

THE NERVE: WOMEN OF COLOR IN THE LEGAL ACADEMY

KHIARA M. BRIDGES†

The end of this academic year will mark two decades since I started law school, as well as the conclusion of my first decade as a law professor. In many ways, it is remarkable that I am in the legal academy. I am pretty sure that if you told the 1L version of me that she would one day stand in the front of a classroom of students and lecture them on an area of law in which she had acquired an expertise, she would have laughed at you—right before scurrying off to brief some cases. Nevertheless, I am a law professor, and I frequently lecture students on areas of law in which I have acquired an expertise. The 2019–2020 academic year, which marks so many momentous “firsts” for women in the law, provides an opportunity for me—as the first (and only) lawyer in my family, as well as the first (and only) academic in my family—to reflect on my own path into the legal academy. It also provides an opportunity for me to imagine the future of women in the law that I hope will eventually come to pass.

As is true for most law students, my first year of law school—especially the first semester—was incredibly challenging for me. I did not understand the language that was used in the cases that we had to read. Try as I might, I could not identify the issue of the case most of the time. I did not know what a “tort” was. I did not understand what civil procedure was all about. I definitely could not read the large volume of materials that were assigned every day as carefully and thoughtfully as everyone was telling me they needed to be read. Because there would be no tests or evaluations until the end of the semester, I had absolutely no idea how much, if anything, I was actually learning. And although I wanted some indication of whether I was gradually coming to “think like a lawyer,” I would become *lightheaded* at the mere thought of the final exam: my anxiety about being tested on what I had learned was almost strong enough to make me pass out. These are laments shared by many, if not most, 1Ls.

However, other factors that were more unique to me made my first year of law school particularly trying. Before beginning my legal education, I was attracted to the idea of going to law school because I thought that it would allow me an opportunity to explore how the law interacts with—and

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† Professor of Law, UC Berkeley School of Law.

produces—race, class, and gender. I was particularly interested in the event of pregnancy, and I wanted to investigate why society has chosen to regulate it in the way that it has. I was well aware that the experience of pregnancy varied dramatically across socioeconomic status and race. I understood that society celebrated the pregnancies of class-privileged white women; meanwhile, the pregnancies of poor women of color were conceptualized as social problems that needed to be solved. I was drawn to law school because I wanted to explore how the law produced and sustained the different values that are attached to reproductive bodies. Moreover, how was this dramatic and obvious inequality possible in a country that purported to be committed to equality? Indeed, was this commitment to equality not explicitly articulated in the Constitution? How could we reconcile the law—indeed, our founding document—with what was actually happening on the ground in real people’s lives?

I found the first year of my legal education to be challenging—and troubling—because although questions about race, class, and gender brought me to law school, we never talked about race, class, or gender in any of my classes. In fact, I do not recall race, class, or gender being *mentioned* in any of my first-year classes—with the exception, of course, of Constitutional Law. I know now that race, class, and gender are interwoven into the interstices of all of the doctrines that we learned during 1L—from the reasonable person standard to the adequacy of consideration. I know now that those doctrines are a product of race, class, and gender hierarchies. I know now that they function to perpetuate and legitimate those hierarchies. However, as a 1L, I did not have the analytical tools to excavate the unspoken elements of race, class, and gender in the cases that were assigned and the doctrines that were being explored. So, as a 1L, I took the failure to discuss race, class, and gender to mean that they were not significant. Indeed, what I ascertained from this deafening silence around race, class, and gender was that the phenomena that were intriguing to me—the phenomena that I thought organized society—were not really that important. They were ancillary to what really matters. Sure, one might explore race, class, and gender in the second and third years of law school. But they were not core concerns. How could they be important when one could only *elect* to analyze them? How could they be significant when law students were not *required* to gain some fluency in them in the course of their legal education?

Simply put, my first year of law school was a profoundly alienating experience. Day after day, I felt as if my legal education was disabusing me of the foolish notion that the things that I had been convinced were critical to understanding why our society operates in the way that does were actually of any consequence.

