

## GATEKEEPING THE PROFESSION

*Christopher Williams<sup>†</sup>*

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### INTRODUCTION

Legal education offers a cohesive structure by which all students - the prospective, current, and alumni - are molded. Every year, around 350,000 students apply to become law students throughout the country.<sup>1</sup> Total

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<sup>†</sup> J.D., University of California, Irvine School of Law. PhD Candidate in Sociology at the University of Chicago. I would first like to thank the editors of the Cardozo Journal of Equal Rights and Social Justice for their patience and helpful editing. I would next like to thank Swethaa Ballakrishnen, Bryant Garth, Kaaryn Gustafson, Mario Barnes, Stephen Lee, L. Song Richardson, Rafael Gely, Scott Brooks, Joan Hermsen, Michele Goodwin, Shauhin Talesh, and Evonnia Woods for their continuous support and mentorship in on-going endeavors. Additionally, I'd like to thank Pilar Escontrias, James Lamb, and Peter Alter for their helpful input.

<sup>1</sup> *Admission Trends: ABA Applicants, Admitted Applicants, & Applications*, L.S.A.C., <https://www.lsc.org/data-research/data/admission-trends-aba-applicants-admitted-applicants-applications> (last accessed May 1, 2019).

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enrollment of students at law schools nationwide is around 111,000 students.<sup>2</sup> A little over 37,000 of these students are new incoming students and the others are law students still receiving their legal education, some preparing to graduate and enter the job market.<sup>3</sup> As the gateway to the legal profession, it is imperative to analyze the structure of legal education since it greatly influences the socialization and reproduction of hierarchy within the legal profession.<sup>4</sup> I suggest in this article that the socialization and reproduction of prejudice as a result of racial hierarchies is embedded in the U.S. model of legal education (“the model”) because of the model’s specific adoption of racial hierarchy.

The structure of U.S. legal education holds itself out as an equitable and meritocratic model,<sup>5</sup> one in which the brightest students are rewarded with entry into elite schools and jobs all because they worked hard themselves absent individual or structural aid.<sup>6</sup> Despite the myth of meritocracy within legal education, the U.S. model has never actually been a “fair” meritocracy where all students are given equal opportunity to succeed.<sup>7</sup> Students of color in legal education have never had the same access to resources and infrastructure as their white counterparts in the entire history of U.S. legal education. Some students simply don’t have the same history of exclusion and pipeline discrimination as students of color, students who, for example have not experienced systemic disadvantage. A “fair” meritocracy would see students of color who battle their way into the profession see high returns on their GPAs and gain access to all jobs in the profession. Instead, the U.S. model has historically and contemporarily produced a profession that is mostly white and mostly privileges whites.<sup>8</sup> But even within the category of whiteness, all whites don’t equally benefit. The model consistently privileges whites who are middle to upper class, male, and cis-gendered as opposed to those who may be poor and trans-gendered.<sup>9</sup> There are indeed minorities who get admitted to law school, get high grades, are incredibly involved on campus, and get elite jobs, but this isn’t to the same extent as their white counterparts.

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<sup>2</sup> A.B.A., 2018 STANDARD 509 INFORMATION REPORT DATA OVERVIEW (Dec. 14, 2018), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/2018-509-enrollment-summary-report.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2018-509-enrollment-summary-report.pdf).

<sup>3</sup> *Id.*

<sup>4</sup> Swethaa Ballakrishnen & Carol Silver, *A New Minority? International JD Students in US Law Schools*, 44 *LAW & SOC. INQUIRY* 647, 649 (2019).

<sup>5</sup> *Id.*

<sup>6</sup> See generally Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 *J. LEGAL EDUC.* 591.

<sup>7</sup> *Supra* note 5 at 649

<sup>8</sup> See generally Leslie Culver, *White Doors, Black Footsteps: Leveraging “White Privilege” to Benefit Law Students of Color*, 21 *J. GENDER RACE & JUST.* 37, 46-68 (2017).

<sup>9</sup> *Id.* at 51-52.

Scholars have long documented how the legal profession structurally is an important site to note the reproduction of inequality.<sup>10</sup> More specifically, legal education has proven to be a particularly fertile ground for understanding notions of inequality surrounding race, gender, class, privilege, and sexuality.<sup>11</sup> Research has shown that the reproduction of inequality in the profession is often disguised under notions of meritocracy, which allows legal actors to explain inequality away due to the lack of specific animus towards diversity.<sup>12</sup> Scholars have also discussed the disparities and racist nature of the model's admissions criteria, usage of affirmative action, and disparities for students within law school.<sup>13</sup> Scholars focusing on admissions critiques usually describe law school admission as a process that discriminates against people of color by under-admitting students of color through myriad of both overt and colorblind processes.<sup>14</sup>

Another related critique of U.S. legal education focuses on affirmative action in admission. Scholars in this area either defend affirmative action against scholars who see no utility in it or critique the implications of court decisions to end affirmative action.<sup>15</sup> Focus in this area is explicitly on race and often frames the attacks on affirmative action as a part of a general animus towards students of color and their entry into law school.<sup>16</sup> Another area of scholarly focus is critiquing the experience of students during law school. These critiques focus on how curriculum, organizations, and

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<sup>10</sup> *Supra* note 5 at 649 (2019); *see also* Culver, *supra* note 8, at 71.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *See generally* Linda Wightman, *The Threat to Diversity in Legal Education: An Empirical Analysis of the Consequences of Abandoning Race As A Factor in Law School Admission Decisions*, 72 N.Y.U. L. REV. 1 (1997); *see e.g.* Walter R. Allen, *Affirmative Action, Educational Equity and Campus Racial Climate: A Case Study of the University of Michigan Law School*, 12 LA RAZA L.J. 237 (2001); Devon Carbarido & Cheryl Harris, *The New Racial Preferences*, 96 CALIF. L. REV. 1139 (2008); Anastasia Boles, *Seeking Inclusion From the Inside Out: Towards a Paradigm of Culturally Proficient Legal Education*, 11 CHARLESTON L. REV. 209 (2017).

<sup>15</sup> *See e.g.* Adriane Kayoko Peralta, *Market Analysis of Race-Conscious University Admissions for Students of Color*, 93 DENV. L. REV. 173 (2015) (arguing that there are economic and inherent intrinsic values to incorporating race-conscious admissions policies versus race neutral policies); Vinay Harpalani, *Diversity within Racial Groups and the Constitutionality of Race-Conscious Admissions*, 15 U. PA. J. CONST. L. 463 (2012) (arguing that race conscious admissions policies increase minority representation and diversity within racial groups in a given law school.).

<sup>15</sup> *See e.g.* Carbarido, *supra* note 13 (critiquing California's proposition 209 ban on affirmative action and explaining the resulting preference for white students in admissions); Andre Cummings, "Open Water": *Affirmative Action, Mismatch Theory and Swarming Predators – A Response to Richard Sander*, 44 BRANDEIS L.J. 795 (2006) (arguing that mismatch theory fails as a critique of affirmative actions and does not explain the challenges black students face in law school); Katherine Barnes, *Is Affirmative Action Responsible for the Achievement Gap Between Black and White Law Students*, 101 NW. U. L. REV. 1759 (2007) (arguing that mismatch theory is flawed in relation to race and affirmative action.).

<sup>16</sup> *See e.g.* Carbarido, *supra* note 13; Cummings, *supra* note 15; Barnes, *supra* note 15.

involvement in law school perpetuate racism and sexism.<sup>17</sup> This may be because curriculum does not incorporate race or feminist perspectives, or because organizations such as law reviews and moot court do not attract and cultivate students of color.<sup>18</sup>

This piece adds on to existing critiques of legal education by explicitly analyzing U.S. legal education as a structural whole from a black male student's perspective informed by experience. In analyzing this perspective, I specifically argue two things. First, in highlighting the inequities of the U.S. black experience within the model of legal education, I argue that legal education serves as a racial gatekeeper for the legal profession. I do this primarily by highlighting the inequities of the U.S. black experience within the model of legal education as a result of multiple "gates" the profession deploys. Second, I argue that the U.S. model of legal education is an adoptive prejudice model, which reproduces historical inequities based on social stratification tailored to the society it is situated in. In using the phrase "adoptive prejudice," I suggest that the U.S. model of legal education adapts to the hierarchy of the society it exists in and then proliferates existing identity hierarchies based on these external prejudices. Finally, I extend and advance these two arguments by suggesting that one way to make sense of the reproduction of prejudice experienced by black law students is by analyzing entrenched caste-based inequality in an Indian law school context. Others scholars have made parallels between race and caste.<sup>19</sup> This article extends such parallels by using the framework of caste to understand the entrenched experience of oppression within high status institutional contexts, as well as to draw empirical parallels between *Dalit* students in the Indian law school context and the experience of black law students in the U.S. context.

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<sup>17</sup> See e.g. Charles Daye et al., *Does Race Matter in Educational Diversity? A Legal Empirical Analysis*, 13 RUTGERS RACE & L. REV. 75 (2012) (arguing that law schools should strive to have a diverse student body to accurately reflect society and mitigate unequal treatment during law schools); Ann Freedman, *Feminist Legal Method in Action: Challenging Racism, Sexism, and Homophobia in Law School*, 24 GA. L. REV. 849 (1990) (highlighting the need for spaces within law school to discuss and challenge racism, sexism, and homophobia and the consequences of doing so); Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Femi-Crits Go to Law School,"* 38 J. LEGAL EDUC. 61, (1998) (arguing the need for the law school model to incorporate and meaningfully take serious the feminist legal perspective in curriculum, client practice, and various aspects of legal education).

<sup>18</sup> See Ann Freedmen *Supra* note 18; See Carrie Menkel-Meadow *Supra* note 18

<sup>19</sup> Nico Slate, *The Dalit Panthers: Race, Caste, and Black Power in India*, in *Black Power Beyond Borders*, (Nico Slate ed., 2012); Deepa Reddy, *The Ethnicity of Caste*, 78 ANTHROPOLOGICAL Q. 543 (2005); Phillip Martin, *Suraj's Shadow: Wherever He Goes, His Caste Follows-Even in America*, WBGH NEWS (Mar. 5, 2010, 12:00 PM), <https://www.pri.org/stories/2019-03-05/even-harvard-pedigree-caste-follows-shadow>.

It is important at the outset to note what this research is not attempting to do. This article advances the idea that race and caste operate and are treated the same way in privileged institutions within the model of U.S. legal education. It does not, however, advance the larger argument that caste and race are the same thing or that *Dalits* and blacks move throughout the world and experience the same oppression in the same way at all times. This research also does not attempt to present an analogy for all people of color, although it is possible that some minorities might have related responses and experiences to an inherently unequal system. Finally, without more robust data, this article also does not encompass all black experiences. It merely offers one segment of perspective on the nature of this experience.

