

# Mind the Gap: Gender Pay Disparities in the Legal Academy

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## ABSTRACT

*Differences in pay between women and men in the same jobs have captured the public's attention in recent years. However, public interest in and press coverage of salary differences on the basis of gender—or any other ascriptive class—in the learned professions are wanting. Moreover, few studies have spoken directly on the gender pay disparities in the legal academy, despite emerging evidence of its existence at multiple law schools. In this Article, we use a unique dataset, drawn from the only nationally representative survey to date of tenured law professors in the United States, to track how gender and race are tied to salary outcomes. But we look beyond the raw differences in salary, probing the mechanisms that undergird gendered pay inequities.*

*Part I of this Article introduces the concepts of human capital and social capital as important factors underpinning inequalities in outcomes for the legal profession. We then provide an overview of how career outcomes in law—and particularly in the legal academy—are shaped by access to social capital and returns to human capital. In Part II, we introduce the After Tenure survey, from which our data originate. Next, we describe our analytical approach, examining the demography of the legal academy and the legal profession more broadly to discuss the ways in which law professors' job experiences diverge along lines*

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*of gender and race. In Part III, we provide evidence of gendered earnings disparities among tenured law professors that are particularly acute for women of color. We conclude by demonstrating how these disparities stem from the differential valuation of human capital.*

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## INTRODUCTION

Differences in pay for women and men performing the same jobs have captured the public's attention in recent years. For their work in the 2018 film *All the Money in the World*, Mark Wahlberg earned eight times what Michelle Williams earned for her starring role, drawing public criticism.<sup>1</sup> In the summer of 2020, members of the soccer world champion U.S. Women's National Team sued their parent organization, the U.S. Soccer Federation, for pay equal to their counterparts on the far-less-successful U.S. Men's National Team.<sup>2</sup> However, public interest in and press coverage of salary differences on the basis of gender—or any other ascriptive class—in the learned professions are wanting.

Yet, a gendered pay gap is well established in research on the earnings of lawyers.<sup>3</sup> On average, male partners in the top U.S. law firms earn nearly \$1 million annually, while women in the same jobs earn less than two-thirds of this figure.<sup>4</sup> This pay gap is nothing new, nor is it unique to the legal profession.<sup>5</sup> Although the demographic profile of the legal profession has gradually edged toward gender parity, the pay gap between men and women lawyers has existed since women's entry into the profession.<sup>6</sup> For example, before becoming Columbia Law School's first tenured female professor in 1972, then-professor Ruth Bader

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1. See Roberto Pedace, *Discrimination Plays a Role in Hollywood Salaries, and Women Lose*, FAST COMPANY (Dec. 22, 2019), <https://www.fastcompany.com/90446804/discrimination-plays-a-role-in-hollywood-salaries-and-women-lose> [<https://perma.cc/PFJ6-NE6D>].

2. ESPN Staff, *USWNT Lawsuit Versus U.S. Soccer Explained: Defining the Pay Gaps, What's at Stake for Both Sides*, ESPN (June 3, 2020), <https://www.espn.com/soccer/united-states-usaw/story/4071258/uswnt-lawsuit-versus-us-soccer-explained-defining-the-pay-gapswhats-at-stake-for-both-sides> [<https://perma.cc/X4GQ-NTPA>].

3. See, e.g., Debra Cassens Weiss, *Full-time Female Lawyers Earn 77 Percent of Male Lawyer Pay*, A.B.A. J. (Mar. 17, 2016), [https://www.abajournal.com/news/article/pay\\_gap\\_is\\_greatest\\_in\\_legal\\_occupations](https://www.abajournal.com/news/article/pay_gap_is_greatest_in_legal_occupations) [<https://perma.cc/RE53-SLJP>] (citing U.S. Census Bureau data from 2014).

4. See Debra Cassens Weiss, *Pay Gap Widened for Male and Female Partners in Larger Law Firms, New Report Says*, A.B.A. J. (Sept. 15, 2020), <https://www.abajournal.com/news/article/pay-gap-has-widened-for-male-and-female-partners-in-larger-law-firms-report-says> [<https://perma.cc/2YFN-29J3>] (citing the latest survey conducted by Major, Lindsey & Africa); Ellen Wulfhorst, *Gender Pay Gap is Dramatic Among Top U.S. Lawyers, Survey Finds*, REUTERS (Dec. 6, 2018), <https://www.reuters.com/article/us-usa-women-pay/gender-pay-gap-is-dramatic-among-top-u-s-lawyers-survey-finds-idUSKBN1O52JL> [<https://perma.cc/DYB4-LVE7>] (citing an earlier survey conducted by Major, Lindsey & Africa).

5. See, e.g., Colleen Flaherty, *Big Gender Gaps in Medical Faculty Pay*, INSIDE HIGHER ED (Feb. 7, 2020), <https://www.insidehighered.com/quicktakes/2020/02/07/big-gender-gaps-medical-faculty-pay> [<https://perma.cc/T68E-5V9Z>] (citing a study by the Association of American Medical Colleges that quantifies the substantial pay gap between women and men—at every faculty rank and status—in the medical academy).

6. See, e.g., Ronit Dinovitzer, Nancy Reichman & Joyce Sterling, *The Differential Valuation of Women's Work: A New Look at the Gender Gap in Lawyer's Income*, 88 SOC. FORCES, 819, 819–64 (2009) (examining the pay gap among attorneys captured in the After the JD Survey data); Mary C. Noonan, Mary E. Corcoran & Paul N. Courant, *Pay Differences Among the Highly Trained: Cohort Differences in the Sex Gap in Lawyer's Earnings*, 84 SOC. FORCES 853, 853–72 (2005) (studying pay differences among graduates of the University of Michigan Law School); Robert G. Wood, Mary E. Corcoran & Paul N. Courant, *Pay Differences among the Highly Paid: The Male-Female Earning Gap in Lawyers' Salaries*, 11 J. LABOR ECON. 417, 417–41 (1993) (using the same underlying data—survey results of graduates of the University of Michigan Law School—as the above referenced study).

Ginsberg and a class of female colleagues successfully sued Rutgers for equal pay.<sup>7</sup> The gender pay gap for lawyers is also consistent with broader labor market compensation patterns in which women consistently earn less than men in the same profession or occupation.<sup>8</sup> However, few studies have spoken directly on the gender pay disparities in the legal academy—despite evidence of its ongoing existence at multiple law schools.<sup>9</sup>

In 2018, a group of seven women law professors at the University of Denver Sturm College of Law won a landmark \$2.66 million under a consent decree, settling their equal pay lawsuit against their private law school.<sup>10</sup> The lawsuit that yielded this settlement was initially filed in the year that marked the fiftieth anniversary of the Equal Pay Act<sup>11</sup> and originated from an inquiry made by a female faculty member to the law school administration about whether the law school

7. Herma Hill Kay, *Ruth Bader Ginsburg, Professor of Law*, 104 COLUM. L. REV. 1, 13 (2004).

8. See, e.g., Nikki Graf, Anna Brown & Eileen Patten, *The Narrowing, but Persistent, Gender Gap in Pay*, PEW RES. CTR. (Mar. 22, 2019), <https://www.pewresearch.org/fact-tank/2019/03/22/gender-pay-gap-facts/> [<https://perma.cc/N3SL-7PA5>] (discussing a national trend across sectors when women between the ages of 25-34 earn eighty-nine percent of their male counterparts); Kevin Miller & Deborah J. Vagins, *The Simple Truth about the Gender Pay Gap*, AM. ASS'N OF UNIV. WOMEN (2019), <https://www.aauw.org/resources/research/simple-truth/> [<https://perma.cc/H93F-S9R8>]. But see Debra A. Barbezat & James Hughes, *Salary Structure Effects and the Gender Pay Gap in Academia*, 46 RES. IN HIGHER EDUC. 621, 621-40 (2005) (using data from the National Study of Postsecondary Faculty to study the compensation of 6,905 university professors and finding that male economists and female law professors experienced the highest salary premiums; however, their sample only included “42 women and 70 men teaching law and 15 women and 113 men teaching economics”).

9. We note, however, that Professor Paula Monopoli has confronted the gender pay gap in legal academia from a theoretical perspective, examining two cases of gender pay disparity. See Paula A. Monopoli, *The Market Myth and Pay Disparity in Legal Academia*, 52 ID. L. REV. 867, 868 (2016).

10. Under the decree, University of Denver Sturm College of Law has to pay those professors compensatory damages, as well as back pay, but also will have to raise their salaries on an ongoing basis. In addition, the law school will have to cooperate with a monitor for five years, with that monitor receiving an annual pay equity study from a labor economist. See Stephanie Francis Ward, *After Previously Defending Lower Pay for Female Profs, DU Law School Enters EEOC Consent Decree*, A.B.A. J. (May 17, 2018), [https://www.abajournal.com/news/article/after\\_defending\\_lower\\_pay\\_for\\_female\\_law\\_professors\\_university\\_of\\_denver\\_en](https://www.abajournal.com/news/article/after_defending_lower_pay_for_female_law_professors_university_of_denver_en) [<https://perma.cc/RYR4-VX3J>]; see also John Herrick, *Seven Female Law Professors Win \$2.6 Million Settlement from DU in Unequal Pay Lawsuit*, COLO. INDEPENDENT (May 17, 2018), <https://www.coloradoindependent.com/2018/05/17/du-equal-pay-lawsuit-gender-discrimination/> [<https://perma.cc/BN79-3NZQ>]. Yet, despite these measures, the law school was sued again when another professor established evidence that she was the lowest paid associate professor—by more than \$30,000 and earned less than a recently hired assistant professor. Elizabeth Hernandez, *DU Law School's “Fix” for Its Gender-Pay Gap Revealed a Female Professor Makes \$30,000 Less than Her Peers*, DENV. POST (June 5, 2019), <https://www.denverpost.com/2019/06/05/du-sturm-college-of-law-pay-gap/> [<https://perma.cc/LGL7-YKS7>]. This lawsuit was also settled out-of-court. Karen Sloan, *University of Denver Law Settles Another Pay Discrimination Suit by Female Faculty*, LAW.COM (Jan. 9, 2020), <https://www.law.com/2020/01/09/university-of-denver-law-settles-another-pay-discrimination-suit-by-female-faculty/> [<https://perma.cc/93WD-DKVR>].

11. 29 U.S.C. § 206(d)(1) (2012) (providing that “No employer . . . shall discriminate . . . between employees on the basis of sex by paying wages to employees . . . at a rate less than the rate at which [the employer] pays wages to employees of opposite sex . . . for equal work on jobs the performance of which requires equal skill, effort and responsibility”).

had a gender pay gap amidst a round of raises that took place in 2012.<sup>12</sup> The administration's response: prior to the raises, the median salary for male full professors was more than \$7,500 higher than the median salary for female full professors and more than \$11,000 higher after the raises.<sup>13</sup> As if this evidence of a gender pay disparity were not enough, the professors who filed the suit also alleged in their complaint that—at a meeting between them and the dean, following the dean's memorandum that disclosed the pay gap—the dean said that the female professors were paid less than their male colleagues due to their underperformance.<sup>14</sup>

Is this example an outlier, or are law schools themselves places where biases can operate to affect how law professors are evaluated and paid? At least one other example—this time at a state flagship university—illustrates that it is not an isolated incident. In 2011, faculty members at the University of Texas School of Law filed a request under the Texas Public Information Act, revealing that the law school's foundation funded a program that compensated some faculty members with forgivable loans that did not require repayment if the professors remained employed by the law school for a specified length of time.<sup>15</sup> This filing

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12. Colleen O'Connor, *DU Professor Files Gender-Based Wage-Bias Case against Law School*, DENV. POST (July 13, 2013), <https://www.denverpost.com/2013/07/09/du-professor-files-gender-based-wage-bias-case-against-law-school/> [https://perma.cc/24KF-DEB7] (noting that, before her untimely death, Ann Scales made the inquiry but initially did not receive a response).

13. Using averages instead of medians, the disparities were even higher—a \$14,870 pay gap before the raises and \$15,859 after the pay increase. *Id.* Notably, because the law school is private and did not have to disclose salary history in the same way that public institutions are required to do, the inquiry that precipitated the lawsuit was the product of clear informational asymmetry. As part of the EEOC consent decree, the law school had to create a database listing faculty members' salaries, position, date of hire, and other demographics—but not the name of the professors. Joe Patrice, *Law School Settles with Female Law Professors for \$2.6 Million*, ABOVE THE L. (May 17, 2018), <https://abovethelaw.com/2018/05/law-school-settles-with-female-law-professors-for-2-6-million/> [https://perma.cc/4D9T-G6WT].

14. See Colleen Flaherty, *Closing the Pay Gap*, INSIDE HIGHER EDUC. (May 18, 2018), <https://www.insidehighered.com/news/2018/05/18/u-denver-settles-eEOC-agreeing-pay-266-million-seven-female-law-professors-who> [https://perma.cc/E4T9-BQ2C] (discussing the complaint and the university's defense of its operation on a merit-based pay system). Ironically, the dean had written an article describing how employers who were consciously in favor of gender and race equality might hold unconscious assumptions and attitudes that could lead to unfairly negative employment decisions. Martin Katz, *No Intent, No Foul?: Unconscious Bias in Employment Decisions Is Actionable under Current Law*, LEGAL TIMES (May 21, 2007), <https://www.law.du.edu/documents/employment-and-labor-law/publications-katz-no-intent-no-foul.pdf> [https://perma.cc/XZ7U-HUG7].

15. OFF. OF THE ATT'Y GEN. OF TEX., REPORT (2014), <https://www.utsystem.edu/sites/default/files/documents/Attorney%20General%20Report%20on%20UT%20Austin%20Law%20School%20Foundation/report-release-redacted.pdf> [https://perma.cc/E4FN-PV8P] (discussing the purpose and terms of the loans); *id.* at EXHIBIT C, <https://www.utsystem.edu/sites/default/files/documents/outside-reports/Attorney%20General%20Report%20on%20UT%20Austin%20Law%20School%20Foundation/appendix-b-c-d-report-release.pdf> [https://perma.cc/DM9Y-DAWH] (listing 25 male faculty members and 3 female faculty members as recipients of these loans); see also Tierney Plumb, *UTexas Dean Resignation Raises Questions about Compensation Practices*, NAT'L JURIST (Dec. 19, 2011), <https://www.nationaljurist.com/prelaw/utexas-dean-resignation-raises-questions-about-compensation-practices> [https://perma.cc/5UBB-2224] (discussing how the loans led to friction between the law school dean and the university president, leading to the dean's resignation, and quoting an emerita faculty member at another Texas law school as saying that a "forgivable loan to a UT

evidenced that these payments were disproportionately awarded to male faculty members.<sup>16</sup> Importantly, this additional compensation was never disclosed in the law school's annual reporting of faculty salaries under Texas rules.<sup>17</sup> This fact relates the Texas case to the Denver case in that gender pay disparities are often difficult to discover.

Perhaps this difficulty is owing to what Professor Paula Monopoli calls the “market myth” in the American legal academy.<sup>18</sup> A tenet of this myth is that faculty compensation is tied to merit, which is purported to be objectively measured in the legal academy—through teaching evaluations; ability to secure research funding; and quantity, quality, and placement of publications. However, the stratified character of compensation in the legal academy suggests that these ostensibly objective markers of merit are inherently subjective at best and discriminatory at worst. For example, empirical evidence suggests teaching evaluations favor men over women professors, even when teaching identical subjects.<sup>19</sup> Additionally, certain fields within the legal academy reflect gendered hierarchies in law schools which are privileged—or disfavored—by the law reviews that publish legal scholarship. For instance, articles about constitutional law concepts are more widely published and cited than articles about family law principles.<sup>20</sup> Thus, the market myth that Professor Monopoli highlights is part of a wider structural issue affecting gendered pay disparities across many professions, which is how access to various forms of capital and their valuation differentially affect the careers of members of different social groups, particularly in elite sectors of the labor market such as the legal profession and the academy.

This relationship between capital and the compensation of law professors lies at the heart of our present study. In this Article, we use a unique dataset—drawn

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law professor and to its dean obviously is a disguised salary payment from a public charity. It is, however, characterized as a loan so that it need not be reported as salary on the Form 990 the foundation files with the IRS”). One female law professor—who complained about the pay gap issue, stemming from the loans, in 2010 and settled her complaint—sued the law school in 2019 over renewed pay discrimination. See Kathryn Rubino, *Elite Law School Faces Gender Pay Gap Lawsuit*, ABOVE THE L. (Dec. 13, 2019), <https://abovethelaw.com/2019/12/elite-law-school-faces-gender-pay-gap-lawsuit/> [https://perma.cc/W856-J9QP].

