

St. John's University School of Law

St. John's Law Scholarship Repository

Faculty Publications

2021

From Academic Freedom to Cancel Culture: Silencing Black Women in the Legal Academy

Renee Nicole Allen

St. John's University School of Law

Follow this and additional works at: https://scholarship.law.stjohns.edu/faculty_publications



Part of the [Law and Gender Commons](#), [Law and Race Commons](#), [Legal Education Commons](#), and the [Legal Profession Commons](#)

This Article is brought to you for free and open access by St. John's Law Scholarship Repository. It has been accepted for inclusion in Faculty Publications by an authorized administrator of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

U.C.L.A. Law Review

From Academic Freedom to Cancel Culture: Silencing Black Women in the Legal Academy

Renee Nicole Allen

ABSTRACT

In 1988, Black women law professors formed the Northeast Corridor Collective of Black Women Law Professors, a network of Black women in the legal academy. They supported one another's scholarship, shared personal experiences of systemic gendered racism, and helped one another navigate the law school white space. A few years later, their stories were transformed into articles that appeared in a symposium edition of the Berkeley Women's Law Journal. Since then, Black women and women of color have published articles and books about their experiences with presumed incompetence, outsider status, and silence. The story of Black women in the legal academy *has* been told. And, in 2021, contemporary voices resemble voices from long ago.

This Article updates and contextualizes the treatment of Black women law professors. While cancel culture is intended to punish or shame bad actors, in legal academia, Black women are canceled for simply existing. This Article explores the ways in which white academic norms, like academic freedom and hierarchy, explicitly and implicitly silence Black women and "cancel" their academic careers. As a result of the systemic gendered racism inherent in existing norms, Black women are silenced by intersectional microaggressions, white tears, and tokenism. They suffer intersectional battle fatigue, a consequence of having to negotiate identity in ways that result in physical, psychological, and emotional trauma. After defining law schools as white spaces and exploring cancellation tactics, this Article encourages law schools to reevaluate academic norms to create positive experiences for Black women.

Amid social unrest, the legal academy is primed to be a key player in modern social justice movements. But first, it must address inequities within.

AUTHOR

Renee Nicole Allen is an Assistant Professor of Legal Writing at St. John's University School of Law. She thanks her research assistants Dallas Park, Precious Lewis, Ben Ranalli, and Lila G. Rosenfeld; her Cocktails & Comments writing group members Professors Alicia R. Jackson and DeShun Harris; Professors Anna R. Roberts, Melanie D. Wilson, Zack Buck, and Rachel H. Smith; "Wakanda;" and St. John's University School of Law junior faculty scholars. She also thanks the editorial staff of the *UCLA Law Review*.



TABLE OF CONTENTS

INTRODUCTION.....	366
I. WHAT IS CANCEL CULTURE?.....	367
II. HOW DO ACADEMIC NORMS SILENCE AND CANCEL BLACK WOMEN?.....	371
A. Law Schools are “White Spaces”	371
B. White Norms Govern Law Schools.....	373
C. Academic Freedom and Tenure Are White Norms.....	376
III. CANCELING BLACK WOMEN	380
A. Not All Women, Black Women	381
B. Tools of Cancellation and Silence.....	382
1. White Tears and Other Manipulations.....	382
2. Unmasking Intersectional Microaggressions: Gendered and Colorblind Racism	385
3. Self-Silencing and Self Sidelineing.....	389
C. Invisible Labor and Black Taxes.....	391
D. Literally and Figuratively, Cancellation Kills	394
IV. WHAT CAN THE LEGAL ACADEMY DO ABOUT IT?	397
A. Incorporate Whiteness and Critical Race Theories Across the Curriculum.....	398
B. Reevaluate Academic Norms	401
C. Engage in Meaningful Diversity and Inclusion Practices	404
D. Amplify, Ally, Accomplice	407
CONCLUSION	408

INTRODUCTION

“The story of [B]lack women law professors in the legal academy
has yet to be told.”

—Emma Coleman Jordan, 1990

“If you are silent about your pain, they’ll kill you and say you enjoyed
it.”

—Zora Neale Hurston¹

American institutions of higher learning, including law schools, are white² spaces governed by academic norms defined by white men. The few Black³ women who enter the white space of American law schools must subscribe to these norms to thrive. For these Black women, failure to subscribe to these norms leads to outright cancellation through failed promotions and an inability to earn tenure. Yet, subscribing to the norms often means silencing their intellectual curiosity and important aspects of their cultural identities.

In recent years, cancel culture has risen to the forefront of public debate. Cancel culture describes a boycott or silencing of a public figure who shares a questionable or unpopular opinion, or someone who behaves in ways society deems inappropriate or offensive.⁴ In its recent iterations, cancel culture is often characterized as a means of agency—a way for victims to regain power. Yet cancel culture is more than a recent social media phenomenon; though not always

-
1. Emma Coleman Jordan, *Images of Black Women in the Legal Academy: An Introduction*, 6 BERKELEY WOMEN’S L.J. 1, 1 (1990); Zora Neale Hurston, *Zora Neale Hurston Quotes*, GOODREADS, https://www.goodreads.com/author/quotes/15151_Zora_Neale_Hurston [<https://perma.cc/UR4A-RWKZ>] (last visited Dec. 13, 2020).
 2. In this Article the lowercase “w” is intentional. See Tsedale M. Melaku & Angie Beeman, *Academia Isn’t a Safe Haven for Conversations About Race and Racism*, HARV. BUS. REV. (June 25, 2020), <https://hbr.org/2020/06/academia-isnt-a-safe-haven-for-conversations-about-race> [<https://perma.cc/H3HR-EUS9>] (“In her academic work, Angie Beeman prefers to put the word ‘white’ in quotation marks when referring to race to reflect the scholarly position that it does not represent a biological reality, but a harmful identity created over time to divide people.”).
 3. In this Article “Black” is intentionally capitalized. See @APStylebook, TWITTER (June 19, 2020, 1:06 PM), <https://twitter.com/APStylebook/status/1274071020471750666> [<https://perma.cc/EG2E-QKG8>] (“AP’s style is now to capitalize Black in a racial, ethnic or cultural sense, conveying an essential and shared sense of history, identity and community among people who identify as Black, including those in the African diaspora and within Africa.”).
 4. See *Online Shaming*, WIKIPEDIA, https://en.wikipedia.org/wiki/Online_shaming [<https://perma.cc/A8H7-NGLJ>] (last updated Aug. 12, 2021).

labelled “cancel culture,” cancellation has long existed in the legal academy as a way to maintain the status quo by silencing marginalized voices.

This Article explores cancel culture as it relates to Black women in the legal academy. Specifically, it addresses how academic norms “cancel” or silence Black women. In Part I, this Article explains how cancel culture—a pop culture phenomenon—operates in law schools. Part II centers law schools as institutional white spaces where academic freedom and tenure are white academic norms. Part III explores the systemic gendered racism Black women experience and specific cancellation and silencing tactics like white tears, intersectional microaggressions, and tokenism. Finally, in Part IV, this Article concludes with recommendations for how law schools can mitigate, and potentially prevent, silencing Black women in the academy.

I. WHAT IS CANCEL CULTURE?

“Sham[e] is. . . [a] tool[] of imperialist[,] white supremacist[,] capitalist[,] patriarchy because [it] produces trauma [which] often produces paralysis.”

–bell hooks⁵

According to Merriam Webster, “*Canceling* and *cancel culture* have to do with the removing of support for public figures in response to their objectionable behavior or opinions. This can include boycotts or refusal to promote their work.”⁶ “Cancel culture refers to ending (or attempting to end) an individual’s career or prominence to hold them accountable for immoral behavior.”⁷ Cancel culture is distinct from callout culture, which aims to publicly shame a person who makes a mistake.⁸ Yet, even callouts can be an effective way to

5. *Black Female Voices: bell hooks & Melissa Harris-Perry*, NEW SCHOOL, at 1:13:40 (Nov. 8, 2013), <https://livestream.com/accounts/1369487/events/2477970> [<https://perma.cc/KZ4V-A945>].

6. *What It Means to Get ‘Canceled,’* MERRIAM WEBSTER, <https://www.merriam-webster.com/words-at-play/cancel-culture-words-were-watching> [<https://perma.cc/9FDZ-M5RC>] (last visited Sept. 25, 2020).

7. Rob Henderson, *What Propels Cancel Culture?*, PSYCH. TODAY, Mar.–Apr. 2020, at 36, 37.

8. See Loretta J. Ross, *Speaking Up Without Tearing Down*, TEACHING TOLERANCE, Spring 2019, at 19, 20 (“Calling out happens when we point out a mistake, not to address or rectify the damage, but instead to publicly shame the offender. In calling out, a person or group uses tactics like humiliation, shunning, scapegoating or gossip to dominate others.”); Loretta Ross, Opinion, *I’m a Black Feminist. I Think Call-Out Culture Is Toxic.*, N.Y. TIMES (Aug. 17, 2019), <https://www.nytimes.com/2019/08/17/opinion/sunday/cancel-culture-call-out.html> [<https://perma.cc/9VLM-24XR>] [hereinafter Ross, *I’m a Black Feminist*] (“Call-

“challenge provocateurs who deliberately hurt others, or for powerful people beyond our reach.”⁹

Often, cancel culture is about “establishing new ethical and social norms and figuring out how to collectively respond when those norms are violated.”¹⁰ Social cancellation can be traced back to Black Twitter in 2015 when canceling a person seriously or in jest caught steam, followed by “communal calls to boycott a celebrity whose offensive behavior [was] perceived as going too far.”¹¹ In popular culture:

A celebrity or other public figure does or says something offensive. A public backlash, often fueled by politically progressive social media, ensues. Then come the calls to cancel the person—that is, to effectively end their career or revoke their cultural cachet, whether through boycotts of their work or disciplinary action from an employer.¹²

A person who is canceled is “culturally blocked from having a prominent public platform or career. . . .”¹³ Yet, in reality, so-called canceled persons often “find themselves back in the public’s good graces within a matter of months or even weeks.”¹⁴

Cancel culture is also characterized as a means of agency—a way for victims to regain power. In this context, cancellation of a powerful person is a way for historically powerless people to reach mass audiences via the internet and social media.¹⁵ Yet individuals in positions of power rarely recognize cancel culture’s legitimacy. Rather, calls for cancellation often lead people in historical positions of power to dismiss legitimate criticism and frame themselves as victims of “reckless

outs happen when people publicly shame each other online, at the office, in classrooms or anywhere humans have beef with one another.”).

9. Ross, *I’m a Black Feminist*, *supra* note 8.

10. Aja Romano, *Why We Can’t Stop Fighting About Cancel Culture*, VOX (Aug. 25, 2020, 12:03 PM), <https://www.vox.com/culture/2019/12/30/20879720/what-is-cancel-culture-explained-history-debate> [<https://perma.cc/LK5V-6A7B>].

11. *Id.*; *see, e.g.*, @TAYLOR_MR, TWITTER (Dec. 29, 2015, 11:33 PM), https://twitter.com/TAYLOR_MR/status/682102106430554112 [<https://perma.cc/42F9-7VES>]; @themochalisa, TWITTER (Sept. 7, 2015, 8:20 AM), <https://twitter.com/themochalisa/status/640907491321233408> [<https://perma.cc/K3RG-FBUA>].

12. Romano, *supra* note 10.

13. *Id.*

14. Danielle Butler, *The Misplaced Hysteria About a ‘Cancel Culture’ That Doesn’t Actually Exist*, ROOT: VERY SMART BROTHAS (Oct. 23, 2018, 7:30 PM), <https://verysmartbrothas.theroot.com/the-misplaced-hysteria-about-a-cancel-culture-that-do-1829563238> [<https://perma.cc/4B5G-458K>].

15. *See* Romano, *supra* note 10 (“They’re still the ones without the social, political, or professional power to compel someone into meaningful atonement, to do much more than organize a collective boycott.”).

vigilante justice.”¹⁶ “This applies to . . . anyone whose privilege has historically shielded them from public scrutiny. Because they can’t handle this cultural shift, they rely on phrases like ‘cancel culture’ to delegitimize the criticism.”¹⁷

A canceled person may take affirmative steps towards redemption. Redemption is generally a theological concept, but there is a psychological aspect to analyzing public transgressions.¹⁸ The redemption process begins with an emotional reaction to the transgression, like canceled speech, when a person violates a personal or community norm and feels guilt.¹⁹ If the transgression is public, so-called cancellation may lead to feelings of shame.²⁰ Redemption usually requires the transgressor to take three affirmative steps following their transgression: First, the canceled party must publicly acknowledge their error or transgression.²¹ Acknowledgment is followed by a commitment to change and demonstrated evidence of change.²² Finally, the canceled party must compensate for her transgression in a way that makes harmed persons feel whole.²³

Students of color generally lead the charge in calling for the cancellation of law school faculty members who engage in racist acts or speech. These students are often tasked with organizing events designed to bring visibility and awareness to the racial inequities present in law schools and the legal profession.²⁴ They do so under the leadership of faculty advisors who are often female and members of underrepresented groups of color.²⁵ To combat racialized discourse in the law school classroom, these students devote a significant amount of time to activities that promote a racially inclusive law school environment.²⁶

The cancel culture cycle plays out in reports of racist remarks, followed by calls for cancellation by students and faculty of color, apologies by

16. *Id.*

17. Sarah Hagi, *Cancel Culture Is Not Real—At Least Not in the Way People Think*, TIME (Nov. 21, 2019, 6:43 AM), <https://time.com/5735403/cancel-culture-is-not-real> [<https://perma.cc/K5UU-V625>].

18. Stanley A. Renshon, *Redemption, Fairness, and the Politics of Transformation in the Obama Presidency*, 32 POL. PSYCH. 1035, 1037 (2011).

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. See WENDY LEO MOORE, REPRODUCING RACISM: WHITE SPACE, ELITE LAW SCHOOLS, AND RACIAL INEQUALITY 158 (2008).

25. See Wendy G. Smooth, *Intersectionality and Women’s Advancement in the Discipline and Across the Academy*, 4 POL., GRPS., & IDENTITIES 513, 520 (2016).