In Part I of this article I provide a brief overview of race and class in the U.S. Part II introduces what I refer to as “The Gate,” which determines who is included and excluded from legal education and ultimately the legal profession. It is important for purposes of this metaphor to understand that the legal profession controls “The Gate” and how “The Gate” functions. That is, the legal profession controls for whom the gate swings open, and also for whom the gate is closed. Section IIB discusses navigating the structural gates of legal education from a black student’s perspective. Section IIC highlights exiting the structure of legal education and entering the legal profession. Part III of this paper discusses the model of U.S. legal education in India and how the model adapts to prejudice in Indian society and reproduces inequality using the same structural gates highlighted in the U.S. context.

## PART I: SOCIAL STRATIFICATION

An in-depth intersectional analysis of race is beyond the scope of this paper. Race is, and always has been, a social construction not rooted in any fact.<sup>20</sup> It was invented solely as a means to advantage whites to the detriment of others.<sup>21</sup> Race gives the privileged in the hierarchy power over the rest of the hierarchy and enables the privileged to benefit to the detriment or oppression of the rest of the hierarchy.<sup>22</sup> Despite being a social construction, race is consistently reproduced everyday through institutions and common cultural discourse.<sup>23</sup>

Race finds its origin in the U.S. as a social construct grounded in meritocracy tied to biological skin color myths.<sup>24</sup> Within the mythology of

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<sup>20</sup> DAVID ROEDIGER, *HOW RACE SURVIVED U.S. HISTORY: FROM SETTLEMENT AND SLAVERY TO THE OBAMA PHENOMENON* vi, xi-xxi (2008).

<sup>21</sup> *Id.* at xi-xii.

<sup>22</sup> Cheryl Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709, 1713 (1993).

<sup>23</sup> *Id.*

<sup>24</sup> ROEDIGER, *supra* note 21, at 214.

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race, whites historically have been posited as the “pure” race, constructed as having the most merit.<sup>25</sup> All other races are deemed inferior and constructed as lacking merit because race in the United States operates in relation to whiteness.<sup>26</sup> Contemporarily, this has led to whites occupying the highest position within the racial hierarchy.<sup>27</sup> To be a minority is to not be included into the category of whiteness, which allows one to experience racial oppression.<sup>28</sup> It is important to note that the biology myth of race is deeply entangled and embedded in the social construction of race such that the discourse surrounding race often still uses the original biological markers of races.<sup>29</sup>

In the U.S. however, race isn’t the only determinant of one’s outcome in life. Race and class, although distinct, interact to produce racial disparities in income, jobs, and access to resources, amongst other life outcomes, which reinforce social stratification in line with both racial and class hierarchies.<sup>30</sup> While people often mention a plethora of explanations to explain away class differences amongst whites and blacks, for example, as something other than racism, research suggests that non-racial explanations like marriage rates, education attainment, ability, and wealth actually explain very little about things like the black-white wealth gap.<sup>31</sup> Likewise, data suggests that areas with the lowest economic white-black gaps are the areas with low levels of racial bias amongst whites.<sup>32</sup> Thus, the degree to which racism is interacting with class is a much better indicator for understanding class disparities for minorities. For example, black and native Americans—both of whom were brutally colonized at the hands of racist white settlers—have the lowest rates of upward mobility amongst racial groups across generations,<sup>33</sup> resulting in most native and black families staying in the class they are born in, unlike other racial groups.<sup>34</sup> Furthermore, there is a disproportionate amount of minorities and natives who represent the poor and working class in society, which means that many black and natives born into poor and working class homes will stay poor or in the working class, unlike other racial groups who

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<sup>25</sup> Cheryl Harris, *Whiteness As Property*, 106 Harv. L. Rev. 1707, 1737(1993); Ian Haney Lopez, *White By Law, The Legal Construction of Race*, NYU Press, 27(2016).

<sup>26</sup> See Devon Carbardo & Daria Roithmayr, *Critical Race Theory Meets Social Science*, 10 ANN. REV. L. & SOC. SCI. 149, 157 (2014).

<sup>27</sup> *Id.* at 160.

<sup>28</sup> *Id.* at 156.

<sup>29</sup> *Id.* at 158.

<sup>30</sup> Carbardo, *supra* note 27, at 159-60.

<sup>31</sup> Raj Chetty et al., *Race and Economic Opportunity in the United States: An Intergenerational Perspective* 24-27 (Nat’l Bureau of Econ. Research, Working Paper No. 24441, 2018), <https://www.nber.org/papers/w24441.pdf>.

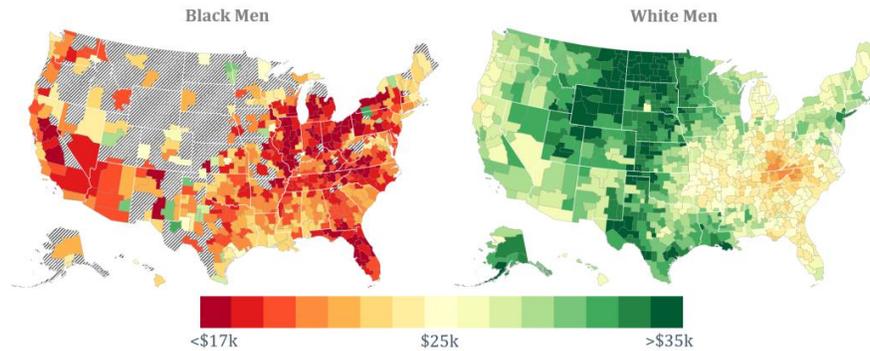
<sup>32</sup> *Id.* at 38.

<sup>33</sup> *Id.* at 18-19.

<sup>34</sup> *Id.* at 19-20.

are more upwardly mobile and gain increased access to resources.<sup>35</sup> Even across other class categories, black men with comparable family incomes as white men still earn substantially less than similarly situated white men.<sup>36</sup> Equally as stark, “In 99% of neighborhoods in the United States, black boys earn less in adulthood than white boys who grew up in families with comparable income, as noted in *Figure 1*.”<sup>37</sup> While Asians and Hispanics see some improvement in upward mobility from generation to generation, this upward mobility lags behind whites, and becomes stagnant after a certain income threshold.<sup>38</sup> *Figure 2* further highlights class differences by race for children.<sup>39</sup>

*Figure 1. Average Incomes for Black and White Men who Grow up in Low-Income (25th Percentile) Families.*



Source: The Equal Opportunity Project.

<sup>35</sup> *Id.*

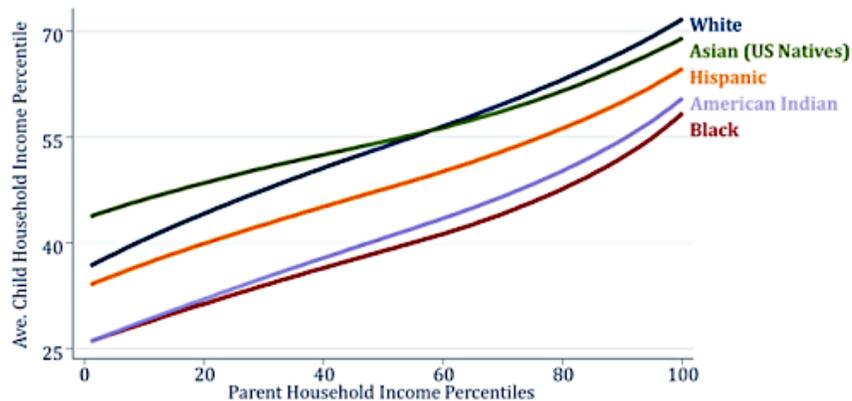
<sup>36</sup> *Id.* at 4-5.

<sup>37</sup> See RAJ CHETTY ET AL., OPPORTUNITY INSIGHTS, RACE AND ECONOMIC OPPORTUNITY IN THE UNITED STATES 2, (Dec. 2019) available at <https://drive.google.com/drive/folders/1ewrjncvohyGI0kZX4cmXpT8vG9UK1Lnu>. This report is a five-page, “non-technical” summary of the full report cited in footnote 32.

<sup>38</sup> CHETTY, *supra* note 32, at 17-18.

<sup>39</sup> CHETTY, *supra* note 38, at 1.

Figure 2. Children's Incomes vs. Parents' Incomes, by Race and Ethnicity



Source: *The Equal Opportunity Project*.

The disparities mentioned above are not merely abstract, they have real world consequences.<sup>40</sup> Wealthy blacks and Hispanics live in poorer quality neighborhoods than similarly situated whites, both from a resource and safety standpoint.<sup>41</sup> Minorities are far more likely to be targeted for subprime loans than whites, ensuring that minorities are more saddled with debt and unable to be upwardly mobile.<sup>42</sup> Minorities are more likely to get turned down for loans than their white counterparts, which prevents minorities from being able to purchase homes in areas with more resources.<sup>43</sup> Minorities are less likely to get job placements than whites with similar credentials.<sup>44</sup> In fact, whites with felony criminal convictions have higher callback rates than blacks with similar qualifications and clean records.<sup>45</sup> Minorities are more

<sup>40</sup> See generally Braden Goyette & Alissa Scheller, *15 Charts That Prove We're Far from Post-Racial*, HUFFINGTON POST (July 2, 2014, 7:09 AM), [https://www.huffpost.com/entry/civil-rights-act-anniversary-racism-charts\\_n\\_5521104](https://www.huffpost.com/entry/civil-rights-act-anniversary-racism-charts_n_5521104).

<sup>41</sup> MARY PATILLO-MCCOY, *BLACK PICKET FENCES: PRIVILEGE AND PERIL AMONG THE BLACK MIDDLE CLASS* 28-29 (1999).

<sup>42</sup> Emily Badger, *The Dramatic Racial Bias of Subprime Lending During the Housing Boom*, CITYLAB (Aug. 16, 2013), <https://www.citylab.com/equity/2013/08/blacks-really-were-targeted-bogus-loans-during-housing-boom/6559/>.

<sup>43</sup> *Id.*

<sup>44</sup> Devah Pager, *The Mark of a Criminal Record*, 108 A.J.S. 937, 957-960 (2003).

<sup>45</sup> *Id.*

likely to attend poorly funded schools than white students, which translates into white students simply having more access and exposure to resources. Thus, white students hold a greater advantage in applying to schools and jobs.<sup>46</sup>

Even in the criminal justice system, minorities are punished more harshly than whites.<sup>47</sup> Despite whites using drugs at a higher rate than blacks, blacks are arrested at a rate three times higher than whites for drug possession.<sup>48</sup> Minorities get sentenced longer than whites for the same crimes.<sup>49</sup> Despite being around ten percent of the U.S. population, blacks are incarcerated at a rate 5.9 times higher than whites.<sup>50</sup> Hispanics are imprisoned at a rate of 3.1 times the rate of whites.<sup>51</sup> Native Americans are incarcerated at a rate of 4 times the rate of whites.<sup>52</sup> These data points provide a mere snapshot as to how the racial hierarchy pervades and shapes everyday life and institutions in a targeted fashion that benefits whites and punishes minorities. From jobs, to schools, to the criminal justice system, racism pervades and produces racialized inequities. More importantly, the data in this section shows the racial logic that pervades multiple institutions in the U.S. It is important to then analyze if and to what extent the legal profession as an institution is producing a disadvantage to minorities.