16. See OFF. OF THE ATT’Y GEN. OF TEX., REPORT, *supra* note 15, at EXHIBIT C.

17. TEX. CODE ANN. § 552.022(a)(2) (2020) (listing government employee salary, such as law faculty members’ salaries at a Texas public university, as public information).

18. See generally Monopoli, *supra* note 9, at 872–81.

19. See, e.g., Kristina M. W. Mitchell & Jonathan Martin, *Gender Bias in Student Evaluations*, 51 PSYCHOL. SCI. & POL. 648, 648–52 (2018) (examining the language students use in evaluations of professors is different when evaluating male or female professors); John A. Centra & Noreen B. Gaubatz, *Is there Gender Bias in Student Evaluations of Teaching*, 71 J. HIGHER EDUC. 17, 17–33 (2000) (noting the differences between male student and female student evaluations for male and female professors).

20. See, e.g., Christopher J. Ryan, Jr., *Of Law School Rankings, Disparity, and Football*, 110 GEO. L. J. ONLINE 19, 31 at note 37 (2021); Adam Chilton & Jonathan Masur, *What Should Law School Rankings Measure and How Should We Measure It?: A Comment on Heald & Sichelman’s Rankings*, 60 JURIMETRICS 61, 63 (2019); Dan Subotnik & Laura Ross, *Scholarly Incentives, Scholarship, Article Selection Bias, and Investment Strategies for Today’s Law Schools*, 30 TOURO L. REV. 615, 620 (2014); Albert H. Yoon, *Editorial Bias in Legal Academia*, 5 J. LEGAL ANALYSIS 309, 320 (2013).



from the only nationally representative survey of tenured law professors in the United States to date—to track how gender and race are tied to salary outcomes. But we dig further than merely asking about the raw differences in salary outcomes between law professors, probing the mechanisms that create those differentiated outcomes. In doing so, we explain how an apparently well-meaning dean, well-versed in the perils of implicit bias, could nonetheless look at underpaid female faculty and conclude that the problem was job performance.

This Article proceeds in four parts. Part I introduces the concepts of human capital and social capital as important factors underpinning inequalities in outcomes for members of the legal profession. This section continues with an overview of the way careers in law—and particularly in the legal academy—are stratified or divided in unequal ways that are explained, in part, by differences not in quality of work, but of social capital and returns to human capital, which incorporates biases based on race and gender. In Part II, we introduce the After Tenure survey, housed at the American Bar Foundation, from which our data are drawn.<sup>21</sup> We then describe the analytical approach we used for examining pay differentials. Mobilizing research from the After Tenure survey and other sources, we then examine the demography of the legal academy and the legal profession more broadly to discuss the ways in which law professors experience their jobs differently along lines of gender and race. Based on our own original analysis, in Part III, we provide evidence of gendered and racialized earnings disparities among tenured law professors. Finally, we conclude by demonstrating how these disparities stem from the differential valuation of human capital.

## I. THE LAY OF THE LAND: HUMAN CAPITAL, SOCIAL CAPITAL, AND PROFESSIONAL STRATIFICATION

### A. EFFECTS OF HUMAN CAPITAL AND SOCIAL CAPITAL ON EARNINGS

Social scientists have long debated the role of human capital in determining gendered earnings disparities. The theory of human capital—which can be traced back to the influential work of economist Gary Becker<sup>22</sup>—posits that earnings are tied to an individual's investment in experience, training, and education.<sup>23</sup> For

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21. This survey was created with support from the American Bar Foundation and the Law School Admission Council and constitutes the first phase of the After Tenure project, which also includes two additional phases. Phase II, not used for this analysis, consisted of 100 follow-up interviews with participants in the Phase I survey, while Phase III is still ongoing.

22. See generally GARY S. BECKER, *HUMAN CAPITAL* (1964).

23. See, e.g., BARRY R. CHISWICK, *INTERPRETING THE COEFFICIENT OF SCHOOLING IN THE HUMAN CAPITAL EARNINGS FUNCTION* (1999); Mark Huggett, Gustavo Ventura & Amir Yaron, *Human Capital and Earnings Distribution Dynamics*, 53 *J. MONETARY ECON.* 265, 265–90 (2006); Jacob Mincer & Solomon Polachek, *Family Investments in Human Capital: Earnings of Women*, 82 *J. POL. ECON.* 76, 76–108 (1974); Jacob A. Mincer, *The Human Capital Earnings Function*, in *SCHOOLING, EXPERIENCE, AND EARNINGS* 83–96 (JACOB A. MINCER ed., 1974); Morton Paglin & Anthony M. Rufolo, *Heterogeneous Human Capital, Occupational Choice, and Male-Female Earnings Differences*, 8 *J. LAB. ECON.* 123, 123–44 (1990); Robert J. Willis, *Wage Determinants: A Survey and Reinterpretation of Human Capital Earnings Functions*, in *HANDBOOK OF LAB. ECON.* 525–602 (O. ASHENFELTER & R. LAYARD eds., 1986).

example, human capital theorists argue that investment in higher education yields financial returns to individuals because employers see educational credentials as markers of one's ability, skill, and productivity.<sup>24</sup> In other words, differences in productivity and earnings between individuals can be explained by differential investments in human capital. A major criticism of this theory relates to its underlying assumption of a rational actor who chooses to invest in human capital in an effort to increase economic rewards, and that these choices are unconstrained by structural forces.<sup>25</sup> Applied to gendered earnings disparities, human capital theorists contend that women earn less than men because they are less productive.<sup>26</sup> This line of reasoning assumes that women's commitment to the family impedes their investment in acquiring skills, education, and work experience and attributes the gender pay gap to women's differential investments in human capital.<sup>27</sup>

Sociologists offer an important corrective to human capital theory by demonstrating that women and people of color have more limited access to these forms of capital than men and whites, because choices that individuals make to invest in human capital—such as law degrees—are constrained by structural inequalities.<sup>28</sup> Moreover, sociologists have demonstrated that even when women and people of color have made the same or comparable investment in human capital, they receive diminished returns on their investment compared to men and whites.<sup>29</sup> This means that women and people of color cannot count on the same wages that their white and male colleagues earn even when making identical capital investments.

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24. See, e.g., Anthony P. Carnevale, Stephen J. Rose & Ban Cheah, *The College Payoff: Education, Occupations, Lifetime Earnings*, GEO. U. CTR. ON EDUC. AND THE WORKFORCE (2011), <https://cew.georgetown.edu/cew-reports/the-college-payoff/> [<https://perma.cc/34BJ-KWE4>]; Pedro Carneiro, James J. Heckman & Edward J. Vytalacil, *Estimating Marginal Returns to Education*, 101 AM. ECON. REV. 2754, 2754–81 (2011). But see Robert Jensen, *The (Perceived) Returns to Education and the Demand for Schooling*, 125 Q. J. ECON. 515, 515–48 (2010).

25. See, e.g., Vicki Smith, *Enhancing Employability: Human, Cultural, and Social Capital in an Era of Turbulent Unpredictability*, 63 HUM. REL. 279, 279–303 (2010).

26. See, e.g., W. Lee Hansen, Burton A. Weisbrod & Robert P. Strauss, *Modeling the Earnings and Productivity of Academic Economists*, 86 J. POL. ECON. 729, 737 (1978).

27. See, e.g., Gary Becker, *Human Capital, Effort, and the Sexual Division of Labor*, 3 J. LAB. ECON. 33, 33–58 (1985); Jacob Mincer, *Intercountry Comparisons of Labor Force Trends and of Related Developments: An Overview*, 3 J. LAB. ECON. 1, 1–32 (1985).

28. See, e.g., Fiona Kay & Elizabeth Gorman, *Women in the Legal Profession*, 4 ANN. REV. OF L. AND SOC. SCI. 299, 299–332 (2008).

29. See, e.g., Kevin T. Leicht, *Broken Down by Race and Gender?: Sociological Explanations of New Sources of Earnings Inequality*, 34 ANN. REV. SOC. 237, 237–55 (2008); June O'Neill, *The Role of Human Capital in Earnings Differences between Black and White Men*, 4 J. ECON. PERSP. 25, 25–45 (1990); Donald Tomaskovic-Devey, Melvin Thomas & Kecia Johnson, *Race and the Accumulation of Human Capital across the Career: A Theoretical Model and Fixed-Effects Application*, 111 AM. J. SOC. 58, 58–89 (2005). But see Thomas A. DiPrete & Claudia Buchmann, *Gender-Specific Trends in the Value of Education and the Emerging Gender Gap in College Completion*, 43 DEMOGRAPHY 1, 1–24 (2006) (finding that earnings, as indicia of returns to education, are higher for women than for men from 1964 to 2002; however, this study compared college-educated women to only women without a college degree and not to college-educated men).



A rich body of research on the legal profession shows that women lawyers' human capital endowments are equivalent to men's, but that they receive lower returns on these investments. For example, in their large-scale study of lawyers in Canada, Professors Hagan and Kay found that women earn less than men with the same education and work experience and thus receive lower returns to their human capital.<sup>30</sup> Similarly, Professors Dixon and Seron's survey of a random sample of 1,000 lawyers in New York City found that women received lower returns to their human capital investments and that a degree from a prestigious law school increased earnings for men but not for women.<sup>31</sup> More recently, Professors Dinovitzer, Reichman, and Sterling's analysis of the first wave of the After the JD study—a national longitudinal survey of law graduates based at the American Bar Foundation—revealed that women working in private law firms reap fewer rewards for the capital they bring to their workplaces and earn significantly less than men with equivalent human capital endowments.<sup>32</sup>

In addition to examining the differential access and returns to human capital enjoyed by different social groups, scholars of the legal profession have challenged human capital theorists by demonstrating the salience of social capital in shaping professional rewards.<sup>33</sup> Social capital theorists frequently examine the benefits that one receives from their social networks and explain earnings differences as an outcome of differential access to social resources.<sup>34</sup> Research shows that social networks and workplace relationships play an instrumental role in shaping lawyers' careers but that women and people of color tend to have less access to social capital than white men.<sup>35</sup> For example, having the right people in one's network facilitates one's prospects for career advancement, but women are less likely to have powerful social networks than men due to their relatively

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30. See generally JOHN HAGAN & FIONA M. KAY, *GENDER IN PRACTICE: A STUDY OF LAWYERS' LIVES* (1995).

31. See generally Jo Dixon & Carroll Seron, *Stratification in the Legal Profession: Sex, Sector, and Salary*, 29 *LAW & SOC. REV.* 381, 381–412 (1995).

32. Dinovitzer et al., *supra* note 6.

33. See, e.g., *id.*; Ronit Dinovitzer, *Social Capital and Constraints on Legal Careers*, 40 *LAW & SOC. REV.* 445, 445–79 (2006); Fiona M. Kay & Jean E. Wallace, *Mentors as Social Capital: Gender, Mentors, and Career Rewards in Law Practice*, 79 *SOC. INQUIRY* 418, 418–52 (2009); Harris H. Kim, *Networks, Information Transfer, and Status Conferral: The Role of Social Capital in Income Stratification among Lawyers*, 50 *SOC. Q.* 61, 61–87 (2009); Jean E. Wallace, *The Benefits of Mentoring for Female Lawyers*, 58 *J. VOCATIONAL BEHAV.* 366, 366–91 (2001); see also Fiona M. Kay & John Hagan, *Raising the Bar: The Gender Stratification of Law-Firm Capital*, 63 *AM. SOC. REV.* 728, 728–43 (1998).

34. See, e.g., Nan Lin, *Social Networks and Status Attainment*, 25 *ANN. REV. SOC.* 467, 467–87 (1999); Alejandro Portes, *Social Capital: Its Origins and Applications in Modern Sociology*, 24 *ANN. REV. SOC.* 1, 1–24 (1998).

35. See Ronit Dinovitzer & Bryant G. Garth, *Lawyer Satisfaction in the Process of Structuring Legal Careers*, 41 *LAW & SOC. REV.* 1, 1–50 (2007); see also Bryant G. Garth & Joyce S. Sterling, *Diversity, Hierarchy, and Fit in Legal Careers: Insights from Fifteen Years of Qualitative Interviews*, 31 *GEO. J. LEGAL ETHICS* 123, 123–74 (2018); Monique R. Payne-Pikus, John Hagan & Robert L. Nelson, *Experiencing Discrimination: Race and Retention in America's Largest Law Firms*, 44 *LAW & SOC. REV.* 553, 553–84 (2010); David B. Wilkins & Mitu Gulati, *Why Are There so Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 *CAL. L. REV.* 493, 493–625 (1996).

recent entry into the profession and the ongoing exclusion and isolation they encounter within their workplaces.<sup>36</sup> We build on the insights generated by these bodies of research by examining the role of human and social capital in explaining gendered earnings disparities in the legal academy.

## B. THE LEGAL ACADEMY: AN ELITE SEGMENT OF AN ELITE PROFESSION

Careers in the legal profession are notably stratified, with corporate law firm partnerships and tenured law faculty positions among the most elite positions in the profession.<sup>37</sup> Among law graduates who work in full-time jobs practicing law, less than twenty percent work in large firms with over 100 lawyers, earning entry-level salaries that are double or triple what their peers earn in smaller law firms.<sup>38</sup> Over half of those law graduates working in large firms will have graduated from the top twenty law schools.<sup>39</sup> But very few law graduates will return to law school as faculty members, and the majority of this select group will have graduated from the nation's most elite law schools.<sup>40</sup>

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36. See CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* (2012); Fiona M. Kay & John Hagan, *Building Trust: Social Capital, Distributive Justice, and Loyalty to the Firm*, 28 *LAW & SOC. INQ.* 483, 483–519 (2003); Nancy Reichman & Joyce S. Sterling, *Recasting the Brass Ring: Deconstructing and Reconstructing Workplace Opportunities for Women Lawyers*, 29 *CAP. UNIV. L. REV.* 923, 923–77 (2002).

37. See, e.g., Ronit Dinovitzer & Bryant Garth, *The New Place of Corporate Law Firms in the Structuring of Elite Legal Careers*, 45 *LAW & SOC. INQUIRY* 339, 339–71 (2020) (finding that “despite significant transformations in the profession, including dramatic expansion in size and the opening of corporate law positions to women, minorities, and the graduates of lower-ranked schools, the powerful and prestigious positions of corporate law partners remain largely reserved for those with the most elite credentials and other characteristics—male, white, wife at home—that defined law partners before the great period of change”); Felix Buhlmann, Thierry Rossier & Pierre Benz, *The Elite Placement Power of Professors of Law and Economic Sciences*, in *NEW DIRECTORS IN ELITE STUDIES* (Olav Korsnes, Johan Heilbron, Johs. Hjellbrekke, Felix Buhlmann & Mike Savage eds., 2017) (noting that the networks of law professors, when compared with professors of the economic sciences, are notably larger and include other “elite members in political, administrative and business positions alike. . . . This . . . points to an important difference between the two disciplines: only law seems to be a generalist and ubiquitous elite profession”). Not only are careers in the law stratified after law students graduate, but entry into law school—on its own—exhibits stratification in terms of who is kept out of the halls of law schools. See Christopher Williams, *Gatekeeping the Profession*, 26 *CARDOZO J. EQUAL RTS.* 171, 190 (2020) (noting that entrance examinations and even law school itself prevents some students from accessing legal education and the legal profession).

38. See *What Do New Law Graduates Who Go into Private Practice Earn? A 25-Year Retrospective*, NAT'L ASS'N L. PLACEMENT BULL. (Oct. 2018), <https://www.nalp.org/1018research> [<https://perma.cc/8FSG-LMVE>].

39. See Kyle McEntee, *Law School Job Outcomes*, LAW SCH. TRANSPARENCY (2015), <https://data.lawschooltransparency.com/jobs/legal-jobs/> [<https://perma.cc/7DLL-QU6D>].

