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Leadership Lapse: Laundering Systemic Bias Through Student Evaluations

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LEADERSHIP LAPSE: LAUNDERING SYSTEMIC BIAS THROUGH
STUDENT EVALUATIONS

DEBRA AUSTIN*

INTRODUCTION

*“Misogyny is an invisible sport.”*¹

THE use of the student evaluation of teaching (SET) for high-stakes faculty employment decisions amounts to a lapse in leadership. A scholarly consensus has emerged that using SETs as the primary measure of teaching effectiveness in faculty review processes can systematically disadvantage faculty from marginalized groups. The growing body of evidence shows that women and minorities get lower ratings of their teaching than white men. Using biased evaluations allows colleges and universities to discriminate against faculty whose identities deviate from white male heteronormativity.

Despite the knowledge that empirical research demonstrates these instruments are biased, the academy has accepted them as credible. Bias in student evaluations can lead an institution to determine that a faculty member who differs from the straight white male stereotype is an inadequate teacher. Faculty with lower student ratings are penalized in the hiring, retention, compensation, and promotion processes.

This Article summarizes empirical research demonstrating that student evaluations are biased against female faculty and faculty of color; describes the impact on student learning; details the influence on institutional culture of using student evaluations for assessing teaching quality for performance evaluations, compensation, promotion, and retention; and suggests recommendations for evaluating teaching effectiveness in fair and responsible ways. Law schools should lead the change in this discriminatory higher education practice because they are institutions dedicated to social justice and to training leaders who will drive social change in the legal system, government, business, media, and philanthropy.

In her book, *Down Girl: The Logic of Misogyny*, Kate Manne argues that misogyny is a system of domination that supports the patriarchal order, where negative social consequences on women and girls serve to enforce

* J.D., Ph.D., Professor of the Practice, University of Denver Sturm College of Law. Hat tip to Victor Ray, Assistant Professor of Sociology at the University of Tennessee at Knoxville, for inspiring this Article’s title. *See infra* note 139.

1. Rachel Braun Scherl, *Bloomberg Equality Summit Recap*, (Apr. 18, 2019), <https://rachelbraunscheryl.com/bloomberg-equality-summit-recap/> [<https://perma.cc/8CXR-S2RW>] (emphasis added).

gendered social norms.² Cultures and institutions that utilize systems of domination that privilege men are hostile toward women.³ In these environments, females may be downgraded or deprived of things of value, such as employment, compensation, status, or credentials.⁴ “[M]isogyny ought to be understood as the system that operates within a patriarchal social order to police and enforce women’s subordination and to uphold male dominance.”⁵

Research examining gender stereotypes reveals that women are perceived as communal (nurturing, kind, sympathetic, and helpful), while men are perceived as agentic (assertive, ambitious, independent, and competent).⁶ Stemming from the word agency, the term agentic was coined by Stanford University Psychologist Albert Bandura.⁷ It describes individuals’ capacities to control their actions and exert their power.⁸

Those who defy gender expectations may make negative impressions on others in their environment.⁹ This is true when women display agentic traits because they are “violating expectations that they are or should be lower in power, agency, or status than men.”¹⁰

The most privileged people in American society are straight, white men.¹¹ They enjoy fewer social and legal limitations on their actions than those with less privilege.¹² Privileged men also may feel entitled to rely on women for communal support.¹³ Women are naturally subordinated by the hierarchy of gendered social relations in a patriarchal environment.¹⁴

Punitive norm-enforcing tools are used to ensure women are performing their roles according to social norms.¹⁵ The targets of misogyny are women in positions of power and authority and women who fail to

2. KATE MANNE, *DOWN GIRL: THE LOGIC OF MISOGYNY* 13, 20 (2018) (mentioning other domination schemes such as racism, xenophobia, homophobia, transphobia, ableism, ageism, and classism).

3. *Id.* at 21, 34.

4. *Id.* at 30.

5. *Id.* at 33.

6. Amani El-Alayli, Ashley A. Hansen-Brown, & Michelle Ceynar, *Dancing Backwards in High Heels: Female Professors Experience More Work Demands and Special Favor Requests, Particularly from Academically Entitled Students*, 79 *SEX ROLES* 136, 136–37 (2018).

7. Marie Bjerede & Michael Gielniak, PhD, *What is Agentic Learning and Why Is It Important?*, *GETTING SMART* (Nov. 9, 2017), <https://www.gettingsmart.com/2017/11/what-is-agentic-learning-and-why-is-it-important/> [https://perma.cc/263C-XLE9].

