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Law School as Straight Space

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LAW SCHOOL AS STRAIGHT SPACE

Swethaa S. Ballakrishnen*

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INTRODUCTION

Professor Deborah L. Rhode was keenly attuned to a persistent diversity irony, which is that, despite its purported commitments to equality, law

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remains one of the least diverse professions in the nation.¹ Rhode's particular lament was about racial diversity, but her argument holds strains of truth for a range of underrepresented groups within the legal profession, many of whom she paid keen attention to over the course of her unmatched career.² Over the last few decades, there has been an increasing interest in tracking diversity demographics and trends within the U.S. legal profession,³ but this has been more performative than substantive,⁴ with most "wins" for diversity being much more visible at lower tiers of organizations and workplaces.⁵

1. Deborah Rhode, *Law Is the Least Diverse Profession in the Nation. And Lawyers Are Not Doing Enough to Change That.*, WASH. POST (May 27, 2015, 8:25 AM), <https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that/> [https://perma.cc/WZ4B-NW2D]. For an interview that discusses the ways in which Rhode further examines this irony, see also Bloomberg Law, *Law: The Least Diverse Profession*, YOUTUBE (Jan. 26, 2016), <https://www.youtube.com/watch?v=SEzT2jPYG90> [https://perma.cc/6CE3-FAD2].

2. There are several important interventions that Rhode made to diversity scholarship within the legal profession, many of which focused on gender but were committed to an intersectional identity perspective. See, e.g., Deborah L. Rhode & Amanda K. Pachel, *Diversity on Corporate Boards: How Much Difference Does Difference Make?*, 39 DEL. J. CORP. L. 377 (2010). Similarly, her coauthored casebook highlights many of these theoretical and policy issues pertaining to gender. See KATHARINE T. BARTLETT, DEBORAH L. RHODE, JOANNA L. GROSSMAN & DEBORAH L. BRAKE, *GENDER LAW AND POLICY* (3d ed. 2021).

3. For example, the American Bar Association (ABA) and the National Association for Law Placement (NALP) each publish public annual surveys with demographics and trends across a range of diversity metrics. The ABA has provided some diversity information since 1940 and diversity data in annual lawyer population surveys since 2009, while the NALP has provided some diversity information since 1993 and annual diversity reports since 2016. Since 2009, the Leadership Council on Legal Diversity (LCLD) has published periodic impact reports on the growth and retention of diverse lawyers among its membership organizations (mostly corporations, but also a significant number of law firms). See, e.g., LEADERSHIP COUNCIL ON LEGAL DIVERSITY, 2018 IMPACT REPORT (2018), https://www.lclldnet.org/media/uploads/resource/2018_Impact_Report_W.pdf [https://perma.cc/R7TB-Y6ZV]. For a discussion on these contrasting demographics and the ways in which legal organizations internalize them in performative rather than substantive ways, see Swethaa S. Ballakrishnen, *Rethinking Inclusion: Ideal Minorities, Inclusion Cultures and Identity Capitals in the Legal Profession*, LAW & SOC. INQUIRY (forthcoming 2023) (on file with author).

4. The most recent ABA National Lawyer Population Survey, for example, reveals that from 2012 to 2022, the proportion of lawyers of color have increased from 12 percent to 19 percent of the profession. Yet, even with the decrease in their population, white lawyers (who comprised 88.4 percent of the profession in 2012 but 81 percent in 2022) are still overrepresented compared to their share of the total U.S. population (60.1 percent), and only twenty-six states report the race and ethnicity of lawyers. AM. BAR ASS'N, ABA NATIONAL LAWYER POPULATION SURVEY 2012–2022 (2022), https://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-demographics-2012-2022.pdf [https://perma.cc/E88M-5LS2]. The representation of lawyers of color in law firms is slightly higher—closer to a fourth of all lawyers—although there are slow gains in these organizations too, with higher gains in entry-level positions and certain subdemographics. See Ballakrishnen, *supra* note 3; see also AM. BAR ASS'N, ABA PROFILE OF THE LEGAL PROFESSION 37–38 (2020), <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf> [https://perma.cc/98XW-BUFM].

5. In 2021, for example, 55 percent of all summer 1L associates were diversity fellows, but only 26.5 percent were associates of color, and although firms reported the highest ever number of partners of color, they made up only 10.2 percent of partners. For data on 1L summer associates and connection to diversity fellowships, see NAT'L ASS'N FOR L. PLACEMENT, PERSPECTIVES ON 2021 LAW STUDENT RECRUITING (2022), <https://www.nalp.org/>

Further, although categories like race and gender have received increasing attention⁶ in diversity research, less is known about other nonnormative actors in the legal profession whose voices remain peripheral because of their minority status and/or historic representation.⁷ This means that we have little aggregate data about categories like generational capital,⁸ sexual

uploads/Research/Perspectiveson2021RecruitingActivity.pdf [https://perma.cc/2M3D-9RRL]. 2022 data on associates and partners of color, as provided by the ABA, are available at *Demographics*, ABA PROFILE OF THE LEGAL PROFESSION 2022, <https://www.abalegalprofile.com/demographics.php> [https://perma.cc/SVS8-65F4] (last visited Feb. 6, 2023). For a fuller discussion, see Ballakrishnen, *supra* note 3.

6. For example, the ABA has long produced demographic metrics on gender (since 1956!) and, more recently, diversity reports that have systematically presented intersectional data on race and gender. However, this interest in intersectionality data has had little impact. See Ballakrishnen, *supra* note 3. In terms of actual numbers from 2006–2021, for example, changes in diversity percentages were +8 percent for women, +18 percent for people of color, +13 percent for women of color, and +7 percent for LGBTQ+ individuals, and in 2021, 41.34 percent of summer associates were people of color, a 54 percent increase from 1993. See CLARA N. CARSON & JEEYOON PARK, AM. BAR FOUND., THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 2005 (2005), https://www.americanbarfoundation.org/uploads/cms/documents/2005_lawyer_statistical_report.pdf [https://perma.cc/6R75-D6XD]; NAT'L ASS'N FOR L. PLACEMENT, 2021 REPORT ON DIVERSITY IN U.S. LAW FIRMS (2022), <https://www.nalp.org/uploads/2021NALPReportonDiversity.pdf> [https://perma.cc/U499-HJW4].

7. For example, the Law School Admission Council (LSAC) started including data on indigenous law students in 2009 and has, since 2010, used more inclusive categories. See Miranda Li, Phillip Yao & Goodwin Liu, *Who's Going to Law School?: Trends in Law School Enrollment Since the Great Recession*, 54 U.C. DAVIS L. REV. 613 (2020).

8. The NALP, for example, started asking about parental education in 2020, and the data show important trends for first generation students (i.e., students without parents who have any college degree). Although there were racial differences in these findings, whether someone decides to pursue law school is more affected by general parental education than whether they come from “lawyer families” (63 percent of law students had parents with higher educational degrees versus 14.4 percent whose parents had a J.D.). See NAT'L ASS'N FOR L. PLACEMENT, *supra* note 6; *New Findings on Disparities in Employment Outcomes Based on Level of Parental Education*, NAT'L ASS'N FOR L. PLACEMENT (Nov. 2021), <https://www.nalp.org/1121research> [https://perma.cc/DQ96-YSRG] (see Chart 1).

orientation,⁹ and disability,¹⁰ and when we do know about them, their narratives do not highlight nonnormative subpopulations within these identities.¹¹ In honoring Rhode's commitment to making space for the marginal in legal education¹² and clarifying the "no-problem" problems¹³ in

9. The ABA claims that there are no reliable statistics available on the total number of lawyers who identify as LGBTQ+ in the legal profession overall. However, they have data on LGBTQ+ partners and associates, beginning in 2011, based on the 2021 NALP report on diversity. *Demographics*, *supra* note 5. Starting in 2020, the ABA National Lawyer Population Survey started asking questions regarding attorneys who identified as LGBTQ+ and/or as having a disability. As of 2021, however, results on the total number of lawyers were insufficient and could not be included in the report. See AM. BAR ASS'N, PROFILE OF THE LEGAL PROFESSION 38–39 (2021), <https://www.americanbar.org/content/dam/aba/administrative/news/2021/0721/polp.pdf> [<https://perma.cc/JY24-XKFC>]. The NALP has been better about collecting these data, and as early as 2003 reported on disabled and LGTBQ+ attorneys (with 0.1 percent identifying as disabled in that survey and less than 1 percent identifying as LGBTQ+). All NALP reporting on diversity can be found at NAT'L ASS'N FOR L. PLACEMENT, *supra* note 6. See also *NALP Form Reporting of Disabled and Openly Gay Attorneys*, NAT'L ASS'N FOR L. PLACEMENT (Jan. 2003), <https://www.nalp.org/2003jannalpformreporting> [<https://perma.cc/3YW4-5Q3L>]. According to the NALP's fifty-year timeline, data collection on LGBTQ+ attorneys began in 1996. *50 Years—A NALP Timeline*, NAT'L ASS'N FOR L. PLACEMENT, https://www.nalp.org/50_years_timeline [<https://perma.cc/87VV-GN6N>] (last visited Feb. 6, 2023). In 2020, for the first time, NALP began reporting gender identity categories for its employment report and salary survey for the class of 2020. *Id.* The Leadership Council on Legal Diversity claims to not gather profession-wide data, though they survey members and program participants. At least since 2014, they have been gathering data on their fellows' gender (using the categories "male" and "female") and their race. See LEADERSHIP COUNCIL ON LEGAL DIVERSITY, FELLOWS ALUMNI SURVEY HIGHLIGHTS (2014), <https://www.lclldnet.org/media/uploads/resource/Fellows-Alumni-Survey-Results-2014-Infographic-6.22.15.pdf> [<https://perma.cc/6KLP-A3GM>]. The 2014 study included the classes of 2011, 2012, and 2013. *Id.* The 2016 study, which covered the classes of 2011–2015, also included the category "LGBT." *Fellows Alumni Survey Provides Crucial Data*, LEADERSHIP COUNCIL ON LEGAL DIVERSITY (July 11, 2016), <https://www.lclldnet.org/news/2016/07/highlights-2015-fellows-alumni-survey/> [<https://perma.cc/S653-H33H>].

