

THE LAW PROFESSOR PIPELINE

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ABSTRACT

Throughout U.S. legal education’s history, a small number of elite law schools have produced the vast majority of law professors. Although law professor hiring is now more inclusive in certain respects, the law school an aspiring professor attended continues to serve as a powerful predictor of hiring market success. Some scholars have maintained that this preference for graduates of elite law schools infects legal education with class bias and distorts legal pedagogy, but the absence of reliable data on socioeconomic diversity within law schools has muted these criticisms.

This Essay reorients the debate on law school hiring by focusing on law professors’ undergraduate educations. This shift in focus is important for two main reasons. First, researchers have gathered reliable socioeconomic data on the student bodies of U.S. colleges, data that do not currently exist for law schools. Second, undergraduate education does not provide legal training or otherwise prepare students for legal academia and therefore should play little to no role in hiring.

Drawing on entry-level hiring information from the last three years, I find that new law professors graduated predominately from elite private colleges that serve the wealthiest strata of U.S. society. The median hire attended a college in which 67% of students come from families in the top income quintile, and only a fraction of students come from families in the bottom three quintiles. Whatever professors’ individual backgrounds, beginning in college they are socialized in highly privileged environments that shape their pedagogy and research. This Essay concludes by describing legal education’s marginalization of non-elite views of the legal system and suggesting that hiring practices should be restructured to allow for a more socioeconomically diverse professoriate.

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INTRODUCTION

U.S. law schools train the next generation of lawyers, judges, and political leaders. But that is only part of their mission. If one takes their rhetoric at face value, they also uplift their graduates and prepare them to advance social justice.¹ In the words of one law school dean, law schools are “engines of access, opportunity, and social transformation.”²

Not all legal educators regard law schools as catalysts for social transformation and change. Professor Duncan Kennedy famously charged that law schools reproduce hierarchy and cause students to believe that “it is natural, efficient, and fair for law firms, the bar as a whole, and the society the bar services to be organized in their actual patterns of hierarchy and domination.”³ Law schools have evolved since Kennedy’s polemic⁴—and certainly since the time of Langdell and Kingsfield.⁵ But there continues to be an open question of whether they are structured to challenge longstanding societal hierarchies.⁶

1. See, e.g., Stephen Gillers, *Truth, Justice and White Paper*, 27 HARV. C.R.-C.L. L. REV. 319, 319 (1992) (“American law schools . . . have become a tad smug about the centrality of their contribution to the advance of western civilization and its several institutions of justice.”); Julie D. Lawton, *Teaching Social Justice in Law Schools: Whose Morality Is It?*, 50 IND. L. REV. 813, 836 (2017) (“[L]aw schools have a responsibility to teach social justice, and this exposure is an essential part of legal education.”).

2. Margaret Raymond, Letter to the Editor, *Most Law Schools Are Good for Democracy*, CHRON. HIGHER ED. (Dec. 20, 2018), <http://web.archive.org/web/20190105191900/https://www.chronicle.com/blogs/letters/most-law-schools-are-good-for-democracy/> [https://perma.cc/HRB5-JJHG].

3. Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 591 (1982).

4. See Blake D. Morant, *The Continued Evolution of American Legal Education*, 51 WAKE FOREST L. REV. 245, 250–52 (2016); see also Franklin G. Snyder, *Late Night Thoughts on Blogging While Reading Duncan Kennedy’s Legal Education and the Reproduction of Hierarchy in an Arkansas Motel Room*, 11 NEXUS 111, 113–14 (2006) (criticizing Kennedy’s conviction that his own experiences as a member of Harvard Law School’s faculty are “true and universal” of legal education generally); Mark V. Tushnet & Louis M. Seidman, *On Being Old Codgers: A Conversation About A Half Century in Legal Education 2* (2019) (unpublished manuscript), <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=3175&context=facpub> [https://perma.cc/5PSV-ZUMX] (“Today law schools tend to be much more collaborative and less hard-edged.”).

5. For a discussion of Langdell’s influence on legal education, see *infra* Part IV. Kingsfield is the fictional contracts professor in the 1973 film *The Paper Chase*. THE PAPER CHASE (Twentieth Century Fox Film Corp. 1973).

6. See ELIZABETH MERTZ, THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A LAWYER” 5–6 (2007). One qualitative study of legal educations finds that “[l]egal training focuses students’ attention away from a systematic or comprehensive consideration of social context. . . . Similarly, legal language discourages students from overt consideration of morality.” *Id.*; see also Mark Edwin Burge, *Without Precedent: Legal Analysis in the Age of Non-Judicial Dispute Resolution*, 15 CARDOZO J. CONFLICT RESOL.

Consider law school hiring practices. Empirical research has confirmed that the legal academy is not diverse in terms of race, gender, and educational background.⁷ Law schools have made strides across the former two dimensions even though inequities persist, particularly vis-à-vis satisfaction and retention.⁸ Yet, with respect to law professors' educational backgrounds, law schools largely hire in lockstep, focusing on candidates with elite pedigrees who may—or may not—make the best law professors.⁹ At the top ten U.S. law schools, 94% of professors are themselves graduates of top ten law schools.¹⁰ There is more diversity as one moves down the law school hierarchy, but graduates of elite law schools dominate the market as a whole, and law schools almost never hire candidates who attended law schools less prestigious than their own.¹¹ Controlling for publications and other factors, graduating from one of the three law schools that sit atop the *U.S. News and World Report* rankings significantly increases the odds of obtaining tenure-track positions.¹²

According to some legal scholars, this emphasis on law school pedigree undermines the law professoriate's socioeconomic diversity.¹³ Elite credentials strongly correlate with socioeconomic privilege because law schools rely on admission criteria, such as the Law School Admission Test (LSAT), that favor applicants from wealthier backgrounds.¹⁴ Law students do not chance into elite law schools; rather, their families

143, 146 (2013) (“While legal education today is delivered more gently than by either Langdell or Kingsfield, it still seeks the same results.”); cf. Jeffrey L. Harrison, *Confess 'n the Blues: Some Thoughts on Class Bias in Law School Hiring*, 42 J. LEGAL EDUC. 119, 120 (1992) (suggesting that law professors “have been sheltered from the wrong side of our lopsided economy”).

7. See, e.g., MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* 4 (2019); see also Michael J. Higdon, *A Place in the Academy: Law Faculty Hiring and Socioeconomic Bias*, 87 ST. JOHN'S L. REV. 171, 194–95 (2013) (criticizing law schools for failing to foster socioeconomic diversity); Steven A. Ramirez, *Foreword: Diversity in the Legal Academy After Fisher II*, 51 U.C. DAVIS L. REV. 979, 980 (2018) (noting that only about 18% of full-time law school faculty are nonwhite).

8. For an excellent discussion of the challenges that women of color face in legal academia in particular, see DEO, *supra* note 7, at 6–7.

9. See Paul L. Caron & Rafael Gely, *What Law Schools Can Learn from Billy Beane and the Oakland Athletics*, 82 TEX. L. REV. 1483, 1507–08 (2004) (book review); see also DEO, *supra* note 7, at 13–14 (noting that requirements such as graduating from a highly ranked school and serving on law review have not been shown to correlate with success in legal academia).

10. Eric J. Segall & Adam Feldman, *The Elite Teaching the Elite: Who Gets Hired by the Top Law Schools?*, 68 J. LEGAL EDUC. (forthcoming 2020), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=3279878 [<https://perma.cc/4YDA-GQSZ>].

11. See Tracey E. George & Albert H. Yoon, *The Labor Market for New Law Professors*, 11 J. EMPIRICAL LEGAL STUDS. 1, 7 (2014).

12. *Id.* at 32.

13. See, e.g., Higdon, *supra* note 7, at 191–93; Segall & Feldman, *supra* note 10.

14. Lucille A. Jewel, *Oil and Water: How Legal Education's Doctrine and Skills Divide Reproduces Toxic Hierarchies*, 31 COLUM. J. GENDER & L. 111, 117 (2015); see also RICHARD L. ABEL, *AMERICAN LAWYERS* 89 (1989) (“Because, there is a strong correlation between family income, scores on the Law School Admission Test, and undergraduate grade point average, admissions criteria tend to exclude lower class applicants.”); Lawprofblawg & Darren Bush, *Law Reviews, Citations Counts, and Twitter (Oh my!): Behind the Curtains of the Law Professor's Search for Meaning*, 50 LOY. CHI. L.J. 327, 344 (2018) (“To get to an elite law school, a prospective student needs to have a good LSAT. [Socioeconomic status (SES)] plays a role here Even students from lower SES who do well on standardized tests may not choose to go to an elite institution.” (footnote omitted)).

likely poured substantial resources into their educations, with elite law schools only the last links in chains of rigorous schooling that began as early as preschool.¹⁵ For students of modest backgrounds, the journey is far more perilous and can be stymied in a variety of ways, including by a lack of awareness of educational hierarchies.¹⁶

The legal academy's alleged exclusion of individuals from less advantaged backgrounds would be antithetical to its commitments to justice and equality.¹⁷ But the absence of socioeconomic diversity could also undermine legal education by alienating students who do not share their professors' elevated statuses and leaving graduates ill-prepared to serve clients of modest means.¹⁸ Without non-elite perspectives, law faculties may also be inclined to produce scholarship that takes for granted class-based orthodoxies and shibboleths.¹⁹

Few would deny that wealth is an advantage in the law school admissions process.²⁰ However, discussions of class and the legal academy are often short circuited by the absence of reliable data on law schools' socioeconomic diversity.²¹ Much of what is known about class in U.S. law schools is anecdotal. The only modern study that has examined socioeconomic status (SES) in law schools found that students differ based on the tier of their law schools but are nevertheless of high SES.²²

15. DANIEL MARKOVITS, *THE MERITOCRACY TRAP: HOW AMERICA'S FOUNDATIONAL MYTH FEEDS INEQUALITY, DISMANTLES THE MIDDLE CLASS, AND DEVOURS THE ELITE* 6–7 (2019).