The turning point for me came during my second year of law school. I

had the good sense to register for a seminar on Critical Race Theory with Professor Kendall Thomas, and I had the good fortune to get in. I do not overstate things when I say that the course changed my life. It gifted me with a vocabulary that I could use to speak about the interrelationship of race, class, and gender—intersectionality! antiessentialism! multidimensionality!—and it gave me the analytical tools with which I could investigate the ways in which race, class, and gender structure society. But perhaps the most important thing that Critical Race Theory and Professor Thomas gave me was validation that race, class, and gender *mattered*. In that seminar, I learned that they were subjects that were worthy of intellectual investigation; they were subjects that serious legal minds could devote their entire lives to studying. By the end of the semester, I had decided that I wanted to become a law professor.

Only recently have I really come to appreciate the *audacity* of my desire to enter the legal academy. I am a black woman. However, I had *no* law professors who were black women during my entire three years in law school. Neither did I have an Asian, Latinx, or indigenous woman as a law professor over the course of my legal education. The numbers that are available on the racial and gender demographics of the legal academy suggest that my experience is not at all rare.¹

During my first year of law school, all but one of my professors were white men. Notably, the only female professor that I had during my first year was a visitor; Columbia Law School had not yet hired her. The powerful lesson that a reasonable student might learn from the racial and gender demographics of the people who provided her with the foundation of her legal education was that women—and nonwhite women, especially—were incapable of doing that very thing. Women, especially nonwhite women, could not become experts. If the Columbia Law School faculty was comprised only of the giants in the various fields of law—which was how

1. The American Bar Association released a report on the racial and gender demographics of the legal academy in 2013. Black women comprised 5.2% of the tenured and tenure-track faculty that year. Latinx women, Indigenous women, and women of Asian descent comprised 1.8%, 0.3%, and 1.8% of tenured and tenure-track faculty, respectively. See Meera E. Deo, *Trajectory of a Law Professor*, 20 MICH. J. RACE & L. 441, 448 & tbl.1 (2015); *Data from the 2013 Annual Questionnaire: ABA Approved School Staff and Faculty Members, Gender and Ethnicity: Fall 2013*, AM. BAR ASS'N, https://www.americanbar.org/groups/legal_education/resources/statistics/statistics-archives (last visited Sept. 8, 2019) (on file with the *Columbia Law Review*).

The American Association of Law Schools (AALS) also released a report on the racial and gender composition of the legal academy in 2009. The numbers in that study are similar to those reported by the ABA. According to the AALS, in 2008–2009, Black women, Latinx women, indigenous women, and “Asian and Pacific Islander” women comprised 3.7%, 1.2%, 0.2%, and 1.0% of law faculty, respectively. See ASS'N AM. L. SCHS., AALS STATISTICAL REPORT ON LAW FACULTY, RACE AND ETHNICITY (2009), <http://www.aals.org/statistics/2009dltr/race.html>.

the law school described its faculty, then as now—then women, particularly nonwhite women, were not giants. Instead, they were small. Indeed, they were so small that they were invisible.

I thought the world of my professors. I do not think this was unique to me: I believe that many law students think incredibly highly of their law professors. Professors are fluent in a language that students dedicate three years of their lives to learning. They invariably are described as *the* leaders in their fields. They have the power to evaluate the student, identifying her as *like* or *unlike* themselves. And they stand in front of dozens upon dozens, sometimes hundreds, of students and command classrooms—expounding doctrine, interrogating the unlucky students who are on call, demystifying that which had been mystified. It is significant that I never saw a nonwhite woman do this. I describe my desire to enter the legal academy as audacious because I had to look to the mostly white men who I had seen assume this lofty role and say, “yeah, I can do that.”² In retrospect, I can see that I had some nerve.

We have so very much to celebrate when it comes to women in the law. Undeniably, women have made great strides over the past 150 years. The fact that the editors-in-chief of the top sixteen flagship law reviews are all women serves as unimpeachable evidence that significant progress has been made in the last century and a half. We certainly should celebrate all the advances that have been achieved. However, while we celebrate women’s advancement in the law, we should be attuned to the reality that there is still work to be done. Unsettling proportions of the students who graduate from law school every year will never have been taught by a nonwhite woman over the course of their legal education. That is, a disturbing number of lawyers have not had the opportunity to witness a black, Latinx, Asian, or indigenous woman command a room full of students. So many lawyers—established and brand new—have never had the chance to bear witness to a

2. I would be unforgivably remiss if I failed to acknowledge that, in many important respects, I am in the legal academy today because of the support of two of my white male professors: the late E. Allan Farnsworth, and the former Dean of Columbia Law School, David Leebron. During my time in law school, they hired me as a teaching assistant for their classes, wrote letters of recommendation for me, encouraged me endlessly, and, in general, made the path to the legal academy more accessible to me than it otherwise would have been.