26. See MOORE, *supra* note 24.

transgressors, and ultimately limited institutional action. Law students, often with the support of Black faculty, lead the charge expending invisible and emotional labor.²⁷ For Black students and other students of color, cancel culture is agency. While we cannot ascertain whether these public actors privately experience shame, we often see little meaningful change at the institutional level or in the longterm behavior of the transgressor.²⁸ And the transgressors—usually tenured, white professors—are often repeat offenders who will not be terminated.²⁹

Too often, should-be-canceled white law faculty members benefit from having harmful speech protected under the guise of academic freedom.³⁰ When a white faculty member asserts that “racist comments about legal scholarship are an aspect of his academic freedom, he is relying upon a particular speech right in the context of teaching, a central institutional norm in the realm of education.”³¹ Academic freedom—a revered attribute of the academy—further functions to silence Black women. Importantly, when white faculty members who engage in overt anti-Black speech are protected, law schools send a clear message to Black women: “contestation of subtler forms of racism will be fruitless.”³²

Rather than effectively giving a voice to marginalized people, cancel culture in legal academia often operates in the reverse: As a result of the reproduction and enforcement of white norms, Black women are silenced and, in effect, “canceled.” American law schools “have a shameful history of excluding Black persons from their hallowed halls” and engaging in practices that promote academic norms

27. See, e.g., Jenni Fink, *Petition Calling for ‘Racist’ Penn Law Professor’s Firing Gathers More Than 50,000 Signatures*, NEWSWEEK (July 31, 2019, 3:19 PM), <https://www.newsweek.com/petition-calling-racist-penn-law-professors-firing-gathers-more-50000-signatures-1451988> [https://perma.cc/PQ7T-U6UT]; see also Alicia Plerhoples (@aplerhoples), TWITTER (Mar. 11, 2021, 6:56 PM) <https://twitter.com/aplerhoples/status/1370207019517501440?s=20> [https://perma.cc/QZ9X-95A5] (attaching a letter drafted by Georgetown Law Black faculty in support of students in response to a viral, racist video).

28. See Associated Press, *UPenn Law Professor Removed for Calling Black Students Inferior*, N.Y. POST (Mar. 15, 2018, 7:12 PM), <https://nypost.com/2018/03/15/upenn-law-professor-removed-for-calling-black-students-inferior> [https://perma.cc/KM63-LJTP].

29. See Kathryn Rubino, *N-Word-Using Law School Professor Gets to Keep His Job*, ABOVE THE L. (Mar. 5, 2020, 11:17 AM), <https://abovethelaw.com/2020/03/n-word-professor-emory-results> [https://perma.cc/DW9K-QP6B].

30. See MOORE, *supra* note 24, at 9; see also Rubino, *supra* note 29; Associated Press, *supra* note 28; Amber Fisher, *DePaul Cancels Professor’s Class After N-Word Controversy*, PATCH (Apr. 5, 2018, 12:31 AM), <https://patch.com/illinois/chicago/depaul-cancels-professors-class-after-n-word-controversy> [https://perma.cc/8V8X-9435] (teaching first-year courses is regarded as a heavy lift, so removal from teaching first-year courses is hardly a penalty).

31. See MOORE, *supra* note 24, at 11.

32. *Id.* at 12.

rooted in racial hierarchy.³³ While cancel culture is intended to punish or shame bad actors, Black women are canceled for simply existing—living while Black and female—in a legal academy where white academic norms explicitly and implicitly cause their cancellation. Moreover, reverse cancellation of Black women is more effective than student-led attempts to cancel their empowered white counterparts for actual transgressions. And since Black women have not violated academic or social norms, the redemptive process provides no recourse.

This academic cancel culture works, in part, because there is no critical mass of Black women in the legal academy. As a result, Black women are less likely to “call out such instances of racism for fear that their [w]hite colleagues will question or invalidate their experiences.”³⁴ Their silence is weaponized as a way to maintain the status quo and “ensure[s] the perpetuation of sexism, racism, and other forms of marginalization and exclusion in the university.”³⁵ The remainder of this Article explores the mechanisms in legal academia that cancel or silence Black women.

II. HOW DO ACADEMIC NORMS SILENCE AND CANCEL BLACK WOMEN?

“In this country American means white. Everybody else has to
hyphenate.”

–Toni Morrison³⁶

A. Law Schools are “White Spaces”

American law schools are “white spaces.”³⁷ White spaces are primarily characterized by the overwhelming presence of white people, the exclusion of

33. See Taja-Nia Y. Henderson & Jamila Jefferson-Jones, *#LivingWhileBlack: Blackness as Nuisance*, 69 AM. U. L. REV. 863, 881 (2020).

34. Cynthia Diana Villarreal, Román Liera & Lindsey Malcom-Piqueux, *The Role of Niceness in Silencing Racially Minoritized Faculty*, in *THE PRICE OF NICE: HOW GOOD INTENTIONS MAINTAIN EDUCATIONAL INEQUITY* 129 (Angelina E. Castagno ed., 2019) (citations omitted).

35. Roxana Ng, “A Woman Out of Control”: *Deconstructing Sexism and Racism in the University*, 18 CANADIAN J. EDUC. 189, 199–200 (1993).

36. Toni Morrison, *Toni Morrison Quotes*, GOODREADS, https://www.goodreads.com/author/quotes/3534.Toni_Morrison [<https://perma.cc/Y7ZQ-MCFV>] (last visited Dec. 13, 2020).

37. See Elijah Anderson, “The White Space”, 1 SOCIO. RACE & ETHNICITY 10, 10 (2015) (“When present in the white space, [B]lacks reflexively note the proportion of whites to [B]lacks, or may look around for other [B]lacks with whom to commune if not bond, and then may adjust their comfort level accordingly; when judging a setting as too white, they can feel uneasy and consider it to be informally ‘off limits.’”); Henderson & Jefferson-Jones, *supra* note 33, at 879–83 (defining the right of white people to exclude Black people from white spaces and penalize them for trespass, and highlighting the exclusion of Black people from universities).

Black people, and embedded white norms.³⁸ Historically, white frames organized the logic of law schools, curricular models were constructed based upon the thinking of whites, and law was characterized as a neutral and impartial body of doctrine unconnected to power relations.³⁹ Thus, while maintaining that “the teaching of law is a neutral, objective, and impartial endeavor,” law and education, as powerful interacting social institutions, reproduce structures of inequality.⁴⁰ For example, tacit reproduction of white power and privilege⁴¹ starts at the onset of legal education where “thinking like a lawyer” is imposed upon law students as a neutral analytical framework instead of a “[s]ocial [t]ransmission of [k]nowledge and [p]ower.”⁴²

Colorblind racism describes racist “practices . . . that are more sophisticated and subtle than those typical of the Jim Crow era.”⁴³ In the law school white space, colorblind racism conceals the reproduction of inequality. “Within the law schools, there are patterns of racialized practices, practices that reinforce a normatively white frame and structure, which get minimized and justified through color-blind racist discourse.”⁴⁴ This discourse supports systems designed to protect white privilege and power. Likewise, victim blaming—instead of analyzing problems—naturalizes “structural racial inequality” by reducing the harmful results of structural processes to “personal choices and intentions.”⁴⁵ For Black women in the legal academy, colorblind racism operates to diminish claims of overt and covert racism.⁴⁶ In practice, it ignores the systemic racism inherent in academic norms and blames Black women for their silence and cancellation. Yet, it promotes the myths of meritocracy by allowing white men to ignore white privilege and the many ways in which they benefit from synergism with white colleagues and white institutions.⁴⁷

38. Anderson, *supra* note 37, at 13.

39. MOORE, *supra* note 24, at 27 fig.1.2.

40. *Id.* at 17.

41. *See id.* at 25.

42. *Id.* at 18–20.

43. See EDUARDO BONILLA-SILVA, RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN AMERICA 17 (5th ed. 2018) (arguing that colorblind racist ideology describes the ways racism persists and challenging the sentiment that, because of the 2008 presidential election of Barack Obama, we live in a postracial, colorblind era).

44. *See* MOORE, *supra* note 24, at 112.

45. *See id.* at 91.

46. *See id.* at 92.

47. See Grace Park, *My Tenure Denial*, in PRESUMED INCOMPETENT II: RACE, CLASS, POWER, AND RESISTANCE OF WOMEN IN ACADEMIA 280 (Yolanda Flores Niemann, Gabriella Gutiérrez Y Muhs & Carmen G. González eds., 2020) [hereinafter PRESUMED INCOMPETENT II].

In white spaces, whiteness is the norm and everything else is an other. The othering of Black women law professors originates from the negative perceptions of Black people in broad American society and culture.⁴⁸ These perceptions lead to prejudices, stereotypes, and rationalizations of discrimination against individual Black people.⁴⁹ To overcome stereotypes and stigmas of Blackness, at predominantly white institutions (PWIs) Black faculty must work hard to establish trust relationships with white faculty, staff, and students by constantly monitoring their own performance or promoting their own credibility.⁵⁰ Black faculty may rely on white colleagues to assure white people that they will not disturb the “implicit racial order” that favors white people in white spaces.⁵¹ And after their initial acceptance, if such acceptance occurs, Black faculty often must continually prove that they belong in white spaces.⁵²

For white people, white spaces are normal; for Black people, white spaces are “informally ‘offlimits.’”⁵³ Yet, navigation of these spaces is a condition of the Black existence. The following Parts of this Article outline and apply the theoretical model of law schools as institutional white spaces to demonstrate how “distinction[s] between whiteness and nonwhiteness” are at the heart of silencing Black women in the legal academy.⁵⁴

B. White Norms Govern Law Schools

Law schools are white spaces governed by white norms. White male sociocultural values are at the heart of every practice and policy in our modern universities, which means institutions are “inherently exclusionary to racially minoritized individuals.”⁵⁵ Because white men “occupy the highest positions in the race and gender hierarchy,” they have the power to define their reality and the reality of others in an academic institution.⁵⁶ Thus, in the academic white space, white men define which people and experiences are valid.⁵⁷

48. *See id.*

49. *See Anderson, supra* note 37, at 13.

50. *See id.*

51. *Id.*

52. *See id.* (describing the ways Black people might talk or dress in order to not “disturb the implicit racial order” of the white space).

53. *Id.* at 10–11.

54. *See Moore, supra* note 24, at 26.

55. *See Villarreal, Liera & Malcom-Piqueux, supra* note 34, at 130–31.

56. *See Robin DiAngelo, White Fragility: Why It’s So Hard for White People to Talk About Racism* 137 (2018).

57. *See id.*

As discussed above, “notions of inferior culture” (like the negative perceptions of Black people) perpetuate white academic norms.⁵⁸ The historically accepted, normalized, and transmitted assumptions within law schools show that racism and sexism are deeply embedded in their organizational culture.⁵⁹ For example, during the hiring process, the notion of “fit” between universities and prospective faculty is an academic norm used to determine how well Black women fit into the often white, Protestant, male values of the school.⁶⁰ “Fit” is used in a similar manner to evaluate Black women for tenure and promotion. To counter notions of a lack of fitness for the law school environment, Black women often self-silence or avoid being their authentic selves in order to thrive and advance.⁶¹

After they are hired, the “culture of [n]iceness”—another academic norm—operates to silence and cancel Black women who are not “polite, diplomatic, and nonconfrontational.”⁶² In the legal academy, niceness is often a “mechanism of [w]hiteness.”⁶³ When evaluated by white academic norms, minoritized⁶⁴ faculty experience challenges, including questioning and devaluation of their scholarship, tokenism whereby they are “visible as representatives of their race but invisible as individuals,” harsh evaluations, presumed incompetence, and microaggressions.⁶⁵

White academic norms often go unquestioned as white people have a seemingly accepted entitlement to dictate what is permissible in white spaces.⁶⁶ This entitlement is derived from the perception that whites are intertwined with institutions through their financial support and alumni legacies, and in return

58. See MOORE, *supra* note 24, at 112.

59. See Villarreal, Liera & Malcom-Piqueux, *supra* note 34, at 130.

60. See *id.* at 134; see also LENA WRIGHT MYERS, A BROKEN SILENCE: VOICES OF AFRICAN AMERICAN WOMEN IN THE ACADEMY 26 (2002) (“When law faculty talk about hiring, certain criteria and phrases are an accepted part of the discourse, which ostensibly is about the qualifications of the applicant. No one wants to hire an applicant who is not qualified. And so participants in the discourse tacitly agree that the conversation is about evaluating qualifications and eliminating the unqualified But the conversation that is really going on is not at all about qualifications.”) (quoting Stephanie M. Wildman, PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA 108 (1996)).

61. See Villarreal, Liera & Malcom-Piqueux, *supra* note 34, at 136–37.

62. See *id.* at 133.

63. *Id.* at 139.

64. *Id.* at 140 n.1 (“Individuals are considered racially minoritized when they are treated in ways that render them inferior because of their race under particular circumstances that work to maintain Whiteness.”).

65. *Id.* at 129.

66. ELWOOD WATSON, OUTSIDERS WITHIN: BLACK WOMEN IN THE LEGAL ACADEMY AFTER *BROWN V. BOARD* 97 (2008).

for their support, they alone are entitled to the benefits of the institution.⁶⁷ When Black women enter the white space of law school, their mere presence forces white people to question their entitlement.⁶⁸ This entitlement is part of white culture and provides the framework for academic norms that operate to silence and cancel Black women in the legal academy.⁶⁹

The “double jeopardy”⁷⁰ Black women experience due to racism and sexism at PWIs also exists at historically Black colleges and universities (HBCUs). Even though HBCUs exist as “demographically nonwhite spaces, tacit white norms remain embedded in the school institution as a result of broader institutionalized racism in education.”⁷¹ And early HBCUs, regardless of white or Black leadership, adopted the norms of white institutions.⁷² Legal scholars Faith Joseph Jackson and Edieth Wu describe Black women working at HBCUs as “the truncated subclass:” their status as a “female minority” is often not recognized because “society has difficulty fathoming that an HBCU would engage in discriminatory activity.”⁷³ Three systems are often implicitly present within HBCUs and influence their culture in a manner that discriminates against Black women: the military with its focus on group culture and socialization under predominantly male leadership,⁷⁴ the Black church with its “male-dominated hierarchy,”⁷⁵ and college athletics in the way Black men are recruited, compensated, and protected by institutions and the law.⁷⁶ Under predominantly Black male leadership that is often influenced by these value systems, Black women at HBCUs advance at the discretion of Black men and face cancellation for revealing discriminatory practices or displaying strength.⁷⁷

67. *Id.*

68. *See id.*

69. *See id.* (referencing an interview with Taunya Lovell Banks).