16. Lawprofblawg & Bush, *supra* note 14, at 345.

17. *See* Harrison, *supra* note 6, at 120.

18. *See id.* at 120–21.

19. *See generally* Richard L. Abel, *The Rise of Professionalism*, 6 BRIT. J.L. & SOC'Y 82, 87 (1979) (book review) (noting that legal scholarship is impractical and legitimates the legal system by obscuring law's esoteric and arbitrary nature). Scholars have criticized the legal academy's ongoing preoccupation with economic efficiency in particular. *See, e.g.*, Ronald Dworkin, *Why Efficiency?: A Response to Professors Calabresi and Posner*, 8 HOFSTRA L. REV. 563 (1980); Zachary Liscow, *Is Efficiency Biased?*, 85 U. CHI. L. REV. 1649 (2018).

20. *See, e.g.*, Higdon, *supra* note 7, at 189 (noting that wealthy students benefit from resources that result in higher test scores and grade inflation at elite colleges); Eli Wald, *A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who Is Responsible for Pursuing Diversity and Why*, 24 GEO. J. LEGAL ETHICS 1079, 1098 (2011) (noting wealthy students' advantages in preparing for the LSAT).

21. *See* Carissa Byrne Hessick, *Law Schools as a Proxy for Class*, PRAWFSBLAWG (Aug. 29, 2019, 10:14 AM), <http://prawfsblawg.blogs.com/prawfsblawg/2018/08/law-schools-as-a-proxy-for-class.html> [https://perma.cc/S64K-JRZ7] (mentioning that what appears to be the best data set on socioeconomic status in law school does not include family income). On the use of law school attended as a proxy for class, compare *id.* (questioning whether elite and non-elite law schools differ in terms of their students' socioeconomic backgrounds), with Lawprofblawg, *Classism in Academia*, ABOVE THE LAW (Aug. 28, 2019, 12:00 PM), <http://abovethelaw.com/2018/08/classism-in-academia/> [https://perma.cc/S9WB-9USE] (highlighting wealth-based barriers to admission into an elite law school).

22. Richard H. Sander, *Class in American Legal Education*, 88 DENV. U. L. REV. 631, 639 (2011). Professor Sander's empirical research, based on data from the After the JD study, found that 82% of graduates of the top ten law schools are in the top quartile of socioeconomic status compared to 58% of graduates of schools ranked 101st and lower. *Id.* Importantly, the After the JD study solicited information about parental occupation and education but not incomes. *See id.* at 634. Using the same data, Professors Ronit Dinovitzer and Bryant Garth reported that two-thirds of graduates of top ten law schools had fathers who completed some graduate education compared to one-third for graduates of fourth-tier law schools. Ronit Dinovitzer & Bryant G. Garth, *Lawyer Satisfaction in the Process of Structuring Legal Careers*, 41 L. & SOC'Y REV. 1, 11 (2007).

This Essay reorients the debate on law school hiring and class by focusing on law professors' undergraduate educations. This shift in focus is important for two main reasons. First, researchers have gathered reliable socioeconomic data on the student bodies of U.S. colleges, data that do not currently exist for law schools. These data show that the most elite U.S. colleges tend to have the least socioeconomic diversity, notwithstanding relatively generous financial aid policies.²³ Second, undergraduate education does not provide legal training or otherwise prepare students for legal academia and therefore should play little to no role in hiring, whereas law school education could conceivably have some effect on an individual's legal scholarship and teaching.²⁴

Relying on law schools' entry-level hiring data for the last three years, as well as parental income data by college drawn from government records, I find that law professors generally graduate from private colleges that serve the wealthiest strata of U.S. society and not more socioeconomically diverse public colleges. The median hire attended an institution in which 67% of the students come from the top income quintile and only a fraction of students come from the bottom three quintiles. Most professors come from privileged backgrounds, and those who do not are generally educated and socialized in this milieu before attending an elite law school.²⁵ These early experiences are bound to acculturate professors and shape their interests and understandings of the legal system. Individual law professors have little incentive to buck this paradigm by concentrating on the experiences of low- and middle-income people in their teaching and scholarship.

Section I of this Essay introduces law schools' historical hiring practices and the claims of socioeconomic bias. Section II provides information about entry-level law professor hires from 2017 to 2019, which is cross-referenced with estimates of parental income by college. Section III demonstrates that recent hires attended undergraduate institutions in which the vast majority of students come from families in the top income quintile, with very few attending socioeconomically diverse colleges. Section IV concludes by connecting law school hiring practices to law professors' pedagogies and research interests and legal education's lack of attention to low- and middle-income people's interactions with the legal system.

23. See James C. Hearn & Kelly Ochs Rosinger, *Socioeconomic Diversity in Selective Private Colleges: An Organizational Analysis*, 38 REV. HIGHER ED. 71, 74 (2014) (“[T]he great majority of students in all of the most selective and expensive schools come from relatively advantaged backgrounds. Numerous studies have found that those institutions lag far behind others in enrolling socioeconomically diverse student bodies” (citations omitted)).

24. See Hessick, *supra* note 21 (speculating that elite law schools such as Harvard and Yale may provide better preparation for legal academia by emphasizing and providing opportunities for academic writing).

25. See Ryan D. Padgett et al., *The Impact of College Student Socialization, Social Class, and Race on Need for Cognition*, 145 NEW DIRECTIONS FOR INST. RES. 99, 100 (2010) (“[S]ocialization entails learning the appropriate behaviors and attitudes of the group, facilitated by interactions with others who exemplify the norms of the particular group.”).

I. A PRIMER ON LAW SCHOOL HIRING

Law schools' hiring practices are largely entrenched and rely on proxies to identify candidates with the most scholarly and teaching potential. In general, law schools hire graduates of elite law schools after they have clerked for a federal judge (preferably an appellate judge, with Supreme Court experience especially valued) and practiced for a few years (but not too many).²⁶ While candidates would once enter the hiring market with only one or two publications, scholarship expectations have increased in recent years.²⁷ A PhD or fellowship appears to have become a de facto requirement.²⁸

Formerly an old boys' club, where law schools hired via word of mouth, law school hiring is now systematized, with most hiring completed in connection with the Association of American Law Schools (AALS) Faculty Recruitment Conference (FRC) held annually in Washington, D.C.²⁹ Part of the impetus for the FRC's creation was to make law professor hiring more equitable and efficient.³⁰

Both candidates and law schools pay to participate in the AALS FRC. Candidates submit information about their educations, professional experiences, teaching interests, and scholarships to the FRC, and law schools extend screening interview offers to their preferred candidates.³¹ After the FRC interviews, law schools will customarily invite a few of the most impressive interviewees to campus.³² Competition for tenure-track

26. See George & Yoon, *supra* note 11, at 37 (“Nearly all new hires in our study attended a small set of schools that are more likely to emphasize theory over practice. The new hires have a shared set of professional experiences Missing from those experiences is substantial time outside of a law school.”); Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199, 240 (1997) (“Graduation from a prestigious college and law school, experience as a Supreme Court clerk, and possession of a doctoral degree in a field other than law all significantly increased the likelihood that a professor would teach at an elite law school.”); Richard E. Redding, “Where Did You Go to Law School?”: *Gatekeeping for the Professoriate and Its Implications for Legal Education*, 53 J. LEGAL EDUC. 594, 596–97 (2003).

27. Compare Don Zillman et al., *Uncloaking Law School Hiring: A Recruit’s Guide to the AALS Faculty Recruitment Conference*, 38 J. LEGAL EDUC. 345, 347 (1988) (suggesting that some hiring committees prefer prior publication), with BRANNON P. DENNING ET AL., *BECOMING A LAW PROFESSOR: A CANDIDATE’S GUIDE* 28 (2010) (“Publishing good legal scholarship is one way—we would say *the way*—to distinguish yourself as a candidate. In fact it is becoming essential.”).