40. See Eric Segall & Adam Feldman, *The Elite Teaching the Elite: Who Gets Hired by the Top Law Schools?*, GA. ST. U. C. OF L. RES. PAPER NO. 2018-26 (2018) (establishing that only 5.56% of law professors at top-ten law schools and only 31.03% of law professors at non-top-ten law schools did not themselves attend a top-ten law school); see also Robert J. Bothwick & Jordan R. Schau, *Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors*, 25 *MICH. J. L. REFORM* 191 (1991); George C. Christie, *The Recruitment of Law Faculty*, 1987 *DUKE L. J.* 306 (1987); Lynn M. LoPucki, *Dawn of the Discipline-Based Law Faculty*, 65 *J. LEGAL EDUC.* 506, 509 (2016); Michael J. Higdon, *A Place in the Academy: Law Faculty Hiring and Socioeconomic Bias*, 87 *ST. JOHN'S L. REV.* 171, 175 (2013); 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, 594–614 (2003).

Due in part to a growing number of law schools, an increasing emphasis on law school rankings, and declining enrollment and subsequent resource constraints, competition among law schools for hiring professors in the 21<sup>st</sup> century is greater than ever.<sup>41</sup> After excelling in the nation's most elite colleges, law schools, and doctoral programs, law professors are often recruited from leading law firms or notable public sector posts, and many have clerked for judges on the federal Circuit Courts of Appeal or justices on the Supreme Court.<sup>42</sup> As such, they represent an exclusive sector of an already elite profession.

In popular media, jobs in the legal academy are touted as favorable alternatives to the practice of law, not merely because they offer an escape from the demands of the billable hour, but because they tend to be prestigious and lucrative positions and come with the relative flexibility of the academic work calendar.<sup>43</sup> Because law faculty must often forego higher paying careers in the private sector, their compensation is often well above average among university faculty, especially when they receive tenure or are promoted to full professor.<sup>44</sup> Thus, law

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41. See Tracey E. George & Albert H. Yoon, *The Labor Market for New Law Professors*, 11 J. EMPIRICAL LEGAL STUDIES 1, 1–38 (2014) (noting that the “number of hires is likely to decline, at least in the short term, because law schools face revenue shortfalls due to shrinking class sizes,” and that the “hiring process can be analogized to a tournament. For most candidates, the tournament represents a competition with one another for limited . . . openings at schools, where schools eliminate candidates in successive stages. . . . For the most successful candidates, however, the competition is bilateral. They are competing for the best offers, while schools are competing with one another to convince these candidates to join the faculty”).

42. See *id.* at 1–3; see also Jon W. Bruce & Michael I. Swigert, *The Law Faculty Hiring Process*, 18 HOUS. L. REV. 215 (1981); Donna Fossum, *Law Professors: A Profile of the Teaching Branch of the Legal Profession*, 5 AM. B. FOUND. RES. J. 501 (1980); Heather A. Haveman & Ogi Radic, *Educational Background and Stratification in the Legal Academy: Invasion of the Body Snatchers . . . or More of the Same?*, 21 J. GENDER RACE JUST. 91, 126 (2017); LoPucki, *supra* note 40, at 508; Milan Markovic, *The Law Professor Pipeline*, 92 TEMP. L. REV. 813, 818 (2020); Segall & Feldman, *supra* note 40, at 1-3. However, it should be noted that not all law faculty candidates possess these elite backgrounds. This adds to the competitive nature of law school hiring for both candidates and the law schools that hire them. The definition of “elite” characteristics is quite narrow, making the competition among candidates for a position rather fierce. Yet, competition among law schools is maybe even more fierce to hire the set of candidates that possess these narrowly-defined “elite” traits. See Higdon, *supra* note 40, at 178-81; Philip L. Merkel, *Scholar or Practitioner: Rethinking Qualifications for Entry-Level Tenure-Track Professors at Fourth-Tier Law Schools*, 44 CAP. U. L. REV. 507, 514–19 (2016).

43. See, e.g., Brad Areheart, *Advice on Becoming a Law Professor*, U. OF TEXAS AT AUSTIN SCH. OF L., <https://law.utexas.edu/career/paths/academic/advice-on-becoming-a-law-professor/> [<https://perma.cc/3EZX-9URF>] (last visited May 1, 2021) (stating that “[t]his is the best job in the world (seriously)"); YALE LAW SCHOOL, *ENTERING THE LAW TEACHING MARKET* (2018), [https://law.yale.edu/sites/default/files/area/departments/cdo/document/cdo\\_law\\_teaching\\_public.pdf](https://law.yale.edu/sites/default/files/area/departments/cdo/document/cdo_law_teaching_public.pdf) [<https://perma.cc/34WV-9RQV>] (noting that “[t]he work of a law professor combines research, writing, and teaching, infused with a strong dose of autonomy. . . . This combination creates a highly appealing mix for many people"); *Why Law Teaching*, N.Y.U. SCH. OF L., <https://www.law.nyu.edu/acp/why-law-teaching> [<https://perma.cc/9UAK-64HF>] (last visited May 1, 2021) (leading with the line that “[l]aw teaching is a terrific job” and extolling the ancillary benefits of being a law professor).

44. See, e.g., Jacqueline Bischel, Jingyun Li, Adam Pritchard & Jasper McChesney, *2018 Faculty in Higher Education Annual Report*, COLLEGE & UNIVERSITY PROFESSIONAL ASSOCIATION FOR HUMAN RESOURCES (2018); *Faculty Salaries Vary by Institution Type, Discipline*, CHRON. OF HIGHER EDUC. (Apr. 11, 2011), <https://www.chronicle.com/article/Faculty-Salaries-Vary-by/127073> [<https://perma.cc/P4G7-ME9F>] (noting

faculty also occupy an elite segment of the academy.<sup>45</sup>

Yet, prior to the After Tenure study from which our data are drawn, surprisingly little academic attention had been given to studying this elite sector of the academy. Although recent years have seen growing interest in research in this area,<sup>46</sup> to date, there has not been systematic or empirical study of how law professors—and particularly tenured law professors—are compensated. In the sections that follow, we seek to address this gap in the research literature on the legal academy by examining gender differences in salary among tenured law faculty and the mechanisms that undergird them.

## II. STRATIFICATION IN THE LEGAL ACADEMY

### A. THE AFTER TENURE SURVEY

To conduct our analyses described in this Article, we began with a dataset from the first phase of the After Tenure study, housed at the American Bar Foundation (ABF), which has included multiple phases of observation.<sup>47</sup> Under the leadership of Elizabeth Mertz at ABF and her initial co-Principal Investigator, Wamucii Njogu, the first phase consisted of a national survey of tenured law

that a Professor of Law earns nearly sixty percent more than a Professor of English Language and Literature, and more than a full professor in any other discipline within the university, on average).

45. There is also evidence of gendered earnings disparities not only in law schools but across universities. See, e.g., Barbezat & Hughes, *supra* note 8; see also Margot E. Shang, *Female Tenured Harvard Profs Paid an Average of 92.5 Cents on the Dollar Compared to Men, Survey Shows*, HARV. CRIMSON (Apr. 24, 2009), <https://www.thecrimson.com/article/2019/4/24/fas-pay-gap-2019> [<https://perma.cc/N8C6-D2Q9>]; *Women in Academia: Quick Take*, CATALYST (Jan. 23, 2020), <https://www.catalyst.org/research/women-in-academia/> [<https://perma.cc/EB5Q-MPQJ>].

46. A growing number of research studies have focused on race, gender, and intersectional bias in the legal academy. See, e.g., RICHARD A. WHITE, *THE PROMOTION, RETENTION, AND TENURING OF LAW SCHOOL FACULTY: COMPARING FACULTY HIRED IN 1990 AND 1991 TO FACULTY HIRED IN 1996 AND 1997* 12–14 (2004) (demonstrating that—after seven years in a tenure-track job—women of color remained untenured at more than twice the rate of white men and women); Sumi Cho, *Post-Intersectionality: The Curious Reception of Intersectionality in Legal Scholarship*, 10 DU BOIS REV. 385, 385–404 (2013) (examining the reception of legal academic scholarship on intersectionality); Meera Deo, *Intersectional Barriers to Tenure*, 51 U. C. DAVIS L. REV. 997 (2017) (investigating the intersectionality of race and gender in tenure decision process for law professors); Meera Deo, *The Ugly Truth About Legal Academia*, 80 BROOK. L. REV. 943 (2015) (reporting the findings of the Diversity in Legal Academia Study); Meera Deo, *Trajectory of a Law Professor*, 20 MICH. J. RACE & L. 441 (2014) (doing the same with application to the lack of leadership roles for women of color in the legal academy); Meera Deo, *Looking Forward to Diversity in Legal Academia*, 29 BERKELEY J. GENDER L. & JUST. 352 (2014); Robert K. Toutkoushian, Marcia L. Bellas & John V. Moore, *The Interaction Effects of Gender, Race, and Marital Status on Faculty Salaries*, 78 J. HIGHER EDUC. 572, 572–601 (2007) (demonstrating the interaction of gender, race, and marital status in determining the earnings of professors—not exclusive to the legal academy).

47. This study was conceived of by Elizabeth Mertz at the American Bar Foundation and conducted in several phases in collaboration with other scholars; her co-PI for the bulk of the study was Katherine Barnes. See Elizabeth Mertz, Frances Tung, Katherine Barnes, Wamucii Njogu, Molly Heiler & Joanne Martin, *After Tenure: Post-Tenure Law Professors in the United States*, AM. B. FOUND. (2011), [http://www.americanbarfoundation.org/uploads/cms/documents/after\\_tenure\\_report\\_final\\_abf\\_4.1.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/after_tenure_report_final_abf_4.1.pdf) [<https://perma.cc/6UGQ-7USS>].

faculty, while the second phase created a distinct qualitative dataset composed of in-depth follow-up interviews to provide greater depth and more precise contextual information for the survey results. The initial survey sample was drawn from tenured faculty listed in the Association of American Law Schools (AALS) Directory of Law Teachers,<sup>48</sup> which augmented the survey results given its wealth of important information about law faculty: race, gender, current law school, title, tenure status, and other information about a professor's educational and professional background, including information about a professor's teaching responsibilities and research areas.<sup>49</sup> Following an initial mailing, a shortened version of the survey was administered by the National Opinion Research Center (NORC), in which NORC contacted and surveyed non-respondents by phone.<sup>50</sup>

In all, the survey achieved a high response rate, with over sixty-three percent, or 1,222 law professors from the eligible sample, participating in the survey.<sup>51</sup> To make the sample generalizable to the legal academy at the time the data were collected, Katherine Barnes, lead quantitative researcher on the After Tenure survey, weighted the responses to the survey in order to make the responses representative of the law school faculty population, using the inverse mean of the response rate decile to correct the response rate in full result reporting.<sup>52</sup> She also used weighting to correct for any non-response bias. Our analysis relies on the same underlying data collected from the After Tenure survey—including those reported in the After Tenure reports and studies—and employs the survey weights

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48. In the initial phase of survey administration, the After Tenure survey was mailed in 2005 to a total of 2,076 law professors who had achieved the rank of associate or full professor, with additional mailings and a digital version of the survey sent out to account for law professors who moved institutions or could not be located at their AALS Directory of Law Teachers address upon the initial mailing. *See id.*

49. It should be noted that the AALS Directory of Law Teachers did not account for tenure status at the time of the study, which is why the creators of the After Tenure Survey had to sample from the 2003 AALS Directory of Law Teachers. *See* Katherine Barnes & Elizabeth Mertz, *Is it Fair: Law Professors Perceptions of Tenure*, 61 J. LEGAL EDUC. 511 (2012); *Directory of Law Teachers*, AM. ASS'N OF L. SCHS. (2019), <https://www.aals.org/publications/dlt/> [<https://perma.cc/B2XB-RV5E>].

50. *See* Mertz et al., *supra* note 47, at Appendix A. NORC interviewers acquired their responses according to the survey protocol, including only those respondents who met survey criteria (including that they were post-tenure and not at the time holding an administrative position).

51. *See* Elizabeth Mertz, Frances Tung, Katherine Barnes, Wamucii Njogu, Molly Heiler & Joanne Martin, *After Tenure: Post-Tenure Law Professors in the United States Project Report Update*, AM. B. FOUND. (2012) [http://www.americanbarfoundation.org/uploads/cms/documents/after\\_tenure-\\_addendum\\_to\\_lsac\\_report\\_-\\_july\\_30.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/after_tenure-_addendum_to_lsac_report_-_july_30.pdf) [<https://perma.cc/3TF5-LLR7>]. In all, “465 male professors (64% of eligible males), 477 female professors (66% of eligible females), and 232 minority professors (57% of eligible minorities)” completed the survey, constituting the nearly 1,200 respondents in the sample. *See id.* Also, many law professors completed a majority of the survey questions, but they have been dropped from analysis for incomplete responses, including responses to relevant questions corresponding to our principal dependent and independent variables, as well as important covariates. *See id.*

52. *See id.* Mertz and her team, which at that time included demographer Wamucii Njogu—and also in consultation with sociologist Robert Nelson on survey design—oversampled female (using a stratified sample) and underrepresented racial minorities (using an oversample of all racial minorities not included in the random stratified sample) in order to provide a robust enough sample to support statistical analyses of gender and race; the oversamples were corrected for by co-PI Katherine Barnes using weights that also took into account non-response rates. *Id.*



used by the After Tenure research team to correct for oversampling of women and underrepresented racial minorities, as well as for non-response.<sup>53</sup>

The After Tenure team's analyses, particularly those led by Professors Barnes and Mertz, have documented significant differences by race and gender in how tenured law faculty perceive the fairness of the tenure process, and in overall job satisfaction, with women of color repeatedly having the least positive experiences.<sup>54</sup> In this article, we perform our own independent analysis using data drawn from the After Tenure study to test for any systematic pay disparities among tenured U.S. law professors—the first of its kind.

## B. A DEMOGRAPHY OF THE LEGAL PROFESSION AND THE LEGAL ACADEMY

In this section, we identify the demographic characteristics of members of both the legal profession and the tenured legal academy to provide our audience with context about the composition of the tenured law faculty in our analysis of the After Tenure study. With a few notable exceptions, data on the gender and racial composition of law faculties were not previously widely collected.<sup>55</sup> Although

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53. See Mertz et al., *supra* note 47, at 62–63; see also Mertz et al., *supra* note 51, at 2 (After Tenure Addendum); Katherine Barnes & Elizabeth Mertz, *Appendix A: Methods for Is It Fair? Law Professors' Perceptions of Tenure*, AM. B. FOUND. (2012), [http://www.americanbarfoundation.org/uploads/cms/documents/isitfair-appendix\\_a\\_methods\\_for\\_online.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/isitfair-appendix_a_methods_for_online.pdf) [<https://perma.cc/352W-JXWJ>].

54. See generally Barnes & Mertz, *supra* note 49; Katherine Barnes & Elizabeth Mertz, *Law School Climates: Job Satisfaction Among Tenured US Law Professors*, 43 LAW & SOC. INQUIRY 441 (2018).