8. *Id.*

9. El-Alayli, Hansen-Brown, & Ceynar, *supra* note 6, at 137.

10. *Id.*

11. MANNE, *supra* note 2, at xiii.

12. *Id.*

13. *Id.*

14. *Id.* at 46.

15. *Id.* at 47.

operate according to communal or service expectations.¹⁶ Misogyny is the “hostility women face . . . [while] navigating the social world,” and institutions that utilize punitive norm-enforcing mechanisms are maintaining hostile cultures for women.¹⁷

I. STUDENTS MAINTAIN GENDER STEREOTYPES ABOUT UNIVERSITY FACULTY

“I can’t get over my disappointment at being a GIRL!”

Jo March, *Little Women*¹⁸

Female college and university faculty members may not be able to get over their disappointment at being *treated like a female*. Feminine-coded work is communal and includes providing care, affection, and love; attention, respect, and acceptance; and compassion, safety, and security.¹⁹ Women are expected to perform this social and emotional labor happily and gratefully.²⁰ When women fail to live up to these care-giving standards, social approval is withdrawn and negative consequences are applied.²¹

Masculine-coded privileges include authority, prestige, compensation, leadership, and power.²² Although these social advantages are not in limited supply, women who compete for them may be perceived as depriving men, and they may be punished with retaliation.²³

Teaching at the university level is historically a male profession, but the number of female professors on campus is increasing.²⁴ Women are frequently told they must work twice as hard as men to be successful, but they may also face backlash for being too competent or qualified when they demonstrate excellence or exert their authority.²⁵ When female faculty exercise power in the classroom, they are described by students as pushy.²⁶ They are expected to assign less work and dole out higher grades than men, and they are evaluated more harshly when they fail to meet these expectations.²⁷ Because some students believe that female faculty

16. *Id.* at 51.

17. *Id.* at 59–60.

18. *Movie Review: Gerwig’s Little Women Stand Tall*, MOVIE NATION (Dec. 19, 2019) (emphasis added), <https://rogersmovienation.com/2019/12/19/movie-review-gerwigs-little-women-stand-tall/> [<https://perma.cc/PV24-D3G8>] (quoting character Jo March); see LOUISA MAY ALCOTT, *LITTLE WOMEN* 5 (Sterling Publishing Co., 2004) (Jo’s statement in the novel reads: “I can’t get over my disappointment in not being a boy.”).

19. MANNE, *supra* note 2, at 110.

20. *Id.* at 111.

21. *Id.*

22. *Id.* at 113.

23. *Id.* at 113–14.

24. El-Alayli, Hansen-Brown, & Ceynar, *supra* note 6, at 137.

25. MANNE, *supra* note 2, at 102, 268.

26. El-Alayli, Hansen-Brown, & Ceynar, *supra* note 6, at 137.

27. *Id.* at 137.

are less competent and effective, they must expend more effort to demonstrate preparedness, skill, and expertise.²⁸

Research indicates that students harbor gender stereotypes that impact faculty:

- Men are referred to as professors, but women are female professors;
- Students expect men to be competent, but women to be nurturing (known as academic momism);
- Students expect the hypothetical male professor to be an expert in his field who challenges them, but they expect the theoretical female professor to be available outside the classroom and to take an interest in their personal lives; and
- Students describe their favorite female professors as nurturing, but their least favorite are described as “rigid, mean and unfair.”²⁹

In student evaluations, demonstrations of communal conduct have more influence on ratings of females than on males, regardless of the gender of the student; and despite receiving more personal attention and time during office hours from women, students rated their female professors as less available than male professors.³⁰

In an effort to better understand the communal expectations on female faculty, researchers conducted two studies.³¹ The first surveyed forty-seven female and forty-one male faculty members about frequency of student standard work demands (such as office hour visits and email questions) and special favor and friendship requests (such as appeals for regrading assignments, addressing personal problems, or attending events).³² Results revealed that students make more standard work demands, as well as special favor and friendship requests, of female faculty than of male faculty, meaning that women are probably doing more work and emotional labor to support students than men.³³

The second study examined student behaviors from the perspective of student participants.³⁴ Students were given three online anonymous surveys, and out of 121 participants, 58 were women, 61 were men, and 2 declined to report their gender.³⁵ The first survey provided an introductory statement and professor characteristics (organized, clear speaker, provides many examples, and gives moderately difficult exams) from either

28. *Id.* at 138.

29. *Id.* at 137.

30. *Id.*

31. *Id.* at 138–39.

32. *Id.* at 139.

33. *Id.* at 140.

34. *Id.* at 140–47.

35. *Id.* at 141.