28. See Sarah Lawsky, *Spring Self-Reported Entry Level Hiring Report 2019: Doctrinal, Fellowship, Doctorate*, PRAWFSBLAWG (June 6, 2019, 4:44 PM), <http://prawfsblawg.blogs.com/prawfsblawg/2019/06/spring-self-reported-entry-level-hiring-report-2019-doctrinal-fellowship-doctorate.html> [https://perma.cc/8U6Z-RYLJ]; see also Minna J. Kotkin, *Clinical Legal Education and the Replication of Hierarchy*, 26 CLINICAL L. REV. 287, 288 (2019) (observing the “trend in tenure-track hiring that privileges advanced degrees and fellowship-driven scholarship over significant practice experience”). In 2019 96% of entry-level hires had completed a PhD or fellowship. Lawsky, *supra*.

29. See Daniel Gordon, *Hiring Law Professors: Breaking the Back of an American Plutocratic Oligarchy*, 19 WIDENER L.J. 137, 137, 153 (2009); Zillman et al., *supra* note 27, at 345. *But see id.* at 346–47 (discussing informal methods of seeking a law faculty position).

30. See Zillman et al., *supra* note 27, at 347.

31. See *id.*

32. *Id.* at 356–57.

positions is fierce. In any given year, only 13% or so of FRC participants will obtain a tenure-track position.³³

Some scholars have castigated law schools for elitist and antimeritocratic hiring, noting that they place inordinate emphasis on the law schools that candidates attended—a questionable proxy for scholarly and teaching potential.³⁴ Since lower-ranked schools tend to have more students from lower-income backgrounds than elite schools do, this hiring practice limits the professoriate’s socioeconomic diversity, particularly when considered alongside law schools’ preference for candidates who complete low-paid fellowships or PhDs.³⁵ One legal education critic has likened the system for hiring law professors to “a plutocratic oligarchy” whereby “a group of law professors who are the product of wealth-based education control the hiring of more law professors who are also the product of wealth-based education.”³⁶

The AALS does not generally afford researchers access to FRC candidate information. However, Professors Tracey George and Albert Yoon collaborated with the AALS during the 2007 to 2008 hiring season to study the labor market for entry-level law professors.³⁷ Although Professors George and Yoon did not assess SES, their study provides strong support for the conventional wisdom that, *ceteris paribus*, graduates of elite law schools fare much better on the hiring market than do graduates of lower-ranked schools.

The George and Yoon study measured candidates’ likelihoods of receiving screening interviews, callback interviews, and tenure-track offers.³⁸ Factors such as publishing in a highly ranked law review and completing a fellowship increased the odds of receiving a screening interview offer, whereas too much practice experience decreased the odds.³⁹ The rank of a candidate’s law school had no effect at this initial stage.⁴⁰ However, the authors found that law school rank was significant at the callback and offer stages. After controlling for publications and other factors, graduates of Yale,

33. Gordon, *supra* note 29, at 138; *see also* George & Yoon, *supra* note 11, at 2.

34. Numerous scholars have questioned the correlation. *See, e.g.*, Gordon, *supra* note 29, at 153 (“Law school faculty recruitment reinforces a bias toward the product of wealth, allowing wealth-based education to masquerade as quality education.”); Harrison, *supra* note 6, at 122 (questioning whether “good grades at an elite school and a clerkship are somehow correlated with a future of being a productive law teacher”); *see also* Kevin H. Smith, *How To Become a Law Professor Without Really Trying: A Critical, Heuristic, Deconstructionist, and Hermeneutical Exploration of Avoiding the Drudgery Associated with Actually Working as an Attorney*, 47 U. KAN. L. REV. 139, 147 (1998) (claiming that candidate success depends on having attended “a school accredited as belonging to the Almighty-Bunch-of-(Educational)-Aristocrats”); Elyce H. Zenoff & Jerome A. Barron, *So You Want To Hire a Law Professor?*, 33 J. LEGAL EDUC. 492, 493 (1983) (suggesting that law professors predominately hire narrow versions of themselves). A recent article by Professors Adam Chilton, Jonathan Masur, and Kyle Rozema determined that law schools would be able to significantly increase scholarly output by increasing tenure denial rates, suggesting that entry-level decisionmaking is suboptimal and is not being corrected. Adam Chilton et al., *Rethinking Law School Tenure Standards* 40 (Univ. of Chi. Coase-Sandor Inst. for Law & Economics, Research Paper No. 887, 2019), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=3200005 [<https://perma.cc/7FCN-QY4R>].

35. *See* Sander, *supra* note 22, at 639.

36. Gordon, *supra* note 29, at 149.

37. *See* George & Yoon, *supra* note 11, at 1.

38. *Id.* at 24–32.

39. *Id.* at 27.

40. *Id.* at 27–28.

Harvard, and Stanford law schools were 18% more likely to obtain callback interviews and 27% more likely to receive offers than graduates of the other top fifty law schools.⁴¹

Law schools' marked emphasis on law school pedigree—over even candidates' publications—is somewhat puzzling.⁴² Yet it cannot necessarily be attributed to class bias without reliable data on socioeconomic diversity in elite versus non-elite law schools.⁴³ Faced with the task of projecting the teaching and scholarly productivity of a plethora of accomplished entry-level candidates, law schools may fall back on institutional prestige to cull the field.⁴⁴ Graduates of elite law schools may also have unobserved qualities that better prepare them for legal academia or may simply receive better mentoring on the ins and outs of the hiring market.⁴⁵ Law is hardly the only academic field concerned with academic pedigree.⁴⁶ However, as set out below, the concern for pedigree is not limited to candidates' choices of law schools.

II. METHODOLOGY AND DATA

To study class and law professor hiring, I draw upon two distinct datasets: parental income data by college from Opportunity Insights and entry-level law school hiring data collected from 2017 to 2019. Undergraduate education provides valuable clues as to the SES of law professors but, unlike law school pedigree, should presumably have minimal bearing on law schools' hiring decisions.

Opportunity Insights relies on big data to address pressing policy problems such as economic mobility.⁴⁷ Its researchers have used social security and tax records to create a dataset tying college attendance to parental incomes.⁴⁸ One of its central findings is that the elite U.S. colleges lack socioeconomic diversity.⁴⁹ For example, at Ivy-Plus colleges—the Ivy League (Brown, Columbia, Cornell, Dartmouth, Harvard, Princeton, the University of Pennsylvania, and Yale) plus Stanford, Massachusetts Institute of Technology (MIT), the University of Chicago, and Duke—only 3.8% of students come from families in the bottom income quintile.⁵⁰ These disparities exist

41. *Id.* at 29, 33.

42. *See id.* at 33.

43. *See* Hessick, *supra* note 21.

44. *See* George & Yoon, *supra* note 11, at 15; *see also* Gordon, *supra* note 29, at 144 (noting that the initial review of candidates can take between fourteen and fifty-seven hours).

45. *See* Redding, *supra* note 26, at 608–09 (2003) (describing the “better horse” theory of hiring, whereby law schools treat law school attended as a mark of intelligence and scholarly potential); *see also* George & Yoon, *supra* note 11, at 16 (highlighting the importance of elite law schools' research networks); Hessick, *supra* note 21 (intimating that law schools such as Yale and Harvard may “do a better job teaching their students about academic writing”).

46. *See* George & Yoon, *supra* note 11, at 15–16 (summarizing research on queuing theory in academia).

47. *See* OPPORTUNITY INSIGHTS, <http://opportunityinsights.org/> [<https://perma.cc/VE2G-BKCS>] (last visited May 1, 2020).

48. *See* Raj Chetty et al., *Mobility Report Cards: The Role of Colleges in Intergenerational Mobility* 1, 6–7 (Nat'l Bureau of Econ. Research, Working Paper No. 23618, 2017), http://opportunityinsights.org/wp-content/uploads/2018/03/coll_mrc_paper.pdf [<https://perma.cc/B6KR-FTSH>].

49. *See id.* at 14–15.

