Gender and the legal academy

Gráinne de Búrca,* Rosalind Dixon,† and Marcela Prieto Rudolphy‡

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

* Professor of Law, European University Institute, Florence, Italy, and New York University, New York, N.Y., United States. Email: grainne.deburca@eui.eu.
† Scientia Professor of Law & Director of the Gilbert + Tobin Centre of Law, University of New South Wales, Sydney, Australia. Email: rosalind.dixon@unsw.edu.au.
‡ Associate Professor of Law and Philosophy, University of Southern California, Gould School of Law, Los Angeles, Cal., United States; Profesora Adjunta Extraordinaria, Universidad Adolfo Ibáñez, Escuela de Derecho, Santiago, Chile. Email: mprieto@law.usc.edu.

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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

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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).
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).
wrought by the COVID-19 pandemic. 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.

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. 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, 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

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9 Crenshaw, supra note 8.

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

\textsuperscript{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).


\textsuperscript{13} See, e.g., Anti-Gender Campaigns in Europe: Mobilizing Against Equality (Roman Kuhar & David Paternotte eds., 2017); Agnieszka Graff & Elżbieta Kobolczuk, Anti-Gender Politics in the Populist Movement (2022).
likely to vary significantly on the basis of overlapping categories of marginalization, and substantial differences exist between and across jurisdictions and regions as far as the material conditions and the precarization of academia are concerned. 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.” There are, however, two potential difficulties with framing the problem in


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. We believe that there can be no true gender justice in the academy without respect for the rights of trans and non-binary scholars.

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. 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. These disparities could not be explained on the basis of differences in credentials, age, work experience, geographic constraints, or family ties. Another study found that minority women were systematically more likely to receive lower compensation as professors than both black male and white female peers. And Meera Deo has extensively documented the marginalization and challenges that women of color face in the legal academy in the United States.

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. And in South Asia, women from lower

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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-Marín, 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).
19 Crenshaw, supra note 8; Harris, supra note 11.
21 Id.
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. 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.

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. 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.

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 over-representation. 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. In the legal academy,
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. 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. 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. 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. 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%. 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).
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.
be the most elite of the country’s educational institutions, the percentage of women was 5.45%.  

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.  

While this is changing, women remain the clear minority of law deans in most countries. 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. 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.  

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.  

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  

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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/0op/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.  
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. 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. 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. Other studies have reported similar findings in domestic legal settings, though the results in the domestic setting vary by context and across studies. 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.

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. 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 professors.

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 Mulliniak, 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).
46 Allen, Jackson, & Harris, supra note 31, at 527.
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. 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. 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. 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. 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. Indeed, as we note in Section 4, these developments themselves pose a major challenge to combating gender injustice in the legal academy.

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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 Off-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.
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. In the 2008–09 period, women remained close to a third of the pool of applicants, with a 34.8 percentage. 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.

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. For instance, Thornton suggests that “the familiar scenario in law schools and the academy
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).
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. 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.

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. 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. In science, this is known as the “John” versus “Jennifer” effect.

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.

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.

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.

On a personal level, each of the authors of this Foreword can testify to the experience

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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: TacK! (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 ACADEMY SCI. 16474 (2012).


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

(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. 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. 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.

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,
may also affect how much time female scholars feel they need to devote to teaching and to various service roles. 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.

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. 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. 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). 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).


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

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.”

Inside academic institutions, the evidence suggests that service and administrative responsibilities are distributed unequally on the basis of gender. Margaret Thornton labels this the construction of women scholars as “Dutiful Daughters.” “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.”

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. 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.

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

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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.
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).
86 Id.
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. 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.

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. 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). 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, 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. 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.

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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).
95 Okin, supra note 88, at 5.
Third, women in particular face sexual harassment at different stages of their academic careers. 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. These patterns are also present in other professional settings, and in academia more broadly, where victims are often reluctant to report their experiences.

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. 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. 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. 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. Sexual harassment is also experienced by women teaching assistants from their own students, who might make sexually charged...

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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.


100 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).