70. *See* Florence B. Bonner, *Addressing Gender Issues in the Historically Black College and University Community: A Challenge and Call to Action*, 70 J. NEGRO EDUC. 176, 178 (2001) (noting Frances M. Beale’s recognition of the “double jeopardy” phenomenon at predominantly white institutions (PWIs) in 1995).

71. MOORE, *supra* note 24, at 26.

72. *See* Faith Joseph Jackson & Edieth Y. Wu, *Must We Deploy Drones in the Twenty-First Century to Target Under the Radar Discrimination Against Minority Women at Law Schools at Historically Black Colleges and Universities (HBCUs)?*, 31 COLUM. J. GENDER & L. 164, 173–74 (2015).

73. *Id.* at 169.

74. *Id.* at 174.

75. *Id.* at 176.

76. *Id.* at 179.

77. *Id.* at 181–82.

C. Academic Freedom and Tenure Are White Norms

Academic freedom and tenure are white institutional norms that “operate to reproduce the racial dynamics of the law school space without the need for enforced racial exclusion or open racial animus.”⁷⁸ In the hierarchy of academic freedom, tenured law faculty have the most freedom while faculty in nontenure-earning positions (legal writing, library, academic support, clinic) have relatively none.⁷⁹ Of course, Black women—like all law faculty—want the freedoms that come with tenure. Yet, for them, the road to tenure is often filled with explicit and implicit messages of silence.

The formation of legal and academic organizations formalized the exclusion of Black people and the early policies and traditions that benefitted white men. The American Bar Association (ABA), the Association of American Law Schools (AALS), and the American Association of University Professors (AAUP) were formed during a time when it was legal to exclude Black people. The ABA was founded in 1878 and formally restricted membership to white men in 1912.⁸⁰ In 1900, the Association of American Law Schools (AALS) was formed “to elevate the standards of legal education” in the apprenticeship era.⁸¹ In 1915, in response to calls for the resignation of a faculty member who expressed views contrary to the cofounder of his university, the American Association of University Professors (AAUP) was formed to protect the employment of American faculty members.⁸² In the AAUP’s 1915 *Declaration of Principles of Academic Freedom and Academic Tenure*, academic freedom is defined as “the freedom of the teacher[:]. . . freedom of inquiry and research; freedom of teaching within the university or college; and freedom of extramural utterance and action.”⁸³ Yet in practice, academic freedom is an “illusory term”⁸⁴ that is sometimes used by faculty

78. See MOORE, *supra* note 24, at 32.

79. See Teri A. McMurry-Chubb, *On Writing Wrongs: Legal Writing Professors of Color and the Curious Case of 405(c)*, 66 J. LEGAL EDUC. 575, 582 (2017).

80. ABA *Timeline*, A.B.A., https://www.americanbar.org/about_the_aba/timeline [https://perma.cc/28JP-X5K5] (last visited Apr. 29, 2021).

81. *History*, ASS’N OF AM. L. SCHS., <https://www.aals.org/about/history> [https://perma.cc/3G8B-RJ8C] (last visited Dec. 13, 2020).

82. Robert C. Post, *Academic Freedom and Legal Scholarship*, 64 J. LEGAL EDUC. 530, 531 (2015).

83. CARY NELSON, *NO UNIVERSITY IS AN ISLAND: SAVING ACADEMIC FREEDOM 3* (2010) (quoting the 1915 Declaration of Principles of Academic Freedom and Academic Tenure).

84. Denise S. Smith & Michael A. Katz, *Academic Freedom in an Age of Assessment and Accountability*, 22 MIDWEST L.J. *1, *2 (2008).

members to “justify unacceptable practices”⁸⁵ like the ones discussed in this Article.

Tenure also contributes to the silencing of Black women legal academics. “Tenure is said to represent the crown jewel of academic life. It confers on those lucky enough to have it a lifetime of financial security and, purportedly, substantial freedom to teach and conduct research.”⁸⁶ Once tenured, law professors have power to influence major institutional decisions.⁸⁷ Yet, Black women’s tenure experience is starkly different from that of white men. In fact, one study of the law school tenure process found that 81 percent of white men perceived the process as fair, compared to only 54 percent of women of color.⁸⁸ Overall, “minority women . . . were significantly more negative about the process than either white female professors or male professors of color.”⁸⁹ This negative perception of the tenure process was fairly consistent for cohorts of minority women who earned tenure before 1980 through 2005.⁹⁰ Similarly, a 2012 study found that 35 percent of minority female law professors agree that the tenure process was unfair.⁹¹

Analogous to the American dream, in the legal academy, tenure and academic freedom are “master narratives” rooted in white norms.⁹² “Master narratives were constructed to achieve a cohesive understanding of the American identity; it also makes sense that master narratives are rooted in [w]hite supremacist ideology that permits racist and sexist conditioning.”⁹³ Master narratives allow academics to consciously and subconsciously see Black women as powerless or inferior and, in turn, devalue them and their contributions.⁹⁴ Master

85. NELSON, *supra* note 83, at 27.

86. Stephen J. Ceci, Wendy M. Williams & Katrin Mueller-Johnson, *Is Tenure Justified? An Experimental Study of Faculty Beliefs About Tenure, Promotion, and Academic Freedom*, 29 BEHAV. & BRAIN SCI. 553, 553 (2006).

87. Katherine Barnes & Elizabeth Mertz, *Is It Fair? Law Professors’ Perceptions of Tenure*, 61 J. LEGAL EDUC. 511, 511 (2012).

88. *Id.* at 516–17 & tbl.1.

89. *Id.* at 519.

90. *Id.* at 531.

91. *Id.* at 516 tbl.1.

92. See Chayla Haynes, Saran Stewart & Evette Allen, *Three Paths, One Struggle: Black Women and Girls Battling Invisibility in U.S. Classrooms*, 85 J. NEGRO EDUC. 380, 381 (2016). Master narratives are ideologies designed to promote and perpetuate cohesive social identity. *Id.* As a master narrative, “The American Dream describes a set of ideals rooted in the U.S. context of country, liberty, opportunity, and equality. Additionally, the American Dream promotes prosperity, which is supposedly accessible to every citizen through hard work and determination.” *Id.*

93. *Id.* at 382.

94. *See id.*

narratives make Black women invisible by placing them “lowest on a raced and gendered hierarchy, behind [w]hite men, [w]hite women and Black men.”⁹⁵ In the legal academy, master narratives support the notion that tenure and academic freedom are accessible to all faculty who work hard while ignoring the fact that on the path to tenure Black women do not have the same opportunities and experiences as their white counterparts. This belief operates to silence Black women who challenge the process by raising concerns about institutional barriers and the myth of meritocracy. Thus, master narratives underpin the numerous barriers Black women face while seeking to obtain full academic freedom through tenure.

The same barriers Black women face in tenure permeate legal academia more generally. Legal scholarship as a discipline is hierarchal. “Disciplines are premised on the idea that there are better and worse ways of knowing.”⁹⁶ Historically and currently, white men—who make up the majority of law school faculties⁹⁷—are often the arbiters of “better” and “worse” to the detriment of Black women. Black women in the legal academy receive numerous messages about how to suppress aspects of their cultural identity so that they can fit in and ultimately earn tenure.⁹⁸ Black women are encouraged to stay away from identity-based scholarship and advice like “[d]on’t write that [B]lack stuff” is not uncommon.⁹⁹ In hiring and tenure reviews, Black women endure questions about whether Critical Race Theory (CRT) is “real” scholarship.¹⁰⁰ As Professor Khiara Bridges, a tenured faculty member and Black woman, points out, there is a paradox in academia where Black women are seen as only having expertise in race or gendered scholarship, yet that same scholarship is treated as intellectually inferior.¹⁰¹

95. See *id.* at 383.

96. Post, *supra* note 82, at 534.

97. See *Law School Faculty & Staff by Ethnicity and Gender: Fall 2013*, A.B.A., https://www.americanbar.org/groups/legal_education/resources/statistics/statistics-archives [<https://perma.cc/VZJ9-LRSV>].

98. See WATSON, *supra* note 66, at 54 (recalling an interview with Patricia Hughes, in which she notes that everything will be fine if she could “just be more like us, harbor no dissenting opinions, particularly on racial and gender issues”).

99. Okianer Christian Dark, *Just My 'Magination*, 10 HARV. BLACKLETTER J. 21, 22 (1993).

100. See MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* 24–25 (2019).

101. Khiara M. Bridges, *The Nerve: Women of Color in the Legal Academy*, *WOMEN & L.* 65, 69–70 (2020) (“Meanwhile, women of color are imagined to acquire expertise in race and/or gender because, well, what else could we possibly know?”).

Black women also receive identity suppression messages about their appearance.¹⁰² In the legal academy (and other professional environments), Black women experience intersectional discrimination regarding their choice of hairstyle.¹⁰³ “[W]ith respect to hair, Black women’s freedom, autonomy, and privilege are constrained in ways that are unique to Black women.”¹⁰⁴ “Black women, because of their race, color, and gender, have been denied or terminated from employment—stigmatized and stereotyped in the process—on the basis of their hairstyles.”¹⁰⁵ Explicit and implicit attempts to police Black women’s appearance force Black women to make an impossible decision: suppress their cultural identity or jeopardize professional advancement.

Master narratives overshadow the challenges Black women experience on the path to tenure and have likely contributed to the inability of Black women to achieve a critical mass on law school faculties despite the accomplishments of notable trailblazers.¹⁰⁶ Lutie A. Lytle, the daughter of former slaves, became the first Black woman law professor in 1898.¹⁰⁷ Sybil Jones Dedmond was the first Black woman to earn tenure at an American law school in 1948.¹⁰⁸ And in 1971, Joyce Hughes became the first Black woman on the tenure track at a PWI.¹⁰⁹ Yet, in 1994, Black women comprised a mere 3.5 percent of law faculty.¹¹⁰ And almost twenty years later in 2013, Black women composed only 5.2 percent of tenured and tenure track law faculty members, while white women comprised 26.3 percent and white men 52.7 percent.¹¹¹ The numbers underscore the fact that “[t]he playing field in the legal academy is often uneven and frequently excludes

102. D. Wendy Greene, *Black Women Can’t Have Blonde Hair . . . in the Workplace*, 14 J. GENDER, RACE & JUST. 405 (2011).

103. *See id.* at 406–07.

104. *Id.* at 408.

105. *Id.* at 430.

106. *See* Sherrée Wilson, *They Forgot Mammy Had a Brain*, in PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA 65, 69 (Gabriella Gutiérrez y Muhs, Yolanda Flores Niemann, Carmen G. González & Angela P. Harris eds., 2012) (finding that increasing the number of Black women faculty creates a critical mass which creates a safe place for these faculty members to share their experiences and vocalize concerns).

107. Taja-Nia Y. Henderson, “*I Shall Talk to My Own People*”: *The Intersectional Life and Times of Lutie A. Lytle*, 102 IOWA L. REV. 1983, 1983 (2017).

108. WATSON, *supra* note 66, at 3.

109. Pamela J. Smith, *Teaching the Retrenchment Generation: When Sapphire Meets Socrates at the Intersection of Race, Gender, and Authority*, 6 W.M. & MARY J. WOMEN & L. 53, 89 (1999).

110. WATSON, *supra* note 66, at 50.

111. *Law School Faculty & Staff by Ethnicity and Gender: Fall 2013*, *supra* note 97.

[B]lack women’s values, voices, and vision while embracing the Western patriarchal perspective.”¹¹²

Black women have no meaningful choice in the silence they provide “in exchange for the tenuous promise of tenure at some point in the future.”¹¹³ In 2000, relying on Audre Lorde’s “tyrannies of silence,”¹¹⁴ Professor Pamela Smith explained that silence is an oppressive tactic used by law schools to maintain the status quo—that is, the subjugation of Black women under white, male academic norms.¹¹⁵ Twenty years later, prompted by institutional statements calling for social justice in response to unrest over numerous killings of unarmed Black people, Black women are again speaking about their experiences in higher education with hashtags like #BlackInTheIvory on Twitter and “Black at _____” accounts on Instagram.¹¹⁶ In 2021, there is a renewed energy and hope that calls for racial equality in the academy will finally be heard and addressed.¹¹⁷

III. CANCELING BLACK WOMEN

“Women of Color in America [sic] have grown up within a symphony of anger at being silenced at being unchosen, at knowing that when we survive, it is in spite of a world that takes for granted . . . and which hates our very existence outside of its service.”

—Audre Lorde¹¹⁸

112. WATSON, *supra* note 66, at 2.

113. Pamela J. Smith, *The Tyrannies of Silence of the Untenured Professors of Color*, 33 U.C. DAVIS L. REV. 1105, 1107 (2000).

114. *Id.* The term is borrowed from Audre Lorde’s 1984 speech, *The Transformation of Silence Into Language and Action*. *Id.* at 1105 n.1 (citing Audre Lorde, *The Transformation of Silence Into Language and Action*, in *SISTER OUTSIDER: ESSAYS & SPEECHES BY AUDRE LORDE* 40, 41 (1984)).

115. *See id.*

116. Francie Diep, *‘I Was Fed Up’: How #BlackInTheIvory Got Started, and What Its Founders Want to See Next*, CHRON. HIGHER EDUC. (June 9, 2020), <https://www.chronicle.com/article/I-Was-Fed-Up-How/248955> [<https://perma.cc/TP8P-KAVA>] (reporting that, in light of academia’s calls for systemic reform, the founders of the hashtag sought to bring attention to systemic racism in academia); *see generally* @BlackintheIvory, TWITTER, <https://twitter.com/BlackInTheIvory> [<https://perma.cc/EY5P-PJ7L>] (last visited Sept. 26, 2020); Terry Nguyen, *Students Are Using Instagram to Reveal Racism on Campus*, VOX (July 15, 2020, 7:30 AM), <https://www.vox.com/the-goods/2020/7/15/21322794/students-instagram-black-at-accounts-campus-racism> [<https://perma.cc/M8Q2-NAGB>] (detailing how Black students are using Instagram to bring awareness to racial injustices on high school and college campuses).