10. See, e.g., NAT'L ASS'N FOR L. PLACEMENT, *supra* note 6.

11. *Id.* For example, the NALP only started collecting aggregate data on nonbinary individuals in 2020. However, there are few if any accounts about the qualitative experience of nonbinary and trans lawyers (a rising but small population) in the legal profession. For significant exceptions, see Ezra Graham Lintner, *To Each Their Own: Using Nonbinary Pronouns to Break Silence in the Legal Field*, 27 UCLA WOMEN'S L.J. 213 (2020); Ann Juliano, *How to Look Like a Lawyer*, 34 J.C.R. & ECON. DEV. 151 (2021).

12. In her 1992 article, *Ethics by the Pervasive Method*, Rhode made the case for going beyond the "Lone Ranger" approach of course coverage and warned that "[t]runcated coverage can be worse than no coverage at all; cursory treatment reinforces student skepticism and suggests that value discussions are indeterminate and unimportant." See Deborah L. Rhode, *Ethics by the Pervasive Method*, 42 J. LEGAL EDUC. 31, 52–53 (1992). Rhode made similar overtures for the role of feminist perspectives and pedagogy in legal education in her 1999 book, *Speaking of Sex: The Denial of Gender Inequality*. Note that ABA Standard 303, which governs law school curricula, at the time made no mention of legal ethics and was limited to offering adequate opportunity for studies in small group settings like seminars and directed research, as well as smaller discussion sections and credit for correspondence. See AM. BAR ASS'N, STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS (1992), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/standardsarchive/1992_93_standards.pdf [<https://perma.cc/5R3T-ZRGD>].

13. See *infra* Part II. For the first articulation of the "no-problem" problem, see Deborah L. Rhode, *The "No-Problem" Problem: Feminist Challenges and Cultural Change*, 100 YALE L.J. 1731 (1991) [hereinafter Rhode, *The No-Problem Problem*]. This is a strain

our midst, this Essay focuses on one strain of nonnormative experience—that of genderqueer¹⁴ persons—to clarify the ways in which law schools, despite their intention and posturing (and sometimes, *in spite of* such posturing),¹⁵ reinforce linear hierarchies of identity and performance. Although just a small number of lawyers—less than 1 percent—identify as genderqueer, their experiences of isolation within professional spaces highlight important ways in which the legal profession reinforces and expects normativity.

Part I offers an overview of queer¹⁶ marginality in the legal profession by outlining the demographic trends of LGBTQIA+ individuals¹⁷ and the ways in which these data leave out nuances and intersections that might be relevant. Particularly, by using direction from Rhode’s early article, *Whistling Vivaldi: Legal Education and the Politics of Progress*,¹⁸ this Essay suggests that understanding genderqueer individuals’ experiences in legal education might be crucial to building sustainable equity and responding to new demographic shifts. Part II uses ethnographic interview data to highlight

that Rhode carried through much of her work, often in new contexts, to explain the minority experience. See, e.g., Deborah L. Rhode, *Gender and the Profession: The No-Problem Problem*, 30 HOFSTRA L. REV. 1001 (2002) [hereinafter Rhode, *Gender No-Problem Problem*]; DEBORAH L. RHODE, SPEAKING OF SEX: THE DENIAL OF GENDER INEQUALITY (1999).

14. This Essay uses “genderqueer” interchangeably with “nonnormative” and “nonbinary.”

15. On the growing distance between intention and application in the law firm context, see Russell G. Pearce, Eli Wald & Swethaa S. Ballakrishnen, *Difference Blindness vs. Bias Awareness: Why Law Firms with the Best of Intentions Have Failed to Create Diverse Partnerships*, 83 FORDHAM L. REV. 2407 (2015).

16. The categories of sexual orientation and gender identity are often conflated together in the literature as “sexual minorities.” Andrew S. Park, *Respecting LGBTQ Dignity Through Vital Capabilities*, 24 J. GENDER RACE & JUST. 271, 321 (2021). This Essay instead focuses on nonbinary and genderqueer students to operationalize more specifically on queerness as a category beyond orientation or sexual choice and as active identity. For an elaboration on this distinction about queerness as distinct from sexual choice, see Professor Eve Kosofsky Sedgwick’s definition of queerness as referring to “the open mesh of possibilities, gaps, overlaps, dissonances and resonances, lapses and excesses of meaning when the constituent elements of anyone’s gender, of anyone’s sexuality, aren’t made (or can’t be made) to signify monolithically.” EVE KOSOFSKY SEDGWICK, TENDENCIES 8 (1993).

17. Note that although the term “LGBTQIA+” is usually used to signal sexual minorities and does not necessarily predict genderqueerness, most nonbinary or genderqueer persons identify as falling within the umbrella category of LGBTQ+. The Williams Institute at the UCLA School of Law approximates that about 1.2 million LGBTQ adults in the United States identify as nonbinary. Rachel Dowd, *1.2 Million LGBTQ Adults in the U.S. Identify as Nonbinary*, UCLA SCH. OF L. WILLIAMS INST. (June 22, 2021), <https://williamsinstitute.law.ucla.edu/press/lgbtq-nonbinary-press-release/> [https://perma.cc/PU56-V7VA]. Note also that this estimate includes all who identify as nonbinary, irrespective of how they might be categorized based on more traditional sex markers and their extensions. *Id.* The report, for example, highlights that trans and cisgender adults alike could identify as nonbinary—even among nonbinary LGTBQ+ adults, for example, “42% identify as transgender, 39% identify as cisgender LBQ, and 19% identify as cisgender GBQ.” *Id.* Yet, it feels important to highlight that “cis” and “trans” are both prescribed categories that nonbinary adults might not necessarily align with in surveys like this, and choices among these categories might still be only in response to institutionalized notions of gender identity and sexual choice that have been imposed on them.

18. Deborah L. Rhode, *Whistling Vivaldi: Legal Education and the Politics of Progress*, 23 N.Y.U. REV. L. & SOC. CHANGE 217 (1997).

the perspectives of genderqueer law students. It demonstrates the ways in which “normal” professional practices in law school reinforce the rigidity of the gender binary and call for a performance of propriety that necessarily alienates students who do not fall into strict categories of identity. The gendered nature of law school has the dual (and somewhat paradoxical) implication of making students both want to establish their gender nonnormative identities more actively *and* feel like those boundaries of representation are not respected. It is this denial of queer inequality—a form of “blasé discrimination”¹⁹—that offers new operationalization to Rhode’s theorizing about the “no-problem” problem.

Part III uses these perspectives from the periphery as central tools for unpacking the structures of the law school. In other work,²⁰ I have started to make the case for the periphery as an important node from which to understand the coordinates of what we think of as “normal” and “ideal” in institutional structures. Beyond explaining mechanisms and employing informed analysis, Rhode was an expert at crafting theoretical hooks that had intellectual “legs” that would last beyond the particularities of a given context.²¹ When I wrote *Accidental Feminism: Gender Parity and Selective Mobility Among India’s Professional Elite*,²² a book that Rhode read in so many draft forms, she would often remark about the “inspired title” and the power of a “colorful phrase” to do analytical work in the minds of readers.²³ It is a similar direction that I heed as I use these student experiences at the periphery to build on Professor Bennett Capers’s framework of law school as a “white space.”²⁴ I offer that the heteronormative assumptions that are baked into law school form “straight” expectations that are inherent in its institutional framework and that it is, in plain sight,²⁵ without ever being called out, a “straight space.” Navigation by those who do not fit these categorical frameworks of normativity is always at a cost, which leads

19. See *infra* note 76 and accompanying text.

20. See Ballakrishnen, *supra* note 3.

21. Rhode took special pleasure in writing eloquently and building on theories across disciplines and sites. For example, the *Whistling Vivaldi* framework is borrowed from the autobiographical account of Brent A. Staples’s life as a graduate student at the University of Chicago and his tendency to begin “going out of his way onto side streets to spare [couples] the sense that they were being stalked,” in order to displace stereotypes that might have attached to his identity as a Black man in a high crime neighborhood. See Rhode, *supra* note 18; BRENT A. STAPLES, *PARALLEL TIMES: GROWING UP BLACK AND WHITE* (1994). This analytical framework was further popularized more than a decade after that article by psychologist Claude M. Steele’s book of the same name and is now synonymous as a way to think about stereotype threat. See generally CLAUDE M. STEELE, *WHISTLING VIVALDI: HOW STEREOTYPES AFFECT US AND WHAT WE CAN DO* (2011).

22. SWETHAA S. BALLAKRISHNEN, *ACCIDENTAL FEMINISM: GENDER PARITY AND SELECTIVE MOBILITY AMONG INDIA’S PROFESSIONAL ELITE* (2021).

23. Email from Deborah L. Rhode, Professor, Stanford L. Sch., to author (Nov. 3, 2017) (on file with author).

24. Bennett Capers, *The Law School as a White Space*, 106 MINN. L. REV. 7 (2021).

25. I draw inspiration for this theory about thinking of the law as violent in plain sight, especially as it pertains to queer spaces, from DEAN SPADE, *NORMAL LIFE* (2015). See also LIBBY ADLER, *GAY PRIORI: A QUEER CRITICAL LEGAL STUDIES APPROACH TO LAW REFORM* (2018).

students to actively push back against them, even if such expression comes at the behest of new costs. Using accounts from students about name calling and pedagogy in classrooms, as well as the dress, professionalization, and affect expectations seen as inherent to becoming a “good lawyer,” I suggest the ways in which these prefigurations²⁶ of structural exclusion might impact a range of nonnormative subjects. I then conclude in Part IV by suggesting that paying attention to these subpopulations of students (of whom nonbinary and trans students are inexhaustive examples) is crucial for those committed to reforming legal education beyond platitudes of equality. Rhode’s interest in justice was not just about precise analysis and theory; it was committed to unveiling the structures of inequality that were not yet named. It is the spirit of that endeavor that buoys this Essay’s main contribution.

