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Better than BIPOC

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Better than BIPOC

Meera E. Deo, JD, PhD*

Race and racism evolve over time, as does the language of antiracism. Yet nascent terms of resistance are not always better than originals. Without the deep investment of community engagement and review, new labels—like BIPOC—run the risk of causing more harm than good. This Article argues that using BIPOC (which stands for “Black, Indigenous, and People of Color”) as a synonym for People of Color not only does a disservice to the People of Color history and legacy, but also is a dangerous example of virtue signaling that promises symbolic progress without meaningful change. Applying this thesis to the context of legal education using empirical data from law students and law faculty, it becomes evident that People of Color is the appropriate term to use when making comparisons to whites; similarly, Women of Color works best when considering *raceXgender* intersectionality. Furthermore, academics, advocates, and allies should recognize that while pursuing commonalities and drawing from shared experiences is often critical for political and strategic purposes, aggregating disparate groups under one umbrella, whatever term is used, risks obscuring marginalized populations. In these instances, we should be even more precise in naming each community individually, which serves the twin goals of promoting accuracy in reporting and furthering anti-subordination.

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Introduction

Racial tensions in the United States are nothing new. In 2020, this racial conflict bubbled over into the streets as those supporting Black Lives Matter and opposing a long history of racist police violence congregated to demand justice.¹ The global pandemic continues to place additional stressors on communities of color, including individuals who have been disproportionately affected by and infected with COVID-19² as well as those who are front-line workers desperately trying to keep infections at bay.³ At the same time, hate crimes decreased nationally overall, but rose significantly against Asian American targets.⁴ Children have been separated from parents at the border while fleeing violence in Central America.⁵ We witnessed a fraught election and political transition, complete with insurrectionists storming the U.S. Capitol.⁶ States, cities, and the federal government have even curtailed academic freedom by imposing limits on racial discourse in learning environments.⁷ It has been a difficult time, especially with regard to issues of race and racism.

1. See Larry Buchanan, Quoc Trung Bui & Jugal K. Patel, *Black Lives Matter May Be the Largest Protest in U.S. History*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> [<https://perma.cc/7AQY-UV2U>].

2. Leo Lopez III, Louis H. Hart III & Mitchell H. Katz, *Racial and Ethnic Health Disparities Related to COVID-19*, 325 JAMA 719, 719 (2021) (“Black, Hispanic, and Asian people have substantially higher rates of infection, hospitalization, and death compared with White people.”).

3. Mae Anderson, Alexandra Olson & Angeliki Kastanis, *Women, Minorities Shoulder Front-Line Work During Pandemic*, ASSOCIATED PRESS (May 1, 2020), <https://apnews.com/article/us-news-ap-top-news-ca-state-wire-pandemics-virus-outbreak-029ea874dc964697358016d3628429fa> [<https://perma.cc/YFF5-ZCZR>].

4. Stop AAPI Hate released a report in August 2020 showing increases in hate crimes against Asian Americans and Pacific Islanders since March 2020. STOP AAPI HATE, STOP AAPI HATE NATIONAL REPORT (2020), http://www.asianpacificpolicyandplanningcouncil.org/wpcontent/uploads/STOP_AAPI_Hate_National_Report_3.19-8.5.2020.pdf [<https://perma.cc/57A4-3T49>]. Those increases continued throughout 2020 and into 2021. Kimmy Yam, *Anti-Asian Hate Crimes Increased by Nearly 150% in 2020, Mostly in N.Y. and L.A., New Report Says*, NBC NEWS (Mar. 9, 2021), <https://www.nbcnews.com/news/asian-america/anti-asian-hate-crimes-increased-nearly-150-2020-mostly-n-n1260264> [<https://perma.cc/5DNJ-NNPB>].

5. Teo Armus & Maria Sacchetti, *The Parents of 545 Children Separated at the Border Still Haven't Been Found. The Pandemic Isn't Helping*, WASH. POST (Oct. 21, 2020), <https://www.washingtonpost.com/nation/2020/10/21/family-separation-parents-border-covid/> [<https://perma.cc/KWT2-CWKB>].