## PART II. THE STRUCTURE OF U.S. LEGAL EDUCATION

Before analyzing the structure of legal education, it important to first establish a working understanding of the structure. There are many governing bodies that shape the U.S. law school model, and none are openly hostile to notions of diversity and meaningful inclusion. Despite the lack of open hostility, inequality persists in every facet of the model. This is due to the model adopting and proliferating prejudices and biases against students of color that mirror the broader society's racial prejudices and biases. The way in which the model does this is through the conceptual tool, which I call "The Gate." The Gate is composed of multiple gates that work together to

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<sup>46</sup> Chetty, *supra* note 32, at 27.

<sup>47</sup> See NAZGOL GHANDNOOS, THE SENTENCING PROJECT, BLACK LIVES MATTER: ELIMINATING INEQUITY IN THE CRIMINAL JUSTICE SYSTEM (2015), <https://www.sentencingproject.org/publications/black-lives-matter-eliminating-racial-inequity-in-the-criminal-justice-system/> (last accessed May 1, 2019).

<sup>48</sup> *Id.* at 14.

<sup>49</sup> *Id.* at 12.

<sup>50</sup> THE SENTENCING PROJECT, REPORT TO THE UNITED NATIONS ON RACIAL DISPARITIES IN THE U.S. CRIMINAL JUSTICE SYSTEM 1(2019), <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/un-report-on-racial-disparities/>.

<sup>51</sup> *Id.*

<sup>52</sup> *Race & Justice News: Native Americans In the Justice System*, THE SENTENCING PROJECT (Mar. 28, 2016), <https://www.sentencingproject.org/news/race-justice-news-native-americans-in-the-justice-system/>.

both shutout and limit opportunity for minorities in the profession. I will be specifically discussing it in relation to black students.

The law school model starts with requiring students to take a standardized entrance examination called the LSAT. Prospective law students must pay for and take the LSAT to attend most law schools. For many minority students, this means paying for an LSAT prep class in addition to the LSAT, and overcoming the bias associated with taking standardized exams.<sup>53</sup> Many students are willing to pay steep financial costs for test prep and the LSAT and endure bias, as gaining admission into law schools in the U.S. results in the increased likelihood of a prestigious job and potential upward mobility. As discussed later in this Note, due to the disproportionate negative impact of standardized testing and the costs associated with applying to law school have on black students, such facially neutral mechanisms might better be understood as gates that exclude and limit black entry.

For minorities, searching and finding the “right” law school can be misleading because advertised data doesn’t accurately reflect the minority experience. To pick the “right” law school, white students often look at metrics such as faculty, corporate/public interest job placement rates, alumni networks, clerkship placements, and U.S. News rankings, amongst other things. For a prospective minority student, looking at clerkships or job placement rates does not paint an accurate picture about what their own prospects as a minority would be if they attended a particular school since white students are far more likely to obtain corporate or clerkship jobs than minority students.<sup>54</sup> Therefore, collapsing all students into one placement rate is misleading, since white and black students do not get placed at similar rates into the aforementioned positions.<sup>55</sup> Collapsing in this way also renders invisible the disparate outcomes endemic in corporate and clerkship placements. Similarly, alumni networks are often heralded as vast and helpful in getting job placements yet these networks too are subject to the same embedded racial problems. Relatedly, if the job market contains entrenched racism that prevents minorities from being hired equitably, then the alumni network ceases to be a benefit to students seeking to leverage the network to get a job. Therefore, finding the “right” school for many minority students is a distorted process because much of the information students base their decisions on is not nuanced in way that accounts for entrenched racism

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<sup>53</sup> Aaron Taylor, *The Marginalization of Black Aspiring Lawyers*, 13 FIU L. REV. 489, 499 (2019) (noting the financial burdens associated with LSAT costs and standardized examination bias against black students).

<sup>54</sup> NATIONAL ASSOCIATION FOR LAW PLACEMENT (NALP), A DEMOGRAPHIC PROFILE OF JUDICIAL CLERKS – 2006 TO 2016, 1 (2017) [hereinafter “NALP JUDICIAL CLERKS”], <https://www.nalp.org/1017research>; NALP, 2018 REPORT ON DIVERSITY IN U.S. LAW FIRMS 5-6 (2019) [hereinafter “NALP LAW FIRMS”], [https://www.nalp.org/uploads/2018NALPReportonDiversityinUSLawFirms\\_FINAL.pdf](https://www.nalp.org/uploads/2018NALPReportonDiversityinUSLawFirms_FINAL.pdf).

<sup>55</sup> NALP JUDICIAL CLERKS, *supra* note 55, at 1; NALP LAW FIRMS, *supra* note 55, at 5-6.

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that renders white and minority interactions with determinative matriculation metrics different. Gates that are open, allow access, and produce outcomes for white students are simply closed or cracked for minorities. Looking at how gates open for students in positions of privilege is not particularly useful for non-privileged students if those same gates are not similarly opened when approached.

Outside of simply applying to law school, legal education in the U.S. is governed by a multitude of legal bodies such as the American Bar Association (A.B.A.), state legislatures, the United States Supreme Court, state Supreme Courts, the federal government, and a law school's respective university. The U.S. Department of Education provides federal oversight for a multitude of things including loans, federal regulations relating to law schools, and investigations into violations of federal law. The A.B.A. serves as the primary body for legal education regulation in the U.S. as it sets standards for degree requirements, course offerings, clinical requirements, ethics, amongst a host of other responsibilities.<sup>56</sup> Chief amongst these responsibilities is being one of the accreditation bodies for law schools throughout the United States.<sup>57</sup> The Association of American Law Schools (A.A.L.S.) also serves as one of the accreditation bodies for law schools.<sup>58</sup> In sum, there are many bodies involved in regulating legal education and each has its hand in legitimizing the racial entrenchment in the profession.

Once in law school, students partake in courses, summer jobs, and extra-curricular activities related to the profession. These activities function to socialize students with the norms, ideologies, and standards of the profession no matter where one gains their education.<sup>59</sup> As such, they are points of socialization where both legal information is conveyed and where structural bias is conveyed and legitimized.<sup>60</sup> After completing the requirements set forth by the A.B.A., law students are granted a J.D., which signifies completion of the legal education. Presuming passage of the bar, law students are then certified to practice law. Put another way, once one has completed the socialization of the profession and the profession is satisfied with a student's knowledge of the socialization, the profession allows entrance.

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<sup>56</sup> See generally *About Us*, A.B.A., [https://www.americanbar.org/about\\_the\\_aba/](https://www.americanbar.org/about_the_aba/) (last accessed Jan. 19, 2020).

<sup>57</sup> *Id.*

<sup>58</sup> *About Us*, A.B.A., *supra* note 62.

<sup>59</sup> Kennedy, *supra* note 4, at 595.

<sup>60</sup> *Id.* at 607.

*A. Introduction to The Gate*

Framing legal education as a racial gatekeeper illustrates how the legal profession as a whole maintains and participates in exclusion based on racial hierarchies. This is because the U.S. model of legal education specifically has adopted the racial hierarchy in broader U.S. society as its own, then in turn actively exacerbates and reproduces pre-existing prejudices and inequities within in the legal education context. The Gate itself represents an invisible mechanism whereby the legal profession (through the model of the legal education) limits and excludes black entry and opportunity in the profession. Rather than just one large gate that excludes and limits black entry and opportunity, The Gate is composed of multiple smaller gates that are arranged around prejudicial processes. These smaller gates are embedded deep within the structure of the model and produce disparate prejudicial racial impact. Despite the gates being prejudicial, they remain erected due to underlying neutral justifications that provide alternative non-racial justifications that “explain” away bias and prejudice as individual fault rather than institutional prejudice. Such neutral justifications are very much a part of The Gate because they allow The Gate to continuously enact bias and prejudice without having to defend itself against the stigma and sanction it would face if its bias and prejudice was explicit.

Entry past the initial entry gates is the start of making a specific type of lawyer. Who is “made” determines the composition of the profession. Examining who is allowed to gain a legal education and access the legal profession is immensely important because it helps illustrate how the gate itself is not freestanding and neutral. This also simultaneously gives insight about how the model adapts and embeds prejudice. I admit earlier and elsewhere that this paper specifically focuses on black students, but this is not to suggest that other racial minorities are not similarly excluded nor does it presume that by proxy of being black or white one is automatically included or excluded.

## 1. Test Prep

Entry into legal education starts even before one has applied for law school. For prospective students, a Law School Admission Test (LSAT) preparation (“prep”) course is highly encouraged to boost their chances of gaining a high LSAT score so they can gain admission into a “good” law school.<sup>61</sup> These prep courses alone cost between \$500-\$1800 depending on

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<sup>61</sup> Daniel Coogan, *Comparing LSAT Preparation Methods: What the Data Say*, U.S. NEWS & WORLD REPORT (Nov. 7, 2016), <https://www.usnews.com/education/blogs/law-admissions-lowdown/articles/2016-11-07/comparing-lsat-preparation-methods-what-the-data-say>.

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the type of course.<sup>62</sup> In addition to paying for a prep course, students must also register with the Law School Admission Counsel (LSAC), which costs \$190.<sup>63</sup> If a student does not readily have the resources available to pay \$500-\$1800, then the student may still forego test prep resources, as they are not mandatory to take the LSAT. However, doing so comes at the cost of competing against other students who are receiving aid from test prep such as questions, test strategies, and human tutors. In this way test prep can be useful viewed as a gate—an avoidable gate, but a gate nonetheless. Those who can pay for test prep pass through the gate and gain access to the benefits on the other side, but those who simply cannot afford test prep are shutout from these resources.

## 2. LSAC Costs

Even though one may be able to opt-out of paying for test prep, one cannot typically opt-out of the costs associated with paying for the LSAT, administered by LSAC, or the fees associated with LSAC registration. Fee waivers are offered by LSAC, but only those with “extreme” need are encouraged to apply.<sup>64</sup> It should be noted that the criteria for extreme need is not clear, nor is who defines extreme need, nor is whether one will get automatic approval if extreme need is demonstrated. Students must pay the \$190 to take the LSAT, but that price does not include the price a student must pay to send their LSAT scores to a respective school.<sup>65</sup> Once the LSAT is paid for and LSAC has received its share, students potentially must pay law schools to submit their applications.<sup>66</sup> Some law schools waive fees, while other schools charge students over \$100 to submit applications.<sup>67</sup>

With the exception of particularized school fees, LSAC fees are mandatory if one cannot get them waived.<sup>68</sup> Therefore if a person does not have the money to register for the LSAT and to pay the LSAC board, then one is shut out even before they apply to law school. In this way, applying to enter the field becomes less about whether an individual is qualified and

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<sup>62</sup> A casual Google search for LSAT prep companies yielded the following top results: Princeton Review LSAT Prep ranges from \$800 to \$1,800 (<https://www.princetonreview.com/law/lSAT-test-prep>), Kaplan Review LSAT Prep ranges from \$800 to \$1300 (<https://kaplan.com/>), TestMasters Review LSAT Prep ranges from \$1,150 to \$1,650 (<https://www.testmasters.net/Register/LsatOnlineSelect>), and Blueprint Review LSAT Prep is \$199 monthly to \$1399 (<https://blueprintlsat.com/lSAT/classroom>).

