



OUR COLLECTIVE WORK, OUR COLLECTIVE STRENGTH[†]

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ABSTRACT

This essay considers the collective strength of women of color in two contexts: when we are well represented on law school faculties and when we contribute to accomplishing stated institutional diversity goals. Critical mass is broadly defined as a sufficient number of people of color. Though the concept has been socially appropriated, its origins are scientific. While much of the academic literature encourages diversity initiatives designed to reach a critical mass, social change is not a science. Diversity in numbers may positively benefit individual experiences for women of color, however, diversity alone will not change social norms at the root of inequities for women of color in the legal academy. This critique of structural diversity is especially true of diversity initiatives that operate as barriers to diversity and structural change. First, I address the perceived benefits and potential shortcomings of obtaining a critical mass of women of color on law school faculties. Then, I examine barriers to diversity and structural change like diversity ideology

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and hiring policies that are racist. Finally, I examine the role of women of color in diversifying law school faculties.

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I. INTRODUCTION

On December 26, 2020, Vice President-Elect Kamala Harris posted a video on Twitter celebrating the first day of Kwanzaa,¹ a celebration of African American and African culture.² This day marked the first day of my fifth celebration of the holiday and a continuation of my commitment to learn more about it. While Kwanzaa always existed in the background, I was raised by strict southern Baptist church leaders who only celebrated the season of Jesus' birth and viewed other celebrations as an affront to the most sacred one. I became acutely aware of Kwanzaa in 2016. That year, I watched police officers kill Alton Sterling, Philando Castile, and Terrence Crutcher.³ Their deaths relentlessly played on national news and on social media without trigger warnings.⁴

At that time, I was living in a city that was overwhelmingly white and working at a predominantly white institution ("PWI"). I was often the only Black woman in many spaces on campus and around town. While I was energized by the Black Lives Matter protests that were taking place

1. Kamala Harris (@KamalaHarris), TWITTER (Dec. 26, 2020, 11:35 AM), <https://twitter.com/kamalaharris/status/1342871544683327488?lang=en>.

2. Ysamur Flores-Peña & Robin Evanchuk, *Kwanzaa: The Emergence of an African-American Holiday*, 56 W. FOLKLORE 281, 283 (1997).

3. See Alex Meier, 'Say Their Names': *Stories of Black Americans Killed By Police*, 6 ABC (June 7, 2020), <https://6abc.com/breonna-taylor-death-say-her-name-his-black-man-killed/6236298/>.

4. See Jamiles Lartey, *Nightmares, Anxiety, Trauma: What Watching Police Shootings Does to Us*, GUARDIAN (July 15, 2016, 7:00 PM), <https://www.theguardian.com/world/2016/jul/15/police-shooting-videos-trauma-alton-sterling-philando-castile>.

all over the nation and Colin Kaepernick's costly stand,⁵ I found myself searching for a way to connect with my Blackness that was not rooted in our constant trauma or struggle. And after the presidential election, I was desperate. At the end of the year, I found Kwanzaa.

Kwanzaa is not a religious celebration, but instead, a communal one. The seven-day celebration focuses on seven principles: unity, self-determination, collective work and responsibility, cooperative economics, purpose, and faith.⁶ Inspired by the Swahili celebration of the first fruits, Kwanzaa connects people of the African diaspora to each other.⁷ And because the end of Kwanzaa aligns with the new year, it is an energizing source of renewed communal resolutions for many who celebrate. Since 2016, it has been that and more for me. In my 2020 celebration, after another turbulent year that included the police killings of Breonna Taylor and George Floyd,⁸ I found myself relishing in collective work and responsibility. Feeling unified around Black causes with Black people despite spending most of the year alone in my Brooklyn apartment, I felt a pressing urgency to do my part in the collective work necessary to solve the problems facing the Black community in my own unique way.⁹

It is from this place of personal reflection that this essay considers the collective strength of women of color in two contexts: when we are well-represented on law school faculties and when we contribute to accomplishing stated institutional diversity goals.¹⁰ In Part I, I define critical mass in an academic setting and address the perceived benefits and potential shortcomings of obtaining a critical mass of women of color on law school faculties. In Part II, I examine law school hiring and identify barriers, like diversity ideology and policies that are racist, which prevent law schools from reaching a critical mass of women of color faculty. In Part III, I examine the role women of color play in advancing diversity. In closing, I revisit my personal reflection.