104 Id. at 17.
comments in person or anonymously, in teaching evaluations. In fact, sexual harassment from students to faculty members is far from an uncommon occurrence. Rates of sexual harassment are also higher among gay, bisexual, transgender, queer, intersex, or asexual women and multiracial students. 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. A recent study finds that, among international graduate students, there is increased risk for harassment by a professor.

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. 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.

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. Twelve days later, more than 1600 people had submitted their stories. Asked about any patterns

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

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. Further, several studies show the negative impact of sexual harassment on mental health and health generally.

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), 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.
117 See Boyle & McKinzie, supra note 102.
networks and connections. 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.”

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 academy 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.

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. While this framework provides a useful starting point, it is somewhat narrow and is also not

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120 Monopoli, *supra* note 119.
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.

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. 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. 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. 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. The latter type of claim can incorporate elements of distributive justice, which will be discussed later.


127 Id.


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. 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.

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 research and in terms of citations.

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. 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 students.


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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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


\textsuperscript{136} See, e.g., Patricia Gurin et al., *Defending Diversity: Affirmative Action at the University of Michigan* 97, 98 (2004).

\textsuperscript{137} \textit{Id.} at 119.

\textsuperscript{138} \textit{Id.} at 117.

\textsuperscript{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).


\textsuperscript{141} See Johnson, supra note 139, at 1562.

in class than men, among other things. 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. 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.

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,” and as role models to other more junior faculty women. Presumably, women faculty would be more likely to mentor women, and women students would perceive women faculty as more approachable. 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. 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). 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.

d) The symbolic or expressive argument

The presence of female scholars in law schools might also play a symbolic or expressive role: it might signal to others—whether to female or male students or to...
everyone—that women belong in the legal professoriate, in law school, or in the legal profession. 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.

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.

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. 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. 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. This is true for all minorities but also for women, who constitute a statistical

151 See, e.g., Johnson, supra note 139, at 1558.
154 See Alger, supra note 135, at 194.
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).


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.


Some feminists have focused their attention on developing feminist-inspired casebooks, treatises, and other legal education materials. Others have argued in favor of considering emotion in legal thought and in legal education. 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. 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.” 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.” Further, if the notion that law is socially constructed is accepted, 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


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 Levis & Robert R. M. Verchick, Feminist Legal Theory: A Primer (2d ed. 2016).


179 Id. at 35–6.

would achieve. What action or reforms these arguments justify varies, but, gener-
ally 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. 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. Socially,
sanctions (such as reactive attitudes in the family of hostility) 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.

Consequentialist justifications can also be compatible with assumptions of inferior-
ity on the part of women, which can remain unchallenged. Women are hired,
following the logic of some versions of the consequentialist account, for the benefit
of others—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. 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.

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

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181 On the idea of critical mass, see Friedenberg et al., supra note 152, at 25–6. In the context of legal ac-
demia, 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
de 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/sites/files/haslanger_how_to_change_a_social_structure_ucl.pdf (last vis-
ited 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

185 See Allen making this point in the context of the social 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
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.\(^\text{189}\) 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.\(^\text{190}\) 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.\(^\text{191}\) 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).


Let us begin with corrective justice.

\textbf{a) Corrective (in)justice}

Corrective justice is the strand of justice concerned with rectifying interpersonal wrongs and is “correlatively structured.”\textsuperscript{193} It operates primarily by depriving the wrongdoer of a wrongful gain and remedying the injured party’s loss.\textsuperscript{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 which each of these practices.\textsuperscript{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,\textsuperscript{196} and some of the obstacles we discussed in Section 2.2 fall outside of the parameters of corrective justice.

\textbf{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.\textsuperscript{197} This can be understood as a problem of misrecognition or recognitional...
injustice, and when it concerns the capacity of a person 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.” 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, 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. 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).

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. 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


199 Fricker, supra note 81, at 1.

200 Id.


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. This might be the case inside the academy, where women might have genuine preferences for mentoring students and participating in service work, and inside the family, where women might choose to prioritize caregiving over their careers.

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. Of course, these choices may not be entirely free, as they are a product of social practices and environments, 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, or the result of discrimination.

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. Oppression itself is also a structural phenomenon “that positions certain

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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.
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.”

