Article

Legal Academia's White Gaze

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For Black law faculty, Blackness, the Black experience, and Black legal and social identity are not trends. Yet, there are inflection points where legal scholarship about race, particularly Blackness, is in vogue. *The most recent rise in such legal scholarship came in the aftermath of George Floyd's murder and the worldwide Black Lives Matter protests in 2020. When antiracist sentiment is high, the regard for scholarship central to the personhood of Black legal scholars is high. Even then, there is an expectation that Black authors write in ways that conform to the White norms of legal scholarship. Though central to critical scholarship, narrative and first-person accounts are often discounted as lacking the requisite data, information, or substance necessary to interrupt the norms of mainstream legal scholarship. Thus, Black scholars who write about Blackness experience an othering that signals our scholarship—and in essence, our being—is not normal.*

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While the White gaze affects all racially marginalized groups in the law school White space, the focus of this paper and my scholarship is the Black experience. In a 2022 course evaluation, a student wrote: "Thank you for centering black people in this class. We do not see that often in the law school space and this is the first time I felt completely seen in . . . class." There was only one Black student in the class, so I assume this comment was from her. Over the years, I have received similar "love letters" from Black students. My work is a love letter to them and my Black colleagues. Through it, I hope they feel seen.

Since the late 1980s, Black law faculty have courageously used narrative in legal scholarship to highlight the challenges associated with teaching, scholarship, and service in the law school White space. Adding to that canon of literature, this Article examines how legal academia's White gaze is an infrastructure of injustice for people racialized as Black. First, this Article pinpoints Whiteness as the infrastructure of injustice that undergirds legal academia's traditions, practices, and policies. Next, this Article expands existing legal scholarship about the law school White space, focusing on embedded White norms and resulting behaviors, namely the know-your-place aggression and complicit bias that are key aspects of legal academia's White gaze. Inspired by Toni Morrison and building on existing legal scholarship and concepts discussed herein, I define the White gaze as the operational norm of White space wherein Black people are scrutinized through the lens of Whiteness, resulting in their exclusion, subordination, and objectification. Next, this Article highlights the discursive and social practices of legal academia's White gaze to illustrate how legal academia is an infrastructure of injustice for Black faculty engaged in the hallmarks of academic life: teaching, scholarship, and service. Finally, it briefly discusses dismantling Whiteness and centering Blackness.

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INTRODUCTION

> For I have never lived, nor has anyone, in a world in which race did not matter.
>
> -Toni Morrison[1]

On February 25, 2022, President Joe Biden nominated Ketanji Brown Jackson, then a D.C. Circuit Court Judge, as Associate Justice of the U.S. Supreme Court.[2] After graduating from Harvard College and Harvard Law School, Jackson spent most of her career in public service clerking for Justice Stephen Breyer and various federal judges, working as a federal public defender, chairing the U.S. Sentencing Commission, and serving as a federal district court judge.[3] Jackson's career accomplishments demonstrated she was "an exceptionally qualified nominee."[4] Yet, at her confirmation hearings, which took place from March 21 to March 24, 2022, questions exposed doubt about her ability to serve on the Supreme Court because of her race and gender.[5] Her former Harvard Law classmate, Senator Ted Cruz, implied "that Jackson was a black radical who believes in 'critical race theory' and would use her position on the court to put dangerous thoughts in the minds of white children."[6] Using a poster as a prop, Cruz questioned Jackson about Dr. Ibram X. Kendi's *Antiracist Baby*, asking, "[d]o you agree . . . that babies

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1. TONI MORRISON, THE SOURCE OF SELF-REGARD: SELECTED ESSAYS, SPEECHES, AND MEDITATIONS 199 (1st Vintage International ed. 2020) (2019).

2. Press Release, White House, President Biden Nominates Judge Ketanji Brown Jackson to Serve as Associate Justice of the U.S. Supreme Court (Feb. 25, 2022), https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2022/02/25/president-biden-nominates-judge-ketanji-brown-jackson-to-serve-as-associate-justice-of-the-u-s-supreme-court [https://perma.cc/5QJS-P8EW].

3. *Id.*; *The Senate Confirms Ketanji Brown Jackson to Serve on the U.S. Supreme Court*, WHITE HOUSE, https://bidenwhitehouse.archives.gov/kbj [https://perma.cc/W63F-YTH2].

4. Press Release, White House, *supra* note 2.

5. *See* Elie Mystal, *Ketanji Brown Jackson's Long Pause Explained Racism and Sexism in America*, NATION (Mar. 24, 2022), https://www.thenation.com/article/politics/ketanji-brown-jackson-pause [https://perma.cc/EWP6-HH99] (discussing questions posed by Republican senators at the confirmation hearings); Seung Min Kim & Marianna Sotomayor, *Race Hovered over Ketanji Brown Jackson's Confirmation Hearing*, WASH. POST (Mar. 24, 2022), https://www.washingtonpost.com/politics/2022/03/24/race-jackson-confirmation-hearing [https://perma.cc/7NZS-UHUY] ("On our side, it's about, we're all racist, if we ask hard questions." (quoting Sen. Lindsey Graham)).

6. Mystal, *supra* note 5.

are racist?"[7] Without evidence that Jackson had read the book, Cruz's questions were based on stereotypes and assumptions about her race.[8] Senator Thom Tillis "praised Jackson's demeanor," noting that because of the power dynamic at play—one that was undoubtedly racialized—"it's not like you can really come at us."[9]

What we saw play out on national television is an experience familiar to many Black people who work in White spaces: the White gaze.[10] Jackson, only the third Black person on the Court and the first Black woman,[11] had been nominated to enter one of the Whitest spaces in the legal profession, both historically and

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7. *Id.* Written questions were similarly problematic: "Is law enforcement in the United States systemically racist? . . . Do you believe that the American legal system is systematically racist? . . . Do you believe America is a systemically racist country? . . . Do you believe the Framers of the Constitution were racist?" *See* STAFF OF S. COMM. ON THE JUDICIARY, 117TH CONG., QUESTIONS FOR THE REC.: JUDGE KETANJI BROWN JACKSON (2022), https://www.judiciary.senate.gov/imo/media/doc/Judge%20Ketanji%20Brown%20Jackson%20Written%20Responses%20to%20Questions%20for%20the%20Record.pdf [https://perma.cc/DV3J-4QZP].

8. *See* Mystal, *supra* note 5 ("There was no evidence that Jackson had read *Antiracist Baby* or any of Kendi's other books, or if she likes them or agrees with them.").

9. *Id.* (noting that Jackson's inability to attack back was, because of her race, dissimilar from Justice Brett Kavanaugh, who had done exactly that during his 2018 confirmation hearings).

10. *See* On the Issues with Michele Goodwin, *Road to Confirmation: Judge Jackson's Walk Through Fire*, MS., at 01:49 (Mar. 30, 2022), https://msmagazine.com/podcast/road-to-confirmation-judge-ketanji-brown-jackson-confirmation-hearings-syovata-edari-steve-vladeck-danielle-holley-walker-zinelle-october [https://perma.cc/JY4N-5QJ4] ("[The confirmation hearings] were inspirational and yet a chilling setback, reminiscent of an angry past in the United States where any advance by Black Americans' progress was met by stereotyping, scurrilous attack, insecurity, and backlash."); Tanya Washington Hicks, Opinion, *Nomination Hearings Showed Black Women's Dignity amid Supreme Disrespect*, ATLANTA J.-CONST. (Mar. 30, 2022), https://www.ajc.com/opinion/opinion-nomination-hearings-showed-black-womens-dignity-amid-supreme-disrespect/SJDZOJSRPRCLZP2VXDZ3JN3O3M [https://perma.cc/XHC4-JF9A] ("The inquisition of Black women is a strategic move by those who are threatened by high-achieving Black women like Judge Jackson who undermine the twin tenets of white supremacy—the primacy of whiteness and maleness.").

11. Yveka Pierre, *Representation Matters, but It Doesn't Upend Systems*, IF/WHEN/HOW (Apr. 6, 2022), https://www.ifwhenhow.org/representation-matters-it-doesnt-upend-systems [https://perma.cc/YE4B-CKX6] (stating that, with regard to the White gaze thrust upon Justice Jackson and Black women attorneys in response to her nomination, "I get so weary of firsts, both the inequity that precedes them, and the respectability politics that come after them").

contemporarily.[12] Jackson's sigh and long pause in response to Cruz's most ridiculous question reveals a calculation familiar to Black people: push back against racism, or remain silent and professionally prosper.[13] It demonstrates the ways the White gaze operates to control Black people's bodies and constrain their agency and dignity.

White gaze, a term made popular by Toni Morrison, describes seeing people through the lens of Whiteness.[14] It is "a set of practices by which Whiteness regulates people's routines, rituals, rules, roles, and relationships."[15] In White spaces, the White gaze operates by encouraging people "to adhere to white-centered norms and standards."[16] It attempts to control movement, speech, emotion, and every aspect of being.[17] When Black people fail to conform to spoken and unspoken White norms, they are scrutinized and penalized.[18] In the workplace, embodiment theory—the experience and perception of bodies through a racialized lens—helps us understand whose work is deemed acceptable "in contexts where whiteness is embedded and normalized."[19] Under the White gaze, the Black body is objectified and

12. Before Justice Jackson's confirmation, there had been 115 Supreme Court Justices. Of those, two were Black. Lawrence Hurley et al., *Senate Confirms Jackson as First Black Woman on U.S. Supreme Court*, REUTERS (Apr. 7, 2022), https://www.reuters.com/world/us/senate-set-confirm-jackson-first-black-woman-us-supreme-court-2022-04-07 [https://perma.cc/WD3X-XA3Z].

13. *See* Mystal, *supra* note 5 ("As the silence filled the room, I felt like I could see Jackson make the same calculation nearly every Black person and ancestor has made at some point while living in the New World. . . . It's the calculation when black people try to decide: 'Am I gonna risk it all for this?'").

14. *See Toni Morrison*, CHARLIE ROSE (Jan. 19, 1998), https://charlierose.com/videos/17664 [https://perma.cc/32FV-FZQ9] (describing reading African writers as a "liberation" which helped Morrison write without being "consumed by or . . . concerned by the white gaze").

15. Verónica Caridad Rabelo et al., *"Against a Sharp White Background": How Black Women Experience the White Gaze at Work*, 28 GENDER, WORK & ORG. 1840, 1842 (2021).

16. Janice Gassam Asare, *Understanding the White Gaze and How It Impacts Your Workplace*, FORBES (Dec. 28, 2021), https://www.forbes.com/sites/janicegassam/2021/12/28/understanding-the-white-gaze-and-how-it-impacts-your-workplace [https://perma.cc/3XCJ-PXSA].

17. *See id.* ("The white gaze can be expanded to mean the ways in which whiteness dominates how we think and operate within society.").

18. *See, e.g.*, *id.* (describing negative performance evaluations as one penalty for Black people who fail to conform to White norms in the workplace).

19. Rabelo et al., *supra* note 15, at 1842.

seen as both invisible and hypervisible, which operate "as modes of further erasure of the integrity of the Black body."[20]

Since the late 1980s, Black law faculty have courageously used narrative in legal scholarship to highlight the challenges associated with teaching, scholarship, and service in the law school White space.[21] They have described the White gaze they experience in legal academia. Without necessarily defining themselves as critical race theorists, they highlight their lived experience with anti-Black racism in the academy and the world to accentuate the relationship between race and law.[22] I am particularly moved by Patricia Williams' groundbreaking work, *The Alchemy of Race and Rights*: *Diary of a Law Professor*, wherein she begins the text with a recognition of the White gaze: "Since subject position is everything in my analysis of the law, you deserve to know that it's a bad morning."[23] In synthesizing existing legal and social science scholarship, I join a long line of scholarship about the Black experience. Adding to this canon, I highlight the ways the White gaze is pervasive in all aspects of academic life for Black law faculty and conclude that, in the so-called antiracist legal academy,[24] Whiteness continues to serve as an infrastructure of injustice.

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20. GEORGE YANCY, BLACK BODIES, WHITE GAZES: THE CONTINUING SIGNIFICANCE OF RACE IN AMERICA, at xxx (2d ed. 2017).

21. *See generally* PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS: DIARY OF A LAW PROFESSOR (1991) (using autobiography to detail the everyday experiences of racism inside and outside the law); Jerome McCristal Culp, Jr., *Telling a Black Legal Story: Privilege, Authenticity, "Blunders," and Transformation in Outsider Narratives*, 82 VA. L. REV. 69, 69 (1996) (describing the value of autobiography in legal scholarship); Taunya Lovell Banks, *Two Life Stories: Reflections of One Black Woman Law Professor*, 6 BERKELEY WOMEN'S L.J. 46 (1990) (offering two personal stories to illustrate the importance of life experiences in crafting one's point of view); Linda S. Greene, *Tokens, Role Models, and Pedagogical Politics: Lamentations of an African American Female Law Professor*, 6 BERKELEY WOMEN'S L.J. 81 (1990) (analyzing tokenism as a key barrier to self-actualization in legal academia).

22. *See* sources cited *supra* note 21.

23. WILLIAMS, *supra* note 21, at 3.

24. Many law schools rely on diversity as a proxy for antiracism. Both are mostly performative. *See* Carliss N. Chatman & Najarian R. Peters, *The Soft-Shoe and Shuffle of Law School Hiring Committee Practices*, 69 UCLA L. REV. DISCOURSE 2, 10–11 (2021) ("Diversity and inclusion in law schools is a way of talking and writing, but mostly theatre. There is always a litany of meetings and half-baked reporting—devoid of any process improvement or actual strategy. Schools host banquets, over-index photos of Black and Brown faculty and

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I. WHITENESS, AN INFRASTRUCTURE OF INJUSTICE

> Race, in fact, now functions as a metaphor so necessary to the construction of "Americanness" . . . .
>
> -Toni Morrison[25]

Race, legally and socially constructed, has shaped every American institution, including legal academia. Simply defined, Whiteness is "the state of being White."[26] But, in reality, Whiteness is complex. This Part examines the legal and social construction of Whiteness to provide the framework for Whiteness as an infrastructure of injustice in legal academia.

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students well above the actual numbers, and organize panels. There are deprioritized agenda items that gain importance only in a crisis. Speakers—so many speakers. Training—ill-conceived and ill-received trainings. All of this is for naught and mostly for show as fewer and fewer nonwhite faculty are hired outside of a small bubble of schools. The goal is to look like you care about diversity and inclusion without ever making any real and sustainable change.").

25. MORRISON, *supra* note 1, at 153.

26. IAN HANEY LÓPEZ, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE, at xxi (Richard Delgado & Jean Stefancic eds., 10th Anniversary ed. 2006).

A. ABOUT RACE

Race, however constructed, is a "master category" that has profoundly shaped the United States.[27] It has come to define how we characterize difference and inequality.[28] Racial formation is "the sociohistorical process by which racial identities are created, lived out, transformed, and destroyed."[29] Chattel slavery and Indigenous genocide are critical historical starting points for constructions of race in the United States, but racial meaning has been transformed over time.[30] Though often imprecise and arbitrary, racial categories are meaningful in how they strategically shape our interactions.[31] In this Article, I adopt Michael Omi and Howard Winant's definition of race: "Race is a concept, a representation or signification of identity that refers to different types of human bodies, to the perceived corporeal and phenotypic markers of difference and the meanings and social practices that are ascribed to these differences."[32] And racism involves "the production and maintenance of social structures of domination" based on race and without regard to invidious intent.[33] Applying these definitions, I understand that "White is not a monolithic or homogenous experience . . . . Instead, Whiteness is contingent, changeable, partial, inconstant, and ultimately social."[34]

B. LEGAL WHITENESS

A brief exploration of law and cases which determined citizenship by resolving questions of race exposes early legal

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27. *See* MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES 106 (3d ed. 2015) ("We assert that in the United States, *race is a master category*—a fundamental concept that has profoundly shaped, and continues to shape, the history, polity, economic structure, and culture of the United States.").

28. *Id.* at 106 (describing race as "the *template* of both difference and inequality").

29. *Id.* at 109.

30. *See id.* at 128 ("[R]ace has no fixed meaning, [but rather] it is constructed and transformed sociohistorically through the cumulative convergence and conflict of racial projects that reciprocally structure and signify race.").

31. *See id.* at 112 ("[D]espite its uncertainties and contradictions, the concept of race continues to play a fundamental role in structuring and representing the social world.").

32. *Id.* at 111.

33. *Id.* at 129.

