Article

Entrenched Racial Hierarchy: Educational Inequality from the Cradle to the LSAT

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INTRODUCTION

For my contribution to this special issue of the Minnesota Law Review, I will attempt to situate the problem of black underrepresentation at America’s law schools1 within the broader context of racial hierarchy in American society. The former has generated an extensive body of legal scholarship and commentary,2 centering primarily on

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1. See American Bar Association, ABA Profile of the Legal Profession 33 (2020) (black Americans make up only five percent of the profession even though they are over thirteen percent of the overall U.S. population). See Law School Enrollment by Race & Ethnicity (2019), ENJURIS, https://www.enjuris.com/students/law-school-race-2019.html [https://perma.cc/BZH5-MNWW] (black students were 7.57% of incoming law students in 2019); id. (“Black enrollment in law school dropped for the fourth consecutive year” and nearly half of all black law school applicants are not admitted to a single institution); Aaron N. Taylor, The Marginalization of Black Aspiring Lawyers, 13 Fla. Int’l. U. L. Rev. 409 (2019) (nearly half of all black law school applicants did not gain admission into a single program). Further, black students who enroll in law school are less likely than other students to persist until graduation. Kyle Thomas & Tiffanie Cochran, ABA Data Reveals Minority Students are Disproportionately Represented in Attrition Figures, ACCESSLEX (Sept. 18, 2018), https://www.accesslex.org/xblog/aba-data-reveals-minority-students-are-disproportionately-represented-in-attrition-figures [https://perma.cc/5PNS-C4MT] (black students are only nine percent of all 1Ls but account for 15.5 percent of all 1L non-transfer attrition).

the racial impact of law schools’ admissions criteria and procedures, particularly the substantial weight placed upon the Law School Admissions Test (“LSAT”). This focus is understandable: given the substantial racial disparities in LSAT performance and the test’s relatively limited value in predicting academic and professional


See, e.g., Randall, supra note 2, at 107 (“If a Black or Mexican applicant is denied admission to law school, there is an excellent possibility that he or she may have been discriminated against based on race . . . . It is institutional racism”); Curtis, supra note 2, at 310 (contending that “the reliance on the LSAT diminishes diversity, reinforces pernicious and anti-democratic hierarchies, and exacerbates financial inequities in the legal profession and among legal professionals”); Lustbader, supra note 2, at 94 (2012) ("law schools continue to over-rely on LSAT scores. In doing so, they significantly reduce enrollment of the underrepresented.”); Bothwell, supra note 2, at 1 (arguing that the LSAT is “inherently and unfairly biased against racial minorities”). Kimberly West-Faulcon, More Intelligent Design: Testing Measures of Merit (2001); Alex T. Johnson, Jr., Knots in the Pipeline for Prospective Lawyers of Color: The LSAT Is Not the Problem and Affirmative Action Is Not the Answer, 24 Stan. L. & Pol’y Rev. 379 (2013); Lustbader, supra note 2, at 94 (2012) (“law schools continue to over-rely on LSAT scores. In doing so, they significantly reduce enrollment of the underrepresented.”); Bothwell, supra note 2, at 1 (arguing that the LSAT is “inherently and unfairly biased against racial minorities”).

Multiple Supreme Court justices also have criticized the racial impact of the LSAT. See, e.g., DeFunis v. Odegard, 416 U.S. 312, 319–44 (1974) (Douglas, dissenting) (suggesting that schools may need to “abolish” the LSAT to avoid racial unfairness); Grutter v. Bollinger, 539 U.S. 306, 369–70 (2003) (Thomas, dissenting) (observing that “no modern law school can claim ignorance of the poor performance of blacks, relatively speaking, on the Law School Admission Test (LSAT). Nevertheless, schools continue to use the test”).

4. The average LSAT score for black test takers is 142, a score in the bottom quintile of all test-takers. Scott Jaschik, Do Law Schools Limit Black Enrollment with LSAT?, Inside Higher Educ. (April 15, 2019), https://www.insidehighered.com/admissions/article/2019/04/15/study-argues-law-schools-limit-black-enrollment-through-lsat [https://perma.cc/ZT6B-J7S6]. By comparison, the average test score for white and Asian test takers is 153. Id. This average score falls below the 25th percentile LSAT scores at virtually every law school in the country, and falls within the range that some observers have concluded puts students at "extreme risk" of bar failure. Law School Enrollment, L. Sch. Transparency Data Dashboard, https://data.lawschoolltransparency.com/enrollment/admissions-standards [https://perma.cc/8C3X-KNNB]. See also Kidder, supra note 2, at 1073 (finding significant racial disparities in LSAT scores among white students and students of color with similar grades at equivalent undergraduate institutions).
outcomes, it makes sense that efforts to increase black representation in law school would start here.6

But in focusing primarily on the inequities of law school admissions, the existing discourse to some extent has unduly isolated the issue of black law school underrepresentation from the broader context of American racial inequality. The law school admissions process is but the final stage in a long chain of events that determines whether an individual becomes a law student. The vast majority of black students effectively are prevented from attending law school by conditions that they encounter before they even apply.

Accordingly, in this article I offer a broader account of the underrepresentation of black law students, one that focuses on the conditions of entrenched racial hierarchy that impede black Americans’ educational trajectories and limit their mobility into high-status


6. Without endorsing the test, it is worth noting that a number of researchers and commentators have countered many of criticisms of the LSAT by emphasizing that the test remains the most reliable predictor of student performance and pushing back against claims that the test is discriminatory. Lisa C. Anthony, Susan P. Dalessandro, & Tammy J. Thierweiler, Law School Admission Council LSAT Technical Report, Predictive Validity of the LSAT: A National Summary of the 2013 and 2014 LSAT Correlation Studies 14 (2016) (LSAT scores have a much stronger correlation with first-year law school grades than undergraduate grade point averages); Katherine Austin, Catherine Martin Christopher, & Darby Dickerson, Will I Pass the Bar Exam? Predicting Student Success Using LSAT Scores and Law School Performance, 45 Hofstra L. Rev. 753, 757 (2017) (concluding that “the LSAT is still a strong predictor of academic success and bar passage, as well as career success.”); Gail L. Heriot & Christopher T. Wonnell, Standardized Tests Under the Magnifying Glass: A Defense of the LSAT Against Recent Changes of Bias, 7 Tex. Rev. L. & Pol. 467 (2003) (reporting on studies finding that the LSAT actually overestimates the future performance of black students in law school); Robert Steinbuch, A Different Take On Why Law Schools Are Not Admitting More Black Students, Nat’l Jurist (Jan. 24, 2018), http://www.nationaljurist.com/national-jurist-magazine/different-take-why-law-schools-are-not-admitting-more-black-students [https://perma.cc/3CK6-JWP6].
occupations, including the practice of law. This entrenched hierarchy has three core, distinct, though related, components that each contribute to the underrepresentation of black law students: stark racial socioeconomic disparities, the pernicious racial stigma that subjects black Americans to various anti-black prejudices and stereotypes, and enduring patterns of racial segregation. Collectively, these conditions subject many black children to an onslaught of deprivations, disadvantages, and discrimination that work to divert them away from professional careers from the very outset of their educational careers. By the time law schools review students’ applications, entrenched racial hierarchy has produced staggering educational disparities that all but ensure that black Americans will be underrepresented among law students.\footnote{Further, given the overrepresentation of black students from immigrant families and among black students at of higher education, the existing statistics, as bad as they are, likely underestimate the impact of racial hierarchy on the educational trajectories of multi-generation, single-race black students. See generally Kevin Brown, \textit{LSAC Data Reveals that Black/White Multiracials Outscore All Blacks on LSAT by Wide Margins}, \textit{39} \textit{NYU Rev. L. & Soc. Change} 381, 383–84 (2014) (describing evidence of the overrepresentation of biracial students among black students at highly-selective colleges); Sara Rimer & Karen W. Arenson, \textit{Top Colleges Take More Blacks, but Which Ones?}, \textit{N.Y. Times} (June 24, 2004), https://www.nytimes.com/2004/06/24/us/top-colleges-take-more-blacks-but-which-ones.html [https://perma.cc/CPG5-5PDE] (reporting that according to Harvard professor Henry Louis Gates, as much as two-thirds of the school’s black undergraduate population were biracial or from immigrant families).}