<sup>63</sup> *LSAT & CAS Fees & Refunds*, L.S.A.C., <https://www.lsac.org/lSAT/lSAT-dates-deadlines-score-release-dates/lSAT-cas-fees-and-refunds> (last accessed May 2, 2019).

<sup>64</sup> *Fee Waivers for the LSAT & Credential Assembly Service (CAS)*, L.S.A.C., <https://www.lsac.org/lSAT/lSAT-dates-deadlines-score-release-dates/lSAT-cas-fees-and-refunds/fee-waivers-lSAT-credential> (last accessed May 2, 2019).

<sup>65</sup> *Id.*

<sup>66</sup> Taylor, *supra* note 54, at 498-500.

<sup>67</sup> *Id.*

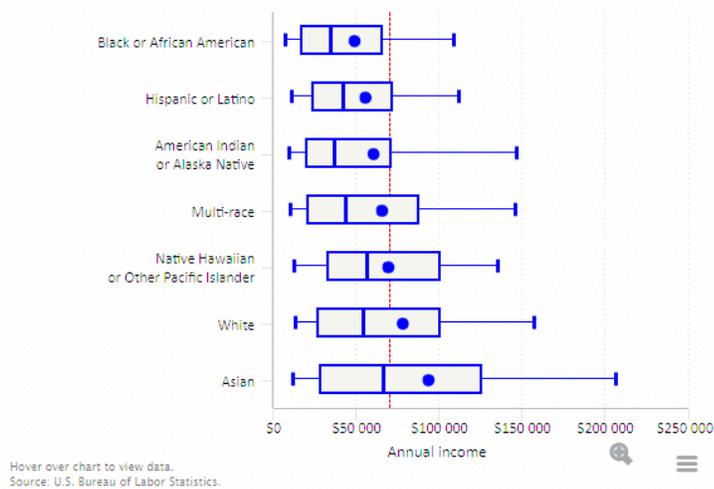
<sup>68</sup> *Fee Waivers for the LSAT*, *supra* note 66.

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more about whether an individual can afford to pay their way into the field. One can be mentally capable of attending law school but not being able to pay the price to open the gate. This means an otherwise capable applicant is priced out of the profession. It is reasonable to assume that most shut out individuals are individuals who have less income available to pay fees associated with applying. From Figure 3, one can infer that individuals shut out by costs are more than likely going to be a minority, or at the very least an individual who does not have adequate income.<sup>69</sup>

Figure 3

Pretax annual income of U.S. households by race and ethnicity, 2014–16 combined



The point here is that the sheer cost of applying can shut perspective applicants to the profession out. This is another gate, but unlike test prep, navigating this gate is mandatory. The stacking of costs operates in a fashion that excludes those in society who have financial constraints, thereby primarily deterring those who are poor from entering the profession. By ignoring the pricing-out of these individuals and presuming that individuals who have simply paid their way through have done so based on merit, renders invisible the significance that being able to pay one's way makes it easier to navigate the system and bypass the gate that actively excludes and prohibits all but those who can exhibit "extreme" need. This simultaneously conflates merit with one's access to resources. In referencing the recent college pay scandal that spanned multiple "elite universities," Shamus Khan states:

<sup>69</sup> REGINALD A. NELI; U.S. BUREAU OF LABOR STATISTICS; RACE, ECONOMIC, AND SOCIAL STATUS 2 (2018) <https://www.bls.gov/spotlight/2018/race-economics-and-social-status/pdf/race-economics-and-social-status.pdf>.

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[T]he true tragedy is that almost all rich families buy their kids into elite colleges by purchasing advantages they pass off as talents, whether by way of sailing lessons or elaborate vacations planned with an eye on admissions essays. We view these vastly over-represented children of the rich as having earned their spots. And that's the great American delusion we call 'meritocracy.'<sup>70</sup>

Making entry dependent on financial capability is one way the model adopts societal racial prejudice and adapts its own mechanisms to gatekeep the profession around racial prejudices. Arranging entry in this fashion, impacts applicants who are more likely to be racial minorities that are poor and cannot afford to pay the fees associated with entry.

### 3. LSAT Bias

Another important gate is the LSAT. Despite the known bias for white students, the LSAT is still required for admission to most law schools and is one of the most important elements of an applicant's file.<sup>71</sup> Research has shown that the LSAT specifically favors white test takers, even when controlling for academic achievement amongst blacks and whites.<sup>72</sup> Test prep or not, students of color still score worse on standardized exams like the LSAT than their white counterparts.<sup>73</sup> Of course a range of factors might predict this, but bias is embedded within standardized exams and minority students might nonetheless do poorly, resources or not.<sup>74</sup> Scholars point out that this is likely the case because standardized exams exhibit cultural biases that discriminate against students of color and drop their exam scores.<sup>75</sup> Aside from the exam itself being culturally biased, students of color often have to confront stereotype threat (the threat of confirming negative stereotypes about one's group) on such exams.<sup>76</sup> Steele and Aronson state that for minorities, stereotype threat interferes with performance on standardized tests and drops scores due to the presence of negative stereotypes about minorities and poor exam performance.<sup>77</sup> Steele and Aronson found that stereotype threat is especially prevalent for black students

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<sup>70</sup> Shamus Khan, *How to Weasel Your Kid Into an Elite College Without Paying Bribes*, WASH. POST (Mar. 15, 2019, 5:59 AM), [https://www.washingtonpost.com/outlook/the-college-admissions-game-is-rigged-arresting-cheaters-wont-change-that/2019/03/14/2127b340-4606-11e9-90f0-0ccfeec87a61\\_story.html](https://www.washingtonpost.com/outlook/the-college-admissions-game-is-rigged-arresting-cheaters-wont-change-that/2019/03/14/2127b340-4606-11e9-90f0-0ccfeec87a61_story.html).

<sup>71</sup> Williams C. Kidder, *Does the LSAT Mirror or Magnify Racial and Ethnic Differences in Educational Attainment: A Study of Equally Achieving Elite College Students*, 89 CAL. L. REV. 1055, 1073-74 (2001).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 1121-23.

<sup>75</sup> *Id.*

<sup>76</sup> See also Claude M. Steele & Joshua Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans*, 69 J. PERSONALITY & SOC. PSYCHOL. 797, 798 (1995).

<sup>77</sup> *Id.* at 809.

on standardized exams while not for white students, because “whites are not under the stereotype threat spotlight in the domain of standardized test taking.”<sup>78</sup> These findings were present regardless of class for black students, highlighting how even access to resources does not mitigate the racial bias impacting standardized exams, such as the LSAT.<sup>79</sup> By requiring an exam at the outset of the profession that favors whites over minorities, the profession signals its preference and privileging of white legal actors and its willingness to limit and exclude racial minority entry into the profession.

#### 4. Admission Bias

Even if minority students are able to successfully navigate the aforementioned gates (financial costs and the LSAT), there is still no guarantee that an individual will gain a legal education. One must actually be admitted into a law school. Many law schools primarily make admissions decisions based on a combination of factors, but LSAT and Undergraduate GPA (UGPA) scores are the most prominent, as they are said to be the best indicators of success in law school and on the bar.<sup>80</sup> Aaron Taylor points out that using LSAT and UGPA scores in this manner is inappropriate because they are not actual predictors of success in law school, and they render invisible all of the processes that favor white students leading to higher LSAT scores and UGPAs for white students.<sup>81</sup>

Most law schools produce primarily white legal actors, which produces a primarily white legal profession. *Figure 4* displays the demographic percentages by race of students at law schools.<sup>82</sup> *As Figure 4* shows, law schools are primarily white. More importantly, this figure shows just how effective the gate at maintaining its limiting and exclusion of minorities from entry. For example, in the 2016-2017 admission cycle alone, 49% of black applicants received no offer of admission, which was highest shutout rate by race.<sup>83</sup> This means that nearly half of the black applicants were simply excluded. This debunks the commonly held notion that there just are not enough black students applying.

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<sup>78</sup> *Id.* at 797-798.

<sup>79</sup> *Id.* at 810.

<sup>80</sup> Sara Berman, *Bar Exam Research Query Blog Series: Academic Bar Exam Success Predictors*, ACCESSLEX INST. (July 2, 2018), <https://www.accesslex.org/xblog/academic-bar-exam-success-predictors..>

<sup>81</sup> Taylor, *supra* note 54, at 490-91.

<sup>82</sup> Ballakrishnen, *supra* note 10, at 654.

<sup>83</sup> Taylor, *supra* note 54, at 490, 496.

Figure 4. Percentage of JD population who are White, Black, Asian, Latina/o and Non-resident alien ("NR"), all ABA-approved law schools<sup>84</sup>

	Minorities as a Percentage of Total JD population				
	White	Black	Asian	Latina/o	NR
2011	66.06%	7.16%	6.97%	9.19%	1.78%
2012	64.75%	7.50%	6.93%	9.72%	1.97%
2013	63.72%	7.95%	6.75%	10.37%	2.31%
2014	62.39%	8.43%	6.61%	11.11%	2.70%
2015	61.26%	8.69%	6.50%	11.57%	3.20%
2016	60.49%	8.61%	6.35%	12.21%	3.18%
2017	60.83%	8.42%	6.20%	12.60%	3.32%

Even today, with an increased awareness of differential outcomes, those who are admitted into law schools are still mostly white, as law schools generally admit whites more than any other racial group overall.<sup>85</sup> White students do not compose the majority of the profession simply because white students are entering in droves, but rather it is the result of systemic gatekeeping that prices students who are more likely to be students of color out, puts barriers in place that reduce opportunity for students of color, and requires an entry exam that is biased against students of color. For example, when white and minority applicants possess similar credentials, research suggests that the white applicant will be favored for admission.<sup>86</sup> Further it takes less white applicants to yield 1,000 offers of admissions than the equal equivalent of blacks applicants.<sup>87</sup> One might be tempted to explain this away by referring to differences in LSAT scores by race or the existence of more white applicants, but data reflects that for 55% of blacks with LSAT scores that led to them being offered no admission, only 39% of whites and 46% of all applicants with the same score were given no offer.<sup>88</sup> Thus, blacks must pass a multitude of gates just to simply be eligible to apply and even after doing so, there still awaits more gates—in this instance admissions bias—

<sup>84</sup> Ballakrishnen, *supra* note 10, at 654 (2019).

<sup>85</sup> *Id.*

<sup>86</sup> Taylor, *supra* note 54, at 497.