Dr. Eric or Erica Campbell.³⁶ Participants were asked about their likelihood of requesting a special favor, being disappointed if the professor said no to the request, and being persistent if the request was denied.³⁷ Participants then took surveys that evaluated academic entitlement, as well as gender and authority.³⁸ Students with a high rate of academic entitlement were more inclined to ask for special favors from female faculty, to experience a heightened degree of irritation and disappointment at being told no, and to persist in the face of rejection.³⁹

This research provides “evidence that female faculty may have different, and more time consuming, interactions with students than their male counterparts.”⁴⁰ These student demands may contribute to burnout, take time away from scholarship and service, and result in student complaints and more negative student evaluations.⁴¹

II. STUDENT EVALUATIONS ARE BIASED AGAINST FEMALE FACULTY

*“Gender is a ubiquitous prison for the mind, reinforced everywhere, by everyone, and only rarely questioned. We’re a long way from eradicating these expectations in society.”*⁴²

Some people recognize that they are influenced by implicit bias, such as gender or racial bias, that impacts their thinking or behavior, without an awareness that it is happening.⁴³ It is possible for a hostile culture to exist in a place where most community members believe they are egalitarian, because the constituents make unconscious social judgments, act on covert emotions, or exhibit subconscious instances of animosity.⁴⁴ Implicit bias impacts “everyday behaviors such as whom we befriend, whose work we value, and whom we favor—notwithstanding our obliviousness to any such influence.”⁴⁵ Implicit bias is present in our institutions and cultures, and when we prefer people who are similar to ourselves and reject folks who appear to be different, those judgments shape experiences and

36. *Id.*

37. *Id.* at 141–42.

38. *Id.*

39. *Id.* at 144.

40. *Id.* at 148.

41. *Id.* at 147; see MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* 1–2, 72 (2019).

42. Farhad Manjoo, Opinion, *It’s Time for ‘They,’* N.Y. TIMES (July 10, 2019) (emphasis added), https://www.nytimes.com.cdn.ampproject.org/v/s/www.nytimes.com/2019/07/10/opinion/pronoun-they-gender.amp.html?amp_js_v=0.1#referrer=https%3A%2F%2Fwww.google.com&_tf=from%20%251%24s&_share=https%3A%2F%2Fwww.nytimes.com%2F2019%2F07%2F10%2Fopinion%2Fpronoun-they-gender.html [https://perma.cc/JE63-FB4Z].

43. MANNE, *supra* note 2, at 103.

44. *Id.* at 61; DEO, *supra* note 41, at 9.

45. DEO, *supra* note 41, at 9 (quoting Jerry Kang & Kristin Lane, *Seeing Through Colorblindness: Implicit Bias and the Law*, 58 UCLA L. REV. 465, 467–68 (2010)).

outcomes, interactions, and career advancement.⁴⁶ “[C]ourse evaluations give students a risk-free opportunity to convey biases anonymously.”⁴⁷

Female faculty are evaluated by students on criteria that differ from how male faculty are appraised, including appearance, personality characteristics, and perception of intelligence and competence.⁴⁸ In spring 2015, two investigators, a male and a female professor, taught identical online political science courses.⁴⁹ In every category on the SETs except Administrative (asking students to rate university-level functions such as registration and advising), the male professor received higher student ratings than the female professor.⁵⁰ “Based on our empirical evidence of online SETs, bias does not seem to be based solely (or even primarily) on teaching style or even grading patterns. Students appear to evaluate women poorly simply because they are women.”⁵¹

Many young adults of both genders prefer their intellectual and moral authority figures to be male.⁵² They also exhibit bias in evaluations of teaching in the way they expect women to practice communal behaviors.⁵³ Female professors are criticized for appearing cold, uncaring, unfair, rigid, and for not developing personal relationships with their students, while male professors are disparaged for being arrogant and boring.⁵⁴ One study concluded that male faculty are held to an entertainment standard, while female faculty are held to a maternal standard.⁵⁵

Studies demonstrate that faculty who are assessed by students to be better looking receive more positive evaluations than faculty who are considered unattractive.⁵⁶ Students can be hypercritical and focus on a female professor’s personal appearance, critiquing wardrobe and style over teaching ability.⁵⁷ This bias highlights the lower status of women in legal education and the idea that female faculty are on display as sex objects for the consumption of students.⁵⁸ Comments on student evaluations have been described by female faculty as “vicious” and the cause of PTSD-type impacts.⁵⁹

46. *Id.*

47. *Id.* at 68.

48. Kristina M. W. Mitchell & Jonathan Martin, *Gender Bias in Student Evaluations*, 51 PS: POL. SCI. & POL. 648, 648 (2018).