The resultant struggle to secure sufficient numbers of academically well-prepared black law students who are likely to thrive will persist indefinitely in the absence of more far-reaching, holistic interventions.

This article will proceed in three parts. Part I introduces the three core components of racial hierarchy in America, each of which deprives black people of equal opportunities and treatment. Part II explains how these conditions diminish the potential pipeline of black attorneys by generating educational disparities at every stage of students’ academic careers, from early childhood through college. Building upon this analysis, Part III identifies some approaches through which a variety of institutions, including law schools, might better enable more black Americans to enter the legal profession.

\section*{I. ENTRENCHED RACIAL HIERARCHY}

America’s structures and processes of racial hierarchy powerfully limit the life chances of black Americans and thereby perpetuate
racial inequality. This Part will introduce the three primary elements of this hierarchy—socioeconomic inequality, stigma, and segregation—that ultimately contribute to the underrepresentation of black law students.8

A. SOCIOECONOMIC DISPARITIES

Racial socioeconomic disparities originated from the institution of slavery and the legal regime erected to manage and preserve it. Laws and social practices that forbid or hindered black Americans

from acquiring land,\footnote{See Roy W. Copeland, In the Beginning: Origins of African American Real Property Ownership in the United States, 44 J. BLACK STUD. 646, 647–48 (2013) (noting legal restrictions that prevented enslaved and free black Americans from owning land).} attaining education,\footnote{See Christopher M. Span, Learning in Spite of Opposition: African Americans and their History of Educational Exclusion in Antebellum America, 131 COUNTERPOINTS 26 (2005) (discussing compulsory illiteracy laws in the antebellum South).} and securing employment in desirable occupations gave rise to conditions of extreme socioeconomic inequality. The financial, educational, and occupational inequities imposed by these early injustices were perpetuated by government-sanctioned discrimination and segregation well into the twentieth century.

The black-white income gap is perhaps the most commonly used measure of this socioeconomic inequality. Thanks in part to the disproportionate concentration of black workers in lower-status jobs,\footnote{See Labor Force Statistics from the Current Population Survey, U.S. BUREAU OF LAB. STATS., https://www.bls.gov/cps/cpsaat11.htm (https://perma.cc/2AEN-4AU8) (black Americans are highly underrepresented in high-status jobs and overrepresented in service-sector employment). See also supra note 8.} the median black household earns barely 60% as much as the median white household.\footnote{See Valerie Wilson, Racial Disparities in Income and Poverty Remain Largely Unchanged Amid Strong Income Growth in 2019, ECON. POL. INST. (Sept. 16, 2020); Valerie Wilson & William M. Rodgers III, Black-White Wage Gaps Expand with Rising Wage Inequality, ECON. POL. INST. (Sept. 20, 2016). See also Deirdre Bloome, Racial Inequality Trends and the Intergenerational Persistence of Income and Family Structure, 79 AM. SOC. REV. 1196 (2014) (finding this gap has held relatively steady and closed very little over the past half century).} Black households are highly overrepresented in the bottom quintile of the U.S. income distribution,\footnote{Scott Winship, Richard V. Reeves & Katherine Guyot, The Inheritance of Black Poverty: It’s All About the Men, Brookings [March 22, 2018], https://www.brookings.edu/research/the-inheritance-of-black-poverty-its-all-about-the-men (https://perma.cc/ZAKG-57RY) (more than forty percent of black children grow up in households in the bottom fifth of the income distribution, a rate more than three times higher than that of white children).} and the black poverty rate remains more than twice that of white Americans.\footnote{See also John Creamer, Inequalities Persist Despite Decline in Poverty for All Major Race and Hispanic Origin Groups, U.S. CENSUS BUREAU, https://www.census.gov/library/stories/2020/09/poverty-rates-for-blacks-and-hispanics-reached-historic-lows-in-2019.html (https://perma.cc/SMZ9-TD6U); Black children are more than three times more likely to live in poverty than white children, and in some states, including Minnesota, they are more than five times as likely. Status and Trends in the Education of Racial and Ethnic Groups: Indicator 4 Snapshot: Children Living in Poverty for Racial/Ethnic Subgroups (Feb. 2019), NAT’L CTR. FOR EDUC. STATS., https://nces.ed.gov/programs/raceindicators/indicator_rads.asp (34 percent of black children lived in poverty in 2016, compared to 11 percent of white children); David Murphy, Jonathan Belford, Susan Baldwing & Samuel Beckwith, In 33 States, Hispanic or Black Children are More than Twice as Likely to be in Poverty Than
these dismal numbers understate the economic gulf separating black and white families. Poor black families remain in poverty for much longer than poor white families, and they are far more likely to be part of an intergenerational cycle of family poverty. Because of residential segregation, they are also far more likely than poor whites to live in concentrated poverty. Although black Americans achieved significant progress toward closing this gap during the middle of the twentieth century, income disparities have increased substantially since 1970, eroding this convergence almost entirely.

As large as these income-based disparities are, they are dwarfed in magnitude by another, even more important indicator of racial socioeconomic inequality, the black-white wealth gap. Whereas measures of income only capture the amount of money that households or individuals earn during a specified time period, wealth encompasses their total stock of accrued assets.

Wealth provides a fuller picture of a family’s economic well-being. Far more so than


16. See Lincoln Qullian, Segregation and Poverty Concentration: The Role of Three Segregations, 77 AM. SOC. REV. 354,355 (2012) ("About one in three poor white families live in poor neighborhoods and send their children to high-poverty schools, compared to two in three poor black and Hispanic families"). See also Sean F. Reardon, Lindsay Fox & Joseph Townsend, Neighborhood Income Composition by Household Race and Income, 1990-2009, 660 ANNALS AM. ACAD. POL. & SOC. SCI. 78, 94 (2015) (black families with incomes of roughly $55,000–$60,000 lived in neighborhoods that were socioeconomically similar to those of white families with incomes of roughly $12,000).


