic events online is likely to be especially valuable for scholars with small children, those who are single parents, or those who have health or other challenges that make travel difficult.

Finally, while the availability of online attendance should not become a substitute for inclusive funding models to support the attendance of under-funded scholars and scholars from the Global South at conferences, nevertheless virtual attendance creates greater opportunities for attendance and participation by those with limited access to travel funding, or who face substantial visa-based restrictions on travel.

e) Scheduling and micro-accommodations

Linked to hybrid attendance is a focus on the timing of conferences and other academic events, including routine teaching and other institutional duties within universities and law faculties. To promote gender equality, timing decisions of this kind should be designed with care responsibilities in mind.

This may involve avoiding scheduling conferences in school holidays, as is the practice of ESIL, or else consciously deciding to arrange conferences during school holidays to allow children and families to attend—but then designing the schedule in ways that allow time each day for caring and family time, in addition to conference attendance.²⁶⁵ At a minimum, it would involve avoiding scheduling conferences during important national holidays, which are known by organizers to be important times for families to gather (for example, in the United States, Memorial Day, July 4, Labor Day, and Thanksgiving). This is also one reason APSA made recent changes to its annual conference schedule.

In law teaching and the day-to-day running of law faculties, it would also mean seeking to ensure that all meetings occur during business hours, ideally at lunchtime rather than at the beginning or end of the workday during school and childcare drop-off and pick-up hours, and to ensure that those with significant childcare responsibilities have priority in teaching during those hours. In Sweden, for example, there is a clear unwritten norm that meetings and seminars will not be organized after 4 P.M., when school ends for children.²⁶⁶ Care-friendly scheduling of this kind will often involve little or no cost to organizers or law faculties, but offer significant benefits to scholars who are parents, and especially parents with primary caregiving responsibilities. For some holidays, it will also offer important benefits to those with elderly family for whom they have care responsibilities.

²⁶⁵ This was the model adopted by Rosalind Dixon and Erin Delaney in organizing a conference on Constitutional Heroines in New Zealand in July 2023, which also provided babysitting and family-friendly conference activities.

²⁶⁶ E-mail from Cécile Brokelind (Mar. 22, 2023) (on file with authors).

For this reason, such practices have been labeled as a form of “micro-accommodation.”²⁶⁷ One of the defining features of a micro-accommodation is that it goes beyond what the law requires in seeking to reduce the conflict between a person’s professional and personal demands. But it also imposes little or no burden on employers or organizers. In that sense, micro-accommodations are the opposite of a micro-aggression, i.e., a small act of exclusion and discrimination that, combined with other similar acts, can contribute to systematic patterns of inequality. Micro-accommodations, in contrast, involve small acts on the part of employers or organizers, but ones which can yield large cumulative benefits for employees or attendees at events.

Not all scheduling accommodations by universities or law faculties will necessarily fall into this category: some may involve larger costs, such as keeping childcare centers open longer, paying adjunct or casual employees without care responsibilities to teach late afternoon or evening classes or offering permanent faculty members without care responsibilities additional credit for doing so, or reducing the capacity utilization of certain classrooms or meeting rooms by leaving them unused outside of business hours.

Others may not involve monetary costs, but rather the opportunity cost of not having scholars present for as much time in person. For instance, visiting professorships and fellowships are one important networking and career advancement opportunity for those in the legal academy. Many women with care responsibilities will also want to take up, and benefit from, opportunities of this kind. But some of these opportunities are only offered as year-long or semester-long options, in ways that make them inaccessible to many scholars—and especially female scholars with responsibility for caring for elderly relatives or school-age children.²⁶⁸ The obvious response to this is also to allow a mix of longer and shorter term visits: the costs of doing so are largely logistical rather than financial, and involve increased administrative effort and/or reward from the presence of a single visitor.

Some of these accommodations may be required by law, and others offer significant benefits that are, we argue, still worth the cost to universities in terms of promoting more equal and diverse workplaces.

f) Extended parental leave, flexible work, and part-time options

One of the myths that sustains current gender disparities in the legal academy is that caregiving responsibilities become less relevant to career progress after a child is three, six, or twelve months old—i.e., after a parent returns from a given period of parental leave. Consistent with broader workplace norms in those countries, universities in Europe, Australia, New Zealand, and Canada are all quite generous in providing a

²⁶⁷ Rosalind Dixon, *Micro-Aggressions Are Repeated Acts That Send Women Backwards. Here’s How Micro-Accommodations Can Fight Back*, THE CONVERSATION (Jan. 4, 2023, 2:16 P.M.), <https://theconversation.com/micro-aggressions-are-repeated-acts-that-send-women-backwards-heres-how-micro-accommodations-can-fight-back-195570>.

²⁶⁸ We are indebted to Jaclyn Neo for pressing us on this point.

minimum of thirty-six weeks' paid parental leave to most tenured faculty members,²⁶⁹ although in many jurisdictions the rate of parental leave pay is substantially lower than regular pay, even when the period of parental leave is mandatory and the household costs have increased with the birth of a child. Further, many countries in Asia and Latin America are far less generous in the length of the period of paid leave they provide. While Venezuela and Brazil provide for up to twenty-six weeks of paid leave, Honduras, Ecuador, and Nicaragua remain behind with a maximum of twelve weeks of paid maternity leave.²⁷⁰ The United States is particularly unusual in failing to require employers to provide any form of paid parental leave.²⁷¹ However, some US law schools, including Harvard and Yale, provide at least thirteen weeks of paid leave,²⁷² while others such as NYU provide for one semester of workload relief (or two semesters of half workload relief) from classroom teaching and administrative committees while on full pay for new parents, although with a requirement to be reasonably available for "responsibilities of research, student consultation and advising."²⁷³

Often, however, the assumption is that once the period of parental leave is over, a scholar is ready to resume a full teaching, service, and research load, or an equivalent program of full-time study or research. In fact, this is rarely true: babies in formal childcare often get sick, in ways that interrupt sleep, research, and the consistent ability to attend meetings and other work commitments. When children start elementary, middle, and high school, they also often require increased parental support. This is especially true for children with learning difficulties, and other cognitive and emotional difficulties, but for all children there is often a need for increased parental presence and support at these key moments.

A genuinely care-friendly work-allocation policy would recognize this, and allow a scholar to increase and decrease their professional demands and outputs across a multi-year period. It would also offer targeted support, for instance by reducing a legal academic's teaching load for a period after the return from parental leave, or through increased research budget support during that period. Some universities and law faculties have moved in recent years to adopt support for just this kind of policy.²⁷⁴

²⁶⁹ See, e.g., UNSW SYDNEY, THE UNIVERSITY OF NEW SOUTH WALES (ACADEMIC STAFF) ENTERPRISE AGREEMENT 2018 at 45 (Apr. 8, 2019), [www.unsw.edu.au/content/dam/zz-drop/single-import/dex/lachlan-bateup/2022-07-enterprise/2022-07-enterprise-The%20University%20of%20New%20South%20Wales%20\(Academic%20Staff\)%20Enterprise%20Agreement%202018.pdf](http://www.unsw.edu.au/content/dam/zz-drop/single-import/dex/lachlan-bateup/2022-07-enterprise/2022-07-enterprise-The%20University%20of%20New%20South%20Wales%20(Academic%20Staff)%20Enterprise%20Agreement%202018.pdf).