I. SPEAKING OF QUEER: GENDER MARGINALITY IN THE LEGAL PROFESSION

In her article, *Whistling Vivaldi: Legal Education and the Politics of Progress*, about the changing nature of law school classrooms, Rhode recalled the ways in which diversity was seldom discussed in her own law school experience, and how very normalized such absence of dialogue was.²⁷ She recalled that she had “no course from a woman law professor, and none that addressed gender inequality” and that what was “most striking” to her at the time of writing was “how little of this was striking to [her] then.”²⁸ Writing two decades after my own law school experience, and in a comparable position of reflection—I am a nonbinary law professor who teaches gender and queer theory in my classes, but was never struck by my own lack of such exposure as a student—I cannot help but acknowledge the ways in which everyday exclusion of nonnormative perspectives are built into legal structures. At least part of this is attributable, as Rhode warned us, to the sense that most problems of diversity have been addressed only through partial progress that acts as “its own obstacles to further change.”²⁹ Unlike the classroom exclusions that Rhode spoke of a quarter century ago, women professors and students alike are no longer a minority in legal education. As of 2021, women comprised 55 percent of law students, 45 percent of faculty, and 42 percent of all law school deans.³⁰ Even though this hardly speaks to substantive equality,³¹ these demographic shifts make

26. Sameer M. Ashar, *Pedagogy of Prefiguration*, YALE L.J.F. (forthcoming 2023) (on file with author).

27. See Rhode, *supra* note 18.

28. See *id.* at 217.

29. *Id.* at 218.

30. Elizabeth Katz, Kyle Rozema & Sarath Sanga, *Women in U.S. Law Schools, 1948–2021*, at 1 (Nw. Pub. L. Rsch., Working Paper No. 22-35, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4194210 [<https://perma.cc/K6CV-R23M>]. These numbers, of course, do not do justice to the stark substantive inequalities that are still inherent in these institutions. *Id.*

31. For important discussions about inequalities in representation, see MEERA DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* (2019) (discussing women of color in the legal academy). See also Rachel López, *Unentitled: The Power of Designation in*

the current classroom a space where gender inequities and positionalities can be voiced and made clear. If there were a school that did not have a female law professor or a class that did not address gender inequality, the grievance would be obvious and necessarily *striking*.³²

Queer representation in legal spaces looks a little different. There are historic accounts of both latent and blatant homophobia in the legal profession,³³ and Rhode's report for *The National Law Journal* as early as 1996 documented homophobia in studies done by bar associations in Los Angeles, New York, and San Francisco.³⁴ There has also been a slowly increasing interest in collecting data about non-straight attorneys, but until a few years ago, this meant "openly gay" lawyers, thus obscuring transgender and broader categories of queer populations until 2016 and 2021, respectively.³⁵ Further, there are important organizations that are nodes for queer law students and attorneys,³⁶ including the American Association of Law Schools' (AALS) Section on Gay and Lesbian Legal Issues, which has

the Legal Academy, 73 RUTGERS U. L. REV. 923 (2021) (discussing the status of those who have more precarious titles within broad categories of faculty positions); Elizabeth Bodamer, *Do I Belong Here?: Examining Perceived Experiences of Bias, Stereotype Concerns, and Sense of Belonging in U.S. Law Schools*, 69 J. LEGAL EDUC. 455 (2020) (discussing racial and gendered student experiences).

32. While about half of all law schools had no female faculty in the 1960s (a decade before Rhode was in law school), the numbers have since changed to reflect a visible, more diverse faculty composition. Katz et al., *supra* note 30, at 37.

33. Older studies about discrimination of gendered and sexual minorities reveal high rates of experienced exclusion for these attorneys. *See, e.g.*, MASS. LESBIAN & GAY BAR ASS'N, THE PREVALENCE OF SEXUAL ORIENTATION DISCRIMINATION IN THE LEGAL PROFESSION IN MASSACHUSETTS (1994), <https://lgbtqbar.org/assets/ThePrevalenceOfSexualOrientationDiscriminationInTheLegalProfessioninMassach.pdf> [<https://perma.cc/MNJ9-LTAB>] (revealing that 75 percent of the lesbian and gay attorneys surveyed had experienced some form of identity-based discrimination). Newer studies on broader categories of queerness find that discrimination continues to be common for these attorneys. *See* Peter Blanck, Fitore Hyseni & Fatma Altunkol Wise, *Diversity and Inclusion in the American Legal Profession: Discrimination and Bias Reported by Lawyers with Disabilities and Lawyers Who Identify as LGBTQ+*, 47 AM. J.L. & MED. 9 (2021); *see also* ABA Study: *Disabled, LGBTQ+ Lawyers Face Discrimination*, AM. BAR ASS'N (July 20, 2020), <https://www.americanbar.org/news/abanews/aba-news-archives/2020/07/aba-study-lgbtq-disabled-lawyers/> [<https://perma.cc/8237-K4J7>] (finding that a fifth of the population surveyed reported intentional biases).

34. Deborah L. Rhode, *Anti-Gay Prejudice Persists in Legal Workplace*, 19 NAT'L L.J. 10 (1996). Rhode's work did not deal with sexual identity explicitly over the next several years, although it mentioned it in passing. *See, e.g.*, Deborah L. Rhode, *Gender and Professional Roles*, 63 FORDHAM L. REV. 39 (1994).

35. NAT'L ASS'N FOR L. PLACEMENT, 2016 REPORT ON DIVERSITY IN U.S. LAW FIRMS (2017), <https://www.nalp.org/uploads/2016NALPReportonDiversityinUSLawFirms.pdf> [<https://perma.cc/D5VS-X7C8>]. Note that the first NALP infographic on these populations was not produced until June 2016 (showing that 0.33 percent of associates and 0.36 percent of partners reported having disabilities), and the report that year included trends on lawyers who identified as LGBT (2.48 percent). *Id.* As of 2021, 4.16 percent of all lawyers identified as LGBTQ. *See* NAT'L ASS'N FOR L. PLACEMENT, *supra* note 8, at 35–37.

36. On the importance of these spaces as nodes for community making and building, see William B. Rubenstein, *In Communities Begin Responsibilities: Obligations at the Gay Bar*, 48 HASTINGS L.J. 1101 (1997).

existed since 1983,³⁷ and the National Lesbian and Gay Law Association, since 1987.³⁸ But recognition for genderqueer and transgender attorneys within these spaces has been more recent.³⁹

Law schools, similarly, are increasingly more likely to publish their statistics of LGB⁴⁰—and to a smaller extent, LGBT or LGBTQ—students, but this conflation of sexual orientation and gender identity has left these minority subpopulations both over and underrepresented in important ways. Although there is a general sense that law school is no longer as blatantly homophobic as it was even a few decades ago,⁴¹ there is a less nuanced understanding of the ways in which gender nonconformity and presentation implicates these narratives.⁴² Nonbinary and trans student populations have

37. The Section on Gay and Lesbian Legal Issues is now called the Section on Sexual Orientation and Gender Identity. See also Patricia A. Cain & Jean C. Love, *Cincinnati: Before and After (A Love Story)*, 66 J. LEGAL EDUC. 460, 460–63 (2017); see also Francisco Valdes, *Solomon's Shames: Law as Might and Inequality*, 23 T. MARSHALL L. REV. 351 (1998) (emphasizing the important work of the AALS section).

38. The National Lesbian and Gay Law Association is now the National LGBTQ+ Bar Association. Although it was informally constituted in 1987 and incorporated in 1989, it did not become an affiliate of the ABA until 1992. See *The National LGBTQ+ Bar Association and Foundation*, LGBTQ+ BAR, <https://lgbtqbar.org/about/about-us/> [<https://perma.cc/ZCT7-6878>] (last visited Feb. 6, 2023).

39. For a history of the AALS Section on Sexual Orientation and Gender Identity, see the spring 2017 special issue of the *Journal on Legal Education* edited by Kate O'Neill and Kellye Testy with articles on “combatting discrimination within and without the legal academy.” Kate O'Neill & Kellye Testy, *From the Editors*, 66 J. LEGAL EDUC. 455, 456 (2017). For a history of the LGBTQ+ Bar's Transgender Law Institute—the participatory space within the LGBTQ+ Bar that brings together the trans community and allies for community action—see *Transgender Law Institute*, LGBTQ+ BAR, <https://lgbtqbar.org/annual/program/institutes/transgender-law-institute/> [<https://perma.cc/DAE4-UFFB>] (last visited Feb. 6, 2023).

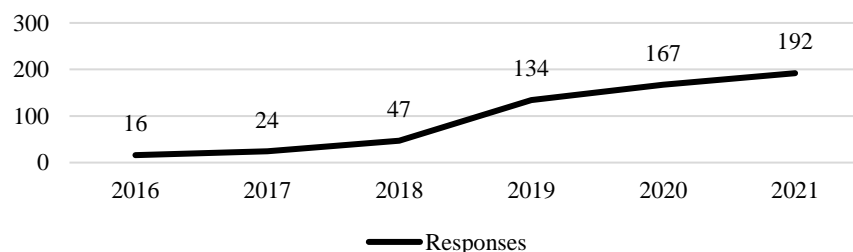
40. *Guidance for Law Schools Gathering LGBT Student Data*, NAT'L ASS'N FOR L. PLACEMENT (Aug. 2012), https://www.nalp.org/ndls_gathering_lgbt_data [<https://perma.cc/D94M-45DT>]. In 2014, the ABA began collecting data for an “other” category in their gender demographic reports (for faculty, the category is called “other/not reported”; for students, the gender categories are “M,” “W,” “AGI,” and “PNR”). *509 Required Disclosures*, AM. BAR ASS'N, <https://www.abarequireddisclosures.org/Disclosure509.aspx> [<https://perma.cc/Y36V-SD6N>] (last visited Feb. 6, 2023). The LSAC began collecting data on “gender diverse” applicants in the 2022–2023 school year. See LAW SCH. ADMISSION COUNCIL, U.S. ETHNICITY, SCHOOL TYPE, AND GENDER IDENTITY (2022), <https://report.lsac.org/VolumeSummaryOriginalFormat.aspx> [<https://perma.cc/45DD-GHVG>].

41. For examples of law school narratives during this period, see KENJI YOSHINO, *COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS* (2006); Scott N. Ihrig, *Sexual Orientation in Law School: Experiences of Gay, Lesbian, and Bisexual Law Students*, 14 MINN. J.L. & INEQ. 555 (1995). On latent microaggressions that continue to persist, see Kaitlin M. Boyle, Elizabeth Culatta, Jennifer L. Turner & Tara E. Sutton, *Microaggressions and Mental Health at the Intersections of Race, Gender, and Sexual Orientation in Graduate and Law School*, 15 J. WOMEN & GENDER HIGHER EDUC. 157 (2022).