6. Associated Press, *WATCH: U.S. Capitol Locked Down as Trump Supporters Clash With Police*, PBS NEWSHOUR (Jan. 6, 2021), <https://www.pbs.org/newshour/politics/watch-live-u-s-capitol-locked-down-as-trump-supporters-clash-with-police> [<https://perma.cc/36GT-VU4W>].

7. Executive Order 13950 “prohibits federal agencies, contractors and grant recipients from offering certain diversity training”—singling out Critical Race Theory specifically—and was the subject of litigation for allegedly violating free speech and allowing for ongoing

In addition to upheaval, there also has been resistance. Diverse groups have banded together to protest police violence against the Black community.⁸ Officials at the local, state, and national levels have pushed for science to lead us out of the pandemic.⁹ Community leaders and academics have also documented challenges and strategized solutions.¹⁰

On the one hand, these ebbs and flows are nothing new. Scholars in law, sociology, political science, racial and ethnic studies, and education have always grappled with questions of race and resistance.¹¹ Many have written extensively on the ongoing ways in which race affects life in the United States.¹² Others highlight the evolving nature of racism,

workplace discrimination. Alexandra Olson, *Trump's Diversity Training Order Faces Lawsuit*, ASSOCIATED PRESS (Nov. 12, 2020), <https://apnews.com/article/trump-diversity-training-lawsuit-naacp-4c426e9f14fc0618eac5d457e0d2066> [<https://perma.cc/UG8Q-9Q4Z>]; see, e.g., Brendan Farrington, *Florida Could Shield Whites from 'Discomfort' of Racist Past*, ASSOCIATED PRESS (Jan. 18, 2022), <https://apnews.com/article/business-florida-lawsuits-ron-desantis-racial-injustice-3ec10492b7421543315acf4491813c1b> [<https://perma.cc/Z4ZM-7EQH>]; Jenny Gross, *School Board in Tennessee Bans Teaching of Holocaust Novel 'Maus'*, N.Y. TIMES (Jan. 27, 2022), <https://www.nytimes.com/2022/01/27/us/maus-banned-holocaust-tennessee.html> [<https://perma.cc/Z69K-GPTW>]. This Executive Order has since been revoked. See Exec. Order No. 13985, 86 Fed. Reg. 7009 (Jan. 20, 2021).

8. Buchanan et al., *supra* note 1; Angela Onwuachi-Willig, *The Trauma of Awakening to Racism: Did the Tragic Killing of George Floyd Result in Cultural Trauma for Whites?*, 58 HOUS. L. REV. 817, 818 (2021).

9. Courtney Vinopal, *What We've Learned about Leadership from the COVID-19 Pandemic*, PBS NEWSHOUR (Apr. 6, 2021), <https://www.pbs.org/newshour/world/what-weve-learned-about-leadership-from-the-covid-19-pandemic> [<https://perma.cc/ML6U-YJHM>]. Some of those efforts have also been met with resistance. Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., 142 S. Ct. 661 (2022) (per curiam) (overturning the Occupational Safety and Health Administration's vaccine mandate for U.S. workers).

10. STOP AAPI HATE, *supra* note 4; Persis Drell, *Additional Support for Eligible Untenured Faculty*, STAN. OFF. PROVOST (Jan. 19, 2022), <https://provost.stanford.edu/2022/01/19/additional-support-for-eligible-untentured-faculty> [<https://perma.cc/HY48-HX4Q>]; Danielle M. Conway, Danielle Holley-Walker, Kimberly Mutcherson, Angela Onwuachi-Willig & Carla D. Pratt, *Law Deans Antiracist Clearinghouse Project*, THE ASS'N OF AM. L. SCHS., <https://www.aals.org/about/publications/antiracist-clearinghouse> [<https://perma.cc/GD6N-NSLN>].