34. HANEY LÓPEZ, *supra* note 26, at xxi.

constructions of Whiteness. The Immigration and Naturalization Act of 1790 expressly limited citizenship to "free white person[s]."[35] Thus, leading to a number of cases—including two that reached the U.S. Supreme Court—that tackled the issue of what it meant to be White and, in doing so, created legal definitions of Whiteness.[36] Courts relied on two dominant rationales: common knowledge and scientific evidence.[37] Common knowledge "rationales appealed to popular, widely held conceptions of races and racial divisions."[38] Scientific evidence rationales relied on "reasoning based on supposedly objective, technical, and specialized knowledge" to justify "racial divisions by reference to the naturalistic studies of humankind."[39] But, "[b]oth merely reported social beliefs about races."[40]

In *Ozawa v. United States*, the Court relied on common knowledge and scientific evidence rationales to determine that Takao Ozawa was not White and thus not eligible for citizenship.[41] Ozawa was born in Japan.[42] When he applied for citizenship on October 16, 1914, he was a resident of Hawaii.[43] After his petition was opposed by the U.S. District Attorney for the District of Hawaii, he appealed, and the Ninth Circuit Court of Appeals sought instruction from the Supreme Court on whether Ozawa was "a free white person" within the meaning of the Naturalization Act.[44] First, the Court concluded that a determination of race based on skin color was "impracticable as that differs greatly among persons of the same race."[45] Second, relying on

35. Naturalization Act of 1790, Pub. L. No. 1-3, 1 Stat. 103 (repealed 1795). Later variants of this Act retained the "free white person" requirement. *See* Naturalization Act of 1795, Pub. L. No. 3-20, 1 Stat. 414 (superseded 1798); Naturalization Act of 1798, Pub. L. No. 5-54, 1 Stat. 566 (repealed 1802); Naturalization Law of 1802, Pub. L. No. 7-28, 2 Stat. 153.

36. *See* HANEY LÓPEZ, *supra* note 26, at 3 ("From the first prerequisite case in 1878 until racial restrictions were removed in 1952, fifty-two racial prerequisite cases were reported, including two heard by the U.S. Supreme Court.").

37. *Id.*

38. *Id.* at 4.

39. *Id.*

40. *Id.* at 7.

41. *Id.* at 5 (citing Ozawa v. United States, 260 U.S. 178, 198 (1922)).

42. *Ozawa*, 260 U.S. at 189 ("The appellant is a person of the Japanese race born in Japan.").

43. *Id.*

44. *Id.* at 189–90 (describing the case's procedural history).

45. *Id.* at 197.

the common knowledge rationale, the Court determined that "the words 'white person' were meant to indicate only a person of what is popularly known as the Caucasian race."[46] Finally, relying on "scientific authorities," the Court justified the judicial determination that "the words 'white person' are synonymous with the words 'a person of the Caucasian race.'"[47] Thus, the Court held that Ozawa was "clearly of a race which is not Caucasian."[48]

In *United States v. Thind*, the Supreme Court changed course and relied solely on the common knowledge rationale to determine that Bhagat Singh Thind was not White and thus not eligible for citizenship.[49] After Thind was granted citizenship, the United States appealed on the ground that Thind was not a White person and therefore not entitled to naturalization; the Court provided instruction on whether "a high caste Hindu of full Indian blood, born at Amrit Sar, Punjab, India, [is] a 'white person' within the meaning of [the revised Naturalization Act]."[50] Relying on "popular meaning" and rejecting "scientific application," the Court ruled that "the term 'race' is one which, for the practical purposes of the statute, must be applied to a group of living persons *now* possessing in common the requisite characteristics."[51] Thus, it did not matter that Thind might share a common Caucasian ancestor, the statute referenced "words of common speech, to be interpreted in accordance with the understanding of the common man, synonymous with the word 'Caucasian' only as that word is popularly understood."[52] Post-*Thind*, common knowledge became the legal "racial meter of Whiteness."[53] Its focus on measuring race "in terms of what people believe"[54] highlights the social construction of the White

46. *Id.* (citing caselaw supporting this idea).

47. *Id.* at 198.

48. *Id.*

49. HANEY LÓPEZ, *supra* note 26, at 6 (citing United States v. Thind, 261 U.S. 204, 211 (1922)).

50. *Thind*, 261 U.S. at 206–07.

51. *Id.* at 209.

52. *Id.* at 204.

53. HANEY LÓPEZ, *supra* note 26, at 7.

54. *Id.*

race and demonstrates the interplay between law and society.[55] These cases highlight legal constructions of race in our immigration system that characterized constructions of race in other areas.

Legally, Whiteness has been constructed as morally superior,[56] property, contract, and power. In her seminal scholarship, *Whiteness as Property*, Cheryl Harris describes how Whiteness is a form of property acknowledged and protected by law.[57] She argues: "Whiteness—the right to white identity as embraced by the law—is property if by property one means all of a person's legal rights."[58] And concludes, "[t]he law's construction of whiteness defined and affirmed critical aspects of identity (who is white); of privilege (what benefits accrue to that status); and, of property (what *legal* entitlements arise from that status)."[59] Marissa Jackson Sow defines Whiteness as contract as "an agreement of the authors of the global settler colonial project, bargained-for amongst themselves to establish white supremacy, via the expropriation, extraction, and exclusive domination of real property, natural resources, human or other capital, and sociopolitical franchise."[60] Erika K. Wilson articulates how, from the foundation of this country, race-conscious laws were vital to the construction of race "in terms of rights and access to material resources and power" and in ways "that favored whites over everyone else."[61]

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55. *See id.* at 9 ("[R]ace is not an independent given on which the law acts, but rather a social construction at least in part fashioned by law." (internal citations omitted)).

56. Jones v. Alfred H. Mayer Co., 392 U.S. 409, 445 (1968) (Douglas, J., concurring) ("The true curse of slavery is not what it did to the black man, but what it has done to the white man. For the existence of the institution produced the notion that the white man was of superior character, intelligence, and morality. . . . While the institution has been outlawed, it has remained in the minds and hearts of many white men.").

57. *See generally* Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1709–10 (1993).

58. *Id.* at 1726.

59. *Id.* at 1725.

60. Marissa Jackson Sow, *Whiteness as Contract*, 78 WASH. & LEE L. REV. 1803, 1832 (2022).

61. Erika K. Wilson, *The Legal Foundations of White Supremacy*, 11 DEPAUL J. FOR SOC. JUST. 1, 6, 7 (2018) (citing Harris, *supra* note 57, at 1718).

C. SOCIAL WHITENESS

Socially, Whiteness is constructed as "power, privilege, and prestige."[62] It provides individual and systemic benefits, or privileges, for White people.[63] In a college Women's Studies course, I first encountered Peggy McIntosh's *White Privilege: Unpacking the Invisible Knapsack*, wherein she describes the many benefits of Whiteness by reflecting on everyday experiences.[64] She defines White privilege as "an invisible package of unearned assets which I can count on cashing in each day, but about which I was 'meant' to remain oblivious."[65] It is the privilege of thinking about life as "morally neutral, normative, and average, . . . and also ideal."[66]

Though they did not characterize them as privileges, the Supreme Court recognized the benefits of Whiteness in *Sweatt v. Painter*.[67] In 1946, Heman Sweatt was denied admission to the University of Texas Law School because he was Black.[68] Texas argued that Sweatt's exclusion did not violate the Equal Protection Clause because White people were excluded from the law school established for Black people just as Black people were excluded from the University of Texas Law School.[69] The Court rejected this argument and "identified tangible and intangible factors that were important to a quality education, factors that

62. Barbara J. Flagg, *Foreword: Whiteness as Metaprivilege*, 18 WASH. U. J.L. & POL'Y 1, 1 (2005).

63. *See generally id.* (discussing the authority and dominance of Whiteness).

64. *See* Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, PEACE & FREEDOM, July–Aug. 1989, at 10, 10 (identifying a list of twenty-six "daily effects of white privilege").

65. *Id.*; *see also* Martha R. Mahoney, *The Social Construction of Whiteness* ("Because the dominant norms of whiteness are not visible to them, whites are free to see themselves as 'individuals,' rather than as members of a culture."), *in* CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR 330, 331 (Richard Delgado & Jean Stefancic eds., 1997). *But see* Leslie Margolin, *Unpacking the Invisible Knapsack: The Invention of White Privilege Pedagogy*, COGENT SOC. SCIS., June 10, 2015, at 1, 1–9 (arguing that the practice of teaching White people to identify White privilege does not fight racism but instead makes White people complacent).

66. McIntosh, *supra* note 64, at 10.

67. Stephanie M. Wildman, *The Persistence of White Privilege*, 18 WASH. U. J.L. & POL'Y 245, 258 (2005) ("Court decisions have recognized privilege without naming it as such." (citing Sweatt v. Painter, 339 U.S. 629, 631 (1950))).

68. *Id.*; *Sweatt*, 339 U.S. at 631.

69. Wildman, *supra* note 67, at 258.

related to privilege."[70] While the "Court did not use the term privilege, it recognized its existence in the form of tangible factors, like faculty, courses, and library, and intangible factors such as faculty reputation, administration experience, alumni influence, school tradition, and prestige."[71]

As a "metaprivilege," Whiteness has the ability "to define the conceptual terrain on which race is constructed, deployed, and interrogated."[72] It is reinforced by material and sociocultural conditions.[73] Material conditions are those that, in ways primarily invisible, "create a world that privileges whiteness."[74] These include, for example, education, housing, and immigration policies.[75] Socio-cultural conditions—like language, societal practices, and thinking patterns—enable "whites to self-perpetuate as a dominant racialized identity, albeit a transparent one."[76]

D. AN INFRASTRUCTURE OF INJUSTICE

Legally and socially, Whiteness operates as an infrastructure of injustice for people who cannot claim its benefits. It "encompasses (1) a location of structural advantage; (2) a standpoint from which White people look at themselves, others and society; and (3) a set of normalized cultural practices."[77] Thus, Whiteness is an infrastructure of injustice for Black people because Black people "deviate from whiteness given their (1) lack of structural advantage, (2) standpoint as objects . . . of the white gaze, and (3) exclusion from normalized cultural practices."[78] As an

70. *Id.*

71. *Id.* at 259.

72. Flagg, *supra* note 62, at 2; *see also* YANCY, *supra* note 20, at xxx ("[W]hiteness is deemed the transcendental norm, the good, the innocent, and the pure, while Blackness is the diametrical opposite.").

73. *See* Wildman, *supra* note 67, at 248–57 (describing a variety of material and socio-cultural dynamics that reinforce the privilege of Whiteness).

74. *Id.* at 248.

75. *Id.* at 248–50.

76. *Id.* at 250–51; *see also id.* at 245 (referencing Barbara J. Flagg's "transparency phenomenon," the option White people have of not seeing themselves as raced (citing Barbara J. Flagg, "*Was Blind, but Now I See": White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953, 969 (1993))).

77. Rabelo et al., *supra* note 15, at 1843 (quoting Helena Liu, *Undoing Whiteness: The Dao of Anti-Racist Diversity Practice*, 24 GENDER, WORK & ORG. 457, 458 (2017) (internal quotation marks omitted)).

78. *Id.* at 1843 (speaking directly about Black women).

infrastructure of injustice, Whiteness operates to exclude, subordinate, and objectify Black people.

Legal academia is comprised of racial, racist, and antiracist projects. Racial projects formally and informally interpret racial meaning in the context of racialized structures to organize resources.[79] This Article is a racial project. A racial project is racist "if it *creates or reproduces structures of domination based on racial significations and identities*."[80] The long-standing policy and practice of excluding Black people from law schools is an example of a racist project,[81] though racist projects are often subtle, as described herein. Antiracist projects—"those that *undo or resist structures of domination based on racial significations and identities*"[82]—may help identify racist projects. For example, racial diversity as a goal of a faculty hiring committee and an institutional commitment highlights an antiracist project designed to undo the racist project of explicit exclusion of Black people from law school, which resulted in small numbers of Black people in the faculty applicant pool.[83]

Our history illustrates how Whiteness is an infrastructure of injustice for Black faculty. The 1990s Harvard Law School controversy over the lack of Black women on its faculty provides an example. In the spring of 1988, approximately fifty Black law

79. OMI & WINANT, *supra* note 27, at 125 (defining the work of racial projects as "simultaneously an interpretation, representation, or explanation of racial identities and meanings, and an effort to organize and distribute resources (economic, political, cultural) along particular racial lines").

80. *Id.* at 128.

81. Black people were denied admission to law school based on their race long after the Association of American Law Schools (AALS) resolved to end racial discrimination in law schools in 1950 and after *Brown v. Board of Education*, 347 U.S. 483 (1954). *See* Michael H. Cardozo, *Racial Discrimination in Legal Education*, *1950 to 1963*, 43 J. LEGAL EDUC. 79, 79–84 (1993) (discussing the struggle to end racial discrimination in the legal profession); *see also Virgil D. Hawkins Story*, UNIV. OF FLA. LEVIN COLL. OF L., https://www.law.ufl.edu/areas-of-study/experiential-learning/clinics/virgil-d-hawkins-story [https://perma.cc/W2AC-LUGH] (telling the story of one Black applicant's fight to be admitted to law school following *Brown v. Board of Education*).

82. OMI & WINANT, *supra* note 27, at 129.

83. *See, e.g.*, *infra* notes 85–99 and accompanying text (describing the effort of Black students at Harvard Law School to increase racial diversity amongst faculty).

students occupied the dean's outer office,[84] demanding "a commitment from the administration to hire 20 women or members of minority groups in the next four years as tenured or tenure-track professors."[85] Of those hires, students wanted at least seven to be Black, including four Black women.[86] They also demanded that the curriculum be expanded to include the experiences of women and people of color.[87] At that time, Harvard Law School had two Black male tenured professors.[88] Dean James Vorenberg could not promise a certain number of "minority" hires in a specific period of time, but said that he would consider establishing a graduate fellowship program designed to increase the number of law professors from underrepresented groups.[89] In 1989, Harvard Law students formed the Coalition for Civil Rights (CCR) "to address the lack of faculty diversity."[90]

But when there was no movement, Derrick Bell—Harvard Law School's first Black tenured professor—protested by refusing to teach until a Black woman was appointed as a tenured faculty member.[91] In 1992, Bell also filed a discrimination complaint against Harvard alleging that it disproportionately excludes Black women from the faculty.[92] That same year, a group

84. Allan R. Gold, *Blacks Hold Sit-In on Harvard Hiring*, N.Y. TIMES (May 11, 1988), https://www.nytimes.com/1988/05/11/us/blacks-hold-sit-in-on-harvard-hiring.html [https://perma.cc/8NAF-RVGD].

85. Allan R. Gold, *Black Students End Occupation of Office at Harvard Law School*, N.Y. TIMES (May 12, 1988), https://www.nytimes.com/1988/05/12/us/black-students-end-occupation-of-office-at-harvard-law-school.html [https://perma.cc/PT6N-Y6DE].

86. *Id.*

87. *Id.*

88. The total faculty size was fifty-seven. *See id.*

89. *Id.*

90. Philip Lee, *The Griswold 9 and Student Activism for Faculty Diversity at Harvard Law School in the Early 1990s*, 27 HARV. J. ON RACIAL & ETHNIC JUST. 49, 53 (2011).

91. Christopher B. Daly, *Harvard Law Students Demand Diverse Faculty*, WASH. POST (Apr. 25, 1990), https://www.washingtonpost.com/archive/politics/1990/04/25/harvard-law-students-demand-diverse-faculty/3a517e7b-6737-4231-92e7-e9dfa5a45d89 [https://perma.cc/WZ9B-Z4Y8]; Lee, *supra* note 90, at 54–55. *See generally* Derrick Bell, *A Law Professor's Protest* (describing the various ways that Bell protested racism in legal academia), *in* FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM 127, 127–46 (1992).

92. Mary Jordan, *Black Harvard Law Professor Files Discrimination Complaint Against School*, WASH. POST (Mar. 3, 1992), https://www.washingtonpost.com/archive/politics/1992/03/03/black-harvard-law-professor

of students known as the Griswold 9 staged an all-night sit-in in Griswold Hall, in the corridor outside then-Dean Robert C. Clark's office.[93] In the press, Clark attributed the protests to "self-esteem issues created by affirmative action policies."[94] Professor Charles Fried stated that the pool of qualified Black women was small.[95] And Associate Dean Louis Kaplow said that Harvard would have to "lower its standards" to hire a Black woman.[96] Ultimately, Bell would be fired for failing to return after his two-year leave.[97] In 1998, eight years after the student occupation, Lani Guinier became the first tenured Black woman on Harvard Law's faculty.[98]

Though certainly not alone at that time and arguably now, the early '90s Harvard Law School controversy was a microcosm of legal academia illustrating Whiteness as an infrastructure of injustice and racist projects at play. First, a curriculum that omits the experiences of people of color reflects a racist project wherein White people determine which legal, historical, and cultural narratives warrant importance. Such exclusion reflects the structural advantage of Whiteness. It also permits the status quo: a standpoint from which White people look at themselves, others, and society. Then, it validated the sentiment that there were no qualified Black women. Second, the fellowship considered by the Dean is an antiracist project designed to counteract the racist project of excluding Black people (and other racialized

-files-discrimination-complaint-against-school/81e99d62-369a-4fce-8258-1354a74e45b3 [https://perma.cc/6HFK-T3CP].