5. See generally Billy Witz, *This Time, Colin Kaepernick Takes a Stand by Kneeling*, N.Y. TIMES (Sept. 1, 2016), <https://www.nytimes.com/2016/09/02/sports/football/colin-kaepernick-kneels-national-anthem-protest.html>.

6. Flores-Peña & Evanchuk, *supra* note 2, at 282 (explaining that traditionally, the principles are first referenced in Swahili, then in English).

7. *Id.* at 281–82.

8. See generally Meier, *supra* note 3.

9. See generally Stephanie L. King, *The Principles and Meaning of Kwanzaa*, OPRAH DAILY (Dec. 7, 2020), <https://www.oprahmag.com/life/a34894866/kwanzaa-principles-candles-meaning/>.

10. Kwanzaa is a sacred, cultural celebration for Africans and African Americans. See Flores-Peña & Evanchuk, *supra* note 2, at 283 (“Dr. Karenga [founder of Kwanzaa] stated that he was pleased with the development of the Kwanzaa holiday, particularly because it serves to reaffirm the bonds between us as an African people.”). As such, its principles are intentionally not applied herein.

II. OUR COLLECTIVE STRENGTH

Critical mass is broadly defined as a sufficient number of people of color.¹¹ The proponents of critical mass theory cite two benefits of a critical mass: people of color experience less isolation in predominantly white environments, and experiences are enriched by diversity for faculty, staff, administrators, and students.¹² There is no set number for a critical mass, but instead it is measured by a climate where women of color “do not feel isolated.”¹³ The absence of a critical mass of faculty of color contributes to “negative climates” for women of color.¹⁴ And at predominantly white institutions, “subtle forms of bias and long-established institutional structures” perpetuate systemic gendered racism.¹⁵

In *Becoming*, Michelle Obama articulates her awareness of the fact that she will need to execute her role as the first Black First Lady flawlessly because, “If there was a presumed grace assigned to my white predecessors, I knew it wasn’t likely to be the same to me.”¹⁶ The same pressure is felt by women of color in the legal academy. Women of color who are the first, or one of a few, to occupy positions on law school faculties are likely to experience “heightened visibility and pressure to perform because she knows that her success or failure will be attributed . . . to her racial or ethnic group.”¹⁷ A critical mass of women of color may create an individual sense of belonging. Cluster hiring—hiring multiple women of color at one time—can help reach a critical mass while also potentially shielding women of color from tokenism.¹⁸ As a recruitment and retention strategy, it can normalize the experiences of nontraditional faculty members.¹⁹

11. See Vinay Harpalani, “Safe Spaces” and the Educational Benefits of Diversity, 13 DUKE J. CONST. L. & PUB. POL’Y 117, 129, 163 (2017).

12. See *id.* at 153 (citing *Grutter v. Bollinger*, 539 U.S. 306, 319 (2003)).

13. See *id.* at 128.

14. Katherine Y. Barnes & Elizabeth Mertz, *Law School Climates: Job Satisfaction Among Tenured United States Law Professors*, 43 LAW & SOC. INQUIRY 441, 448 (2018).

15. *Id.* at 449.

16. MICHELLE OBAMA, *BECOMING* 284 (2018) (acknowledging that, as the first African American First Lady, she would be assessed differently).

17. Carmen G. González, *Women of Color in Legal Education: Challenging the Presumption of Incompetence*, 61 FED. LAW. 48, 52 (2014).

18. See MEERA DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* 61, 163–64 (2019).

19. *Id.* at 164.