42. There seems to be little early writing or awareness of gender identity or transition services in law school within the legal academic scholarship. For an important exception, see Elizabeth M. Glazer, *Name-Calling*, 37 HOFSTRA L. REV. 1 (2008). The last few years have seen an increasing amount of engagement with these issues, many of which I deal with more substantively in Part II. On nonbinary identity rights and claims more generally, see Jessica A. Clarke, *They, Them, and Theirs*, 132 HARV. L. REV. 894 (2019), and the urgent and illuminating work of Beyond Binary Legal at *Our Work*, BEYOND BINARY LEGAL,

only just started to be included in annual law school reports, but data show that there is a growing population of students who might identify as genderqueer (as shown by Figures 1 and 2 below). These increased numbers⁴³ might not just mean that there are more trans or nonbinary lawyers than ever before, but rather that there is an interest in paying attention to these populations alongside the cultural conditions that make outing possible,⁴⁴ even if political conditions continue to pose a danger in other contexts.⁴⁵

Figure 1: American Bar Association (ABA) Survey—Fall 1L “Other” Enrollment Between 2016 and 2021⁴⁶



<https://www.beyondbinarylegal.org/our-work> [<https://perma.cc/74W2-NW8P>] (last visited Feb. 6, 2023).

43. For example, California’s most recent diversity report on lawyers shows that 9 percent of all attorneys identify as LGBTQIA+ (the same as the statewide adult LGBT population), the highest ever recorded. See *Diversity of 2022 California Licensed Attorneys*, STATE BAR OF CAL., <https://publications.calbar.ca.gov/2022-diversity-report-card/diversity-2022-california-licensed-attorneys> [<https://perma.cc/QHG6-TYET>] (last visited Feb. 6, 2023); see also Hans Johnson, *California’s LGBT Population*, PUB. POL’Y INST. OF CAL. (June 28, 2022), <https://www.ppic.org/blog/californias-lgbt-population/> [<https://perma.cc/VH6Q-WJKQ>].

44. On the importance of understanding missing archives in queer data and their implications, see Anjali Arondekar, *Without a Trace: Sexuality and the Colonial Archive*, 14 J. HIST. SEXUALITY 10 (2005).

45. LGBTQ+ people continue to be four times more likely to experience violence in their life than their straight counterparts, with people of color facing heightened bigotry. Federal Bureau of Investigation (FBI) data from 2019 illustrates a rise in anti-LGBTQ+ hate crimes, including higher rates of police brutality. See Press Release, Wyatt Ronan, Hum. Rts. Campaign, *New FBI Hate Crimes Report Shows Increase in Anti-LGBTQ Attacks* (Nov. 17, 2020), <https://www.hrc.org/press-releases/new-fbi-hate-crimes-report-shows-increases-in-anti-lgbtq-attacks> [<https://perma.cc/G5TQ-RANC>]; Maria Caspani, *Police Discrimination Against U.S. LGBT Community Pervasive: Report*, REUTERS (Mar. 4, 2015, 5:19 P.M.), <https://www.reuters.com/article/us-usa-lgbt-police-idUSKBN0M02JM20150304> [<https://perma.cc/VQ6B-ZJZR>]; JL Heinze, *Fact Sheet on Injustice in the LGBTQ Community*, NAT’L SEXUAL VIOLENCE RES. CTR. (June 24, 2021), <https://www.nsvrc.org/blogs/fact-sheet-injustice-lgbtq-community> [<https://perma.cc/929J-G84J>]. Similar statistics define everyday LGBTQ+ workplace discrimination, with almost half of all workers (46 percent) having experienced unfair treatment at work at some point in their lives, and one in three LGBT employees reporting discrimination at hiring and/or firing because of their sexual orientation or gender identity. See UCLA SCH. OF L. WILLIAMS INST., *LGBT PEOPLE’S EXPERIENCES OF WORKPLACE DISCRIMINATION AND HARASSMENT* (2021), <https://williamsinstitute.law.ucla.edu/publications/lgbt-workplace-discrimination/> [<https://perma.cc/8WYY-Z27E>].

46. One data point in 2016 was not included due to reporting inconsistencies.

The ABA numbers⁴⁷ show overall that the “other” category for gender identification might be increasingly reporting nonbinary data among students and faculty.⁴⁸ As Figure 1 shows, between 2016⁴⁹ and 2021 alone, the number of students who identified as “other” changed from sixteen students in the country to 192 students. This might still be a small percentage of all law students (about 0.5 percent, roughly similar to the number of indigenous students in American law schools), but the percentage change (of over 1,000 percent!) in five years is telling of an important trend, especially as cohorts of law students represent younger populations.⁵⁰ These data also have intersectional implications. Although there are more white students who identify as “other” than students of color (ninety-eight versus fifty-nine students, respectively), the percentages of all students of color who identify as “other” (0.42 percent) is slightly higher than the number of white students who identify as “other” (0.38 percent). Further, as Figure 2 below shows, the number of students of color who reported having an “other” gender identity increased six-fold, from ten students to about sixty students in the five years of observed data.

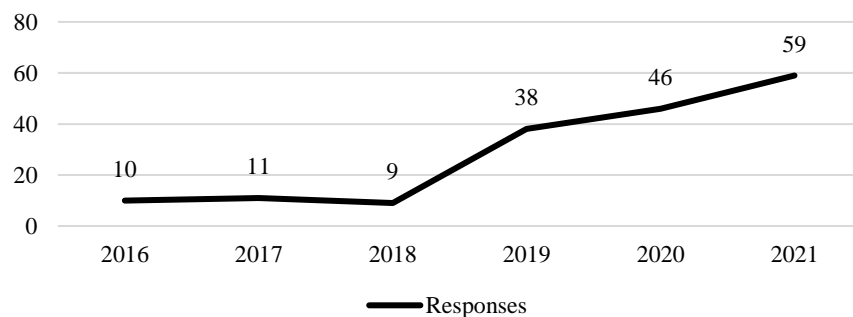
47. “Other” refers to students who do not identify as male or female. *See Std. 509 Data Guide*, AM. BAR ASS’N, <https://www.abarequireddisclosures.org/Disclosure509.aspx> [<https://perma.cc/3M5E-29NS>] (last visited Feb. 6, 2023) (accompanying guide). Raw data on school, race, and gender was gathered from the ABA website for each year of documented (and nonreported) disclosure to trace the first note of “other” documentation (which was in 2014, although it was not until 2016 that the report captured self-reporting data about gender queerness). *See id.*

48. Starting in 2014 and continuing to the most recent data collection, the ABA faculty disclosures reported “other” as a category alongside male and female. *See 509 Required Disclosures*, AM. BAR ASS’N, <https://www.abarequireddisclosures.org/> [<https://perma.cc/XP76-HNLT>] (last visited Feb. 6, 2023).

49. Although the “other” category was available from 2014, for the first two years, there were data discrepancies—for 2014 and 2015, “other” included all law students, but in 2016 only included 1Ls. *Id.* Totals were more standardized beginning in 2016 and to ensure accuracy, all overall totals were checked against law school totals.

50. Younger students are much more likely to identify as nonbinary, and studies show that newer cohorts of Gen Z are less and less tied to ideas of gender performance and conformity. *See, e.g.*, Elizabeth F. Schwartz, *Sexual Orientation and Gender Identity Bias*, FAM. ADVOC. Feb. 2, 2022, at 17, 18; *The Survey Is In: Gen Z Demands Diversity and Inclusion Strategy*, TALLO (Oct. 21, 2020), <https://tallo.com/blog/genz-demands-diversity-inclusion-strategy/> [<https://perma.cc/8ANQ-9BGL>]; Stevie Leahy, *Fostering Equity and Inclusion Across the Gender Spectrum*, 65 VILL. L. REV. 1105, 1113–14 (2020).

Figure 2: ABA Survey—Fall 1L “Other” Nonwhite Enrollment Between 2016 and 2021⁵¹



These might seem like low numbers overall, but it is exactly the “non-startling” nature of the demographic that deserves our attention. As students who are not yet engaged by law school rhetoric of what “good inclusion” looks like, students who identify in genderqueer ways threaten neat categories of potential inclusion posturing and, in turn, offer new insights into the culture of inclusion in legal institutions. As existing outliers who are not yet seen as a “problem,” these “no-problem” problems offer ways in which to observe the exact denial of discrimination that Rhode warned us to pay attention to. Being genderqueer in today’s legal profession is not exactly like being a woman half a century ago, but to the extent it calls attention to the experience of the marginalized, it might give us a more fleshed out account of the everyday inequalities that go unnoticed in plain sight.

Valuing diversity, as Rhode warned, “must become a central mission, not just in theory, but in practice.”⁵² But, as in much of her writings, musing sits alongside direction. Here, the road map for transforming theory into practice includes surveying marginalized students alongside institutional actors, paying attention to pedagogy and mentorship, and offering institutional support in ways that serve the community rather than prescribe a normative requirement.⁵³ Beyond acting as a reflection on structural inequality, the narratives of these students offer important ways to think about these broad aggregate data. It is this elucidation of the invisible problems in plain sight to which I turn next.