²⁷⁰ Marisa Hawley & Matthew E Carnes, *Explaining New Patterns in Family Leave Policies in Latin America: Competing Visions and Facilitating Institutions*, 63 LATIN AM. POL. & SOC'Y 103 (2021).

²⁷¹ Joya Misra, Jennifer Hickes Lundquist, & Abby Templer, *Gender, Work Time, and Care Responsibilities Among Faculty*, 27 SOCIO. F. 300, 305 (2012).

²⁷² *Massachusetts Paid Family and Medical Leave*, HARV. INFO. FOR EMP., <https://hr.harvard.edu/ma-pfml> (last visited Jan. 26, 2024); YALE UNIV. FACULTY HANDBOOK 136 (Oct. 1, 2021), [https://provost.yale.edu/sites/default/files/files/Faculty%20Handbook_10-1-2021\(1\).pdf](https://provost.yale.edu/sites/default/files/files/Faculty%20Handbook_10-1-2021(1).pdf).

²⁷³ See *Leave of Absence (Paid and Unpaid)*, N.Y. UNIV., www.nyu.edu/faculty/governance-policies-and-procedures/faculty-handbook/the-faculty/other-faculty-policies/leave-of-absence.html (last visited Jan. 26, 2024).

²⁷⁴ See, e.g., UNSW SYDNEY, CAREER ADVANCEMENT FUND PROCEDURE FOR FEMALE ACADEMICS DURING OR RETURNING FROM MATERNITY/ADOPTION LEAVE (effective May 17, 2021), www.unsw.edu.au/content/dam/pdfs/governance/policy/2022-01-policies/careeradvfundprocedure.pdf.

Relatedly, universities and law faculties should consider providing access to flexible work options, which accommodate a scholar's care responsibilities and *choices*. Not all scholars may wish to engage in full-time work and rely on full-time formal childcare. To accommodate that choice, and the feminist logic of care and relational autonomy it embodies, universities should also offer part-time work options for all those with significant caregiving responsibilities or who would otherwise benefit from them. Again, most universities in Europe, Australia, New Zealand, and Canada already do so, but most elite law schools in the United States do not.²⁷⁵ In parts of Latin America, while some universities such as the University of Costa Rica offer part-time work options, this can significantly delay promotions and future career progression.²⁷⁶

Part-time work is not to be confused with the casualization or “fissuring” of academic work, which involves increasing reliance on casual and adjunct teachers.²⁷⁷ While part-time work can increase the scope to combine care and legal scholarship, casualization tends to reduce access to the benefits and entitlements that make this combination feasible. And while part-time work tends to promote relational freedom, casualization on the other hand generally reduces personal security and academic freedom.

Part-time work also comes with challenges: not everything an academic does is easily divisible, and there are dangers of putting too much emphasis on teaching and service as compared to research, in how responsibilities are divided. Part-time work also requires an appropriate adjustment in expectations for tenure, promotion, and the award of grants, or a move to a “research opportunity and performance evidence” (ROPE) standard as opposed to an absolute benchmark for these decisions.²⁷⁸ Standards of this kind are inevitably limited, and do not capture the full range of structural challenges to equality in the academy. But they allow for individualized consideration of a scholar's opportunities for research, factoring in health, personal, and caregiving challenges, in ways that increase the scope for promotion and advancement for those in part-time roles, and for those with full-time roles but no commensurate opportunities for research. Many universities and grant bodies within Australia have successfully adopted a ROPE-based model, in ways that suggest it offers a plausible model in response to the challenges of combining care and academic performance.²⁷⁹ They also offer all scholars an explicit opportunity to describe career breaks and interruptions caused by a range of health challenges and caregiving responsibilities.

Part-time work is not the only model of flexible work available. In a professional services context, other options include hybrid and work-from-home arrangements. To

²⁷⁵ Amy A. Moors, Abigail Stewart, & Janet Malley, *Gendered Impact of Caregiving Responsibilities on Tenure Track Faculty Parents' Professional Lives*, 87 *SEX ROLES* 501 (2022). In Latin America, Susan Twombly gives the example of the University of Costa Rica where, although a part-time work option is available, promotions and future career progression can be significantly delayed by availing of it: Susan B. Twombly, *Women Academic Leaders in a Latin American University*, 35 *HIGHER EDUC.* 367, 388 (1998).

²⁷⁶ Twombly, *supra* note 275, at 388.

²⁷⁷ David Autor et al., *Concentrating on the Fall of the Labor Share*, 107 *AM. ECON. REV.* 180 (2017).

²⁷⁸ See, e.g., AUSTRAL. RSCH. COUNCIL, *RESEARCH OPPORTUNITY AND PERFORMANCE EVIDENCE (ROPE) STATEMENT* (June 2022), www.arc.gov.au/sites/default/files/2022-06/ROPE%20Statement.pdf.

²⁷⁹ *Id.*

some extent those norms tend already to be possible for academic research, although not for teaching or service, and they have in any event changed during the pandemic. Another alternative involves job-sharing, especially in the context of service or other leadership roles, where care responsibilities might otherwise preclude female scholars from being able to gain the professional rewards of visible and career-advancing forms of service and leadership opportunity.²⁸⁰

g) Equal and fair assignment of academic service roles

A further important step would be for law faculties to ensure an equal and gender-neutral distribution of academic service, citizenship, and caregiving responsibilities. This might involve a more fair allocation of responsibility between male and female scholars for participating in student panels and events, as well as the equal sharing of formal faculty service roles.²⁸¹ It would also be important for law schools in which female scholars perform large service roles to offer adequate administrative and professional support for them, rather than assuming the service can be carried out without undue cost to wellbeing or research productivity, and to appropriately value and reward such service.

Societies such as ICON-S, and journals such as ICON, can likewise play a role in ensuring an equitable distribution of academic service work. Involving women in prominent leadership roles is an important step toward substantive equality of opportunity and can help counter gender bias and stereotypes. Enabling junior female scholars to be part of a team or network can also be valuable for their scholarly career development, provided female scholars are not allocated more than their fair share of academic care work, or work that involves significant time and effort yet remains low visibility or with little intellectual reward. This is true for panel appearances, invisible service work, and refereeing and reviewing the work of others.

In the longer term, a feminist legal academy would require the re-valuing of academic caregiving in relation to research. As we noted in Section 2.2, service and other forms of academic caregiving are often undervalued and undercompensated in relation to research, even though such caregiving is essential to the functioning of academic communities. Recognizing and re-valuing academic care and citizenship would, of course, require changing widespread societal attitudes and institutional incentives, and as such, it is a particularly ambitious goal.