49. *Id.* at 650.

50. *Id.* at 651.

51. *Id.* at 652.

52. MANNE, *supra* note 2, at 267.

53. *Id.*

54. *Id.* at 267–68.

55. Gregory S. Parks, *Race, Cognitive Biases, and the Power of Law Student Teaching Evaluations*, 51 U.C. DAVIS L. REV. 1039, 1042 (2018).

56. DEO, *supra* note 41, at 69.

57. *Id.* at 68–69.

58. *Id.* at 68.

59. *Id.* at 3.

Studies in the United States and France demonstrate that student evaluations of teaching are strongly associated with faculty gender, where women receive lower scores than men.⁶⁰ In a U.S. study of two of the same online class sections taught by a male professor—where he identified as female for one of the sections—the professor’s female identity received lower student ratings in several dimensions of teaching.⁶¹ For example, even when assignments were returned simultaneously, his female identity was rated as less timely in returning them than his male identity.⁶²

A study conducted in Australia, across five different faculties, utilized data from 2012–2016 on over 3,000 faculty members, where over 44% were female and 38% were non-English speaking background.⁶³ In its review of the literature, the study summarized findings from two other recent studies: (1) research from 20,000 student evaluations collected in the Netherlands from 2009–2013 showed that female faculty scored 37 percentage points lower than male faculty; and (2) a study of over 22,000 evaluations at a French university revealed that male students prefer male faculty, and that men are believed to be more knowledgeable and possess better leadership skills.⁶⁴ The Australian study demonstrated that gender and culture (non-English speaking backgrounds) have a negative impact on student evaluations of teaching.⁶⁵

III. STUDENT EVALUATIONS ARE BIASED AGAINST FACULTY OF COLOR

“My grandmother turned to a guard—she was in line to be shot into a pit—and said, ‘What happens if I step out of line?’ And he said, ‘I don’t have the heart to shoot you, but somebody will.’ And she stepped out of line. And for that, I am here. And for that, my children are here. So step out of line, ladies. Step out of line.”⁶⁶

60. Anne Boring, Kellie Ottoboni, & Philip B. Stark, *Student Evaluations of Teaching Are Not Only Unreliable, They Are Significantly Biased Against Female Instructors*, LONDON SCH. ECON. & POL. SCI. (Feb. 4, 2016), <https://blogs.lse.ac.uk/impactofsocialsciences/2016/02/04/student-evaluations-of-teaching-gender-bias/> [<https://perma.cc/H3VD-3L8E>].

61. *Id.*

62. *Id.*

63. Y. Fan, L. J. Shepherd, E. Slavich, D. Waters, M. Stone, R. Abel, & E. L. Johnston, *Gender and Cultural Bias in Student Evaluations: Why Representation Matters*, PLOS ONE, Feb. 2019, at 1, 14, <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0209749> [<https://perma.cc/LK5C-FGT3>].

64. *Id.* at 1–2.

65. *Id.* at 6.

66. Alex Borstein, *Alex Borstein Honors Her Holocaust Survivor Grandma in Feminist Emmys Speech*, YOUTUBE (Sept. 23, 2019) (emphasis added), <https://www.youtube.com/watch?v=akk3-sFFZik> [<https://perma.cc/SJ6M-M767>] (Emmy Acceptance Speech for Best Supporting Actress in a Comedy for portraying Susie Meyerson in *The Marvelous Mrs. Maisel*, on September 22, 2019).

The more different your identity is from the straight, white, male norm that students expect, the more negative your student evaluations.⁶⁷ Racial and intersectional bias is present in the social science research on student evaluations.⁶⁸ Within critical race theory, intersectionality recognizes that faculty face prejudice based on “multiple devalued identity characteristics.”⁶⁹ Female faculty of color face intersectional discrimination when white privilege is used to discriminate against people of color and when male privilege is used to discriminate against women.⁷⁰

Female faculty of color receive evaluations from students that range from microaggressions to racist comments, even when the quantitative data is positive.⁷¹ Examples of these comments include:

- She’s terrible;
- She’s hostile;
- She thinks she’s so smart [though actually she isn’t];
- [She is] a disgrace to the school;
- Don’t know why she’s teaching;
- You should have hired somebody else;
- Professor [XX] doesn’t like white people;
- I know we have to have affirmative action, but do we have to have this woman?⁷²

Female faculty of color are vulnerable to disastrous professional consequences when faculty and administrators are unaware of or uninformed about the bias problems in student evaluations.⁷³ This institutional and structural problem causes the ongoing “fear that no amount of success will overcome the intersectional discrimination, gender disadvantage, and implicit bias working against them.”⁷⁴