18. See id. at 2–3 ("the median black man’s earnings would have placed him at the 24th percentile of the white earnings distribution in 1940. Years after the end of the Great Recession, his position had scarcely budged, rising to only the 27th percentile.").

19. See Melvin Oliver & Thomas N. Shapiro, BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY 3 (2d ed. 2006) (positing that the wealth gap “reveals dynamics of racial inequality otherwise concealed by income, occupational attainment, or education”).

20. Id. at 2.

income, wealth determines the amount and quality of the resources and opportunities that families are able to provide their children, and thereby powerfully contributes to the intergenerational transmission of privilege and inequality. The wealth gap reflects a number of historic and ongoing racial dynamics, including income disparities, discriminatory housing policies, and unequal access to credit.

The median wealth of black families in 2019 ($24,100) was a scant 13 percent of the median white family wealth ($188,200). Black families hold less wealth than white families at every income level, and over a third of all black families have negative wealth or no wealth at all. Passed down from generation to generation on account of racial differences in inheritances and access to in vivo gifts and financial support, wealth disparities continue to grow because of contemporary differences in income, home ownership, and marriage rates. The full magnitude of this wealth gap is perhaps most evident when relatively well-off black families are compared to white families who would otherwise appear to be less privileged. On

22. Id. at 32 ("the reality for most families is that income supplies the necessities of life, while wealth represents a kind of 'surplus' resource available for improving life chances, providing further opportunities, securing prestige, passing status along to one's family, and influencing the political process."); DALTON CONLEY, BEING BLACK, LIVING IN THE RED: RACE, WEALTH, AND SOCIAL POLICY IN AMERICA 58 (2010 ed.) (two families with the same household income might have vastly different resources at their disposal to provide advantages to their children.").


27. See BARADARAN, supra note 24.


average, black families with employed heads of household have less wealth than white families whose heads of household are jobless.\textsuperscript{30} Black households whose heads have university degrees have less wealth than white households whose heads never completed high school.\textsuperscript{31} Black families with graduate or professional degrees typically are worth hundreds of thousands of dollars less than their comparably-educated white counterparts.\textsuperscript{32} Due to the interplay of these discrepancies and persisting patterns of residential segregation, even middle-class, relatively high-income black households tend to live in far more disadvantaged neighborhoods than comparable white families.\textsuperscript{33}

B. STIGMA

Another foundational component of racial hierarchy is the racial stigma that categorically marks black Americans as inferior and dangerous in the eyes of their fellow citizens.\textsuperscript{34} In America, the institution of slavery first gave rise to pervasive black racial stigma, as white Americans developed mythologies of innate racial differences to excuse the enslavement and oppression of black people.\textsuperscript{35} The rise of scientific and social scientific racism at the tail end of the nineteenth


\textsuperscript{31} Id. See also Patricia Cohen, Racial Wealth Gap Persists Despite Degree, Study Says, N.Y. TIMES (Aug. 16, 2015), https://www.nytimes.com/2015/08/17/business/racial-wealth-gap-persists-despite-degree-study-says.html [https://perma.cc/PEP5-8VPS] (“From 1992 to 2013, the median net worth of blacks who finished college dropped nearly 56 percent (adjusted for inflation). By comparison, the median net worth of whites with college degrees rose about 86 percent over the same period”).


\textsuperscript{33} Patrick Sharkey, Spatial Segmentation and the Black Middle Class, 119 AM. J. SOC. 903 (2014).


century further reinforced black stigma by introducing new "proof" of black otherness and inferiority under the veneer of supposedly objective empirical analyses. An extensive body of social science research has demonstrated the continued force of racial stigma and prevalence of anti-black racial biases (albeit increasingly in subtle and covert forms). On account of this stigma, black Americans suffer discriminatory, life-altering mistreatment in employment, the criminal justice system, and in their commercial and financial dealings. This anti-black racial stigma also extends to black neighborhoods and institutions, which are often inaccurately perceived to be far more dangerous and of lower quality than comparable non-black ones.

C. SEGREGATION

The profound racial segregation that persists between black and white Americans is another defining characteristic of racial hierarchy in America. This segregation is the legacy of concerted and sustained efforts to deny black Americans access to white residential and educational spaces. It became a prominent feature of American life in northern metropolitan areas around the turn of the twentieth century, as cities and their white citizens attempted to confine black residents to racially designated neighborhoods through a variety of invidious means, ranging from racist laws and contractual restrictions to

38. See DEVAH PAGER, MARKED: RACE, CRIME, AND FINDING WORK IN AN ERA OF MASS INCARCERATION (2007).
41. See Robert J. Sampson & Stephen W. Raudenbush, Neighborhood Stigma and the Perception of Disorder, 24 FOCUS 7, 10 (2005) (demonstrating that perceptions of neighborhoods disorder are heavily influenced by neighborhoods’ racial compositions).
campaigns of violence and terrorism. When black Americans successfully breached neighborhoods and schools that were previously all-white, their arrival often led to white flight and, ultimately, resegregation.

More recently, residential segregation has been sustained through unlawful racial steering, exclusionary zoning, the strategic placement of schools and public housing in racially defined neighborhoods, and the consistent refusal of white families to move to black neighborhoods. More than a half century after the Supreme Court struck down separate but equal in public education and the 1968 Fair Housing Act proscribed housing discrimination, many of America’s neighborhoods remain highly segregated. This residential segregation invariably fuels patterns of school segregation, which are further exacerbated by the refusal of many white parents to send their children to predominantly-minority schools. As a result, nearly


seven out of ten black students now attend schools in which most students are racial minorities.\footnote{Emma Garcia, Schools are Still Segregated, and Black Children are Paying a Price, ECON. POL. INST. (Feb. 12, 2020), https://www.epi.org/publication/schools-are-still-segregated-and-black-children-are-paying-a-price[https://perma.cc/9K7Z-DUNK].}

Segregation, socioeconomic inequality, and stigma operate in tandem, and their effects on racial inequality constitute a mutually reinforcing feedback cycle of deprivation and mistreatment. For example, segregation is both a function of the wealth gap, which leads to black families being priced out of many white neighborhoods, and a contributing factor, as the values of the homes that black Americans ultimately purchase in more heavily black and less affluent neighborhoods appreciate at lower rates than comparable homes in white neighborhoods.\footnote{See generally Katrin B. Anacker, Still Paying the Race Tax? Analyzing Property Values in Homogeneous and Mixed-Race Suburbs, 32 J. URB. AFFAIRS 55 (2010) (finding that homes in predominantly black neighborhoods are appraised for less than comparable homes in white neighborhoods); Junia Howell & Elizabeth Korver-Glenn, The Increasing Effect of Neighborhood Racial Composition on Housing Values, 1980–2015, SOC. PROBLEMS 1, 19 (2020) (in the years between 1980 and 2015, homes in white neighborhoods appreciated $194,000 more than comparable homes in minority neighborhoods).}