11. Conversations about racial/ethnic terminology are ongoing throughout the globe. Varying contexts result in disparate priorities and preferences regarding terminology and identity; thus, labels depend in part on culture and geography. See, e.g., MOHAMED ADHIKARI, BURDENED BY RACE: COLOURED IDENTITIES IN SOUTHERN AFRICA (Mohamed Adhikari ed., 2009) (discussing "coloured" and "mixed-race" identities and how history, "class, locality, context, and ideology" impact understanding and use); Antonio Sérgio Alfredo Guimarães, *The Brazilian System of Racial Classification*, 35 ETHNIC & RACIAL STUD. 1157, 1158 (2012); NICO SLATE, *The Dalit Panthers: Race, Caste, and Black Power in India*, in BLACK POWER BEYOND BORDERS: THE GLOBAL DIMENSIONS OF THE BLACK POWER MOVEMENT 127 (Nico Slate ed., 2012); Peter J. Aspinall, *Ethnic/Racial Terminology as a Form of Representation: A Critical Review of the Lexicon of Collective and Specific Terms in Use in Britain*, 4 GENEALOGY 87 (2020) (discussing how racial and ethnic terminology can be seen as a form of representation and can have different meanings in popular culture and politics).

12. See, e.g., MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES (3d ed. 2015); ROBERT BLAUNER, RACIAL OPPRESSION IN AMERICA (1972); DERRICK BELL, FACES AT THE

recognizing that past “racial projects” will not necessarily be part of modern racism.¹³ Sociologists Omi & Winant define racial formation as “the sociohistorical process by which racial identities are created, lived out, transformed, and destroyed.”¹⁴ Research utilizing a framework of Critical Race Theory (CRT) similarly warns that race and racism are evolving projects; as the groundbreaking scholarship of Professor Derrick Bell teaches us, “despite our best efforts to control or eliminate it, oppression on the basis of race returns time after time—in different guises, but it always returns.”¹⁵

Along with the evolution of racism and resistance to it, language itself shifts over time.¹⁶ Language matters for framing, context, and even in determining progress in social movements. “Names matter—never more so than when dealing with the identity of an oppressed minority.”¹⁷ Activists and advocates debate not only substance but also language, arguing that “illegal aliens” is a dehumanizing term for “undocumented residents” or that those who consider themselves “pro-life” are really “anti-choice.”¹⁸

BOTTOM OF THE WELL: THE PERMANENCE OF RACISM (1992); EDUARDO BONILLA-SILVA, *RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN AMERICA* (5th ed. 2018).

13. See OMI & WINANT, *supra* note 12, at 190 (describing how after the civil rights reforms in the 1960s, “existing racist projects were no longer sustainable and posed significant risks,” so white supremacy took on new forms). “Racial projects are efforts to shape the ways in which human identities and social structures are racially signified, and the reciprocal ways that racial meaning becomes embedded in social structures.” *Id.* at 13.

14. *Id.* at 109.

15. BELL, *supra* note 12, at 97. In *Racism Without Racists*, Bonilla-Silva suggests that the “new racism” that has emerged since the 1960s and “accounts for the persistence of racial inequality” has five key components: its “increasingly covert nature;” the avoidance of overt racial terminology; the “invisibility” of instruments used to perpetuate racism; the move to a racial agenda based in political issues that avoids direct racial references; and the return of racial practices found in the Jim Crow era of race relations. BONILLA-SILVA, *supra* note 12, at 18.

16. This Article begins with the increasingly accepted scholarly understanding of race as a fluid concept, recognizing it as socially constructed rather than biologically determined. See Ian F. Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1, 7 (1994) (drawing on research from various disciplines to “repudiate the idea that race is a fixed essence and instead locate[s] races within the cartography of other social constructions”). Similarly, while this Article highlights the importance of appropriate language, terminology can also be fluid. Thus, this Article uses both Black and African American, in addition to Native American and Indigenous. Latinx is used to refer to both men and women, though Latina is used to refer to women specifically and Latino to refer to men specifically. This is consistent with previous projects and methods.

17. SLATE, *supra* note 11, at 127.

18. Kevin R. Johnson, “Aliens” and Other US Immigration Laws: *The Social and Legal Construction of Nonpersons*, 28 U. MIA. INTER-AM. L. REV. 263, 264 (1996); D. Carolina Nuñez, *War of the Words: Aliens, Immigrants, Citizens, and the Language of Exclusion*, 2013 BYU L. REV. 1517, 1518–19 (2014); Amy Harmon, ‘Fetal Heartbeat’ vs. ‘Forced Pregnancy’: *The Language Wars of the Abortion Debate*, N.Y. TIMES (May 22, 2019),

There are certainly those who have little interest in engaging with linguistic debates, preferring instead to simply use the preferred term. Yet there are not always clear guidelines or preferences to help allies say the right thing. The terms presented here are just three of many that have inspired debates on vocabulary, even among those who have shared goals regarding substance and outcomes.¹⁹ This is why academic and community engagement with the terms is so critical, lest “woke” influencers or loud corporations lead the way.