Gendered distributions of caregiving also take place outside academic institutions, as we discussed in Section 2.2. Those gendered distributions of caregiving, although occurring primarily within the family, have effects on society at large and on women's working lives. It is unlikely that academia on its own can address the societal issue of gendered distributions of caregiving for its members, beyond the adoption of discrete measures like parental leave and other forms of caregiving-related leaves, as well as a commitment to stop operating on the basis of the breadwinner/homemaker specialization assumption, particularly concerning issues like scheduling, traveling expenses,

²⁸⁰ ROSALIND DIXON ET AL., REIMAGINING JOB SHARING (2020).

²⁸¹ Lynch & Curcio, *supra* note 84.

and so on. Nonetheless, the gendered distribution of caregiving within the family is one of those issues that must be addressed at the societal level, and academia can only play a relatively smaller, but not for that reason unimportant, role.

h) Parity and panel pledges

Likewise, measures such as a “panel pledge” are likely to be helpful in redressing gender biases and stereotypes. One of the most important ways in which to counter such biases is through the politics of presence. And one way of doing this is by establishing a commitment to equal “descriptive” representation, in order to ensure that men and women are represented on panels, programs, and in print in equal numbers, or at least in numbers commensurate with their representation in the profession. At the very least, it could involve a commitment to ending the era of “manels”—or academic events that exclusively or overwhelming involve showcasing the ideas of male rather than female scholars.²⁸²

Adopting and fulfilling such commitments sends an important message that women are welcome and that they are important contributors to scholarly discussions, as discussed in Section 3 in the context of the symbolic or expressive argument. It can encourage male colleagues to invite women to contribute to, and be part of, certain discussions. This inclusion may in turn help counter implicit biases or blind spots that cause female scholars’ ideas to be overlooked, and can help to address a confidence gap around participation. Over time, it may further help to transform or remove unconscious bias or perceptions about the typical or ideal scholar in certain sub-fields.²⁸³

Moreover, there remains a long way to go in achieving this kind of parity of presence. One study found that women often made up less than 20% of speakers at German legal conferences, and the numbers are similar for conferences in many other countries.²⁸⁴ We have certainly all been on conference programs in which there is only one female speaker, and still occasionally observe panels that are comprised exclusively of male scholars.

One response to this practice is to encourage greater self-reflection from male and female conference and panel organizers about how they assemble various panels. Many scholars have taken a “panel pledge” which commits them to appear only on panels that meet the requirement of gender parity, or as close to parity as is feasible.²⁸⁵ Many have been active contributors to policies such as that of ICON-S and ASIL, which require attention to considerations of gender diversity in the composition of conference

²⁸² Jeffrey Perkel, *Just Say “No” to Manels*, NATURE INDEX (Feb. 7, 2020), www.nature.com/nature-index/news/say-no-to-manels-all-male-panels-research-science-conference; Kelly Wright & Louise P. King, *All-Male Panels, or “Manels,” Must End*, BILL HEALTH (Oct. 23, 2020), <https://blog.petrieflom.law.harvard.edu/2020/10/23/manels-male-panels-must-end/>; Jenny K. Rodriguez & Elisabeth A. Guenther, *What’s Wrong With ‘Manels’ and What Can We Do About Them?*, THE CONVERSATION (Oct. 14, 2020, 9:27 AM), <https://theconversation.com/whats-wrong-with-manels-and-what-can-we-do-about-them-148068>.

²⁸³ Amy C. Alexander, *Change in Women’s Descriptive Representation and the Belief in Women’s Ability to Govern: A Virtuous Cycle*, 8 POL. & GENDER 437 (2012).

²⁸⁴ See Hailbronner, Prieto Rudolph, & de Búrca, *supra* note 12, at 1032.

²⁸⁵ *Panel Pledge—Letter to Leaders*, CHAMPIONS OF CHANGE COAL. (Jun. 3, 2019), <https://championsofchangecoalition.org/commit-to-the-panel-pledge/>.

panels.²⁸⁶ And many female and male scholars have adopted informal commitments to only attending panels that meet with these same requirements.²⁸⁷

Such measures would ideally be flexible rather than strict, given that other considerations related to expertise and availability may come into play, and overall parity can be achieved without each individual panel or event requiring strict equality of numbers. Parity would also more helpfully counter gender bias without exacerbating other aspects of the problem if it were to be applied to speakers, presenters, and substantive moderators, and not only or mainly to formal chairs or commentators. Having male scholars comment on or introduce female scholars might not always advance the politics of presence, but it might help in other ways to counter gender biases, since it helps to make men the visible supporters of women rather than vice versa. For this reason, panels in which women are outnumbered by men, but in which they are presenting their work with male colleagues commenting and chairing, are a feature to be encouraged rather than avoided.

i) Strengthening anti-harassment policies and procedures

Another important step would be for international organizations and universities to strengthen their anti-harassment policies—and for law faculties, as home to subject-matter experts, to provide support for changes of this kind. For some institutions, this could involve taking the first steps to adopt a formal policy of this kind. ICON-S, for instance, took this step in 2020.²⁸⁸ For others, it might mean increasing efforts to publicize existing policies with the view to making them more accessible, or refining policies to make them more effective in *protecting* victims as well as punishing harassers, or more consistent with commitments to female autonomy and agency.

There are several limitations to many current anti-harassment policies. They generally require individuals to come forward with a formal complaint before that complaint can be investigated, and they give complainants limited say in the institutional response to a violation, if and when it is established. This tends to undermine the agency of complainants, and it can also discourage them from making a complaint since it asks individuals to make a significant psychological step and potentially also a career sacrifice in order for harassment to be addressed. Not knowing how a complaint is likely to be addressed may be an additional deterrent to coming forward.

One response to these shortcomings of existing anti-harassment policies would be to adopt a “push” rather than a “pull” approach to sexual harassment complaints, or to undertake an audit of a workplace or organization for instances

²⁸⁶ See, e.g., Int’l Soc’y Pub. L., Call for Panels, Papers, Fora, and Working Groups, www.icon-society.org/previous-conferences/2022-conference/call-2022/ (last visited Jan. 26, 2024) (noting that “panels must be formed in accordance with the Society’s commitment to gender balance”). For the American Society of International Law policy, see *Diversity, Equity, and Inclusion at ASIL*, AM. SOC. INT’L L., www.asil.org/about/DEI (last visited Jan. 26, 2024).

²⁸⁷ We are indebted to Ruth Rubio for pressing us on this point.