50. *Id.* at 14.

even though elite colleges offer admitted students sizeable financial aid packages. For a variety of reasons, highly qualified low-income students often do not apply to elite colleges and instead pay more to attend less selective institutions.⁵¹

The Opportunity Insights dataset covers students who were in college in the early 2000s and specifies, per college, the percentage of students from families in each income quintile.⁵² Students who are part of this cohort were in their mid-to-late thirties from 2017 to 2019, approximately the same age as the median entry-level law professor.⁵³ The percentage of lower-income students per college also does not vary greatly over time.⁵⁴ For example, Ivy-Plus colleges' enrollments of students from the bottom income quintile did not change from 2000 to 2011.⁵⁵

To construct the law professor database, I relied on entry-level hiring information that Professor Sarah Lawsky collected and shared on Prawfsblawg, a website that legal academics frequent.⁵⁶ I focused on new law professors because higher education was more affordable decades ago, and colleges could have therefore been more socioeconomically diverse.⁵⁷ While new professors and their hiring schools need not share hiring information, they have reputational incentives to do so. Lawsky's dataset includes information about, inter alia, hires' legal educations, fellowships, other degrees, and subject matter interests.⁵⁸ Lawsky also separates tenure-track hires from non-tenure-track hires, unlike other potential sources of hiring information such as the *AALS Directory of Law Teachers*.⁵⁹

51. This phenomenon is called “undermatching.” Caroline Hoxby & Christopher Avery, *The Missing “One-Offs”: The Hidden Supply of High-Achieving Low Income Students*, BROOKINGS PAPERS ON ECON. ACTIVITY, Spring 2013, at 1, 2–4 (defining “undermatching” as the tendency of lower-income students to not apply to selective universities and instead to enroll in less selective universities that would charge them higher tuition); see also Goodwin Liu, *Three Challenges for American Higher Education*, 7 U.C. IRVINE L. REV. 9, 13 (2017); Ann L. Mullen, *Elite Destinations: Pathways to Attending an Ivy-League University*, 30 BRIT. J. SOC. EDUC. 15, 25 (2009) (“What stands out in [lower-income] students’ accounts is how commonly Ivy League institutions were initially not even considered as possible college destinations. . . . Some less-advantaged students also revealed a striking disinclination to attend elite universities because, instead of imagining feeling at home, they anticipate the discomfort of not fitting in . . .”).

52. Chetty et al., *supra* note 48, at 9–10.

53. Professors George and Yoon noted that the median candidate in the AALS FRC completed law school nine years before seeking a tenure-track position. George & Yoon, *supra* note 11, at 19–20.

54. See Chetty et al., *supra* note 48, at 4–5.

55. *Id.* at 36–37; cf. Hearn & Rosinger, *supra* note 23, at 74 (“While the late 20th-century shift toward mass higher education in the United States greatly expanded postsecondary access among all social classes, students’ specific college choices have remained closely linked to socioeconomic background.”).

56. See, e.g., Sarah Lawsky, *Spring Self-Reported Entry Level Hiring Report 2019*, PRAWFSBLAWG (June 4, 2019, 4:03 PM), <http://prawfsblawg.blogspot.com/prawfsblawg/2019/06/spring-self-reported-entry-level-hiring-report-2019.html> [<https://perma.cc/8DVJ-GBBD>].

57. See Laura W. Perna & Chunyan Li, *College Affordability: Implications for College Opportunity*, 36 NASFAA J. STUDENT FIN. AID 7, 11–14 (2006). Professors Laura Perna and Chunyan Li noted that, controlling for inflation, “median family income increased by 2% between [1994–2005], while over the same period tuition and fees increased by 59% at public four-year institutions and 42% at private four-year institutions.” *Id.* at 11.

58. Lawsky, *supra* note 56.

59. *Id.*

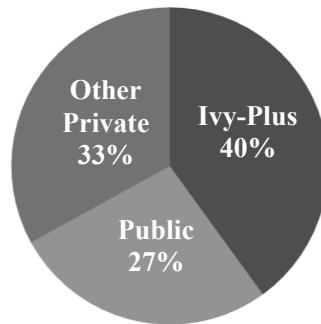
According to Lawsky's final dataset, law schools made 264 entry-level hires from 2017 to 2019.⁶⁰ I supplemented the dataset with new hires' undergraduate institutions. Sixty-seven of the hires were ultimately excluded from the analysis because they earned their undergraduate degrees outside of the United States or were hired to a non-tenure-track position. The final sample consists of 197 law professors.

III. ANALYSIS

Law professors are expected to “prepare[] . . . students for admission to the bar, and [for] effective and responsible participation in the legal profession”⁶¹ as well as to engage in “continuous and energetic study of new developments in [the law].”⁶² Undergraduate education does not provide preparation for these and other professional tasks, and college prestige should presumably be irrelevant to the hiring process. Yet, law schools appear to hire mostly graduates of elite colleges.

As set out in Figure 1, 40% of law professors in the final sample attended Ivy-Plus colleges. Only 27% attended public colleges.

FIGURE 1
LAW PROFESSOR HIRES BY UNDERGRADUATE INSTITUTION TYPE



The most common “other private” colleges attended by law professors in the sample included elite institutions such as Georgetown University, New York University, and Vanderbilt University, as well as non-elite but selective institutions

60. Lawsky posts her report each year to PrawfsBlawg with a link to the data. See Lawsky, *supra* note 56; Sarah Lawsky, *Spring Self-Reported Entry Level Hiring Report 2018*, PRAWFSBLAWG (May 21, 2018, 10:43 AM), <http://prawfsblawg.blogs.com/prawfsblawg/2018/05/spring-self-reported-entry-level-hiring-report-2018.html> [https://perma.cc/C4LS-CY3J]; Sarah Lawsky, *Spring Self-Reported Entry Level Hiring Report 2017*, PRAWFSBLAWG (June 1, 2017, 1:06 PM), <http://prawfsblawg.blogs.com/prawfsblawg/2017/06/spring-self-reported-entry-level-hiring-report-2017.html> [https://perma.cc/GF4N-YJPG].

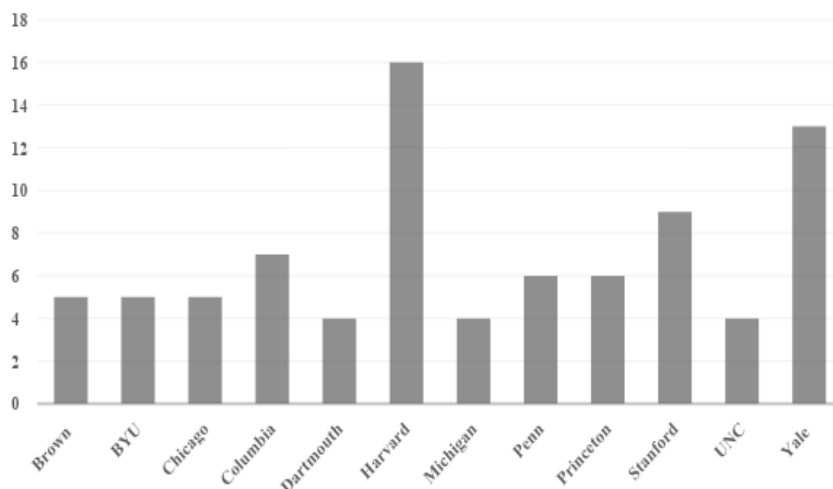
61. Gordon, *supra* note 29, at 139–40 (alterations in original) (quoting AM. BAR ASS'N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2009–2010, at 19 (2009), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/standardsarchive/2009_2010_standards.pdf [https://perma.cc/V37Y-NFFP]).

62. *Id.* at 140 (quoting ASS'N OF AM. LAW SCHS., 2009 HANDBOOKS § 6-4(a) (2009)).

such as Baylor University and Brigham Young University (BYU).⁶³ Even if one assumes that private colleges generally provide more preparation for graduate school than public colleges do, this disparity is striking because leading public colleges serve many more students than leading private ones.⁶⁴

Figure 2 displays the twelve colleges that had at least four or more of their graduates hired to the legal academy from 2017 to 2019.

FIGURE 2
MOST COMMON UNDERGRADUATE INSTITUTIONS AMONG LAW PROFESSOR HIRES



Unsurprisingly, nine of the twelve are Ivy-Plus, and only two are public colleges. Just three Ivy-Plus colleges—Harvard, Yale, and Stanford—produced thirty-eight law professors among them.⁶⁵ Without access to the AALS FRC candidate pool, it is impossible to determine whether graduating from any of these institutions has an independent effect on the odds of receiving a tenure-track position. But these descriptive results imply that law schools' tendency to hire from Harvard, Yale, and Stanford law schools⁶⁶ extend to the undergraduate level.

One reason for this trend could be that graduates of Ivy-Plus colleges are overrepresented at the elite law schools from which law schools prefer to hire law

63. Three law professors attended each of Georgetown, New York University, Vanderbilt, and Baylor. Five law professors attended BYU, three of whom were hired by BYU's Law School.

64. For example, the undergraduate enrollment of the University of Michigan, Ann Arbor was 30,318 compared to 5,964 at Yale University. *Compare Student Profile*, U. MICH., <http://admissions.umich.edu/apply/freshmen-applicants/student-profile> [https://perma.cc/8CRQ-EW2L] (last visited May 1, 2020), with *Fast Facts*, YALE U., <http://www.yale.edu/about-yale/yale-facts> [https://perma.cc/A5LL-HPJX] (last visited May 1, 2020).