117. *See* Diep, *supra* note 116.

118. Audre Lorde, *The Uses of Anger: Women Responding to Racism*, Keynote Presentation at the National Women’s Studies Association Conference (June 1981)

A. Not All Women, Black Women

Gender inequities exist in the legal profession and the legal academy. As critical legal scholar Kimberlé Crenshaw clearly articulated when she coined the term intersectionality in 1989, “[b]ecause the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated.”¹¹⁹ “Rather than thinking of a woman of color as Black ‘plus’ female, or female ‘plus’ Black, . . . [i]ntersectionality is a natural lens through which to consider discrimination in legal academia, where opportunities to exercise complex bias abound.”¹²⁰ Intersectional discrimination accounts for the ways institutional policies, practices, leaders, coworkers, and students exercise both white privilege and male privilege to discriminate against Black women in the legal academy.¹²¹

“Switch intersectionality” describes a tendency to deactivate causal relationships by determining that experiences are the result of one identity instead of both.¹²² This often takes the place of a recognition that the intersection of systems of power (like race and gender) causes effects that would not occur without intersections. Switch intersectionality occurs when the experiences of Black women in the legal academy are regarded as racist, but not sexist; or sexist, but not racist. Switch intersectionality also occurs when Black women are lumped in with white women or other women of color and their unique intersectional experiences are discounted. While the experiences of women of other racial and ethnic groups sometimes mirror those of Black women, Black women’s experiences are uniquely tied to a history of racist and sexist subjugation in America. These intersectional experiences are put in stark relief in legal academia.

(transcript available at https://www.blackpast.org/african-american-history/speeches-african-american-history/1981-audre-lorde-uses-anger-women-responding-racism/?mc_cid=13afe18c87&mc_eid=21a4b2cb99 [<https://perma.cc/X95G-6BGC>]).

119. Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 140.

120. DEO, *supra* note 100, at 8.

121. *Id.*

122. Liam Kofi Bright, Daniel Malinsky & Morgan Thompson, *Causally Interpreting Intersectionality Theory*, 83 PHIL. SCI. 60, 63 (2016).

B. Tools of Cancellation and Silence

Black women have consistently spoken out about their plight in the academy. Black feminist scholar and poet Audre Lorde reflected on the racism women of color experience in academia.¹²³ Her words speak directly of Black women as outsiders in academic white spaces. This exclusion and silencing are direct results of the systems and structures of the white space: Those who dominate the white space implicitly and explicitly engage in practices, including white tears and intersectional microaggressions, that work to silence and cancel Black women. They also benefit from Black women's self-silencing and self-sidelining, which are incidental consequences of white academic norms.

1. White Tears and Other Manipulations

When white women cry, their “white tears” inadvertently serve to silence marginalized voices as they remove the attention from the issue at hand and place it on themselves.¹²⁴ While seemingly harmless, tears are political because they are shaped by bias and can drive behaviors that impact other people.¹²⁵ White tears demonstrate insensitivity to a history that prioritizes “white centrality, individualism, and lack of racial humility.”¹²⁶ They are symbolic of ambivalence to the fact that historically white women's tears lead to Black harm.¹²⁷ Moreover, although they do not often exhibit tears, white men similarly engage in manipulations that silence Black women, including switch intersectionality, invalidations, and denials of racial inequality.¹²⁸

Women who cry white tears, or “Karens” as defined by mainstream media,¹²⁹ often use tears to garner support for their bad acts.¹³⁰ On social media, we see viral

123. See Lorde, *supra* note 118.

124. See DIANGELO, *supra* note 56, at 132–37.

125. *Id.* at 133.

126. *Id.* at 133.

127. See *id.* at 133–34.

128. *Id.* at 135–36.

129. Karen, DICTIONARY.COM, <https://www.dictionary.com/e/slang/karen> [https://perma.cc/BDW5-TAUF] (last visited Dec. 13, 2020).

130. See Karen Attiah, Opinion, *The ‘Karen’ Memes and Jokes Aren’t Sexist or Racist. Let a Karen Explain.*, WASH. POST (Apr. 28, 2020), <https://www.washingtonpost.com/opinions/2020/04/28/karen-memes-jokes-arent-sexist-or-racist-let-karen-explain/?arc404=true> [https://perma.cc/Y6GB-9C9A]; see also Sarah Maslin Nir, *White Woman Is Fired After Calling Police on Black Man in Central Park*, N.Y. TIMES (July 6, 2020), <https://www.nytimes.com/2020/05/26/nyregion/amy-cooper-dog-central-park.html> [https://perma.cc/JY4Z-XAHZ]; Gerren Keith Gaynor, *White Women Say Calling Them ‘Karen’ Is*

videos of white women who call the police, ask to see the manager, or engage in racist name calling in response to the mere existence of Black people in white spaces.¹³¹ And when she is called out for her acts, Karen cries and imagines herself as the victim, and “Karen” a slur.¹³² These incidents are not isolated and frequently occur in corporate America where Karens police Black women’s tone and appearance or target Black women in negative performance reviews, all while being protected as concerns and complaints from Black women are ignored.¹³³ And if these harms against Black women are not enough, there is an implicit feminist expectation that Black women comfort Karen when she cries.¹³⁴

Because there is an imagined solidarity among women as minorities on law school faculties, and “[b]ecause of whiteness and how white women are stereotyped as innocent,”¹³⁵ white tears and manipulative acts often go unchallenged in academic white spaces. Yet, white women help maintain the status quo by manipulating and gaslighting Black women.¹³⁶ Gaslighting occurs when Black women share intersectional discrimination experiences with their white female colleagues and, instead of being allies, white female colleagues encourage Black women to take responsibility for their role in discrimination.¹³⁷ Gaslighting is followed by manipulation:

a Slur, Black Twitter Sounds Off, GRI0 (Apr. 6, 2020), <https://thegrio.com/2020/04/06/karen-slur-white-women-twitter> [<https://perma.cc/5XDQ-KF8D>].

131. See Henderson & Jefferson-Jones, *supra* note 33, at 873–78 (other nicknames include “BBQ Becky” for a white woman who called 911 to report two Black men using a grill in a public park and “Permit Patty” after a white woman who called the police on an eight-year-old Black girl selling water on a public sidewalk); Attiah, *supra* note 130.
132. See Attiah, *supra* note 130.
133. See Crystle Johnson, LINKEDIN, https://www.linkedin.com/posts/crystlespeaks_culture-leadership-racism-activity-6671281861295263745-RZKv [<https://perma.cc/4XVA-6K7S>] (last visited Sept. 26, 2020) (discussing how a viral racist incident is not isolated to the circumstances in which it occurred, but is indicative of the commonplace interactions Black people have).
134. See Lynn Fujiwara, *Racial Harm in a Predominantly White “Liberal” University: An Institutional Autoethnography of White Fragility*, in PRESUMED INCOMPETENT II, *supra* note 47, at 106, 110 (“Her response was defensive, as if I had hurt her for saying such words. In her [w]hite fragility, she became the victim and expected me to make her feel better.”); see also Stacey Patton, *White Women, Please Don’t Expect Me to Wipe Away Your Tears*, DAME (Dec. 15, 2014), <https://www.damemagazine.com/2014/12/15/white-women-please-dont-expect-me-wipe-away-your-tears> [<https://perma.cc/9XU8-TB26>] (“[A]nd then come more tears. Then comes the waiting for us to comfort and reassure them that they’re not bad people.”).
135. Cheryl E. Matias, *Becky(s) as Manipulators and Gaslighters*, in SURVIVING BECKY(S): PEDAGOGIES FOR DECONSTRUCTING WHITENESS AND GENDER 219, 221 (Cheryl E. Matias, ed., 2020).
136. Cheryl E. Matias, *Introduction*, in SURVIVING BECKY(S), *supra* note 135, at 221.
137. *Id.*

These Becky(s) [or Karen(s)] wield their power to ensure that the woman of color's background, her side of the story, or even her humanity is never heard, seen, or recognized. Instead, she focuses her energies in creating a narrative that so denigrates the woman of color faculty member that the woman of color eventually pulls away, disconnects, or self-isolates.¹³⁸

After engaging in gaslighting and manipulation, white women admonish Black women for not engaging with the faculty and adopting self-protection measures.¹³⁹

White women are gender oppressed and race privileged, which can cause tension between white women and Black women when racism and white privilege are at issue.¹⁴⁰ When white women “feel attacked”¹⁴¹ during racialized discourse, they use defense tools such as false envy and benevolence to maintain power and alienate Black women.¹⁴² False envy is used to explain actions; it is seen when positive relationships with Black women, and people of color generally, are highlighted to neutralize tensions arising from racialized discussions.¹⁴³ “[F]alse envy oversimplifies the complexity of the dialogue by assuming that it is merely about like versus dislike, while also removing the role that power might play in the dialogue.”¹⁴⁴ Benevolence is a defensive tool used to center discourse on white women's service and sensitivity to communities of color.¹⁴⁵ In tough conversations, benevolence “shifts the conversation to make the person with privilege, and her good intentions, the central focus of the discussion, further privileging her identity.”¹⁴⁶

138. *Id.* “Becky” is used interchangeably with “Karen.” See Matias, *supra* note 136, at 1 (“Becky is just another white woman who enacts her white privilege at the expense of people of color . . .”).

139. Matias, *supra* note 135.

140. See Mamta Motwani Accapadi, *When White Women Cry: How White Women's Tears Oppress Women of Color*, 26 COLL. STUDENT AFFS. J. 208, 208 (2007).

141. *Id.* at 212.

142. *Id.* at 212–13.

143. *Id.* at 212.

144. *Id.*

145. *Id.* at 212–13.

146. *Id.* at 213.

2. Unmasking Intersectional Microaggressions: Gendered and Colorblind Racism

Gendered racism describes oppression that occurs at the intersections of race and gender.¹⁴⁷ Gendered racism uniquely affects Black women because pervasive negative imagery of Black women as Mammies, Sapphires, and Jezebels dates back to slavery and persists today in contemporary portrayals of Black women as confrontational or sexually indiscriminate.¹⁴⁸ In white institutions like law schools, gendered racism is systemic because “the white racial frame that rationalizes systemic discrimination is also gendered.”¹⁴⁹

Colorblind racism also pervades legal academia. Colorblind racism describes the subtle ways in which institutional racism presents in contemporary America.¹⁵⁰ “[M]icroaggressions are derogatory slights or insults directed at a target person or persons who are members of an oppressed group.”¹⁵¹ They manifest in three different ways: microassaults, microinsults, and microinvalidations.¹⁵² Microassaults are overt and blatant, verbal or nonverbal attacks that are intended to convey racist or sexist sentiments.¹⁵³ Microinsults are unintentional verbal and nonverbal actions that communicate insensitivity or demean a person’s racial or gender identity.¹⁵⁴ Microinvalidations are unintentional “verbal comments or behaviors that exclude, negate, or dismiss the psychological thoughts, feelings, or experiential reality of the target group.”¹⁵⁵ Microaggressions are “prototypical” examples of how colorblind racism operates in law schools.¹⁵⁶ Because they often present as neutral statements

147. See TSEDALE M. MELAKU, *YOU DON’T LOOK LIKE A LAWYER: BLACK WOMEN AND SYSTEMIC GENDERED RACISM* 16 (2019). The concept of gendered racism was first introduced by sociologist Philomena Essed. *Id.*

148. Kamesha Spates, Na’Tasha M. Evans, Brittany Clarvon Watts, Nasra Abubakar & Tierra James, *Keeping Ourselves Sane: A Qualitative Exploration of Black Women’s Coping Strategies for Gendered Racism*, 82 *SEX ROLES* 513, 515 (2020).

149. MELAKU, *supra* note 147, at 16 (referencing the work of sociologist Adia Harvey Wingfield).

150. BONILLA-SILVA, *supra* note 43, at 17.

151. Gina C. Torino, David P. Rivera, Christina M. Capodilupo, Kevin L. Nadal & Derald Wing Sue, *Everything You Wanted to Know About Microaggressions but Didn’t Get a Chance to Ask*, in *MICROAGGRESSION THEORY: INFLUENCE AND IMPLICATIONS* 3, 3 (Gina C. Torino, David P. Rivera, Christina M. Capodilupo, Kevin L. Nadal & Derald Wing Sue eds., 2019).

152. *Id.* at 4.

153. *Id.*

154. *Id.*

155. *Id.*

156. See BONILLA-SILVA, *supra* note 43, at 29.

or actions, microaggressions are difficult for Black women in the legal academy to challenge.¹⁵⁷

Intersectional microaggressions are subtle forms of gendered and colorblind racism. A 2016 study of Black women produced a taxonomy of gendered racial microaggression themes associated with microaggressions experienced by Black women, including:

Expectation of a Jezebel (e.g., being exoticized, sexualized, and objectified by men), *Expectation of the Angry Black Woman* (e.g., being perceived as the stereotype of an “angry Black woman”), *Struggle for Respect* (e.g., messages that question one’s intelligence and challenge leadership), *Invisibility* (e.g., being marginalized, invisible, or silenced in professional settings), *Assumptions of Communication Styles* (e.g., preconceived notions about Black women’s communication styles), and *Assumptions of Aesthetics* (e.g., messages about Black women’s physical appearance, including body type, hairstyles, and facial features).¹⁵⁸

These themes underly the intersectional microaggressions that lead to silence and cancellation of Black women in the legal academy.

Intersectional microassaults against Black women are not uncommon. For example, Black women are verbally scolded for not sharing details of their personal lives with faculty colleagues.¹⁵⁹ These admonitions, which sometimes rely on feelings of voyeurism and stereotypes that value Black people for their entertainment value, can damage annual reviews and hurt Black women during tenure and promotion processes as refusal to share details about their personal lives (often as a protectionary measure) may be viewed as a lack of collegiality.¹⁶⁰ Microassaults are also common in student evaluations where students comment that Black women are scary, angry, incompetent, sassy, sexy, and ugly.¹⁶¹

157. *See id.*

158. Jioni A. Lewis, Marlene G. Williams, Anahvia T. Moody, Erica J. Peppers & Cecile A. Gadson, *Intersectionality Theory and Microaggressions: Implications for Research, Teaching, and Practice*, in MICROAGGRESSION THEORY, *supra* note 151, at 48, 51 (citations omitted) (describing a study conducted by Lewis, Mendenhall, Harwood and Hunt in 2016).