II. THE “NO-PROBLEM” PROBLEM: THE EVERYDAY DENIAL OF QUEER INEQUALITY

Research on the experiences of gender nonconforming adults in educational settings suggests that those adults consistently express a lower

51. See *supra* note 46.

52. Rhode, *supra* note 18, at 224.

53. See *id.*; see also *supra* note 44 and accompanying text.

sense of belonging than their cisgender peers.⁵⁴ Yet, although there is a slowly growing interest in these students in law schools, EDI (equity, diversity, and inclusion) efforts are still nascent and more likely to accommodate rather than effectuate substantive inclusion.⁵⁵ Most schools that responded to the National LGBTQ+ Bar Association's Law School Climate Survey reported having gender inclusive bathrooms, LGBTQ+ course offerings, queer-focused learning opportunities, and counseling.⁵⁶ Many schools also report that they are invested in recruiting genderqueer individuals and have formal policies in place to ensure that students are referred to by their name-in-use rather than their deadnames.⁵⁷

These institutional measures have a lot of weight and show a kind of signaling that is important, especially for prospective students making decisions about which schools are likely to be more welcoming than others. Even so, intention may obscure impact and deny queer equality while seeming to address it in plain sight. For example, there is a growing percentage of schools allowing transgender and nonbinary students' names-in-use to be reflected on documentation.⁵⁸ But this "allowing" might be toothless (for example, some students lamented about the bureaucracy required to change their email addresses without a legal name change), and execution might be dampened by inconsistent name and pronoun usage.⁵⁹ Similarly, although most schools report having "all-gender restroom" signage, they usually refer to male/female restrooms as "gender neutral" (rather than "all gender") and have few—if any—trans-affirming policies for non-labeled restrooms.⁶⁰ Further, the sample itself may be biased. The 56 percent of schools interested in participating in an LGBTQ+ "climate survey" are likely already interested in signaling their commitments to these issues, and the "LGBTQ+" questions in the survey might conflate sexual orientation and gender identity experiences in ways that are not equally

54. 2021 data from the National Survey of Student Engagement (NSSSE) show that non-cis, postsecondary students systematically feel less valued by and lower belonging with their academic institutions. *Do First-Year Students of Different Backgrounds Feel They Belong?*, IND. UNIV. SCH. OF EDUC. CTR. FOR POSTSECONDARY RSCH., <https://nsse.indiana.edu/research/annual-results/belonging-story/fy-belongingness.html> [https://perma.cc/R7VB-NQ5J] (last visited Feb. 6, 2023).

55. See LGBT BAR, 2020–21 LAW SCHOOL CAMPUS CLIMATE SURVEY: AN EXECUTIVE SUMMARY 2 (2021), <http://lgbtqbar.org/wp-content/uploads/sites/6/sites/8/2021/04/Law-School-Campus-Climate-Survey-Executive-Summary-2020-2021.pdf> [https://perma.cc/UDT2-EDE9].

56. *Id.* at 3. For a discussion on how gender inclusive pedagogy could better serve students, see Laura P. Graham, "Safe Spaces" and "Brave Spaces": *The Case for Creating Law School Classrooms That Are Both*, 76 U. MIAMI L. REV. 84 (2021); Leahy, *supra* note 50, at 1114–17; Paula Gerber & Claerwen O'Hara, *Teaching Law Students About Sexual Orientation, Gender Identity and Intersex Status Within Human Rights Law: Seven Principles for Curriculum Design and Pedagogy*, 68 J. LEGAL EDUC. 416 (2019); Lintner, *supra* note 11.

57. LGBT BAR, *supra* note 55, at 3.

58. *Id.*

59. For an early argument about name-calling traumas among genderqueer students, see Kim Brooks & Debra Parkes, *Queering Legal Education: A Project of Theoretical Discovery*, 27 HARV. WOMEN'S L.J. 89, 94–97 (2004); Glazer, *supra* note 42, at 4–5.

60. LGBT BAR, *supra* note 55, at 5.

experienced by all—for example, the climate for a wealthy, white, gay man who can “pass” might be entirely different from that for a presenting, first generation, nonbinary student of color. Law schools might similarly think that they are offering neutral advice about what good professionalism ought to look like—for example, by privileging certain kinds of participation in the classroom⁶¹ or by telling students what to wear to a job interview or advising them on the best way to refer to themselves and others in networking opportunities. Yet, although they may seemingly be helpful for a certain kind of professional success, these sorts of institutional cues are gendered (and raced, and classed, of course), might not be as useful or appropriate for non-cis (among other nonnormative) students, and further alienate them from these spaces.⁶² As a result, even when schools say they are invested in LGBTQ+ diversity, their approach might not trickle down to being inclusive of students whose identities are in the peripheries of that categorization.

It is in this context that the qualitative experiences of individuals—rather than institutional responses to them—offer important substantive perspectives. In spring 2021, I interviewed, as part of a larger study focused on nonnormative actors, twenty genderqueer law students and legal professionals. Rather than following specific themes, the questions probed a semi-structured exploration of identity, experience, and belonging within institutional spaces.⁶³ For the purpose of making the argument about “straight space” in this Essay, I focus on three interrelated themes that emerged from these interviews: institutional space, individual appearance, and interactional culture. Across interviews, there was consensus that law school was a space particularly primed for confronting gender identity because, beyond the pervasive physical hostility that others have identified⁶⁴ and the administrative hurdles that entry into the legal profession poses for minority candidates,⁶⁵ the nature of its everyday experience was stifling

61. See Dara E. Purvis, *Legal Education as Hegemonic Masculinity*, 65 VILL. L. REV. 1145 (2020) (noting that non-cis men have lower outcomes in law school (class participation, grades, belonging, etc.) that reverberates beyond). See generally SUSAN CAIN, QUIET: THE POWER OF INTROVERTS IN A WORLD THAT CAN'T STOP TALKING (2012).

62. On the gendered processes of job searching and dress codes, see, for example, Ruth Carter, *Non-Binary Lawyering: What's Courtroom Attire?*, ATT'Y AT WORK (Aug. 9, 2018), <https://www.attorneyatwork.com/non-binary-lawyering-ruth/> [<https://perma.cc/T835-HY4M>]; Elizabeth B. Cooper, *The Appearance of Professionalism*, 71 FLA. L. REV. 1, 27 (2019). See also Bodamer, *supra* note 31.

63. Interview transcripts, codes, and analyses are on file with the author. For more methodological explanations, see Ballakrishnen, *supra* note 3.

64. On the restrictive architecture of law schools physically (e.g., housing, bathrooms) and institutionally (e.g., gender categories in application forms), see Celia Meredith, *Neither Here Nor There: Nonbinary, Law, Student*, 10 IND. J.L. & SOC. EQUAL. 453 (2022). For an impressive form alternative, see Sasha White, *Law School Application Has Thirteen Gender Options but Not “Man” or “Woman,”* UNDERGROUND (Dec. 7, 2021), <https://notesfromtheunderground.substack.com/p/new-york-law-school-application-has> [<https://perma.cc/877B-RMST>].

65. See, e.g., Marcy L. Karin, Margaret E. Johnson & Elizabeth B. Cooper, *Menstrual Dignity and the Bar Exam*, 55 U.C. DAVIS L. REV. 1 (2021).

because of expectations of professional socialization and performance.⁶⁶ Further, because appearance and propriety (like other normative expectations) were so deeply embedded into its cultural nucleus, law school perpetuated and privileged a certain type of idealness while making nonnormative deviators reconsider their positionality within the space.⁶⁷ This experience of space as not meant for them or not made with them in mind is not unique to gender-diverse students.⁶⁸ Still, its illustrative example might bring to sharp relief the inherent inequalities of seemingly inclusive institutional spaces.

Almost every genderqueer law student I spoke with mentioned how law school made them hyperaware of their gender.⁶⁹ Two narratives were resilient across contexts: the first concerned modes of address within and beyond law school, and the second was about the kinds of advice students received about how to present themselves in professional situations.

A common refrain from nonbinary students was the ways in which professors referred to them in already stressful cold-call settings in the classroom and instructor resistance to ceasing the use of gendered honorifics like “Ms.” and “Mr.” Requests to do away with these honorifics and use first names, for example, were seen as informal and/or unprofessional, and requests to use honorifics like “Mx.” were either not honored (in that many students reported instances of repeat misgendering) or resulted in students being ignored altogether in class interactions. The professor’s internal mechanisms that might have led to students being—or feeling—ignored cannot be intuited from data that focus on student perspectives. But a range of other contemporary accounts help put this experience in perspective. Legal writing—despite a range of important contemporary critique⁷⁰—has

66. See generally PETER GOODRICH, *LAW IN THE COURTS OF LOVE: LITERATURE AND OTHER MINOR JURISPRUDENCE* (1996) (discussing the affective nature of court performances and its reinforcement of law’s grandness through certain rituals and rules).

67. See Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591 (1982) (discussing how law school’s “culturally reactionary” hierarchical structure leaves students frightened and humiliated). On the subversive possibility of “being unprofessional,” see Bennett Carpenter, Laura Goldblatt & Lenora Hanson, *Unprofessional: Toward a Political Economy of Professionalization*, 39 SOC. TEXT 47 (2021).

68. See Capers, *supra* note 24; see also Lani Guinier, Michelle Fine & Jane Balin, *Becoming Gentlemen: Women’s Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994) (describing law school as a male space accommodating female students); Carole Silver & Swethaa Ballakrishnen, *Where Do We Go From Here?: International Students, Post-Pandemic Law Schools, and the Possibilities of Universal Design*, 8 CAN. J. COMPAR. & CONTEMP. L. 313 (2022) (suggesting similar othering for international students).

69. This aligns with preliminary findings from a forthcoming project on diverse law students, suggesting that students increasingly identify as gender-diverse over the course of their time in law school. See Swethaa Ballakrishnen, Carole Silver, Steven Boucher & Anthony Paik, *Diversity and Networking in Law School: Are Law Students From Diverse Backgrounds Disadvantaged?* (unpublished manuscript) (on file with author).

70. On neopronouns as more inclusive language that helps correct the “grammatical erasure” of the marginalized, see Danielle Mundekis, Asta Kill, Sima Lotfi & Nicholas Ripley, *Broaden Your Reach with Inclusive Language*, LAWS. J., Feb. 11, 2022, at 9, 9–10. See also Heidi K. Brown, *Get with the Pronoun*, 17 LEGAL COMMUN & RHETORIC 61, 62 (2020).

long resisted the singular “they” as grammatically incorrect,⁷¹ so those indoctrinated in this biased and outdated training might find it hard to change. Yet, this argument, at least to someone whose “difficult” last name has offered similar trouble before, reeks of a kind of resistance to inclusivity that mainstream systems use to further isolate new kinds of identity performance.⁷² For some, as Chan Tov McNamarah’s⁷³ important work suggests, resistance and objections to pronoun usage might be seen as an active rejection of esoteric demands of a small minority or, worse, an active exercise of academic freedom and free speech.⁷⁴ And for many, there might be no intention involved at all to actively discriminate⁷⁵ and, despite good intentions to be inclusive actors, their consciousness might not have begun to code their actions as problematic.⁷⁶

Regardless of intent or lack thereof, there was a variation in the ways in which students responded to these triggers. For instance, some students found it hard to repeat the request for honorific or pronoun usage to a professor, especially in a first-year classroom, where power dynamics made the space particularly oppressive.⁷⁷ Other students were forgiving of fumbles and slips when professors made them, especially if the professor apologized after, while some offered tools for professors to use language differently (for example, one student told a professor to pretend that they were three people, to help the professor use they/them pronouns) while continuing to defer to their authority in other contexts. Each of these responses demanded a different kind of labor from students, and regardless of their reaction to these triggers, students were not likely to forget the interaction, especially if it was

71. On the “pronoun problem” in legal usage and writing, see Robert Anderson, *Reclaiming the Singular They in Legal Writing*, 19 *LEGAL COMM’N & RHETORIC* 55 (2022).