²⁸⁸ *ICON-S Anti-Sexual Harassment Policy*, INT’L SOC’Y PUB. L., www.icon-society.org/policy-and-guidelines/ (last visited Jan. 26, 2024).

of harassment. If the same leader, manager, or employee is repeatedly named in such an audit, an independent investigation that *invites* their coworkers to be interviewed could be commenced, including on the basis that their complaints would only become official if several other complaints of the same kind were made.²⁸⁹

Another strategy would be to give complainants a significant say in crafting their preferred remedy for a harassment violation, whether that would include training, an apology, a transfer for either the harasser or complainant, or more serious sanctions including loss of salary, benefits, or employment. A “victim-centered” approach of this kind should not lead to an increase in the sanctions imposed on a proven harasser, given that proportionality in punishment is not only a matter of fundamental fairness but also linked to feminist anti-subordination commitments. But reform of existing harassment procedures is important to encourage many complainants to come forward in the first place. For instance, in a recent survey of 7000 lawyers worldwide, the International Bar Association found extremely high rates of bullying and sexual harassment within the legal profession globally.²⁹⁰ Yet they also found a highly variable willingness to report bullying and harassment across countries and contexts. Among the factors that were identified as relevant to the willingness to report were the complainants’ own perceptions of the fairness or proportionality of the consequences for offenders. However, if proper counselling and advice for complainants were to be put in place as part of a reformed harassment procedure, more preventive rather than increasingly punitive remedies may be the result.

5. Closing the gender gap? Prospects, dangers, and limitations

There are, however, several potential limitations and challenges to measures of this kind beyond those already noted. First, questions arise as to whether or to what extent they should be “gender neutral” as opposed to being targeted to addressing the academic challenges facing women. Second, some of the proposed measures may have unintended consequences, for example by creating forms of a diversity “tax” on some women even while benefiting others. Finally, because gender injustice is a problem at the societal level and is not just confined to academic settings, some of these measures may depend for their effectiveness on broader legal, social, or political changes which are beyond the scope of law schools or academic institutions to achieve. And law schools and universities may have limited incentives to push for change, even within the limits of their own institutional power.

²⁸⁹ See, e.g., *Sexual Harassment in Local Government*, VICTORIAN AUDITOR-GEN.’S OFF. (Dec. 9, 2020), www.audit.vic.gov.au/report/sexual-harassment-local-government.

²⁹⁰ KIERAN PENDER, INT’L BAR ASS’N, US TOO? BULLYING AND SEXUAL HARASSMENT IN THE LEGAL PROFESSION (2019), www.ibanet.org/MediaHandler?id=B29F6FEA-889F-49CF-8217-F8F7D78C2479.

5.1. Gender symmetric versus asymmetric policies

The challenges discussed in Section 2 pertain largely to women, particularly to women of color, though they may also be relevant to some non-binary scholars. In addressing these challenges, therefore, there are good arguments for pursuing a gender-specific and race-conscious approach. This can be done, for example, by adopting childcare and parental leave policies that give primary caregivers, who are more likely to be women, more generous benefits and/or leave than others, and ensuring that women of color are adequately protected from demanding formal service responsibilities.

Gender-neutral policies have some clear advantages in addressing at least some of the challenges and obstacles noted in Section 2. They potentially allow men and women to play a full role in caring for children, in ways that may build long-term patterns of shared housework and childcare that can benefit men and their children but also foster gender equality for women at home and at work.²⁹¹ They promote equality for male primary caregivers, especially within gay couples or for single and divorced male parents with significant childcare responsibility. And they avoid perpetuating damaging forms of stereotype about who in a family or household bears responsibility for childcare and elder care—stereotypes that, as Justice Kriegler held in the decision of the Constitutional Court of South Africa in *Hugo v. President*, deny men important opportunities for parental involvement, but even more so “relegate[e] women to a subservient, occupationally inferior yet unceasingly onerous role,” which is a root cause of women’s inequality in our society.²⁹²

At the same time, there is extensive evidence that gender-neutral policies can tend to worsen rather than ameliorate existing gender disparities. A leading example are policies adopted in the United States that allow a delay in tenure decisions for those who have taken parental leave. These policies were designed to achieve the goal of substantive equality for those who have been pregnant, given birth, and taken time off to care for an infant, including in some cases by breastfeeding. However, the desire to promote gender equality has led to these policies becoming gender neutral and available to any primary caregiver. One difficulty is that some male faculty may take up these benefits while performing little or no actual childcare.²⁹³ This can occur if male

²⁹¹ ANNABEL CRABB, *THE WIFE DROUGHT* (2015); Ruth Rubio-Marin, *The New Constitutional Father?*, in *GLOBAL GENDER CONSTITUTIONALISM AND WOMEN’S CITIZENSHIP: A STRUGGLE FOR TRANSFORMATIVE INCLUSION* 259 (2022); Kevin Maguire, *Let’s Get Physical*, *NEW FATHERHOOD* (May 19, 2023), www.thenewfatherhood.org/pl-lets-get-physical.

²⁹² *President of the Republic of South Africa and Another v. Hugo*, 1997 (4) SA 1 (CC) at 73 para. 80 (S. Afr.).

²⁹³ The advice provided by Harvard University Faculty of Arts and Sciences (FAS) on its policy on parental teaching relief (PTR) appears to reflect such concern in posing and responding to the question, “How can the FAS ensure that the PTR policy does not unfairly benefit faculty who use this time to advance their research instead of caring for their child?” The answer given is that while FAS will not monitor those faculty who take up PTR, nevertheless “the FAS expects faculty to adhere to the high ethical standards required in all areas of academic endeavors and leadership. Although faculty are expected to devote substantial time to caregiving and bonding with their child, the extent to which he or she wishes to spend time on research is up to the faculty member” and “we expect that you spend substantial time during the workweek caring for and bonding with your child.” *Frequently Asked Questions: FAS Parental Policies for Professors of All Ranks*, HARV. UNIV., https://academic-appointments.fas.harvard.edu/files/fas_appointment_handbook/files/faqs_for_fas_parental_policies_for_professors_of_all_ranks_0.pdf (last visited Jan. 26, 2024).

parents outsource the care of their children to paid childcare workers and find additional time to write, research, and publish in ways that effectively increase the tenure standard for all academic faculty, and to the detriment of those who take substantial time off to care for children—the overwhelming majority of whom are women.²⁹⁴ A more recent study, however, found “no clear evidence that parenthood causes a short-term productivity increase for fathers, in contrast to previous suggestions that fathers may tend to use gender-neutral parental leave policies to increase their productivity relative to women.”²⁹⁵ Other research has suggested that male faculty express the intention of spending more time on work-related tasks during their parental leave than female faculty do,²⁹⁶ and that there are gendered expectations that male faculty who have taken parental leave *should* be performing work-related tasks during that leave period.²⁹⁷

More evidence is required in order to determine whether gender-neutral parental leave policies have these undesirable effects, and whether this pattern might also apply in the case of tenure reset policies. It might apply to many other forms of leave available to those with parental responsibilities, teaching reductions, and other forms of benefit that are offered on a gender-neutral basis. On the other hand, gender-neutral policies can contribute to challenging pervasive stereotypes regarding who must be caregivers in society, as well as promoting a more egalitarian distribution of caregiving within the family, and for these reasons, they might be preferable to gender-specific policies.