White men make up approximately 43% of law professors, and they generally receive positive evaluations from students.⁷⁵ Male faculty of color have a disparate experience, where some face racial bias (“He’s teaching Black history in class,” “Maybe he doesn’t know this material particularly well,” or he is “picking on the police”), while others garner positive evaluations.⁷⁶ Gender-based bias and intersectional discrimination “continues to plague faculty in legal academia, especially in student inter-

67. Marirose Osborne, *Professors Discuss Gender Bias in Course Evaluations*, OBSERVER (May 1, 2019), <https://ndsmcobserver.com/2019/05/professors-discuss-gender-bias-in-course-evaluations/> [https://perma.cc/9YRN-UXPL].

68. See DEO, *supra*, note 41, at 69.

69. *Id.* at 7.

70. *Id.* at 8.

71. *Id.* at 70.

72. *Id.* at 70–71.

73. *Id.* at 71.

74. *Id.*

75. *Id.* at 75.

76. *Id.* at 76.

actions and on evaluations.”⁷⁷ Implicit bias is especially harmful when entrenched norms are challenged.⁷⁸ Social norms based on race and gender are part of a deeply ingrained vertical hierarchy that would need to be deconstructed to achieve social justice.⁷⁹ People holding privileged social positions may be unaware of the inequities, and they may experience any attempts to remedy unfairness as maltreatment.⁸⁰

Dominant players in these hierarchies often suffer from misconceptions about their social status and entitlements, relative to those they perceive as subordinate, including women and people of color.⁸¹ Interviews of white men reveal that when an equally qualified black woman is hired over a white man, the men perceive the woman as having taken *his* job.⁸² This sense of entitlement is part of a persistent and toxic white patriarchal structure.⁸³

Bias may be difficult to overcome, even in populations that should strive to recognize their own intolerance.⁸⁴ In a recent study, sociologists found that Americans who self-identify as liberal were vulnerable to both implicit and explicit racial appeals.⁸⁵ White liberals who scored high on a racial resentment test demonstrated bias when confronted with policy statements about social programs, using both explicit racial statements and implicit coded language.⁸⁶ The researchers theorized that liberals might be vulnerable to racial rhetoric because they are reluctant to discuss racial inequity.⁸⁷ This study highlights the importance of confronting implicit bias, exploring deeply held but unacknowledged resentments, and discussing inequities of all kinds.

IV. IMPACT ON STUDENT LEARNING

*“You can never leave footprints that last if you are always walking on tiptoe.”*⁸⁸

77. *Id.* at 78.

78. MANNE, *supra* note 2, at 61.

79. *Id.* at 156.

80. *Id.* at 157.

81. *Id.*

82. *Id.* at 158.

83. *Id.*

84. Rachel Wetts & Rob Willer, *Who Is Called by the Dog Whistle? Experimental Evidence That Racial Resentment and Political Ideology Condition Responses to Racially Encoded Messages*, SOCIUS: SOC. RES. DYNAMIC WORLD, Aug. 2019, <https://journals.sagepub.com/doi/10.1177/2378023119866268> [<https://perma.cc/2J8W-5JGA>].

85. *Id.* at 1.

86. *Id.*

87. *Id.*

88. Leymah Gbowee, GOODREADS (emphasis added), <https://www.goodreads.com/quotes/8664426-you-can-never-leave-footprints-that-last-if-you-are> [<https://perma.cc/25HD-PXYR>] (last visited Dec. 2, 2020); *see also* Leymah Gbowee, *Biographical*, NOBEL PRIZE, <https://www.nobelprize.org/prizes/peace/2011/gbowee/biographical/> [<https://perma.cc/48YM-ENWB>] (last visited Nov. 8, 2020).

The practice of having students rate professors tends to position students as customers who perceive that university faculty are totally responsible for the quality of their education.⁸⁹ This can result in students who exhibit “unearned arrogance” and determine that they don’t have to do the work in their courses because grades are on the rise, even when they don’t do the reading or contribute to class discussions.⁹⁰ Students who believe they are going to get high grades give more positive evaluations, so rather than inspiring more effective teaching, evaluations can lead to grade inflation.⁹¹ Female faculty may feel the need to moderate their feedback to students, providing softer critiques, so they are not considered too harsh.⁹²

Student evaluations of teaching are not strongly associated with learning outcomes.⁹³ A recent meta-analysis of studies with large sample sizes showed that students do not learn more from highly rated professors.⁹⁴ Research that measured student learning at two timepoints—at the end of the course and performance in subsequent related courses—revealed that when learning was measured by later performance in similar courses, the faculty with lower ratings appeared to be more effective than those whom students gave higher ratings at the conclusion of the course.⁹⁵