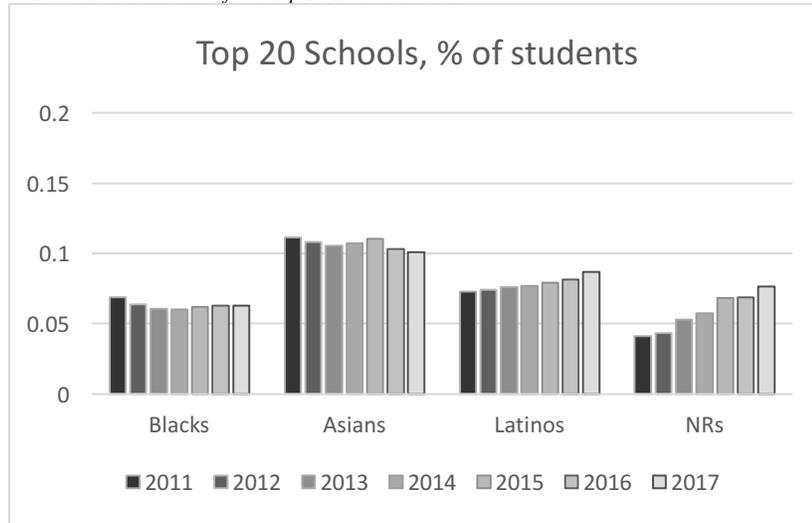
<sup>87</sup> *Id.* at 490.

<sup>88</sup> *Id.* at 496.

that still favor whites even if a black applicant is equally qualified, because the model here is adopting and adapting its own mechanisms to favor racial bias prevalent in broader society.

*Figure 5* shows that there is a decrease of black enrollment amongst elite law schools.<sup>89</sup> *Figure 6* shows that diversity is better at non-elite law schools, but that is only because it is being compared to the poor diversity of elite law schools. While the model gatekeeps generally for all schools, there is an additional layer of limiting and exclusion around race at the most elite schools, which often wield influence and produce the legal actors who shape the profession.

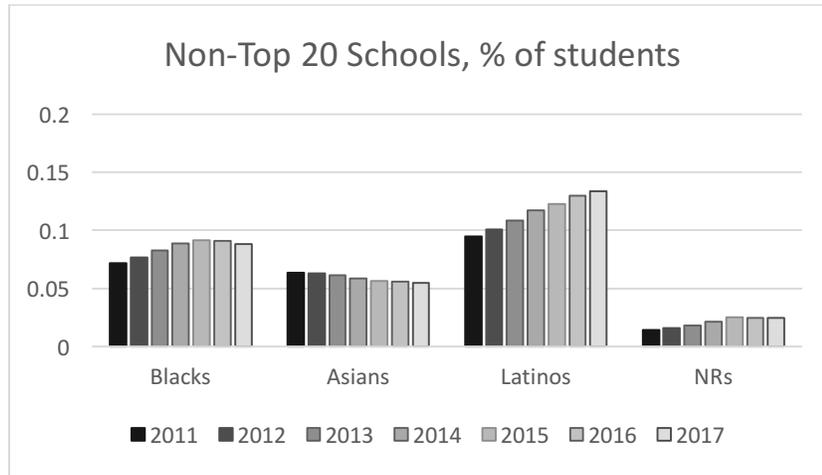
*Figure 5. Trends in Enrollment for Black, Asian, Latina/o and Non-Resident Alien (“NR”) JD Students at Law Schools Outside of the Top 20 Ranked Schools*



Source: Swethaa Ballakrishnen and Carol Silver, *A New Minority? International JD Students in US Law Schools*, *Law and Social Inquiry* 655 (2019).

*Figure 6. Law School Level Analysis of Non-Resident Aliens (“NR”) in Comparison to Blacks, Asians and Latina/os, Top 20 and Non-Top 20 Schools*

<sup>89</sup> Ballakrishnen, *supra* note 10, at 654-55.



Source: Swethaa Ballakrishnen and Carol Silver, *A New Minority? International JD Students in US Law Schools*, *Law and Social Inquiry* 655 (2019).

The data highlight how whites are primarily getting the benefits that elite law schools have to offer such as vast job networks, resources, and access to the most prestigious jobs in the profession, while only a small proportion of blacks are getting the same opportunity. In addition, the data shows how structural impediments exuding from the gates (the LSAT, admissions criteria, costs, general racial bias, etc.) function to exclude and limit black entry into the profession. The under-representation of minorities pervades and characterizes laws schools throughout the United States. It is the result of entrenched racial bias that gatekeeps minorities to exclusion or limited matriculation. In sum, The Gate determines who is allowed to enter the profession and who is excluded. The Gate allows legal education to specifically produce a certain type of lawyer. As for racial minorities, like black students, The Gate allows entry, but only after these students have overcome significant entry barriers that their white counterparts do not have to face.

### *B. Navigating Law School*

The initial gates mentioned above, not surprisingly, result in lower enrollment for black students.<sup>90</sup> For those black students who remain and are underrepresented, the model continues to impact them in a racially biased manner. Racial bias during law school is seldom systemically addressed because of the lack of available data for the student of color experience and the model's insistence on meritocratic reasoning. As with analyzing the initial gates, it is important to analyze the student of color experience during

<sup>90</sup> Ballakrishnen, *supra* note 10, at 654.

law school as it provides valuable insight into the model's discriminatory gates, and how such gates shape who ultimately ends up with powerful, prestigious positions in the profession.

### 1. In Class

A direct consequence of underrepresentation is the lack of representation for students of color in the classroom from both faculty and other students.<sup>91</sup> The model's insistence on meritocracy, engrains in students that the process by which students end up in the classroom is one that is fair, equitable, and based on self-merit. This leads to the false assumption that the majority presence of other students is the result of that group being merited than another group not present. This logic can be extended to faculty since law faculty presumably have to pass through the same law school mechanisms that gatekeeps diversity.<sup>92</sup> Students of color are well aware of classroom demographics, and some internalize under-representation, causing them to doubt their own capabilities and wonder whether they belong or are capable of doing work in the classroom.<sup>93</sup> In reality, it is not that these students are incapable or lack merit, rather the model does not operate based on meritocracy as it holds itself out to. Rather, it is the model's active gatekeeping that produces under-representation leading to anxiety, isolation, and self-doubt.

Even still, many minority students feel simultaneously hyper-visible as a result of being the sole black student in the classroom, and invisible due to being the only black voice drowned out by others. Black students are often left with the choice of either speaking up and being the voice of all black people, or not speaking up at all to avoid being the voice of all black people—a burden not shared by all students.

### 2. Activities

To gain entry into the most elite areas of the profession, it is engrained in students that one must do law review, moot court, Student Bar Association (SBA) or some combination, because participation in these activities signals merit and prestige.<sup>94</sup> Participation in leadership or winning

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<sup>91</sup> See generally MEERA DEO, *THE UNEQUAL PROFESSION: RACE AND GENDER* (2019) (noting the impact of faculty diversity and lack thereof).

<sup>92</sup> See generally Deo, *supra* note 92.

<sup>93</sup> Christopher Birdsall et. al., *Stereotype Threat, Role Models, and Demographic Mismatch in an Elite Professional School Setting* at 4,19 (AccessLex Inst., Research Paper No. 18-08, 2018), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3210628](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3210628) (finding that increasing faculty diversity would improve the environment for students of color in law school vis-a-vis grades, etc.); Taylor, *supra* note 54, at 489.

<sup>94</sup> Brian Dalton, *What's the Best Thing You Can Do While Not Studying*, *ABOVE THE LAW* (Nov. 3, 2016, 4:59 PM), <https://abovethelaw.com/2016/11/whats-the-best-thing-you-can-do-while-not-studying/>.

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one of these activities, per the model's socialization, increases one's chances at landing a prestigious job, because leadership and winning are indicative of merit. Those who participate in and win in these activities are advantaged by employers, because they have engaged in what the model deems should be rewarded activity. Biases, however, often restrict and deter black students from leadership positions and succeeding in such activities. Alas, another gate. Reframed this way, activities seem to be less about meritocracy and appear to be an extension of the model shaping a specific type of meritocratic and prestigious lawyer.

To be clear, there are white students who will never win moot court, or an SBA position, or a position on law review. I am suggesting that because the model's actions of adapting law school to be a primarily white space with scant minorities, it effectively ensures that the majority of students who occupy the most prestigious positions in the most prestigious activities will primarily be white students. While law schools do not release data publicly about who participates in such activities, my own experience has shown that these activities have not adequately made space for black students to meaningfully hold leadership positions or achieve success in such activities.

For clarification, none of the processes that lead to membership like voting or writing competitive work product contain criteria or actors that I think are openly explicitly hostile to students of color. In fact, I'm sure many value diversity meaningfully. Rather it is the import of benevolent bias that exists in broader society that law students are not immune to. Such import of bias is especially impactful in a law school setting because of how small and limited opportunities are within a given law school. Due to the awareness of such biases, my experience has been that many black students steer away from these activities and focus their activities and involvement elsewhere, like pro bono or student organization involvement. These students invested their time outside of the merit and prestige activities because of the existing lack of diversity and present culture of bias surrounding them, thereby creating a double bind, in a sense. The activities themselves maintain bias that characterize and shape involvement in a specific fashion, but they are simultaneously shaped by those who are the target of said bias avoiding the activity altogether. For those who want to participate, it comes with the knowledge that one must overcome obstacles that other students may not have to deal with in order to get elected or win a competition. For those who choose to avoid, it comes at the cost of foregoing a relic of merit, but for those who choose to participate and do not obtain the relic, they are left in the same position had they avoided the activity.

### 3. Community

With such limited numbers, black students often gravitate towards each other to collectively navigate law school. I believe this is because some black students want to be surrounded by individuals who understand and have experienced what being “black” is because of its distinctive experience. Community is often what got me through law school, and I do not think it is too much to assume that that is true for most black students. Community provided a space for affirmation and stress relief due to the shared understanding of how hostile law school can be from a racial standpoint. In my experience, the Black Law Students Association (BLSA) and the space occupied by BLSA was where students felt safe to voice their grievances with discrimination, and also to engage in on-going discussions in the black community. There was comfort in not needing to constantly explain one’s blackness or one’s experience with discrimination with other black students because there was a presumption of understanding by proxy of race. Whether one actually understood or experienced discrimination in the same fashion was not *per se* dispositive of community, but rather if someone would more or less be targeted and discriminated by institutions in a similar way.

BLSA provided students with a space that connected professionals in the field as well as academic skills workshops aimed at improving members academic achievement. These acts of labor were not simply done to do them. Rather there was a collective understanding amongst fellow black students that if BLSA didn’t facilitate spaces for black students to see themselves in the profession, or take the extra time to work at academics, then no one else would do it. If black students do not meet professionals in the field or see other students who achieve academically with similar backgrounds, then it is hard to make informal connections that might mitigate some bias in hiring. Also, it is simply hard to envision oneself as achieving when there is no example present. For students who are represented adequately in the profession, there are ample examples of oneself to aspire to; but for those students who are not represented, it becomes much harder to aspire to be something – in a field one knows is already hostile – for which no example exists.

In communal BLSA spaces amongst other black students, there was a sense of safety from the broader law school environment where one might be subject to instances of racial injury. As a black student, my experience was that we gravitated towards each other because of the need to support each other through community in light of how few of us had actually made it into law school. The communal spaces were spaces where a black student didn’t have to worry about the type of racial injury that could derail one’s mental state. This act of supporting each other in a communal sense made others want to avoid us though. In seeking such communal spaces because of the comfort they brought, black students inevitably had to congregate together.