65. Twenty-four of these professors also attended one of Harvard, Yale, or Stanford for law school.

66. George & Yoon, *supra* note 11, at 28–29, 32–33.

professors.⁶⁷ However, elite law schools do not just draw students from elite private colleges. Harvard Law School enrolled graduates of 185 different colleges in 2019.⁶⁸ In addition, Ivy-Plus colleges have small student bodies and therefore send far fewer students to law school than elite public colleges.⁶⁹ The top law school feeder colleges are all public institutions, and the top feeder college, the elite University of California, Los Angeles (UCLA), sends three times as many students to law school every year than does Yale.⁷⁰

Regardless of the precise cause, law schools' seeming preference for graduates of Ivy-Plus and similar colleges is problematic for the professoriate's socioeconomic diversity. The United States has substantial income inequality, with nearly half of total U.S. income going to families in the top income decile.⁷¹ This inequality is very much reflected in higher education:

In recent decades, resource and prestige hierarchies have risen sharply within the postsecondary sector, and top status groups fight to place their children in private elite colleges and universities rather than in less selective public campuses or lower-ranked private institutions. . . . [T]he modern U.S. class system itself is constituted in large measure by the increasing organizational variety of college and university types, with elites with the right class culture dominating the top of the horizontally stratified system.⁷²

These "elites with the right class culture" dominate most of the colleges that law professor hires attended. Figure 3 sets out the percentage of students from families in the top income quintile for the top undergraduate institutions in the law professor sample. The percentage of students from families in the bottom three quintiles is also included for comparison.

67. See MARKOVITS, *supra* note 15, at 7 (suggesting that elite law schools admit only a few students a year from non-elite colleges).

68. *Undergraduate Institutions*, HARV. L. SCH., <http://hls.harvard.edu/dept/jdadmissions/apply-to-harvard-law-school/undergraduate-colleges/> [<https://perma.cc/YZL7-RN55>] (last visited May 1, 2020).

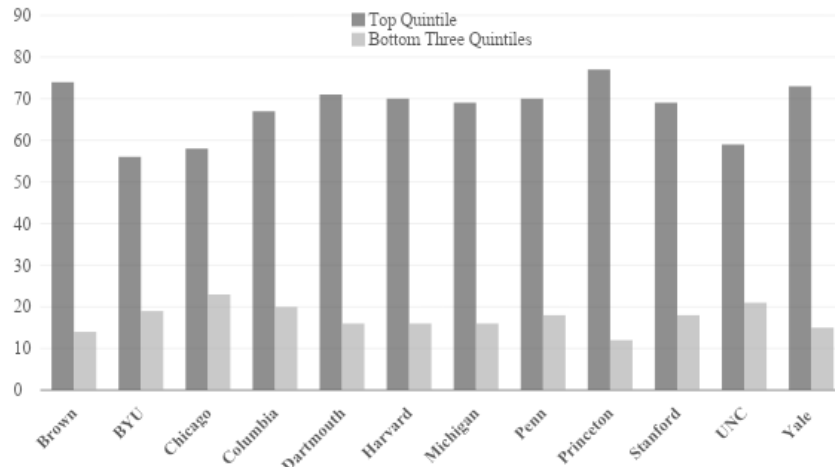
69. See ACCESSLEX INST., LAW SCHOOL APPLICANTS BY DEGREES: A PER CAPITA ANALYSIS OF THE TOP FEEDER SCHOOLS 7 (2018), http://www.accesslex.org/sites/default/files/2018-04/Law%20School%20Applicants%20by%20Degrees_Per%20Capita_Mar2018.pdf [<https://perma.cc/6YCC-PJ26>].

70. See *id.*

71. Sara Goldrick-Rab et al., *Reducing Income Inequality in Educational Attainment: Experimental Evidence on the Impact of Financial Aid on College Completion*, 121 AM. J. SOC. 1762, 1762–63 (2016).

72. See Amy J. Binder & Andrea R. Abel, *Symbolically Maintained Inequality: How Harvard and Stanford Students Construct Boundaries Among Elite Universities*, 92 SOC. EDUC. 41, 43 (2019) (citations omitted).

FIGURE 3
PERCENTAGE OF FAMILIES IN TOP INCOME QUINTILE AND BOTTOM THREE QUINTILES



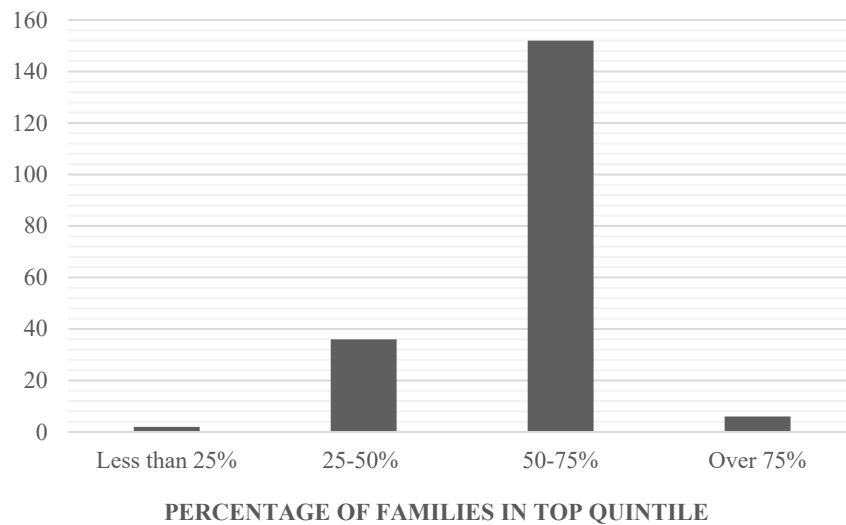
As Figure 3 illustrates, nine of the twelve undergraduate colleges have two-thirds of their students come from families in the top income quintile. Brown, Dartmouth, Princeton, and Yale have over 70%. The results are similar when the entire law professor sample is considered. The median college that appears in the law professor dataset draws 67% of its student body from families in the top income quintile.

Equally striking are these colleges' low enrollments of low- and middle-income students. Only two colleges listed in Figure 3—the University of Chicago and the University of North Carolina (UNC)—have 20% or more of their students from families in the bottom three income quintiles. Brown and Princeton have five times as many students from families in the top income quintile than they do in the bottom three quintiles. Thus, contrary to the perception of elite colleges as engines for social mobility, these institutions more often pass on and cement privilege.⁷³ Unless new law professor hires differ substantially from their college classmates, the vast majority come from relatively wealthy families.

Regardless of individual backgrounds, few law professors attended colleges with meaningful socioeconomic diversity. For example, a selective public institution such as Temple University draws 69% of its students from families that are outside of the top quintile. Yet, as Figure 4 indicates, it is uncommon for law professors to attend such institutions.

73. *See id.* at 42.

FIGURE 4
NUMBER OF PROFESSOR HIRES BY UNDERGRADUATE SOCIOECONOMIC DIVERSITY



Only 19% of law professors in the sample attended an institution in which 50% of the students come from families outside of the top quintile, with only one professor having attended a college with less than a quarter of its students from families in the top income quintile. Law faculty would likely condemn such stratification in other contexts.⁷⁴

Thus, even if certain law professors do not come from great means, they still disproportionately attended colleges dominated by economically advantaged students. Inevitably, college would have exposed them to wealth and its trappings in interactions with fellow students, professors, and administrators.⁷⁵ Lower-income students in elite colleges are highly conscious of class-based differences and engage in a number of coping strategies, including assimilation of speech, attire, and behavior.⁷⁶ These foundational experiences would have then been carried to law school, post-law school employment, and eventually the academy.⁷⁷

74. Raj Chetty and colleagues observed that “the degree of income segregation across colleges is comparable to the degree of income segregation across neighborhoods in the average American city.” Chetty et al., *supra* note 48, at 1–2.

75. See Padgett et al., *supra* note 25, at 100–01.

76. See Elizabeth Aries & Maynard Seider, *The Interactive Relationship Between Class Identity and the College Experience: The Case of Lower Income Students*, 28 *QUALITATIVE SOC.* 419, 431 (2005); Harrison, *supra* note 6, at 121 (“[S]potting people who are socially and economically disadvantaged is not always easy, especially if they have caught on to the fact that they should adopt the affectations of their privileged competitors.”).

77. See Aries & Seider, *supra* note 76, at 431; Harrison, *supra* note 6, at 121.

The hiring tendencies that this Section analyzes do not necessarily signify that law schools set out to hire professors from economically advantaged backgrounds. As noted, graduates of Ivy-Plus and similar colleges could simply be overrepresented at the elite law schools from which law schools generally hire. The preference for graduates of elite colleges could also be implicit inasmuch as hiring committees regard candidates with these backgrounds as more relatable.⁷⁸ Nevertheless, hiring mostly graduates of Ivy-Plus and similar colleges overwhelmingly benefits individuals with high SESs even if hiring committees do not place special emphasis on college pedigree.