Segregation also contributes to socioeconomic inequality through the phenomenon of spatial mismatch, in which many employers are located in areas remote from, and difficult to access by, people living in black neighborhoods.\footnote{See Michael A. Stoll, Job Sprawl, Spatial Mismatch, and Black Employment Disadvantage, 25 J. POL. ANAL. & MGMT. 827 (2006) (finding evidence that job sprawl reduced black workers’ employment outcomes); William Julius Wilson, The Truly Disadvantaged: The Inner City, The Underclass, and Public Policy (1987) (describing the impact of deindustrialization and job loss on predominantly-black urban communities).}

The disparities and social problems brought about by segregation, concentrated poverty, and wealth disparities further stigmatize black people and black spaces as inferior, leading to discrimination that in turn reinforces socioeconomic inequality. The tendency to blame black people for the outcomes brought about by racial hierarchy also leads to greater support for racially repressive and regressive public policies\footnote{See Elizabeth Hinton, From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America (2017) (arguing that perceptions of black pathology helped fuel the rise of mass incarceration).} and apathy and resentment concerning the plight of the black poor.\footnote{See Martin Gilens, Why Americans Hate Welfare: Race, Media, and the Politics of Antipoverty Policy (1999) (finding that Americans supported the
conditions of racial hierarchy all jointly contribute to educational inequality, as the following Part will explain.\textsuperscript{58}

II. THE LONG PIPELINE PROBLEM

The underrepresentation of black students in American law schools is the product of a series of disparities that occur throughout the educational careers of black Americans. The inequities of entrenched racial hierarchy disadvantage black Americans through the childhood and early adulthood years in which students attain the academic preparation and credentials necessary for entrance to law school. In fact, this process begins before they even reach kindergarten and produces cumulative disadvantages that increase at every step along the way from elementary school to secondary school to college.

A. CHILDHOOD DISPARITIES

The impact of racial hierarchy on the educational trajectories of black children is evident by the time they first go to school. Socioeconomic inequality leads to racial disparities in developmental parenting practices\textsuperscript{59} and exposure to adverse childhood experiences (“ACEs”),\textsuperscript{60} both of which strongly influence children’s school readiness and future educational outcomes.\textsuperscript{61} Further, most black 3- and 4-

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\textsuperscript{58} These educational disparities are multifaceted and stem from a diverse, complex array of causes. There is no way to determine the precise degree to which the conditions associated with racial hierarchy are responsible for these problems, but the social science research suggests that they play critical roles.

\textsuperscript{59} See Jeanne Brooks-Gunn & Lisa B. Markman, The Contribution of Parenting to Ethnic and Racial Gaps in School Readiness, 15 Fut. Child. 139, 157 (2005) (finding that black and Hispanic mothers were less likely to use certain parenting behaviors that are associated with greater school readiness and finding that these differences may account for 25 to 50 percent of the school readiness gap).

\textsuperscript{60} See Vanessa Sacks & David Murphey, The Prevalence of Adverse Childhood Experiences, Nationally, by State, and by Race or Ethnicity, Child Trends (Feb. 12, 2018), https://www.childtrends.org/publications/prevalence-adverse-childhood-experiences-nationally-state-race-ethnicity [https://perma.cc/ZQ3K-VRDB] (33% of black children have multiple ACEs, compared to only 19% of white children).

\textsuperscript{61} See Nadine Forget-Dubois, Ginette Dionne, Jean-Pascal Lemelin, Daniel Pérousse, Richard E. Tremblay & Michael Boivin, Early Child Language Mediates the Relation Between Home Environment and School Readiness, 80 Child Dev. 736, 736 (2009) (finding that certain parenting tactics and qualities increased school readiness); Annie Bernier, Stephanie M. Carlson & Natasha Whipple, From External Regulation to Self-Regulation: Early Parenting Precursors of Young Children’s Executive Functioning, 81 Child Dev. 326, 334 (2010); Dylan B. Jackson, Alexander Testa & Michael G. Vaughn,
year-olds do not attend preschool, and those who do disproportionately receive low-quality care. Thus, black children arrive at kindergarten already an extraordinary seven to twelve months behind their white counterparts in math and reading on average, and also substantially trailing them in other measures of school readiness.

These early disparities beget later ones. As a group, black students never overcome this initial deficit. The black-white achievement gap persists through elementary and secondary school. It is a near-universal feature of American education: it exists in every state and

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63. See Rachel Valentino, Will Public Pre-K Really Close Achievement Gaps? Gaps in Prekindergarten Quality Between Students and Across States, 55 AM. EDUC. RES. J. 79 (2018) (finding that the public prekindergarten programs that served poor black children were much lower in quality than those that served more affluent whites); Diane M. Early, Iheoma U. Iruka, Sharon Ritchie & Oscar A. Barbarin, How Do Pre-Kindergarteners Spend Their Time? Gender, Ethnicity, and Income as Predictors of Experiences in Pre-Kindergarten Classrooms, 25 EARLY CHILD. Q. 177 (2010) (schools with greater percentages of minority children spend less time engaged in stimulating developmental activities).


65. See Emma Garcia & Elaine Weiss, Early Education Gaps by Social Class and Race Start U.S. Children Out on Unequal Footing, ECON. POL. INST. (June 17, 2015), https://www.epi.org/publication/early-education-gaps-by-social-class-and-race-start-u-s-children-out-on-unequal-footing-a-summary-of-the-major-findings-in-inequalities-at-the-starting-gate/ (2015). Racial disparities in mass incarceration also contribute to these disparities to some extent, as the experience of having an incarcerated parent has been associated with lower school readiness scores. Anna R. Haskins, Unintended Consequences: Effects of Paternal Incarceration on Child School Readiness and Later Special Education Placement, 1 SOC. SCI. 141 (2014) (boys whose fathers have been incarcerated have lower school-readiness scores and are more likely to be placed in special education classes).


within virtually all school districts that educate black students. If the past few decades are any indicator, there is little reason to expect that this gap will close in the foreseeable future.

These disparities are not mere by-products of cultural pathologies or self-sabotage on the part of black children succumbing to peer pressure. Instead, they are the natural and foreseeable results of the conditions of racial hierarchy set forth in Part I. Socioeconomic inequality, for example, contributes to this achievement gap substantially, and in


68. Sean F. Reardon, Joseph P. Robinson-Cimpian & Ericka S. Weathers, The Geography of Racial/Ethnic Test Score Gaps, 124 AM. J. SOC. 1164, 1204 (2019) (studying several thousand districts and finding “but a handful in which the achievement gap is near zero.”). Id. (“there is no school district in the United States that serves a moderately large number of black or Hispanic students in which achievement is even moderately high and achievement gaps are near zero.”).