72. See, e.g., Keya Roy, Zuheera Ali & Medha Kumar, *The Racist Practice of Mispronouncing Names*, KUOW (March 21, 2019, 1:11 PM), <https://www.kuow.org/stories/a-rose-by-any-other-name-would-not-be-me> [https://perma.cc/88W6-EB8D]; see also Imani Shannon, *The Importance of Not Misgendering Anyone: Creating an Inclusive Environment for Coworkers and Clients*, WASH. STATE BAR NEWS (June 9, 2022), <https://wabarnews.org/2022/06/09/the-importance-of-not-misgendering-anyone/> [https://perma.cc/B9FB-N7GH].

73. See Chan Tov McNamarah, *Misgendering*, 109 *CALIF. L. REV.* 2227 (2021) (presenting prominent objections to pronoun use, the limits in such argument, and suggesting that misgendering is the next form of minority subjugation).

74. For another problematic extension, see Randall Kennedy & Eugene Volokh, *The New Taboo: Quoting Epithets in the Classroom and Beyond*, 49 *CAP. U. L. REV.* 1 (2021). On rejecting the case for misgendering by professors as academic freedom, see Gabrielle Dohmen, *Academic Freedom and Misgendered Honorifics in the Classroom*, 89 *U. CHI. L. REV.* 1557 (2022).

75. See Olivia Mendes, *Gender-Neutral Pronouns: They Are Here to Stay*, 52 *SETON HALL L. REV.* 317 (2021) (discussing how misgendering is in fact discrimination).

76. I call this kind of nonrecognition “blasé” in other work. See Swethaa Ballakrishnen, *Making It Halal, Blasé Discrimination and the Construction of the “Good” Muslim Lawyer*, in *HANDBOOK ON RACE, RACISM AND THE LAW* (Aziza Ahmed & Guy-Uriel Charles eds., forthcoming 2023) (on file with author).

77. See Kathryn M. Young, *Understanding the Social and Cognitive Processes in Law School That Create Unhealthy Lawyers*, 89 *FORDHAM L. REV.* 2575 (2020); see also Kennedy, *supra* note 67.

not an isolated incident. These recalls, in turn, were instrumental when students made choices about upper-level classes.

Similar institutional commitments to propriety and professionalism made navigating professional networking opportunities difficult for students. From how they should dress to instructions about addressing professional contacts and potential employers, students received a range of formational advice that demanded conforming to specific gendered standards of professional presentation.⁷⁸ One student explained how their office of career services had a lecture on professionalism early in their 1L year, during which students were told how best to present themselves at professional events. When they heard the advice, “When you go to your first job [interview], women should wear skirts and panty hose and men should wear suits,” they recalled how they “left their body” in anguish and amazement at how, despite being in a class of diverse students, expectations of propriety were still very gendered and traditional. Most students shared how, although it was different across organizations, manners of dress in professional space were seen as an important part of how “put together” or “professional” one was. While gender-typical adults—who also enjoy other kinds of normative privilege⁷⁹—might find it easy to determine what “formal” or “business casual” was, it was harder for those with more fluid identities to “pass” or conform in these circumstances while also staying authentic to their true selves.⁸⁰ For instance, another student consistently wore what they thought was “business casual” at their first internship, and they were told—by a friendly senior in the organization who was trying to be helpful—that it would be “nice if they wore a pencil skirt.” This was a suggestion that made them feel like they either had to perform an inauthentic version of their identity or alternatively, take a stand more actively about presentation, which they were uncomfortable with doing at that stage in their career. In contrast, when they interviewed for another, nonlegal organization after law school, they knew it was a fit because they had a boss who was nonbinary and used any pronouns. More than anything, this space where gender was not the predominant logic for organizing identity propriety offered them relief and a capacity to focus on work rather than presentation because, in this space, “what they wore was the least interesting thing about them.” In turn, knowing that it was “okay to be one’s own self” allowed them room for exploring their gender identity with more confidence than when in institutions where gendered performance was policed more strictly.

78. See Juliano, *supra* note 11; Rebekah Hanley & Malcolm MacWilliamson, *Moral Dress Code: Promoting Genderless Attire Rules to Foster an Inclusive Legal Profession*, 34 J.C.R. & ECON. DEV. 125 (2021).

79. On intersectional extensions to nonnormative presentation, see Shannon Cumberbatch, *When Your Identity Is Inherently “Unprofessional”*: Navigating Rules of Professional Appearance Rooted in Cisheteronormative Whiteness as Black Women and Gender Non-Conforming Professionals, 34 J.C.R. & ECON DEV. 81 (2021).

80. On “passing” in trans presentation and power dynamics, see Lee Clark, *The Pressures of Passing, Reinforced by Precedent*, 22 CUNY L. REV. F. 17 (2019).

Still, not all students could make choices to be in structures that held space for such gender navigation. For some, the choice to join a particular firm or organization was predicated on other factors beyond their gender identity, and they made the choice to accept that they would not be able to bring their full selves to work.⁸¹ In contrast, for others, this lack of sight for their full identities was enough confirmation that they could not exist and do their best work in such a space. For others still, there was the experience of feeling an injustice about their surroundings that they could not name—a difficulty that I have referred to elsewhere as a particular form of hermeneutical injustice.⁸²

Overall, these nonbinary student narratives help us understand the inherent violence, embedded in plain sight, within what might look like a benign culture of ideality. While legal organizations might be posturing their inclusivity of LGBTQ+ students more generally for individuals who “pass,” those whose presence requires more active accommodation experience the same place very differently. In turn, this offers a reminder of the liminality and intra-differences even within an umbrella identity⁸³ like queer,⁸⁴ and the things that law schools truly committed to inclusion might want to turn their attention to. Law schools today are more diverse than they ever have been,⁸⁵ but they remain embroiled in normative scripts and conventional categories that do not serve those who fall outside their parameters for entry and success. From application forms and classroom interactions to professional performance⁸⁶ and propriety during and beyond law school, the gender binary—despite being unobvious at first glance—is a normative framework of expected association that is repeatedly reinforced.

Locating law school as a place with primed gender is important to making sense of the everyday violence that such gendering reinforces. If a student is called on in class with an honorific with which they do not identify, the disassociation could disorient them in their response, and in turn, disadvantage them in relation to their cisgendered peers. This is particularly true for first-year law school classrooms, where students can feel overwhelmed and powerless within the law school hierarchy, and where being vocal in class matters because it is seen as important socialization for

81. See generally Slater Stanley, Note, *Lifestyle Balancing: Queerness and the Practice of Law*, 57 U.S.F. L. REV. F. 502 (2023); JANE WARD, RESPECTABLY QUEER: DIVERSITY CULTURE IN LGBT ACTIVIST ORGANIZATIONS (2008); LILY ZHENG & INGE HANSEN, THE ETHICAL SELLOUT: MAINTAINING YOUR INTEGRITY IN THE AGE OF COMPROMISE (2019).

82. See generally Swethaa S. Ballakrishnen & Sarah B. Lawsky, *Law, Legal Socializations, and Epistemic Injustice*, 47 LAW & SOC. INQUIRY 1026 (2022).

83. On the complications of a singular queer category, see Marie-Amelie George, *Expanding LGBT*, 73 FLA. L. REV. 243 (2021).

84. See, e.g., Adam R. Chang & Stephanie M. Wildman, *Gender In/Sight: Examining Culture and Constructions of Gender*, 18 GEO. J. GENDER L. 43 (2017).

85. Susan L. Krinsky, *Incoming Class of 2022: A Major Advance in Diversity, More Work To Do*, LAW SCH. ADMISSION COUNCIL (Dec. 20, 2022), <https://www.lsac.org/blog/incoming-class-2022-major-advance-diversity-more-work-to-do#msdyntrid=6c4qItQyNXHlm3N--Zz3Harm9N6xmnu8ZKErEG36joY> [https://perma.cc/Q4QZ-N22F].

86. On professional navigation and propriety, see Chan Tov McNamarah, *Misgendering as Misconduct*, 68 UCLA L. REV. DISCOURSE 40 (2020).

becoming a successful lawyer.⁸⁷ At the same time, it is law school—and often the tools of lawyering in which students are socialized—that might offer them new incentives to agentically claim these identities vocally. At least three students shared how they had always subconsciously thought of themselves as nonbinary, and, because of how much assumption occurred to the contrary, it was not until they came to law school that they realized that the only way to make that identity clear was to actively claim it. In response to a deep institutional space that worked primarily around categories of analysis, even noncategories that were diffuse and in flux called for specific categorization. Unlike more affirming groups and spaces that many of these students might have self-selected into before, law school called for a kind of self-identification in order to make salient and determinate the environments they sought. As a result, students felt called to actively declare their identity markers not so much because law school was an easy place in which to do so, but because its inherent normativity made such demarcation essential for navigation.

This is not to say that law is the only field in which such binary logics prevail. Gender is a primary framework for categorization in most—if not all—social spaces.⁸⁸ Still, the performance of scripts across legal institutions reinforces ideal worker norms and expectations differently than in other professional spaces.⁸⁹ Thus, even when law school makes new commitments to LGBTQIA+ students and rights, it is still from a starting point of a normative binary category, making it especially difficult for those who do not fit in these spaces to find footing. Further still, it can shape the course of how performances and accepted roles in the legal profession—and, in turn, laws—get reinforced. In recent work, Ezra Graham Lintner argues that law school classrooms are devoid of gender-neutral language, and because law students might graduate without hearing they/them pronouns, they might take for granted the binaries that they are socialized in and find it “strange and improper” to not defer to these terms when they exit the classroom, reinforcing these hierarchies in practice as well.⁹⁰ In contrast, by using language in law school that is more inclusive, instructors can normalize nonbinary identities in the legal profession, a field with inherent and exceptional power to reinforce norms.