55. One such notable exception was Donna Fossum's pathbreaking work on women law professors in the 1980s. See Fossum, *supra* note 42, at 501–54; Donna Fossum, *Law and the Sexual Integration of Institutions: The Case of American Law Schools*, ALSA FORUM VII 222–50 (1983). Also, in the case of law faculty members, the data often conflicted based on which organization—the American Bar Association (ABA) or AALS—collected the data. See Elyce H. Zenoff & Kathryn V. Lorio, *What We Know, What We Think We Know, and What We Don't Know About Women Law Professors*, 25 ARIZ. L. REV. 869, 871 (1983) (noting that “no one knows how many women law professors exist or their percentage of the law teacher population because ABA and AALS, the only sources for statistics on the law teaching profession, define law professor differently. Consequently, the number of women law professors varies depending on whether the AALS or ABA statistic [sic] are used, as well as on which definition researchers use to correct what seem to them to be inaccurate estimates”). Likewise, data on the sexual orientation of lawyers have not been systematically collected over time, but recent data reported by 957 law firms and offices to the National Associate for Law Placement (NALP) indicate that in 2017, 2.64 percent of all lawyers identified as LGBTQ. *LGBT Representation among Lawyers in 2017*, NALP BULL. (Jan. 2018), <https://www.nalp.org/0118research> [<https://perma.cc/A79U-D3AW>]. It is notable that a larger share of associates identified as LGBTQ than partners (3.45 percent compared to 1.99 percent, respectively). It is also worth noting that firms with over 701 lawyers had the highest percentage of LGBTQ associates—3.96 percent—while firms with 100 or fewer lawyers had the highest rates of LGBTQ partners—2.34 percent. Approximately 5.96 percent of tenured law professors in our sample self-identified as lesbian, gay, or bisexual, tracking higher than the most recent estimates of members of the LGBTQ community in the practicing legal profession. However, outside of the *After Tenure* study, very little academic or descriptive attention has been paid to LGBTQ law professors in general, and their compensation in particular. See generally Francisco Valdes, *Sexual Minorities in Legal Academia: A Retrospection on Community, Action, Remembrance, and Liberation*, 66 J. LEGAL EDUC. 510 (2017) (discussing the history and actions of the Section on Gay and Lesbian Legal Issues of the Association of American Law Schools throughout the 1990s). Some LGBTQ legal scholars praise the inclusion of LGBTQ students and professors in legal education and the expansion of course coverage of LGBTQ issues. *But see* Ruthann Robson, *Educating the Next Generation of*



both the legal profession and the legal academy have been diversifying in terms of gender and race, progress has been slow and particularly at the upper levels of partnership—in the case of law firms—and tenure—in the case of law schools.<sup>56</sup> And in the present context, numerous commentators have suggested that the composition of post-tenure law faculty remains fairly homogeneous.<sup>57</sup>

This homogeneity is, perhaps, unsurprising. Historically, the legal profession has been overwhelmingly dominated by men.<sup>58</sup> As of 2019, of the more than one million active lawyers in the United States, only thirty-six percent, or less, are women.<sup>59</sup> Likewise, the tenured doctrinal law faculty ranks have historically been predominantly male.<sup>60</sup> However, the present gender distribution among tenure-track doctrinal faculty exhibits near parity, which suggests that tenured law faculty could reach greater gender parity in the not-so-distant future. That said, tenured law professors today, and those included in our analysis, are predominately male.<sup>61</sup>

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LGBTQ Attorneys, 66 J. LEGAL EDUC. 502, 502 (2017) (stating that “while law school may be more [LGBTQ] friendly, I’m not convinced that the legal academy has been queered, at least sufficiently so”). Others have experienced both implicit and explicit bias while a part of the legal community. See Elvia Rosales Arriola, *Amor y Esperanza: A Latina Lesbian Becomes a Law Professor*, 66 J. LEGAL EDUC. 484 (2017); Elvia Rosales Arriola, *Welcoming the Outsider to an Outsider Conference: Law and the Multiplicities of Self*, 2 HARV. LATINO L. REV. 397, 412–22 (1997).

56. See Zenoff & Lorio, *supra* note 55, at 874–88. See generally Richard H. Chused, *Hiring and Retention of Minorities and Women on American School Faculties*, 137 U. PA. L. REV. 537 (1988); Deborah Jones Merritt, *The Status of Women on Law School Faculties: Recent Trends in Hiring*, 1995 U. ILL. L. REV. 93 (1995); Debra Branch McBrier, *Barriers to the Sex and Race Integration of Law Academia: Process of Ghettoization and the Revolving Door* (1999) (Ph.D dissertation, The Ohio State University).

57. See, e.g., Bothwick & Schau, *supra* note 40, at 191–99; Chused, *supra* note 56, at 537–39; Deborah J. Merritt, Barbara F. Reskin & Michelle Fondell, *Family, Place, and Career: The Gender Paradox in Law School Hiring*, 1993 WIS. L. REV. 395 (1993); James R. P. Ogloff, David R. Lyon, Kevin S. Douglas & V. Gordon Rose, *More Than “Learning to Think Like a Lawyer:” The Empirical Research on Legal Education*, 34 CREIGHTON L. REV. 73, 128–41 (2000); Martha S. West, *Gender Bias in Academic Robes: The Law’s Failure to Protect Women Faculty*, 67 TEMP. L. REV. 67, 79–92 (1994).

58. See, e.g., EPSTEIN, *supra* note 36, at 3–5; *Household Data Annual Averages*, U.S. BUREAU OF LAB. STAT. (2008), [https://www.bls.gov/cps/cps\\_aa2008.htm](https://www.bls.gov/cps/cps_aa2008.htm) [<https://perma.cc/BQ5H-UMXD>].

59. *ABA National Lawyer Population Survey*, A.B.A. (2019), [https://www.americanbar.org/content/dam/aba/administrative/market\\_research/national-lawyer-population-demographics-2009-2019.pdf](https://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-demographics-2009-2019.pdf) [<https://perma.cc/D54P-7PBG>] (revealing that, among respondents to the survey, women accounted for about thirty-five percent of active attorneys every year since 2014); *ABA National Lawyer Population Survey – 10 Year Trend in Lawyer Demographics*, A.B.A. (2018), [https://www.americanbar.org/content/dam/aba/administrative/market\\_research/National\\_Lawyer\\_Population\\_Demographics\\_2008-2018.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/market_research/National_Lawyer_Population_Demographics_2008-2018.authcheckdam.pdf) [<https://perma.cc/5PQ4-LFXX>].

60. Catherine Martin Christopher, *Putting Legal Writing on the Tenure Track: One School’s Experience*, 31 COLUM. J. GENDER & L. 65, 67 (2015) (noting that as recently as 2015, men comprised 68.1 percent of tenured American law faculty); see also Debra Branch McBrier, *Gender and Career Dynamics within a Segmented Professional Labor Market: The Case of Law Academia*, 81 SOC. FORCES 1201, 1251 (2003).

61. See Christopher, *supra* note 60, at 70 (revealing that only 51.5 percent of tenure-track faculty were men).

Estimates of tenured women in the legal academy in the mid-2000s marginally exceeded twenty-five percent of the tenured legal professoriate.<sup>62</sup> Among the law schools represented by respondents in the sample, the mean percentage of women law faculty members at those law schools is 35.36 percent with an interquartile range between 30.00 and 40.80 percent.<sup>63</sup> Therefore, although women have made significant in-roads into the legal academy over the last several decades, the tenure process may mitigate these gains and maintain the historical gender dominance of men in the legal academy.<sup>64</sup>

**TABLE 1: GENDER DISTRIBUTION OF LAW PROFESSORS (RYAN-DAWE ANALYSIS FROM AFTER TENURE DATA)**

<i>Gender</i>	<i>Percent (Unweighted)</i>	<i>Percent (Weighted)</i>
Men	53.17	73.91
Women	46.83	26.09

*N*: 1,222

**TABLE 2: PERCENTAGE OF FULL-TIME TENURED WOMEN LAW FACULTY (RYAN-DAWE ANALYSIS FROM AFTER TENURE DATA) (WEIGHTED)**

<i>Mean</i>	<i>S.D.</i>	<i>Min.</i>	<i>0.25</i>	<i>Median</i>	<i>0.75</i>	<i>Max</i>
35.36	8.69	7.70	30.00	35.10	40.80	57.10

*N*: 1,217

The legal profession and the legal academy are predominantly white. Only five percent of lawyers are black, three percent are Asian, and five percent are Hispanic or Latino—figures which underscore the woeful underrepresentation of these racial groups in the legal profession as compared with their representation in the overall population.<sup>65</sup> While law schools have increased efforts to diversify

62. See Mertz et al., *supra* note 47, at Table 2.1 (noting 25.21 percent women faculty in the ABA national survey of the time).

63. Calculations on file with the authors.

64. See Barnes & Mertz, *supra* note 49, at 511 (noting that “tenure was frequently described as the crucial institutional process through which the legal academy could block or open the doors to gender and racial integration”); see also Chused, *supra* note 56, at 538–39; McBrier, *supra* note 60; Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth about Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199, 274–75 (1997).

65. See ABA *National Lawyer Population Survey*, *supra* note 59; see also *Quick Facts: Population Estimates*, U.S. CENSUS BUREAU (July 1, 2019), <https://www.census.gov/quickfacts/fact/table/US/PST045219> [<https://perma.cc/JE42-HN55>] (indicating the representation of these racial groups at 13.4 percent, 5.9 percent, and 18.5 percent, respectively, in the population based on 2018 data).

their faculty and indeed have achieved some measure of success, law faculties are also lacking in terms of racial diversity.<sup>66</sup>

As recently as 2013, 9.7 percent of all law professors were black, 4.4 percent of law professors were Asian or Pacific Islander, and 4.7 percent were Hispanic or Latino.<sup>67</sup> White law professors are also overrepresented in our analysis of tenured law professors. However, racial diversity among tenured law professors in our analysis is somewhat higher than 2013 figures of racial diversity among all law professors. In fact, data from the American Bar Association (ABA) in the early 2000s estimated that just under thirteen percent of tenured law professors were people of color.<sup>68</sup> Before weighting, 31.32 percent of respondents in our analysis were tenured law professors of color, with black law professors making up the largest racial minority group among tenured law professors.<sup>69</sup> After weighting, 20.08 percent of respondents in our analysis were people of color, scaling the proportion of tenured law professors of color much closer to their probable proportions in the legal academy in the mid-2000s.

**TABLE 3: RACIAL DISTRIBUTION OF TENURED LAW PROFESSORS (RYAN-DAWE ANALYSIS FROM AFTER TENURE DATA)**

<i>Race</i>	<i>Percent (Unweighted)</i>	<i>Percent (Weighted)</i>
White	68.68	79.92
People of Color	31.32	20.08

*N*: 1,210

66. *But see* James T. Lindgren, *Measuring Diversity: Law Faculties in 1997 and 2013*, 39 HARV. J.L. & PUB. POL'Y 89, 128 (2016) (concluding that "affirmative action overcomes discrimination in the hiring process" by looking at the gains in racial diversity between the 1997 and 2013 American Association of Law Schools' Directory of Law Teachers listing for the top 100 law schools).

67. *See* James T. Lindgren, *Law Faculty Diversity: Successes and Failures*, WASH. POST (Mar. 21, 2015), [https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/03/21/law-faculty-diversity-successes-and-failures/?utm\\_term=.328aae6377d8](https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/03/21/law-faculty-diversity-successes-and-failures/?utm_term=.328aae6377d8) [<https://perma.cc/6LPP-5ZWJ>] (using the 2013-2014 data provided by the American Bar Association). The underrepresentation of racial minority law faculty intersects with other demographic characteristics, including gender. In fact, in 1994, women comprised 25 percent of full-time law professors but only 3.5 percent were black women. *See* Barnes & Mertz, *supra* note 54 (noting also that through the 1980s, minority groups were leaving tenure-track jobs in the legal academy in greater proportions than white male professors).

68. *See* Mertz et al., *supra* note 47, at 14.

69. *Id.* at 16.

**TABLE 4: BIVARIATE DISTRIBUTION OF RACE BY GENDER OF LAW PROFESSORS  
(RYAN-DAWE ANALYSIS FROM AFTER TENURE DATA) (WEIGHTED)**

	<i>Men</i>	<i>Women</i>	<i>Total</i>
White	76.03	23.97	100.00
	82.48	72.76	79.92
People of Color	64.29	35.71	100.00
	17.52	27.24	20.08
Total	73.67	26.33	100.00
<i>N</i> : 1,210	$\chi^2 = 13.81$	$p < 0.001$	

Age in the legal academy or legal profession is an important demographic factor, with bearing on how professionals are compensated. Since pay generally increases with age, it is important to take this variable into account when examining how the individual characteristics of law professors impact their earnings. In the legal profession, lawyers between the ages of 35 and 64 make up the vast majority of those actively engaged in the practice of law.<sup>70</sup> Although recent data on the average age of practicing lawyers is limited, even in 2005—when the After Tenure data were first collected and before the 2008 recession, which may have driven many older attorneys to defer retirement even further<sup>71</sup>—nearly 3 in 4 lawyers were between the age of 35 and 64.<sup>72</sup> Only thirteen percent of lawyers were under the age of 35.<sup>73</sup>

The age distribution in our analysis indicates that the legal academy closely mirrors the legal profession with regard to age. The ages of tenured law faculty range from 34 to over 83 years old at the time the study first commenced in 2005.<sup>74</sup> Approximately ninety percent of all respondents in our analysis—whether weighted or unweighted—fell between the ages of 40 and 69, with a

70. Bill Henderson, *Is the Legal Profession Showing Its Age?*, LEGAL WHITEBOARD (Oct. 12, 2014), <https://lawprofessors.typepad.com/legalwhiteboard/2014/10/is-the-legal-profession-showing-its-age.html> [<https://perma.cc/G955-Q5MJ>] (using data from Martindale-Hubbell's *The Lawyer Statistical Report*).

71. *Id.* For example, the proportion of lawyers age sixty-five has held relatively steady at twelve percent in 1980 and thirteen percent in 2005, while the lawyers between the ages of thirty-five and sixty-four increased from fifty-two percent in 1980 to seventy-four percent in 2005. *Id.*

72. *Id.*

73. *See id.* This trend dovetails with the lower rates of absorption of law school graduates into entry-level jobs requiring a bar license, which has declined quite dramatically since 2008. *See id.*; *see also* Debra Cassens Weiss, *As Fewer Law Grads Become Lawyers, the Profession Shows Its Age*, A.B.A. J. (Oct. 22, 2014), [http://www.abajournal.com/news/article/as\\_fewerLaw\\_grads\\_become\\_lawyers\\_the\\_profession\\_shows\\_its\\_age](http://www.abajournal.com/news/article/as_fewerLaw_grads_become_lawyers_the_profession_shows_its_age) [<https://perma.cc/6HWE-DLFV>].

74. *See* Mertz et al., *supra* note 47, at 16.

median age of 54 in the unweighted sample and 56 in the weighted sample.<sup>75</sup> Given that an award of tenure typically occurs several years into an academic's career and that teaching in a law school sometimes requires both a law degree and a doctorate degree or clerkship experience, it is not surprising that the vast majority of respondents in our analysis are between the ages of 40 and 69.

**TABLE 5: AGE DISTRIBUTION OF TENURED RESPONDENTS (RYAN-DAWE ANALYSIS FROM AFTER TENURE DATA).**

<i>Age</i>	<i>Percent (Unweighted)</i>	<i>Percent (Weighted)</i>
30 – 39	3.62	2.89
40 – 49	28.51	23.41
50 – 59	43.14	40.61
60 – 69	19.72	25.53
70 +	4.52	7.32
Did not respond	0.49	0.24

*N*: 1,217

### C. A CLOSER LOOK AT TENURED WOMEN LAW PROFESSORS AND THEIR CAREER EXPERIENCES

As the previous section of this Article discusses, women law professors comprise a growing segment of the legal academy but still trail men in terms of representation on law faculties.<sup>76</sup> Various explanations have been provided for the gender disparity in tenured law faculty positions. For instance, it was the case twenty years ago that women represented the minority of applicants for tenure-track jobs in law schools, which impacts the number of tenured women law faculty today.<sup>77</sup> Once on the tenure track, women may encounter two forms of gender bias. Female faculty may hit a “glass ceiling,” and mothers may hit “maternal wall,” triggered by assumptions about their competence by their faculty peers that may affect how they are evaluated by a tenure committee.<sup>78</sup>

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

<sup>76</sup> See Tables 1 and 2, *supra* page [insert pages when we receive printer proofs].

<sup>77</sup> See, e.g., Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313, 341–42 (2000).

<sup>78</sup> That is, research has shown that women face an assumption of reduced productivity in the workplace once they begin having children. See Christine Haight Farley, *Confronting Expectations: Women in the Legal Academy*, 8 YALE J.L. & FEMINISM 333 (1996); Joan C. Williams, *Hitting the Maternal Wall-Before They Reach a “Glass Ceiling” in Their Careers, Women Faculty May Hit a “Maternal Wall”*, 90 ACAD. BULL. 16 (2004).

While these examples illustrate processes that undoubtedly contribute to women remaining a minority among tenured law faculty, one might logically expect that having tenure should level the playing field for women law professors in terms of pay. That is, a law school tenure committee's decision to award tenure to a woman should elevate her to a higher salary band and suggest that she is valued within her workplace in non-pecuniary terms. Additionally, research suggests law faculty are relatively liberal in terms of their politics, compared to other professionals and members of the legal profession; it would stand to reason that the progressive values held by law professors would translate to their workplace in the form of fair compensation and social integration.<sup>79</sup> Moreover, law professors—and particularly those who teach or produce research in the area of employment law—ought to be well-versed in legislation surrounding equal pay. Thus, even if law faculty are not committed to workplace gender equality themselves, one would expect that they would be aware of—and perhaps deterred by—the potential consequences for engaging in gender pay discrimination. Yet, other studies of women in the legal academy indicate that these ideals do not positively influence the valuation of women law professors or their integration within the law schools in which they work.<sup>80</sup> Our findings are consistent with these studies.