Often, changing terms signal opportunities to increase power, co-opt language, or give voice to those who have been marginalized or minoritized.²⁰ Determining appropriate labels “is about more than solving an ontological puzzle. Without [clear definitions], we risk categorizing a mix of individuals without this classification packing any real meaning for them.”²¹ Using appropriate terminology is critical for both insiders and outsiders: “Carefully selecting and using proper monikers does more than identify particular groups; it also signals pride in identity (when used by those from within the group) and respect for identity (when used by outsiders).”²²

<https://www.nytimes.com/2019/05/22/us/fetal-heartbeat-forced-pregnancy.html?auth=login-email&login=email> [<https://perma.cc/K84V-SAR7>] (“The battle over abortion has long been shaped by language.”).

19. Several other terms have been debated, preferred by some pockets while resisted by others. Together, these indicate the importance of language, the interest in being specific and careful in our usage, and the power of terms to signal worth. As relevant examples, debates involving personal identity terminology have included the following: Latinx/Hispanic (see Lourdes Torres, *Latinx?*, 16 *LATINO STUD.* 283 (2018); Fernando M. Treviño, *Standardized Terminology for Hispanic Populations*, 77 *AM. J. PUB. HEALTH* 69 (1987)); queer/LGBTQ (see ANNAMARIE JAGOSE, *QUEER THEORY* (1996); D. Grant Campbell, José Augusto Chaves Guimarães, Fabio Assis Pinho, Daniel Martínez-Ávila & Francisco Arrais Nascimento, *The Terminological Polyhedron in LGBTQ Terminology: Self-Naming as a Power to Empower in Knowledge Organization*, 44 *KNOWLEDGE ORG.* 586 (2017)); Indigenous/Indian/Native American (see Michael Yellow Bird, *What We Want to Be Called: Indigenous Peoples’ Perspectives on Racial and Ethnic Identity Labels*, 23 *AM. INDIAN Q.* 1 (1999)); Asian American/API/AAPI (see Naomi Ishisaka, *Why It’s Time to Retire the Term ‘Asian Pacific Islander,’* *SEATTLE TIMES* (Nov. 30, 2020), <https://www.seattletimes.com/seattle-news/why-its-time-to-retire-the-term-asian-pacific-islander/> [<https://perma.cc/VX7F-4NZ4>]).

20. For a discussion on how advocates reclaimed the terms *dyke* and *crip* from slurs to powerful self-identifiers, see Meera E. Deo, *Why BIPOC Fails*, 107 *VA. L. REV. ONLINE* 115 (2021), <https://www.virginialawreview.org/articles/why-bipoc-fails/> [<https://perma.cc/NU39-MYKF>].

21. EFRÉN O. PÉREZ, *DIVERSITY’S CHILD: PEOPLE OF COLOR AND THE POLITICS OF IDENTITY* 34 (2021).

22. Meera E. Deo, *Why Language Matters for Diversity, Equity, and Inclusion*, *LSAC LAW:FULLY BLOG* (July 12, 2021), <https://www.lsac.org/blog/why-language-matters-diversity-equity-and-inclusion> [<https://perma.cc/46UC-WV2F>].