93. Lee, *supra* note 90, at 50.

94. *Id.* at 65 (citing L. Gordon Crovitz, *Rule of Law: Harvard Law School Finds Its Counterrevolutionary*, WALL ST. J., Mar. 25, 1992, at A13)).

95. Matthew S. Bromberg, *Harvard Law School's War Over Faculty Diversity*, 1 J. BLACKS HIGHER EDUC. 75, 79 (1993). Fried further argues that to be "qualified" is not enough to become a Harvard professor. *Id.* ("The concept of being qualified is totally irrelevant in this context . . . . We are trying to build a faculty of people who have extraordinary attainments, not of people who are qualified." (quoting Fried)).

96. WILLIAMS, *supra* note 21, at 5 (citing *The MacNeil/Lehrer News Hour* (Public Broadcasting Service television broadcast May 10, 1990)).

97. Caroline M. McKay, *Derrick Bell's Legacy*, HARV. CRIMSON (May 24, 2012), https://www.thecrimson.com/article/2012/5/24/derrick-bell-harvard-law [https://perma.cc/8EXX-XYYB] ("Since Bell did not return [after two years], he was fired."); Lee, *supra* note 90, at 82 ("Bell's refusal to teach his classes [was] construed by Harvard as a resignation from his tenured position." (internal citations omitted)).

98. Lee, *supra* note 90, at 83.

groups) from legal education. The practice of restricting hiring to graduates of elite law schools and former Supreme Court clerks was (and still is[99]) a racist project that reflects a set of normalized cultural practices that privilege White people.

In the following Parts, I provide examples of racist and antiracist projects to highlight the ways Whiteness is an infrastructure of injustice which operates in White space and through the White gaze to exclude, subordinate, and objectify Black faculty engaged in hallmarks of academic life: teaching, scholarship, and service.

II. WHITE SPACE

> Very few disciplines escape the impact of racial constructs.
>
> -Toni Morrison[100]

Legal academia is a White space. White space, a term recently popularized by sociologist Elijah Anderson:

> [I]s a perceptual category that assumes a particular space to be predominantly White, one where Black people are typically unexpected, marginalized when present, and made to feel unwelcome, a space that Blacks perceive to be informally "off-limits" to people like them and where on occasion they encounter racialized disrespect and other forms of resistance.[101]

Focusing on elite law schools, Wendy Leo Moore defined the White institutional space as one founded in a history of racist exclusion of people of color, which resulted in "white accumulation of economic and political power reaped from these institutions . . . [and] permitted an exclusively white construction of the norms, values, and ideological frameworks that organize these institutions."[102] Key to the reproduction of racism within the law school White space is the "[a]ssertion of law as a neutral

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99. *See* Sarah Lawsky, *Lawsky Entry Level Hiring Report 2024*, PRAWFSBLAWG (May 14, 2024), https://prawfsblawg.blogs.com/prawfsblawg/entry-level-hiring-report [https://perma.cc/YHZ4-Q2ZH] (analyzing reported law school faculty hires for 2024 and finding that 39% had received a JD from Yale, Harvard, Stanford, or NYU and 46% had at least one judicial clerkship experience).

100. MORRISON, *supra* note 1, at 203.

101. ELIJAH ANDERSON, BLACK IN WHITE SPACE: THE ENDURING IMPACT OF COLOR IN EVERYDAY LIFE 14–15 (2022).

102. WENDY LEO MOORE, REPRODUCING RACISM: WHITE SPACE, ELITE LAW SCHOOLS, AND RACIAL INEQUALITY 27 (2008).

and impartial body of doctrine unconnected to power relations."[103]

In prior scholarship, relying on the works of Anderson and Moore, I defined the law school White space as one characterized by the overwhelming presence of White people, the exclusion of Black people, and the embedding of White norms.[104] In the law school White space, Whiteness masquerades as invisible and is accepted as neutral.[105] I argued that fit, niceness, academic freedom, and tenure are White norms that operate to silence Black women through behaviors like White tears, microaggressions, self-sidelining, and invisible labor.[106] In another work, I described the embedded White norms by illustrating the ways Whiteness is regarded as neutral in the law school classroom.[107] Here, I expand existing legal scholarship about the law school White space with a focus on embedded White norms and resulting behaviors, namely the know-your-place aggression and complicit bias that are key aspects of legal academia's White space exhibited in the White gaze.

A. KNOW-YOUR-PLACE AGGRESSION

Koritha Mitchell describes know-your-place aggression as an "American tradition"[108] where "the success of marginalized groups inspires aggression as often as praise."[109] Know-your-place aggression is the "flexible, dynamic array of forces that

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103. *Id.* at 27 fig.1.2.

104. Renee Nicole Allen, *From Academic Freedom to Cancel Culture: Silencing Black Women in the Legal Academy*, 68 UCLA L. REV. 364, 371–72 (2021) [hereinafter Allen, *Academic Freedom*] (citing Elijah Anderson, *"The White Space,"* 1 SOCIO. RACE & ETHNICITY 10, 13 (2015)); *see also* Bennett Capers, *The Law School as a White Space*, 106 MINN. L. REV. 7, 21–41 (2021) (defining the law school White space by numbers, architecture, what law is taught, and how).

105. Allen, *Academic Freedom*, *supra* note 104, at 372 (citing MOORE, *supra* note 102, at 27 fig.1.2); *see also* YANCY, *supra* note 20, at xxx (stating that Whiteness is deemed the "transcendental norm").

106. Allen, *Academic Freedom*, *supra* note 104, at 374–94 (describing behaviors used to silence Black women in academia).

107. Renee Nicole Allen, *Get Out: Structural Racism and Academic Terror*, 29 WM. & MARY J. RACE, GENDER, & SOC. JUST. 599, 616–18 (2023) [hereinafter Allen, *Get Out*] (describing the ways Whiteness is neutral and often invisible in the law school curriculum).

108. Koritha Mitchell, *Identifying White Mediocrity and Know-Your-Place Aggression: A Form of Self-Care*, 51 AFR. AM. REV. 253, 254 (2018).

109. *Id.* at 258.

answer the achievements of marginalized groups" with physical and discursive violence.[110] "Any progress by those who are not straight, white, and male is answered by a backlash of violence—both literal and symbolic . . . that essentially says, *know your place!*"[111] Here, the accomplishment need not be spectacular to incite "white-authored violence" designed to check the progress of a marginalized person.[112] Undergirding such violence is the tendency to regard Whiteness as neutral. For example, when we pretend that Whiteness is unrelated to the function of institutions, we permit a manufacturing of default merit for White people "because whites are considered good without reference to actual standards."[113] The same is not afforded to people of color in White spaces who are often expected to exceed—not just meet—such standards.[114]

Know-your-place aggression functions to keep marginalized groups from "enjoying the rights and privileges of citizenship" and deny them "a sense of belonging within the community and the country."[115] Through microaggressions and physical violence, it sends the message that only White people have the right to occupy White spaces.[116] To combat this violence, she encourages two acts of self-care: (1) "identifying know-your-place aggression" and (2) "highlighting how often white mediocrity is treated as merit."[117] She notes: "Pretending that whiteness has

110. *Id.* at 253.

111. *Id.*

112. *Id.*

113. *Id.* at 256–57.

114. *See, e.g.*, discussion *supra* note 95 (describing the idea of "being qualified" as "totally irrelevant" in the context of Black women legal scholars).

115. Mitchell, *supra* note 108, at 261; *see also* Angela Mae Kupenda, *Facing Down the Spooks* ("Be our Negro means to act in ways some whites deem appropriate for black people to behave: obedient, submissive, and silent unless joking . . . . [A] pre-civil-rights Negro who knows her place . . . and stays in that place."), *in* PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA 20, 26 (Gabriella Gutiérrez y Muhs et al. eds., 2012).

116. *See, e.g.*, Mitchell, *supra* note 108, at 258 ("Lynching African Americans of achievement sent a terrorizing message to survivors in their families and the larger community: *know your place!*"); *id.* ("These messages are created and conveyed with microaggressions and bullying but they are also sent and received when someone is beaten or murdered and the response of authorities is to blame the victim . . . .").

117. *Id.* at 254.

nothing to do with how institutions function maintains the unjust status quo."[118]

Reflecting on the know-your-place aggression she experienced from White male students in the law school classroom, Adrienne Davis wrote, "[a]ll they see is a Black woman standing in front of them, and they need to not have their worldviews disrupted, need to make sure that you know your place."[119] In the context of responses to racialized stereotypes and the White norm of niceness, Frank Wu observes, "[t]o be polite is to know your place . . . . To be polite when people tell you that you are expected to be polite is just a reminder that there are certain constraints, that there is a certain etiquette, especially about race."[120] In response to a student who described her classroom as "out of control[,]" Patricia Williams received a know-your-place letter from an associate dean describing her conduct as "inappropriate 'trumping moves' . . . being employed to 'silence the more moderate members of the student body.'"[121] These are just a few examples of the ways know-your-place aggression operates to send the message that people of color are not welcome in the law school White space. Though subtle, Black law faculty and other faculty of color understand the tacit message know-your-place aggression sends and the system it intends to reinforce.

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118. *Id.* at 257.

119. Robert S. Chang & Adrienne D. Davis, *An Epistolary Exchange—Making Up Is Hard to Do: Race/Gender/Sexual Orientation in the Law School Classroom*, 33 HARV. J.L. & GENDER 1, 13 (2010).

120. Frank H. Wu, *Living Up to Our Ideals: What Race Means in Higher Education Now*, 48 U.S.F. L. REV. 327, 327 (2013) (reflecting on his experience with racist stereotypes of Asian Americans as polite).

121. WILLIAMS, *supra* note 21, at 21 (quoting the letter).

B. COMPLICIT BIAS

In the context of the Supreme Court's 2021 term and its *Dobbs v. Jackson Women's Health Organization* decision,[122] Michele Goodwin defines complicit bias as:

> (1) cognitive awareness of a past or present harm and conscious refusal to intercede with knowledge that the impact will prejudice another or others.
>
> (2) to feel or show an inclination of protection toward an individual or group based on relationship, affinity, or group characteristics.
>
> (3) further a harm through silence and inaction.[123]

Unlike implicit bias, complicit bias accounts for people who are "cognitively aware of the specific prejudice, discrimination, and injustice at issue . . . [but] fail to correct or acknowledge the discriminatory harms inflicted on vulnerable individuals despite awareness of the inappropriate, unethical, or illegal conduct."[124] Often, in the context of complicit bias, a focus on egregious acts of racism ignores "racism's adaptability and mutations"[125] and denies the "persistence of structural racism."[126]

Adopted by the Association of American Law Schools (AALS),[127] the Statement of Good Practices for the Recruitment and Retention of Minority Law Faculty Members encourages law faculties to be educated "about the nature of bias in today's law school environment and the obstacles that law faculty of color face . . . [including] double standards or extra scrutiny in reviewing their scholarship, extraordinary service burdens, and students' presumptions of teaching incompetence."[128] Additional retention best practices include active mentoring, creating a

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122. Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022).

123. Michele Goodwin, *Complicit Bias and the Supreme Court*, 136 HARV. L. REV. F. 119, 119 (2022).

124. *Id.* at 126–27.

125. *Id.* at 125.

126. *Id.* (quoting Khiara M. Bridges, *Race in the Roberts Court*, 136 HARV. L. REV. 23, 32 (2022)).

127. AALS is a non-profit association of 194 law schools with a mission to "uphold and advance excellence in legal education." *About AALS*, ASS'N OF AM. L. SCHS., https://www.aals.org/about [https://perma.cc/A5CW-DQQT].

128. ASS'N OF AM. L. SCHS., *Statement of Good Practices for the Recruitment & Retention of Minority Law Faculty Members*, *in* AALS HANDBOOK 125, 128 (2024) [hereinafter *Recruitment & Retention Statement*]. This statement was published in the AALS Handbook in as early as 2014. *See* ASS'N OF AM. L. SCHS., *Statement of Good Practices for the Recruitment and Retention of Minority Law Faculty Members*, *in* AALS HANDBOOK 137 (2014).

supportive environment, written expectations for tenure, and critical mass hiring.[129] Finally, tenured faculty should self-assess their law school's "past experiences with tenure-track hires of color and identify ways to improve their retention efforts," and law schools should consider the use of university or external resources in evaluating "their environments and their failures and successes with minority faculty retention."[130]

In 2020, many law schools expressed a recognition of anti-Black racism and made commitments to become antiracist.[131] Yet, despite a stated cognitive awareness of racial harms and stated commitments to protect Black people from them, law schools continue to rely on racist projects—like preferences for hyper-credentialed candidates, use of student evaluations in the promotion process, optional faculty attendance at racial equity trainings—in the recruitment and retention process. We see complicit bias in law schools when, for example, schools rely on numerical increases of racially diverse faculty members to lessen the effects of structural racism over time.[132] Policies that intend to racially diversify law school faculties often masquerade as antiracist but, without structural change, they are racist projects that perpetuate Whiteness as an infrastructure of injustice in the law school White space. Thus, even people of goodwill and intentions—those who acknowledge and understand the benefits of racial diversity—can exhibit complicit bias.[133] Complicit bias in the law school White space contributes to the physiological and psychological harms Black faculty experience when they encounter anti-Black racism.[134]

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129. *Id.* at 128 ("When law schools have only one or very few faculty members of color, a true culture of inclusiveness is difficult to achieve.").

130. *Id.*

131. *See generally* Danielle M. Conway et al., *Law Deans Antiracist Clearinghouse*, THE ASS'N OF AM. L. SCHS., https://www.aals.org/antiracist-clearinghouse [https://perma.cc/X5VB-6E6P] (suggesting a series of practices for law schools to address and fight racism).

132. *See* Goodwin, *supra* note 123, at 136 ("B]usinesses and industries assume that as workplaces become more numerically inclusive of women, . . . the behaviors that push women out and hold them back from advancement will lessen. In reality, such behaviors may actually worsen in some instances due to active complicit bias." (internal citations omitted)).

133. *See id.* at 127 (noting that complicit bias includes people with good intentions who fail to act).

134. *See, e.g.*, Adrien K. Wing, *And Still We Rise* (noting the premature deaths of prominent Black law professors Patricia Roberts Harris, Goler

Know-your-place aggression and complicit bias are behaviors that result from an acceptance of Whiteness as neutral and normal—embedded White norms—in legal academia. In the following Part, I define legal academia's White gaze and demonstrate how Whiteness is an infrastructure of injustice in the ways it operates to exclude, subordinate, and objectify Black faculty.

III. WHITE GAZE

> As though our lives have no meaning and no depth without the White gaze.
>
> -Toni Morrison[135]

In a 1973 *New York Times* review of *Sula*, Sara Blackburn proclaimed, "Toni Morrison is far too talented to remain only a marvelous recorder of the black side of provincial American life."[136] Without outright saying that Morrison needed to write about White people to gain broader acclaim, Blackburn suggested that Morrison would need to "address a riskier contemporary reality . . . [a]nd if she does this, . . . she might easily transcend that . . . limiting classification 'black woman writer' and take her place among the most serious, important and talented Amerinovelists now working."[137] Thus, implying that serious writers are ones who write about White people or do not limit their writing to Black people.

In a 1998 interview with Charlie Rose, Toni Morrison was asked about criticisms of her writing, chiefly that she only writes about race and the Black experience.[138] In response to accusations that she does not write about White people, Morrison responded, "[a]s though our lives have no meaning and no depth

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Butcher, Marilyn Yarbrough, Pamela Bridgewater, Hope Lewis, Jerome Culp, Clyde Ferguson, and Edwin "Rip" Smith), *in* PRESUMED INCOMPETENT II: RACE, CLASS, POWER, AND RESISTANCE OF WOMEN IN ACADEMIA 223, 227–28 (Yolanda Flores Niemann et al. eds., 2020); *see also* Lolita Buckner Inniss, *The Lucky Law Professor and the Eucatastrophic Moment* ("I also suffered from social and professional loneliness, as there were very few people at work with whom I had managed to become acquainted."), *in* PRESUMED INCOMPETENT II: RACE, CLASS, POWER, AND RESISTANCE OF WOMEN IN ACADEMIA, *supra*, at 23, 28.

135. *Toni Morrison*, *supra* note 14.

136. Sara Blackburn, *Sula*, N.Y. TIMES (Dec. 30. 1973), https://www.nytimes.com/1973/12/30/archives/sula-by-toni-morrison-174-pp-new-york-alfred-a-knopf-595.html [https://perma.cc/L2YX-Z57N].