I mention this to make clear that the critique here is not that female law students of color *need* to have women of color as law professors in order for them to dream of entering the legal academy someday. Neither is the critique that white men and white women cannot serve as competent or adequate mentors to women of color who aspire to become law professors. My personal experience disproves both of these claims. The more modest critique that I am making here is that it took some *chutzpah* on my part to aim to assume a role that I, a black woman, had seen white men typically assume. My hope is that there will be more women of color among the next generation of law professors and that those women of color need not to have been brave beyond measure in order to seek a tenure or tenure-track job in the legal academy.

nonwhite woman's unparalleled expertise. Too many lawyers have learned the lesson that reasonable people can learn from nonwhite women's absence from the legal academy: nonwhite women are not in the academy because they are not good enough to be there.

Progress will have been made when the discourses about the incompetence of nonwhite people—especially when they are not cisgender males—no longer circulate. I am certain that these discourses were responsible for producing my legal education as one marked by the complete absence of nonwhite female professors. How many students who will graduate from Columbia Law School this year—two decades later—will have similar experiences? What of the graduates at the fifteen other top law schools?

Further, progress will have been made when female professors of color are as likely to be experts in race and gender as they are in fields that do not directly implicate race and gender. To be clear, I am a scholar of race and gender. I do the work that I do because I find it endlessly fascinating and exceedingly important. I also find it to be terribly (hopelessly?) complex. Race and gender (and the intersection of the two) are phenomena that are in constant flux—incessantly shifting across sites and historical moments. I enjoy studying race and gender because they are challenges—high-stakes puzzles that I am constantly trying to solve. However, my choice to study what I study, and the difficulty of studying what I study, does not erase the reality that the women of color who make it into the legal academy frequently have acquired an expertise in race or gender, or both. I am afraid that this suggests that the gatekeepers to the legal academy—appointments committees, the faculties that vote on candidates—believe that *women of color can only be experts in matters of race or gender*. I am afraid that these gatekeepers believe that race and/or gender are the only things that women of color *can* know with any degree of depth or sophistication.³ This, of course, is racist and sexist. It also unfairly limits the universe of possibilities for those women of color who desire careers in the legal academy. And it is *insulting*. It insults those women of color who have made the interrogation of race and sex their life's work—implying, as it does, that we could not become experts in any other field. It suggests that we have a narrow set of

3. At the same time that race and gender are the only things that women of color are imagined to know with any degree of depth or sophistication, there are still discourses circulating that cast doubt on whether race and gender are actually topics worthy of rigorous intellectual engagement. In some significant corners of the legal academy, questions persist about whether theorizing race, gender, or the intersection of the two, is the stuff of serious academic scholarship. While thinking about corporations, tax, or federal courts is undeniably “serious,” thinking about race and gender (as well as sexuality, ability, gender identity, to name a few other denigrated subjects) is not as uncomplicatedly understood as subjects to which “serious” intellectual minds would devote their energies.

intellectual skills that have been made possible not by the work that we have put into developing our abilities, but rather by our social location. Our white male counterparts are imagined to acquire expertise in their areas of specialization because they are, quite simply, brilliant, and they have chosen to concentrate their brilliance on one of many possible topics. Meanwhile, women of color are imagined to acquire expertise in race and/or gender because, well, what else could we possibly know?

So, progress will have been made when nonwhite female law professors are as likely to teach a seminar on Business Associations as they are on Reproductive Rights and Justice. Progress will have been made when women of color in the legal academy are as likely to publish an influential, oft-cited article on federal income tax as they are on the simultaneous over- and underpolicing of communities of color. Progress will have been made when female law professors of color are invited to speak on panels about federal courts as they are asked to present at conferences about civil rights and antidiscrimination law.

Finally, progress will have been made when female law students of color who want to become law professors do not have to be *audacious*. Certainly, we will have made significant gains when audacity is not required to dream of becoming a woman of color in the legal academy.