As others have noted, “The study of language is not new to legal academia” and has been a central feature in CRT specifically.²³ Changes in terms are rarely linear; instead, the scatter plots of new language can signal wholesale change and progress in leaps and bounds, as well as potential setbacks.²⁴

This Article examines one such line of terminology, starting with the label People of Color, adding intersectionality with Women of Color, and probing the new term BIPOC (referencing “Black, Indigenous, and People of Color”), ultimately concluding that BIPOC does more harm than good. What is even better than BIPOC is to be specific when referencing particular groups.²⁵

Each term—People of Color, Women of Color, and BIPOC—seeks to explain challenges, opportunities, and broader experiences with racism in the United States.²⁶ Yet nascent terms are not always better than originals. Furthermore, the terms themselves should not drive empirical or theoretical investigations. Scholars should think carefully, and critically, about the purpose of any project as well as the data or argument being analyzed, using terms that best fit the specific agenda, data, goals, and actual groups discussed. Using the correct label is not only more precise and honest, but also serves broader antiracism efforts by giving voice to the particular communities affected, which are often otherwise overlooked, forgotten, or subsumed.²⁷

23. Nuñez, *supra* note 18, at 1518; Deo, *supra* note 20, at 121.

24. See, e.g., BARBARA RANSBY, MAKING ALL BLACK LIVES MATTER: REIMAGINING FREEDOM IN THE TWENTY-FIRST CENTURY 97–98 (2018) (describing the evolution of the terminology used by the Black Lives Matter movement, in particular “unapologetically Black,” which was used as a response to previous expressions of Black identity, which required “downplaying or apologizing for one’s ‘blackness’” and “expressing political and class loyalty, as a condition of acceptance by wealthy white counterparts”).

25. This Article does not make recommendations for how individuals themselves should identify. Instead, it focuses squarely on which terms should be used in popular and academic discourse when discussing various racial and ethnic communities.

26. These three terms were chosen because People of Color and Women of Color currently enjoy widespread usage in the United States and abroad and BIPOC has the potential to become more popular in certain quarters although there is strong resistance in others. Though this Article focuses on umbrella terms incorporating various non-white groups, there are many other distinctions in language that could be relevant for groups and individuals, including Hispanic vs. Latino, or even Latino vs. Latina/o vs. Latinx, or for that matter African American vs. Black vs. ADOS (American Descendants of Slavery) or BAME (Black/Asian/Minority Ethnic). See, e.g., Gabby Beckford, *Which is the Correct Term? Black vs. BIPOC vs. African American vs. POC vs. BAME*, PACKS LIGHT <https://www.packslight.com/which-is-right-term-african-american-vs-black-vs-bipoc-vs-poc-vs-bame/> [<https://perma.cc/MRD2-JLXZ>].

27. See, e.g., Victoria Sutton, *Native American Exclusion as a Form of Paper Genocide*, LSSSE INSIGHTS BLOG (July 17, 2020), <https://lssse.indiana.edu/blog/guest-post-native-american-exclusion-as-a-form-of-paper-genocide> [<https://perma.cc/8NAM-MKTX>] (describing the necessity of including Native Americans in “statistical data collection and reporting”).

We should create new frameworks to conceptualize intersectional issues in various contexts.²⁸ The move to highlight Women of Color from within the larger People of Color label signaled the importance of centering gender in particular conversations about race; now, we must take that further. This Article argues that People of Color remains the best term to use when this group shares an experience different from whites, while Women of Color is important when prioritizing challenges driven by *raceXgender* (the compound effects of race and gender identities).²⁹ However, the use of BIPOC does not signal progress; instead, it is damaging on several fronts—both theoretical and practical.³⁰ Instead, we must do better than BIPOC as a synonym for People of Color in order to center the experiences of particular groups in appropriate contexts.³¹

The key is to start with data or arguments that are driven by the literature and framed by relevant theory; then we should match conclusions to appropriate language—rather than allowing terms to dictate projects or outcomes. Greater awareness of our particular priorities and the populations we study will determine the best language for the moment. Scholars should match each term with identities, priorities, and experiences.³²

This Article has three interrelated proposals, the last of which is the primary thesis. First, it is important to critically examine existing frameworks surrounding the terms used to represent intersectionality and changing conceptions of race and gender; when appropriate, language should be updated to reflect goals and priorities. Second, terms should not dictate what data are used or which arguments are made; instead, language should be precise rather than overbroad or underinclusive when reporting findings and reaching conclusions. Linguistic categories should not be deployed without stringent consideration of their origins and their effects and appropriate uses; community engagement, approval, and adoption are critical to changes in

28. While this Article foregrounds *raceXgender*, terms should also be developed to account for intersectionality related to sexual orientation, socioeconomic status, disability, immigration background, and more.