70. The “acting white” trope, which posits that culturally-maladapted black children eschew academic achievement, has been roundly rebuked in recent social science research. See, e.g., PRUDENCE L. CARTER, KEEPIN’ IT REAL: SCHOOL SUCCESS BEYOND BLACK AND WHITE (2005) (finding that minority students used the “acting white” criticism in reference to social and cultural behavior that were not necessarily related to academic achievement); KAROLYN TYSON, INTEGRATION INTERRUPTED: TRACKING, BLACK STUDENTS, AND ACTING WHITE AFTER BROWN (2011) (arguing that academic-related concerns about “acting white” only arise with respect to high-achieving black students who have been isolated by racial tracking).
a variety of ways. The strong and growing correlation between socioeconomic status and educational achievement and the deleterious effects of living in poverty, especially long-term exposure to poverty, undermine black educational achievement. Racial hierarchy depresses black educational outcomes by relegating black students to inferior schools. Black students attend schools with higher concentrations of inexperienced and uncertified teachers and fewer school counselors. Their schools offer calculus, physics, chemistry, and Algebra II less frequently than schools with low minority enrollments. Most black students in large metropolitan areas attend high-poverty schools, and this exposure to school poverty is a powerful mechanism of educational inequality.

71. See Jesse Rothstein & Nathan Wozny, Permanent Income and the Black-White Test Score Gap, J. HUM. RES. 509, 537 (finding that “family financial circumstances can explain 40 to 75 percent of the raw [black-white test score] gap at age 10 or 11.”).


73. See Robert Sampson, Patrick Sharkey & Stephen W. Raudenbush, Durable Effects of Concentrated Disadvantage on Verbal Abilities among African American Children, 105 PROCEEDINGS NAT. ACAD. SCI. 845–52 (2008) (finding that living in severely disadvantaged neighborhoods reduced later verbal ability by the equivalent of an entire year or more of school).

74. See Caroline Ratcliffe, Child Poverty and Adult Success, Urb. Inst. 4 (Sept. 9, 2015), https://www.urban.org/research/publication/child-poverty-and-adult-success [https://perma.cc/BA6N-PRRX] (children who spend at least half of their childhoods in poverty are 13 percent less likely to complete high school and 43 percent less likely to complete a four-year college degree than children who experienced poverty).


76. Id.

77. Id. at 6.


79. Reardon et al., supra note 16, at 95. See Janie Boschma & Ronald Brownstein, The Concentration of Poverty in American Schools, ATLANTIC (Feb. 29, 2016), https://www.theatlantic.com/education/archive/2016/02/concentration-poverty-american-schools/471414 [https://perma.cc/2TBA-UF3K] (quoting Sean Reardon as explaining that “The difference in the rate at which black, Hispanic, and white students go to school with poor classmates is the best predictor of the racial-achievement gap.”).
Racial stigma impairs black students' educational careers by subjecting them to discrimination at the hands of teachers and other school personnel. Black students are subject to excessive surveillance and disparate levels of discipline, including suspensions, expulsions, referrals to law enforcement, and arrests. These inequities begin as early as preschool and persist throughout students' educational careers. Black students also experience discrimination in the classroom, for example when they are “tracked” into less rigorous courses that less adequately prepare them for college admissions exams and the academic rigors of college. Some evidence suggests that teachers may give black students worse grades and devote less effort to improving their performance because of racial biases. Racial stigma may also harm black students in even more subtle ways. Many social psychologists have posited that black students' awareness of racial stigma may lead them to underperform on important exams on.

80. U.S. GOV'T ACCOUNTABILITY OFF., K-12 EDUCATION: DISCIPLINE DISPARITIES FOR BLACK STUDENTS, BOYS, AND STUDENTS WITH DISABILITIES 13 (March 2018) (“Although there were approximately 17.4 million more White students than Black students attending K-12 public schools in 2013-14, nearly 176,000 more Black students than White students were suspended from school that school year.”).

81. A FIRST LOOK, supra note 75, at 4 (black students are nearly twice as likely as white children to be expelled from school).

82. Id. (black students are more than twice as likely as white students to be referred to law enforcement).


84. A FIRST LOOK, supra note 75, at 3 (black preschoolers are 3.6 times as likely as white children to receive one or more suspensions, and make up 47% of suspended preschoolers despite constituting only 19% of all preschoolers); Walter S. Gilliam, Angela N. Maupin, Chin R. Reyes, Maria Accavitta & Frederick Shic, Research Study Brief, Do Early Educators’ Implicit Biases Regarding Sex and Race Relate to Behavior Expectations and Recommendations of Preschool Expulsions and Suspensions?, YALE CHILD STUDY CTR. (Sept. 28, 2016) (describing experimental evidence suggesting that implicit racial biases may lead preschool teachers more likely to expect challenging behavior from black boys).


86. See generally Harriet R. Tenenbaum & Martin D. Ruck, Are Teachers’ Expectations Different for Racial Minority than for European American Students? A Meta-Analysis, 99 J. EDUC. PSYCHOL. 253 (2007) (finding that teachers scored certain assignments lower when they believed that they had been completed by black students).
account of stereotype threat, a phenomenon in which anxieties about confirming negative stereotypes situationally hinder their cognitive abilities.87

Conditions of racial hierarchy also inhibit the educational performance of black children from higher-income households.88 Thanks to the wealth gap, even fairly well-to-do black families may lack the financial resources necessary to provide their children the same opportunities and support that their privileged white peers enjoy,89 including private tutors, test preparation services, and college admissions coaches. Further, black students who attend low-poverty, predominantly-white schools potentially face various forms of discrimination, including the disparate enforcement of school rules.90

These achievement gaps culminate in black school dropout rates that are twice those of white students.91 In some predominantly black

88. See also Reardon et al., supra note 68, at 1205–07 (finding that educational disparities are largest among students from high-SES households).
89. See Jones, supra note 32 (noting that “Even the typical black family with a graduate or professional degree had more than $200,000 less wealth than a comparable white family.”).
90. See Amanda E. Lewis & John B. Diamond, Despite the Best Intentions: How Racial Inequality Thrives in Good Schools 45–83 (2015) (black students were more likely to be punished than white students who committed the same rule infractions).
91. Secondary School Completion: Public High School 4-Year Graduation Rate, AM. COUNCIL ON EDUC., https://www.equityinhighered.org/indicators/secondary-school-completion/public-high-school-4-year-graduate-rate [https://perma.cc/RPQ9-6WF2]. Although the percentage of black Americans who have completed high school has converged upon the national average, this statistic is misleading as it includes students who have dropped out of school and attained General Equivalency Degrees (“GEDs”). Secondary School Completion, AM. COUNCIL ON EDUC., https://www.equityinhighered.org/indicators/secondary-school-completion/high-school-completion-rate-by-gender [https://perma.cc/TN74-CY86]; James J. Heckman & Paul A. LaFontaine, The American High School Graduation Rate: Trends and Levels, 92 REV. ECON. STAT. 244 (2010). Back students are highly overrepresented among GED-holders, who as a group are far less likely than high school graduates to attend or complete college. See id. See generally The Myth of Achievement Tests: The GED and the Role of Character in American Life (James J. Heckman et al. eds., 2014). Many other students earn enough credits to graduate high school through online credit recovery programs, in some instances with minimal little work or demonstrations of proficiency. See Stephen Smiley, Fast Isolating, Superficial, SLATE (May 23, 2017), https://slate.com/news-and-politics/2017/05/what-class-is-like-for-high-schoolers-taking-their-courses-online.html [https://perma.cc/254G-YM9P]; Molly Bloom, Atlanta Schools: How Online Credit Recovery Students Actually Perform, ATL. J-CONST. (Oct. 14, 2016), https://www.ajc.com/news/local-education/atlanta-schools-how-online-credit-recovery-students-actually-perform/e3XdYjH5RuuNO7xRMDjNdN [https://perma.cc/BZXA-RH27] (reporting that although 90 percent of Georgia students passed
cities, fewer than half of all students who begin high school graduate within four years. As few students who drop out of high school ultimately complete college, let alone attend professional school, this disparity effectively eliminates a significant number of black students from the law school pipeline. Those black students who persist in high school through graduation are less likely to have amassed the types of academic records that might make them candidates for admission at selective colleges and universities—the schools that typically serve as pathways to law school. As a group, black high school graduates have GPAs that are substantially below the national average, a troubling indicator given the well-documented correlation between high school GPAs and academic performance in college. They also take fewer Advanced Placement courses and are less likely to be enrolled in gifted and talented programs. Although standardized