“Despite deep investment in students, women are more likely to be presumed incompetent in the classroom, enduring challenges to their authority and direct confrontations; these disruptions create a taxing classroom climate that may detract from the learning process for everyone.”⁹⁶ Research has demonstrated that law school classrooms can be centered on white male students, at the expense of women and men of color.⁹⁷ Female students are called on less often and their responses may be disregarded.⁹⁸ Female law graduates face bias and discrimination in the

Leymah Gbowee is the 2011 Nobel Peace Laureate, a Liberian peace activist, trained social worker, and women’s rights advocate.

89. Nancy Bunge, *Students Evaluating Teachers Doesn’t Just Hurt Teachers. It Hurts Students*, CHRON. HIGHER EDUC. (Nov. 27, 2018), <https://www.chronicle.com/article/Students-Evaluating-Teachers/245169> [https://perma.cc/B844-QBRL].

90. *Id.*

91. Boring, Ottoboni, & Stark, *supra* note 60.

92. El-Alayli, Hansen-Brown, & Ceynar, *supra* note 6, at 137.

93. Boring, Ottoboni, & Stark, *supra* note 60.

94. Bob Uttl et al., *Meta-Analysis of Faculty’s Teaching Effectiveness: Student Evaluation of Teaching Ratings and Student Learning Are Not Related*, 54 STUD. EDUC. EVALUATION 22 (2017).

95. See Nate Kornell & Hannah Hausman, *Do the Best Teachers Get the Best Ratings?*, FRONTIERS PSYCHOL., Apr. 2016, at 1, 1.

96. DEO, *supra* note 41, at 6.

97. *Id.* at 43.

98. *Id.*

courtroom and their career advancement when they matriculate.⁹⁹ “Because student evaluation comments often focus on race, ethnicity, personal style, sexual orientation, gender, or other topics irrelevant to learning, some faculty members eventually avoid reading them.”¹⁰⁰

V. INFLUENCE ON INSTITUTIONAL CULTURE

*“Having the audacity—because that’s what it is—to exhibit self-sovereignty has always been a privilege reserved for men, especially white men.”*¹⁰¹

Institutional discrimination occurs when social benefits are granted to some groups and burdens are imposed on other groups based on identities such as gender, race, and sexual orientation.¹⁰² Individuals in the dominant group organize the culture to further their interests at the expense of those with less power.¹⁰³ “As elite institutions and escalators to power, law schools reflect and even amplify broader structural inequality in society as a whole, including inequality based on privilege.”¹⁰⁴

Universities and colleges must develop an institutional understanding of the bias, misogyny, and discrimination that female faculty and faculty of color face, and adopt or change policies that eliminate the resulting employment inequities.¹⁰⁵ In legal education, female faculty are rarely treated to the same status and opportunity as white male faculty, and the inequities in employment, advancement, and compensation persist.¹⁰⁶

Even small accumulated influences of student evaluations can have a large effect on the careers of female faculty.¹⁰⁷ University review committees and administrators must understand the social science research about demands on female professors, the gendered expectations of students, and the likelihood of less favorable student evaluations when making hiring, retention, and promotion decisions involving women.¹⁰⁸

University of California at Berkeley Professor of Statistics Philip Stark has conducted research on the use of student evaluations, and he believes

99. See generally Connie Lee, *Gender Bias in the Courtroom: Combatting Implicit Bias Against Women Trial Attorneys and Litigators*, 22 *CARDOZO J.L. & GENDER* 229 (2016).

100. DEO, *supra* note 41, at 68.

101. Lisa Respers France, *Coming or Going, Meghan Gets the Blame—And It’s Because of Her Race*, CNN (Jan. 10, 2020, 4:41 PM) (emphasis added) (internal quotation marks omitted), <https://www.cnn.com/2020/01/10/entertainment/meghan-markle-blame-all-sides-race-trnd/index.html> [https://perma.cc/W8U6-U9JS] (quoting Natasha Eubanks, founder and editor of TheYBF.com).

102. DEO, *supra* note 41, at 8.

103. *Id.* at 8–9.

104. *Id.* at 9.