#### 1. INTERNAL PROMOTION AND EXTERNAL INTEREST

Women in the academy encounter gender bias in many forms. They encounter bias in how their scholarship is valued by their peers on tenure and promotion committees, given that traditional measures of scholarly productivity and output privilege men.<sup>81</sup> They encounter it in the classroom, and this form of bias may become a part of their teaching record to the extent that it manifests on student evaluations of their teaching.<sup>82</sup> Like their peers in legal practice, female professors

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79. Adam Bonica, Adam Chilton, Kyle Rozema & Maya Sen, *The Legal Academy's Ideological Uniformity*, 47 J. LEGAL STUD. 1, 32 (2018) (finding that only fifteen percent of law professors are conservative, compared to thirty-five percent of lawyers overall, suggesting a relatively uniform liberal ideology among members of the legal professoriate).

80. See, e.g., Barnes & Mertz, *supra* note 54; Barnes & Mertz, *supra* note 49; see also MEERA DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* (2019).

81. See Ira Mark Ellman, *A Comparison of Law Faculty Production in Leading Law Reviews*, 33 J. LEGAL EDUC. 681 (1983); see also Leslie D. Gonzales & Aimee LaPointe Terosky, *From the Faculty Perspective: Defining, Earning, and Maintaining Legitimacy across Academia*, 118 TEACHERS COLLEGE REC. 1 (2016); Janet H. Lawrence, Sergio Celis & Molly Ott, *Is the Tenure Process Fair? What Faculty Think*, 85 J. HIGHER EDUC. 155 (2014); KerryAnn O'Meara, *Uncovering the Values in Faculty Evaluation of Service as Scholarship*, 26 REV. HIGHER EDUC. 57 (2002); Michael I. Swigert & Nathaniel E. Gozansky, *Senior Law Faculty Publication Study: Comparisons of Law School Productivity*, 35 J. LEGAL EDUC. 373 (1985).

82. See, e.g., Susan A. Basow, *Student Evaluations of College Professors: When Gender Matters*, 87 J. EDUC. PSYCH. 656 (1995); John A. Centra & Noreen B. Gaubatz, *Is There Gender Bias in Student Evaluations of Teaching?*, 71 J. HIGHER EDUC. 17 (2000); Meera Deo, *A Better Tenure Battle: Fighting Bias in Teaching Evaluations*, 31 COLUM. J. GENDER & L. 7 (2015).



often encounter fewer opportunities for internal promotion.<sup>83</sup> Many women in the academy experience a stalling of their careers after they receive tenure.<sup>84</sup> Professors and other professionals who are women are often forced to choose between advancement in their career or their families.<sup>85</sup> Each of these examples of gender bias may impact how women law professors are compensated and the opportunities they have within and outside of their law schools.

Both external opportunities for employment and internal opportunities for promotion have bearing on compensation. While internal promotion opportunities usually present a law professor with increased compensation without the cost of leaving her professional and social networks, external opportunities often come with increased salaries to compensate for the loss of social networks.<sup>86</sup> With respect to both of these opportunities, we observe that women law professors have fewer opportunities for internal promotion within their law schools and may be extended fewer opportunities to continue their career in the legal academy at other law schools.<sup>87</sup> Given that promotion to full professor is not coterminous with a tenure decision at many law schools, we would expect that women would have the same odds as men of being promoted to full professor at some time following their tenure decision. Yet, we find that nearly eight percent fewer women law professors in our sample have achieved the rank of full professor than men, even accounting for time passing since the faculty member's tenure decision.<sup>88</sup> Likewise, among tenured law professors in our analysis who had not achieved the rank of full professor, the proportion of women was almost triple the proportion of men. And even before the question of being promoted to full professor arises, women law professors in our analysis indicated that they received, on average, at

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83. See Dinovitzer & Garth, *supra* note 37; Robert L. Nelson, Ioana Sendroiu, Ronit Dinovitzer & Meghan Dawe, *Perceiving Discrimination: Race, Gender, and Sexual Orientation in the Legal Workplace*, 44 LAW & SOC. INQUIRY 1051 (2019); Nancy J. Richman & Joyce S. Sterling, *Recasting the Brass Ring: Deconstructing and Reconstructing Workplace Opportunities for Women Lawyers*, 29 CAP. U. L. REV. 923 (2002).

84. See Barbara Bagilhole & Jackie Goode, *The Contradiction of the Myth of Individual Merit, and the Reality of the Patriarchal Support System in Academic Careers: A Feminist Investigation*, 8 EURO. J. WOMEN'S STUD. 161 (2001); Mary Frank Fox, *Women, Science, and Academia: Graduate Education and Careers*, 15 GENDER & SOC. 654 (2001).

85. See generally Anne-Marie Slaughter, *Why Women Still Can't Have It All*, THE ATLANTIC (July/August 2012), <https://www.theatlantic.com/magazine/archive/2012/07/why-women-still-cant-have-it-all/309020/> [<https://perma.cc/959A-NFYq>]; MARY BLAIR-LOY, *COMPETING DEVOTIONS: CAREER AND FAMILY AMONG WOMEN EXECUTIVES* (2009).

86. See, e.g., Joni Hersch & W. Kip Viscusi, *Gender Differences in Promotions and Wages*, 35 INDUS. REL. 461, 470 (1996) (noting a gender difference in the effect of internal promotions on wages, and reporting a fifty percent higher earnings premium for men than for women); Toby J. Park, *Do Faculty Members Get What They Deserve? A Review of the Literature Surrounding the Determinants of Salary, Promotion and Tenure*, 66 J. PROFESSORIAL 28-47 (2011).

87. See *infra* Table 7.

88. The After Tenure survey asked two questions about the respondent's promotion to full professor in immediate succession. Question 12 asked: "Have you been promoted to full professor?" Question 12a asked: "What year were you promoted to full professor?"

least one fewer permanent lateral offer than men.<sup>89</sup> Thus, it seems as if neither the external nor internal markets offer the same opportunities and rewards for women law professors that they do for men.<sup>90</sup>

**TABLE 6: PROPORTION OF TENURED LAW PROFESSORS WHO HAVE BEEN PROMOTED TO THE RANK OF FULL PROFESSOR (RYAN-DAWE ANALYSIS FROM AFTER TENURE DATA) (WEIGHTED)**

	<i>Men</i>	<i>Women</i>	<i>Total</i>
Not Promoted to Full Professor	49.78	50.22	100.00
	4.18	12.02	6.22
Promoted to Full Professor	75.62	24.38	100.00
	95.82	87.98	93.78
Total	74.01	25.99	100.00
<i>N</i> : 1,216	$\chi^2 = 24.63$	$p < 0.001$	

**TABLE 7: PERMANENT OFFERS RECEIVED AFTER TENURE BY LAW PROFESSORS (RYAN-DAWE ANALYSIS FROM AFTER TENURE DATA) (WEIGHTED)**

<i>Group</i>	<i>Mean</i>	<i>Std. Err.</i>	<i>95% Confidence Interval</i>	
Men	5.70	0.15	5.40	5.99
Women	4.66	0.18	4.31	5.01
Diff.	1.04	0.23	0.58	1.50
<i>N</i> : 1,015	$t = 4.47$	$p < 0.001$		

## 2. SOCIAL NETWORKS

Social networks are essential to professional life.<sup>91</sup> Within the context of law schools, social networks offer law professors a community—even within the broader law school or university—with which professors can share research ideas, successful teaching methods, and even friendships beyond the water

89. Notably, Question 9b1 of the After Tenure Survey asked: “Did other law schools express interest in hiring you after tenure?” and Question 9b2 “How many permanent offers have you received?”

90. See, e.g., Dinovitzer et al. *supra* note 6 (noting that women lawyers receive lower returns for their work than men lawyers).

91. See, e.g., Kay & Hagan, *supra* note 36; Payne-Pikus et al., *supra* note 35.

cooler. Social networks provide opportunities for law professors to share information with one another, and to the extent that a law professor has a robust social network that includes colleagues in positions of power, she may not only have access to information but can be included in the meaningful decision-making of the law school. If a law professor's social network is not dense within her law school, she may not have the same access to information or be approached with the same opportunities to participate in the enterprise of the law school. As such, she will not receive the same returns to her human and social capital investments in her career.

The systematic data collection for the After Tenure survey provides new insight into the social environments and climates of law schools as experienced by the professors who participate in them. In fact, studies using the After Tenure data demonstrate the adverse social conditions that tenured women law professors often experience in their law schools.<sup>92</sup> The differences between genders that we observe among tenured law faculty, in terms of their opportunities for internal promotion and tenure and external interest in continuing their careers at another law school, are likely compounded by differences in access to law schools' social networks.<sup>93</sup> The After Tenure Survey asked respondents questions that address patterns of social interaction between colleagues to better gauge the respondent's levels of integration or isolation. To supplement Barnes and Mertz's analysis, we conducted a bivariate analysis of networking and gender. The results from our descriptive bivariate analysis—which harmonize with Barnes' and Mertz's 2018 findings—indicate that men are far more likely than women to socialize often

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92. See generally Barnes & Mertz, *supra* note 54; Barnes & Mertz, *supra* note 49. These studies harmonize with a body of research demonstrating that women experience social isolation in certain settings of the academy. See, e.g., Carol Kemelgor & Henry Etzkowitz, *Overcoming Isolation: Women's Dilemmas in American Academic Science*, 39 MINERVA 239 (2001) (discussing the social isolation experienced by women professors in the sciences).

93. See, e.g., Barnes & Mertz, *supra* note 54, at 455–59. The slowed rates of integration of women law professors and law professors from underrepresented racial minority groups among the tenured law professor ranks, despite increased hiring of women and underrepresented racial minority groups, has been attributed to the fact that many women and underrepresented racial minority law professors left the academy before obtaining tenure. See Barnes & Mertz, *supra* note 49, at 515. In their initial investigation of this pattern, Barnes and Mertz sought to discover what was causing an exodus of underrepresented racial minorities and women from the legal academy and determined women faculty and faculty of color experience challenges their white male counterparts do not, which impacted their job satisfaction. For example, after tenure, women and law professors of color are asked to advise students and take on more academic service roles and functions than white men. See *id.* at 520–23. Several of the professors interviewed stated that they felt they were treated differently due to their racial or gender minority status, and that their employers felt underrepresented groups were differentially risky to hire. See *id.* at 523. Professors who are racial minorities also find themselves over-extended as they are asked to be on multiple committees to make sure their “group” is represented. See *id.* at 525; see also Louise August & Jean Waltman, *Culture, Climate, and Contribution: Careers Satisfaction among Female Faculty*, 45 RES. HIGHER EDUC. 177 (2004); Deborah Olsen, Sue A. Maple & Frances K. Stage, *Women and Minority Faculty Job Satisfaction: Professional Role Interests, Professional Satisfaction, and Institutional Fits*, 66 J. HIGHER EDUC. 267 (1995); Titus Oshagbemi, *Personal Correlates of Job Satisfaction: Empirical Evidence from UK Universities*, 30 INT'L J. SOC. ECON. 1210 (2003); Shelley M. Park, *Research, Teaching, and Service: Why Shouldn't Women's Work Count?*, 67 J. HIGHER EDUC. 46 (1996).

with their university colleagues and members of the university administration outside of work, and the difference is rather substantial: nearly ten percentage points in each category. This finding, then, suggests that women are not as embedded in the professional networks.

**TABLE 8: FREQUENCY WITH WHICH LAW PROFESSORS SOCIALIZE WITH UNIVERSITY COLLEAGUES OUTSIDE OF WORK (RYAN-DAWE ANALYSIS FROM AFTER TENURE DATA) (WEIGHTED)**

	<i>Men</i>	<i>Women</i>	<i>Total</i>
Never	68.19	31.81	100.00
	45.79	54.42	48.23
Often	75.19	24.81	100.00
	54.21	45.58	51.77
Total	71.82	28.18	100.00
<i>N</i> : 728	$\chi^2 = 4.39$	$p = 0.027$	

**TABLE 9: FREQUENCY WITH WHICH LAW PROFESSORS SOCIALIZE WITH UNIVERSITY ADMINISTRATION OUTSIDE OF WORK (RYAN-DAWE ANALYSIS FROM AFTER TENURE DATA) (WEIGHTED)**

	<i>Men</i>	<i>Women</i>	<i>Total</i>
Never	68.46	31.54	100.00
	60.85	69.73	63.40
Often	76.29	23.71	100.00
	39.15	30.27	36.60
Total	71.33	28.67	100.00
<i>N</i> : 755	$\chi^2 = 5.26$	$p = 0.015$	

### 3. LAW PROFESSORS AND JOB SATISFACTION

In their 2018 study, Barnes and Mertz shed considerable light on the disparities in levels of job satisfaction between tenured law professors along gender and racial

lines.<sup>94</sup> Notably, their study documents evidence of several examples of the disparate social experiences of women law professors and law professors of color—groups that indicated lower levels of job satisfaction relative to their white male peers.<sup>95</sup> Specifically, their “quantitative results point to issues surrounding voice and respect as having the strongest impact on racial and gendered disparities in job satisfaction.”<sup>96</sup> Of next importance in the model were differential feelings about collegiality and then about salary.<sup>97</sup> Controlling for these factors—along with, to a much lesser extent, reported divergences in values between professors and their institutions—caused the race and gender gap in satisfaction to disappear. Illustrating these quantitative findings with qualitative evidence, Barnes and Mertz conclude that socially marginalized professors experience something that their white male counterparts may not: a sense that their contributions carry lesser value.<sup>98</sup> In a finding that is congruent with our discussion of social networks above, Barnes and Mertz note that “groups other than white men rely much more heavily on support groups and on colleagues outside of their own law faculties for professional interaction,” a likely reaction to perceived lack of collegiality and respect within their own institutions.<sup>99</sup> But social marginalization may not be the only way that women law professors and professors of color are devalued; their devaluation might also be of a pecuniary nature.

#### 4. DISSATISFACTION WITH COMPENSATION

As noted above, previous work on the After Tenure Study examined overall job satisfaction for law professors, combining both the survey data we use here and data from the qualitative interview part of the project.<sup>100</sup> Since our principal

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94. See Barnes & Mertz (2018), *supra* note 54.

95. See *id.*, at 454–55 (noting that “women of color, men of color, and white women described subtle and continuing ways in which they felt silenced or disrespected in their work settings . . . [leading] them to turn, as individuals, to different communities for support”).

96. *Id.* at 457 (using structural equation modeling to demonstrate that “[b]oth qualitative and quantitative results also point to collegiality as another important factor mediating the differential dissatisfaction of traditional outsider law professors, second only to voice/respect in its impact on the satisfaction gap”). Importantly, Barnes and Mertz distinguish collegiality from “voice/respect” on the basis that the former is an institutional characteristic while the latter is experienced on a more individualized basis.

97. See *id.*

98. *Id.* at 459 (“A number of traditional outsider professors report that they have had to work harder for recognition; in light of the already grueling workload reported by many respondents, it is not hard to imagine a long-term negative effect on these professors’ job experiences. . . . [P]revious research has highlighted how institutional structures in schools and workplaces tend to recreate existing hierarchies. Here, we see that the practices that recreate those hierarchies are tightly linked to hidden belief systems that . . . have concrete effects on how work burdens are distributed and assessed.”).

99. *Id.* at 455.

100. Barnes & Mertz investigated the relationship between salary levels and overall job satisfaction, finding that “a higher salary does improve professors’ personal job satisfaction; that is, to the extent that salary is important, it is the absolute level of salary, rather than relative level of salary compared to one’s cohort, that is correlated with job satisfaction” and that salary “appears to have a threshold effect—once one reaches at least \$125,000 nine-month salary, job satisfaction is both stable and high.” Barnes & Mertz, *supra* note 54, at 459.

analysis centers on pay differences between tenured law faculty, we have chosen to focus on responses to the survey dealing only with dissatisfaction over pay in a series of bivariate analyses. This is because a law professor's salary is discrete from the other sources of dissatisfaction options in the survey, which tend to focus on home and workplace environments; compensation straddles and impacts both worlds but is an important part of a larger picture about how a law professor feels that she is being valued in return for her labor. Another element that comprises the compensation satisfaction mosaic is whether a law professor feels that she is given opportunities or perks at her law school that may not always come in the form of remuneration.