The challenge for law schools, therefore, is to create policies that avoid the dangers of perpetuating pernicious stereotypes about who can and should care for children and elderly relatives, while at the same time being sufficiently attentive to context and difference among families and caring arrangements. Or as Ruth Rubio-Marin has put it, the challenge is to introduce change “in such a way that men who have not opted for a care-centered approach to fatherhood so far are not unduly rewarded through forward-looking norms that encourage new understandings of fatherhood to the detriment of those women who have so far primarily devoted themselves to caretaking, often at the expense of foregoing or severely limiting their already scarce employment opportunities.”²⁹⁸

This, however, is no small design challenge. Those designing these policies may be senior administrators who have not themselves been primary carers, or human resources professionals who do not understand how academic work operates at the

²⁹⁴ Justin Wolfers, *A Family-Friendly Policy That’s Friendliest to Male Professors*, N.Y. TIMES (June 24, 2016), www.nytimes.com/2016/06/26/business/tenure-extension-policies-that-put-women-at-a-disadvantage.html, citing Heather Antecol, Kelly Bedard, & Jenna Stearns, *Equal but Inequitable: Who Benefits from Gender-Neutral Tenure Clock Stopping Policies?* (IZA Discussion Paper No. 9904, 2016).

²⁹⁵ Allison C. Morgan et al., *The Unequal Impact of Parenthood in Academia*, 7 SCI. ADVANCES (2021), www.science.org/doi/full/10.1126/sciadv.abd1996.

²⁹⁶ D. T. Tharp & E. J. Parks-Stamm, *Gender Differences in the Intended Use of Parental Leave: Implications for Human Capital Development*, 42 J. FAM. ECON. 47 (2021).

²⁹⁷ E. J. Parks-Stamm & D. T. Tharp, *But What Did They Do on Leave? Differing Evaluations of Men and Women’s Completion of Work Tasks on Parental Leave*, 96 J. OCCUPATIONAL & ORG. PSYCH. 235 (2023).

²⁹⁸ Rubio-Marin, *supra* note 291.

“coalface.” Those administering the policies are also often deans and deputy-deans (or their institutional equivalent) with clear incentives to be accommodating to those seeking access to relevant entitlements. While formal policies are set at a faculty or university level, their uptake is decided at a “local” institutional level. Local-level institutional decision-makers also often have incentives to be generous rather than restrictive in granting access to male colleagues who apply for centrally guaranteed entitlements: doing so does not always have budgetary consequences for those local decision-makers. And saying “no” to a colleague seeking access to a gender-neutral policy can be personally costly, or damaging to local institutional culture. As the Harvard Faculty of Arts and Sciences policy language suggests, institutions are understandably wary about appearing to monitor or censure faculty behavior, or to ascertain whether they are using leave policies intended to support caregivers for research purposes rather than childcare.²⁹⁹

The other danger is that a discretionary scheme of this kind may be administered in ways that again reflect the dynamics of implicit bias: female caregivers seeking to accommodate work and childcare responsibilities may find that they are denied requests for accommodation based on a gendered perception of their demands as selfish and unreasonable.³⁰⁰

5.2. A “diversity tax” or solution as cause

Another difficulty is that many positive initiatives that can help address problems of gender biases and stereotypes, gendered networks, or a gender confidence gap may worsen or exacerbate gendered care dynamics and sources of time-poverty in ways that reinforce the original problem.

In some cases, the problem may be that certain “choices” become coercive in practice: for example, offering women the “choice” of part-time work or reduced academic responsibilities while their children are young may end up putting pressure on them to take up those options; the mere availability of the policies may amplify societal pressures to conform to notions of the “good mother” who is present throughout her child’s early years and prioritizes parenting over professional work.³⁰¹

Mentoring support and networking events can likewise involve a significant amount of time and emotional labor, particularly on the part of senior and mid-career women. Each of these activities takes time. They can be poorly scheduled: networking events frequently take place before or after business hours when school and day care are not operating, and children under five are screaming to be fed and dressed, while older children seek help with homework. Mentoring, in particular, can also involve intense forms of care work in the workplace. It takes time to establish a rapport with, and an understanding of the challenges facing, a potential mentee. It can also take time to

²⁹⁹ *Frequently Asked Questions: FAS Parental Policies for Professors of All Ranks*, *supra* note 293.

³⁰⁰ In response to such a risk, Harvard FAS changed its policy on parental teaching relief in 2019, not from discretionary to compulsory, but from “opt-out” to “opt-in,” “in order to demonstrate our commitment to creating an environment that supports faculty with new children. Instead of applying for PTR, FAS faculty automatically receive PTR when they have a child.” *Id.*

³⁰¹ We are indebted to David Kosář for drawing our attention to this point.

encourage them and help build their confidence, and to identify ways of increasing their access to networks. Reference-writing, which often flows from a mentoring relationship, is a time-consuming—and, also, like much of mentoring work, largely invisible and undervalued—task. This helps to explain why the time required for mentoring was the top reason reported by professional women for their decision not to mentor junior colleagues.³⁰²

Asking senior and mid-career women to perform this role can therefore worsen their time poverty. The smaller the number of senior women there are—and the proportion of women in academic positions declines as the positions become more senior—the worse this problem can be. A small number of senior women is likely to be called on to do the work of mentoring a growing group of younger women wishing to enter and progress in the profession.

The burden of mentoring may not be a particular source of concern in relation to the individual women who are regularly asked to do so. After all, many senior women already have favorable terms and conditions of work, compared to many junior male and female scholars without tenure or secure academic work. However, the practice of asking women to act as mentors does risk entrenching gender (and racial) stereotypes, which can be further exacerbated by narratives that assign women the responsibility of being primarily a role model for other women.³⁰³ If senior female scholars devote a disproportionate amount of their time to academic care work, they will not have adequate time to write and present their work, or to receive the academic recognition and attention enjoyed by male scholars.³⁰⁴ They may also be more prone to emotional and physical exhaustion and burnout in trying to find additional time to undertake these tasks, or due to the stress that accompanies the provision of support for others facing gender and racial bias.

This is especially true for minority female professors, who are even more likely than other female colleagues to be called on to be a visible—and often lone—role model for female students of color, and to mentor students and other women of color.³⁰⁵ This can be a highly time-consuming role that can exert a significant emotional toll even while bringing reward, especially if it means supporting younger scholars through experiences of overt sexism and racism.³⁰⁶ The fact that female scholars of color are often represented in small numbers also means that the burden is likely to fall on one or two scholars, as opposed to being more equitably distributed across a larger group.

These same dynamics also risk perpetuating various forms of gender and racial bias. First, they arguably reinforce rather than counter the implicit association between women and care work: by mentoring and supporting other women, female scholars are performing the kind of care work and emotional work traditionally associated

³⁰² Carrie Freeman, *How Time-Strapped Women Can Make Space for Mentoring*, FORBES (Sept. 28, 2021), www.forbes.com/sites/forbesbusinesscouncil/2021/09/28/how-time-strapped-women-can-make-space-for-mentoring/.

³⁰³ See *supra* Section 2.

³⁰⁴ DEO, *supra* note 23.

³⁰⁵ DEO, *supra* note 55; DEO, *supra* note 23.