137. *Id.*

138. *Toni Morrison*, *supra* note 14.

without the White gaze. And I've spent my entire writing life trying to make sure that the White gaze was not the dominant one in any of my books."[139] In 2001, speaking about how important it was to write authentically in a Black voice, Morrison said, "I knew I could not dupe Black readers."[140] She further described the White gaze as "so debilitating, so hurtful . . . a burden."[141] And so, Morrison courageously determined to thrive without regard to the White gaze.[142] In *Academic Whispers*, she wrote, "[a]s an already and always raced writer I knew I would not, could not, reproduce the master's voice along with its assumptions of the all-knowing law of the white father."[143]

White gaze is connected to a racialized history wherein the White body politic has perpetually demonstrated disregard for Black humanity.[144] According to George Yancy, it is a history of "a country that legally sanctions the thesis that Black lives don't matter—unless, of course, they serve the interests and desires of white power."[145] In White spaces, Whiteness is the transcendental norm for humanity,[146] and Black bodies are "situated within a history . . . that is racially oppressive and violent."[147] Thus, in White spaces, Black people carry the "historical weight" of a White gaze that deems their very being deviant (from the White norm).[148] Because space is considered racially neutral, the

139. *Id.*

140. The Connecticut Forum, *Toni Morrison on Writing for Black Readers Under the White Gaze*, YOUTUBE (May 4, 2001), https://www.youtube.com/watch?v=oP_-m7V58_I.

141. *Id.*

142. *Id.* ("So I determined to write outside that gaze and that there would be no token white vision in the book at all.").

143. MORRISON, *supra* note 1, at 199.

144. YANCY, *supra* note 20, at 2–3 (discussing the disregard for Black lives from White policing forces).

145. *Id.* at 254.

146. *Id.* at 3 ("[W]hiteness [is] the transcendental norm, leaving whiteness unmarked, unraced, and as the human *simpliciter*.").

147. *Id.* at 7.

148. YANCY, *supra* note 20, at 6 ("[White violence on Black bodies] is based upon racial and racist . . . assumptions about the Black body itself, a body that is 'criminal,' 'scary,' 'demonic.'" (citing Judith Butler, *Endangered/Endangering: Schematic Racism and White Paranoia*, *in* READING RODNEY KING, READING URBAN UPRISING 15, 19 (1993))).

everyday oppression Black people experience is often subtle.[149] But from lynching to police killings of unarmed Black people, the White gaze has exhibited as a violent demonstration of White supremacist violence.[150]

White gaze describes seeing people through the lens of Whiteness.[151] It is "a set of practices by which whiteness regulates people's routines, rituals, rules, roles, and relationships."[152] In White spaces, the White gaze operates by encouraging people "to adhere to white-centered norms and standards."[153] It "communicates whiteness and reinforces white supremacy"[154] by controlling movement, speech, emotion, and every aspect of being. When Black people fail to conform to spoken and unspoken White norms, they are scrutinized and penalized. In the workplace, embodiment theory—the experience and perception of bodies through a racialized lens—helps us understand whose work is deemed acceptable "in contexts where whiteness is embedded and normalized."[155]

White gaze racializes Black people through discursive and social practices which perpetuate White supremacy.[156] In organizations, it manifests through four mechanisms wherein whiteness is imposed, presumed, venerated, or forced.[157] When the White gaze is imposed, "white norms are expected of and placed on everyone."[158] Tone policing and Eurocentric beauty standards are dominant practices of the imposed White gaze.[159] When the White gaze is presumed, "whiteness is assumed, taken for

149. *Id.* at 8 (noting that oppression may be generated through "bodily responses, facial expressions, and linguistic utterances" (quoting Dan Flory, *Imaginative Resistance, Racialized Disgust, and* 12 Years A Slave, 19 FILM & PHIL. 75, 79 (2015))).

150. *Id.* at 4–5, 244, 248–59 (demonstrating how the White gaze resulted in death for Eric Garner, Sandra Bland, Renisha McBride, and Trayvon Martin).

151. *See supra* notes 14–15 and accompanying text.

152. Rabelo et al., *supra* note 15, at 1842.

153. Gassam Asare, *supra* note 16.

154. Rabelo et al., *supra* note 15, at 1843.

155. *Id.* at 1842.

156. *Id.* at 1843 (explaining how practices of the White gaze are both "conveyed and interpreted through texts" (discursive) and "enacted in everyday life" (social)).

157. *Id.* at 1845 fig.1.

158. *Id.*

159. *Id.* at 1846–48 (discussing how the White gaze is imposed through display rules and beauty standards to control Black bodies and expression).

granted, and viewed as default."[160] In practice, it operates to legitimize members of an organization based on their proximity to whiteness and by depersonalizing Black people.[161] White gaze is venerated when "whiteness is valued, idolized, celebrated, and preferred."[162] This practice manifests when whiteness is deemed superior and essentialized.[163] And finally, the White gaze is forced when "whiteness is an authoritative entity that exerts control."[164] We see this when whiteness manifests as entitlement, exploitation, or endangerment of Black people.[165] It's important to note that while these practices "are not always enacted consciously but [as] the result of years of white racism calcified and habituated within the bodily repertoire of whites, whites are not exempt from taking responsibility for the historical continuation of white racism."[166]

Legal scholarship has explored the White gaze in various contexts. Analyzing the gendered politics of the Black family, Teri A. McMurtry-Chubb defines the White gaze as "an implicit analytical framework that normalizes whiteness and compares all non-whites to widely held White cultural norms and postulated beliefs."[167] In analyzing Supreme Court decisions, john a. powell identifies an important aspect of the White gaze: "Part of the White gaze is making the racial Other the racial Other without seeing how that also helps to constitute Whiteness. . . . [which] normalizes Whiteness [and] places the impossible burden on the racial Other to become equal by becoming

160. *Id.* at 1845 fig.1.

161. *See id.* at 1848–49 (describing Black people's roles as unrecognized and their individuality stripped because Whiteness serves as the presumed default).

162. *Id.* at 1845 fig.1.

163. *Id.* at 1849–50 (discussing the use of "subtyping" whereby Black people are presumed to be incompetent and then, if shown to have counter-stereotypical traits, are deemed "exceptional").

164. *Id.* at 1845 fig.1.

165. *Id.* at 1850–51 (scrutinizing how the White gaze manifests as entitlements to Black women's time, space, and bodies; exploitative practices in which Black women are viewed as having limitless support capacity; and endangerment of Black women for others' entertainment).

166. YANCY, *supra* note 20, at xxxiii.

167. Teri A. McMurtry-Chubb, *"Burn This Bitch Down!": Mike Brown, Emmett Till, and the Gendered Politics of Black Parenthood*, 17 NEV. L.J. 619, 636 (2017) (internal citations omitted).

like Whites—that is, raceless."[168] In an analysis of the ways Black and BlaQueer bodies are scrutinized, T. Anansi Wilson describes the White norm of manners as "the method of performance, or embodiment of servitude, that bends Black appearance . . . and personhood to the will and desires of the white gaze."[169] In her critique of objective legal concepts and actors, Patricia Williams writes that they "are all versions of this Idealized Other whose gaze provides us either with internalized censure or externalized approval; internalized paralysis or externalized legitimacy; internalized false consciousness or externalized claims of exaggerated authenticity."[170]

Here, building on concepts discussed herein, I adopt a broad definition of the White gaze: White gaze is the operational norm of White space wherein Black people are scrutinized through the lens of Whiteness, resulting in their exclusion, subordination, and objectification. This Part examines the ways legal academia's White gaze is an infrastructure of injustice for Black faculty engaged in the hallmarks of academic life: teaching, scholarship, and service.

A. TEACHING

> The construction of race and its hierarchy have a powerful impact on expressive language . . . .
>
> -Toni Morrison[171]

Teaching is an expression of language and self. Law school faculty members are responsible for preparing for and teaching classes, hosting office hours, and assessing student performance.[172] The accreditation standards outlined by the American

168. john a. powell, *Whites Will Be Whites: The Failure to Interrogate Racial Privilege*, 34 U.S.F. L. REV. 419, 427 (2000).

169. T. Anansi Wilson, *The Strict Scrutiny of Black and BlaQueer Life*, 48 HASTINGS CONST. L.Q. 181, 195 (2020).

170. WILLIAMS, *supra* note 21, at 9.

171. MORRISON, *supra* note 1, at 271.

172. Section of Legal Educ. & Admissions to the Bar, *Standards and Rules of Procedure for Approval of Law Schools 2023–2024*, AM. BAR ASS'N 30 [hereinafter *ABA Standards*], https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2023-2024/2023-2024-aba-standards-rules-for-approval.pdf [https://perma.cc/R48Y-9L9H].

Bar Association (ABA)[173] require law school faculty members to "possess a high degree of competence, as demonstrated by academic qualification . . . [and] teaching effectiveness."[174] ABA Standard 403(b) makes law schools responsible for ensuring teaching effectiveness.[175] Its interpretation of this standard provides that law schools may ensure teaching effectiveness through various methods, including class visits, critiques of videotaped teaching, and institutional review of student course evaluations.[176] ABA Standard 405 and its interpretations require law schools to have a comprehensive system of evaluation, reflected in written criteria; a written policy regarding academic freedom; and promotion procedures based on principles of fairness and due process.[177] The AALS Bylaws ("Bylaws") and the AALS Statement of Good Practices for Law Professors in the Discharge of Ethical and Professional Responsibilities ("Responsibilities Statement") echo the requirements and guidance outlined by the ABA.[178] But the AALS Statement of Good Practices for Recruitment & Retention of Minority Law Faculty Members ("Recruitment & Retention Statement") recognizes the ways bias results in "obstacles" for "faculty of color," including "student's' presumptions of teaching incompetence."[179]

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173. Law school programs in the United States are accredited by the "Council of the ABA Section of Legal Education and Admissions to the Bar." Section of Legal Educ. & Admissions to the Bar, *Guide to Schools Seeking ABA Approval*, AM. BAR ASS'N, https://www.americanbar.org/groups/legal_education/accreditation/schools-seeking-aba-approval [https://perma.cc/6SRB-FVRW].

174. *ABA Standards*, *supra* note 172, at 29.

175. *Id.* at 30 ("A law school shall ensure effective teaching by all persons providing instruction to its students.").

176. *Id.*

177. *Id.* at 31.

178. *See* ASS'N OF AM. L. SCHS., *Bylaws*, *in* AALS HANDBOOK 49, 60 (2024) [hereinafter *Bylaws*] ("Competence shall be determined in the aggregate, with emphasis upon . . . [q]uality of teaching . . . ."); ASS'N OF AM. L. SCHS., *Statement of Good Practices by Law Professors in the Discharge of Ethical and Professional Responsibilities*, *in* AALS HANDBOOK 103, 114 (2024) [hereinafter *Responsibilities Statement*] ("Law professors should aspire to excellence in teaching and to mastery of the doctrines and theories of the subjects they teach. They should prepare conscientiously for class and employ teaching methods appropriate for the subject matters and objectives of their courses.").

179. *Recruitment & Retention Statement*, *supra* note 128, at 128–29 ("Studies show that minority faculty members, particularly women of color, are more harshly judged than majority faculty members for the same work in student evaluations.").

Most law schools rely on two methods to evaluate the quality of faculty teaching: peer review and student evaluations.[180] These evaluations are considered in the promotion process and in determining salary increases and fringe benefits.[181] These methods often fail to account for the presumption of teaching incompetence held by students and faculty colleagues against Black faculty members.[182] Focusing primarily on student evaluations, this Section illustrates the ways Whiteness is imposed through tone policing and Eurocentric beauty norms. Here, I argue that the White gaze operates to exclude, subordinate, and objectify Black faculty members whose teaching is evaluated through the lens of Whiteness in the law school White space.

Legal scholarship has extensively explored bias in student evaluations.[183] Simply put, "course evaluations give students a

180. William A. Wines & Terence J. Lau, *Observations on the Folly of Using Student Evaluations of College Teaching for Faculty Evaluation, Pay, and Retention Decisions and Its Implications for Academic Freedom*, 13 WM. & MARY J. WOMEN & L. 167, 169 (2006) ("At virtually all American universities . . . faculty members are evaluated . . . on their scholarship and service contributions by their peers. When it comes to teaching . . . faculty members are usually evaluated anonymously by their students.").

181. *See id.* at 170–71 (discussing how university administrators use student evaluation results to make key personnel decisions).

182. *See, e.g.*, Jacquelyn Bridgeman, *"Still I Rise"* ("[M]y teaching received less value during my evaluation for tenure due to race . . . . I was able to witness firsthand how several of my colleagues '. . . postulated that the students liked me because I was too easy on them and too helpful—an assessment made despite the fact that evaluation after evaluation described me as challenging and demanding and my classes as some of the hardest the students had taken in law school."), *in* PRESUMED INCOMPETENT II: RACE, CLASS, POWER, AND RESISTANCE OF WOMEN IN ACADEMIA, *supra* note 134, at 13, 15; Inniss, *supra* note 134, at 29 ("One of my senior colleagues began shadowing me, polling my students, discussing my competence with other faculty members, going through my trash, reviewing my already graded and submitted examinations and, worst of all, standing outside my classroom while I taught . . . . He [later] told me that he had been talking to students, trying to determine why they hated me so much.").

183. *See, e.g.*, Pamela J. Smith, *Teaching the Retrenchment Generation: When Sapphire Meets Socrates at the Intersection of Race, Gender, and Authority*, 6 WM. & MARY J. WOMEN & L. 53, 105 (1999) (discussing the difficulties Black professors face when student evaluations are "infected with racist and sexist bias"); Pedro A. Malavet, *The Accidental Crit III: The Unbearable Lightness of Being . . .* Pedro?, 22 RUTGERS RACE & L. REV. 247, 270–71 (2021) (citing a report which found that Black faculty receive lower ratings on student evaluations than their White counterparts). *See generally* Deborah J. Merritt, *Bias, the Brain, and Student Evaluations of Teaching*, 82 ST. JOHN'S L. REV. 235

risk-free opportunity to convey biases anonymously."[184] This is particularly true for Black women, who often receive comments that critique their attire, speech, and demeanor.[185] When Black women are critiqued for their appearance instead of the substance of their teaching, the critiques are often framed through the lens of White beauty norms.[186] These "norms. . . reflect and privilege Eurocentric aesthetics, including body shapes, skin tone, and hair texture."[187] "Eurocentric paragons of beauty, such as having long hair, light skin, and few Afrocentric features . . . correspond[] with favorable work outcomes regarding . . . professionalism[] and 'fit' into the dominant work culture."[188] Knowing that they are subject to the White gaze, Black women "must devote time and attention to their personal appearance before walking into the classroom, in a way that few other faculty members do."[189] Patricia Williams expressed her awareness of the White gaze and White beauty norms:

> [I] dress myself increasingly with reference to their imagined conversations. . . . I redress myself, long hours in the mirror every morning, wondering what my students will think, trying to see myself as they

(2008) (analyzing the faults of the student evaluation system and adjustments that should be made to decrease opportunity for unconscious social stereotyping); Therese A. Huston, *Race and Gender Bias in Higher Education: Could Faculty Course Evaluations Impede Further Progress Toward Parity?*, 4 SEATTLE J. FOR SOC. JUST. 591 (2006) (analyzing the current state of gender and racial equity in student admission and graduation rates and among university faculty, and how faculty course evaluations result in problematic bias against faculty of color); Gregory S. Parks, *Race, Cognitive Biases, and the Power of Law Student Teaching Evaluations*, 51 UC DAVIS L. REV. 1039 (2018) (exploring how cognitive biases skew student evaluations of teaching and suggesting interventions for law faculty of color to navigate classroom dynamics); Meera E. Deo, *A Better Tenure Battle: Fighting Bias in Teaching Evaluations*, 31 COLUM. J. GENDER & L. 7 (2015) (arguing that legal institutions should fight bias in teaching evaluations by getting rid of them, modifying them, or supplementing them with more rigorous and less discriminatory forms of evaluation).

184. MEERA E. DEO, UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA 68 (2019).

185. *See id.* (providing illustrative examples of comments students made in evaluations that were focused on appearance and style rather than learning opportunity).

186. Wing, *supra* note 134, at 227 ("[M]ost Black women do not fit the Barbie image, and may deal with a lifetime of negativity on account of their skin color, hair, nose, size, and so on.").

187. Rabelo et al., *supra* note 15, at 1847.

188. *Id.* (internal citations omitted).

189. DEO, *supra* note 184, at 69.

> must see me; trying to make myself over in a way that will make them like me more.[190]

With a similar awareness, Ruth Gordon wrote, "I had many questions, several that I could only ask another sister. Could I wear braids? Would it hurt my chances for tenure, alienate my colleagues or students?"[191] And even still, the White gaze objectifies their physical characteristics when they do not or cannot conform to White beauty norms.

In her groundbreaking work, C.R.O.W.N. Act architect D. Wendy Greene argued that race-based discrimination under Title VII must include mutable and immutable characteristics like hair.[192] Title VII of the Civil Rights Act prohibits employment discrimination on the basis of race,[193] and the C.R.O.W.N. Act prohibits race-based hair discrimination.[194] Yet, the White gaze objectifies, excludes, and subjugates Black faculty when teaching is evaluated through White beauty norms that are critical of Black hair textures or protective hairstyles like braids, locs, or twists.[195] It's important to note that few law schools have formal grooming or appearance policies that apply to faculty members. However, ingrained White-normed ideas of professionalism are imposed by students when evaluating Black faculty. Thus, a law student "may walk into a class with preconceived notions about what an 'authentic' law professor should look like."[196] While state law has evolved to recognize the stigmatizing effect of

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190. *See* WILLIAMS, *supra* note 21, at 209.