To analyze the latter construct, we conducted a bivariate analysis of whether respondents felt that they had been given better opportunities or perks by their law school than others at their rank by the respondents' gender. We find that men are far more likely to indicate that they had been given better opportunities or perks by their law school than others at their rank, 10.7 percentage points more than women. Moreover, more women than men indicated that they had not been given better opportunities or perks by their law school than others at their rank, again by nearly eleven percentage points. Similarly, we analyzed whether respondents felt that they had received salary increases that are higher or comparable to others at the same faculty rank. We observe that male respondents in our sample were much more likely to have received salary increases that were greater to or equal to others at their rank than female respondents—by over ten percentage points. The correspondence between these two findings is alarming, to say nothing of the fact that they both evince a differential in excess of ten percentage points between men and women tenured law faculty. Taken together, these findings would suggest that law schools give non-financial perks and salary increases at higher rates to faculty members who are men than their peers of the opposite gender, even accounting for tenured status and faculty rank.

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Yet, apart from this study, little is known about law professors' satisfaction with their pay, despite a fairly robust literature on pay satisfaction differentials between men and women suggesting that women have lower pay expectations and perceive lower levels of compensation to be fair. See, e.g., Timothy J. Keaveny & Edward J. Inderrieden, *Gender Differences in Pay Satisfaction and Pay Expectations*, 12 J. MANAGERIAL ISSUES 363 (2000); Linda A. Jackson & Severin V. Grabski, *Perceptions of Fair Pay and the Gender Wage Gap*, 73 J. APPLIED SOC. PSYCH. 606 (1988); Brenda Major & Blythe Forcey, *Social Comparisons and Pay Evaluations: Preferences for Same-Sex Same-Job Wage Comparisons*, 21 J. EXPERIMENTAL SOC. PSYCH. 393 (1985). The information from the literature on job satisfaction involves many factors, such as the individual's own self-image, attitudes, and demographic background, as well as other important considerations. See Ruth Kanfer & Phillip L. Ackerman, *Aging, Adult Development, and Work Motivation*, 29 ACAD. MGMT. REV. 440 (2004); Joshua R. Knapp, Brett R. Smith & Therese A. Sprinkle, *Is It the Job or the Support? Examining Structural and Relational Predictors of Job Satisfaction and Turnover Intention for Nonprofit Employees*, 46 NONPROFIT & VOLUNTARY SECTOR Q. 652 (2017); Elvira Nica, *Employee Voluntary Turnover as a Negative Indicator of Organizational Effectiveness*, 4 PSYCH. ISSUES IN HUM. RES. MGMT. 220 (2016); Mo Wang & Kenneth S. Shultz, *Employee Retirement: A Review and Recommendations for Future Investigation*, 36 J. MGMT. 172, 175–76 (2010); Cheryl J. Daly & Jay R. Dee, *Greener Pastures: Faculty Turnover Intent in Urban Public Universities*, 77 J. HIGHER EDUC. 776, 777 (2006).



**TABLE 10: WHETHER LAW PROFESSORS BELIEVE THEY HAVE BEEN GIVEN BETTER OPPORTUNITIES & PERKS THAN COLLEAGUES AT THEIR RANK (RYAN-DAWE ANALYSIS FROM AFTER TENURE DATA) (WEIGHTED)**

	<i>Men</i>	<i>Women</i>	<i>Total</i>
Yes	78.54	21.46	100.00
	45.93	35.25	43.13
No	69.99	30.01	100.00
	53.66	64.64	56.54
Total	73.70	26.14	99.84
<i>N</i> : 1,159	$\chi^2 = 11.43$	$p = 0.020$	

**TABLE 11: WHETHER LAW PROFESSORS BELIEVE THEY HAVE BEEN GIVEN COMPARABLE OR GREATER SALARY INCREASES THAN COLLEAGUES AT THEIR RANK (RYAN-DAWE ANALYSIS FROM AFTER TENURE DATA) (WEIGHTED)**

	<i>Men</i>	<i>Women</i>	<i>Total</i>
Yes	77.94	22.06	100.00
	75.90	60.50	71.87
No	64.17	35.83	100.00
	23.31	36.66	26.81
Total	99.21	97.16	98.68
<i>N</i> : 1,104	$\chi^2 = 30.21$	$p < 0.001$	

To further probe this evidence of gender stratification in compensation structures, we tested whether there were differences in the levels of dissatisfaction for survey respondents on the basis of gender. Specifically, we performed a bivariate analysis of respondents' gender with their response as to whether they were dissatisfied with their current institution because of their pay and/or other material resources. Response rates to this question were low, because responses to this

question were part of a skip-pattern in the survey.<sup>101</sup> Yet, unsurprisingly, we find that the proportion of women who were dissatisfied with their law school because of their pay nearly doubled the proportion of men who were dissatisfied because of their pay.

**TABLE 12: WHETHER PAY IS A SOURCE OF JOB DISSATISFACTION FOR LAW PROFESSORS (RYAN-DAWE ANALYSIS FROM AFTER TENURE DATA) (WEIGHTED)**

	<i>Men</i>	<i>Women</i>	<i>Total</i>
Yes	59.36	40.64	100.00
	5.85	11.67	7.34
No	76.24	23.76	100.00
	34.54	31.37	33.73
Total	40.39	43.04	41.07
<i>N</i> : 438	$\chi^2 = 10.21$	$p = 0.004$	

These findings suggest profound differences in the access to social capital and returns to human capital that tenured men and women law faculty members experience in their jobs. Women indicate that they have fewer opportunities for internal promotion in their current law schools, and that fewer law schools interested are in them for lateral roles than men. Women are also more likely to feel socially isolated. And finally, women receive non-salary-based perks and salary increases at far lower rates than men, which can compound their feeling valued in terms of their compensation. Because compensation, and more specifically salary, is a paradigmatic measure of a professional's value by their employer for their labor as well as a strong indicator of inequality, we explore the earnings differential between men and women more deeply in the next section of this Article.

### III. GENDER PAY DISPARITY IN THE LEGAL ACADEMY

#### A. EXPLANATIONS OF PAY DIFFERENCES BETWEEN LAW PROFESSORS

Given the political leanings of the legal academy, one might expect faculty pay in the legal academy to be more equitable, as opposed to law firms' salary structures,

101. We should note, here, that the After Tenure Survey queried respondents first about whether they were dissatisfied with their job before asking why respondents were dissatisfied. That is, a skip pattern in the survey prevented many respondents from answering whether they were dissatisfied with their pay if they did not indicate that they were dissatisfied with their jobs first. As a result, just over one third of the sample was asked follow-up questions about the sources of their dissatisfaction.

which tend to be market driven.<sup>102</sup> During the time of the data collection for the After Tenure Survey, the highest paid member of the legal academy was a woman: Elizabeth Warren.<sup>103</sup> This fact is remarkable, given that Senator Warren worked at an elite law school but did not herself attend an elite law school. However, our results, discussed above and in this section, indicate that Warren is an outlier.

Pay differences within the legal academy are generally tied to differences in faculty rank, tenure status, and line. That is, on average, full professors earn more than associate or assistant professors, tenured faculty earn more—and sometimes much more—than tenure-track and contract faculty, and doctrinal faculty members typically earn more than clinical faculty members.<sup>104</sup> Perhaps because of these structural differences based on rank, title, and line, law faculty compensation has not been the subject of much academic study.<sup>105</sup>

Our study is optimal for studying wage differences between legal academics, because the After Tenure survey data allow us to look within a similarly-situated segment of the legal profession and the legal academy—tenured law professors—which mitigates earnings differences that are attributable to the confounding effect of tenure status and line. Also, looking within and across different typologies of law schools, the differences in salary among faculty of the same rank, tenure status, and line should be more constrained, if not dramatically reduced.<sup>106</sup> Because we are examining only tenured law professors, our study allows us to limit the effects of occupational segregation by focusing on the highest echelon of the legal academy. By investigating wage differentials among a sample of tenured law

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102. See Bonica et al., *supra* note 79; Monopoli, *supra* note 9, at 872–81.

103. See, e.g., *US Sen. Warren Releases 10 Years of Her Tax Returns Online*, CNBC (August 23, 2018), <https://www.cnbc.com/2018/08/23/us-sen-warren-posts-10-years-of-her-tax-returns-online.html> [https://perma.cc/5UDE-NHTN] (last visited Apr. 7, 2021).

104. Deborah J. Merritt, *Salaries and Scholarship*, LAW SCH. CAFÉ (Jan. 13, 2018), <https://www.lawschoolcafe.org/2018/01/13/salaries-and-scholarship/> [https://perma.cc/SZ87-G6UE] (last visited April, 2021) (discussing pay differentials across law professor's title lines and status within the law school).

105. *But see* Bruce D. Fisher & Paul Bowen, *The Law School Compensation Systems at Three Top Quartile State Law Schools: Factors Correlating with Law Professors' Salaries and Suggestions*, 19 N. ILL. U. L. REV. 671 (1999) (discussing the compensation systems at three unnamed public law schools).

106. Given the fact that all of the faculty members in the sample have received tenure, there should be a reduced level of variation in salary among tenured law professors and pay should not be differentiated on the basis of these demographic traits, a hypothesis we test below. However, for a discussion of how race impacts faculty pay, see generally Linda A. Renzulli, Linda Grant, & Sheetija Kathuria, *Race, Gender, and the Wage Gap: Comparing Faculty Salaries in Predominately White and Historically Black Colleges and Universities*, 20 GENDER & SOC. 491 (2006) (noting that underrepresented racial minorities earn less than their white peers). For a discussion of how salary increases with age among faculty, see, e.g., Orley Ashenfelter & David Card, *Did the Elimination of Mandatory Retirement Affect Faculty Retirement?*, 92 AM. ECON. REV. 957, 958 (2002). Finally, for a discussion of how sexual orientation and race impact pay across sectors, see, e.g., Jamie H. Douglas & Michael D. Steinberger, *The Sexual Orientation Wage Gap for Racial Minorities*, 54 INDUS. RELATIONS 59 (2015) (finding that, for men, there exists an “unexplained penalty greater than the sum of their individual unexplained race and sexual orientation differentials” and that underrepresented “racial minority lesbians, however, earn higher wages than what the sum of their racial and sexual-orientation analyses would suggest”).

professors, our data provide us with an apples-to-apples comparison of members of the upper ranks of the legal academy.

## B. DATA AND METHODS

While our results use the After Tenure data and weights, our methods of analysis are distinct from prior studies using the After Tenure data in a number of ways. For instance, our regression analyses account for non-response without imputation by including dummy variables representing missing responses—for the survey questions dealing with socializing with law school colleagues and publications, which would have reduced the available observations by almost 275—as a covariate in the regression models specified in Tables 21 and 22.<sup>107</sup> As such, while our approach varies at points from the previous approaches taken in other studies using After Tenure data, we make use of the full dataset in evaluating differences in compensation between tenured law professors.

For our regression analyses, we sought to test the impact of human and social capital measures—as well as a respondent’s social identity characteristics, including gender, age, race, and LGBTQ status—on a tenured law professor’s earnings.<sup>108</sup> The After Tenure survey collected information about a respondent’s gender dichotomously, and we used these data to determine the impact of gender on earnings for both respondents of color and white respondents. Likewise, a respondent’s LGBTQ status was collected as a binary variable, which we used to predict the effect of LGBTQ status on earnings. For a respondent’s race, we

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107. Importantly, these covariates were, in most cases, not statistically significant at conventional levels, suggesting that the missing responses were missing at random. In just one case, the variable indicating missingness on the self-reported question regarding the quality of publications, is the variable statistically significant at conventional levels ( $p = 0.05$ ). See Table 21, *infra*.

108. We test this two ways. First, we test the marginal difference in earnings reported by the coefficients in the Ordinary Least Squares regression. See Table 21, *infra*. For this analysis, we took the midpoint of each category in the categorical earnings variable as collected by the After Tenure survey. There were 14 categorical values of that variable: \$0-24,999; \$25,000-49,999; \$50,000-74,999; \$75,000-99,999; \$100,000-124,999; \$125,000-149,999; \$150-174,999; \$175,000-199,999; \$200,000-249,999; \$250,000-299,999; \$300,000-349,999; \$350,000-399,999; \$400,000-499,999; and over \$500,000. No respondents reported salaries at or exceeding \$300,000. Thus, the midpoints we created were the dollar values in the middle of the ranges for the first eleven categories of the variable. In our second analysis, we used a logistic regression to predict the likelihood of a respondent’s salary being at or above \$150,000. See Table 22, *infra*.

We also conducted a series of interactions between race, gender, and LGBTQ status to determine if the intersectionality of one’s endowed traits had any bearing on compensation. Additionally, we conducted interactions on gender and the percent of women law faculty members at the respondent’s law school to isolate the effect of tokenism—thinking specifically of the scenarios in which women are dramatically underrepresented on their faculties. Apart from the race and gender interactions, none of the interaction terms was a statistically significant predictor of earnings. Likewise, we also controlled for marital status, children, and childcare and eldercare responsibilities in other models to see how these might explain some of the statistically significant gender effects we observe in our regression analysis. However, none of these variables were statistically significant, and their inclusion did not adjust the magnitude of the gender\*race effects we observe. Finally, we also considered respondents’ parents’ educational as a proxy for the respondents’ social class background, but it was also not statistically significant. As such, we do not include these variables in the regression specifications of the models that we report in Tables 21 and 22, *infra*.

created a dichotomous variable with white law faculty as the comparison group against an aggregated group of law faculty identifying with one or more underrepresented racial minority groups. Based on these binary measures of gender and race, we created dummy variables representing women of color, white women, and men of color, with white men as the reference group. A respondent's age was catalogued in the survey data continuously. We demeaned age and squared the respondents' demeaned age values, which is consistent with the economic and sociological literature doing the same, given that age does not have a linear relationship with compensation but instead exhibits a quadratic relationship with earnings.<sup>109</sup> In addition to these variables capturing individual attributes of the respondents, we controlled for a series of dummy variables related to features of the law schools in which respondents are employed. We also employed independent variables that controlled for the respondents' human and social capital, via measures of the respondents' productivity and social networking—to improve our estimates of the relationship between respondents' demographic characteristics and their earnings.<sup>110</sup> Because the After Tenure survey did not capture a law professor's earnings as a continuous variable, we created a synthetic continuous measure of earnings by assigning the mid-point value of each earnings category (mean=\$137,381, standard deviation=36,633).<sup>111</sup> We also collapsed the categorical values of earnings into two categories so we could predict the odds of reporting earnings in the top quartile: those earning up to \$149,999 in annual base salary (n=746, 71 percent), and those earning \$150,000 or more (n=305, 29 percent).<sup>112</sup>

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109. See, e.g., HAGAN & KAY, *supra* note 30, at 135 (noting that it is “crucial in analyses of income to take age and experience into account. These variables are so closely related that only one or the other can be included in the analysis. We include measures of age and ‘age squared.’ Both are included in the models of earnings to take into account the tendency of incomes to increase into middle age and the tendency to decline with advancing age. The linear term (i.e. age) picks up the ascending effect, and the quadratic term (i.e. age squared) captures the later decline”).

110. These covariates include: the rank of the law school where the faculty member was employed when the first wave of the After Tenure data were collected, using the *U.S. News & World Report* Ranking of Law Schools published in 2005; whether the law school where the faculty member was employed was public or private; self-reported measures of the quality and quantity of the respondent's scholarship compared to similar colleagues; whether the faculty member often socializes with law school colleagues outside of work; and the rank of the law school the faculty member attended, again using the *U.S. News & World Report* ranking. Each of these variables further contextualize the respondent's compensation levels from human and social capital perspectives and was worthy of inclusion in the regression model. However, we did not include a covariate measuring whether the faculty member had risen to the rank of full professor, given that all of the respondents in our sample who earned salaries exceeding \$150,000 were also full professors.

111. See, e.g., HAGAN & KAY, *supra* note 30, at 134.

112. We note that this salary figure was reported between 2005 and 2007, which equates to a purchasing power of approximately \$185,000 to \$195,000—in 2020 constant dollars using CPI adjustment. However, this adjustment may be inflated, given that faculty wages have been relatively stagnant over the last fifteen years, which encompassed an economic recession and substantial declines in law school enrollments—both of which have impacted faculty pay. See, e.g., David Frakt, *Cost Cutting in an Age of Declining Law School Enrollment*, FACULTY LOUNGE (Jan. 15, 2015), <https://www.thefacultyounge.org/faculty-compensation/> [<https://perma.cc/X3PH-7X25>].