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It was inevitable, we had to be around each other to be community to each other, but being community to each other in this way deterred others for whatever reason. We felt the need to come together because we felt it necessary given how law school can be less than inclusive, and yet because we did so in a particular the fashion, the broader community in its reaction to our reaction further isolated us.

While community seems to be where most black students gravitated, that was not always absolute. Some black students chose to avoid being associated with the larger black group in an effort to make their blackness less visible. Presumably, these students chose to do so because they either did not feel the broader black community incorporated their brand of blackness or they wanted other students to view them as something other than just a black student. This created tension between these individual students and those students who communally associated because often the communal students labeled the students who did not communally associate as inauthentically black. To not participate in a certain brand of blackness that engages in specific communal work was seen as a person distancing themselves from blackness or being ashamed of their own blackness. For many, to engage with the community is to engage in the processes that helps to improve other black students. Whatever the case may be, this strategy is also about navigating a a predominately white space in a way in which one feels most comfortable. It is just as much of the black experience as is the communal one, both are choices one makes in an effort to navigate law school.

*C. Exiting Law School*

The gate operates in a fashion that excludes and limits minorities from meaningful representation in the legal profession post-graduation because of its prior gatekeeping. Jobs are funneled through the same bias embedded in the model against minorities, and as a result, they function as another layer of gatekeeping that keeps the legal profession characterized in a specific fashion.

At the firm level and on the bench, minorities are poorly represented. At the firm level, this is the case for both associates and partners. For judges this is true at both the state and federal levels. In 2018, all minorities combined composed only 16.10% of all lawyers in law firms.<sup>95</sup> Black lawyers at the associate level in firms has declined every year since reaching 4.66% in 2009 to 4.48% today.<sup>96</sup> As one climbs up the firm hierarchy, disparities become worse. Combined, minorities compose less

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<sup>95</sup> NALP LAW FIRMS, *supra* note 55, at 6.

<sup>96</sup> *Id.* at 4.

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than 8% of all partners at law firms.<sup>97</sup> Black partners have the smallest representation at 1.8%, however, all minority partner statistics are abysmal.<sup>98</sup>

Minorities fare no better when it comes to representation at the judicial level. Minorities compose about 20% of all state judges in the U.S.<sup>99</sup> This breaks down to women of color composing 8% of all state court judges and men of color making up 12% of all state court judges.<sup>100</sup> At the federal level, minority numbers are not better; for example, since the Trump presidency, 90% of all new confirmed judges have been white, and only 9% have been a minority, all of which were Asian.<sup>101</sup> Conversely, Trump and Congress have confirmed zero black, Hispanic, or Native American judges.<sup>102</sup> In addition, since Ronald Reagan was president, white judges have never composed less than 60% of all federal judges confirmed in a presidency.<sup>103</sup> Returning to our gate metaphor, the data above belie why all of the gates prior cannot be ignored. Excluding and limiting minorities from the profession in admission and then again during law school contributes to the lack of diversity in the post-grad context.<sup>104</sup>

Diversity numbers at law firms have increased (albeit only when compared to levels of total exclusion), but have nonetheless recently remained stagnant.<sup>105</sup> Law firms are increasingly embracing diversity in theory but not necessarily as a practical matter. For instance, most firms participate in some form of diversity initiatives for law students every summer, yet still many firms are not diverse.<sup>106</sup> Because there is no mandate or practical necessity for diversity, firms can use these summer positions as a way to say they are committed to diversity, yet continue to not hire diverse candidates. This is evidenced by the lack of diversity at most law firms.<sup>107</sup> For example, every year since 2009, there has been a 9% gap between minorities summer associates and permanent minority employees at firms, with the summer associate percentage always being higher.<sup>108</sup> This

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<sup>97</sup> *Id.* at 3.

<sup>98</sup> *Id.*

<sup>99</sup> TRACEY E. GEORGE & ALBERT. H. YOON, THE GAVEL GAP, AM. CONST. SOC. L. & POL'Y. 8 (2018), <https://gavelgap.org/pdf/gavel-gap-report.pdf>.

<sup>100</sup> *Id.*

<sup>101</sup> *Judicial Selection Snapshot*, ALLIANCE FOR JUST. 2 (last updated Apr. 25, 2018), [https://www.afj.org/wp-content/uploads/2015/01/Judicial\\_Selection\\_Snapshot.pdf](https://www.afj.org/wp-content/uploads/2015/01/Judicial_Selection_Snapshot.pdf) (last accessed Jan. 10, 2020).

<sup>102</sup> *Id.* at 2.

<sup>103</sup> *Judicial Selection Snapshot*, *supra* note 102, at 2.

<sup>104</sup> While there may still be a lack of diversity in the post-grad context even in the presence of greater diversity during admission, excluding and limiting minorities during admission obviously does nothing to increase diversity in the post-grad context.

<sup>105</sup> NALP LAW FIRMS, *supra* note 55, at 3.

<sup>106</sup> *Id.* at 6.

<sup>107</sup> *Id.* at 9.

<sup>108</sup> *Id.*

highlights a shallow commitment to diversity that the model allows, which undercuts actual progress for diverse candidates and allows for unchecked gatekeeping. The problem is not the diversity programs, but rather the lack of actual accountability and commitment to diversity from the profession, which prevents representation and precludes a culture that fosters diversity. So long as the profession and the model of legal education allow for employers to take credit for surface-level diversity initiatives, while simultaneously allowing the same employers to then abandon notions of diversity when making actual hiring decisions, both the model and the profession will continue to be what it always has been—a white-serving and white-dominated space that self-perpetuates to maintain whiteness with little diversity.

In the many conversations I have had with other black students and attorneys, the post-graduation context is brutal. As the co-chair of BLSA, I have watched helplessly as members of BLSA searched and searched for jobs with nothing to show for it but disappointment. Other students go overseas or maybe even out of state. My peers somehow all stay local (despite many wanting to leave) and have the hardest time finding jobs despite applying for every possible position. Admittedly, some students don't have the best grades or are not involved in mock trial, but this is true for the rest of the student body, which does not seem to be faced with the same issues to the same degree. There does not appear to be a meaningful investment by the model or the profession to sustain an advantage or even equity for black students. The model will allow for black students to enter yet does not facilitate or give enough help to black students to allow them to navigate after graduation. On the flip side, black attorneys who do make it into elite jobs often complain of a lack of representation and being under-appreciated in their positions. Many of the same complaints that come up in law school such as lack of diversity, lack of cultural competence, etc. are often reflected in the post-grad context. While graduating is often heralded, graduation for most black attorneys I talked to was more of dealing with the same issues caused by the gatekeeping of the profession leading many attorneys to be disgruntled and burned out due to the sheer baggage of racial inequity. Constantly believing that you will get the job based on merit or believing that somehow a profession with little diversity will be competent becomes exhausting and mentally taxing. To be black and in the law, you graduate from school, not from the racial inequity of the profession.

In sum, every facet of legal education is characterized by entrenched racism, and of course many other inequities. This entrenchment is the result of inherent bias and prejudice that the model of American legal education has adopted and has adapted to based on racial hierarchy in broader U.S. society. Thus, it is not a coincidence that the inequities that exist in legal education and in the profession mirror broader society. It is the result of the model actively adapting its own mechanisms to facilitate and proliferate prejudice

embedded in broader society. In addition, I have attempted to show that the model gatekeeps minorities, and specifically blacks, out of law schools and out of the profession, especially “elite” portions of the profession.

### PART III: ADAPTING TO PREJUDICE IN INDIA

In Parts I and II, I presented a structural analysis of the U.S. model of legal education. I have attempted to show how the model serves to specifically gatekeep blacks out of law schools, and the impacts of the model’s inherent bias on black students during and after law school. Black students, in particular, feel the weight of such gatekeeping and bias due to the model adopting the U.S. racial hierarchy as its own. This is why I call the model of U.S. legal education one of “adoptive prejudice” because it adopts, facilitates, and proliferates prejudices embedded in the broader society in which it is situated. Thus far, I have only made the case that the model has adopted prejudice in the U.S. One useful way of discerning the veracity of this concept of gatekeeping is to consider how a similar model of legal education adopts and embodies a different entrenchment of prejudice in a society characterized by a completely different hierarchy than the U.S.

One particularly useful context to consider is India because of India’s U.S. style model of law school and how similarly caste empirically maps onto race within the model of law school. This is not to conflate the meaningful differences between caste and race, rather I am advancing the idea that race and caste occupy the same space within the law school model and that the model treats or gatekeeps race and caste in the same way. By analyzing race from this perspective, caste becomes a useful framework for understanding entrenched inequality in a U.S. style model of law school. Here, I specifically draw on the data from the study based around National Law School at Bangalore, India (NLS), since has a wealth of data due to access it has given researchers. NLS has influenced a significant number of law schools with its implementation of the U.S. model of legal education and, therefore, is a normalized model for public law schools in India.

#### *A. Caste Defined*

Caste is a socially constructed social phenomena.<sup>109</sup> Surinder Jodhka frames caste as relations of tradition, power politics, and humiliation.<sup>110</sup> As

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<sup>109</sup> MAPPING SOCIAL EXCLUSION IN INDIA: CASTE, RELIGION, AND BORDERLANDS i, 132-33 (Paramjit S. Judge ed., 2d ed. 2014).

<sup>110</sup> SURINDER S. JODHKA, CASTE IN CONTEMPORARY INDIA 4-5 (2d ed. 2015) (arguing that by organizing the caste system around purity and pollution, leaders justified unequal treatment of the lower caste by claiming them to be toxic and framing the “pure” upper caste as deserving of the benefits of inequity within society.); see Ajantha Subramanian, *Making Merit: The Indian Institutes of Technology*

a tradition, caste operates on a cultural level: it permeates social organization in which hierarchical inequality becomes central to the notion of caste.<sup>111</sup> Inequality in turn legitimized through religious purity and impurity beliefs.<sup>112</sup> Power refers to caste groupings' ability to dominate other in society, with regards to access to resources and ability to control social ordering.<sup>113</sup> Humiliation can best be understood as a system that "institutionalizes humiliation as a social and cultural practice."<sup>114</sup> In this way, caste exists as a structural and material reality whereby inequality is "institutionalized." It is a complex social ordering that permeates all facets of society. It is not simply skin color or just religion, yet the caste grouping one is categorized into greatly shapes one's life in society.<sup>115</sup>

Jodhka notes that at the "extremes" of the hierarchy are the Brahmins (considered an upper caste group) and *Dalits*.<sup>116</sup> The *Dalits* are the most deprived and excluded in Indian society and will primarily be the focus of this section of the paper.<sup>117</sup> *Dalits* often are largely unable to occupy quality jobs, shamed in public, largely unable to marry upper caste individuals, and in many instances, unable to collect water from the same water sources as upper caste individuals.<sup>118</sup> *Dalits* are shut out institutionally from owning land and receiving government resources, leading many to crippling poverty.<sup>119</sup> In addition to being subjected to exclusion, shame, and poverty, *Dalits* are subjected to massive amounts of both symbolic and physical violence at the hands of the state and broader society.<sup>120</sup>

Those occupying the upper caste often have social mobility and societal power.<sup>121</sup> Prestigious jobs, education, and ownership over industry have contemporarily and historically been concentrated among close knit limited upper caste networks. Caste membership determines who get jobs, who is oppressed, and who gets access to wealth.<sup>122</sup> That is not to say that

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*and the Social Life of Caste*, *Comp. Stud. Soc'y & Hist.* 304, 311 (2015) (arguing that British colonization in India made caste categories more rigid and formally strengthened the caste system by legitimizing distinctions based on caste through law and allocation of resources to Brahmins and other upper case groups and further contending that those within the higher tiers of the caste system were deemed to be pure while those in the lower caste were deemed to be polluted.).