IV. DISCUSSION

Law professor positions are highly sought after. Since family wealth is correlated with educational attainment and pedigree, high-SES individuals will have advantages in the law professor hiring market. As this Essay shows, the filtering out of individuals from more modest backgrounds occurs well before their choice of law school. In this Section, I examine why law schools might favor candidates with elite college pedigrees even though undergraduate education does not provide legal training.⁷⁹ I then connect law schools' hiring practices to the legal education's marginalization of the experiences of low- and middle-income people.⁸⁰

A. *Undergraduate Pedigree, Class, and Law School Hiring*

Critics have long charged that law school hiring is elitist and infected with class bias, but these criticisms have failed to gain traction.⁸¹ In the absence of reliable data on socioeconomic diversity in law schools, the legal academy has largely ignored or downplayed the ramifications of hiring law professors who are mostly graduates of elite law schools.

Law schools may be justified to assign some weight to law school pedigree. Law schools can devote only so much time to evaluating candidates, and law school pedigree need not be a perfect proxy for it to be useful to hiring committees. For example, if law schools are primarily seeking scholarly potential in new hires, it is logical that they would favor graduates of institutions that are known to have a strong academic orientation.⁸² Even ardent critics of modern legal education have conceded that law schools are not "trade schools" and that their students need grounding in theory and interdisciplinary considerations.⁸³ One must also acknowledge the importance of network effects: elite law schools offer access to leading scholars who

78. See LAUREN A. RIVERA, PEDIGREE: HOW ELITE STUDENTS GET ELITE JOBS 143–45 (2015) (observing that employment decisions in professional fields such as law depend on assessments of "fit," and candidates from economically privileged social ranks are more apt to demonstrate the requisite fit).

79. See *infra* Part IV.A.

80. See *infra* Part IV.B.

81. See *supra* note 34 and accompanying text.

82. See Hessick, *supra* note 21; see also Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231, 1236 (1991) ("[P]rofessors who once trained prospective lawyers have, at elite law schools, become true academicians, highly specialized and almost exclusively engaged in pure . . . research." (footnote omitted)).

83. E.g., Harry T. Edwards, *Another "Postscript" to "the Growing Disjunction Between Legal Education and the Legal Profession"*, 69 WASH. L. REV. 561, 564 (1994).

can mentor and collaborate with aspiring professors.⁸⁴ Even in an era where candidates have developed bodies of research, some recourse to pedigree may be unavoidable because, unlike many other fields, there is little consensus on standards for evaluating legal scholarship, and professors differ in the methods that they use and their intended audiences.⁸⁵

Law schools' hiring practices look far more problematic, however, when law professors' college educations are considered. The archetypal law professor hire did not just attend an elite law school. Rather, based on the entry-level professor sample, she also likely attended an Ivy-Plus college or other elite private college. A remarkable 40% of law professors hired to tenure-track positions from 2017 to 2019 attended Ivy-Plus colleges. Notwithstanding the meritocratic ideal of poor students gaining admission into elite educational institutions, Ivy-Plus and similar colleges draw students predominantly from the top income quintile and graduate few students from lower-income backgrounds. In hiring from these institutions, law schools all but guarantee that the professoriate will be made up of individuals from the top of the U.S. economic pyramid. Legal academia may not be entirely closed off to lower-income people, but the system is stacked in favor of economically advantaged individuals because they have the requisite resources to prevail in a "massive, multistage meritocratic tournament."⁸⁶

Hence, the law professor pipeline is quite narrow and is further narrowed by the choice of law school, postgraduate employment, and the completion of fellowships and PhDs. To the extent that law schools are managing to hire some candidates from less privileged backgrounds despite the foregoing entry barriers, elite socialization has likely rendered their socioeconomic origins largely undetectable; in sociological terms, these candidates have assimilated the habitus of the legal academics.⁸⁷ Professors from working-class backgrounds have written poignantly of steps taken to mask their social-class identities.⁸⁸

Law schools do not likely endeavor to favor candidates with high SES. Indeed, many law professors are politically committed to economic and social equality. But, as

84. See George & Yoon, *supra* note 11, at 16 ("[H]igh-ability students will choose more prestigious institutions because of the greater job opportunities that these schools afford. Higher ranked schools also may provide a stronger network of potential collaborators . . .").

85. See *id.* at 15–16.

86. MARKOVITS, *supra* note 15, at 7.

87. Habitus, a term associated with French sociologist Pierre Bourdieu, refers to "a system of embodied dispositions which generate practice in accordance with the structural principles of the social world." Roy Nash, *Bourdieu on Education and Social and Cultural Reproduction*, 11 BRIT. J. SOC. EDUC. 431, 432–33 (1990); see also Diane Reay et al., 'Strangers in Paradise'? *Working-Class Students in Elite Universities*, 43 SOC. 1103, 1110–11 (2009) (documenting working-class students' adaption and refashioning of habitus to elite university environment).

88. See Carmen G. González, *Women of Color in Legal Education: Challenging the Presumption of Incompetence*, FED. LAW., July 2014, at 49, 53–54 (2014) (summarizing accounts of working-class academics); see also Michael Z. Green, "Just Another Little Black Boy from the South Side of Chicago": *Overcoming Obstacles and Breaking Down Barriers To Improve Diversity in the Law Professoriate*, 31 COLUM. J. GENDER & L. 135, 147–48 (2015) (describing financial difficulties in leaving legal practice to complete a low-paid fellowship at a top-tier law school to improve prospects on the hiring market).

products of elite schooling, they have little reason to question U.S. higher education's meritocratic pretensions, particularly when it deploys nominally meritocratic admission criteria that conceal the effects of class.⁸⁹

The current system effectively invites law schools to prioritize pedigree in a number of ways. For example, AALS FRC participants must submit resumes⁹⁰ and complete standardized forms that place undergraduate and law school education before publications, professional experience, and other relevant information. The AALS could discourage reliance on pedigree altogether by having candidates list their degrees without associated alma maters. Law schools' failure to implement these types of reforms indicates that they consider the preoccupation with pedigree to be natural and benign.

Individual law schools could take additional steps to attract candidates from less privileged backgrounds. For example, they could advertise preferences for first-generation professionals and choose to interview a greater number of qualified candidates from public colleges and other institutions that the wealthy do not dominate.⁹¹ In interviews, hiring committees could inquire about hardships that candidates have overcome. However, at the vast majority of law schools, the hiring process centers on a candidate's ability to defend a single paper and interact amiably with faculty.⁹²

Future research—ideally in concert with the AALS—should examine whether law schools' seeming preference for graduates of elite colleges is independent of their preference for graduates of elite law schools. If the preference for elite college pedigree is independent of the preference for law school pedigree, this gives credence to the notion that class bias affects law school hiring.⁹³ Hiring committees may tacitly believe that only graduates of elite colleges possess the requisite acumen for legal academia even though class, and not acumen, often drives college enrollment decisions.⁹⁴ An independent effect for college pedigree could also suggest that hiring committees prefer FRC candidates who manifest interests and behaviors associated with high SES.⁹⁵

89. See Binder & Abel, *supra* note 72, at 42.

90. See Zillman et al., *supra* note 27, at 347.

91. See Harrison, *supra* note 6, at 121 (suggesting that law faculty can look for public school degrees, glamourless summer jobs, and other subtle indications of economic disadvantage).

92. See Gordon, *supra* note 29, at 145 (“[H]iring choices are made, through the AALS hiring process, on the basis of . . . a thirty-minute interview, and a one-day visit to campus during which no one faculty member can spend more than a couple of hours assessing a candidate’s skills and potential.”).

93. Some law schools may have nonclassist reasons to pay attention to candidates’ undergraduate educations. For example, law schools in geographically undesirable areas may wish to target candidates who have geographic ties to these areas via college attendance, and religiously affiliated law schools may seek candidates who attended religiously affiliated colleges.

94. See Harrison, *supra* note 6, at 121 (claiming that hiring committees are uninterested in and even scornful of economic disadvantage). The phenomenon of focusing on institutional prestige rather than individual achievement is sometimes referred to as “institutional ascription.” George & Yoon, *supra* note 11, at 14–15; see also Lisa Tsui, *Reproducing Social Inequalities Through Higher Education: Critical Thinking as Valued Capital*, 72 J. NEGRO EDUC. 318, 320 (2003) (“[M]erely being affiliated with a prestigious institution signals to others, especially such important gatekeepers as graduate school admission committees and corporate employers, one’s elite status and capability for high performance.” (citations omitted)).

95. See RIVERA, *supra* note 78, at 3 (“[H]iring decisions that appear on the surface to be based only by individual merit are subtly yet powerfully shaped by applicants’ socioeconomic backgrounds.”).

Professor Daniel Gordon claims that hiring committees “conflat[e] intellectualism with ample financial resources” and regard applicants without these resources as “outsider[s].”⁹⁶ There is little in the faculty selection process that would counteract such tendencies or work to the advantage of individuals from working-class backgrounds.⁹⁷

Conversely, hiring committees could prefer graduates of elite colleges simply because they are overrepresented in elite law schools. As noted above, some consideration of law school pedigree may be unavoidable. However, for a number of reasons, ranging from lack of financial resources and information about educational hierarchies to the nature of the standardized testing process, lower-income individuals are less likely to follow pathways that lead to elite law schools.⁹⁸ These nontraditional pathways should not disqualify them from legal academia.