Rhode argued that the problems most likely to entrench inequalities are those that people deny as being unjust and/or unequal.⁹¹ Instead, allowing things to be legitimated on what seems like neutral grounds is exactly what

87. Kennedy, *supra* note 67.

88. On embedded background frameworks of gender, see Cecilia L. Ridgeway, *Framed Before We Know It: How Gender Shapes Social Relations*, 23 GENDER & SOC’Y 145 (2009).

89. See Joan Acker, *Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations*, 4 GENDER & SOC’Y 139 (1990); see also Erin Reid, *Embracing, Passing, Revealing, and the Ideal Worker Image: How People Navigate Expected and Experienced Professional Identities*, 26 ORG. SCI. 997 (2015).

90. See Lintner, *supra* note 11, at 242; see also Ross Fishman, *Drafting a Nonbinary and Other LGBTQ Lawyer’s Biography*, 41 LEGAL MGMT. 24 (2022).

91. See Rhode, *Gender No-Problem Problem*, *supra* note 13.

obscures that which might have been more strikingly visible in plain sight. In fact, it is the denial of this responsibility to categorize something as a problem that causes these “no-problem” problems to persist. Yet, recognition is only one part of the solution. Beyond locating these non-problems, Rhode argued that there is a need to reformulate them *as* problems and reassess the ways in which we respond to them.⁹² Reorienting Gloria Steinem’s question about what effects feminism had on the law,⁹³ Rhode suggested that the more seemingly crucial question was “how feminism has not *yet* affected law and legal practice.”⁹⁴ It is similar invitations for imagining the inequalities not yet glaringly visible for genderqueer (and other nonnormative) actors that this framework of straight space asks us to bear witness to.

III. THE TROUBLE WITH LEGAL EDUCATION: LAW SCHOOL AS STRAIGHT SPACE

In his article, *The Law School as a White Space*,⁹⁵ Professor Bennett Capers makes the argument that beyond requiring a kind of “bleaching out”⁹⁶ from its inhabitants, and despite being outwardly polite, law school is inherently a white space within which Black students are made to feel like, in bell hooks’s words, “interlopers who do not really belong.”⁹⁷ It is this framework of “space,” both in the abstract (as a metaphor for the topography of law school culture) and in the corporeal (as it extends to spaces of safety, accommodation, and belonging), that makes it compelling as a lens to consider law school as a site of exclusion.

The extension of this theory to gender and sexual minorities in itself is not novel. Capers, for example, in one of his illustrations of the theory, recalls Adrienne Rich’s notion of “compulsory heterosexuality,” which permeates all social environments and orderings.⁹⁸ But even beyond social situations like proms (Capers’s example) and weddings, where heterosexual norms exclude or linearly extend to queer subjects, straight logics permeate most of the seemingly neutral life decisions that the law implicates itself in, from who we think of as dependent and what unions we think of as legitimate to the

92. *Id.*

93. Rhode, *The No-Problem Problem*, *supra* note 13, at 1732.

94. *Id.*

95. Capers, *supra* note 24 (extending Professor Elijah Anderson’s concept of “white space”); see also Elijah Anderson, “*The White Space*,” 1 SOCIO. RACE & ETHNICITY 10, 10 (2015).

96. Capers, *supra* note 24, at 11. Professor Sanford V. Levinson coined the term, but it was a subsequent application by Professors David B. Wilkins and Russell G. Pearce that clarified its implicit structural violence. See, for a historical review, Swethaa S. Ballakrishnen & Sydney Martin, *Coloring, Highlights, and Pompadours: 25 Years from Fragmenting Professionalism and Bleached Out Lawyering*, in LEADING WORKS ON THE LEGAL PROFESSION (Daniel Newman ed., forthcoming 2024) (on file with author).

97. Ballakrishnen & Martin, *supra* note 96; Capers, *supra* note 24, at 12 n.30 (citing BELL HOOKS, TEACHING TO TRANSGRESS 4 (1994)).

98. Capers, *supra* note 24, at 18 n.66 (citing Adrienne Rich, *Compulsory Heterosexuality and Lesbian Existence*, 5 SIGNS 631, 632–40 (1980)).

kinds of communities that are seen as family and the implications of this legal sight. Yet, it is not straightness as heterosexuality that I articulate as “straight space” in this Essay. Neither is it gendered or sexualized spaces of interaction alone. Rather, it is a call to think of straightness as accepted normativity that excludes, with consistent apathy, identities of alterity. Nonconforming gendered identities merely offer one core illustration of such straightness.

Thinking of queerness as a category of exclusion rather than a particular choice of sexuality allows us to think more broadly about the kinds of inclusion that spaces engender. Unlike proms or weddings or constructions of family that all start with an ideal context that is “traditionally” avowed to be heterosexual (and patriarchal), law schools are not seen as sites where gender or sexuality is primed in particularly salient ways. Yet, it is exactly this “no-problem” problem—of *not* seeing law school as a certain kind of gendered ecosystem—that calls for our consideration.

For instance, in his article, Capers suggests that although his experience had given him nodes for understanding the concept, it was only through the term “white space” that he could start to consider his experience more clearly.⁹⁹ From historic demographics of law schools to the inherited practices of socialization that determine how the language of law is taught and reinforced, Capers’s argument is that the physical and intellectual “architecture”—from names on buildings and portraits on walls to the kinds of scholarship read and seen as important—of law school is necessarily, persistently white.¹⁰⁰ Students of color, in this context, even when included in these de facto white spaces, remain both hypervisible and unaccounted for at the same time.¹⁰¹

By parallel analytical extension, normative forms of address which are predicated on clean lines of gender reinforce forms of (class-based, hierarchical) heteronormativity. Similarly, the inheritances of what are considered proper forms of dress establish propriety in accordance with certain cultural, social (and economic!) norms of those historically seen as ideal inhabitants of the legal profession. Seen this way, straightness enforces a normativity that excludes not only those who fall between categories of gender and feel the violence of its dichotomous performance, but also all others who do not fit within the historical expectations of who was meant to be in these spaces. Particularly, these gendered assumptions are also raced¹⁰² and classed¹⁰³ in very specific ways, forcing all subversion to stand in

99. Capers, *supra* note 24, at 12 n.30.

100. See *id.* at 13 n.39 for an interpretation of this term “architecture” following Lawrence Lessig, *The Law of the Horse: What Cyberlaw Might Teach*, 113 HARV. L. REV. 501, 507 (1999).

101. Capers, *supra* note 24, at 13 n.37 (citing Elijah Anderson, “*The White Space*,” 1 SOCIO. RACE & ETHNICITY 10 (2015)).

102. See generally D. Wendy Greene, *A Multidimensional Analysis of What Not To Wear in the Workplace: Hijabs and Natural Hair*, 8 FIU L. REV. 333 (2013) (discussing race and religious expectations of propriety in the workplace).

103. See generally Lucille A. Jewel, *Bourdieu and American Legal Education: How Law Schools Reproduce Social Stratification and Class Hierarchy*, 56 BUFF. L. REV. 1155 (2008)

obvious contrast to what is seen as expected and proper. And despite suggestions¹⁰⁴ to push for a more genderless dress code, there have been few, if any, changes to the kind of advice and socializing that law students endure.¹⁰⁵

Acknowledging the dominant conception of presentation and propriety allows us to recognize more fully the work it might take for alterity within these structures to be made visible and the costs of such visibility. Similar to how other scholars have observed the reinforced sense of identity that racial minorities have when they come to law school, queer reinforcement of identity is negotiated by its particular experience within the straight space of law school. In her research, Professor Yung-Yi Diana Pan argues that law students of color have reinforced connections to their racial identities because they feel excluded by the dominant structure of law school.¹⁰⁶ Claiming their racial identities through student groups and activity clubs becomes salient in law school, even for students for whom such community membership never served as an organizing social mechanism in prior spaces like college. This “incidental racialization,” Pan argues, is not because law school promotes particularly fecund conditions for minority students, but, rather, because it is so pervasively exclusionary to nonnormative students that their communal bonds offer new ways of navigating a hostile environment which might have not been necessary in other contexts.¹⁰⁷

Similarly, students—who are increasingly from generational cohorts in which binary gender constructs are losing significance¹⁰⁸—might come to law school and find its expected gender performances and scripts oppressive. Unlike other spaces where the reclaiming of a more fluid category might not be necessary, law school creates conditions for claiming identity in two interrelated ways. First, as a space with demanding expectations of propriety, it triggers a sense of nonbelonging for those who do not fit neatly into expected categories. Relatedly, as a space that trains its inhabitants to think

(discussing how “proper” attire within the legal profession is that which is traditionally associated with the upper class).

104. See Hanley & MacWilliamson, *supra* note 78, at 143 (critiquing contemporary dress codes and suggesting a genderless dress code for firms that is “consistent with ethical duties, cultural evolution, and market forces”). In 2022, UCI law student (and OutLaw president) J Tharp set up events around the idea of “Dress to Transgress” to unpack the tensions between law school identity, performance, and the dominant narrative of professionalism. See *Dress to Transgress Panel*, UCI LAW (Mar. 17, 2022), https://calendar.law.uci.edu/event/dress_to_transgress_panel#.Y6FfSezMKw4 [<https://perma.cc/CD9T-UCXA>].

105. For an exception, see, for example, Erin Degregorio, *Fordham Law’s OUTLaws Establishes New Task Force for Trans and Non-Binary Law Students*, FORDHAM L. NEWS (Nov. 11, 2022), <https://news.law.fordham.edu/blog/2022/11/11/fordham-laws-outlaws-establishes-new-task-force-for-trans-and-non-binary-law-students/> [<https://perma.cc/ER3H-BEZT>]; NAT’L LGBT BAR ASS’N & FOUND., LGBTQ+ BEST PRACTICES FOR LAW SCHOOLS: A GUIDE TO INSTITUTIONAL EQUITY (2020), <http://lgbtqbar.org/wp-content/uploads/sites/6/sites/8/2020/10/Law-School-Best-Practices-Guide.pdf> [<https://perma.cc/WD2W-B9XV>].