Below, we examine the bivariate relationships between the independent variables in our models and our dependent variables. The distribution of salaries of law professors in our analysis indicates that, of the 1,051 respondents who reported their earnings, 64.6 percent earn below \$150,000 annually, and 35.4 percent earned at above that threshold.<sup>113</sup> Looking at the intersection of gender and race, we observe white women and women of color earned salaries of \$150,000 or greater at far lower rates than white men, by nearly fifteen percentage points and by twenty-five percentage points, respectively.<sup>114</sup> In fact, on average, women of color and white women earn more than \$24,000 and nearly \$14,000 less than white men, respectively.<sup>115</sup> Men of color earned salaries at or exceeding \$150,000 at roughly comparable rates to white men, but on average, men of color earn more than \$7,000 less than white men.<sup>116</sup> Our bivariate analysis of the earnings of LGBTQ professors as compared to their non-LGBTQ peers does not return statistically significant results between the two groups. This is likely because LGBTQ professors earned salaries of \$150,000 or more at nearly identical rates to non-LGBTQ professors, and on average, LGBTQ professors earn about the same—though slightly higher—salaries as non-LGBTQ professors.<sup>117</sup>

Additionally, a clear descriptive picture emerges with respect to returns to human and social capital. Tenured faculty in our sample who worked at private law schools also earned more than \$11,000 per year above their peers at public law schools and were more likely to earn \$150,000 or more in annual salary at higher rates than their professors at public law schools (thirty-nine percent compared to thirty percent).<sup>118</sup> Professors in our sample who were employed at more prestigious law schools earned at or above \$150,000 at dramatically higher rates than professors employed at lower ranked law schools—and in a descending linear fashion by ranking tier.<sup>119</sup> On average, professors at top 20 law schools earned salaries with nearly a \$37,000 premium over professors at law schools ranked between twenty-one and fifty.<sup>120</sup> In turn, the salaries of professors working at law schools ranked between twenty-one and fifty were more than \$17,000 greater than salaries of professors working at law schools ranked between fifty-one and

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113. See *infra* Table 13.

114. See *infra* Table 14. The mean differences between these groups, based on the interaction of gender and race, are statistically significant ( $p \leq 0.001$ ).

115. See *id.*

116. See *id.*

117. See *infra* Table 15.

118. See *infra* Table 16. Here, too, the mean differences between professors at private and public law schools are statistically significant ( $p = 0.011$ ).

119. See *infra* Table 17. Note that all of the mean differences between professors salaries on the ranking tier of their employing law schools are statistically significant ( $p \leq 0.001$ ).

120. See *id.*



100, on average.<sup>121</sup> Law professors who were employed at law schools ranked between fifty-one and 100 earned very nearly \$10,000 more than professors employed at law schools ranked in either of the next two tiers.<sup>122</sup> Also, although measures of scholarship quality and publication quantity were self-reported and reflect respondents' own assessments of how their scholarship compares to that of similarly-situated colleagues, they appear to have a close relationship with earnings, but the differences between their mean values fall just outside of conventional levels of statistical significance.<sup>123</sup> Rates of professors earning \$150,000 or greater increase linearly as self-reported measures of publication quantity rise from below average (mean of \$137,630), to average (mean of \$139,931), to above average (mean of \$144,606).<sup>124</sup> Likewise, law professors in our sample who rated their scholarship quality as average or above average earned salaries of \$150,000 or greater at more than double the rate of those who rated their scholarship quality as below average.<sup>125</sup> However, law professors who rated their scholarship quality as above average earned salaries of \$150,000 or more at slightly lower rates than those who rated their scholarship quality as average.<sup>126</sup>

Finally, the patterns shown in Table 20 suggest social networking is associated with higher earnings.<sup>127</sup> Law professors in our sample who socialized with their colleagues outside of work often earned salaries at or above \$150,000 at rates of more than fifteen percentage points over law professors who seldom or never socialized with their colleagues.<sup>128</sup> Perhaps more importantly, professors who socialized often with their colleagues earn salaries of very nearly \$12,000 more than their peers who socialize with colleagues infrequently or never.<sup>129</sup>

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121. *See id.*

122. *See id.*

123. *See infra* Tables 18 and 19. Tenure respondents were asked whether they think that they publish above average, average, or below average quality and quantity of publications compared to similar colleagues at their law schools. It is important to note that these measures of productivity are themselves imbued with gender. For example, women's ability to publish may be constrained by their responsibilities in the private sphere; women may receive fewer opportunities to collaborate with colleagues due to less powerful social networks and access to mentors; and women may rank themselves lower than men for performing equivalent work. *See generally* Deo, *supra* note 80.

124. *Infra* Table 18. These mean differences are not statistically significant, but we note that they exhibit a linear relationship similar to that seen in the mean differences of earnings by quality of publication, which were very nearly statistically significant. *See* Table 19, *infra*.

125. *See infra* Table 19. These mean differences are very close to—but ultimately are outside of—conventional levels of statistical significance ( $p = 0.076$ ).

126. *See id.* We also note that the annual salary differences between professors who rated their scholarship quality as average or above average are nominal (means of \$142,624 and \$142,335, respectively), but on average, these professors earned more than \$14,000 more than professors who rated their scholarship quality as below average.

127. *See infra* Table 20. The mean differences between these groups are statistically significant ( $p = 0.010$ ).

128. *See id.*

129. *See id.*

**TABLE 13: DISTRIBUTION OF EARNINGS (RYAN-DAWE ANALYSIS FROM AFTER TENURE DATA) (WEIGHTED)**

<i>Salary Range</i>	<i>Percent (Unweighted)</i>
\$50,000 - \$74,999	0.52
\$75,000 - \$99,999	7.09
\$100,000 - \$124,000	28.52
\$125,000 - \$149,999	28.48
\$150,000 - \$174,999	18.17
\$175,000 - \$199,999	10.00
\$200,000 - \$249,999	5.92
\$250,000 - \$299,999	1.23
\$300,000 +	0.08

*N*: 1,051

**TABLE 14: DISTRIBUTION OF EARNINGS BY RACE AND GENDER (RYAN-DAWE ANALYSIS FROM AFTER TENURE DATA) (WEIGHTED)**

<i>Race and Gender</i>	<i>Earns less than \$150,000</i>	<i>Earns \$150,000+</i>	<i>Mean</i>	<i>Standard Error</i>
Women of Color	84.40	15.60	\$124,470	2,313
White Women	74.24	25.76	\$134,685	1,649
Men of Color	61.70	38.30	\$141,490	2,562
White Men	59.38	40.62	\$148,623	1,992
Total	64.57	35.43	\$143,064	1,293

*N*: 1,048       $\chi^2 = 30.46$        $p < 0.001$

**TABLE 15: DISTRIBUTION OF EARNINGS BY LGBTQ STATUS (RYAN-DAWE ANALYSIS FROM AFTER TENURE DATA) (WEIGHTED)**

<i>LGBTQ Status</i>	<i>Earns less than \$150,000</i>	<i>Earns \$150,000+</i>	<i>Mean</i>	<i>Standard Error</i>
LGBTQ	66.01	33.99	\$142,907	3,741
Non-LGBTQ	64.79	35.21	\$142,575	1,361
Total	64.86	35.14	\$142,596	1,295
<i>N: 1,025</i>	$\chi^2 = 0.04$	$p = 0.846$		

**TABLE 16: DISTRIBUTION OF EARNINGS BY TYPE OF EMPLOYING LAW SCHOOL (RYAN-DAWE ANALYSIS FROM AFTER TENURE DATA) (WEIGHTED)**

<i>Law School Type</i>	<i>Earns less than \$150,000</i>	<i>Earns \$150,000+</i>	<i>Mean</i>	<i>Standard Error</i>
Public	69.51	30.49	\$136,428	1,766
Private	60.88	39.12	\$148,000	1,832
Total	64.73	35.27	\$142,836	1,291
<i>N: 1,049</i>	$\chi^2 = 8.46$	$p = 0.011$		

**TABLE 17: DISTRIBUTION OF EARNINGS BY RANKING OF LAW SCHOOL AT WHICH RESPONDENT IS EMPLOYED (RYAN-DAWE ANALYSIS SAMPLE FROM AFTER TENURE DATA) (WEIGHTED)**

<i>Law School Ranking</i>	<i>Earns less than \$150,000</i>	<i>Earns \$150,000+</i>	<i>Mean</i>	<i>Standard Error</i>
Top 20	14.13	85.87	\$189,437	3,420
Ranked 21-50	48.65	51.35	\$152,740	2,409
Ranked 51-100	75.85	24.15	\$135,104	1,880
Tier 3	84.76	15.24	\$125,212	1,958
Tier 4	84.83	15.17	\$125,166	2,158
Total	64.30	35.70	\$143,342	1,301
<i>N: 1,037</i>	$\chi^2 = 284.17$	$p < 0.001$		

**TABLE 18: DISTRIBUTION OF EARNINGS BY SELF-REPORTED QUANTITY OF PUBLICATIONS COMPARED TO COLLEAGUES (RYAN-DAWE ANALYSIS FROM AFTER TENURE DATA) (WEIGHTED)**

<i>Publication Quantity</i>	<i>Earns less than \$150,000</i>	<i>Earns \$150,000+</i>	<i>Mean</i>	<i>Standard Error</i>
Below Average	72.91	27.09	\$137,630	3,480
Average	67.58	32.42	\$139,931	2,505
Above Average	62.76	37.24	\$144,606	2,184
Total	66.04	33.96	\$141,713	1,485
<i>N: 757</i>	$\chi^2 = 4.65$	$p = 0.173$		

**TABLE 19: DISTRIBUTION OF SELF-REPORTED QUALITY OF PUBLICATIONS COMPARED TO COLLEAGUES (RYAN-DAWE ANALYSIS FROM AFTER TENURE DATA) (WEIGHTED)**

<i>Publication Quality</i>	<i>Earns less than \$150,000</i>	<i>Earns \$150,000+</i>	<i>Mean</i>	<i>Standard Error</i>
Below Average	84.53	15.47	\$128,255	5,006
Average	63.09	36.91	\$142,624	2,386
Above Average	66.54	33.46	\$142,335	1,990
Total	66.34	33.66	\$141,888	1,481
<i>N: 757</i>	$\chi^2 = 6.85$	$p = 0.076$		

**TABLE 20: DISTRIBUTION OF EARNINGS BY FREQUENCY OF SOCIALIZING WITH COLLEAGUES OUTSIDE OF WORK (RYAN-DAWE ANALYSIS SAMPLE FROM AFTER TENURE DATA) (WEIGHTED)**

<i>Frequency of Socializing</i>	<i>Earns less than \$150,000</i>	<i>Earns \$150,000+</i>	<i>Mean</i>	<i>Standard Error</i>
Never or Not Often	79.31	20.69	\$131,377	3,286
Often	64.22	35.78	\$143,373	1,625
Total	66.15	33.85	\$141,836	1,485
<i>N: 754</i>	$\chi^2 = 8.56$	$p = 0.010$		

## C. RESULTS

Table 21 reports of a series of Ordinary Least Squares (OLS) regression models demonstrating the effect of each independent variable on the dependent variable of salary. In essence, each coefficient can be interpreted as the pay gap or premium that exists between the group identified and its comparison group, *ceteris paribus*, as expressed in increments of \$1,000. In the first model, or the baseline model, we test the impact of attributes of the law school at which the respondent worked, which one would expect to predict a law professor's earnings, as well as the demographic characteristics of respondents including age, race and gender, and LGBTQ status.<sup>130</sup> The first variable in our baseline model is a continuous measure of age, which captures respondents' position within the life- and career-course. We would expect that earnings would increase the longer one has been working, and we find that each year of a respondent's age nets the respondent an increase in salary slightly over a \$1,000. In addition to controlling for a respondent's age, our baseline model includes interacted measures of race and gender and indicates that both white women and women of color earn considerably less than white men—about \$9,100 and \$14,600, respectively. Although the direction of the coefficient suggests that men of color earn less than white men, this result is not statistically significant. We include a measure of LGBTQ status, but we find that LGBTQ professors do not earn more than their non-LGBTQ peers at statistically significant rates. Next, we measure the effects of the status of the law schools in which respondents are employed as measured by rankings produced by *U.S. News & World Report* in 2005, when the After Tenure data were first collected. We find that working at a top twenty law school or working at a law school ranked between twenty-one and fifty comes with a significant pay premium—nearly \$58,000 and \$26,000, respectively—over those who work at a law school ranked outside the top fifty. Likewise, we control for working in a private law school and find that working in a private law school also carries a substantial pay premium, more than \$11,600, over those who work at public law schools.

Our second model includes human capital variables, which we operationalize as self-reported measures of productivity. We include two measures of productivity: quantity of publications and quality of publications. This model includes a pair of dummy variables representing respondents who reported publishing above average quality and quantity, and we observe that publishing more work than similarly-situated peers is associated with a statistically significant earnings

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130. Respondents' nine-month law school salary was used as the dependent variable for the regression analysis reported in Table 21. In Table 22, we employ a different dependent variable—the condition of earning more than \$150,000, or a salary that is less than or equal to \$150,000—using a logistic regression methodology instead of an OLS regression methodology. See *infra* Tables 21 and 22.

premium.<sup>131</sup> This self-reported measure of quantity of publications is statistically significant in the model, as well as large, netting law professors who publish above average quantities a considerable pay premium of nearly \$9,400. Additionally, all of the effects found in our baseline model remain, net of our added measures of human capital. Yet, the magnitude of the pay gap between women and white men shrinks modestly in our second model. However, the pay premiums associated with working at top law schools and private law schools increase in this second model, suggesting that working at an elite law school or a private law school increases a professor's earnings regardless of how much the professor publishes.

Our third model specification includes social capital in the form of social networks. This model demonstrates that socializing often with colleagues outside of work is associated with a considerable pay premium of more than \$9,300. This finding supports prior research on the importance of social capital in the form of social networks shaping professional rewards. All effects from the baseline and human capital models remain with slight adjustments in magnitude.

In our fourth and final model in this table, we include interaction terms for men and women who graduated from top-fourteen law schools to test whether women and men receive different returns on elite credentials. In this specification, we find that men with elite law school credentials enjoy a significant boost to their salaries of nearly \$10,500. Women who graduated from top-fourteen law schools also receive a pay premium of nearly \$5,500. However, this disparity suggests another piece of evidence that men receive greater returns to their educational capital than women do, net of all previously controlled variables. When we add the interaction terms, the coefficient for white women falls just outside conventional levels of statistical significance ( $p=0.108$ ), and the magnitude of this coefficient declines to just over a \$3,750 pay differential between white women and white men. Thus, we conclude that the differential impact of returns to educational capital between genders explains some but not all of the pay disparity between white women and white men. Yet, the pay gap between women of color and white men remains statistically significant at nearly \$9,400. The fact that women of color earn considerably less than white men after we control for features of the employing law school, human capital, social capital, and returns to educational capital by gender illustrates that the story of earnings disparities in the legal academy is not merely about gender but also one about how gender intersects with race.

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131. See *infra* Table 21. To keep the observations the same across the four specifications of our OLS regression models, we began controlling for missingness in the response rate.