<sup>111</sup> Judge, *supra* note 109, at 115.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 112-13; See also M.N. Srinivas, *The Dominant Caste Rampura*, 61 *Am. Antho* 1, 3(1959)(Explaining how caste groups can exert power via domination on other caste groups).

<sup>114</sup> JODHKA, *supra* note 111, at 2.

<sup>115</sup> *Id.* at 109, 112-13.

<sup>116</sup> JODHKA, *supra* note 111, at 112, 114.

<sup>117</sup> SUBHADRA MIRTA CHANNA & JOAN P MENCHER, *LIFE AS A DAILT: VIEWS FROM THE BOTTOM ON CASTE IN INDIA* 256 (2013).

<sup>118</sup> *Id.* at 257, 278-79, 289, 413-14.

<sup>119</sup> *Id.* at 143-144.

<sup>120</sup> *Id.* at 266-276.

<sup>121</sup> Judge, *supra* note 109, at 93.

<sup>122</sup> CHANNA, *supra* note 116, at 5.

there have not been strides to remedy caste-based discrimination. In India there has been meaningful reservation policies put in place that have complicated a strict binary of the advantaged and disadvantaged.<sup>123</sup>

The implementation of reservation programs in legal education resulted in increased *Dalit* enrollment in law school.<sup>124</sup> Likewise, affirmative action in the United States has increased black enrollment in law schools, allowing blacks to become lawyers and judges when they previously were unable to be. Referring back to the adoptive prejudice concept, it would appear that the U.S. model of legal education is receptive to surface level diversity initiatives. These initiatives require only minimal effort and no real commitment to diversity because they allow the actors within the model to both appear diversity-friendly on the surface and avoid charges of prejudice like racism or caste discrimination as they can point to a tangible thing they did to *attempt* to “diversify” despite not having to *actually* diversify. Even with affirmative action and reservation programs that seek to introduce blacks and *Dalits* into spaces they were previously excluded from, the model continues to privilege the advantaged while simultaneously allowing those within the model to take credit for diversity initiatives without providing any real infrastructure, cultural shift, or resources needed to make affirmative action impactful.

### B. Law School in India

Connecting the experience of race in the United States and caste in India in a legal context illuminates how the model actively serves to exclude, limit, and privilege, shaping the profession in a way that aligns with historical inequitable prejudicial hierarchies. From start to finish, black and *Dalit* students must endure various gates to enter the profession, maintain in the profession, and eventually find a job in the profession. This is all with the backdrop of legal education being a deeply hostile and biased environment that actively works to the detriment of both *Dalit* and black students.

The move toward a U.S. model of law school in India began in the 1980s.<sup>125</sup> The Bar Council of India sought to craft a model of law school that would be heralded as the “Harvard of the East,” which posited a move towards a more U.S. model of legal education.<sup>126</sup> As a result, large swaths of India legal education mirrors U.S. legal education.<sup>127</sup> This model would extend legal education in India to five years, introduce a standardized

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<sup>123</sup> CHIRAYU JAIN ET. AL, THE ELUSIVE ISLAND OF EXCELLENCE: A STUDY ON STUDENT DEMOGRAPHICS, ACCESSIBILITY AND INCLUSIVITY AT NATIONAL LAW SCHOOL 2015-2016, 40 (2016).

<sup>124</sup> *Id.* at 56-58.

<sup>125</sup> Jonathan Gingerich et. al, *Responding to the Market: The Impact of the Rise of Corporate Law Firms on Elite Legal Education in India*, in THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION 519, 1-12 (David B. Wilkins et. al eds., 2017).

<sup>126</sup> *Id.* at 10.

<sup>127</sup> *Id.*

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entrance exam, and provide a multi-disciplinary approach to law school.<sup>128</sup> The transformation of legal education was two-fold. It was specifically designed to “draw on the best aspects of American legal education” to make the profession have globalized appeal.<sup>129</sup> This was out of concern that high-achieving high school students were not going into law unless they came from a legal family.<sup>130</sup> This transition to a more merit-based model has shifted the narrative surrounding Indian legal education—a profession that was previously overtly characterized by caste, class, and family.<sup>131</sup> Subsequently, everyone has a “fair shot” at gaining access to elite legal careers, which used to be reserved exclusively for family members of the legal elite. The shift to merit served as way to distinguish the profession from the past and also promote a more global appeal, which gives firms more legitimacy.<sup>132</sup>

Just as the U.S. model of legal education proliferates, gatekeeps, and rewards previously existing hierarches, analysis of the model of legal education in India shows that model operates no differently. Recognizing this, it becomes clear that the notion of merit is embedded in the model. Merit exists as a way to offer a rationale that justifies and legitimizes discrimination and prejudice, so long as the discrimination and prejudice are covert. Although in a different setting, the model still works to privilege those with resources and gatekeep the disadvantaged in an effort shape the profession according to broader society’s hierarchy.

For example, the Indian legal profession has set aside positions for the historically disadvantaged caste members in society. Specifically, NLS reserves seats for lower caste students, as required by national law.<sup>133</sup> Out of the 80 seats available for the B.A. L.L.B, NLU reserves 15% of seats for Scheduled Caste, 7.5% for Scheduled Tribe students (both considered Dalit students), and 3% of seats for students with disabilities.<sup>134</sup> This was in recognition of the profession’s previous overt exclusion of *Dalit* students. However, increased representation for *Dalits* combined with a new legal education model have, unfortunately, created the perception that the legal profession and subsequently legal education is merit-based. Much like the removal of formal exclusion of racial minorities in the U.S., the removal of overt barriers does not mean the removal of all gates that have historically limited and excluded. Instead, the covert gates still function to discriminate and gatekeep historically disadvantaged students out of the profession.

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<sup>128</sup> *Id.*

<sup>129</sup> See generally Gingerich, *supra* note x.

<sup>130</sup> *Id.* at 3.

<sup>131</sup> See Swethaa S. Ballakrishnen, *Just Like Global Firms Unintended Gender Parity and Speculative Isomorphism in India’s Elite Profession*, 53 LAW & SOC. REV. 1, 108, 126-29 (2019).

<sup>132</sup> Ballakrishnen, *supra* note 130, at 126-27.

<sup>133</sup> JAIN, *supra* note 122, at 42

<sup>134</sup> *Id.* 42?

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Despite formal removal and affirmative action, the Indian legal education is still primarily dominated by individuals from the upper caste, while, as Figure 7 shows, *Dalit* students are still immensely under-represented in the legal profession.

Figure 7. Admission Data for NLU Bangalore

Caste Groups:	Tier 1	Tier 2	Tier 3	Tier 4	Share in Total Population
Brahmins	39 (28.89%)	43 (25.29%)	12 (22.64%)	4 (18.18%)	105 (26.45%)
Other Upper Castes	44 (32.59%)	56 (32.94%)	16 (30.19%)	6 (27.27%)	129 (32.49%)
Scheduled Castes (Dalit)	19 (14.07%)	28 (16.47%)	9 (16.98%)	3 (13.64%)	59 (14.86%)
Scheduled Tribes (Dalit)	4 (2.96%)	12 (7.06%)	9 (16.98%)	3 (13.64%)	28 (7.05%)
None	12 (8.89%)	20 (11.76%)	4 (7.55%)	4 (18.18%)	43 (10.83%)

Source: Adopted from *Exclusive Island*

This parallels the black experience in the United States. Despite the removal of both explicit and implicit exclusionary practices for black students, they are nonetheless immensely underrepresented with regards to entry. Together, the shared positioning of both the historically excluded and contemporarily oppressed, shows that entrenched prejudice centered around race and caste far outweigh, and are in fact, more determinative than simplified notions of merit.

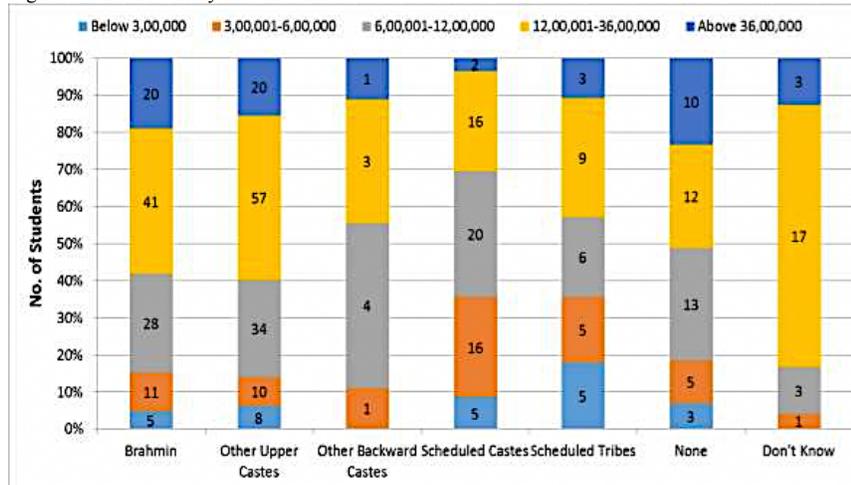
Upper caste individuals overwhelmingly gain access to legal education at NLS. Upper caste students, like white students, are more likely to have wealth and parents willing to outspend the remaining students on high school education, which leads to better test outcomes, further increasing one's ability to access law school.<sup>135</sup> Although this not specific to India and the U.S., but for purposes of this article it is important to note because it highlights how the model it adopting and easing access accordingly. These students are more likely to have individuals who have knowledge of legal education or access to knowledge that can potentially help them navigate entry in the profession. In addition, upper caste students are more likely to have had multiple generations of family with higher education degrees and, thus, knowledge of the processes and networks that tend to make entry into a field substantially easier, again much like whites in the United States.<sup>136</sup> On

<sup>135</sup> JAIN, *supra* note 122, at 12, 49.

<sup>136</sup> *Id.* at 12.

the other hand, like blacks, *Dalit* students have typically spent less on their high school education and are more likely to come from a family with a lower income. Simply put, *Dalits* do not have the same access to resources as upper caste students as displayed in Figure 8.