159. *See* Angela Mae Kupenda, *Facing Down the Spooks*, in PRESUMED INCOMPETENT, *supra* note 106, at 20, 20–21.

160. *See id.*

161. *See id.* at 22 (“[T]hey expressed . . . that they were scared of my face when I was serious as we discussed the law.”); Wilson, *supra* note 106, at 72 (noting that white students see Black female professors as affirmative action hires and therefore question their competence or expect Black women to be like Mammy: happy and nurturing); Sylvia R. Lazos, *Are Student*

Black women in academia also commonly experience microinsults. Throughout the law school building, images communicate nonverbal microinsults that reinforce Black women's outsider status. Carefully hung portraits of white men convey microinsults, signaling that Black women are intruders who do not belong.¹⁶² Verbal microinsults occur when students address Black women by their first names or "Ms." or "Mrs.," instead of Professor.¹⁶³ They also occur when white colleagues intend a compliment but instead invoke negative stereotypes by remarking that a Black woman is "articulate."¹⁶⁴ Microinsults are environmental as Black women receive messages from people (such as alumni, judges, library patrons, legal clinic clients) who, because of stereotypes, cannot fathom that Black women are professionals, lawyers, professors, or administrators.¹⁶⁵

Intersectional microinvalidations silence Black women in the legal academy by denying or ignoring Black women's lived experiences with systemic gendered racism. Microinvalidations reinforce the notion that the tenure and promotion process is the same for all women despite the fact that, as a result of negative stereotypes, "Black mother-scholars are characterized as unfocused, uncommitted, and incapable of simultaneously managing . . . professional and parenting obligations."¹⁶⁶ Microinvalidations reinforce notions of equality and meritocracy when Black women who experience microaggressive behaviors are denied support, and instead, are tone-policed and accused of being trivial or playing the "race card."¹⁶⁷ When ignored by institutions, Black

Teaching Evaluations Holding Back Women and Minorities?: The Perils of "Doing" Gender and Race in the Classroom, in PRESUMED INCOMPETENT, *supra* note 106, at 164, 167 (noting findings that unattractive minority professors are penalized in student evaluations); Jessica Lavariega Monforti & Melissa R. Michelson, *They See Us, but They Don't Really See Us*, in PRESUMED INCOMPETENT II, *supra* note 47, at 59, 67 (noting that study participants—female professors of color—were "described as 'exotic,' 'sassy,' 'overbearing,' 'uppity,' or 'greedy'").

162. Adrien Katherine Wing, *Lessons From a Portrait: Keep Calm and Carry On*, in PRESUMED INCOMPETENT, *supra* note 106, at 356, 359.

163. See Monforti & Michelson, *supra* note 161, at 67.

164. See Catharine Wells, *Microaggressions in the Context of Academic Communities*, 12 SEATTLE J. FOR SOC. JUST. 319, 335 (2013).

165. See Shamika D. Dalton, Gail Mathapo & Endia Sowers-Paige, *Navigating Law Librarianship While Black: A Week in the Life of a Black Female Law Librarian*, 110 LAW LIBR. J. 429, 432 (2018) (recounting her experience with a white male library patron: "Is there a man available who can help with my question? I need to speak with someone who went to law school.").

166. Jemimah Li Young & Dorothy E. Hines, *Promotion While Pregnant and Black*, in PRESUMED INCOMPETENT II, *supra* note 47, at 73, 73–74.

167. See MYERS, *supra* note 60, at 23.

women at times must resort to court to attempt to vindicate their claims of bias and disparate treatment.¹⁶⁸ And by its very essence, litigation silences Black women as their ability to speak about pending litigation or settlement agreements is often restricted.

Sophisticated execution of microaggressive behaviors results in the silencing or cancellation of Black women in the legal academy.¹⁶⁹ Because these behaviors are normalized by the Retrenchment Generation—students, colleagues, and administrators who are not limited to a certain age or temporal period, but rather are “defined by the synergism that is created by racial isolation, particularly in the educational arena . . . and the presumption of incompetence that inflexibly presumes that all professional Black women are angry, threatening, intimidating, and unintelligent”¹⁷⁰—they are rarely challenged. Smith explores sociological factors, like racial isolation, behind the negative stereotypes that lead to the barriers Black women law professors experience, including sexism, racism, and ageism, when they assert competence or authority as they attempt to teach the Retrenchment Generation.¹⁷¹ She further analyzes the effects of the negative stereotypes of Black women as Mammy and Sapphire, and the resulting presumed incompetence. Smith points out that Black women are scrutinized in every aspect, including their performance and appearance, and concludes with the recommendation that Black women reclaim Sapphire and the positive in the stereotype.¹⁷² For decades, legal scholars have explored the many ways in which law schools have permitted microaggressive behaviors to silence and cancel Black women.¹⁷³ Students use microaggressive behaviors to challenge

168. See, e.g., Complaint, *Sanders v. Univ. of Idaho*, No. 1:19-cv-00225-DCN (D. Idaho June 19, 2019). *Sanders*—a Black woman and the only woman of color to earn tenure or the rank of full professor at Idaho Law—filed a lawsuit alleging various instances of racial discrimination. *Id.* at 2, 4. Specifically, *Sanders* alleges that she was told her concerns were “miscommunications rather than serious problems.” *Id.* at 13.

169. See Jennifer Lisa Vest, *What Doesn't Kill You: Existential Luck, Postracial Racism, and the Subtle and Not So Subtle Ways the Academy Keeps Women of Color Out*, 12 SEATTLE J. FOR SOC. JUST. 471, 493–94 (2013).

170. Smith, *supra* note 109, at 55.

171. *Id.*

172. *Id.*

173. See *id.* at 86–92 (writing about her experiences and the experiences of Black female trailblazers in the legal academy, specifically, the transition from blatant racism experienced by Professor Joyce Anne Hughes (the first Black female tenure track law professor at a PWI) in the 1970s to the subtle institutional racism of the 1990s); Jennifer M. Russell, *On Being a Gorilla in Your Midst, or, the Life of One Blackwoman in the Legal Academy*, 28 HARV. C.R.-C.L. L. REV. 259 (1993) (recounting her experiences as the first Black woman law professor at her University and, specifically, a picture of a gorilla on the cover of a National Geographic magazine that was anonymously placed in her faculty mailbox at said law school).

Black women's authority and disrupt the classroom learning environment.¹⁷⁴ Microaggressive behaviors rooted in negative stereotypes of Black women result in failures in the ways white colleagues mentor Black women, which ultimately stifles their professional development.¹⁷⁵ Similarly, microaggressive behaviors exclude Black women from networking opportunities, which limits their ability to gain much-needed social capital.¹⁷⁶ Finally, microaggressive behaviors in the tenure and promotion process create an expectation that Black women must outperform their white colleagues by being better than competent in their areas of academic expertise.¹⁷⁷

3. Self-Silencing and Self Sidelining

Black women self-silence in response to the systemic gendered racism they experience in the legal academy.¹⁷⁸ This silence is a form of comforting. Comforting, which describes actions taken by outsiders to "make insiders comfortable with [the outsiders'] outsider status,"¹⁷⁹ is an "implicit racial subordination" for the purpose of making insiders feel comfortable.¹⁸⁰ Black women adopt co-cultural communication strategies ranging from those that foster assimilation with the dominant group, like niceness, to those that foster separation from their own identity group, like silence.¹⁸¹ As nondominant members of law school faculties, Black women are burdened by conscious identity performances they adopt to counter cancellation.¹⁸²

174. Smith, *supra* note 109, at 139–45.

175. See generally Pamela J. Smith, *Failing to Mentor Sapphire: The Actionability of Blocking Black Women From Initiating Mentoring Relationships*, 10 UCLA WOMEN'S L.J. 373 (2000) (identifying the barriers that negatively affect the ways Black women law faculty are mentored by senior colleagues who are primarily white men, including presumed incompetence, the Sapphire stereotype, and discomfort about race and gender).

176. See MYERS, *supra* note 60, at 21.

177. See *id.* at 23.

178. See Villarreal, Liera & Malcom-Piqueux, *supra* note 34, at 137.

179. Leslie P. Culver, *Conscious Identity Performance*, 55 SAN DIEGO L. REV. 577, 583 (2018) (quoting Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259, 1301 (2000)).

180. *Id.*

181. See *id.* at 595 & n.95 (citing MARK P. ORBE, *CONSTRUCTING CO-CULTURAL THEORY: AN EXPLICATION OF CULTURE, POWER, AND COMMUNICATION 2* (1998)). Orbe's co-cultural theory defines the co-cultural communication strategies that exist between dominant and subordinate cultures in the United States. *Id.* The theory acknowledges that while no culture is inherently superior, intersecting identities can be both powerful and marginalized. *Id.*

182. See *id.* at 612–13.

“Self sidelining” occurs when Black women on law faculties intentionally decline “opportunities for professional advancement based on falsely endorsed feelings of inadequacy.”¹⁸³ Professor Leslie Culver, who coined the phrase self sidelining, describes the process: When a woman has “imposter feelings of intellectual phoniness or feelings of being a fraud[,] . . . gender sidelining occurs, resulting in implicit messages that trigger and erroneously confirm imposter feelings,” and then, “gender sidelining’s external validation of the internal imposter feelings may lead women to discipline themselves to forego professional opportunities.”¹⁸⁴ Self sidelining has a “two-dimensional effect on women with multiple diverse identities” because Black women who self sideline must “consciously push past bias or presumed incompetency based on [their] race, as well as gender bias.”¹⁸⁵ Because no “legally actionable” harm results from self sidelining, there is a lack of meaningful discourse about this phenomenon.¹⁸⁶ Yet, it likely accounts for some of the social harms experienced by Black women in the legal academy, including the small number of tenured Black women on law school faculties, the so-called leaky pipeline, the reluctance to produce legal scholarship about the Black experience, and the small number of Black women in law school administrative positions.¹⁸⁷

Pretenure and posttenure, Black women struggle with the tension between presenting their authentic identities and working their identities in ways that will be positively perceived by students, colleagues, and key institutional actors.¹⁸⁸ For some Black women, silence is powerful and, when strategically employed, can elevate voices that are often ignored.¹⁸⁹ For others, public silence is strategically employed to uplift powerful, private voices.¹⁹⁰ For pretenure Black women who are often advised to remain silent, silence protects the ability to achieve the ultimate professional outcome: tenure and full academic freedom.¹⁹¹ Yet, some

183. See Leslie P. Culver, *The Rise of Self Sidelining*, 39 WOMEN’S RTS. L. REP. 173, 176 (2018).

184. *Id.* at 210 (footnotes omitted). According to Culver, self sidelining occurs when women who already have imposter feelings have their imposter feelings confirmed by some external event. *Id.* at 211. This results in women self sidelining, or punishing themselves by foregoing professional opportunities. *Id.*

185. *Id.* at 178.

186. *Id.* at 216.

187. See *id.*; see also Barnes & Mertz, *supra* note 87, at 513 (noting the disproportionate number of minority law school hires who leave before they earn tenure).

188. Angela Onwuachi-Willig, *Silence of the Lambs*, in PRESUMED INCOMPETENT, *supra* note 106, at 142, 142–43.

189. *Id.* at 144.

190. *Id.*

191. *Id.* at 143. For example, silence eliminates opportunities for intersectional scrutiny which often results in negative consequences for Black women.

must speak to avoid “unforgivable silences,” those silences that support “a presumption that the average white male professor’s experiences are the same as those of women of color.”¹⁹²

For Black women in the legal academy, self-silencing and self-sidelining have a close relationship with tokenism. “Tokenism masks racism and sexism by admitting a small number of previously excluded individuals to institutions. At the same time, a system of tokenism maintains barriers of entry to others.”¹⁹³ Black women either remain silent because they are tokens or they self-sideline to avoid becoming tokens (avoiding opportunities for professional advancement that will result in them being the sole Black woman in a leadership position). In the early 1990s, Black women law professors wrote extensively about their experiences with silence and tokenism. On her silence, Professor Jennifer M. Russell wrote, “[b]ut my token status as the first [B]lackwoman law professor at the University counseled against any public expression of my pain and anger.”¹⁹⁴ Professor Linda Greene recognized that “role options are limited by the high visibility and symbolic significance of our token presence” which “make[s] it difficult, if not impossible, for African American women to enjoy significant control over the roles we play in law teaching and a significant measure of professional privacy.”¹⁹⁵ Professor Regina Austin described her “token existence” as “intellectual isolation . . . like being in solitary confinement.”¹⁹⁶

C. Invisible Labor and Black Taxes

Invisible labor and Black taxes burden Black women, interfere with scholarship and meaningful efforts at tenure and promotion, and essentially cancel Black women in the legal academy. 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

192. *Id.* at 151.

193. Linda S. Greene, *Tokens, Role Models, and Pedagogical Politics: Lamentations of an African American Female Law Professor*, 6 BERKELEY WOMEN’S L.J. 81, 82 (1990).

194. Russell, *supra* note 173, at 260 (referencing her silence after returning from maternity leave to find a magazine, featuring a picture of a gorilla on the cover, had been placed in her faculty mailbox).

195. Greene, *supra* note 193, at 82.

196. Regina Austin, *Resistance Tactics for Tokens*, 3 HARV. BLACKLETTER J. 52, 52 (1986).

are often overlooked, ignored, and/or devalued by employers, consumers, workers, and ultimately the legal system itself.¹⁹⁷

Invisible labor includes emotion work, identity work—the actions Black women take to make their white colleagues and students comfortable, like hair straightening or brushing off racist comments¹⁹⁸—or other uncompensated time.¹⁹⁹ In the legal academy, Black women disproportionately engage in invisible labor.²⁰⁰

Black women are further subject to Black taxes,²⁰¹ which are unique forms of invisible labor related to their intersectional identities and experiences in the legal academy that contribute to Black women’s silence and cancellation. Tsedale Melaku describes the “inclusion tax” (a type of Black tax) as “the additional resources ‘spent’ [by Black people], such as time, money, and mental and emotional energy, just to be allowed in white spaces.”²⁰² Because of their intersectional identities, Black women “are often subject to a ‘cultural tax’ that includes mentoring, and service of others from one’s background, but that service is rarely recognized, valued, or compensated in accounts of faculty workloads.”²⁰³ Finally, emotional tax arises from the coexistence of marginalization and privilege, a unique burden of Black women’s intersectional experiences that Black women must confront and reconcile daily.²⁰⁴

Inclusion tax accounts for the added invisible labor Black women invest to successfully navigate institutional white spaces.²⁰⁵ Unlike their white colleagues, Black women are “required to work harder to fulfill nebulous, shifting,

197. Miriam A. Cherry, *People Analytics and Invisible Labor*, 61 ST. LOUIS U.L.J. 1, 3 (2016) (quoting Winifred R. Poster, Marion Crain, & Miriam A. Cherry, *Introduction: Conceptualizing Invisible Labor*, in *INVISIBLE LABOR* 3, 6 (Marion Crain, Winifred R. Poster & Miriam A. Cherry eds., 2016)).