³⁰⁶ DEO, *supra* note 23.

with women in the home. In doing so, they also risk reinforcing the subtle associations between gender, race, and care, which have arguably contributed to female scholars being denied leadership and other career opportunities associated with a more “masculine” set of responsibilities, and also often associated with an expectation of time commitment that is perceived to be incompatible with the family responsibilities and care work that women are expected or assumed to perform at home.

Second, the gendered and racialized allocation of mentoring and service work can also reinforce implicit biases and stereotypes about the relationship between gender, race, and “important” work. The fact that in past decades, men published more and were cited more highly may have resulted in a subconscious association between scholarly importance and male authors. In order for this association to be disrupted, there is a need for prominent counterexamples of prolific, diverse, and respected female-authored work. And while junior female scholars often produce extremely high-quality work, thereby contributing to gradual de-biasing, existing gender and age biases can mean that such work is downgraded in importance. Moreover, work by junior female scholars may be cited and noticed without challenging broader gendered norms and structures, according to which senior male scholars are viewed both by themselves and others as dominant within the academic community. A notable body of published work by diverse senior female scholars is also necessary to disrupt such attitudes and assumptions, even while it is this same group of scholars who might be asked to do much of the work of mentoring and networking.

Some studies further suggest that active mentoring by senior scholars can also perpetuate biases in even more direct ways. If senior scholars have accommodated themselves to existing gendered structures in order to advance, the advice they offer more junior colleagues might be to follow the same path—i.e., to manage and work around rather than overtly challenge unfair structures or practices. In aggregate, this can also encourage newer generations of scholars to perpetuate rather than challenge institutional and structural injustices or forms of bias.³⁰⁷

The same kinds of unintended consequences can be seen from other attempts to counter implicit bias and gendered stereotypes, such as parity requirements and panel pledges. When women, including women of color, appear publicly in prominent roles, this can be very good for other female and minority scholars, but it can also be a tax as well as a benefit to the scholars making the appearance. Attendance at panels can also have multiple benefits for those involved: it can help publicize scholarly ideas and build a scholar’s reputation among key audiences. There may still be other benefits: many people derive satisfaction from helping others, and enjoy intellectual exchange, but this is generally true only up to a point, and there are many other calls on the time of scholars. But it also involves costs: panels require significant time to be devoted to

³⁰⁷ Simone Dennis & Alison Behie, *Why Mentoring for Women Risks Propping up Patriarchal Structures Instead of Changing Them*, THE CONVERSATION (May 24, 2021), <https://theconversation.com/why-mentoring-for-women-risks-propping-up-patriarchal-structures-instead-of-changing-them-157965> (arguing that women who overcome patriarchal hurdles to reach leadership positions are subject to conflicts of interest and may not promote effective change).

preparation, organization, and attendance, while the benefit from such investment is variable. Panels can also be focused on the ideas of others, or involve a very small audience, in ways that make the instrumental benefits, in terms of professional advancement, quite small.

For instance, parity requirements on panels can sometimes lead to women being included in panels and conference programs at increasing rates, but often in the “supporting” role of chair or commentator rather than presenter.³⁰⁸ And while such roles bring some benefits for women scholars, such benefits may not outweigh the time cost associated with the organization and preparation of these events.

Another area in which this may be starting to occur is in the context of academic reviewing. There has been an effort on the part of many journals and publishing houses in recent years to broaden the pool of reviewers they use, in order to address gender and racial biases. Having diverse reviewers can help address problems of bias in the assessment of the value or merit of academic scholarship that draws on diverse experiences and perspectives, and reflects the diverse voices and approaches of authors. Reviewing, however, is again an activity that involves a form of academic service, and indeed a largely invisible form of academic service, without any direct academic reward. It is a critically important part of maintaining a system of peer review, and therefore norms of scientific knowledge production. Every scholar benefits from this system or set of norms, but it is at the same time the kind of public good that can be enjoyed without directly contributing to its production. The question of who contributes as opposed to who freerides has important distributional consequences. While, in some instances, it may be likely to benefit minority and female scholars when women and scholars of color are asked to act as reviewers, there are also costs and few visible scholarly benefits for the reviewers.

Thus, while any efforts to combat prior gender bias or exclusion in academia are welcome in principle, it is important for organizations to consider carefully the kinds of role they are asking men and women to play, and to avoid issuing invitations that may *worsen* rather than improve existing gendered norms and patterns of caregiving, service work, and time-poverty. In addition, in issuing invitations, it is important for both institutions and individual scholars to design them in ways that are mindful of care responsibilities, and hence as flexible as possible, and that make it possible to decline, as well as accept, without fear of undermining valued institutional and personal relationships.

Another important step publishers, journals, and law schools can take is to rethink how the practice of reviewing is organized, publicized, *rewarded*, and valued within the academy.³⁰⁹ This could begin with improving the ways in which we record and

³⁰⁸ Compare the recent ICON-S 2022 conference program, which produced a roughly equal gender spread: 52% male versus 48% female for chair positions; and 50.8% males versus 49.2% females for presenter positions. <https://conference.icon-society.org/events/photo/2022-07-05/> (last visited Jan 31, 2024).

³⁰⁹ The *European Journal of International Law* and the *International Journal of Constitutional Law*, for example, publish an annual list of those who have provided peer reviews, and EJIL announces an award each year for the best peer reviewer.

measure such work. But it would ultimately require broader changes to how we value and reward different forms of academic work.

5.3. Limits to institutional power and incentives

Another difficulty facing academic societies, law faculties, and universities is the limits to their institutional power and role, and in some cases their incentives to make change. Often, institution-specific programs designed to promote gender equality will only be fully effective if they are accompanied by and embedded within broader social, legal, and economic changes, and universities and law faculties have limited power to drive those changes.

For instance, the most effective way to promote gender equity in the academy may be to encourage states to fund or provide universal, affordable, and high-quality childcare. Many countries in Europe also do a fairly good job of achieving this through government policy, whereas in many other countries there are far larger gaps in provision, funding, and access.³¹⁰

But universities have limited capacity to advance policy changes of this kind. Even when they seek to compensate for their absence, by subsidizing access to childcare for staff on campus, or in other formal childcare centers, these programs may attract adverse tax consequences, which effectively mean that subsidizing access to childcare attracts fringe benefits or other forms of taxation that must be born either by the employee or by the employer. And from a law-and-economics perspective, the provision of tax concessions and subsidies are often equivalent: providing support for childcare that attracts adverse tax consequences will often lead to equivalent reductions in salary for all employees. Hence, without broader structural change, either to national childcare or tax policies, university-level change will often have quite limited efficacy.

Similarly, formal childcare is unlikely to provide meaningful opportunities for women's networking, research, and engagement unless it is accompanied by an equitable division of responsibility for housework and informal childcare within the home. And while there have been clear advances in this context in recent decades, in most countries there remains a clear gender gap in the "second shift."³¹¹ International organizations and faculties can go some way to providing formal childcare support, and a substantial way toward correcting gender imbalances in service within their own institutional context, but it is much harder for them to redress inequality resulting from imbalances in *household* labor.