Figure 8. Annual Family Income and Caste



(Adopted from Exclusive Island)

This means that *Dalit* students will likely have less expendable income to pay for test prep, tutors, or any other resource money that aids students in passing the Common Law Admission Test (“CLAT”), much like blacks when it comes to the LSAT and programs like Kaplan, etc.. Due to the historical exclusion of *Dalit* students in academia, one could infer that *Dalit* students are less likely to have family members knowledge of how to navigate entry into the profession because they were institutionally shut out from legal education. As with black students, it is hard to establish access or a network of individuals who know how to navigate entry if historically and contemporarily entry is elusive. Most importantly, this particular parallel displays that the model is seemingly adopting hierarchies prevalent in broader society, and simultaneously reproducing them by instituting entry mechanisms like the LSAT or CLAT. Those who have been and continue to be advantaged in society benefit, while those disadvantaged continue to be marginalized.

For *Dalits* who manage to take the CLAT and gain admission to law school, entering or passing admission gates does not eliminate the pervasiveness of caste or caste based bias. Despite uniform neutral curriculum and all caste groups’ involvement on campus, there still exists sorting mechanisms which characterize upper class and *Dalit* involvement in organizations and in the classroom. For example, Brahmins on average typically have the highest GPAs at NLS, followed by other upper caste

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students, then *Dalit* students.<sup>137</sup> While certainly not the only indicator, GPA is a significant indicator for who lands the most prestigious jobs.<sup>138</sup> GPA disparities might lead one to conclude that upper caste students are just more meritorious and perform better than *Dalit* students.<sup>139</sup> However, this line of reasoning again ignores oppression based on caste. Rather than merit, GPA seems to be much more associated with the amount spent on schooling before legal education, quality of schooling, and familial generational college attainment, which vary by caste.<sup>140</sup> This is not to suggest, however, that all Brahmins and upper caste students succeed with high GPAs and that all *Dalit* students fail and have the worst GPAs. Rather, for the most part, upper caste students tend to have better outcomes in law school.

Caste disparities are prevalent even in activities outside of the classroom, which is indicative that caste hierarchy characterizes and dominates student involvement in prestigious activities. Amongst organizations like debate or moot court, 42% of students who have never debated or mooted come from *Dalit* backgrounds.<sup>141</sup> Organizational involvement in things such as Activity Based Committees (“ABCs”) which facilitate career development for students and dictate campus life, caste plays a pivotal role.<sup>142</sup> Only about 47% of Scheduled caste members and 61% of Schedule tribe members, have participated in ABCs.<sup>143</sup> Moreover, when incorporating class, poor *Dalits* reported being rejected from a school committee at a rate twice that of the general student body.<sup>144</sup> Generally, there are no committees from which a member from an upper caste is excluded, whereas there are at least three committees in which no *Dalit* student participates.<sup>145</sup> These numbers belie a stark comparison of extracurricular involvement for upper caste students and *Dalit* students. To be a *Dalit*, much like being a black student, is to experience student involvement differently. It means a less likely opportunity at winning prestigious competitions or holding prestigious student involvement positions. This is because activities that are prestigious are overwhelmingly dominated by upper caste individuals, and in the U.S., white students.

When *Dalit* students become involved in organizations on campus, they are still underrepresented as senior leaders said organizations. *Dalits* only compose about 7% of student leaders despite composing 14% of the student population, contrasted by upper caste students who compose 39% of

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<sup>137</sup> JAIN, *supra* note 122, at 97-98.

<sup>138</sup> *Id.* at 98-99.

<sup>139</sup> *Id.* at 122.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 101-02.

<sup>142</sup> *Id.* at 104.

<sup>143</sup> *Id.* at 116.

<sup>144</sup> *Id.* at 117.

<sup>145</sup> *Id.*

student leaders even though they only compose 32% of the student population.<sup>146</sup> In essence, students who are Dalit and involved in ABCs are far less likely to become leaders of these organization.<sup>147</sup> Out of the 281 students on ABC boards, there are 60 leaders, and only 3 of those 60 leaders have come from *Dalit* backgrounds.<sup>148</sup> Similar to their black counterparts, *Dalit* students are less likely to be involved and included in committees that dictate social life on campus, and thus, less likely to infuse cultural competence into the main pillars of social life. This disparity of inclusion in leadership, whether intentional or not, is seemingly alarming given the importance of representation and engagement in law school.

### C. Dalits Exiting Law School

Caste continues to animate and highlight distinctions in the post-graduation context. Analysis of the data shows that far from being based on merit, access to the bar and bench are far more determined by family, caste, and class, than by merit. The most popular career path for Brahmins and upper caste students is corporate law.<sup>149</sup> Law firm placement maps closely to the GPA of the students, specifically students with a GPA of above 5 on a 7 scale.<sup>150</sup> For reference, 4.90 is the average for all NLS students with 5 being above average, 6 being exceptional, and 7 being the highest one can score.<sup>151</sup> Students with 5, most commonly identify as upper caste.<sup>152</sup> In this way, corporate law in India operates as a gate keeping actor because it has organized entry in such a fashion that ensures upper caste entry at a higher rate than *Dalit* entry.<sup>153</sup>

This is contrasted by *Dalit* students' preferences for civil service jobs. Civil service jobs might be a preference for Dalit members because the competitive exam required for job placement maintains quotas for *Dalit* members, which increases the probability of job placements in civil service. Likewise, civil service increases the likelihood of mobility for lower caste students.<sup>154</sup> As in the U.S., black law students are far more represented in public interest jobs than big law. Just as big law and private placement is characterized by merit metrics like GPA, the same is true of India, underscoring just how significant differential resources and infrastructure for

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<sup>146</sup> *Id.* at 126.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* at 127.

<sup>149</sup> *Id.* at 21.

<sup>150</sup> *Id.* at 16; 96

<sup>151</sup> *Id.* at 96

<sup>152</sup> *Id.* at 135.

<sup>153</sup> *Id.* at 135-36.

<sup>154</sup> *Id.* at 136.

students really are. The difference in who occupies positions of prestige and who gets the opportunities illustrates how the model of U.S. legal education is actively shaping the profession by funneling students into certain sectors of the profession. Even when *Dalit* and black lawyers make it into positions of prestige, they still lack the same mobility as their white or upper caste counterparts.<sup>155</sup> What results is a profession characterized by upper caste and white lawyers in positions of prestige with blacks and *Dalits* in less prestigious positions. This in turn means that the individuals with most social capital to influence and shape the profession are likely to be upper caste and white individuals, which, of course, is no surprise when considering that upper caste and white individuals have easier access to legal education, and more resources.

Such outcomes are not happening by accident or natural ordering. The reason that in both societies white and upper caste individuals are privileged entering, during, and after completing law school is because the system is designed to advantage those already advantaged and disadvantage those already disadvantaged according to the entrenched biases embedded within a particular society. It is not a passive process that enables both white and upper caste students to be advantaged; rather it is an active process that the model at various points takes part in that shapes the profession to produce the stark disparities highlighted in this article.

## CONCLUSION

On the eve of my first ever law school class as I was shopping at the local Target, two older white women said to me: “Isn’t it great that you are here getting school supplies?” They were expressing how surprised and elated they were that I was in school. Despite the many students who were doing the same thing at the exact same time, these two women decided to make a point to express their sincere gratitude to me—the only black student in the store. I looked up, nodded my head, and quietly continued gathering my supplies for my first class. This was not the moment to teach “well-meaning” strangers about their benign racism. After all, I was embarking on an entirely new journey and no instance of racism was going to hold me back. But the further along I got in journey, the more I began to realize just how much race and systemic racism would shape and characterize my law school experience in the same benevolent way as the two well-meaning white women.

This article has attempted to show that far from being about merit, the U.S. model of legal education is actually a racial gatekeeper for the

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<sup>155</sup> See generally JAIN, *supra* note 122; Christopher Rider et al., *Career Mobility and Racial Diversity in Law Firms*, IN *DIVERSITY IN PRACTICE: RACE, CLASS, AND GENDER IN LEGAL AND PROFESSIONAL CAREERS* 357, 360 (Spencer Headworth et al. eds., 2016).

profession. In the U.S., the model functions to keep the profession primarily white and deploys multiple gates to exclude and limit black students at multiple stages throughout the course of legal education. Using caste as an informative framework, we are able to see that the model—when used in a context outside of the U.S.—still adapts to prejudices embedded in society and creates disparate outcomes for *Dalits*, who share similar positioning as blacks. Taken together, an analysis of the model in India and the United States shows that the model of U.S. legal education adopts and proliferates existing prejudices of the society it is embedded in. Despite being two vastly different countries with differing prejudices and social ordering, the model in both countries works to privilege those advantaged in society and disadvantage those oppressed in society. I see this as no coincidence. It is symptomatic of the model itself as an active facilitator of prejudice. It is simply not enough to deflect the entrenched inequity of the model onto broader society as if the model is passive. This ignores the active, specific ordering of the model, which creates and reproduces entrenched inequality through active processes, such as making entry determinative upon processes that disproportionately impact certain groups negatively over others, classroom and activity bias during law school, and inequity in hiring and placement in the post-grad context. All of these are active decisions that create the state of the profession today, none of which is society forcing the model to do.

Nevertheless, the stories of the black and *Dalit* law students is not simply one of oppression. Yes, the dominant models of legal education are actively biased and place barriers in front of us. Is it hard to exist as black student or a *Dalit* student? Presumably, yes. Are the chances unequal? Yes. But the troves of black and *Dalit* students who make it through the model continue to exhibit unparalleled resiliency in the face of hostility. While this article has primarily advanced a structural argument indicting the prejudiced model of U.S. legal education, underlying this are the many black and *Dalit* students who persist. In this way, the black and *Dalit* students experience is connected via the shared positional experience of oppression and resistance. While race and caste certainly are experienced differently, the oppression we experience structurally from the model is the same, which means presumably *Dalit* and black students are critical understanding what is wrong with the model and what a new equitable model might look like. In addition, this creates a space where caste and race can be used to learn valuable lessons about the model and how inequity operates in shared systems. Specifically, caste has provided affirmation and credence to the inequity of highlighted for black students. On its own, the inequities displayed for blacks might appear to be isolated, but the introduction of caste shows in fact a strikingly similar experience, and vice versa. Not that blacks or *Dalits* need each other to validate either's experience, but they nonetheless help show that the model is not working in isolation or enacting prejudice in one country. Together

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our experiences show that the model of U.S. legal education's discrimination is not merely isolated to one law school or even one country. Together too, our experiences highlight important aspects of the model maybe unseen but felt to the other. Just as much as oppression via the model are connected, so too must our resistance and new model development be.

There is no quick or even prolonged fix within the current model that will expunge its inherent bias. Further research should include space for expanding this framework beyond caste and race and incorporating other aspects of identity like class, sexuality, and gender. What is needed is a fundamentally new model, if the profession is serious about making it equitable. A model that learns from this one and centers the experiences mentioned and not mentioned in this article. As stakeholders in equity and equality, we must critically analyze why we need gates in the first place, and what purpose they serve. To move towards true equity and equality, we must do away with prejudice in the model and move towards the destruction of the model's gates. There must be a sustained effort of diversity that is not simply about numbers or representation, but about facilitating equity and sustainability at all levels from admissions, the actual law school experience, and in the post-graduation context.