Oppression results from the “normal processes of everyday life,” due to the everyday practices of society that remain unquestioned. 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. 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.

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. It is the social structure itself that makes the pursuit of gender-neutral lifestyles costly relative to gendered lifestyles. 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. 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. 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. 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. 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.
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. The fact that gender-neutral lifestyles are costly has implications beyond caregiving, particularly if a broad conception of costs is adopted. 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.

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

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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 (Ratnesh) 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.


228 In the context of primary and secondary education, see, e.g., Irene Martínez Martín & Gema Ramirez 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.

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.” 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.” According to ESIL, they have “formalised a commitment to facilitate, when practicable, hybrid attendance, not only for those with caregiving/
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. 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, a Women’s Caucus and the Women Gender and Politics research section, all of which organize scholarly and networking events, 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. It has a commitment to diversity in the composition of its Council, and gender parity in the organization of panels. 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. APSA

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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.


also currently offers many virtual events and meetings. 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). 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.

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.

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. 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 rethink 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

240 Women, Gender and Politics Research (Section 16), supra note 235.
242 We thank Bea Greenberg for help in compiling and summarizing this data.
they are, there is a strong case for doing away entirely with such evaluations.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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

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

\textsuperscript{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).

\textsuperscript{246} Dixon & Versteeg, supra note 7.

\textsuperscript{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 unbiased. 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. 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. 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.

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.\textsuperscript{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.\textsuperscript{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 participation\textsuperscript{252} 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.”\textsuperscript{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.\textsuperscript{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.\textsuperscript{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,\textsuperscript{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.\textsuperscript{257} Additionally, for example, within a feminist legal academy, the treatment of certain issues often associated with women and minorities, traditionally

\textsuperscript{250} Dixon & Versteeg, supra note 7. 
\textsuperscript{251} We are grateful to Cora Chan for highlighting this point, with special reference to the experience of female scholars in Asia.
\textsuperscript{253} Crenshaw, supra note 178, at 35–6.
\textsuperscript{254} Id. at 49.
\textsuperscript{255} Cf. Hooks, supra note 8, at 5.
\textsuperscript{256} Rosemary Auchmuty, Agenda for a Feminist Legal Curriculum, 23 LEGAL STUD. 377 (2003).
left to specialized courses, would find a central place in the core curriculum, and the way issues of gender injustice are taught would be informed by trauma-informed teaching strategies.

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. 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. 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.
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,


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. 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.

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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.” 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. 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

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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, 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. The United States is particularly unusual in failing to require employers to provide any form of paid parental leave. However, some US law schools, including Harvard and Yale, provide at least thirteen weeks of paid leave, 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.”

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.

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. 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.

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. 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. 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. 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

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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).


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.  

**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. 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.

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,

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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 overwhelmingly involve showcasing the ideas of male rather than female scholars.

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.

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. 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. 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 panels.

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

\textbf{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.\textsuperscript{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


\textsuperscript{287} We are indebted to Ruth Rubio for pressing us on this point.

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.

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. 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.

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. This can occur if male...


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_hand-book/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.\textsuperscript{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.”\textsuperscript{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,\textsuperscript{296} and that there are gendered expectations that male faculty who have taken parental leave \textit{should} be performing work-related tasks during that leave period.\textsuperscript{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.”\textsuperscript{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


\textsuperscript{295} Allison C. Morgan et al., The Unequal Impact of Parenthood in Academia, 7 Sci. Advances (2021), \url{www.sciencemag.org/doi/full/10.1126/sciadv.abc1996}.


\textsuperscript{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 Kosař 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.  

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. 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. 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. 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. 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

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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. 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. 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 subsiding 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


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: Backlash and the Struggle for Same-Sex Marriage (2014).
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, 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, 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.

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. This, for example, was long the tradition in Nordic universities, and in many parts of Europe and Latin America. 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.

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. 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.

The managerial university tends to be highly centralized, and to give much less space

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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).
320 We are indebted to Malcolm Langford for pressing us on this point.
322 Id.
323 See, e.g., MARGARET THORNTON, PRIVATIZING 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.\textsuperscript{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.\textsuperscript{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.

\section{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...
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.

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 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.


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.