While the concept of critical mass has been socially appropriated, it has scientific origins.²⁰ In science, critical mass describes: “the existence of a precise minimum level of the required material for a change to take place; a change that is sudden and transformative; and . . . change [that] is not simply a function of a minimum level of the resource but also a function of how elements of that resource interact with one another.”²¹ Social change, however, is not science. And while a critical mass of women of color on law school faculties may improve individual experiences, we cannot assume that numbers alone will change the status quo.²² Meera Deo accurately concludes that “[s]tructural diversity—diversity in numbers—does not automatically translate into meaningful cross-racial interaction *Critical mass*, creating sufficient diversity in numbers, is a necessary but insufficient condition for ensuring the benefits we expect from diversity.”²³ Therefore, we must continue to address, challenge, and change the social norms that are at the root of inequities for women of color in the legal academy.

III. BARRIERS

Under the leadership of women of color law school deans, the Law School Antiracist Clearinghouse was formed in 2020.²⁴ The Clearinghouse was created as a space for “collective voices . . . to engage . . . institutions in the fight for justice and equality . . . [and] to focus . . . teaching, scholarship, service, activism, programming, and initiatives on strategies to eradicate racism.”²⁵ Any policy that sustains racism is racist.²⁶ Racist policies and practices serve as barriers to diversifying law school faculties in two ways. First, faculty who subscribe to diversity ideology view exclusion as the problem and representation as the solution

20. Adeno Addis, *The Concept of Critical Mass in Legal Discourse*, 29 CARDOZO L. REV. 97, 104–05 (2007).

21. *Id.* at 98–99.

22. See DEO, *supra* note 18, at 61.

23. *Id.*

24. *Law Deans Antiracist Clearinghouse Project*, ASS’N AM. L. SCHS., <https://www.aals.org/antiracist-clearinghouse/> (last visited Mar. 28, 2021) (Deans Angela Onwuachi-Willig, Kimberly Mutcherson, Carla D. Pratt, Danielle Holley-Walker, and Danielle M. Conway founded the clearinghouse).

25. *Id.*

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

while also centering whiteness.²⁷ Second, hiring practices often contradict stated diversity goals.²⁸

Sarah Mayorga-Gallo's framework identifies four tenets that explain how diversity ideology maintains white supremacy: "diversity as acceptance, diversity as intent, diversity as commodity, and diversity as liability."²⁹ Diversity as acceptance "celebrates racial difference and frames racial representation as a remedy to racial inequality" while protecting "the structural advantages and privileges of those in power."³⁰ Diversity as intent "refers to the centering of [white people's] good intentions during discussions of diversity issues and initiatives" instead of structural inequality.³¹ Diversity as a commodity occurs when white people treat members of marginalized racial groups as others for their own benefit and racial comfort.³² Here, "valuing . . . people of color . . . becomes currency in a market where being 'not a racist' is essential to a moral [w]hite identity."³³ The last tenet, diversity as liability, occurs when diversity is praised but also seen as a threat to "[w]hite American values."³⁴ It speaks to the desire of white people to "consume and engage [diversity] on their own terms."³⁵

While diversity seems like a "national preoccupation,"³⁶ the diversity of most institutions does not reflect changing racial demographics.³⁷ In academia, targeted diversity hiring often fails to produce results because the hiring process is often subjective.³⁸ Search

27. See Sarah Mayorga-Gallo, *The White-Centering Logic of Diversity Ideology*, 63(13) AM. BEHAV. SCIENTIST 1789, 1793–94 (2019).

28. See *id.* at 1801 (discussing how, for example, profit levels often dictate hiring practices at the expense of diversity).

29. *Id.* at 1790.

30. *Id.* at 1795 ("Inclusion is not about addressing power or structure, but everyone having a 'seat at the table.'").

31. *Id.* at 1796 ("The logic of diversity as intent sustains a system of structural inequity by centering white feelings, intentions, and self-identification . . ."); see also ROBIN J. DIANGELO, *WHITE FRAGILITY: WHY IT'S SO HARD FOR WHITE PEOPLE TO TALK ABOUT RACISM* 109 (2018) (noting that when such intentions are challenged and conversations about race become difficult, white people employ self-defense strategies that "obscur[e] the true power of their social positions," blames marginalized people for resulting discomfort, and "falsely describes that discomfort as dangerous").