105. MANNE, *supra* note 2, at 59–60.

106. DEO, *supra* note 41, at 43.

107. El-Alayli, Hansen-Brown, & Ceynar, *supra* note 6, at 147.

108. *Id.*

that they might measure student satisfaction, but not teaching effectiveness.¹⁰⁹ His research on the flaws within evaluations demonstrates that they “have a disparate impact on protected groups” and result in disadvantaging them.¹¹⁰

The American Sociological Association released a Statement on Student Evaluations of Teaching in September 2019.¹¹¹ “Because these instruments are cheap, easy to implement, and provide a simple way to gather information, they are the most common method used to evaluate faculty teaching for hiring, tenure, promotion, contract renewal, and merit raises.”¹¹²

Research indicates the practice of relying on SETs in personnel decisions is questionable because they are poorly connected to other measures of student learning and teaching effectiveness, and they can be influenced by course characteristics that are unrelated to teaching effectiveness, such as whether a course is required, class size, and time of day it is offered.¹¹³ Both observational and experimental studies have shown that SETs are “biased against women and people of color.”¹¹⁴ Students rate female faculty lower than males, “even when they exhibit the same teaching behaviors.”¹¹⁵ Asian and black faculty are rated more negatively than white faculty.¹¹⁶ “A scholarly consensus has emerged that using SETs as the primary measure of teaching effectiveness in faculty review processes can systematically disadvantage faculty from marginalized groups.”¹¹⁷

Women are less likely to be promoted than men, so they reach fewer high-status positions in many occupations.¹¹⁸ Women garner fewer management and executive board positions, law firm partnerships, and tenured and full professorships.¹¹⁹ The literature indicates that gendered mechanisms continue to interfere with appraisal of women’s productivity, contributions, and associated career advancement.¹²⁰

109. Colleen Flaherty, *Speaking Out Against Student Evals*, INSIDE HIGHER ED (Sept. 10, 2019), <https://www.insidehighered.com/news/2019/09/10/sociologists-and-more-dozen-other-professional-groups-speak-out-against-student> [<https://perma.cc/CQN7-CCUU>].

110. *Id.*

111. Statement on Student Evaluations of Teaching, Am. Soc. Ass’n, https://www.asanet.org/sites/default/files/asa_statement_on_student_evaluations_of_teaching_feb132020.pdf [<https://perma.cc/QZ6F-8NSK>] (last updated Feb. 13, 2020).

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. Katherine Weishaar, *Publish and Perish? An Assessment of Gender Gaps in Promotion to Tenure in Academia*, 96 SOC. FORCES 529, 535 (2017).

119. *Id.* at 529–30.

120. *Id.* at 530.

An investigator examining the gender gap in the academic tenure and promotion process created a data set on employment history, productivity, and academic environment from a random sample of associate professors in Computer Science, English, and Sociology, and analyzed the rate at which male and female faculty were tenured.¹²¹

In all three academic disciplines, women remain disadvantaged in receiving tenure even after accounting for productivity and contextual differences. Further, when women receive tenure, they do so in lower-prestige departments than men, on average. These findings suggest that gendered processes during promotional decisions contribute to women's lower likelihood of receiving tenure.¹²²

Gendered expectations (1) cause greater scrutiny of women's contributions than of men's work; (2) weaken the frequent positive feedback in letters of support of women that praises communal attributes, while men's feedback is more often agentic; and (3) punish women who have significant records of service, even when they have a productive scholarship agenda.¹²³

"Relying on biased instruments to evaluate faculty members is institutional discrimination. Indeed, it is simply a matter of time before a class-action lawsuit is filed against an institution for knowingly using biased instruments in evaluating its faculty."¹²⁴

VI. RECOMMENDATIONS

*"If you have a voice, you have influence to spread. If you have relationships, you have hearts to guide. If you know young people, you have futures to mold. If you have privilege, you have power to share. If you have money, you have support to give. If you have a ballot, you have policy to shape. If you have pain, you have empathy to offer. If you have freedom, you have others to fight for. If you are alive, you are a leader."*¹²⁵

In her book *Wolfpack*, Abby Wambach, soccer star, two-time gold medalist, and activist, argues that the fallacy of scarcity has kept women from

121. *Id.* at 530–31, 536. (The investigator identified faculty who were assistant professors from 2000–2004, then tracked the complete employment histories for 89.7% of the initial 606 Computer Science professors; 73.2% of the initial 478 English professors; and 88.2% of the initial 475 Sociology professors).

122. *Id.* at 531.

123. *Id.* at 534.

124. Anne Owen, *The Next Lawsuits to Hit Higher Education*, INSIDE HIGHER ED (June 24, 2019), <https://www.insidehighered.com/views/2019/06/24/relying-often-biased-student-evaluations-assess-faculty-could-lead-lawsuits-opinion> [<https://perma.cc/R4RE-CR9M>].