198. *See id.* at 1, 5.

199. *Id.* at 1.

200. *See id.* at 2–3.

201. The term “Black taxes” is an axiom commonly used to refer to the understanding (among Black people) that we must work harder to achieve the same outcomes as nonblack people. *See* Anthony D. Mays, *The New Black Tax and the Cost of Being a Minority in Tech*, HUFFPOST (Aug. 4, 2017, 11:25 PM), https://www.huffpost.com/entry/the-new-black-tax-and-the-cost-of-being-a-minority_b_59853a4fe4b0bd82320297c5 [https://perma.cc/LSG2-7ELS]; *see also* Cedric D. Burrows, *Writing While Black: The Black Tax on African American Graduate Writers*, 14 PRAXIS 15, 15 (2016) (“I define the [B]lack tax as the societal charges placed on African Americans in order to . . . participate in white spaces.”).

202. MELAKU, *supra* note 147, at 18.

203. Smooth, *supra* note 25, at 520.

204. *See id.* at 517.

205. *See* MELAKU, *supra* note 147, at 18.

identity-related job requirements to survive in elite white institutions by doing more work without the same guarantee of benefits.²⁰⁶ Untenured Black women expend extra energy to ensure their pedagogical choices align with white institutional norms because their race is a “pedagogical subtext” that impacts teaching.²⁰⁷ Black women spend additional money on their appearance to thwart assumptions of aesthetics.²⁰⁸

Black women experience cultural taxation when, because of their intersectional identities, they are disproportionately burdened by additional work-related assignments and commitments.²⁰⁹ They are burdened by spoken and unspoken expectations for them to serve on diversity committees and initiatives and speak on behalf of their race and gender in diversity discussions.²¹⁰ As representatives of their race and gender, they are often expected to be role models and advocates for Black female students and institutional diversity.²¹¹ Because of stereotypes, Black women are expected to mother and nurture students and colleagues.²¹² Over time, cultural taxation can negatively impact Black women’s ability to focus on tenure and promotion activities.²¹³ Additionally, these service activities are often devalued during the promotion and tenure process, leading to the cancellation of Black women.²¹⁴

In institutional white spaces, Black women are haunted by the daily possibility of encountering systemic gendered racism.²¹⁵ If they dare to defy silence, they are subject to emotional taxation that can result from being placed

206. *Id.*

207. See Joyce Hughes, *Different Strokes: The Challenges Facing Black Women Law Professors in Selecting Teaching Methods*, 16 NAT’L BLACK L.J. 27, 28 (1998).

208. See Lewis, Williams, Moody, Peppers & Gadson, *supra* note 158, at 51.

209. See Tiffany D. Joseph & Laura E. Hirshfield, ‘Why Don’t You Get Somebody New to Do It?’ *Race and Cultural Taxation in the Academy*, 34 ETHNIC & RACIAL STUD. 121, 122 (2011).

210. *Id.* at 126; see also Renate L. Chancellor, *Racial Battle Fatigue: The Unspoken Burden of Black Women Faculty in LIS*, 60 J. EDUC. LIBR. & INFO. SCI. 182, 186–87 (2019) (citing Gloria Thomas & Carol Hollenshead, *Resisting from the Margins: The Coping Strategies of Black Women and Other Women of Color Faculty Members at a Research University*, 70 J. NEGRO EDUC. 166–75 (2001)).

211. See Greene, *supra* note 193, at 88; see also Chancellor, *supra* note 210, at 186–87.

212. Laura E. Hirshfield & Tiffany D. Joseph, ‘We Need a Woman, We Need a Black Woman’: *Gender, Race, and Identity Taxation in the Academy*, 24 GENDER & EDUC. 213, 222–23 (2012).

213. *Id.* at 218, 220–21.

214. See Rene O. Guillaume & Elizabeth C. Apodaca, *Early Career Faculty of Color and Promotion and Tenure: The Intersection of Advancement in the Academy and Cultural Taxation*, RACE ETHNICITY & EDUC. 1, 4 (2020).

215. See Rachel Alicia Griffin, *Black Female Faculty, Resilient Grit, and Determined Grace or “Just Because Everything Is Different Doesn’t Mean Anything Has Changed”*, 85 J. NEGRO EDUC. 365, 367 (2016).

in the middle of white colleagues who publicly steamroll discussions and privately offer supportive words.²¹⁶ Black women also experience emotional taxation due to the coexistence of occupational privilege and race and gender marginalization. As Professor Wendy Smooth points out, “[d]espite the many markers of occupational prestige and privilege [Black women] experience in relation to our communities . . . across the academy [Black women] experience distinct reminders of marginalization. . . .”²¹⁷ The emotional taxation Black women experience often goes unnoticed by their colleagues and institutions.²¹⁸ Yet, these intersectional taxations can negatively affect Black women’s ability to earn tenure and experience full academic freedom as they force Black women to expend uncompensated time and resources and divert their attention from activities that are valuable in the tenure process, like scholarship and teaching.

D. Literally and Figuratively, Cancellation Kills

Repeated and continuous experiences of perceived systemic gendered racism, including the cumulative effects of dealing with cancellation tools and various taxations, have serious health consequences for Black women. While there are many reasons for health disparities between white and Black Americans, some can be attributed to perceived racism.²¹⁹ Health consequences of perceived racism include cardiovascular disease, depression, infant mortality, lower life expectancy, hypertension, diabetes, cancer, and substance abuse.²²⁰ Hypervigilance to perceived racism may exacerbate the health consequences associated with perceived racism.²²¹

Black women legal academics also experience racial battle fatigue. Racial battle fatigue describes the psychophysiological symptoms that result from repeated encounters with racism and racial microaggressions.²²² They include tension headaches, chronic pain, elevated heart rate, suppressed immunity, and

216. See Fujiwara, *supra* note 134, at 110.

217. See Smooth, *supra* note 25, at 518.

218. See MYERS, *supra* note 60, at 108; Onwuachi-Willig, *supra* note 188, at 145.

219. Joanne M. Hall & Becky Fields, “It’s Killing Us!” *Narratives of Black Adults About Microaggression Experiences and Related Health Stress*, GLOB. QUALITATIVE NURSING RSCH., 2015, at 1, 2–3.

220. *Id.* at 2–3, 9.

221. *Id.* at 12.

222. William A. Smith, Tara J. Yosso & Daniel G. Solórzano, *Challenging Racial Battle Fatigue on Historically White Campuses: A Critical Race Examination of Race-Related Stress*, in FACULTY OF COLOR: TEACHING IN PREDOMINANTLY WHITE COLLEGES AND UNIVERSITIES 299, 300–01 (Christine A. Stanley ed., 2006).

frequent sickness.²²³ These symptoms, and repeated experiences with racism and racial microaggressions, may cause Black women in the legal academy to lose confidence in themselves, their work, or even their worth.²²⁴

Black women also encounter a unique form of sexism: the “systemically orchestrated misrecognition of Black femininity as deviant, bereft, and anti-intellectual.”²²⁵ Black women are repeatedly challenged and misunderstood as a result of “institutionalized myths, stereotypes, and stigmas about Black femininity.”²²⁶ Black women experience battle fatigue from combatting racist and sexist oppressive ideologies rooted in “‘post-racial’ and ‘post-feminist’ assertions that race and gender are insignificant [and] assumptions that Black women are naturally predisposed to emotional and physical strength. . . .”²²⁷ The battle fatigue Black women experience as a result of combatting systemic gendered racism is more accurately described as intersectional battle fatigue.

Silencing and cancellation can kill a Black woman’s career in the legal academy. It can also lead to health complications and death.²²⁸ In the legal academy, Black women suffer intersectional battle fatigue as a result of “the negative health effects of being stunned, disappointed, knowing you are the victim of injustice, and yet remaining silent and doing as you are told in order to survive on the job.”²²⁹ Symptoms of intersectional battle fatigue—emotional stress and post-traumatic stress disorder (PTSD)—occur when Black women must constantly check their emotions.²³⁰ This is common where Black women feel unable to decline any request,²³¹ are unable to push back against defiant students,²³² or must remain neutral in situations they do not feel neutral about because of fear of retaliation.²³³

The negative health consequences for Black people in academia are well-recognized. The “Clyde Ferguson Syndrome” refers to a condition named after Harvard University law professor Clyde Ferguson who died of a heart attack at age

223. *Id.* at 301.

224. *See id.*

225. Griffin, *supra* note 215, at 366.

226. *Id.*

227. *Id.* at 367 (citations omitted).

228. *See* DEO, *supra* note 100, at 47 (“The emotional challenges facing traditional outsiders in legal academia have been tied to ill health and even untimely death.”).

229. *Id.* at 49.

230. *See id.* at 50.

231. *Id.* at 49.

232. *Id.* at 65.

233. *Id.*

59.²³⁴ It is believed Ferguson died early because of the cumulative effect of “special burdens” on his health.²³⁵ Likewise, the special burdens Black women in the legal academy experience can lead to severe health conditions and death.²³⁶ These burdens are not experienced by white counterparts. The special burdens on Black women include: white students who struggle to deal with their first encounters with a Black authority figure; minority students who look to Black faculty for help with problems unique to people of color; indifference and antagonism from white peers; “token support” from deans; and an expectation that they support minority community organizations.²³⁷ Additionally, Black faculty are uniquely expected to work to address the needs of the Black underclass and Black people in general.²³⁸ All the while, Black women academics must excel in their teaching and scholarship in order to be promoted and earn tenure.

In addition to overachieving in their normal academic duties and extra service requirements, Black women must “try to put the haunting legacy of racial subordination behind them and learn a new, more self-supportive way of dealing with the pockets of racism that still exist” in the legal academy.²³⁹ After describing the ways Black women must overachieve to survive in the legal academy, Professor Adrien Wing observed: “If everyone tried to do all the things I have mentioned in this essay all of the time—as well as juggle the pressures of being the first or only or one of the few [B]lack female professors—they would have a stroke.”²⁴⁰ Concerning the existential bad luck caused by intersectional oppressions at play in the background that result in Black women’s mistreatment, Professor Vest writes, “Women of Color [sic] are over determined to fail or to leave or to die in the Academy.”²⁴¹

234. Roy L. Brooks, *Life After Tenure: Can Minority Law Professors Avoid the Clyde Ferguson Syndrome?*, 20 U.S.F. L. REV. 419, 420 (1986).

235. *Id.* at 420–24.

236. See *supra* note 228 and accompanying text.

237. See Brooks, *supra* note 234, at 420–23.

238. *Id.* at 423.

239. *Id.* at 426.

240. Wing, *supra* note 162, at 369 (describing, among other things, doing more than the minimum to ensure tenure will be granted).

241. Vest, *supra* note 169, at 474–75 (defining existential luck as “the luck of being born into a society where one’s physical markings and what those markings signify are linked to social standings that guarantee specific rights and privileges”).

IV. WHAT CAN THE LEGAL ACADEMY DO ABOUT IT?

“Diversity without structural transformation simply brings those who were previously excluded into a system as racist, as misogynist, as it was before.”
—Angela Davis²⁴²

In 1988, Black women in the legal academy held the first meeting of the Northeast Corridor Collective of Black Women Law Professors (The Collective), a supportive network of faculty members.²⁴³ This meeting was the impetus for the 1990–1991 symposium edition of the *Berkeley Women’s Law Journal* that exclusively focused on issues unique to Black women in the legal academy.²⁴⁴ Some of the work from that symposium is cited in this Article, and unfortunately, is still relevant today.

In the spring of 1990, Professor Derrick Bell of Harvard Law School garnered national attention when, in protest, he announced his indefinite leave of absence until the school hired a woman of color faculty member.²⁴⁵ Bell’s protest thrust Professor Regina Austin, a Black woman and visiting professor at Harvard, into the spotlight as the subject of negative criticism from Harvard students and others.²⁴⁶ To address the fact that Black women’s voices were omitted from the national discourse surrounding Bell’s protest and the backlash on Austin, members of The Collective wrote letters to editors in an effort to include the voices of Black women law professors and add perspective to the national debate.²⁴⁷ In response, Harvard embarked on a national search for a woman of color faculty member and, to support the need for women of color in the legal academy, three main arguments emerged: Black women bring intellectual diversity, Black women are role models for Black female students, and Black women’s inclusion in leadership positions “serves democratic representational ideals.”²⁴⁸

242. Ruth Serven Smith, *In Charlottesville Talk, Angela Davis Reflects on the Impact and Intersectionality of Political Movements*, DAILY PROGRESS (Mar. 27, 2018), https://www.dailyprogress.com/news/local/in-charlottesville-talk-angela-davis-reflects-on-the-impact-and-intersectionality-of-political-movements/article_8ab54a16-3239-11e8-9c42-03570a2b7240.html [<https://perma.cc/6SMB-RUVK>].

243. WATSON, *supra* note 66, at 123.

244. *See id.*

245. Emma Coleman Jordan, *Images of Black Women in the Legal Academy: An Introduction*, 6 BERKELEY WOMEN’S L.J. 1, 4 (1990).

246. *Id.*

247. *Id.* at 5 & n.16.

248. *Id.* at 5–6.