191. Ruth Gordon, *On Community in the Midst of Hierarchy (and Hierarchy in the Midst of Community)*, *in* PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA, *supra* note 115, at 313, 320.

192. D. Wendy Greene, *Title VII: What's Hair (and Other Race-Based Characteristics) Got to Do with It?*, 92 U. COLO. L. REV. 1276, 1305–06 (2021) ("If courts viewed the definition of race from a historical and contemporary social perspective, courts would have to acknowledge that race encompasses more than 'immutable characteristics' and is not an absolute or stable construct. . . . [C]ourts could no longer preclude a finding of race discrimination simply because non-African-Americans can also 'perform' or 'adopt' the racial characteristic.").

193. *Id.* at 1276; 42 U.S.C. § 2000e-2.

194. The C.R.O.W.N. Act is law in twenty-seven states. *See Creating a Respectful and Open World for Natural Hair*, CROWN ACT, https://www.thecrownact.com/about [https://perma.cc/MP5N-YYSY].

195. *See, e.g.*, Bridgeman, *supra* note 182, at 14 (wondering if the "honeymoon" phase with faculty colleagues would have been extended "if I had continued to straighten my hair").

196. Parks, *supra* note 183, at 1055.

preferences for certain race-based conduct or characteristics,[197] law schools have failed to meaningfully account for the ways Black people experience the White gaze through teaching evaluations, thus demonstrating their complicit bias.[198]

Through tone policing, the White gaze imposes Whiteness via display rules, "the racialized feeling rules that reflect white norms and regulate minoritized workers' emotional expression."[199] Because of the White gaze "[s]tudents may evaluate the style and method of white professors as normative. The same conduct by a professor of color may elicit frustration and hostility."[200] "[S]tudies have shown that people more quickly perceive anger and hostility on black faces than on white faces . . . ."[201] Black faculty experience tone policing from students and colleagues. In evaluations and complaints to law school administration, Black faculty—myself included—are often accused of being "racist against White students."[202] When students comment about feeling "afraid"[203] of Black faculty or that Black faculty are "angry," they express animus based on racial stereotypes.[204]

197. CROWN Act legislation relies on Greene's expanded definition of race which includes race-based characteristics. *See* Greene, *supra* note 192, at 1279, 1303–04 (arguing courts should look to historical and contemporary social perspective to determine if the plaintiff experienced stigmatic harm based on a physical appearance or behavior constitutive of race).

198. *See* sources cited *supra* note 183.

199. Rabelo et al., *supra* note 15, at 1846 (internal citations omitted).

200. Parks, *supra* note 183, at 1048.

201. *Id.* at 1052; Kupenda, *supra* note 115, at 22 ("[T]he major troubling point they expressed was that they were scared of my face when I was serious as we discussed the law. Many suggested if I came into class and gave them a big, warm smile every morning and continued smiling throughout the class, then perhaps they could accept me—a black female teacher—better.").

202. An actual student comment I received on a recent course evaluation. *See also* DEO, *supra* note 184, at 70 (describing many incidents of Black faculty receiving comments with racist undertones, including comments stating the professor "doesn't like white people").

203. *See id.* at 64.

204. *Id.* at 76 (providing examples of student evaluation comments that "voice a suspicion based in racial animus . . . that [the professor] may not be qualified to teach them"); Parks, *supra* note 183, at 1050 ("When I first came into this class and saw my teacher, I thought he was going to [be] mean and a hard teacher . . . . I think I felt this way because he was a rather large, Black man." (alteration in original)).

Aware of tone policing, Black faculty may consciously and subconsciously monitor their expression.[205]

Comments that explicitly state or imply that Black faculty are "affirmative action" hires who do not deserve their positions and are unqualified to teach them signal presumed incompetence.[206] Black faculty often receive comments regarding their lack of intelligence, knowledge of the subject matter, and preparation.[207] They also more often have students challenge their knowledge and authority directly during classroom exchanges in ways White colleagues do not.[208] And they experience scrutiny when teaching courses about race in ways that their White

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205. ELIZABETH LEIBA, I'M NOT YELLING: A BLACK WOMAN'S GUIDE TO NAVIGATING THE WORKPLACE 48 (2022) ("I was quick to second-guess myself in my interactions in predominantly white spaces, checking the volume of my voice, my facial expressions, and my mannerisms. I didn't want to appear too animated. I didn't want those I engaged with to feel threatened.").

206. Student comments demonstrate suspicion based on racial animus for Black male faculty: "Maybe he doesn't know this material particularly well, after all its not his research. And he's a new professor." *See* DEO, *supra* note 184, at 70, 76; *see also* WILLIAMS, *supra* note 21, at 115 ("When some first-year law students walk in and see that I am their contracts teacher, I have been told, their whole perception of law school changes."); Bridgeman, *supra* note 182, at 19 ("The year before I was to come up for tenure [a colleague] came into my office and explained to me that I was having trouble because everyone had supposed I was an affirmative action hire and so even before I took the job they assumed I wasn't qualified."); Adrien Katherine Wing, *Lessons from a Portrait: Keep Calm and Carry On* ("I remember some student comments: 'I know we have to have affirmative action, but do we have to have her?' 'I'll never give a dime if we have professors like that around!'"), *in* PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA, *supra* note 115, at 356, 356.

207. *See* DEO, *supra* note 184, at 70–71 (describing instances in which a Black professor received comments stating she was not very smart or prepared).

208. *See, e.g.*, *id.* at 63–64 (accounting for first-hand experiences of Black professors being confronted and challenged in class); Njeri Mathis Rutledge, *It's Exhausting to Be a Black Woman. Just Ask Supreme Court Nominee Ketanji Brown Jackson*, YAHOO (Mar. 21, 2022), https://www.yahoo.com/entertainment/exhausting-black-woman-just-ask-090126955.html [https://perma.cc/FP7Q-5GT2] (commenting on the exhausting nature of gendered racism for Black woman law professors, particularly a student asking what qualified her to teach law); Bridgeman, *supra* note 182, at 14 ("[W]hen one of my students addressed me by my first name without permission within a few weeks of the start of my first semester, [it became clear] that the imprimatur of respect and deference afforded by virtue of standing in front of the class and being called professor did not apply to me.").

colleagues do not.[209] Students regularly complain to administrators that they were assigned to the "Black professor."[210] When Black women are presumed incompetent, students often rely on racist stereotypes, especially Sapphire, "a stereotypical myth that exploits the public's fear of, disrespect for, and denigration of Black women, especially their intelligence."[211] Writing on the challenges of teaching the "Retrenchment Generation,"[212] Pamela Smith notes a "presumption of incompetence that inflexibly presumes that all professional Black women are angry, threatening, intimidating, and unintelligent."[213] They are also stereotyped as other-mothers or service workers more often than professors.[214]

Black law faculty have written candidly about their harmful experiences under the White gaze. Patricia Williams effectively captures the effect of the White gaze in her reflections on student evaluations she received in her ninth year of law teaching. She writes: "They are awful, and I am devasted. The substantive ones say that what I teach is 'not law.' The nonsubstantive evaluations are about either my personality or my physical features. . . . I am condescending, earthy, approachable, and arrogant."[215] She continues, "anonymous student evaluations speculating on dimensions of my anatomy are nevertheless counted into the statistical measurement of my teaching proficiency. I am expected to woo students even as I try to fend them off; I am supposed to control them even as I am supposed to manipulate them into loving me."[216] She notes that the evaluations

209. In receiving feedback on this draft, White faculty members commented that they feel confident that when they talk about race students will give them grace.

210. *See, e.g.*, DEO, *supra* note 184, at 64 ("After [a Black professor's] very first class meeting, a 'big group' of students were so 'up in arms' about her being their professor that they complained to the assistant dean.").

211. Smith, *supra* note 183, at 55.

212. *Id.* ("The Retrenchment Generation is defined by the synergism that is created by racial isolation, particularly in the educational arena, retrenchment fervor, and . . . the presumption of incompetence [of Black women in academia] . . . .").

213. *Id.*

214. *See* DEO, *supra* note 184, at 67–68 (recounting experiences where professors of color were expected to change their pedagogical approach and treated as if they belong in a caretaking role).

215. WILLIAMS, *supra* note 21, at 95.

216. *Id.* at 95–96.

are particularly personally harmful because she is the first Black woman law professor at her institution.[217]

In *A Hair Piece*, Paulette M. Caldwell reckons with the "traditional boundaries in academic discourse between the personal and the professional" as she navigates a classroom discussion of *Rogers v. American Airlines*, a case which failed to recognize race-based discrimination in an employer grooming policy that discouraged braided hairstyles.[218] Though she acknowledged no formal requirement to discuss her braided hairstyle, she was challenged because "by legitimizing the notion that the wearing of any and all braided hairstyles in the workplace is unbusinesslike, *Rogers* delegitimized me and my professionalism."[219] She candidly reflected that she avoided discussion because she was wearing braids and "resented being the unwitting object of one in thousands of law school hypotheticals,"[220] and she was not "prepared to suffer publicly . . . the pain and outrage . . . experience[d] each time a black woman is dismissed, belittled, and ignored simply because she challenges our objectification."[221] She noted:

> Black women bear the brunt of racist intimidation resulting from western standards of physical beauty. This intimidation begins early . . . [,] continues throughout adulthood, and causes immeasurable psychological injury and dignitary harm. Such intimidation also is a crucial instrument to limit the economic and social position of black women.[222]

As a Black woman, I have a particular appreciation for the honest reflections of Black law faculty who have challenged the White gaze in legal scholarship. Throughout my fourteen years in legal academia, I have also experienced the harmful effects of the White gaze in my student evaluations and in interactions

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217. *Id.* at 97.

218. Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 DUKE L.J. 365, 366–69 (1991) (citing Rogers v. Am. Airlines, Inc., 527 F. Supp. 229 (S.D.N.Y. 1981)).

219. *Id.* at 369; *see also* Angela Onwuachi-Willig, *Silence of the Lambs* ("I also was afraid to expose too deeply—to witness too boldly—my students' lack of understanding and awareness about black women and their experiences—our hair, our wants, our burdens in living up to an appearance ideal that is rooted in a white female norm."), *in* PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA, *supra* note 115, at 142, 147.

220. Caldwell, *supra* note 218, at 368.

221. *Id.* at 369.

222. *Id.* at 383.

with students who have presumed that I was incompetent because of my race and gender. The instances are too many to recount in detail, but they echo those described in this Section, reflecting the imposition of Whiteness through Eurocentric beauty norms, tone policing, and implying a presumption of incompetence. The most traumatic are the most memorable. An anonymous student comment on an early career course evaluation said: "If she put as much into the course as she did her looks, it would be great." A few years ago, a White male student told me that I had a "chip on my shoulder." On multiple occasions when I have expressed anger or disappointment in these harmful interactions to colleagues, I have been tone-policed and characterized as "too sensitive." And on more than one occasion, a White colleague has told me that I was "articulate" as if a law professor would be anything less.

B. SCHOLARSHIP

> [T]he problem of being free to write the way you wish to without this other racialized gaze is a serious one for an African American writer. . . .
>
> -Toni Morrison[223]

Even when written criteria appear objective, the process of evaluating faculty scholarship is racialized. In addition to teaching, law school faculty members demonstrate competence through scholarship.[224] Per ABA Standard 404, "[e]ngaging in scholarship, as defined by the law school" is a core responsibility of a full-time faculty member.[225] The Bylaws provide that "scholar[ship] interests and performance" is a criterion on which faculty competence shall be judged.[226] Regarding law professor responsibilities, the Responsibilities Statement requires law professors to engage in research and publish as part of their participation "in an intellectual exchange that tests and improves their knowledge of the field, to the ultimate benefit of their students, the profession, and society."[227] The Recruitment & Retention Statement recognizes the ways bias results in "double

223. *Toni Morrison*, *supra* note 14.

224. *ABA Standards*, *supra* note 172, at 30 (listing responsibilities of full-time faculty).

225. *Id.*

226. *Bylaws*, *supra* note 178, at 60.

227. *Responsibilities Statement*, *supra* note 178, at 116.

standards or extra scrutiny" in the review of "minority" faculty scholarship.[228]

Methods for evaluating faculty scholarship vary but include internal and external peer review. The regard for faculty scholarship is influenced by norms of legal scholarship and rank of publication. Focusing on norms of legal scholarship, this Section illustrates how Whiteness is presumed and venerated. Here, I argue that the White gaze operates to exclude, subordinate, and objectify Black faculty members whose scholarship is evaluated through the lens of Whiteness in the law school White space.

Whiteness is the "norm" in normative legal scholarship. It is the conceptual default.[229] The White gaze excludes and subordinates Black faculty when the legitimacy of scholarship is determined through the lens of Whiteness.[230] Further, evaluations of Black-authored scholarship often "imply a racialized hierarchy whereby White people and standards are venerated, and Black people are respected so long as the white gaze deems them suitable."[231] Here, the White gaze messages conditional acceptance in the law school White space so long as Black-authored scholarship assimilates to White norms.[232] The White gaze depersonalizes Black faculty by stripping them of their personhood.[233] It

228. *Recruitment & Retention Statement*, *supra* note 128, at 128.

229. *See* Rabelo et al., *supra* note 15, at 1848 ("White people serve as the conceptual 'default' for employees in organizations.").

230. *See id.* (observing that the "white gaze relegates Black women to particular occupations, roles, and strata," presuming Whiteness as the default across industries including academia).

231. *Id.* at 1849; *see also* Bridgeman, *supra* note 182, at 18 ("One colleague not so subtly expressed concerns about the quality and quantity of my scholarship . . . . Another . . . [told] me that she worried my first piece, one centered on issues of Black racial identity, did not demonstrate the kind of rigorous legal analysis my colleagues would require for a favorable tenure decision.").

232. *See supra* note 231.

233. *See* Rabelo et al., *supra* note 15, at 1848 ("Whiteness is also presumed via the depersonalization of Black women: the refusal and failure to recognize their individuality. . . . The white gaze depersonalizes Black women by stripping them of their names and personhood."); Wing, *supra* note 206, at 357 (describing advice she received from colleagues to turn down a narrative publication opportunity, including comments that it would be a "distraction" and that "narrative stuff is not law").

"enables narrow imagination by dictating and constraining"[234] how Black faculty should engage in legal scholarship.[235]

By definition, the law school White space is one where Black voices and values are historically and contemporarily excluded. Thus, normative and value determinations have been shaped through the lens of Whiteness. In legal academia, the "often unexamined preferences" for White norms guide "individual and institutional judgments about the work of others."[236] These judgments have significant consequences for the academic careers of individual faculty members.[237] In her critique of legal scholarship, Deborah Rhode concludes that "law professors are writing largely for each other."[238] Thus, when thinking about evaluation and promotion, Black faculty are constrained by the White gaze of their colleagues and the body of legal scholarship. Though she argues that "one of the most important functions of legal scholarship is to expose the historical, structural, and ideological underpinnings of current legal norms and to assess their social value,"[239] she notes that doctrinal analysis is the scholarly

234. Rabelo et al., *supra* note 15, at 1850.

235. *See* Bridgeman, *supra* note 182, at 19 (describing the critique of her scholarship during the reappointment process: "One [colleague] went so far as to refer to critical race theory as alien . . . . [Others] criticized my writing as too simplistic and conversational to be taken seriously . . . . [M]y clear and straightforward prose was perceived to be simplistic and unanalytical, [while a male colleague's] turgid prose was considered to be the product of a brilliant mind."); Inniss, *supra* note 134, at 30 (acknowledging that she could write about race only after receiving tenure, when she "began remembering why I had wanted to be a professor in the first place" and "think[ing] about the ways that disciplines outside of law informed law, especially in the areas of race and gender").

236. Deborah L. Rhode, *Legal Scholarship*, 115 HARV. L. REV. 1327, 1328 (2002).

237. *See id.* at 1327 ("Assumptions about what is and is not valuable in legal scholarship significantly affect how academics shape their careers, how law schools choose and reward their faculties, and how those faculties influence, or fail to influence, legal institutions.").

238. *Id.* at 1336. This is not unimportant because people in positions of privilege shape the ideologies of each other, the legal community, and their students. *See* Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561, 573 (1984) ("Ideologies—perspectives, ways of looking at the world—are powerful. They limit discourse. They also enable the dominant class to maintain and justify its own ascendancy. Law professors at the top universities are part of this dominant class, and their writings contribute to the ideologies that class creates and subscribes to.").