32. Mayorga-Gallo, *supra* note 27, at 1798–99.

33. *Id.* at 1799; see also DIANGELO, *supra* note 31, at 109 ("We whites who position ourselves as liberal often opt to protect what we perceive as our moral reputations, rather than recognize or change our participation in systems of inequity and domination.").

34. Mayorga-Gallo, *supra* note 27, at 1801.

35. *Id.* at 1802 (citing BELL HOOKS, *BLACK LOOKS: RACE AND REPRESENTATION* (1992)).

36. PAMELA NEWKIRK, *DIVERSITY, INC.: THE FAILED PROMISE OF A BILLION-DOLLAR BUSINESS* 8 (2019) (ebook).

37. *Id.* at 9–10.

38. *Id.* at 97–98, 100.

committees hire people who look like them and come from similar backgrounds or share professional networks.³⁹ The hiring process often overlooks “emerging scholars of color” in favor of “proven stars” who are “recycled and move between schools, while the overall numbers of underrepresented faculty remains unchanged.”⁴⁰

Goals are an essential component of effective plans to diversify law school faculties.⁴¹ While process-oriented diversity initiatives fail to account for meritocracy and subjective bias by assuming that a fair application process will produce fair results, goal-oriented initiatives assess whether the group of qualified candidates is diverse at each stage of the hiring process and considers expanding search efforts if it is not.⁴² Articulating “clear and meaningful selection criteria” is the first step in a goal oriented process.⁴³ Because some will perceive diversity hiring initiatives as mechanisms that take opportunities from more qualified white candidates, institutions should be careful about how they message diversity efforts to colleagues and students.⁴⁴ Administrators and search committee members should be transparent about the hiring process, and actively dispel notions that a less qualified candidate was hired to meet a diversity goal.⁴⁵

Most law schools have stated goals that include diversifying the faculty.⁴⁶ However, traditional law school hiring practices often contradict stated goals. For example, hyper-credentialing—the current hiring trend that prefers candidates with a PhD, VAP, or published scholarship—is one way hiring practices can contradict stated diversity goals.⁴⁷ A recent compilation of data suggests that approximately half of

39. *Id.* at 97–98; Tracey E. George & Albert H. Yoon, *The Labor Market for New Law Professors*, 11 J. EMPIRICAL LEGAL STUD. 1, 1 (2014) (“[L]aw schools appear open to nontraditional candidates in the early phases of the hiring process but when it comes to the ultimate decision—hiring—they focus on candidates who look like current law professors.”).

40. NEWKIRK, *supra* note 36, at 100.

41. See BEVERLY DANIEL TATUM, WHY ARE ALL THE BLACK KIDS SITTING TOGETHER IN THE CAFETERIA? AND OTHER CONVERSATIONS ABOUT RACE 213 (2d ed. 2017) (explaining that white America’s perceived ideas about reverse racism are not rooted in reality).

42. See *id.* at 217, 219.

43. *Id.* at 230.

44. See *id.* at 216.

45. *Id.* at 220.

46. See, e.g., *Action Plan for Faculty Diversity and Excellence*, U. PENN. L. (Dec. 2019), <https://www.law.upenn.edu/live/files/10835-faculty-diversity-and-inclusion-action>; see also G.S. Hans et al., *The Diversity Imperative Revisited: Racial and Gender Inclusion in Clinical Law Faculty*, 26 VAND. CLINICAL L. REV. 127, 145–46 (2019).

47. See Milan Markovic, *The Law Professor Pipeline*, 92 TEMP. L. REV. 813, 818 (2020) (noting the expectation of scholarly publications and calling a PhD or fellowship a “de facto requirement”); see also DEO, *supra* note 18, at 162 (noting that there is no correlation between success in the academy and having a PhD, VAP, or elite school attendance).

the entry-level faculty hired in 2018 had a PhD or equivalent degree, an increase from approximately 26 percent of candidates in 2011.⁴⁸ This preference makes diverse hiring unlikely as women of color make up a small percentage of doctoral degrees awarded.⁴⁹ Additionally, hiring committees prefer graduates from elite colleges and law schools,⁵⁰ yet on average students of color attend lower ranked schools.⁵¹ Even still, studies suggest that people of color with so-called elite credentials face challenges in the job market.⁵² The preference for hyper-credentialed faculty candidates is not antiracist.