test scores are used to determine acceptance at many professional schools, they do not capture the multitude of factors that contribute to a student’s professional success. The academic records of black law students often reflect the myriad disadvantages they have faced throughout their education. The group of black students who successfully make the transition from high school to law school is likely small, perhaps in the single digits, and those students are often from cities, fewer than half of all students who begin high school graduate within four years. As few students who drop out of high school ultimately complete college, let alone attend professional school, this disparity effectively eliminates a significant number of black students from the law school pipeline. Those black students who persist in high school through graduation are less likely to have amassed the types of academic records that might make them candidates for admission at selective colleges and universities—the schools that typically serve as pathways to law school. As a group, black high school graduates have GPAs that are substantially below the national average, a troubling indicator given the well-documented correlation between high school GPAs and academic performance in college. They also take fewer Advanced Placement courses and are less likely to be enrolled in gifted and talented programs. Although standardized
test scores are used to determine acceptance at many professional schools, they do not capture the multitude of factors that contribute to a student’s professional success. The academic records of black law students often reflect the myriad disadvantages they have faced throughout their education. The group of black students who successfully make the transition from high school to law school is likely small, perhaps in the single digits, and those students are often from cities where the percentage of the overall law student population is as low as 42 percent. In contrast, black high school graduates in one-time dropouts and single mom celebrates her law school graduation in viral photo, ABA J. (Apr. 11, 2018), https://www.abajournal.com/news/article/one-time-high_school_dropout_and_single_mom_celebrates_her_law_school [https://perma.cc/7NP2-Q497]; Jey Born, A High School Dropout Finds Support on Road from Prison to Law School, NPR (Oct. 23, 2020), https://www.npr.org/2020/10/23/926632001/a-high-school-dropout-finds-support-on-road-from-prison-to-law-school?utm_medium=RSS&utm_campaign=morningedition [https://perma.cc/Y7Q-FB6G]. This group likely represents an extremely small percentage of the overall law student population.


94. Race/Ethnicity: Grade Point Average, NATION’S REP. CARD, https://www.nationsreportcard.gov/hsts_2009/race_gpa.aspx?tab_id=tab2&subtab_id=Tab_1 [https://perma.cc/PM4K-BN17] (the average GPAs of black high school graduates were 2.47 in core academic courses and 2.82 in other academic courses, compared to 2.88 and 3.22 for white students).


96. A First Look, supra note 75, at 7 (black students account for only 28 percent of the students enrolled in such programs despite constituting 42 percent of the student bodies in schools with such programs).
tests are highly imperfect predictors of future academic performance, the very low scores of black students, which have been linked in part to racial segregation,\textsuperscript{97} reveal the academic deficit that many would need to overcome to succeed in college. Black students score an average of 927 on the Standardized Achievement Test ("SAT"),\textsuperscript{98} compared to the average white score of 1104,\textsuperscript{99} and only 32 percent of black test-takers scored above 1100,\textsuperscript{100} compared to 72 percent of white test-takers.\textsuperscript{101} A quarter of all black test-takers scored below 800,\textsuperscript{102} compared to 5 percent of white test-takers.\textsuperscript{103} Only 20 percent of black test-takers met College Board’s benchmarks of presumptive college readiness on both the math and Evidence-Based Reading and Writing sections of the test,\textsuperscript{104} compared to a majority of white test-takers.\textsuperscript{105}

Black students also fare very poorly on the ACT test, the other major college entrance exam. The average black ACT score of 16.9 (compared to 22.2 for white test-takers)\textsuperscript{106} falls below the ACT College Readiness Benchmark, the minimum scores associated with a 50 percent chance of earning a B grade or better in related college courses.\textsuperscript{107} These disparities not only make black students less competitive applicants at selective colleges and universities but suggest that they will have greater difficulties transitioning to college if they ever enroll.\textsuperscript{108} One study found that college enrollees with ACT scores and GPAs in the same range as the mean black test-takers and high school

\textsuperscript{99} \textit{Id.}
\textsuperscript{100} \textit{Id. at 5.}
\textsuperscript{101} \textit{Id.}
\textsuperscript{102} \textit{Id.}
\textsuperscript{103} \textit{Id.}
\textsuperscript{104} \textit{Id. at 3.}
\textsuperscript{105} \textit{Id.}
graduates (16–17 and 2.75–2.99, respectively) have only a 39 percent graduation rate.\footnote{109}

Thus, the educational deficits and inequalities brought about by conditions of racial hierarchy remove a very high percentage of black students from the law school pipeline before they even enter adulthood. The disparities evident in academic performance, standardized test scores, and high school graduation rates all drastically limit the supply of potential black attorneys who survive the next critical stage of the law school pipeline: college.

B. \textbf{COLLEGE AS A DEAD END}

The social dynamics that lead to many black students not attending college also undermine the performance and outcomes of those who do.\footnote{110} Black college attendance has fallen greatly in recent years,\footnote{111} and only a minority of those who do enroll in college emerge with the credentials and preparation necessary to pursue careers as attorneys. Black college students are only half as likely as their white peers to graduate within four years,\footnote{112} and most do not even graduate within six years.\footnote{113} In total, these disparities lead to a deficit of

\footnote{109} Allensworth & Clark, supra note 95, at tbl 2.

\footnote{110} See generally Jason M. Fletcher & Marta Tienda, \textit{Race and Ethnic Differences in College Achievement: Does High School Attended Matter?}, 627 ANN. AM. ACADEM. POL. SCI. 144 (2010) (finding that inequalities in the high schools black and white students had attended explained much of the disparities in their college grades).