239. Rhode, *supra* note 236, at 1338.

method utilized (and thus valued) by most faculty.[240] Doctrinal analysis as a valued norm is problematic because it is "divorced from society and life."[241] Thus, the majority of scholarship against which Black scholarship is evaluated "is out of touch with fundamental social problems."[242]

Normative legal scholarship "is characterized by a pseudo-scientific neutral voice"[243] that purports to be objective and fails to embrace narrative methodology as substantive despite the fact that stories undergird all legal issues.[244] When Black scholars tell Black stories, including autobiographical ones, they "question the status quo in law and society."[245] Normative legal scholarship is less accepting of narrative and nonacademic voices even though counter-storytelling in critical scholarship is effective when employed to counter dominant White narratives that reproduce racism and magnify the experiences of racially marginalized people (including Black law faculty).[246] Rachel López's groundbreaking work in participatory law scholarship (PLS)—"legal scholarship written in collaboration with authors who have no formal training in the law but rather expertise in its function and dysfunction through lived experience"[247]—highlights the necessity of nonacademic voices in social and racial

240. *See id.* at 1339 ("Doctrinal analysis . . . remains the method of choice for the vast majority of legal scholars.").

241. *Id.* at 1341 (internal quotations omitted).

242. *Id.* at 1342.

243. Richard A. Matasar, *Storytelling and Legal Scholarship*, 68 CHI.-KENT L. REV. 353, 353 (1992).

244. *See generally id.* (discussing the role of subjective narrative and storytelling in shaping the law).

245. Culp, *supra* note 21, at 69.

246. When Black scholars write about the Black experience and receive praise, the seriousness of their writing is sometimes trivialized. *See* Richard Delgado, *The Imperial Scholar Revisited: How to Marginalize Outsider Writing, Ten Years Later*, 140 U. PA. L. REV. 1349, 1366 (1992) ("Some writers of majority race praise . . . writing for its passionate or emotional quality. The writing is so personal, so colorful, so poetic, so 'moving.' This approach can marginalize outsider writing by placing it in a category of its own . . . . The writing is evaluated as a journal of the author's individual thoughts and feelings, not as an article that delivers uncomfortable insights and truths about society and injustice." (internal citations omitted)).

247. Rachel López, *Participatory Law Scholarship*, 123 COLUM. L. REV. 1795, 1795 (2023).

justice work.[248] But she acknowledges criticism from the gatekeepers of legal scholarship, chiefly that such scholarship lacks objectivity.[249] She writes: "By foregrounding the lived experience and analysis of nonlawyers who are frequently marginalized, not just by the law, but in legal scholarship as well, PLS creates a fuller account of the law."[250] It presses "the boundaries of what legal scholarship traditionally looks like by evoking lived experience as evidence and developing legal meaning alongside social movements."[251] Unlike the White gaze of normative legal scholarship which objectifies marginalized voices, PLS focuses on the subject's humanity.[252] Black legal scholars who elevate the Black experience as substantive challenge the erasure imposed by the White gaze.[253] They also challenge normative legal scholarship's "propensity to require extensive sourcing of all legal arguments,"[254] as racial stereotypes often limit such sources.[255]

A discussion of normative legal scholarship is incomplete without briefly addressing the uniqueness of our publication process: "[A]rticles are primarily selected and edited by students."[256] This necessarily requires me to acknowledge the ways Black people have been excluded from the publication process. "[O]f the approximately sixty-five Black EICs [Editors in Chief] from the top 100 law schools across U.S. history, roughly thirty-eight—

248. *See id.* at 1836–37 (highlighting the importance of amplifying nonacademic voices through PLS).

249. *Id.* at 1804 (presenting the view that PLS "lacks the objectivity necessary to qualify" as legal scholarship).

250. *Id.* at 1805.

251. *Id.* at 1807.

252. *See generally, e.g.*, Terrell Carter et al., *Redeeming Justice*, 116 NW. U. L. REV. 315 (2021) (invoking the lived experiences of two of the co-authors to critique the lack of redemption opportunities for people sentenced to life without parole).

253. *See* López, *supra* note 247, at 1808 (stressing the benefit of PLS in "lifting up critical stories that counter the dominant discourses, which inform the law and its interpretation").

254. *Id.* at 1830.

255. *See id.* at 1830–31 (observing that stories "provide a means of injecting the traditional canon of scholarship with fresh ideas and perspectives that are otherwise absent" because of "limiting and regnant" legal sources); *see also* Rhode, *supra* note 236, at 1335 ("This obsessive documentation discourages originality without necessarily ensuring factual accuracy.").

256. Rhode, *supra* note 236, at 1356.

more than half—were elected in the past ten years."[257] Historically, law reviews have served educational, public, and political purposes.[258] But Gregory Parks and Etienne Toussaint argue that law reviews as White spaces have "furthered social hierarchy" by perpetuating the myth of meritocracy in the selection of its members, serving as gatekeepers to opportunity in the profession, and constructing and conferring sociopolitical power.[259]

In 1991, Jerome Culp wrote about the challenges associated with writing about the "value of the black experience" in legal scholarship,[260] including job insecurity.[261] His assertion that "[l]egal scholarship remains one of the last vestiges of white supremacy in civilized intellectual circles"[262] still rings true. Because of the "ethnocentric nature of American legal scholarship,"[263] which prioritizes White interests and values,[264] the structure of legal discourse is fixed in a way that excludes Black people.[265] "[W]hite scholars traditionally have heard black scholars only when what they have said and claimed were compatible with white concerns."[266] He wrote: "All black law professors face a common problem. We are asked to play a role that is assigned to us because of our race, and we then are asked to remove our blackness when we play the role."[267] Thus, normative legal scholarship presents a dilemma for Black faculty: "We cannot separate our blackness from the rest of ourselves."[268] Because of the

257. Gregory S. Parks & Etienne C. Toussaint, *The Color of Law Review*, 103 B.U. L. REV. 181, 185 (2023).

258. *Id.* at 194 (describing these as the "three primary objectives" of law reviews).

259. *Id.* at 195.

260. Jerome McCristal Culp, Jr., *Toward a Black Legal Scholarship: Race and Original Understandings*, 1991 DUKE L.J. 39, 48 (1991).

261. *See id.* (noting that Black scholars experience job-related restrictions similar to "[t]he black domestic in the pre-*Brown v. Board of Education* South who asked for too much" (internal citation omitted)).

262. *Id.* at 41.

263. *Id.* at 88.

264. *See id.* at 49 (highlighting the absence of legal scholarship that "challenges the underlying principles of a legal system that subordinates the needs of blacks to the interests of whites").

265. *See id.* at 88–89 (explaining that Black scholars in legal academia have written "with the assumption that the then-current structure of legal discourse was fixed").

266. *Id.* at 48.

267. *Id.* at 45.

268. *Id.* at 44.

White gaze, tacit messages—"the unwritten rules of [Black] existence"[269]—subordinate Blackness through know-your-place aggression in the evaluation of legal scholarship, which may lead Black scholars to self-censor.[270]

Though there has undoubtedly been some change since Culp's 1991 piece, Black faculty continue to grapple with the White gaze as they balance intrinsic interest in non-normative legal scholarship with professional reputation and tenure. In 2022, Goldburn Maynard described the "existential career tension" between writing about things he cares about or focusing "on what plays well in the legal academy and what will build me a reputation that procures me tenure."[271] While intrinsically motivated to write about race and social justice, he understands that "such scholarship also . . . goes against the grain, is less likely to be accepted . . . , can marginalize a scholar's future work, and can make tenure a more difficult proposition."[272] Without explicitly identifying the White gaze, Maynard recognizes the boundaries imposed by normative legal scholarship. Maynard hypothesizes that minority scholars forgo writing outside these bounds to "fit their work within the dominant paradigm of legal scholarship."[273] When scholarship is evaluated through the White gaze, "[w]ork that is deemed more scientific and rigorous is viewed as more valuable."[274] Radical or critical scholarship, often produced by "minority" faculty members, is deemed invaluable because it criticizes law without offering

269. *Id.* at 47.

270. *See id.* at 47 ("Black scholars knew . . . that certain claims were outside the bounds of discourse."); *id.* at 50 ("Black scholars had to 'know their place' in order to have their claims heard . . . . [T]hey were actors constrained by the understanding that making militant claims about change would not be countenanced by judges, white colleagues, or their largely white students."); Bridgeman, *supra* note 182, at 14 (wondering if the "honeymoon period" among her faculty colleagues would have been extended "if I had not written on controversial topics like race, gender, and Black identity").

271. Goldburn P. Maynard Jr., *Killing the Motivation of the Minority Law Professor*, 107 MINN. L. REV. 245, 245 (2022).

272. *Id.* at 247.

273. *Id.*

274. *Id.* at 261.

solutions and seeks to deconstruct traditional (read: White) structures.[275]

Highlighting the ways the White gaze operates to objectify Black faculty, Maynard observes that "radical scholarship is devalued . . . by the tendency to value scholarship based on short-term considerations."[276] The "bias toward the present"[277] causes the academy to "value[] work that pays off quickly or has the ability to influence current policy discussions."[278] We saw this recently with the volume of publications by Black scholars in the aftermath of George Floyd's murder and the worldwide Black Lives Matter protests in 2020.[279] Almost five years later, the desire for such scholarship has seemingly waned, which gives the impression that Black voices are only valuable when antiracist sentiment is high and when scholarship about the Black experience can produce immediately relevant insight and solutions. This approach fails to demonstrate a long-standing commitment to publishing racial justice scholarship—scholarship often deemed non-normative or radical—that is central to the personhood of Black scholars.

C. SERVICE

> The very serious function of racism . . . is distraction. It keeps you from doing your work. It keeps you explaining, over and over again, your reason for being.
>
> -Toni Morrison[280]

Racism adds additional service burdens that can distract Black faculty members, keeping them from engaging in teaching and scholarship.[281] In addition to teaching and scholarship, law

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275. *See id.* at 273–74, 285 (noting that critical scholarship, including Derrick Bell's permanency of racism thesis, is critiqued because of its lack of solutions).

276. *Id.* at 288.

277. *Id.* at 290.

278. *Id.* at 289.

279. *See, e.g.*, *id.* at 287 (referencing the "summer of George Floyd"); Parks & Toussaint, *supra* note 257, at 190 (referencing the "police killings of Breonna Taylor and George Floyd").

280. Toni Morrison, Speech at Portland State University: A Humanist View (May 30, 1975), https://soundcloud.com/portland-state-library/portland-state-black-studies-1 [https://perma.cc/34Z4-ZH6R].

281. *See* Chatman & Peters, *supra* note 24, at 12 ("At the worst end of the spectrum is the invocation of Black trauma veiled as attempts to educate.

school faculty members must engage in service to the law school and university communities, the legal profession, and the public.[282] Per ABA Standard 405: "A law school shall establish and maintain conditions adequate to attract and retain a competent faculty."[283] The Bylaws require member schools to "maintain conditions conducive to the faculty's effective discharge of its . . . service obligations."[284] Regarding service to the law school and university communities, law professors are responsible for overall governance, including service on committees.[285] Regarding service to students, law professors should "be reasonably available to counsel students about academic matters, career choices, and professional interests."[286] The Recruitment & Retention Statement recognizes the ways bias results in "extraordinary service burdens" for faculty of color.[287]

As a result of invisible and emotional labor, Black faculty members face extraordinary service obligations in the law school White space. Whiteness is forced when there is entitlement to Black faculty members' time and when Black faculty are exploited and endangered. Here, I argue that the White gaze operates to exclude, subordinate, and objectify Black faculty

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Presentations on lynching or discussions of slavery highlight the harm to the victims without naming and placing appropriate blame on the perpetrators. We, as Black faculty, are expected to lead these discussions, to share our personal encounters with racism, to give our white colleagues an opportunity to publicly shed empathetic tears and feel better about themselves without ever having to do more than try to change."); Bridgeman, *supra* note 182, at 16 (regarding the "structural racial tax" of service: "[T]here were not enough mentors and means of support for Students of Color, African American or otherwise, and there were not enough people from underrepresented groups to add diversity to the many places where it was desperately needed . . . . [A group of five Black professors] mentored graduate and undergraduate Students of Color throughout the university, in addition to our regular advising and mentoring duties . . . , and we frequently helped organize, support, and consult with the greater African American community.").

282. *ABA Standards*, *supra* note 172, at 30.

283. *Id.* at 31.

284. *Bylaws*, *supra* note 178, at 61.

285. *See Responsibilities Statement*, *supra* note 178, at 118 ("Law professors have a responsibility to participate in the governance of their university and particularly the law school itself. . . . Individual professors have a responsibility to . . . serve on faculty committees . . . .").

286. *Id.* at 114.

287. *Recruitment & Retention Statement*, *supra* note 128, at 128.

members whose service is evaluated through the lens of Whiteness in the law school White space.

When Whiteness is forced, the White gaze manifests as entitlement, exploitation, or endangerment.[288] As an entitlement, the White gaze is seen in boundary violations of Black people's time and physical space.[289] Examples of such boundary violations include a nonconsensual touching of hair or "entitlement to their time and participation in unwanted conversations about race."[290] Whiteness is enforced through exploitation when Black people are hypervisible yet invisible in White spaces.[291] Because of racialized stereotypes, Black people are regarded as strong, invincible saviors and are expected to perform as such without acknowledgement or additional compensation.[292] The White gaze endangers Black people "by disregarding their safety and dignity" for the benefit of others.[293]

Invisible and emotional labor are aspects of the extraordinary service obligations Black faculty experience in the law school White space. Invisible labor describes:

> [A]ctivities that occur within the context of paid employment that workers perform in response to requirements (either implicit or explicit) from employers and that are crucial for workers to generate income, to obtain or retain their jobs, and to further their careers, yet are

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288. *See supra* note 165 and accompanying text.

289. Rabelo et al., *supra* note 15, at 1850.

290. *Id.*; *see also* Wing, *supra* note 206, at 357 ("I was inundated with requests for assistance from black law graduate and undergraduate students, as well as other black professors and staff on campus, not to mention other students and faculty who had heard that I was someone who would listen to their concerns.").

291. *See* Rabelo et al., *supra* note 15, at 1850 (outlining one manifestation of the exploitation Black women as "*invisibility*, or situations where their presence and/or ideas were ignored and overlooked"); Chatman & Peters, *supra* note 24, at 7–8 ("'Look we hired a Black professor, and she is on the tenure track! Look we hired a Black dean, and she is a lesbian too!' Now queue in the barrage of photo-ops, banquets, and stories to broadcast and showcase something that is nothing short of a moving performance and brief escape from business as usual.").

292. Rabelo et al., *supra* note 15, at 1851 (explaining how the Strong Black Woman stereotype "maintains subordination of Black women economically and professionally"); *see also* KUPENDA, *supra* note 115, at 23 (recalling comments from the dean of the law school: "We need you to teach in the summer program because you are black, you are a woman, you are a great teacher, and you nurture, mother, feed, and nurse all the students.").

293. Rabelo et al., *supra* note 15, at 1851.

> often overlooked, ignored, and/or devalued by employers, consumers, workers, and ultimately the legal system itself.[294]

Black faculty engage in racialized invisible labor, for example, when they expend time supporting Black students who experience academic terror.[295] They also engage in invisible labor as representations of diversity in ways that socially and financially benefit law schools.[296] Emotional labor is "'the management of feeling to create a publicly observable facial and bodily display' . . . 'to comply with [workplace] norms.'"[297] It also includes

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294. Allen, *Academic Freedom*, *supra* note 104, at 391–92 (quoting Miriam A. Cherry, *People Analytics and Invisible Labor*, 61 ST. LOUIS U. L.J. 1, 3 (2016)).

295. *See* Allen, *Get Out*, *supra* note 107, at 605 (defining academic terror as "overt and covert faculty behaviors directed at racially marginalized students, staff, and faculty under the guise of academic freedom" that occurs "in institutions steeped in structural racism"); Chatman & Peters, *supra* note 24, at 16 ("Why are we expected to carry this burden in addition to the extra emotional labor we take on to support students who face and absorb daily microassaults and aggressions that our colleagues express great difficulty in recognizing as actual and genuine harm?"); DOROTHY A. BROWN, THE WHITENESS OF WEALTH: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS—AND HOW WE CAN FIX IT 6–7 (2021) ("George Mason was a tough environment for me as the lone black female law professor . . . . [A]s a black woman, I had additional responsibilities . . . . While my white colleagues could focus exclusively on their work, I met with black students who were also navigating the same hostile environment and with their white peers who were troubled by what they were observing. They leaned on me for guidance and I was more than sympathetic."). I am currently on research leave yet actively engaged with Black students and other students of color on campus because my institution lacks representation and students need support.

296. *See* Chatman & Peters, *supra* note 24, at 10–11 (characterizing diversity and inclusion in law schools as "mostly theatre" with a goal of "look[ing] like you care about diversity"); Bridgeman, *supra* note 182, at 17 ("[W]hen I served on hiring committees I made sure we advertised and targeted underrepresented populations, often doing extra work to build a diverse applicant pool and to encourage people from underrepresented groups to apply. I then fought for people from these groups to be interviewed and hired."). When Black faculty are the first, the only, or one of few, they engage in racialized invisible labor as representatives of their race. *See, e.g.*, Wing, *supra* note 206, at 356 ("The pressures on me as the first black female law professor at [my university] . . . were enormous . . . . It is the plight of minorities to know that their whole subgroups may be judged by their individual behavior. If I failed, it might mean that no other black woman would be hired in the future.").