While diversity initiatives may initially result in diversity in numbers, without structural change, women of color are likely to leave academia. Studies show that there is a “revolving door of racial minorities in and out of academia.”⁵³ Further, compared to white men, women of color are more likely to leave tenure-track positions.⁵⁴ To cure the “leaky pipeline”⁵⁵ of women of color, diversity initiatives must be accompanied by retention efforts that are rooted in structural change. A full exploration of retention efforts is beyond the scope of this essay, but such efforts must include addressing the law school caste system that places women of color lowest in the hierarchy resulting in little to no job security, lower pay, and negative experiences with colleagues and students.⁵⁶ If a desire to diversify law school faculties is sincere, law schools must assess whether they subscribe to diversity ideology, engage in goal oriented hiring processes, and avoid practices that will not lead to hiring and retaining diverse candidates.

48. *Advanced Degrees*, AM. ASS'N L. SCHS. BECOMING A L. TEACHER, <https://teach.aals.org/tenure-track/advanced-degree/> (last visited Apr. 6, 2021).

49. A survey found that, of doctorate degree earners in 2019, 50 percent were white; 5.5 percent were Black; 7 percent were Hispanic or LatinX; 27 percent were Asian; and 45.9% were women. Kelly Kang, *Survey of Earned Doctorates*, NAT'L CTR. SCI. AND ENG'R STATS. tbl.19 (Dec. 1, 2020), <https://nces.nsf.gov/pubs/nsf21308/data-tables> (select table 16 “Doctorate recipients, by subfield of study and sex: 2019” or table 72 “Statistical profile of doctorate, by ethnicity, race, and citizenship status: 2019”).

50. Markovic, *supra* note 47, at 828.

51. See Erin Thompson, *Law Schools Are Failing Students of Color*, NATION (June 5, 2018), <https://www.thenation.com/article/archive/law-schools-failing-students-color/>.

52. Angela Onwuachi-Willig, *Complimentary Discrimination and Complementary Discrimination in Faculty Hiring*, 87 WASH. U. L. REV. 763, 771–72 (2010).

53. *Id.* at 775.

54. Renee Nicole Allen et al., *The Pink Ghetto Pipeline: Challenges and Opportunities for Women in Legal Education*, 96 U. DET. MERCY L. REV. 525, 543 (2019).

55. *Id.*

56. See Darby Dickerson, *Abolish the Academic Caste System*, ASS'N AM. L. SCHS.: AALS NEWS, <https://www.aals.org/about/publications/newsletters/aals-news-fall-2020/presidents-message-abolish-the-academic-caste-system/> (last visited Apr. 6, 2021).

IV. OUR COLLECTIVE WORK

Collectively, regardless of institutional progress towards equity, women of color should continue to support one another locally, regionally, and nationally. Groups like the Northeast Corridor, Lutie Lytle, LatCrit, and National People of Color will continue to be great sources of scholarship support for women of color.⁵⁷ But these groups go beyond scholarship support by providing an opportunity for women of color to see themselves in the academy and validate their individual experiences.⁵⁸ During the pandemic, sister circles of women of color formed organically on Twitter through relationships developed from hashtags like #BlackInTheIvory or #CiteBlackWomen.⁵⁹ These dynamic connections sprung conferences and virtual gatherings where women of color could speak freely about their experiences.⁶⁰ These virtual connections will continue to be a source of collective strength.

Collectively, women of color should continue to champion for transparency and accountability. First, since law schools promote diversity as a way to sell the institution to prospective students,⁶¹ they should be held accountable for their diversity practices and initiatives. For example, accountability could be found in requiring law schools to post an addendum to their 509 disclosures.⁶² This addendum might require them to detail their stated faculty diversity goals, the steps they took to reach their goals, and their yearly outcomes. Regarding transparency, the Association of American Law Schools (“AALS”) should

57. See DEO, *supra* note 18, at 145.

58. See *id.*

59. See Nidhi Subbaraman, *How #BlackInTheIvory Put a Spotlight on Racism in Academia*, NATURE (June 11, 2020), <https://www.nature.com/articles/d41586-020-01741-7>; CITE BLACK WOMEN, <https://www.citeblackwomenscollective.org/> (last visited Apr. 6, 2021).