The value of law school pedigree as a proxy for scholarly potential is also diminishing. Candidates now have developed bodies of research to share with hiring committees that are better markers of scholarly potential than their law school pedigrees. The mere lack of consensus on standards for assessing legal scholarship hardly justifies the academy’s continuing dependence on law school pedigree.⁹⁹

Lastly, although this Essay’s main focus is socioeconomic diversity, SES and racial diversity are connected.¹⁰⁰ Limited numbers of racial minorities attend Ivy-Plus and similar colleges, and fewer still continue on to elite law schools and manifest interest in law teaching.¹⁰¹ To increase racial diversity in the legal academy, law schools must be open to pedigrees that have historically been excluded. For example, only one hire in the entire law professor sample attended a historically black college. This college also happened to be the most socioeconomically diverse institution in the dataset. Hiring from a wider cross section of colleges and law schools would widen the professor pipeline and send a strong signal that law schools are open to a variety of backgrounds and experiences. Continuing to emphasize law school pedigree—on top of other requirements such as the completion of a low-paid fellowship or PhD program—largely limits the academy to socioeconomically advantaged groups. As the next Part sets out, a reconsideration of hiring practices may also make legal education more attuned to non-elite experiences of the legal system.

B. Legal Education and the Experiences of Low- and Middle-Income People

Thus far, this Essay has used entry-level hiring information and college socioeconomic data to estimate law professors’ socioeconomic backgrounds. The apparent hiring preference for the types of candidates who attended elite colleges and law schools also has pernicious effects on legal education. A law professor need not be

96. Gordon, *supra* note 29 at 153.

97. See Harrison, *supra* note 6, at 121.

98. See Lawprofblawg & Bush, *supra* note 14, at 345.

99. See George & Yoon, *supra* note 11, at 37.

100. See generally Tsui, *supra* note 94, at 323–24 (summarizing research on education, socioeconomic status, and race).

101. *Id.*; see also Green, *supra* note 88, at 144–45 (summarizing barriers faced by aspiring law professors who are racial minorities).

from a lower-income background to be sensitive to issues of wealth and class, but firsthand experience with the legal system's inequities is invaluable to understanding and conveying its treatment of lower-income people.¹⁰²

To this day, the predominant form of law school instruction is the case method that Christopher Columbus Langdell created at Harvard Law School.¹⁰³ Langdell viewed law as a science and maintained that aspiring lawyers could deduce its principles through a close reading of appellate cases.¹⁰⁴ Scholars have long excoriated the case method on methodological and pedagogical grounds.¹⁰⁵ However, an overlooked problem is that it provides students with a wholly unrealistic impression of the legal system's operations: what is a very rare event—a case resulting in a well-reasoned appellate decision—is presented to law students as the norm.¹⁰⁶

Disputes in the civil legal system rarely end with an appellate court's issuance of an opinion. Before an appellate court can opine, the parties must hire and pay attorneys to handle the matter, fully contest the matter before a lower court, and then file and argue an appeal of the lower court's ruling. Each of these steps requires time and substantial resources. Few cases reach trial, let alone receive appellate review.¹⁰⁷ Yet,

102. See Lucille A. Jewel, *Bourdieu and American Legal Education: How Law Schools Reproduce Social Stratification and Class Hierarchy*, 56 BUFF. L. REV. 1155, 1172 (2008) (“[E]ducational institutions’ implicit role in the propagation of existing systems of domination automatically reduces the authority of anyone who wishes to criticize the existing system from within.”); see also Harrison, *supra* note 6, at 120 (“[A] great deal of evidence suggests that class has an impact on one’s sense of justice, expectations, and self-esteem.”).

103. Todd D. Rakoff & Martha Minow, *A Case for Another Case Method*, 60 VAND. L. REV. 597, 597–98 (2007).

104. See C.C. LANGDELL, *A SELECTION OF CASES ON THE LAW OF CONTRACTS*, at vii–ix (2d ed. 1879); see also Russell L. Weaver, *Langdell’s Legacy: Living with the Case Method*, 36 VILL. L. REV. 517, 527–28 (1991) (“Langdell viewed law as a ‘science’ and believed that it should be studied by scientific methods. In his view, a scientific method involved an examination of ‘original sources’—the printed reports of cases.” (footnotes omitted)).

105. See, e.g., Rakoff & Minow, *supra* note 103, at 601 (“‘Truth,’ in modern and post-modern views, is much more constructed, much less simply discovered, than the Langdellian model of ‘science’ supposes. What is known . . . is much more contextual and perspectival.”); W. David Slawson, *Changing How We Teach: A Critique of the Case Method*, 74 S. CAL. L. REV. 343, 345 (2000) (“Another drawback of the case method, at least for the common-law subjects, is that some of the laws to be learned are so poorly understood, or subject to so much disagreement, that a selection of a case or small number of cases to represent the subjects is bound to be arbitrary.”); Weaver, *supra* note 104, at 591 (“[The case method] affords students insufficient insight into how attorneys develop cases. Students read appellate opinions that involve cases already processed by both lawyers and judges, but they do not see legal problems in their unrefined form.”); see also Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 FORDHAM L. REV. 1929, 1931–32 (2002) (noting the rise of legal realism and rejection of Langdell’s formalist views of the law).

106. See Benjamin H. Barton, *A Tale of Two Case Methods*, 75 TENN. L. REV. 233, 242 (2008) (suggesting that the case method relies on students forgetting their life experiences and expertise).

107. The literature on the so-called vanishing trial is voluminous and includes both popular and scholarly works. See, e.g., Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL LEGAL STUD. 459, 460 (2004); William G. Young, *Vanishing Trials, Vanishing Juries, Vanishing Constitution*, 40 SUFFOLK U. L. REV. 67, 73 (2006); Benjamin Weiser, *Trial by Jury, a Hallowed American Right, Is Vanishing*, N.Y. TIMES (Aug. 7, 2016), <http://www.nytimes.com/2016/08/08/nyregion/jury-trials-vanish-and-justice-is-served-behind-closed-doors.html> [https://perma.cc/5PKD-WP84].

resource constraints are rarely part of Socratic dialogues. As Professor Lucille Jewel explains:

When law professors review cases and charge that the negative outcome for the plaintiff was a result of the lawyer's failure to ask questions or failure to take the time to investigate the facts more thoroughly, they present the idea that legal solutions are to be considered in space where time, money, and other concepts related to making a living do not come into play.¹⁰⁸

For many low- and middle-income people facing civil legal problems, the mere hiring of a lawyer is a major obstacle. According to a Legal Services Corporation study, low- and middle-income Americans turn to attorneys for legal assistance in only 20% of situations.¹⁰⁹ When low- and middle-income people are forced to go to court, they often represent themselves. For example, self-representation rates are over 95% in proceedings involving personal plights such as eviction and child support.¹¹⁰ The idealized adversarial system in which both parties are ably represented by counsel before a neutral fact finder is far more elusive than legal educators let on.¹¹¹

The appellate decisions discussed in law school classrooms also contain extensive reasoning. This is understandable from a pedagogical perspective—students cannot divine legal rules from cursory analyses. However, appellate courts routinely decide appeals without providing their reasoning. These decisions usually take the form of unpublished, nonprecedential opinions.¹¹² Nearly 90% of merits decisions in the U.S. Courts of Appeals take this form; overwhelmingly they pertain to indigent litigants.¹¹³ These decisions lay bare the two-tiered nature of the legal system and constitute law only in the sense that they are an exercise of government power.¹¹⁴

Legal education does not wholly ignore these realities—a professor, dean, or distinguished speaker may raise them under the rubric of “access to justice” or perhaps after evoking the Supreme Court’s decision in *Gideon v. Wainwright*.¹¹⁵ Some law

108. Jewel, *supra* note 102, at 1218 (footnote omitted).

109. LEGAL SERVS. CORP., THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 29 (2017), <http://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf> [<https://perma.cc/BDR6-98N3>].

110. *Id.* at 9.

111. See Russell G. Pearce, *Redressing Inequality in the Market for Justice: Why Access to Lawyers Will Never Solve the Problem and Why Rethinking the Role of Judges Will Help*, 73 *FORDHAM L. REV.* 969, 972 (2004) (“[T]he use of the market as the primary mechanism for distributing legal services guarantees significantly unequal justice under law. The more resources a party has, the better quality lawyering they can buy. . . . Rather than being the exception, inequality under law is more frequently the rule.” (footnote omitted)).