Some law professors are public intellectuals who can encourage social change through their research, public writing, and advocacy, and this is certainly part of what a feminist legal academy would entail. They can also foster discussion among students as the next generation of leaders and workers in ways that may help promote

³¹⁰ Org. for Econ. Co-operation & Dev., Policy Brief on Employment, Labour and Social Affairs, *Is Childcare Affordable?* (June 2020), <https://web-archiv.oe.cd.org/2020-06-05/554683-OECD-Is-Childcare-Affordable.pdf>; ORG. FOR ECON. CO-OPERATION & DEV., EQUITY AND QUALITY IN EDUCATION (2012), www.oecd.org/education/school/50293148.pdf.

³¹¹ ARLIE HOCHSCHILD, *THE SECOND SHIFT: WORKING FAMILIES AND THE REVOLUTION AT HOME* (2012).

ongoing legal and social change. However, international academic societies, law faculties, and universities have few levers with which to challenge the overall social structural patterns that underpin the gendered division of labor, and any change they can achieve will often be incremental and contingent. Universities are often seen as part of a cultural elite, and if they seek to drive change that a majority of voters does not support, populist forms of transphobic, misogynistic, and other kinds of backlash may be provoked.³¹²

Further, many may regard a decision by universities and law faculties themselves to press for change as inconsistent with norms of academic freedom and institutional self-restraint in service of the protection of that freedom.³¹³ These norms of institutional self-restraint are especially strong in the United States, given their relationship to commitments to individual freedom of speech. But they are also present elsewhere, and they clearly impose some limits on what academic institutions can do to overcome gender bias.³¹⁴ For instance, an effective way to challenge gender bias might be to mandate gender-equal citation patterns on the part of academic staff members, or equal speaking time for female and male scholars in meetings and workshops, or to require that chairs should intervene to correct forms of gendered interruption, or the misattribution of ideas.³¹⁵ But measures of this kind would almost all be in tension with a commitment to academic freedom,³¹⁶ as well as having other possible undesirable effects. The more likely response is therefore one that focuses on awareness and individual scholarly reflection, but this is also likely to be a less powerful tool for short-term change.

Domestic and international academic associations face similar—if somewhat less stark—trade-offs between supporting necessary social and political change and restraint in the service of academic freedom for their members. With this less stark trade-off comes a separate set of institutional limitations: because international associations do not employ scholars, their actions have far less capacity to undermine the academic freedom of scholars, but, at the same time, they also have fewer tools with which to respond to and discipline their actions, including actions such as gender violence and harassment.

³¹² On backlash, see ROSALIND DIXON, *RESPONSIVE JUDICIAL REVIEW: DEMOCRACY AND DYSFUNCTION IN THE MODERN AGE* (2022); MICHAEL KLARMAN, *FROM THE CLOSET TO THE ALTAR: COURTS, BACKLASH AND THE STRUGGLE FOR SAME-SEX MARRIAGE* (2014).

³¹³ DONNA R. EUBEN, AM. ASS'N. UNIV. PROFESSORS, *ACADEMIC FREEDOM OF INDIVIDUAL PROFESSORS AND HIGHER EDUCATION INSTITUTIONS: THE CURRENT LEGAL LANDSCAPE* (May 2002), [www.aaup.org/sites/default/files/files/Academic%20Freedom%20-%20Whose%20Right%20\(WEBSITE%20COPY\)_6-26-02.pdf](http://www.aaup.org/sites/default/files/files/Academic%20Freedom%20-%20Whose%20Right%20(WEBSITE%20COPY)_6-26-02.pdf).

³¹⁴ See CAROLYN EVANS & ADRIENNE STONE WITH JANE ROBERTS, *OPEN MINDS: ECONOMIC FREEDOM AND FREEDOM OF SPEECH IN AUSTRALIA* (2021).

³¹⁵ See, e.g., Maya Yang, *Let Her Finish: Interruptions of Female Justices Led to New Supreme Court Rules*, *GUARDIAN* (OCT. 15, 2021), www.theguardian.com/law/2021/oct/15/us-supreme-court-female-justices-interruptions-sonia-sotomayor. For the original research, see Tonja Jacobi & Dylan Schweers, *Justice, Interrupted: The Effect of Gender, Ideology and Seniority at Supreme Court Oral Arguments*, 103 VA. L. REV. 1379 (2017). See also, generally, Susan Chira, *The Universal Phenomenon of Men Interrupting Women*, N.Y. TIMES (June 14, 2017), www.nytimes.com/2017/06/14/business/women-sexism-work-huffington-kamala-harris.html.

³¹⁶ See, e.g., Dixon & Versteeg, *supra* note 7.

In many cases, there will also be limits to the willingness, or structural incentives, of universities and law faculties to promote relevant forms of change. Often, a commitment to institutional change comes from having strong feminist leadership,³¹⁷ and many of the obstacles to gender equality in the academy pose obstacles to leadership by women with intersecting experiences of disadvantage—including women who are sole parents, disabled, poor, or from a culturally and linguistically diverse background. Women are the clear minority of university presidents,³¹⁸ even if the proportion of female presidents is beginning to increase in some jurisdictions, but women with intersectional experiences of disadvantage are even less likely to be appointed to senior university leadership roles.³¹⁹

One potential answer to this lies in democratic models of university governance, whereby academics play a central role in university decision-making through democratic models of governance.³²⁰ This, for example, was long the tradition in Nordic universities, and in many parts of Europe and Latin America.³²¹ But that tradition is under strain, and many parts of the Anglo-American world have seen a much longer trajectory of managerial university governance that gives little space for democratic processes of this kind.³²²

In many parts of the world, the rise of the “managerial” and neoliberal university is itself another obstacle to the willingness, and capacity, of universities and law faculties to make meaningful gender-based change.³²³ Managerial universities often delegate the task of achieving gender equality to human resources professionals, in ways that make diversity a “key performance indicator” to be managed rather than fostered as an ethos in teaching and research. This can also lead to policies and training practices that are poorly tailored to addressing the concrete challenges and experiences of academic staff, and hence that effectively speak to the challenges of implicit bias, harassment, and gendered networks, as they arise in an academic as compared to a corporate setting. Managerial standards tend to emphasize “massification” in research and teaching, which makes workloads worse for all academics, and reduces the scope to accommodate slower, more care-focused models of teaching and research.³²⁴ The managerial university tends to be highly centralized, and to give much less space

³¹⁷ See, e.g., Emma Whitford, *Women Earn More Under Female Presidents, Study Shows*, INSIDE HIGHER EDUC. (Jan. 25, 2022), www.insidehighered.com/news/2022/01/26/study-women-led-colleges-hire-more-women-and-pay-them-better (noting that colleges with female presidents tend to employ more women, at more senior levels, and at higher pay rates).

³¹⁸ *Id.* (noting that approximately one-third of college and university presidents in the United States are women).