\footnote{111} \textit{African American Students in Higher Education}, PNPI (June 12, 2020), https://pnpi.org/african-american-students [https://perma.cc/9TK4-N8AF] (explaining that black undergraduate enrollment fell 21% between 2010 and 2018).


\footnote{113} \textit{Status and Trends in the Education of Racial and Ethnic Groups}, NAT’L CTR. FOR EDUC. STATS. (Feb. 2019), https://nces.ed.gov/programs/raceindicators/indicator_red_4292.asp [https://perma.cc/K6NB-PK3V] (only 40 percent of black students graduate from their initial institutions within six years). \textit{See also Undergraduate Completion Rates at Public Four-Year Institutions}, AM. COUNCIL ON EDUC., https://www.equityinhighered.org/indicators/undergraduate-persistence-and-completion/undergraduate-completion-at-public-four-year-institutions [https://perma.cc/4VUN-YQCF] (six years after first enrolling at public four-year institutions, black students are more likely to be unenrolled without having received a degree than to have graduated). Doug Shapiro et al., \textit{Completing College – National by Race and Ethnicity – 2017}, NSC
upwards of 100,000 black college graduates per year.\textsuperscript{114} As a result, less than 30% of all black adults from ages 25–29 hold bachelor’s degrees (compared to 45% of whites in this age group),\textsuperscript{115} a basic prerequisite for admission to law school.

College dropouts are not the only students eliminated from the law school pipeline. A large percentage of black students who graduate from college do so with grades that render them unlikely candidates for admission to law school. 2009 data from the U.S. Department of Education revealed that 45 percent of all black college graduates finished with cumulative grade point averages of less than 3.0,\textsuperscript{116} a cutoff point that falls below the median incoming GPAs at even the least selective law schools in the country, and below the 25\textsuperscript{th} percentile at many. Fewer than one in five black college graduates finished with a GPA of 3.5 or higher,\textsuperscript{117} less than half the percentage of white graduates.\textsuperscript{118} These numbers indicate that the LSAT is not the only, or perhaps even the most significant, barrier that prevents black students from attending law school.

Moreover, black college students are also less likely to attend the selective and well-resourced institutions that best prepare students for the academic rigors of law school.\textsuperscript{119} The percentage of black
students attending the nation’s most selective schools has declined in recent years,\(^\text{120}\) while the numbers attending less selective and less well-resourced schools rose substantially.\(^\text{121}\) Black students now account for only 6 percent of students at the nation’s top-tier research institutions,\(^\text{122}\) and they are highly underrepresented at the flagship public universities of many states.\(^\text{123}\) As of 2016, 14 percent of black college students pursuing bachelor’s degrees attended for-profit colleges,\(^\text{124}\) by far the largest percentage of any major racial group.\(^\text{125}\) Because of racial differences in the quality of the institutions of higher learning that students attend, states ultimately spend billions more on educating white students.\(^\text{126}\) This racial sorting of black college students into less well-resourced and academically rigorous institutions further limits their law school prospects.

Financial considerations may also push many black college graduates away from law school. Black students leave college owing $7,400 more than their white counterparts,\(^\text{127}\) and that gap explodes


\(^{121}\) Id. Black college students attending selective non-profit 4-year institutions are twice as likely as white students to be enrolled in minimally selective institutions *Undergraduate Enrollment in Selective Public and Private Nonprofit 4-Year Institutions, by Race and Ethnicity: 2015-16*, AM. COUNCIL ON EDUC., https://www.equityinhighered.org/indicators/enrollment-in-undergraduate-education/enrollment-in-selective-institutions [https://perma.cc/62KP-EDHJ] (12.9 percent compared to 6.3 percent). They are somewhat more likely to be enrolled in schools with open admissions. Id. (17.1 percent compared to 14.2 percent).

\(^{122}\) McGill, supra note 120.


\(^{125}\) Id.


in size to $25,000 a few years after they have graduated.\textsuperscript{128} Black college graduates earn lower salaries upon graduating\textsuperscript{129} and are less likely to receive family support in paying back their loans than white graduates.\textsuperscript{130} These disparities, a direct result of racial socioeconomic inequality, likely deter a significant number of black college graduates from applying to law school.

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This overview of the challenges and disparities that greatly diminish the law school prospects of the vast majority of black students is intended to encourage readers to think about the law school underrepresentation problem more expansively. By the time students are old enough to apply for admission to law school, profound educational deficits and disparities arising from the confluence of socioeconomic inequality, racial stigma, and racial segregation have effectively removed the vast majority of black Americans from the law school pipeline. This set of problems defies simple solutions. Resolving them will require far more than mere tinkering with law school admissions criteria. In the following part, I will briefly propose some policy and programming efforts that law schools and other interested parties might undertake to address this problem more holistically.

III. THE PATH FORWARD

The enduring underrepresentation of black students in American law schools has proven resistant to quick fixes and easy solutions. Representing the culmination of lifelong educational disparities rooted in centuries of racial hierarchy, it calls for broad, wide-ranging policy solutions that address those underlying conditions. Without substantial interventions, law schools could well struggle in perpetuity to enroll more representative numbers of black students. A truly comprehensive solution to this problem would require ambitious policy reforms at every level of government to help ameliorate racial hierarchy and reduce its impact on the educational prospects of black

\textsuperscript{128} Id.


children. There are any number of policy measures that might help address the effects of racial socioeconomic inequality, such as targeted employment and training initiatives that would provide black families access to higher-paying jobs, student loan forgiveness measures, and programs to bolster black homeownership. A more expansive Moving to Opportunity-style housing policy program might offer housing vouchers and mobility counseling to help more disadvantaged black families move to more affluent and less segregated neighborhoods.\textsuperscript{131} Other policy solutions could address the conditions of black schooling directly. They might entail, for example, programs that provide black children and their families greater access to high-quality early childhood education and parenting assistance programs,\textsuperscript{132} and reform efforts to provide more black children access to high-quality primary and secondary schools.\textsuperscript{133} Additional measures might seek to rein in the excessively punitive policies and practices at the heart of the school-to-prison pipeline and to prevent racial discrimination in pupil placement and college counseling. These policy reforms would not lead to immediate increases in the number of black law students, but by attacking the root causes of their underrepresentation, they would help bring about greater diversity in the profession in the long-term.


But while there are many policies that might help alleviate racial hierarchy, the political will necessary to bring those policies to fruition is in short supply. The American public’s well-documented resistance to policies that redistribute resources to racial minorities renders the wholesale adoption of many of these policies highly unlikely. Because these ambitious reforms will likely remain unattainable for the foreseeable future (and if they are implemented eventually, would still take many additional years to bear fruit), the primary responsibility for resolving this problem will fall upon law schools. These are the institutions best situated to achieve immediate, tangible progress, and the breadth and depth of the pipeline problem does not absolve them of their moral obligations to pursue this goal. Therefore, it is particularly important to consider measures law schools might feasibly undertake to help increase the representation of black law students.