60. See, e.g., Amy E. Earhart et al., *Citational Politics: Qualifying the Influence of Gender on Citation in Digital Scholarship in the Humanities*, DIGIT. SCHOLARSHIP IN THE HUMANS. (2020); Chavella Pittman, *Teaching in Color: The Trailer*, TEACHING IN COLOR (July 31, 2020), <https://teachingincolor.libsyn.com/teaching-in-color-the-trailer>; Danica Moise et al., *Welcome to Mahogany Rose University*, MAHOGANY ROSE UNIV. (Feb. 12, 2021), <https://podcasts.apple.com/us/podcast/mahogany-rose-university/id1553708338?i=1000509022106>.

61. See, e.g., *Admissions: FAQ*, RUTGERS L. SCH., <https://law.rutgers.edu/admissions> (last visited Apr. 6, 2021) (promoting the Minority Student Program in response to the question, “Does Rutgers Law School seek to attract applicants from underrepresented groups?”); Heather Gerken, *Message from the Dean*, YALE L. SCH.: DIVERSITY & INCLUSION, <https://law.yale.edu/student-life/diversity-inclusion> (last visited Apr. 3, 2021) (“In the immediate wake of [the 2016 diversity report], our faculty admitted the five most diverse classes in its history.”).

62. Rachel Margiewicz, *Why Every Law School Applicant Should Use ABA 509 Reports*, NAT'L JURIST (May 4, 2020, 1:27 PM), <https://www.nationaljurist.com/prelaw/why-every-law-school-applicant-should-use-aba-509-reports>.

compile and publish annual and longitudinal reports that include the gender, race, and ethnicity of law school faculty members.⁶³ Since scholars of color are often “recycled” as discussed above,⁶⁴ an accurate report must account for new and experienced hires. Together, there is strength in our collective demand for transparency and accountability.

Collectively, women of color are entitled to bring their authentic selves to their teaching, scholarship, and service. But we are not far removed from a time when women and people of color were excluded from academic workplaces and once admitted to these spaces, assimilation was the prevailing avenue for success.⁶⁵ Even now, “[w]omen of color may feel compelled to conceal or mute aspects of their identities to make their students and colleagues feel comfortable—to mask the very diversity that makes their presence in legal academia so valuable.”⁶⁶ Thus, true authenticity is dependent upon law schools tackling systemic gendered racism and creating climates where white-centered norms are replaced by policies that are antiracist.

V. CONCLUSION

In 2020, I started to see a “new” community emerge. This community of women of color academics was more emboldened, more powerful, and more unified. Similar to my Kwanzaa experience, this community always existed in the background. For decades, women of color have quietly found support in informal and formal networks. But in the aftermath of the deaths of Breonna Taylor and George Floyd at the hands of the police, a summer of unrest, and a national pandemic that unequally burdened women, these voices were more bold and more unified. Like the community I so desperately needed in 2016, I found comfort in this community of women, most I had only briefly met at conferences or only encountered on social media. With the support of this group, I felt empowered and emboldened to write an essay that addressed how embedded white norms silence Black women in legal academia.

In this movement, our collective strength will continue to be a source of comfort, inspiration, and support for women of color as we radically move towards creating law schools that are not only anti-racist, but

63. González, *supra* note 17, at 56 (noting that AALS stopped compiling this information in 2009).

64. NEWKIRK, *supra* note 36, at 100.

65. See Jessica Moldovan, *Authenticity at Work: Harmonizing Title VII with Free Speech Jurisprudence to Protect Employee Authenticity in the Workplace*, 42 N.Y.U. REV. L. & SOC. CHANGE 699, 709–11 (2019).

66. González, *supra* note 17, at 51.

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demonstrate appreciation for women of color in representation, inclusion, and equity.