Following Bell's protest, Black women continued to express their voices. While noting that Black women bring unique intersectional perspectives to the classroom and legal academy, Professor Taunya Lovell Banks identified the problems with justifying Black women as role models as opposed to mentors, a term with implicit intellectual connotations.²⁴⁹ Professor Kimberlé Crenshaw later expressed concerns about Austin's lack of agency in the national attention that surrounded Bell's protest, and Bell later recognized the "unintentional sexism" in the matter.²⁵⁰ In academic arenas, including law schools,

When people of color give voice to the discrimination they experience, they are often silenced by their white colleagues, many of whom purport to be liberal progressives. And although there is a perception that academia is a safe haven for these kinds of honest conversations, it is often the opposite.²⁵¹

Honest conversations followed by meaningful actions are the only way Black women will experience equity in academic white spaces.²⁵² This Part briefly addresses how law schools might act to mitigate and eliminate the silence and cancellation Black women experience.

A. Incorporate Whiteness and Critical Race Theories Across the Curriculum

Systemic gendered racism renders Black women invisible in the legal academy. To create spaces where Black women are visible as their authentic selves, law schools should incorporate Critical Race Theory and Whiteness Theory across the law school curriculum.

CRT incorporates counternarratives that de-center whiteness and challenge institutional racism.²⁵³ An intersectional pedagogical approach incorporates CRT's counternarratives and "includes an analysis of privileged and oppressed identities that create systemic inequalities, analyzes power dynamics, involves

249. Taunya Lovell Banks, *Two Life Stories: Reflections of One Black Woman Law Professor*, 6 BERKELEY WOMEN'S L.J. 46, 46 (1990) ("The word 'mentor' has an intellectual connotation which the term 'role model' generally lacks.").

250. See WATSON, *supra* note 66, at 126 (quoting Bell), 128 (referencing an interview with Crenshaw on March 11, 1999).

251. Melaku & Beeman, *supra* note 2.

252. See *id.*

253. See Derrick A. Bell, *Who's Afraid of Critical Race Theory?*, 1995 U. ILL. L. REV. 893, 898–99 (1995) ("Critical race theory writing and lecturing is characterized by frequent use of the first person, storytelling, narrative, allegory, interdisciplinary treatment of law, and the unapologetic use of creativity.").

educator and student personal reflection of intersecting identities, and promotes social action and community engagement.”²⁵⁴ Intergenerational counterstories—stories told by members of The Collective and Black women for decades—are a crucial aspect of challenging the status quo through intersectional pedagogy.²⁵⁵ When Black women tell their stories and others listen, they bear faithful witness to experiences of oppression, an important step in the process of dismantling systemic gendered racism in the legal academy.²⁵⁶

In addition to incorporating CRT, law schools should explicitly teach whiteness. White is the dominant norm in most legal contexts.²⁵⁷ Confronting whiteness across the law school curriculum helps faculty and students recognize that “issues of race and racial justice do not solely concern people of color and the law” and understand how whiteness operates as a privileged status in the United States.²⁵⁸ Confronting whiteness exposes perspectivelessness, a “theoretically neutral lack of perspective [that] perfectly diverts students and professors from examining the way whiteness and many other factors inform law school culture.”²⁵⁹ Unmasking perspectivelessness first requires an understanding that white norms are the operative defaults in the legal academy.²⁶⁰

These changes are unlikely to come easy. Because law schools are “particular sites of spatial production of social norms,” they remain inflexible to academic change.²⁶¹ Legal scholar Lolita Buckner Inniss argues that barriers to incorporation of CRT in topical courses and broad legal pedagogy should be broken down so that legal methodologies can be deprivileged and deconstructed

254. Lewis, Williams, Moody, Peppers & Gadson, *supra* note 158, at 58 (citations omitted).

255. See Daniel G. Solórzano, Lindsay Pérez Huber & Layla Huber-Verjan, *Theorizing Racial Microaffirmations as a Response to Racial Microaggressions: Counterstories Across Three Generations of Critical Race Scholars*, 18 SEATTLE J. SOC. JUST. 185, 188 (2020).

256. See Tamara T. Butler, *#Say[ing]HerName as Critical Demand: English Education in the Age of Erasure*, 49 ENG. EDUC. 153, 160 (2017) (describing faithful witnessing as “an effort to dismantle oppression . . . [and] a practice of seeing, hearing, and working alongside in ways that are resistant and attentive to colonial violence”).

257. Margalynne J. Armstrong & Stephanie M. Wildman, *Teaching Race/Teaching Whiteness: Transforming Colorblindness to Color Insight*, 86 N.C. L. REV. 635, 639 (2008).

258. *Id.* at 641.

259. Margalynne J. Armstrong & Stephanie M. Wildman, *Working Across Racial Lines in a Not-So-Post-Racial World*, in PRESUMED INCOMPETENT, *supra* note 106, at 224, 230 (citing Kimberlé Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 4 S. CAL. REV. L. & WOMEN’S STUD. 33, 35 (1994)).

260. *Id.* at 234 (citing Crenshaw, *supra* note 259, at 35).

261. Lolita Buckner Inniss, “Other Spaces” in *Legal Pedagogy*, 28 HARV. J. RACIAL & ETHNIC JUST. 67, 81 (2012).

to accomplish racial antisubordination in legal pedagogy.²⁶² Yet, she notes that one particular site of resistance to CRT's incorporation is the:

[O]pposition of ostensibly progressive educators who may fear that broader incorporation of CRT norms in the law school curriculum threatens the carefully crafted, race-neutral scholarly programming within law schools. For such persons, including “the racial view” in courses that are not specifically about race seemingly requires them to acknowledge the import of matters whose existence they have very carefully sought to avoid.²⁶³

Faculty and students must push back against the notions that talking about race makes them appear racist and that the law is objective and neutral. Subjectivity underlies the systemic gendered racism Black women experience in the academy from hiring, to interactions with students, to promotion and tenure.²⁶⁴ Color insight, in contrast to colorblindness, promotes racial equity and justice by recognizing “that a racial status quo exists” and encouraging people to notice their race and race of others and question what race means.²⁶⁵ A color insight approach to legal education examines systems of privilege to reveal how academic norms perpetuate the silence and cancellation of Black women.²⁶⁶ A color insight approach to the presumption of incompetence Black women face reveals the negative intersectional stereotypes that underly this presumption.²⁶⁷

Generally, law professors avoid race discussion or discuss it incompetently.²⁶⁸ Thus before incorporating CRT and whiteness theories across the law school curriculum, law professors must become culturally proficient by examining their cultural background, privilege, and bias.²⁶⁹ Law faculty must undergo “cultural transformation” by seeking training on culturally proficient instruction, mitigating unconscious behaviors that affect students and

262. *See generally id.*

263. *Id.* at 87.

264. Armstrong & Wildman, *supra* note 259, at 230 (“[C]ongeniality is very subjective, but institutions tout that quality as if it were quantifiable.”).

265. *Id.* at 233.

266. *See id.* (explaining that because color insight requires noticing whiteness, it allows for recognition that “[w]hiteness can also negate people of color, who are judged by their conformance to white norms, disparaged by their perceived dependence on whiteness, or silenced by invisible presumptions of nonwhite deviance.”).

267. *Id.* at 235–36.

268. *See* Anastasia M. Boles, *The Culturally Proficient Law Professor: Beginning the Journey*, 48 N.M. L. REV. 145, 146 (2018).

269. *See id.* at 147.

colleagues, and learning to recognize and reduce microaggressions.²⁷⁰ This introspection will not only challenge the stereotypes that cause law students to presume Black women are incompetent, but it will also shape the perspectives law faculty bring to policy decisions that influence the academic norms that negatively affect Black women.

B. Reevaluate Academic Norms

Academic culture “is impervious to change because its power structure is designed to reproduce itself.”²⁷¹ As discussed above, white academic institutions reproduce white academic norms to benefit white men. As a result of these norms, Black women—outsiders in the law school white space—suffer intersectional slights from colleagues, administrators, and students. Thus, to prevent silencing Black women, law schools must reevaluate the academic norms that [operate to] cancel them including norms that perpetuate meaningless hierarchies that operate to further subjugate Black women.

Academic culture produces and reproduces social hierarchies. Professor Ruth Gordon accurately observed that many law professors spend their “professional lives contesting hierarchy and exclusion—whether on the basis of race, gender, or class—but when it comes to academia—and I would suggest especially legal academia—we appear to have finally found a hierarchy we can believe in.”²⁷² While the law professorship is “a passage to status and privilege,”²⁷³ Black women faculty have complex relationships with status and privilege as their intersectional identities are often obstacles to obtaining and maintaining it. Importantly, while Black women work in privileged spaces, they do not experience the full advantages of privilege.²⁷⁴

270. *Id.* at 148, 153–72.

271. Angela P. Harris & Carmen G. González, *Introduction*, in *PRESUMED INCOMPETENT*, *supra* note 106, at 1, 7.

272. Ruth Gordon, *On Community in the Midst of Hierarchy (And Hierarchy in the Midst of Community)*, in *PRESUMED INCOMPETENT*, *supra* note 106, at 313, 326–27; see also Nantiya Ruan, *Papercuts: Hierarchal Microaggressions in Law Schools*, 31 *HASTINGS WOMEN'S L.J.* 3, 6 (2020) (“The disheartening reality is that those most attuned to social justice in law schools—including critical legal studies scholars—have failed to be allies to skills faculty in addressing inequities in the institution, including microaggressions.”).

273. Gordon, *supra* note 272, at 313.

274. See *id.* at 314 (describing how, in Gordon’s own experience as a “[B]lack, female, heterosexual law professor,” she has become “firmly enveloped” in privilege despite “[n]ot being a product of [it]”).

Tenure is an important example of privilege and hierarchy operating to silence Black women. Black women experience an emotional tax that results from feeling validated by tenure while also disdaining the “racism, sexism, and arbitrariness that is part of this pursuit.”²⁷⁵ In stark contrast, “[w]hite male faculty may see the tenure process as easy because it actually is easier for them” since, unlike Black women, they do not feel compelled to be silent and do not endure systemic gendered racism.²⁷⁶ To remedy this disparity, instead of reproducing academic norms that cancel Black women, law schools should adhere to transparency in the tenure and promotion process and explicitly condemn any unspoken expectations that Black women must do more than others to succeed.²⁷⁷ Moreover, law schools should support and mentor Black women and discourage practices that permanently scar pre-tenure Black women and abuse their academic freedom. Discouraged practices might include circulating a Black woman’s scholarly drafts without her permission,²⁷⁸ professors or administrators having conversations with students about another professor without her knowledge,²⁷⁹ or imposing on a Black woman’s classroom with nonroutine observations.²⁸⁰ Additionally, instead of burdening Black women with educating the faculty about their negative experiences, law schools should “arrange for outside facilitators and expect full faculty attendance at anti-discrimination trainings, workshops on race X gender in the classroom, and other events showcasing support for diversity and inclusion.”²⁸¹ Finally, law school faculty should be trained on the ways privilege and power are reproduced in the hiring process.²⁸²

In addition to evaluating academic norms that reproduce privilege in the tenure process, law schools should evaluate norms that perpetuate meaningless hierarchies that further subjugate Black women. Currently, tenure and tenure-track faculty are at the top of the law school hierarchy, and

275. *Id.* at 328.

276. DEO, *supra* note 100, at 90.

277. *See id.* at 83.

278. See Lolita Buckner Inniss, *The Lucky Law Professor and the Eucatastrophic Moment*, in PRESUMED INCOMPETENT II, *supra* note 47, at 23, 27 (“[A] [w]hite male faculty member expressed interest in my work and asked me to show him drafts of my scholarly writing. I happily complied, grateful for the interest. Not much later, I learned that these early drafts were being shared with some other members of the faculty to bolster the decision not to offer me an interview for a permanent job.”).

279. *See id.* at 29.

280. *See id.*

281. Meera E. Deo, *Securing Support in an Unequal Profession*, in PRESUMED INCOMPETENT II, *supra* note 47, at 300, 309.

282. *See id.*

nontenure track faculty, including legal writing and clinic, and teaching staff, such as academic support, bar preparation, and library, are at the bottom.²⁸³ Women of color at the bottom of the hierarchy experience intersectional and “hierarchical microaggressions.”²⁸⁴ For example, “[w]omen of color who teach Legal Writing can be marginalized as women, as women of color, and as faculty members teaching a course almost universally less valued in the academy.”²⁸⁵ In addition to the presumed incompetence that results from their intersectional identities, Black women who teach skills courses have little to no job security, earn less, and have limited involvement in faculty governance.²⁸⁶ Moreover, individuals in these positions experience a lack of respect from faculty colleagues who believe “that the courses they teach are not as rigorous or legitimate as doctrinal courses.”²⁸⁷ Students also recognize the lower status of women of color who teach legal writing (and other skills courses), demonstrated by their lack of respect rooted in the belief that writing is not a “real” course.²⁸⁸ Race, gender, and status contribute to the silence of Black women in legal writing and other positions at the bottom of the hierarchy.²⁸⁹

We are likely light years away from eliminating the hierarchy entrenched in the legal academy.²⁹⁰ But in the meantime, law schools should acknowledge that,

-
283. See Gordon, *supra* note 272, at 323–24; see also Renee Nicole Allen, Alicia Jackson & DeShun Harris, *The “Pink Ghetto” Pipeline: Challenges and Opportunities for Women in Legal Education*, 96 U. DET. MERCY L. REV. 525, 535–38 (2019) (noting that women dominate the law school “pink ghetto,” a coined term for the lowest positions in the law school hierarchy—clinical, legal writing, academic support, bar preparation, and library faculty); Kent D. Syverud, *The Caste System and Best Practices in Legal Education*, 1 J. ASS’N LEGAL WRITING DIRS. 12, 13–16 (2002) (describing the relationship between the seven law school castes—tenure and tenure-track faculty, deans, clinical faculty, legal writing faculty, law librarians, adjunct faculty, staff—and outlining suggested best practices in legal education).
284. Ruan, *supra* note 272, at 19 (“In the university workplace setting, power and privilege disparities are reflected in the hierarchical status of workers, which play out across campuses, departments, and offices through differentiation in title, pay, responsibilities, and benefits. Such differentiation in power and privilege can express itself through microaggression.”).
285. Lorraine K. Bannai, *Challenged X 3: The Stories of Women of Color Who Teach Legal Writing*, 29 BERKELEY J. GENDER L. & JUST. 275, 279 (2014); see also McMurtry-Chubb, *supra* note 79, at 578.
286. Bannai, *supra* note 285, at 281–83.
287. *Id.* at 284 (drawing on the lived experiences of women of color legal research and writing professors who have experienced blatant disrespect by their colleagues despite being tenure-track, or a graduate of a top 10 law school, or a clerk for a Circuit Court judge).
288. *Id.* at 286 (citing Teri McMurtry-Chubb, *Writing at the Master’s Table: Reflections on Theft, Criminality, and Otherness in the Legal Writing Profession*, 2 DREXEL L. REV. 41, 51–52 (2009)).
289. See *id.* at 289–90.
290. Compare Darby Dickerson, *President’s Message: Abolish the Caste System*, AALS NEWS (Fall 2020), <https://www.aals.org/about/publications/newsletters/aals-news-fall->

in addition to intersectional microaggressions, Black women who teach skills “are often made to feel devalued, degraded, demeaned, and discredited”²⁹¹ due to the subjects they teach. To counter this, law schools should value skills teaching and scholarship in the same way they value doctrine with equity in pay, job security, and status.²⁹² Additionally, schools should eliminate arbitrary barriers to obtaining internal tenure-track positions. For example, many law schools refuse to promote Black women who teach skills to tenure-track positions while hiring less qualified, and often white male, external candidates.²⁹³ Law schools can also provide resources to support scholarly production, including research assistants and paid writing leave.²⁹⁴

When we define the abuses experienced by Black women in the legal academy, we take a step towards change by demonstrating “that this is not simply ‘how academia is,’ but how the system, and those abusing power within it, significantly harms others.”²⁹⁵ Black women have found safe, supportive spaces in groups, like The Collective and the Lutie A. Lytle Black Women Faculty Writing Workshop, that have little regard for hierarchy.²⁹⁶ While these spaces will continue to be important for Black women, law schools should reevaluate academic norms that reproduce policies that promote systemic gendered racism in order to make the institutions as a whole less hostile toward Black women.