Law schools committed to diversifying the profession have a number of options. First, they should reevaluate and revise their admissions criteria to minimize the impact of the inequities brought about by racial hierarchy. Individual schools should each examine their admissions data to ensure that they are not placing unnecessary weight on applicants’ LSAT scores for the sake of prestige or on the basis of misguided notions about the extent of their predictive value. And by sharing their data and working collectively, law schools might be able to develop an even more precise and fine-grained understanding of the predictive value of LSAT scores for black applicants.

Law schools should also create new pipeline programs, or expand existing ones, to cultivate a broader pool of potentially viable black applicants. Such initiatives ideally would include academic support, career advice, help preparing for standardized tests, assistance with application materials, and financial aid support, but they can vary considerably in their breadth of focus. The most narrowly-tailored programs would entail efforts on the part of law schools to increase their

134. See Gilens, supra note 57.

135. In the absence of government action, wealthy non-governmental entities such as philanthropic foundations and universities may still be able to leverage their resources to help alleviate the conditions of racial hierarchy. For an exemplary recent example, see Michelle Cafrey, University of Pennsylvania Pledges $100M to Philadelphia Public Schools, Phil. Bus. J. (Nov. 17, 2020), https://www.bizjournals.com/philadelphia/news/2020/11/17/university-of-pennsylvania-pledges-100m-to-philadelphia-public-schools.html [https://perma.cc/F3EC-8V9X] (describing the University of Pennsylvania’s pledge of $100 million to improve the quality of education available at Philadelphia public schools).

136. Numerous scholars have proposed that law schools place less emphasis on applicants’ LSAT scores. See supra note 3 and accompanying text.
own minority student populations in relatively short order. This approach is perhaps best exemplified by CUNY Law School’s Pipeline to Justice program, which admits a select group of applicants who have been denied admission to the law school into a special preparatory program and then reconsiders them for admission upon completion. Another type of targeted pipeline initiative involves forming partnerships with HBCU undergraduate institutions. One model for this approach is the “3+3” dual-degree program that Drexel University’s Thomas R. Kline School of Law and Spelman College formed in December 2020, in which students begin taking classes at Drexel after finishing their third year of coursework at Spelman.

Other less-targeted pipeline efforts might focus on expanding the pool of black law school applicants more broadly, with less emphasis on funneling students into their own programs. One prominent example of this approach is the University of Houston Law Center’s Pre-Law Pipeline Program, which offers several programs including an eight-week summer program that provides university undergraduates and alums from underrepresented backgrounds preparation for the LSAT, the law school admissions process, and law school coursework. A number of other schools also have implemented such programs, including the University of California at Davis School of Law, St. John’s

137. See Pipeline to Justice, CUNY SCH. OF L., https://www.law.cuny.edu/academics/pipeline [https://perma.cc/3WCG-5QJ3] (program provides participants intensive preparation for the LSAT exam and the academic rigors of law school coursework).


139. Id. The credits that students earn during their first year at Drexel also count toward their bachelor’s degree requirements at Spelman.


141. King Hall Outreach Program (KHOP), U.C. DAVIS SCH. OF L., https://law.ucdavis.edu/outreach/khop.html [https://perma.cc/PJ86-VC33] (King Hall Outreach Program provides mentoring, advising, and weekend programming to undergraduate students from underrepresented communities).
University School of Law,\textsuperscript{142} UCLA School of Law,\textsuperscript{143} and the University of Baltimore.\textsuperscript{144} Other schools hold similar programs that, while not specifically targeted to minority students, still may help increase the pool of well-prepared black applicants.\textsuperscript{145}

These pipeline programs are valuable tools for increasing the representation of black law students, and far more schools should adopt such initiatives. But broader and even more ambitious outreach efforts that would begin working with black students during their critical childhood years would hold even greater potential for expanding the pool of qualified black law school applicants over time. A small number of law schools already have implemented such programs. The University of Baltimore’s Charles Hamilton Houston Scholars Program, for example, offers attorney mentors, mini-internships, and weekly workshops on academic skills to participating college freshman and sophomores.\textsuperscript{146} The Georgetown University Law Center’s Early Outreach Initiative sends Georgetown staff to visit select groups of high school seniors at dozens of high schools across the country.

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providing mentorship support and advising aimed at preparing them for college and for their postgraduate educational and professional careers. Several bar associations and non-profit organizations also have developed similarly long-term pipeline programs. An obvious downside to these more expansive programs is that they offer far less in the way of direct returns for the individual law schools that run them. The students who participate in them may very well end up attending law school elsewhere, or not applying to law school at all. The broad dispersion of these programs’ benefits potentially poses a collective action problem that may deter some schools from investing the resources necessary to fund such programs. Law schools might avoid this problem by agreeing collectively to support such programs, either by developing their own programs or by pooling their resources with other institutions.

Finally, law schools and law professors can help address the underlying conditions of racial hierarchy by supporting or engaging in research, policy advocacy, social activism, and efforts to promote doctrinal reforms.


148. See, e.g., Student Pipeline Programs, NYC Bar, https://www.nycbar.org/serving-the-community/diversity-and-inclusion/student-pipeline-programs [https://perma.cc/B3QP-LN48] (describing several pipeline support programs that the New York City Bar Association offers to high school and college students); About Us, Legal Outreach, https://legaloutreach.org/?page_id=2 [https://perma.cc/V2A7-CFW5] (New York City organization, Legal Outreach, Inc., works with students starting in the eighth grade to interest them in, and prepare them for, legal careers); NJLEEP, http://njleep.org (NJ Law and Education Empowerment Program ("LEEP") provides similar support to middle- and high-school students from New Jersey).

149. See generally James E. Moliterno, The Lawyer as Catalyst of Social Change, 77 Fordham L. Rev. 1559, 1568 (2009) (noting some of the many competencies that position attorneys to help achieve social change, including "[l]eadership qualities, forensic ability, talent for reasoning, [and] knowledge of the legal system").

150. For example, in recent years, a number of prominent education law scholars have made the case for more robust education-related rights under federal and state constitutions and statutes. See James E. Ryan, A Constitutional Right to Preschool?, 94 Calif. L. Rev. 49 (2006); Derek W. Black, The Fundamental Right to Education, 94 Notre Dame L. Rev. 1059 (2019); See generally A Federal Right to Education: Questions for Our Democracy (Kimberly Jenkins Robinson ed., 2019). The recent decision of the Sixth Circuit Court of Appeals in Gary B v. Whitmer suggests that at least some members of the federal judiciary may be open to such rights claims, given sufficiently compelling legal argumentation and evidence.
CONCLUSION

Continued black underrepresentation at America’s law schools has produced a substantial body of scholarship and commentary. This Article contributes to this literature by situating this problem against the backdrop of racial hierarchy that impedes the educational trajectories of black Americans. Conceptualizing black underrepresentation through this broader lens underscores the need to approach the law school diversity problem expansively and holistically. Only bold, persistent efforts on the part of a broad set of stakeholders, including policymakers and members of the bar, will achieve the type of lasting and transformative progress that advocates have sought for so long.