³¹⁹ Jessica Bryant, *Survey Finds Women of Color Represent Just Over a Tenth of College Presidents*, BESTCOLLEGES (Apr. 19, 2023), www.bestcolleges.com/news/analysis/women-of-color-underrepresented-as-college-presidents (noting that less than 10% of college and university presidents are women of color in the United States).

³²⁰ We are indebted to Malcolm Langford for pressing us on this point.

³²¹ Mikko Poutanen et al., *From Democracy to Managerialism: Foundation Universities as the Embodiment of Finnish University Policies*, 37 J. EDUC. POL'Y 419 (2022).

³²² *Id.*

³²³ See, e.g., MARGARET THORNTON, *PRIVATISING THE PUBLIC UNIVERSITY: THE CASE OF LAW* (2011). We are indebted to Mehera San Roque for pressing us on this point.

³²⁴ *Id.* at 64, 110.

to faculties to determine their own policies and practices than previously.³²⁵ Therefore, while greater numbers of law deans are now women, they tend to be decision-makers with decreasing power and authority to make meaningful change of the kind we suggest is necessary to achieve true gender equality.³²⁶

Democratic governance within universities might thus be an important condition for a more feminist and gender-just legal academy to be developed. At the same time, the fact that gender inequality and misogyny are a pervasive phenomenon in society, and not just in academia, presents a range of additional challenges of the kind just discussed. And while the gender gap in academia may be capable of being lessened through some of the measures suggested in this Foreword, including by the adoption of a university model of democratic governance, a more genuinely feminist and just legal academy is likely to require more radical societal transformation. Clearly academic institutions are unable, on their own, to achieve that.

This limited capacity for fundamental change of academic institutions is not a call for despair. Universities are still powerful actors, and they can and should contribute to social transformation for the better. In this sense, moves toward creating a fairer, more just, and feminist legal academy should be seen as closely allied with commitments to democracy and wider solidarity within, and outside, the academy. In present times, for example, a feminist legal academy could not be silent regarding the threat that trans men and women are facing in certain contexts, like the United States and the United Kingdom, nor could it fail to address the many intersectional dimensions of disadvantage and injustice which prevent academics, students, staff, and others within the academy from flourishing. And to achieve its goals, as well as broader commitments to equality, a fairer and feminist legal academy may need to challenge the shift from universities as sites of democratic self-government to sites of corporate governance.

6. Conclusion

In this Foreword, we have discussed the persistence of the gender gap in legal academia, along different dimensions, as well as the different obstacles that women face, on account of their gender, within the legal academy.

We have also explored possible responses to these obstacles: some of the measures proposed are short term and discrete, while others are long term and require widespread societal change in terms of attitudes, social norms, and expectations. And in some instances, we have limited ourselves to pointing out some of the potential unintended consequences of certain measures, like specific gender-neutral policies, without clearly embracing or proposing a particular solution.

The measures discussed and suggested are by no means an exhaustive or even comprehensive list. Some experimentation is undoubtedly necessary, as certain changes might have unexpected or undesirable consequences depending on the context

³²⁵ *Id.* at 27–31.

³²⁶ On the increased number of female law deans, see Melville & Barrow, *supra* note 3. For their decreasing freedom of action, see THORNTON, *supra* note 323, at 124–31.

and other factors. In addition, reforms that may be possible in some contexts and jurisdictions, such as the kinds of affirmative action steps recently announced by the University of Tokyo to redress the stark gender imbalance on its faculties, might not be possible in other contexts, where affirmative action policies may be legally or constitutionally suspect.³²⁷ Further, it is likely that different approaches are necessary depending on the dimension of the gender gap to be addressed. For example, achieving gender parity in the composition of law schools is likely to require measures different from those required to address disparities in salaries and promotions, the “pink ghetto,” or other dimensions of the gender gap. More broadly, progress on these various fronts will inevitably depend significantly on existing social and political attitudes to the issue of gender equality in a given jurisdiction.³²⁸

Another aim of the Foreword is to highlight the multiple reasons to care about addressing the gender gap, along its many dimensions. Some of those reasons, elaborated in Section 3 above, focus on the negative consequences that the gender gap might have as well as the positive consequences that closing the gender gap might bring about. Other reasons to care about and address the gender gap are based on justice, insofar as the gender gap is the product of different forms of injustice.

Given the many different possible visions of a more just and feminist legal academy, this Foreword is intended as merely the beginning of a dialogue about what such an academy might look like. The same could be said for a queer-friendly legal academy: we have mentioned some of the challenges facing LGBTQI+ scholars, and how they intersect with gender burdens and biases. But while we believe that a truly feminist academy also demands justice for LGBTQI+ individuals, we have not developed that argument in this Foreword.³²⁹ It is a deeply important task and yet, as with the crucial task of developing a racially just academy, it is one that requires further attention and analysis than we have undertaken here, in focusing primarily on gender justice.

Instead, our aim has been to explore a range of possible solutions and approaches which comprise merely a small selection of the kinds of practices that could be introduced to help address the existing gender gap in legal academia, without exacerbating or reinforcing aspects of the problem. We offer these ideas while recognizing the need for more radical rethinking of how these changes could be linked to broader efforts at social transformation.

³²⁷ For the University of Tokyo’s announcement, see #WeChange UTOKYO, <https://wechange.adm.u-tokyo.ac.jp/en/> (last visited Jan. 26, 2024); UTokyo to Launch ‘UTokyo Gender Equity Initiative #WeChange’ (AY2022-AY2027), OFF. GENDER EQUAL, U. TOKYO (2023), www.u-tokyo.ac.jp/kyodo-sankaku/en/news/2023_01_00001.html. By comparison, certain forms of race-conscious affirmative action within university admissions policies have been constitutionally challenged recently in the United States, although these apply to student admissions rather than faculty recruitment. We are grateful to Akiko Najima for pointing out that the University of Tokyo reform has been introduced top-down by the President and Vice-President of the university, even though it will need to be implemented in practice by departments and faculties; and that it is thus far designed as a soft persuasive approach without any clear enforcement, incentive, or assessment mechanism.

³²⁸ For a good example, see Monique C. Cardinal, *Women and the Judiciary in Syria: Appointment Process, Training and Career Paths*, 15 INT’L J. LEGAL. PRO. 123 (2008).

³²⁹ For early interventions in this spirit, see, e.g., DIANE RICHARDSON, JANICE McLAUGHLIN, & MARK E CASEY, *INTERSECTIONS BETWEEN FEMINIST AND QUEER THEORY* (2006).

The project of calling for and seeking to promote a feminist legal academy is far from a new one. In writing this Foreword, we aim to join a lively ongoing conversation about the desirability, nature, and prospects for such an academy, as well as to encourage others to join and advance this conversation. Particularly at a time of vocal and growing misogynistic backlash in many parts of the world, we want to remind ourselves and others of the urgency of such a project, and to call for renewed commitment and determination in the collective task of tackling injustice along all its dimensions in the academy and beyond.