297. DEO, *supra* note 184, at 47–48 (first quoting ARLIE RUSSELL HOCHSCHILD, THE MANAGED HEART: COMMERCIALIZATION OF HUMAN FEELING 7 n.* (1st ed. 1983); and then quoting Yeong-Gyeong Choi & Kyoung-Seok Kim, *A Literature Review of Emotional Labor and Emotional Labor Strategies*, 3 UNIVERSAL J. MGMT. 283, 285 (2015)).

feeling management and suppression, and body regulation in order to comply with workplace norms.[298] For example, Black people are forced to perform racialized emotional labor when they are expected to answer questions or correct misinformation about race or when they consider whether to correct a colleague or student who attempts to build rapport by relying on appropriations of Blackness.[299]

The weight given to faculty service activities varies across institutions. While it is unlikely that any faculty member will be granted a promotion based on service activities alone, extraordinary service burdens distract Black faculty from engaging in other aspects of the promotion process.[300] In *Roebuck v. Drexel University*, Dr. James Roebuck, a Black male faculty member, challenged his tenure denial.[301] He was denied because his teaching and service were satisfactory, but his scholarship was unsatisfactory.[302] Evidence supported Roebuck's contention that, because he was a Black man, he "was hired in large part for his ability to project a positive image for the university in the West Philadelphia community."[303] The tenure review committee inferred that Drexel's reputation in the community was, in fact,

298. DEO, *supra* note 184, at 47–48. This includes having to suppress feelings in the face of blatant racism when experiencing organized workplace bullying with no opportunity for recourse. *See, e.g.*, Inniss, *supra* note 134, at 29 ("[A colleague] detailed all of the watching, checking, and reviewing that he had been doing [of my work]. I was dumbfounded. I felt ill. I felt as if I had been physically violated. It took every ounce of my self-control to remain calm. I composed myself to speak clearly, though my hands shook violently . . . . I was in a daze as I thanked him and walked out. Even as I write these words now, I feel waves of revulsion at the thought that I thanked my abuser."); *see also* Onwuachi-Willig, *supra* note 219, at 142 ("[T]his task of negotiating and performing identity can prove rather burdensome because of the need to undertake extra identity work to counter negative stereotypes about groups based on race, gender, and class.").

299. Rabelo et al., *supra* note 15, at 1850–51 (describing both the entitlement and exploitation of Black people due to the White gaze).

300. *See* John D. Copeland & John W. Murry, Jr., *Getting Tossed from the Ivory Tower: The Legal Implications of Evaluating Faculty Performance*, 61 MO. L. REV. 233, 243 n.26 (1996) (citing cases where Black faculty members "unsuccessfully claimed they were unable to do adequate levels of scholarship or be effective teachers because of excessive public service demands placed on them").

301. *See* Roebuck v. Drexel Univ., 852 F.2d 715, 725 (3d Cir. 1988) (stating the basis of Roebuck's claim).

302. *Id.* at 719.

303. *Id.* at 720.

made better as a result of Roebuck's service.[304] But this was not enough to warrant tenure.[305] In *Carpenter v. Board of Regents*, Dr. Joseph Carpenter, a Black male faculty member, challenged his tenure denial.[306] Despite proffered evidence that additional service demands "materially diminished his capacity to demonstrate the required competency in [his] scholarship,"[307] the court held that Carpenter failed to demonstrate a racial discrimination claim.[308]

We see the White gaze in legal academia when Black faculty engage in invisible labor in support of Black students who experience academic terror.[309] A recent and very public example from Georgetown University Law Center comes to mind. In 2021, Sandra Sellers participated in a video call where she said, "I hate to say this, I end up having this angst every semester that a lot of my lower [students] are Blacks. Happens almost every semester. . . . You get some really good ones, but there are also usually some that are just plain at the bottom. It drives me crazy."[310] A video recording of her comments subsequently went viral.[311] Black students were rightfully hurt and outraged by yet another incident of academic terror. In response and in support of Black students, sixteen Black Georgetown Law faculty members

304. *Id.* at 721.

305. *See id.* at 734–35 (reversing the district court's order because a jury could have concluded that, but for his race, Roebuck would have been granted tenure).

306. *See* Carpenter v. Bd. of Regents, 728 F.2d 911, 911 (7th Cir. 1984) (stating the basis of Carpenter's claim).

307. *Id.* at 915.

308. *See id.* (holding that the facts did not support Carpenter's disparate impact claim).

309. Though I focus on highly publicized occurrences at Georgetown Law, it is important to note that these incidents are not anomalies. Black law faculty engage in invisible and emotional labor in response to racist comments and actions by their colleagues and in support of Black students all the time. *See* discussion *supra* note 295.

310. Catherine Thorbecke & Benjamin Siu, *Georgetown Law Professor Terminated After Remarks About Black Students*, ABC NEWS (Mar. 12, 2021), https://abcnews.go.com/US/georgetown-law-professor-terminated-remarks-black-students/story?id=76413267 [https://perma.cc/2JJB-WBBB].

311. *See id.* (describing how the professor's comments "went viral and sparked a firestorm of backlash on social media").

published a letter condemning the comments.[312] They wrote: "In singling out Black students, the professor flagrantly and unfairly stigmatized them and in the process both revealed and propagated racial, and overtly white supremacist stereotypes about the intellectual ability of Black students."[313] Ultimately, Sellers was terminated,[314] and David Batson, the professor to whom the comments were made, resigned.[315]

Georgetown Law was in the national news again in 2022 after a newly-hired lecturer tweeted that President Biden nominated a "lesser Black woman" in reference to Justice Ketanji Brown Jackson's Supreme Court nomination.[316] The tweet's author, Ilya Shapiro, was slated to start work at Georgetown Law as a lecturer and center director.[317] But, as a result of the tweet, he was placed on paid leave and his conduct was the subject of a university investigation.[318] Once again, Black faculty would engage in invisible labor in support of Black students and Black people. In a *Washington Post* opinion piece, Professor Paul Butler wrote, "I've been a tenured law professor at Georgetown for

312. *Georgetown Black Faculty Statement*, TAXPROF BLOG, https://taxprof.typepad.com/files/georgetown-black-faculty-statement.pdf [https://perma.cc/ZG4Y-A3PY] ("We, the undersigned Georgetown University Law Center Black faculty, condemn the statements reportedly made by one of the school's adjunct professors deriding the capabilities of Black students in her class . . . . We stand in support of our Black law students.").

313. *Id.*

314. *See* Thorbecke & Siu, *supra* note 310 ("A Georgetown Law School professor has been terminated after comments she made . . . .").

315. *See* Janhvi Bhojwani & Nicole Acevedo, *Georgetown Law Professor Resigns Over 'Insensitive Remarks' About Black Students*, NBC NEWS (Mar. 13, 2021), https://www.nbcnews.com/news/education/Georgetown-law-professor-resigns-over-insensitive-remarks-about-black-students-n1261034 [https://perma.cc/VB92-KEZF] (explaining that David Batson submitted a letter of resignation following the publicization of the video).

316. William M. Treanor, *Dean's Statement on Ilya Shapiro*, GEO. L. (June 2, 2022), https://www.law.georgetown.edu/deans-statement-re-ilya-shapiro [https://perma.cc/8LZ9-Q3NZ] ("His tweets could reasonably be understood, and were in fact understood by many, to disparage any Black woman the President might nominate.").

317. *See id.* (indicating that Shapiro was due to join Georgetown Law staff as Executive Director of the Center for the Constitution and a senior lecturer).

318. *See* Anemona Hartocollis, *A Conservative Quits Georgetown's Law School amid Free Speech Fight*, N.Y. TIMES (June 6, 2022), https://www.nytimes.com/2022/06/06/us/georgetown-ilya-shapiro.html [https://perma.cc/38T8-R7FE] (explaining that Shapiro deleted the tweet and apologized, calling it "inartful").

more than a decade. . . . [Shapiro] should not be employed at our school, which educates more Black women than virtually any top law school in the country."[319] In response to the claim that Shapiro's words were protected by academic freedom, Butler wrote: "Students who think their education should be free of racist slurs from professors are not illiberal snowflakes who don't understand academic values. They simply want to learn in an environment where their teachers don't judge them by their race or gender."[320] The investigation resulted in Shapiro's reinstatement.[321] But, claiming that academia is an "intolerant place," Shapiro resigned shortly after he was reinstated.[322]

In *The Alchemy of Race and Rights*, Patricia Williams describes an incident where she engages in emotional and invisible labor in support of a Black student who was terrorized by racist language on a law school final exam.[323] She recounts the story of the student visiting her office in tears after she was called an "activist" for vocalizing concerns about the facts of a criminal law exam where, as a spin on Shakespeare's *Othello*, a White male professor described Othello as "'a black militaristic African leader' who marries the 'young white Desdemona' whom he then kills in a fit of sexual rage."[324] Williams describes feeling angry as she reads the exam and agrees to speak to the exam author on the student's behalf.[325] She engages in invisible labor when she follows through on that promise.[326] Then, she recounts engaging in emotional labor, spending weeks thinking about how

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319. Paul Butler, Opinion, *Yes, Georgetown Should Fire an Academic for a Racist Tweet*, WASH. POST (Feb. 20, 2022), https://www.washingtonpost.com/opinions/2022/02/20/georgetown-should-fire-ilya-shapiro-tweet-supreme-court-lesser-black-women [https://perma.cc/A9BT-EPSK]. Butler also noted that Shapiro had made similar remarks in response to President Obama's nomination of Justice Sonia Sotomayor: "[S]he would not have been on the short list if she were not Hispanic . . . ." *Id.* (quoting Shapiro).

320. *Id.*

321. *See* Treanor, *supra* note 316 (explaining that as a result of the investigations, it was determined that Shapiro "can begin his work as Executive Director" and would "be able to teach upper-class elective courses as a senior lecturer").

322. *See* Hartocollis, *supra* note 318 ("[Shapiro] said that given his experience, he had no current plan to return to academia.").

323. WILLIAMS, *supra* note 21, at 80–81.

324. *Id.* at 80.

325. *Id.* at 81–82.

326. *Id.* at 83–84.

to explain that the exam employs racist and sexist imagery.[327] She embarks on the research of exams from law schools around the country and compiles a detailed list of the ways "they use race, gender, and violence in ways that have no educational purpose" and shares the list along with a detailed explanation in a memorandum to her faculty.[328] Yet, despite her invisible and emotional labor, her concerns are not embraced by her colleagues.[329]

In this Part, I highlight the ways the White gaze manifests in the law school White space, and I provide concrete examples of the ways Black faculty experience the White gaze. These are just a few of the many ways the White gaze operates to exclude, objectify, and subordinate Black faculty, causing them psychological, physical, and financial harm. In the next Part, I briefly discuss dismantling Whiteness and centering Blackness as ways legal academia can deconstruct the infrastructure of injustice caused by Whiteness.

IV. DISMANTLING WHITENESS, CENTERING BLACKNESS

> I insisted on writing outside the white gaze, not against it but in a space where I could postulate the humanity writers were always being asked to enunciate.
>
> -Toni Morrison[330]

To counteract Whiteness as an infrastructure of injustice, legal academia must dismantle Whiteness and center Black law faculty. Per the Responsibilities Statement, "evaluation made of any colleague for purposes of promotion or tenure should be based exclusively upon appropriate academic and service criteria fairly weighted in accordance with standards understood by the faculty and communicated to the subject of the evaluation."[331] This Responsibilities Statement, and the criteria for evaluation created by law schools, purport neutrality and fairness but fail to consider the effects of Whiteness. Here, I briefly discuss dismantling Whiteness and centering Blackness.

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327. *Id.*

328. *Id.* at 84–90.

329. *Id.* at 92–94 (describing two response memos that Williams received from colleagues, one which critiqued her tone and one which dismissed the particular pain endured by law students of color).

330. MORRISON, *supra* note 1, at 199.

331. *Responsibilities Statement*, *supra* note 178, at 117.

In arguing that legal academia must dismantle Whiteness, I do not discount the value of Whiteness to White people. Arguments that encourage White people to simply adopt a race consciousness that denounces the legally and socially constructed privileges of Whiteness miss the mark.[332] Arguably, the practice of teaching White people to identify White privilege does nothing to fight racism and makes White people complacent.[333] Critical of McIntosh-inspired knapsack pedagogy,[334] Leslie Margolin argues that identifying White privilege is "less about changing an unjust system than it is about freeing those who operate that system to think of themselves as innocent, egalitarian, and antiracist."[335] In fact, the practice does more to permit the practice of "moral distancing," which grants White people "a sense of moral superiority" over White people who engage in overt racist acts "while also obfuscating their own racism through the act of disavowing only a *particular form* of racism."[336] Further, it falsely and dangerously equates individual renunciation with institutional change.[337] Thus, simply acknowledging White privilege and committing to antiracism in legal academia is not enough.

In legal academia, Black faculty are presumed incompetent, while White faculty are presumed worthy of occupying space and reaping benefits.[338] For many White people, this presumption reflects a value in self that fails to recognize or appreciate the value

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332. *See* HANEY LÓPEZ, *supra* note 26, at 139–40 ("[T]he tremendous value of Whiteness to Whites[] suggest[s] that Whites are much more likely to embrace than dismantle their identity.").

333. *See* Margolin, *supra* note 65, at 4 ("[I]n so far as white privilege confessors define themselves as non-oppressive and antiracist as far better than ordinary whites, they can continue to reap the reward of ordinary whites without serious damage to their self-image.").

334. *See generally* McIntosh, *supra* note 64 (examining White privilege and "unpacking the invisible knapsack").

335. See Margolin, *supra* note 65, at 4 ("[W]hite privilege pedagogy operates in large part as an antiracist cover, a sham that allows whites to have their cake and eat it too by providing them the appearance of selflessness and antiracism without requiring them to do anything selfless or antiracist.").

336. YANCY, *supra* note 20, at xxxi.

337. *See* Margolin, *supra* note 65, at 7 ("[T]hose engaged in white privilege pedagogy are called upon to believe that . . . those renunciations really do offer a solution to systemic oppression and privilege.").

338. *See* HANEY LÓPEZ, *supra* note 26, at 140 (describing how "presumptions of worth accompany Whiteness").

of being racialized as White.[339] Even when unrecognized, there is value in Whiteness as a superior racial identity.[340] As Frances Ansley so aptly observes:

> White supremacy is concretely in the interests of all white people. It assures them greater resources, a wider range of personal choice, more power, and more self-esteem than they would have if they were (1) forced to share the above with people of color, and (2) deprived of the subjective sensation of superiority they enjoy as a result of the societal presence of subordinate non-white others.[341]

In legal academia, the benefits of Whiteness come at a serious "material and psychological" cost to Black faculty.[342] Thus, until Whiteness is dismantled in conjunction with centering Blackness, legal academia cannot begin to overcome racism or live up to its antiracist commitments.[343]

A. DISMANTLING WHITENESS

Dismantling Whiteness requires individuals and society to "dismantle the meaning systems surrounding Whiteness."[344] For people racialized as White, this means having an awareness of self and others that is free from the lens of the White supremacy that undergirds the White gaze.[345] Part of this process requires self-examination which includes questioning the terms of superiority associated with White people and the terms of inferiority associated with non-Whites.[346] "Knowing one's self only in these terms without recognizing the central role of race in constructing

339. *See id.* ("[M]ost Whites continue to falsely suppose presumptions of worth are accorded them because they are valuable in themselves, rather than because they are White.").

340. *See id.* at 142 ("[I]t seems incontestable that, on the whole, Whites greatly value their racially superior identity.").

341. Frances Lee Ansley, *Stirring the Ashes: Race, Class and the Future of Civil Rights Scholarship*, 74 CORNELL L. REV. 993, 1035 (1989).

342. *See id.*

343. *See* HANEY LÓPEZ, *supra* note 26, at 142 ("Whites cannot know themselves, and . . . society cannot overcome racism, until Whiteness is dismantled.").

344. *Id.* at 129.

345. *See id.* at 129–30 ("For those constructed as White, dismantling Whiteness would allow them to know themselves and others directly, or at least without having to look through the distorting lens of White superiority.").