C. Engage in Meaningful Diversity and Inclusion Practices

Although ABA Standard 206 requires law schools to “demonstrate by concrete action a commitment to diversity and inclusion,”²⁹⁷ diversity initiatives

2020/presidents-message-abolish-the-academic-caste-system [https://perma.cc/7W54-P9YK] (writing in support of abolishing the caste system in legal academia); with Brian Leiter, *It's a Good Thing the President of the AALS Doesn't Really Matter to Legal Education* . . . , BRIAN LEITER'S L. SCH. REPS. (Dec. 7, 2020), https://leiterlawschool.typepad.com/leiter/2020/12/its-a-good-thing-the-president-of-the-aals-doesnt-really-matter-to-legal-education.html [https://perma.cc/DX7A-BZDN] (arguing that the organization within legal academia is not a caste system at all, but a “system of differing qualifications, expectations and authority.”).

291. Ruan, *supra* note 272, at 32.

292. *Id.* at 31.

293. See Inniss, *supra* note 278, at 25.

294. *Id.* (noting that clinicians have no hiatus or time to write).

295. Melissa Michal Slocum, *Healing is Speaking: Stories Evolving Perceptions of Microaggressions, Abuse, and Racial Battle Fatigue—The Good Mind in Action*, in PRESUMED INCOMPETENT II, *supra* note 47, at 313, 317.

296. Gordon, *supra* note 272, at 322–23.

297. STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 206 (AM. BAR ASS'N 2000).

have done little to advance the status of Black women in the legal academy. And, in fact, some scholars argue that diversity initiatives operate to perpetuate the status quo²⁹⁸ like the academic norms that silence and cancel Black women discussed herein.

To combat this, law schools should examine the ways diversity initiatives perpetuate systemic gendered racism. When law schools espouse a commitment to diversity, diversity ideology can cause Black women to question their reality.²⁹⁹ “[D]iversity ideology frames exclusion as the cause of racial inequity and fair representation as the solution.”³⁰⁰ It also centers whiteness.³⁰¹ Thus, “[t]he logic of diversity ideology allows whites to construct a positive white identity as open-minded and accepting of difference or organizations as innovative and cutting-edge, while maintaining the social and legal benefits of systemic whiteness.”³⁰²

In the wake of George Floyd’s killing at the hands of the police, law schools are exploring antiracist practices including antiracist hiring.³⁰³ While this offers an opportunity to serve as an important turning point, it is imperative that institutions proceed in a manner that avoids perpetuating the existing problems. Law schools should hire more Black women, as a critical mass of Black women may provide a buffer against tokenism.³⁰⁴ But more work must be done to ensure that diverse environments result in positive experiences for Black women.³⁰⁵ Since

298. See Cyra Akila Choudhury, *In the Shadow of Gaslight: Reflections on Identity, Diversity, and the Distribution of Power in the Academy*, 20 CUNY L. REV. 467, 469–70 (2017) (“[I]n the Academy, in the 1990s and early 2000s multiculturalism and the institutional embrace of diversity gave us the illusion of progress but masked ongoing subordination and repelled efforts to change structural inequality on campus.”); see also Vest, *supra* note 169, at 489 (“[R]acist/sexist/ableist/heterosexist cognitive dissonance allows faculty to promote diversity hiring while maintaining racist, sexist, ableist, and homophobic views about the presumed inferior abilities of the colleagues they hired.”).

299. See Choudhury, *supra* note 298, at 479.

300. Sarah Mayorga-Gallo, *The White-Centering Logic of Diversity Ideology*, 63 AM. BEHAV. SCIENTIST 1789, 1793 (2019).

301. See *id.* at 1794.

302. *Id.*

303. See *Law Deans Antiracist Clearinghouse Project*, ASS’N AM. L. SCHS. <https://www.aals.org/antiracist-clearinghouse> [<https://perma.cc/BK7K-Z5YE>] (last visited May 2, 2021); *Video Now Available! Anti-Racist Hiring Practices*, SOC’Y AM. L. TCHRS. (SALT) (Oct. 20, 2020), <https://www.saltlaw.org/video-now-available-anti-racist-hiring-practices> [<https://perma.cc/3HZT-FKUW>]; *SALT Webinar Anti-Racist Hiring Practices*, MICH. ST. UNIV.: KALTURA MEDIASPACE (Oct. 16, 2020), [https://mediaspace.msu.edu/media/SALT+Webinar+Anti-Racist+Hiring+Practices+\(16+Oct+2020\)/1_kw0prxu1](https://mediaspace.msu.edu/media/SALT+Webinar+Anti-Racist+Hiring+Practices+(16+Oct+2020)/1_kw0prxu1) [<https://perma.cc/2L8W-WEJS>] [hereinafter *SALT Antiracist Hiring Practices*].

304. See Jordan, *supra* note 245, at 21.

305. See Wilson, *supra* note 106, at 70.

any policy that sustains racial inequity is racist,³⁰⁶ law schools should consider how current hiring practices—including hypercredentialing and preferring elite law school graduates—disadvantage Black women. Hypercredentialing describes the increasing demand for entry-level faculty candidates to have significant publications, advanced degrees, and teaching fellowships.³⁰⁷ Though data is limited, research suggests that hypercredentialing may disadvantage Black women in the law school hiring process.³⁰⁸ Law schools should also take steps to ensure that Black women are not disadvantaged by negative stereotypes during the hiring process. For example, members of the recruitment committee should develop and use a rubric to ensure that hiring expectations are clear and candidates are uniformly evaluated.³⁰⁹

In addition to improving their hiring practices, law schools should ensure that Black women have financial allowances that permit opportunities to engage with other faculty of color even if expenses exceed the general faculty allotment for professional associations and conference attendance.³¹⁰ Law schools should eliminate diversity policies that operate to reinforce white dominance in the legal

306. IBRAM X. KENDI, *HOW TO BE AN ANTIRACIST* 18 (2019).

307. See *Credentials*, STAN. L. SCH., <https://law.stanford.edu/careers/career-possibilities/academia/credentials> [<https://perma.cc/7GAY-ZWCT>] (last visited May 2, 2021) (describing the shift in hiring criteria over the last twenty-five years from elite school attendance, law review officer, clerkships, and high grades to more emphasis on scholarly publications, a Ph.D., and a teaching fellowship); *Paths to Law Teaching*, U. CHI. L. SCH. (last updated Nov. 2017), <https://www.law.uchicago.edu/careerservices/pathstolawteaching> [<https://perma.cc/3Z54-2SGS>] (noting the importance of publishing scholarly work before seeking a law faculty position); *Advanced Degrees*, ASS'N AM. L. SCHS., <https://teach.aals.org/tenure-track/advanced-degree> [<https://perma.cc/97CE-KETT>] (last visited May 2, 2021) (noting that an advanced degree may increase chances of becoming a law professor).

308. See Lynn M. LoPucki, *Dawn of the Discipline-Based Law Faculty*, 65 J. LEGAL EDUC. 506, 508 (2016) (noting the increase in law faculty with a Ph.D. and identifying two faculty tracks: J.D. faculty who have law practice experience and J.D.-Ph.D. faculty who have minimal practice experience); Tracey E. George & Albert H. Yoon, *The Labor Market for New Law Professors*, 11 J. EMPIRICAL LEGAL STUD. 1, 1 (2014) (concluding, after exploring the factors that influence the interview selection process, that law schools ultimately hire “candidates who look like current law professors”); see also Milan Markovic, *The Law Professor Pipeline*, 92 TEMP. L. REV. 813, 835 (2020) (“The legal academy touts its commitment to diversity but hires mostly from the toniest colleges and law schools.”).

309. See *SALT Webinar Antiracist Hiring Practices*, *supra* note 303 (recommending the creation and use of a hiring rubric).

310. See *id.* (recommending, where diversity is limited on faculty, that schools provide additional funding for inclusive opportunities like conferences and memberships with affinity groups).

academy.³¹¹ And schools should challenge beliefs that reinforce notions of presumed incompetence like the belief that, to diversify law faculties, law schools sacrifice quality by giving diverse hires special treatment.³¹²

D. Amplify, Ally, Accomplice

Exhaustive coverage of the ways law schools can create positive experiences for Black women is beyond the scope of this Article. But, amplification and allyship—in addition to the proposed systemic changes herein—are important strategies that privileged insiders can employ to obstruct the many ways Black women are silenced in the legal academy.

Amplification, as defined by Professor Tiffany Atkins, “is the intentional act of elevating the voices and experiences of minorities in large group settings.”³¹³ Amplification occurs when faculty members with status or privileged identities consciously and directly uplift Black women’s voices, and when intentional steps are taken to ensure that Black women see themselves positively reflected in the law school environment.³¹⁴ These intentional acts create more inclusive environments for Black women.³¹⁵

In law schools, allies challenge the status quo and advance equity in existing power structures.³¹⁶ White-centered allyship views Black women as victims who require white saviors.³¹⁷ By contrast, genuine allyship requires an acceptance that the ally work must focus on decentering whiteness and “permanently occupying a space of discomfort, shifting allegiance, and unlearning privilege.”³¹⁸ The goal of genuine allyship is liberation from systemic gendered oppression and white

311. See Choudhury, *supra* note 298, at 477 (“If promoting minority representation becomes an institutional goal (as it is for the Association of American Law Schools), recruiting minorities willing to act as identity shields can help maintain the structural status quo and distribution of power while providing cover for what amounts to superficial inclusion masking the de facto, ongoing systemic racism and intersectional hetero/sexism.”).

312. See Vest, *supra* note 169, at 489.

313. Tiffany D. Atkins, *Amplifying Diverse Voices: Strategies for Promoting Inclusion in the Law School Classroom*, SECOND DRAFT, Fall 2018, at 10, 13.

314. See *id.* at 12.

315. See *id.*

316. See Michelle Kim, *Allyship (& Accomplice): The What, Why, and How*, MEDIUM: AWAKEN (Nov. 10, 2019), <https://medium.com/awaken-blog/allyship-vs-accomplice-the-what-why-and-how-f3da767d48cc> [https://perma.cc/W59Y-2Y3U].

317. Rachelle A. C. Joplin, *Through a White Woman’s Tears: Fragility, Guilt, and the Journey Toward Allyship*, in PRESUMED INCOMPETENT II, *supra* note 47, at 215, 220.

318. *Id.* at 216.

academic norms so that Black women no longer require allies.³¹⁹ Allies accomplish this by challenging their own perspectives and the perspectives of others. Accomplices, however, use power derived from tenure and academic freedom to directly challenge and dismantle institutional academic norms that promote systemic gendered racism and oppress Black women.³²⁰ Whether acting as an ally or accomplice, professors and administrators with privilege must commit to work that will permit Black women to be their authentic selves in the legal academy without being silenced or fearing cancellation.

CONCLUSION

Law schools are institutional white spaces governed by white academic norms like academic freedom and hierarchy. While in much of society cancel culture aims to punish or shame bad actors, the norms of legal academia explicitly and implicitly silence Black women and cancel their careers. On the path to tenure, Black women experience intersectional microaggressions, white tears, and tokenism as a result of the systemic gendered racism inherent in existing norms. In response, they self-silence and self-sideline. They also suffer intersectional battle fatigue, a consequence of having to negotiate identity in ways that result in physical, psychological, and emotional trauma. And Black women who are not on the tenure track are further subjugated by hierarchal norms. These institutional barriers often result in the silencing of Black women.

Black women have little meaningful choice in the silence they adopt to combat systemic gendered racism in white institutional spaces. In fact, their silence may help them avoid cancellation. As such, law schools must create positive experiences for Black women by reevaluating the academic norms and hierarchies that oppress them, incorporating CRT and whiteness theories across the curriculum, and genuinely focusing on diversity and inclusion. Those in positions of power must ally with Black women and amplify Black women's voices; they should also challenge and dismantle systems that oppress Black women.

For over thirty years in the legal academy, Black women have been telling their stories. As a Black woman in the legal academy who is still very early in my career, I must maintain some optimism that we will get to a place where Black women can excel in law schools without sacrificing our authentic selves, but:

319. *See id.* at 220.

320. For example, a tenured faculty member is best situated to call for revisions of faculty hiring and evaluation processes. *See Kim, supra* note 316.

“ . . . bein alive & bein a woman & bein colored is a metaphysical
dilemma/ i havent conquered yet/”
–Ntozake Shange³²¹

321. NTOZAKE SHANGE, FOR COLORED GIRLS WHO HAVE CONSIDERED SUICIDE/WHEN THE RAINBOW IS ENUF 59 (Scribner 2010) (1975).