**TABLE 21: OLS REGRESSION MODELS PREDICTING EARNINGS IN \$1,000S**

	Baseline Model			Human Capital Model			Social Capital Model			Interaction Model		
	Coefficient	Std. Err.	p	Coefficient	Std. Err.	p	Coefficient	Std. Err.	p	Coefficient	Std. Err.	p
Constant	124.8345	2.0156	***	118.4492	2.6057	***	110.0752	3.2969	***	104.9614	3.4159	***
Age	1.0122	0.1338	***	1.0398	0.1352	***	1.0597	0.1355	***	1.1345	0.1355	***
Age-squared	-0.0058	0.0124		-0.0064	0.0122		-0.0075	0.0122		-0.0092	0.0120	
Works at Top 20 Law School	57.9731	3.3309	***	58.7713	3.3514	***	58.3662	3.3476	***	55.4986	3.4350	***
Works at Law School Ranked 21-50	25.9349	2.6170	***	26.5399	2.5323	***	26.6061	2.5003	***	25.1331	2.5380	***
Works at Private Law School	11.6159	1.9434	***	11.8977	1.9333	***	11.8175	1.9242	***	11.2001	1.8824	***
White Woman	-9.0834	2.1027	***	-7.1628	2.1358	***	-6.9382	2.1310	***	-3.7646	2.3406	+
Woman of Color	-14.6034	2.5277	***	-13.2366	2.5518	***	-12.5729	2.5188	***	-9.3973	2.8087	***
Man of Color	-0.9616	2.6329		-2.0969	2.7000		-1.5112	2.6854		-0.9572	2.6345	
LGBTQ	4.0112	3.2525		3.9844	3.1676		3.9405	3.1397		3.8902	3.0342	
Quantity of Publications				9.3876	2.5142	***	9.4996	2.4936	***	9.9444	2.4329	***
Quantity of Publications Missing				-7.0237	5.4448		-5.0947	4.9546		-5.1704	5.9105	
Quality of Publications				-0.2484	2.5812		0.0039	2.5552		-0.8131	2.4861	*
Quality of Publications Missing				15.5996	5.7794	**	16.0458	5.9672	**	12.8273	5.7815	*
Socializes with Colleagues							9.3530	2.4369	***	10.1185	2.3943	***
Socializes with Colleagues Missing							5.9412	5.3863		9.6467	5.6270	+
Woman (Attended a T-14 Law School)										5.4766	2.0389	***
Man (Attended a T-14 Law School)										10.4978	2.5405	***
Model Statistics	Obs:1,006	R <sup>2</sup> : 0.4418		Obs:1,006	R <sup>2</sup> : 0.4556		Obs:1,006	R <sup>2</sup> : 0.4605		Obs:1,006	R <sup>2</sup> : 0.4752	

\*\*\*  $p \leq 0.001$ , \*\*  $p \leq 0.01$ , \*  $p \leq 0.05$ , +  $p \leq 0.1$ . Coefficients are expressed in terms of \$1,000. Notes: Age and age-squared have been de-measured. The reference categories are works at a law school ranked 51 or lower, works at a public law school, white men, non-LGBTQ, attended a law school ranked 15 or lower, publishes work of average or below average quality, publishes work of average or below average quality, and does not socialize with colleagues often.

Table 22 provides another take on the findings of our OLS regression results. It reproduces logistic regression models predicting the odds of earning \$150,000 or more per year, and expresses the parameter estimates for our independent variables in the form of odds ratios. Our results in this table largely mirror those found in Table 21. In our baseline model, we find that the odds of earning \$150,000 or more increase at a statistically significant rate with age. Next, we find a very strong positive effect for working in higher ranked law schools, with the odds of earning \$150,000 or more being thirty-eight times higher for respondents working in top-twenty law schools compared to respondents working in law schools ranked fifty-one or lower, and respondents working in law schools ranked twenty-one to fifty being six times more likely to earn high incomes compared to respondents working in lower-ranked law schools. We also find that working in a private law school is associated with an increase in the odds of high earnings of nearly 200 percent compared to respondents working in public law schools. In terms of our interacted measures of race and gender, our results indicate that both white women and women of color have lower odds of earning a salary at or exceeding \$150,000 than white men. These odds are especially low for women of color, who were more than seventy-five percent less likely to earn salaries at or above \$150,000 than white men. Last, we include a measure of LGBTQ status, but we find that the odds of earning \$150,000 or more do not differ significantly for LGBTQ and non-LGBTQ respondents.

In our human capital model, we observe that publishing more work than similarly situated peers is associated with a 250 percent increase in the odds of being a high earner. Here, too, all effects found in our baseline model remain net of human capital, and the odds ratio for respondents working in top-twenty law schools to earn at least \$150,000 increases from 38.1 to 46.7. Once again, this upward adjustment indicates that working in an elite law school or a private law school increases a professor's earnings no matter how much the professor publishes.

In our social capital model, we once again observe the positive impact of social networks on earnings. Each variable that was a statistically significant predictor of high earning status in the previous models remains statistically significant in this model. We find that socializing often with colleagues outside of work is associated with a 230 percent increase in the odds of being a high earner.

In our final model, which includes interaction terms for men and women who graduated from top-fourteen law schools, we find that men who graduated from the nation's most prestigious law schools enjoy a significant boost in the odds of being high earners, while women do not. Once again, this result suggests—perhaps more clearly than our results in Table 21 do—that men's educational capital is valued differently than women's educational capital. When we control for returns to law school status by gender through our interaction terms in the fourth model, the coefficient for white women becomes non-significant. This indicates that the reduced odds of being a high earner for white women is explained by the lower returns they receive to their human capital. However, the coefficient for women of color remains statistically significant and negative, net of our interaction terms, which suggests that some of the

earnings disparity for women of color remains unexplained. That is, the pay gap for women of color persists despite the host of control variables, which is evidence of the robustness of a pay gap impacting women of color most acutely.

To illustrate the patterns that we see in our fourth model, we produced a graphical representation of the marginal probability of being high earners for women and men with and without elite education credentials.<sup>132</sup> This graphical representation can be found in Figure 1. Net of demographic characteristics, law school rank and type, human capital, and social capital, the probability of being a high earning law professor is twenty-eight percent for men with non-elite credentials, compared to fifty percent for men with elite credentials, and eight percent for women with non-elite credentials, compared with twenty-seven percent for women with elite credentials. Thus, having graduated from a top-fourteen law school nearly doubles the odds of being a high earner for men but only increases these odds by one-half for women. This pattern indicates that women are rewarded for their human capital endowments at a lower rate than men.

We also conducted a series of robustness checks, for example, dropping observations from respondents who were retiring from their positions.<sup>133</sup> Our findings—regarding pay differentials on the basis of gender, race, and the intersection of these traits as well as other human and social capital factors, discussed above—were robust to these tests, evincing similar effect sizes and levels of statistical significance across various specifications of the models.

Finally, given the example at the University of Texas School of Law that began this article, we know that a law professor's annual salary is a critical measure of a law professor's compensation but is often an incomplete picture of the professor's earnings. As such, we used the same covariates that we used to predict respondents' salary to estimate additional earnings reported by After Tenure respondents, which we transformed by their natural logs.<sup>134</sup> These estimates are reported in Table 23. Here, too, we find that working at a high-ranking law school predicts increases to additional earnings. But more germane to the focus of our study, we find that women—regardless of their race—experience dramatically lowered rates of additional earnings. Also, directionally, the interaction between educational capital and gender indicates that attending an elite law school represents a modest reduction in additional earnings for both men and women, directionally speaking. Yet, while neither interaction yields a statistically significant result at conventional levels, the impact of this interaction is worse for women than it is for men. Taken together, the findings from the logistic regression analyses and ordinary least square regression analyses are strong evidence of a gender pay gap in the legal academy.

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132. See *infra* Figure 1.

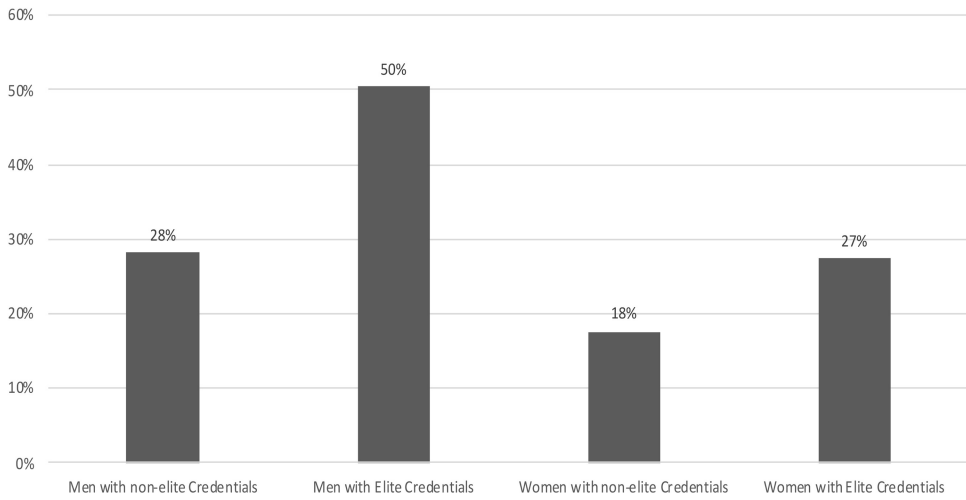
133. A majority of respondents who were retiring earned well in excess of the \$150,000 threshold and those that did not were presumably already on a phased retirement plan, meaning that—with respect to earnings—these responses were outliers in the dataset to begin with. Of the group of 97 respondents who indicated that they were retiring, two thirds were men.

134. See *infra* Table 23. We transformed the raw data using the natural log of additional earnings to adjust for the right-skewed distribution of the additional earnings data.

TABLE 22: LOGISTIC REGRESSION MODELS PREDICTING EARNING \$150,000 OR MORE

	Baseline Model			Human Capital Model			Social Capital Model			Interaction Model		
	Odds Ratio	Std. Err.	p	Odds Ratio	Std. Err.	p	Odds Ratio	Std. Err.	p	Odds Ratio	Std. Err.	p
Constant	0.159	0.035	***	0.102	0.031	***	0.047	0.022	***	0.030	0.014	***
Age	1.059	0.013	***	1.064	0.013	***	1.066	0.013	***	1.073	0.014	***
Age-squared	1.000	0.001		1.000	0.001		1.000	0.001		1.000	0.001	
Works at Top 20 Law School	38.123	10.951	***	46.735	14.635	***	46.051	14.451	***	40.592	12.978	***
Works at Law School Ranked 21-50	6.198	1.424	***	6.811	1.552	***	6.908	1.585	***	6.455	1.504	***
Works at Private Law School	1.826	0.355	**	1.832	0.357	**	1.846	0.361	**	1.783	0.350	**
White Woman	0.488	0.100	***	0.541	0.114	**	0.543	0.115	**	0.837	0.228	
Woman of Color	0.223	0.070	***	0.240	0.076	***	0.257	0.080	***	0.412	0.149	*
Man of Color	1.199	0.309		1.063	0.274		1.121	0.289		1.175	0.319	
LGBTQ	1.237	0.418		1.278	0.432		1.237	0.419		1.236	0.393	
Quantity of Publications				2.570	0.664	***	2.553	0.655	***	2.670	0.689	***
Quantity of Publications Missing				0.193	0.231		0.166	0.176	+	0.176	0.179	+
Quality of Publications				0.736	0.196		0.772	0.206		0.711	0.193	
Quality of Publications Missing				9.267	11.135	+	8.139	10.327	+	5.885	7.445	
Socializes with Colleagues							2.290	0.831	*	2.500	0.896	*
Socializes with Colleagues Missing							2.794	1.816		3.887	2.736	+
Woman (Attended a T-14 Law School)										1.101	0.281	
Man (Attended a T-14 Law School)										2.224	0.524	***
Model Statistics	Obs:1,006			Obs:1,006			Obs:1,006			Obs:1,006		

\*\*\*  $p \leq 0.001$ , \*\*  $p \leq 0.01$ , \*  $p \leq 0.05$ , +  $p \leq 0.1$   
 Notes: Age and age-squared have been de-meaned. The reference categories are works at a law school ranked 51 or lower, works at a public law school, white men, non-LGBTQ, attended a law school ranked 15 or lower, publishes work of average or below average quality, publishes work of average or below average quality, and does not socialize with colleagues often.



**Figure 1. Marginal Probability of Earning \$150,000 or More by Gender and Status of Law School Credentials**

TABLE 23: OLS REGRESSION MODELS PREDICTING AMOUNT OF ADDITIONAL EARNINGS (LOGGED)

	Baseline Model			Human Capital Model			Social Capital Model			Interaction Model		
	Coefficient	Std. Err.	p	Coefficient	Std. Err.	p	Coefficient	Std. Err.	p	Coefficient	Std. Err.	p
Constant	9.594	0.111	***	9.568	0.119	***	9.639	0.129	***	9.685	0.143	***
Age	0.011	0.006	+	0.011	0.006	+	0.012	0.006	+	0.011	0.006	+
Age-squared	0.001	0.001		0.001	0.001		0.001	0.001		0.001	0.001	
Works at Top 20 Law School	0.620	0.150	***	0.636	0.151	***	0.650	0.150	***	0.691	0.157	***
Works at Law School Ranked 21-50	0.405	0.120	***	0.407	0.120	***	0.415	0.119	***	0.433	0.122	***
Works at Private Law School	0.060	0.103		0.058	0.102		0.065	0.102		0.074	0.103	
White Woman	-0.392	0.092	***	-0.370	0.093	***	-0.357	0.094	***	-0.327	0.125	**
Woman of Color	-0.374	0.114	***	-0.357	0.116	**	-0.356	0.116	**	-0.316	0.148	*
Man of Color	-0.196	0.158		-0.192	0.160		-0.214	0.160		-0.221	0.160	
LGBTQ	0.037	0.112		0.027	0.110		0.027	0.111		0.041	0.113	
Quantity of Publications				0.230	0.147		0.244	0.146	+	0.240	0.146	+
Quality of Publications				0.027	0.110		0.027	0.111		0.041	0.113	
Socializes with Colleagues				-0.149	0.139		-0.100	0.143		-0.095	0.141	
Woman (Attended a T-14 Law School)							-0.157	0.104		-0.160	0.105	
Man (Attended a T-14 Law School)										-0.187	0.103	+
Model Statistics	Obs:773	R <sup>2</sup> :0.087		Obs:773	R <sup>2</sup> :0.092		Obs:773	R <sup>2</sup> :0.095		Obs:773	R <sup>2</sup> :0.098	

\*\*\*  $p \leq 0.001$ , \*\*  $p \leq 0.01$ , \*  $p \leq 0.05$ , +  $p \leq 0.1$ .  
 Notes: Age and age-squared have been de-meant. The reference categories are works at a law school ranked 51 or lower, works at a public law school, white men, non-LGBTQ, attended a law school ranked 15 or lower, publishes work of average of below average quantity, publishes work of average of below average quality, and does not socialize with colleagues often.



## CONCLUSION

A wealth of research has demonstrated that the gender wage gap in the legal profession is both pervasive and persistent. Our investigation of a rich and unique dataset of tenured law professors reveals gender stratification in the legal academy, clearly demonstrated by our finding that tenured women law professors—and especially women of color—receive lower compensation than their male colleagues. We find evidence that women law professors are very likely to earn lower salaries and income than men, even when they both enjoy the same protection of tenure.<sup>135</sup> Moreover, we find that gendered earnings disparities are experienced more acutely by women of color. In addition to documenting that gendered earnings disparities exist, it is important to examine the mechanisms that underly these persistent forms of gender—and racialized—inequality.<sup>136</sup> Our findings demonstrate the salience of human capital and social capital in mediating the relationship between gender and earnings in the legal academy.

Given that our analysis was confined only to tenured law professors and thus excludes pre-tenured faculty, our results cannot be said to address the size or scope of this salary gap in the whole of the legal academy. However, if anything, our findings may actually *underestimate* the gender pay gap, given that our sample only includes women who have won the law school tournament and received tenure and thus represent the most successful segment of women in the legal academy. Regardless of whether we underestimate gendered earnings disparities, we have uncovered sound evidence of its existence in the legal academy, as well as evidence that these disparities are conditioned by race. Furthermore, our analysis demonstrates that women's reduced earnings cannot be explained by differences in human capital endowments. Rather, an important mechanism underpinning gendered earnings disparities within the legal academy is the lower returns that women receive for their human capital endowments. Taken together, our findings demonstrate the differential valuation of women's work in the legal academy.<sup>137</sup>

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135. Although it is beyond the scope of our data, the cases from the University of Denver and the University of Texas with which we began this Article suggest there is a distinct possibility that tenured women law professors do not know about—or at least do not know the full extent of—the gender pay gap in the legal academy, particularly at law schools that are not subject to salary history disclosures. This informational asymmetry keeps women at a competitive disadvantage in the bargaining process regarding compensation. Perhaps they did not negotiate a higher starting salary when offered their first tenure-track academic appointment, while many more of their male colleagues did, and the gender pay gap persists in part because of these initial pay differences. Indeed, research shows that women are less likely to negotiate their starting salaries. *See, e.g.,* LINDA BABCOCK & SARA LASCHEVER, *WOMEN DON'T ASK: THE HIGH COST OF AVOIDING NEGOTIATION—AND POSITIVE STRATEGIES FOR CHANGE* (2007). Thus, even several years into their careers, women may still lack express knowledge of the inequalities they face with respect to pay. The remedy for informational asymmetry is fairly simple: law school salary history should be disclosed to members of the legal academy.

136. *See, e.g.,* Barbara F. Reskin, *Including Mechanisms in Our Models of Ascriptive Inequality*, 68 AM. SOC. REV. 1 (2003).

137. *See generally* Dinovitzer et al., *supra* note 6.