346. *Id.* at 130 ("Never questioning one's White identity precludes knowing those categorized as non-White because the mythology of interior non-White identities cannot fully be comprehended or transcended without interrogating the superior characteristics attributed to Whites.").

positive and negative identities further entrenches the meaning systems of racial categorization and thus makes it even more difficult to transcend those systems in one's conception of non-Whites."[347] Thus, individuals racialized as White must critically examine White identity, including engaging with social ills created by Whiteness.[348] Failure to do so results in maintaining the status quo: entrenchment of White superiority to the advantage of White people and disadvantage of non-White Others.[349]

However, there is skepticism about whether Whiteness can be dismantled as it is deeply embedded in society, and systemic change requires more than movement at an individual level.[350] In addition to recognizing their own racialized identity, White people can work to dismantle Whiteness by recognizing and accepting "the personal and social consequences of breaking out of a White identity . . . [and embarking] on a daily process of choosing against Whiteness."[351] While these actions may produce change at a micro level, institutions must also adopt policies and practices designed to dismantle Whiteness. To address the inferior positions imposed on Black people by Whiteness, institutions must directly address "disparities created by race-motivated benefits," which requires "race-based solutions that take into account the historical monopolization of wealth and opportunity among whites."[352]

Focusing specifically on the White gaze and the ways it presents in legal academia, institutions must engage in affirmative

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347. *Id.*

348. *See id.* at 92 (characterizing the racially discriminatory treatment of Japanese Americans which resulted in lack of social and economic opportunities as "legally engineered conditions of social misery" that only occurred because they were not White).

349. *See id.* at 131 ("Accepting without question and, more so, seeking to protect one's White identity requires a social engagement either aimed at entrenching the status quo or dedicated to tepid reform unlikely to affect racial differences.").

350. *See id.* at 133 ("Whiteness is so deeply a part of our society it is impossible to know even whether Whiteness can be dismantled.").

351. *Id.* at 137.

352. Kevin E. Jason, *Dismantling the Pillars of White Supremacy: Obstacles in Eliminating Disparities and Achieving Racial Justice*, 23 CUNY L. REV. 139, 148, 161–62 (2020) (defining race-based benefits as "government policies . . . that were tinged with racial animus and white supremacy, such that benefits and opportunities were conferred to white people and denied to Black people under white supremacist tenets").

actions to interrupt it after gaining understanding and awareness.[353] This work includes engaging expert consultants to assess policies and practices with the goal of exposing the White gaze in the seemingly benign activities of legal academia.[354] Because administrators, peers, and students can employ the White gaze in ways that exclude, subordinate, and objectify Black faculty, each constituency must engage in the work of dismantling Whiteness employed through the White gaze. Administrators should assess how policies and practices reinforce Whiteness and require training and interventions that address the imposition and idealization of Whiteness in every aspect of the academic enterprise including hiring, student and peer evaluations, and promotion.[355] While it is important for administrators to engage in assessing how policies and practices reinforce Whiteness, because individual faculty members and students play a significant role in the assessment of Black faculty, they must also engage in this work.[356] Critical self-reflection may help individuals effectively recognize and challenge instances of the White gaze.[357] Administrators, faculty, and students must learn to effectively notice the White gaze, intervene in real time, and hold themselves and others accountable for employing it.[358]

B. CENTERING BLACKNESS

Dismantling Whiteness at the institutional level necessarily requires amplifying Black voices and experiences. Centering Blackness "is to see and to understand the world through the

353. *See* Gassam Asare, *supra* note 16 ("Companies committed to interpreting the white gaze must focus on . . . . education, understanding, and awareness of how the white gaze operates.").

354. *See id.* ("Bring in consultants, speakers, and researchers to educate employees about the white gaze.").

355. *See* Rabelo et al., *supra* note 15, at 1854 ("Managers and leaders could conduct internal assessments of how their current policies and practices reinforce whiteness and further subordinate marginalized groups.").

356. *See id.* ("Coworkers and prospective allies can also engage in critical self-reflection to more effectively notice, then challenge, instances of white gazing at work." (internal citations omitted)).

357. *See id.* ("[S]elf-reflection is important for understanding more overt forms of racism as well as the impact of seemingly positive statements . . . .").

358. *See id.* ("Organizational leaders and employees can benefit from our work by learning how to more effectively notice white gazing, intervene when it i's happening, and hold employees accountable when they are enacting it.").

Black experience."[359] "[C]entering Blackness means actively working to create policies and practices that protect and uplift Black people. It means celebrating and honoring the humanity of all Black people in a society that has historically erased, devalued, and disposed of them."[360] Thus, centering Blackness requires the presence of Black people in legal academia in all positions so that Black voices are heard and Black experiences are reflected in policymaking in a non-monolithic way.

Centering Blackness challenges normative Whiteness and White superiority.[361] As a practice, it "acknowledges the racial hierarchy that intentionally situates Black people at the bottom of society and it provides an opportunity to 'imagine how rules and structures would be reorganized and envision a world where we all thrive because the bottom is removed.'"[362] Centering Blackness requires communication and partnership with the very people who have been affected by anti-Black racism as their experiences with discrimination expose injustices within legal academia.[363] It also requires developing systems that "eliminate harm to Black people, and in return, all people."[364]

Centering Blackness in teaching, for example, requires law schools to rethink the policies and practices associated with peer and student evaluations. Though some may consider it a radical step, eliminating student evaluations will eliminate harm to Black faculty. Despite significant scholarship regarding bias in

359. Norrinda Brown Hayat, *Freedom Pedagogy: Toward Teaching Antiracist Clinics*, 28 CLINICAL L. REV. 149, 156 (2021).

360. Aaliyah Ford et al., *Tools for Centering Blackness in Social Work Field Education: An Anti-Racist Agency Learning Plan and Evaluation*, 42 J. TEACHING SOC. WORK 207, 208 (2022).

361. *See id.* at 209 ("Centering Blackness challenges white supremacy or the idea (ideology) that white people and the ideas, thoughts, and actions of white people are superior to those of people of color.").

362. Brown Hayat, *supra* note 359, at 156 (quoting Siraad Dirshe, *What Does It Mean to 'Center Black People'?*, N.Y. TIMES (June 19, 2020), https://www.nytimes.com/2020/06/19/style/self-care/centering-blackness.html [https://perma.cc/X8PR-K8FR]).

363. *See id.* at 163 ("[T]hose who have been discriminated against speak with a special voice to which we should listen[.]" (quoting Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 324 (1987))).

364. Ford et al., *supra* note 360, at 209.

student evaluations and their lack of intrinsic value,[365] law schools continue to rely on them in evaluating Black faculty. This failure to act is an example of complicit bias. In the alternative, student evaluations could be substantially modified by removing anonymity and educating students about the ways the White gaze operates to harm Black faculty. They could also be modified so that students are "asked to evaluate their own learning rather than the faculty member's teaching,"[366] which would make students accountable for their role in the self-regulated learning process that is law school. Administrators can also eliminate or limit the use of student evaluations in the retention and promotion process. Since faculty play an essential role in evaluating teaching, they must also be educated about the barriers Black faculty experience, specifically the ways tone policing and the presumption of incompetence are aspects of the know-your-place aggression Black faculty experience in the law school White space that affect the very classroom dynamics observed during the evaluation process.

Centering Blackness in legal scholarship, as another example, requires law review faculty advisors and student editors to acknowledge the effects of racism on academic publishing and commit to eliminating barriers Black faculty experience in the submission process.[367] Scholarship reflects that law faculties and student bodies are overwhelmingly White.[368] Journals should expressly commit to increased representation of Black

365. *See* DEO, *supra* note 184, at 164 ("It is unclear whether course evaluations have an intrinsic value, as they depend on students who are by definition not well versed in the subject matter, evaluating faculty who know a great deal on the topic."); *see also* Daniel E. Ho & Timothy H. Shapiro, *Evaluating Course Evaluations: An Empirical Analysis of a Quasi-Experiment at the Stanford Law School, 2000-2007*, 58 J. LEGAL EDUC. 388, 389 (2008) ("Despite widespread use, consensus on [course evaluations'] validity remains elusive, with scholars highlighting interpretation difficulties, non-correspondence between evaluations and student performance, and lack of comparability, validity, or reliability.").

366. Dennis R. Honabach, *Responding to "Educating Lawyers": An Heretical Essay in Support of Abolishing Teaching Evaluations*, 39 U. TOL. L. REV. 311, 322 (2008).

367. *See generally* Iheoma U. Iruka et al., *Call to Action: Centering Blackness and Disrupting Systemic Racism in Infant Mental Health Research and Academic Publishing*, 42 INFANT MENTAL HEALTH J. 745, 747 (2021) (demonstrating one academic journal's "commitment to ending systemic racism and promoting diversity in academic publishing").

368. *See id.* at 746 ("The majority of full professors in academia are White males.").

student editors, staff, and faculty advisors.[369] Journals can also center Black voices by requiring prospective authors to submit diversity statements and preferencing manuscripts that cite Black scholars or include first-person narratives.[370] Internally, Black faculty should be encouraged to produce non-normative legal scholarship and "follow their bliss."[371] Further, law review editors and selection committees must push back against the idea that narrative in legal scholarship must be relegated to essays or published in specialty journals.[372] The presumed relationship between scholarship and teaching—and how the White gaze operates to deter and negatively evaluate non-normative scholarship—must also be questioned, especially since our students are novice learners and our scholarship often concerns complex legal issues.[373]

Centering Blackness in service, for example, requires law schools to adjust practices and policies that rely on unspoken expectations of Black faculty member's invisible and emotional labor. For example, this might include accounting for how Black faculty members provide informal life support for students of color in the law school White space. This accounting might be considered a "credit" where other areas (scholarship, teaching, formal service) are lacking. It could also warrant financial compensation through the establishment of faculty service awards.

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369. *See id.* at 747 ("It is not enough to acknowledge the inequities that exist in research and academic publishing. Instead, we must intentionally and actively work to disrupt racism in research . . . ."). Concrete action could include adopting a Diversity Statement and having a dedicated Diversity Editor. *See* Parks & Toussaint, *supra* note 257, at 234 (identifying *Temple Law Review* as having "a dedicated Diversity Editor" and having "adopted a Diversity Statement . . . to ensure it 'promot[es] diversity in both membership and scholarship'").

370. *See* Iruka et al., *supra* note 367, at 747 (exemplifying how one academic journal has committed to reviewing diversity statements and centering Black experiences).

371. Maynard Jr., *supra* note 271, at 248, 267, 295.

372. As someone who regularly incorporates personal narrative in legal scholarship, what constitutes an essay or article is very unclear. Is it the number of words, the fact that the author speaks directly to the reader, the incorporation of relevant narrative, or a combination of these things? Or is it based on the consensus of an always changing group of student editors?

373. *See* Honabach, *supra* note 366, at 319 ("So strong has the culture of scholarship become in legal education that one can rarely attend a discussion on scholarship these days without hearing someone espouse the belief that scholarship is essential for good teaching.").

While efforts to diversify law school faculties and student bodies may provide some relief, I do not propose this as a method for centering Blackness as such long-standing efforts have not produced Black student enrollment or representation on law school faculties in meaningful ways.[374] While legal academia must hear and listen to Black voices, White people must be careful not to abuse or monopolize Black faculty member's' time in the process.

Together, dismantling Whiteness and centering Blackness can eliminate the harm Black faculty experience when subjected to the White gaze and scrutinized through the lens of Whiteness. Elevating Black voices is essential to understanding how Whiteness results in the exclusion, subordination, and objectification of Black faculty. Our experiences are key to modifying or eliminating policies and practices which promote Whiteness and perpetuate the status quo for Black faculty engaged in teaching, scholarship, and service.

CONCLUSION

> And I didn't have to be consumed by or be concerned by the white gaze. That was the liberation for me.
>
> -Toni Morrison[375]

Since the late 1980s, Black law faculty—despite the White gaze—have courageously used narrative in legal scholarship to highlight the challenges associated with teaching, scholarship, and service in the law school White space.[376] This Article adds to that canon of literature, noting that structural change is slow to occur in the wake of 2020 commitments to antiracism.

Here, I examined the ways legal academia's White gaze is an infrastructure of injustice for people racialized as Black. Whiteness is the infrastructure of injustice that undergirds legal academia's traditions, practices, and policies. White norms and

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374. Despite law schools touting diversity and small incremental changes in Black student enrollment, the number of Black attorneys—the pipeline for law faculty members—has remained essentially unchanged. *See* DeShun Harris, *Do Black Lawyers Matter to the Legal Profession?: Applying an Antiracism Paradigm to Eliminate Barriers to Licensure for Future Black Lawyers*, 31 U. FLA. J.L. & PUB. POL'Y 59, 61 (2020) ("[F]or the year 2020, the American Bar Association (ABA) provides statistics showing that 86% of American attorneys are White and 5% are Black. The percentage of Black attorneys has been virtually unchanged since 2010.").

375. *Toni Morrison*, *supra* note 14.

376. I am immensely grateful for the courageous voices of Black scholars cited herein.

resulting behaviors, like know-your-place aggression and complicit bias, are critical aspects of White space, which includes legal academia. The White gaze is the operational norm of legal academia's White space wherein Black faculty are scrutinized through the lens of Whiteness, resulting in their exclusion, subordination, and objectification. Through the White gaze, Whiteness is imposed, presumed, venerated, and forced. The discursive and social practices of legal academia's White gaze illustrate how legal academia is an infrastructure of injustice for Black faculty engaged in the hallmarks of academic life: teaching, scholarship, and service.

Efforts to dismantle Whiteness and center Blackness, when taken together, can eliminate the harm Black faculty experience when subjected to the White gaze and scrutinized through the lens of Whiteness. However, considering the complicit bias exhibited by law schools since 2020, I am candidly not confident this work can or will occur. In my experience, when Black faculty challenge the White gaze, they face being gaslit, subtly accused of playing "the race card,"[377] or being too sensitive about issues of race.[378] This, of course, assumes that the race card being played is the "Black" one and often ignores the ways Whiteness is operating as a norm that objectifies, subjugates, and excludes Black faculty in legal academia. Thus, progress requires that law schools, as historically White institutions, and their governing bodies, acknowledge the value and benefits bestowed by Whiteness by doing more than renouncing White privilege, committing to diversity, or declaring themselves antiracist.

Inspired by Morrison, I would like to confidently assert that I am navigating academia, particularly legal scholarship, by "writing outside the white gaze, not against it but in a space where I [can] postulate the humanity writers were always being

377. *See* Kimberle Crenshaw, *Playing Race Cards: Constructing a Proactive Defense of Affirmative Action*, 16 NAT'L BLACK L.J. 196, 198 (1998) (noting that the trope, playing the race card, "suggests that raising concerns about racism . . . is merely an opportunistic ploy . . . [and] leads to the incredulous assumption that there is any game remotely conceivable in which the player that holds the race card has been dealt a winning hand").

378. *See* GEORGE J. SEFA DEI ET AL., PLAYING THE RACE CARD: EXPOSING WHITE POWER AND PRIVILEGE 130 (Joe L. Kincheloe & Shirley R. Steinberg eds., 2004) ("For the racially privileged, . . . responses to the moment are often interpreted as an excessive and extraordinarily sensitive . . . ."). White is invisible because it is "unmarked, unraced, civilized, and normal." YANCY, *supra* note 20, at xxxiii.

asked to enunciate,"[379] including my own. However, in legal scholarship, it is often the humanity which we forget as we assess so-called neutral laws and postulate remedies that are often void of the people laws affect.[380] But the unfortunate reality is that operating within the White gaze is vital to my career. This non-normative piece of legal scholarship, which focuses on the Black experience, fails to propose a concrete solution but instead invites conversations about the ways the White gaze excludes, objectifies, and subordinates Black faculty. That alone may limit its publication potential.

Some five years removed from feigned interest in racial justice, this Article will likely be subject to the White gaze as it undergoes review for publication. Exposing it is risky, but silence bears no reward.[381] Wherever it lands, it furthers my quest for liberation as a Black person who desires to live authentically in legal academia.[382] And so, it is worth it.

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379. MORRISON, *supra* note 1, at 199. She continues, "Writing of, about, and within a world committed to racial dominances without employing linguistic strategies that supported it seemed to me the most urgent, fruitful, challenging work a writer could take on." *Id.*

380. *See* WILLIAMS, *supra* note 21, at 214 (paraphrasing the rejections she received from law review editors: "If . . . you genuinely want to confront the risks of mental illness involved in your being a 'vain black female commercial law professor,' either you should do so by rewriting the piece as an objective commentary, weaving in appropriate references to the law and, if necessary, social science data; or, since you have a very poetic way of writing, you should consider writing short stories. As it is, this piece is far too personal for any legal publication . . . .").

381. *See* Chatman & Peters, *supra* note 24, at 3 ("We do not know any Black or otherwise marginalized person in the legal academy whose silence or complicity has allowed them to escape these kinds of harms."); *see also* Onwuachi-Willig, *supra* note 219, at 151 ("[T]hey [women of color] refused to engage in unforgivable silences that would have perpetuated a presumption that the average white male professor's experiences are the same as those women of color.").

382. It is also a continuation of my commitment to write about the Black experience in legal academia in a way where Black people feel seen. *See* BROWN, *supra* note 295, at 8 ("Although race scholarship wasn't critical to my tax law research, taking it in was a kind of comfort food for me, an act of self-preservation that acknowledged what I was experiencing was real.").