106. See generally YUNG-YI DIANA PAN, *INCIDENTAL RACIALIZATION: PERFORMATIVE ASSIMILATION IN LAW SCHOOL* (2017).

107. *Id.*

108. See *supra* note 50 and accompanying text.

using the “language of the law,” law school nudges students, including those between categories, to think within the logic of categories and claim their noncategory as an active category. Thus, for someone who has always thought of themselves as genderfluid but had not come into that identity fully, or for someone who had never felt the need to claim such fluidity as an active identity marker because their environments always saw them for who they were regardless of nomenclature, law school’s oppressiveness might prime different responsive associations. As a space where categories matter, and slippage between them is also only legitimated if coded appropriately, law school and its straightness might trigger—and reinforce—coming into one’s identity.

In the last part of his article, Capers urges the reader—and the legal community—to be bolder in their construction of this space that they have long since taken for granted by questioning long forgone assumptions of “good structures” that might well be violent to new inhabitants.¹⁰⁹ To help us do this work of reimagination, Capers offers a subversive possibility—instead of thinking about whiteness as a restrictive, presupposed, and binding category that structurally excludes the new actors that it purports to include, what might it look like to consider instead the idea of whiteness as blankness—as a new, empty page “full of reimagined possibilities”?¹¹⁰ As those who have considered the limitations of background frameworks know,¹¹¹ no such unencumbered possibilities exist, but this queer reading¹¹² of what whiteness can mean might offer new leases to consider straightness as well.

IV. IN THE INTEREST OF JUSTICE: REFORMING NORMATIVE LEGAL EDUCATION

Even if we were to recognize the straightness of law school, how might we repurpose normative—or straight—cultural scripts in law school to be aligned toward more inclusive goals? The answer might lie in paying better attention to the structures within these spaces, with a critical eye to the biases inherent in their original intention and the impact of their outcome regardless of intention. For example, it is not so much that forms of address be done away with altogether (because if they are, they might privilege only those students who feel comfortable speaking up in a law school class, which might produce other interactional inequalities), but rather, that forms of address perform the intended inclusion which these spaces purport to be committed to. For example, the nudge to be aware of student identities and honorifics in the classroom could prompt some well-meaning professors eager to make

109. Capers, *supra* note 24, at 42–46.

110. *Id.*

111. Ridgeway, *supra* note 88.

112. I use “queer reading” here to refer to subtexts that might have been missed when initially introduced to a text or concept. See generally Brenda Cossman, *Sexuality, Queer Theory, and “Feminism After”*: *Reading and Rereading the Sexual Subject*, 49 MCGILL L.J. 847 (2003).

the classroom inclusive to have mandatory pronoun sharing at the start of a class or during introductions. Yet, this act of compelled disclosure of pronouns might be an uncomfortable and involuntary outing for some who are not yet ready to share their pronouns or who feel like they are still coming into their identity and find the pressure of needing to share this journey with new peers overwhelming.¹¹³ Similarly, asking students for their “preferred” pronouns¹¹⁴ might suggest, by its very category, that the question is about a preference rather than an expected or necessary form of address. Instead, creating spaces where students feel comfortable sharing their pronouns—among other facets of their identity—and being forthcoming with one’s own identity markers of relevance could help create more inclusive environments within hierarchical law school structures. Treating pronouns and honorifics as instructive language—not unlike names and their pronunciation—could help with this approach. And alongside trainings and primers¹¹⁵ that are easily accessible,¹¹⁶ and dedicated staff and mechanisms that can track student experience, being aware of one’s own bias and power in the classroom could help better calibrate the inconsistencies and inequalities in student experiences. Further, as academics train a new wave of students with increasingly multidimensional identities to “think like lawyers,” being open to correction when there is a misstep (rather than to ignore the interaction altogether) might help set the tone of what is considered proper and formal in the classroom. In turn, this could have implications for building environments within the legal profession where the coordinates of what is considered respectable or professional do not require sacrifices and compromises by peripheral actors who are most likely to already feel like imposters.

Similarly, giving advice about professionalization and considering early socialization about the language and nature of the law both inside and outside the classroom could be better served if faculty and staff had comprehensive gender identity training with a focus on students’ particular needs,¹¹⁷ and if they were actively considering the implications of these identities in their

113. See, e.g., Christina M. Xiao, *The Case Against Mandatory Preferred Pronouns*, HARV. CRIMSON (Oct. 16, 2020), <https://www.thecrimson.com/article/2020/10/16/xiao-against-mandatory-preferred-gender-pronouns/> [<https://perma.cc/UQ9Q-Y7F7>].

114. See, e.g., Meghan Olson, *Pronouns Are Not “Preferred,”* MEDIUM (Apr. 15, 2021), <https://meghan14olson.medium.com/pronouns-are-not-preferred-aa0d9383b7d1> [<https://perma.cc/JLF9-KEJC>].

115. See generally Gabrielle Kassel, *A Guide to Personal Pronouns—and Why Not to Call Them “Preferred,”* SHAPE (Sept. 27, 2022), <https://www.shape.com/lifestyle/mind-and-body/personal-pronouns-preferred-pronouns> [<https://perma.cc/6K4M-6CVN>]; Mary Kate Sheridan, *5 Ways to Make Your Law Firm More Inclusive for the Transgender Community*, LEGAL MGMT. (2020), <https://www.legalmanagement.org/2020/july-august/features/5-ways-to-make-your-law-firm-more-inclusive-for-the-transgender-community> [<https://perma.cc/6BRS-XXA5>].

116. See *supra* note 105.

117. Challenges that nonnormative students face might vary drastically across schools. Dedicating institutional resources to specific problems rather than offering generic platitudes is crucial. Task forces, when accountable, are one way of signaling this commitment. See, e.g., Degregorio, *supra* note 105.

interactions with students, especially as they pertain to versions of professional affect and mien.¹¹⁸ Here again, reevaluating biases about what kinds of expression serve their conceptions of propriety and professionalism is key, and institutions will benefit from approaching reform from the vantage point of those most disenfranchised rather than just seeking to perform the aesthetics of inclusion.¹¹⁹ This might be relevant in this new era of queer rights, during which (despite what looks like progress) there might be new “no-problem” problems with queer appearance and presentation.¹²⁰

Altogether, thinking about legal pedagogy expansively could help set a tone for making peripheral students feel more welcome in normative law school spaces. Instruction materials (slides, casebooks) that are the main forms of substantive engagement in large doctrinal classes and bibliographies used for readings in smaller seminar classes might all be advantaged with an eye towards nonnormativity. Further, law schools now offer several courses that address sexuality and the law, but these are often treated the way legal ethics classes were once treated—as curricular additions that are interesting-to-have (rather than need-to-have), often taught as a seminar and taken predominantly by a self-selecting group of students. Rather than framing it as a sexuality or a broader civil rights issue, thinking of straightness as normative could reconfigure our assumptions of law school pedagogy. Just as teaching with a critical race lens in *all* foundational classes¹²¹ could impact change more fundamentally than a few self-selected seminars on race, considering law school subjects from the framework of queer theory could give students new frameworks for understanding and appreciating positions that are more peripheral. In turn, this perspective that does not hold new actors against the central norm of white, cisgendered, straight, able-bodied, neurotypical, and class-advantaged ideal peers might

118. See Shane O’Neill, *Defining Nonbinary Work Wear*, N.Y. TIMES (Jan. 9, 2023, 10:06 AM), <https://www.nytimes.com/2023/01/09/style/nonbinary-professional-work-attire.html> [<https://perma.cc/CXT4-K5NS>]. For the layered ways in which this kind of mainstream reporting complicates intended nuance (as well as for useful nonbinary fashion tips), see Andy I., *Non-Binary Fashion Tips for Professionals*, MEDIUM (Jan. 9, 2023), <https://medium.com/@AndyEyeballs/non-binary-fashion-tips-for-professionals-872f38a25c43> [<https://perma.cc/HZ74-4WU8>].

119. Ballakrishnen, *supra* note 3.

120. Queer appearance and presentation as grounds for legal discrimination might not look the same in the future. Traditionally, in order for the conduct in a Title VII case to be seen as exclusionary, a court would look at appearance or affect rather than status. However, there is a sense that this is no longer likely to be the case after *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), under which literal status—rather than affective and environmental factors, like pronouns and bathrooms—is likely to be protected. For a review of the position before *Bostock*, see Brian Soucek, *Perceived Homosexuals: Looking Gay Enough for Title VII*, 63 AM. U. L. REV. 715 (2014). Note that nonqueer cases about gender presentation and grooming expectations also have implications for genderqueer adults. See *Jespersen v. Harrah’s Operating Co.*, 444 F.3d 1104, 1108 (9th Cir. 2006).

121. On considering property, a foundational law school subject, from this perspective, see generally Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993), and, more recently, K-Sue Park, *The History Wars and Property Law: Conquest and Slavery as Foundational to the Field*, 131 YALE L.J. 1062 (2022).

hold the tools to break the master's house, within which we are all grudgingly embedded.

CONCLUSION

As early as 1996, in a philosophical article about the biology and ideology of gender difference, Rhode made the case for moving beyond defined categories of duality in sexual and gendered representation:

We want individuals to fit neatly into our dual sexual categories, not to straddle the borders. Yet these abnormalities point to a threshold problem with conventional assumptions about sexual identity. How can masculinity and femininity be biologically based when some well-adjusted individuals have biological characteristics of both sexes?¹²²

Her vision for the scarcity of this approach offers important blueprints for thinking about ways forward. At the same time, intersectionality is key to thinking about how white spaces in law school might complicate its straightness, and the ways in which whiteness, in its inherent normativity, might itself be a form of straightness. If real change is what we desire, we need to acknowledge that it demands our committed attention to those with the least institutionally internalized identities. Starting with the coordinates of spaces that we take for granted as “good” or “normal” or “working” offers a starting point for such an endeavor.

122. Deborah L. Rhode, *The Ideology and Biology of Gender Difference*, 34 S. J. PHIL. 73, 75 (1996).