112. Merritt E. McAlister, “Downright Indifference”: Examining Unpublished Decisions in the Federal Courts of Appeals, 118 *MICH. L. REV.* 533, 535 (2020). One well-known former federal judge—a defender of unpublished, nonprecedential opinions—described them as “not safe for human consumption.” *Id.* (quoting Alex Kozinski, *In Opposition to Proposed Federal Rule of Appellate Procedure 32.1*, *FED. LAW.*, June 2004, at 36, 38). The absence of reason giving is both marginalizing to litigants and threatening to the legal system’s legitimacy. *Id.* at 541.

113. *Id.* at 535–37.

114. See *id.* at 536 (“Traditional appellate process . . . continues for the system’s haves. But for its have-nots, the promise of an appeal as of right has become little more than a rubber stamp . . .”).

115. 372 U.S. 335, 344 (1963) (“The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”).

students will work with lower-income clients in law clinics. But students who are themselves from lower-income backgrounds are likely to find the law school alienating because they will learn the law from the perspective of professors whose experiences with the legal system are starkly different than their own.¹¹⁶ To the extent that they occur at all, well-meaning professor-led discussions about “access to justice,” *Gideon*, and class-based inequalities can backfire because they risk stigmatizing low- and middle-income people as charity cases (or worse) as opposed to full and equal participants in the legal system.

In earlier eras, law schools trained students to provide legal services mostly to propertied interests.¹¹⁷ Contemporary law schools purport to prepare students to serve all segments of society while characterizing the legal system’s treatment of the poor and middle class as orthogonal to its actual operations. As Professor Rhode observes:

Unlike medicine, which has well-developed courses, schools and concentrations devoted to public health, law does little to prepare practitioners to address structural problems in the delivery of legal services and the administration of justice. As a consequence, many students graduate without an informed understanding of how the law affects those who cannot afford to invoke it.¹¹⁸

Law schools and law faculties are not geared to provide this “informed understanding,” leaving graduates unprepared to represent lower-income individuals and to address their complex mix of legal and socioeconomic needs.¹¹⁹

The marginalization of the experiences of lower-income individuals extends to faculty research. Although scholarly trends ebb and flow, legal scholarship has historically legitimated the legal system by emphasizing its neutral, scientific character and by tinkering at its margins.¹²⁰ The individual law professor is well advised to play it safe by ploughing this familiar terrain.¹²¹ Of course, some legal scholars grapple seriously with socioeconomic inequality, and there are scholarly movements focusing

116. See Harrison, *supra* note 6, at 120–21.

117. See ABEL, *supra* note 14, at 128–29.

118. Deborah L. Rhode, *Access to Justice: An Agenda for Legal Education and Research*, 62 J. LEGAL EDUC. 531, 545 (2013).

119. *Id.*; see also Andrew M. Perlman, *The Public’s Unmet Need for Legal Services & What Law Schools Can Do About It*, 148 DAEDALUS 75, 76 (2019) (“[Law schools] have trained students to engage in highly customized and expensive forms of lawyering, leaving them ill-equipped to . . . increase access to legal services.”).

120. See, e.g., Abel, *supra* note 19, at 87; Duncan Kennedy, *Cost-Reduction Theory as Legitimation*, 90 YALE L.J. 1275, 1276 (1981) (“[L]egal scholarship is one of the things that creates [the unequal society] I’ve just described—creates it, sustains it, legitimates it.”); Peter Gabel, *Book Review*, 91 HARV. L. REV. 302, 315 (1977) (reviewing RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* (1977)) (“It is only by transforming [economic] processes themselves rather than by tinkering with a legal system that legitimates them that we can create the possible conditions for a concrete justice . . .”).

121. See Aviam Soifer, *MuSings*, 37 J. LEGAL EDUC. 20, 24 (1987) (“Recently, there have been too many poignant incidents in which tenure was denied to scholars whose career paths were out of the ordinary, or whose writing did not fit comfortably within established patterns.”). The difficulties faced by early adherents of the critical legal studies movement are a cautionary tale. See generally Mark Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515, 1530–34 (1991) (describing how the senior faculty perceived early critical legal studies scholars’ lack of interest in doctrinal scholarship as a “lack of judgment,” playing a role in their firing).

on class and poverty.¹²² But the need for such movements indicates the extent to which legal scholarship treats these issues as ancillary to the study of law.

Topic selection is another manifestation of this marginalization. To obtain tenure and build national reputations, law professors are incentivized to write about prestigious topics that will appeal to their colleagues as well as law review editors at elite law schools.¹²³ This creates a feedback loop whereby professors and law reviews reinforce their status by continuing to write on these topics while neglecting less prestigious ones that may be of more practical utility and impact.

For example, legal scholarship almost entirely eschews state courts in favor of federal courts, even though the former hear all but a sliver of civil cases and lie “at the heart of our civic, economic, and social life.”¹²⁴ Administrative courts also receive comparatively little scrutiny, notwithstanding their prodigious caseloads and impact.¹²⁵ The number of scholars who focus on crucial government programs such as Social Security Disability Insurance, Temporary Assistance for Needy Families, and the Supplemental Nutrition Assistance Program—relied upon by tens of millions of Americans—would barely fill a seminar room.

Might the state of affairs in legal education be different were the legal academy to include more individuals from lower-income backgrounds? It is impossible to state definitively, but increased representation could disrupt prevailing pedagogical orthodoxies and open new avenues of scholarly inquiry. Professors who have experienced the inequities of the legal system firsthand should be able to more effectively address these inequities and impress them upon students of varied socioeconomic backgrounds.¹²⁶ With a critical mass of professors from these backgrounds, there would likely be greater demand for legal scholarship that takes the experiences of low- and middle-income people seriously. However, as long as law schools pay little heed to socioeconomic diversity in hiring, non-elite perspectives will continue to be underrepresented.

122. See, e.g., Edgar S. Cahn, *Reinventing Poverty Law*, 103 YALE L.J. 2133, 2133 (1994); June Carbone, *Unpacking Inequality and Class: Family, Gender and the Reconstruction of Class Barriers*, 45 NEW ENG. L. REV. 527, 528–29 (2011); Athena D. Mutua, *Introducing ClassCrits: From Class Blindness to a Critical Legal Analysis of Economic Inequality*, 56 BUFF. L. REV. 859, 860 (2008).

123. See Erwin Chemerinsky, *Foreword: Why Write?*, 107 MICH. L. REV. 881, 881 (2009) (suggesting that law faculty are increasingly strategic and sophisticated in terms of topic selection).

124. Anna E. Carpenter et al., *Studying the “New” Civil Judges*, 2018 WIS. L. REV. 249, 250. As the authors note, only 1% of civil cases are filed in the federal courts. *Id.* at 252; see also Ethan J. Leib, *Localist Statutory Interpretation*, 161 U. PA. L. REV. 897, 898–99 (2013) (“[L]egal scholars have almost universally ignored the law in local courts, favoring the study of federal courts and state appellate courts.”).

125. E.g., Milan Markovic, *Lawyers and the Secret Welfare State*, 84 FORDHAM L. REV. 1845, 1845–49 (2016). For example, the Social Security Administration’s Office of Disability Adjudication and Review hears over seven hundred thousand claims a year. *Id.* at 1850. By way of comparison, the federal district courts collectively heard 358,563 cases in 2018. *Federal Judicial Caseload Statistics 2018*, U.S. COURTS, <http://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2018> [https://perma.cc/22U2-NK5L] (last visited May 1, 2020).

126. See Harrison, *supra* note 6, at 120; Higdon, *supra* note 7, at 192.

CONCLUSION

This Essay has sought to provide empirical evidence of law professors' socioeconomic backgrounds. Intentional or not, law schools appear to hire graduates of colleges dominated by families from the top income quintile. Law professors who are from less advantaged backgrounds probably surmounted numerous obstacles to attain their positions, beginning with admission into elite colleges. Future research should measure the precise effects of attending an Ivy-Plus or other elite college on the likelihood of obtaining a law professor position.

Law schools may not appreciate the extent to which their preoccupation with various types of pedigree affects the legal academy's socioeconomic diversity. The notion of leading colleges as meritocratic bastions is deeply ingrained.¹²⁷ Yet, these colleges enroll few students from lower-income backgrounds, and the lower-income students who do attend these colleges often struggle to adapt to their privileged environs and peers. The legal academy cannot achieve a socioeconomically diverse professoriate without being open to a variety of educational backgrounds.

Of course, graduates of elite colleges and law schools will always have some advantages in the law professor hiring market. They will have generally worked in the most prestigious legal practice settings, completed the most desirable clerkships, and gained admission into the best fellowship and doctoral programs. But this is hardly reason for law schools to compound these advantages further.

The legal academy touts its commitment to diversity but hires mostly from the toniest colleges and law schools. A reexamination of law schools' hiring practices is long overdue. The economically advantaged should not have a virtual monopoly over legal education.

127. For a defense, see ANTHONY T. KRONMAN, *THE ASSAULT ON AMERICAN EXCELLENCE* 186 (2019).