125. ABBY WAMBACH, *WOLFPACK: HOW TO COME TOGETHER, UNLEASH OUR POWER, AND CHANGE THE GAME* 42 (2019) (emphasis added).

attaining power.¹²⁶ She advises that influence and success are infinite, and that women should be supporting each other and acting collectively to re-envision and restructure a newer and bigger table where seats are made available to all marginalized people.¹²⁷

Because bias is so prevalent in our society, it may be easier to reduce student academic entitlement as one way of easing the extra burdens that female faculty experience.¹²⁸ The entire academy would benefit from students who practiced greater self-efficacy and gratitude.¹²⁹

The teaching effectiveness of college and university faculty should be assessed for high-stakes personnel decisions using holistic methods, including self-assessment and peer evaluation.¹³⁰ A tool that can be adopted or adapted to assist faculty reflection is the Teaching Practices Inventory.¹³¹ SETs should not be used to compare faculty to one another.¹³² Student evaluations should be reframed as student feedback, and faculty should use them to consider why students are providing the feedback they do, with a focus on improving teaching at the individual level.¹³³

CONCLUSION

*"I am angry nearly every day of my life. . . . I'm not patient by nature. But with nearly 40 years of effort, I'm learning to not let it get the better of me."*¹³⁴

Women in America have been using their anger to question who has power and who benefits from existing power structures.¹³⁵ It is institutional discrimination when advantages are granted to some groups and burdens are imposed on other groups based on identities such as gender, race, and sexual orientation.¹³⁶

Students expect different treatment from female faculty than from male faculty, and when the treatment does not meet their expectations, they respond with negative ratings and harsh feedback in student evalua-

126. *Id.* at 58.

127. *Id.* at 57–58.

128. El-Alayli, Hansen-Brown, & Ceynar, *supra* note 6, at 147.

129. *Id.* at 147–48.

130. Statement on Student Evaluations of Teaching, *supra* note 111, at 2.

131. Macie Hall, *Learning from Student Evaluations*, INNOVATIVE INSTRUCTOR BLOG (Apr. 19, 2017), <https://ii.library.jhu.edu/tag/teaching-practices-inventory/> [<https://perma.cc/68GW-6KBK>].

132. Statement on Student Evaluations of Teaching, *supra* note 111, at 2.

133. Hall, *supra* note 131.

134. Brandon Tensley, *'Little Women' Reminds Us How Stuck We Have Been on Judging Female Politicians*, CNN (Dec. 29, 2019, 9:36 AM) (emphasis added), <https://www.cnn.com/2019/12/29/politics/little-women-complex-world-female-candidates/index.html> [<https://perma.cc/25AC-PCZ7>] (quoting Laura Dern's Mrs. March in the 2019 film *Little Women*).

135. *Id.*

136. DEO, *supra* note 41, at 8.

tions.¹³⁷ Student evaluations of teaching, when used for high-stakes employment decisions, are punitive, norm-enforcing mechanisms that ensure a hostile and gendered work environment for women.¹³⁸

Usually when social scientists discover that a research instrument is biased, it is discontinued in favor of a more effective mechanism.¹³⁹ “Everyone knows—or should know—that teaching evaluations are better measures of student stereotypes than teaching effectiveness. Yet colleges and universities persist in laundering systematic bias through tenure and promotion processes, the legitimacy of which depend upon their supposed neutrality.”¹⁴⁰ The use of biased student evaluations in compensation, retention, promotion, and tenure determinations allows colleges and universities to discriminate against all faculty whose identities differ from while male normativity, which at this point appears to be an intentional feature of the culture that is designed to maintain the status quo.¹⁴¹

One of the most critical missions of legal education is the demonstration of social justice leadership. Law schools train leaders in business, philanthropy, government, the media, and the legal system, possessing the power to drive social progress, but they are not living up to that responsibility. Law schools should be eliminating bias and discrimination within their faculty evaluation processes and serving as examples to the other disciplines on their campuses. Until colleges and universities are willing to confront the issue of implicit bias in student evaluations of teaching, and reform their practices of relying on them as proxies for teaching effectiveness, they are laundering systemic bias and perpetuating inequity.

137. El-Alayli, Hansen-Brown, & Ceynar, *supra* note 6, at 137–47.

138. MANNE, *supra* note 2, at 59–60.

139. Victor Ray, *Is Gender Bias an Intended Feature of Teaching Evaluations?*, INSIDE HIGHER ED (Feb. 9, 2018), <https://www.insidehighered.com/advice/2018/02/09/teaching-evaluations-are-often-used-confirm-worst-stereotypes-about-women-faculty> [<https://perma.cc/UQ6E-TPGR>].

140. *Id.*

141. *Id.*