29. See *infra* Section II.B.i (describing *raceXgender* in detail). *RaceXgender* bias refers to “the compound effects of devaluation based on both race and gender.” Meera E. Deo, *The Culture of “raceXgender” Bias in Legal Academia*, in *POWER, LEGAL EDUCATION, AND LAW SCHOOL CULTURES* 240, 241 (Meera E. Deo, Mindie Lazarus-Black & Elizabeth Mertz, eds., 2019).

30. Deo, *supra* note 20, at 118.

31. Throughout this Article, the terms People of Color and Women of Color are capitalized when referring to the groups or terms themselves and presented in lower case when referencing the actual individuals involved in those groups.

32. This imagery is borrowed from Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, *PEACE & FREEDOM*, July/Aug. 1989, at 2; and Victoria Reyes, *Ethnographic Toolkit: Strategic Positionality and Researchers’ Visible and Invisible Tools in Field Research*, 21 *ETHNOGRAPHY* 220 (2020) (discussing researchers’ use of “visible” and “invisible” identities to position their discussions of different groups).

terminology, and strongly preferred to following elite, corporate-driven preferences.³³ Third, using BIPOC as a synonym for People of Color does a disservice to the People of Color history and legacy—though the nascent term should inspire scholars and advocates to disaggregate the data and carefully name the relevant racial groups involved in appropriate instances.

All three arguments are developed further in this Article in the context of legal education. While this Article necessarily focuses on definitions and an evolution of terms, it also makes a preliminary interrogation into the application to specific legal education contexts. Legal education has long been the site of struggles over race and racial categories—especially those involving educational diversity and affirmative action that have played out in numerous federal courts, in the court of public opinion, and on campuses throughout the country.³⁴ This investigation and the frameworks they instantiate are an essential contribution not only to theoretical foundations in CRT and elsewhere, but also to our understanding of how raceXgender shapes law student and law faculty experiences. Without terms that create a better framework for applying intersectional concepts to legal education, we cannot realize meaningful progress for the most vulnerable groups.

Consider, for instance, the five Black women leaders who spearheaded the Law Deans Antiracist Clearinghouse Project.³⁵ Their blueprint serves as a “guide [to] the many law schools issuing faculty resolutions committing themselves to becoming (more) *antiracist* as a signal of more meaningful progress in legal education.”³⁶ The past few years have borne witness to a deepening commitment to antiracism—where neutrality is not sufficient but, as Ibram X. Kendi has taught us,

33. Community engagement, review, and approval are critical to the use of terms by advocates, allies, and academics; BIPOC has not gone through this process. Amy Harmon, *BIPOC or POC? Equity or Equality? The Debate over Language on the Left*, N.Y. TIMES (Nov. 1, 2021), <https://www.nytimes.com/2021/11/01/us/terminology-language-politics.html> [<https://perma.cc/8Y8T-Q2MD>] (“One reason BIPOC has engendered both backlash and bewilderment... is because it seems to be an example of ‘top-down language reform[]’ ... [because] few Black or Indigenous people use it, language scholars say.”).

34. See *Sweatt v. Painter*, 339 U.S. 629 (1950); *DeFunis v. Odegaard*, 416 U.S. 312 (1974); *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 980 F.3d 157 (1st Cir. 2020), *cert. granted*, 142 S. Ct. 895 (Jan. 24, 2022) (No. 20–1199); *Students for Fair Admissions, Inc. v. Univ. of N.C.*, 567 F. Supp. 3d 580 (M.D.N.C. 2021), *cert. granted*, 142 S. Ct. 896 (Jan. 24, 2022) (No. 21–707).

35. Conway et al., *supra* note 10. The five Black women who are leading the charge for the Law Deans Antiracist Clearinghouse Project are Danielle M. Conway (Penn State Dickinson Law), Danielle Holley-Walker (Howard Law), Kimberly Mutcherson (Rutgers-Camden Law), Angela Onwuachi-Willig (Boston University Law), and Carla D. Pratt (formerly the dean at Washburn Law and now at Oklahoma Law).

36. Deo, *supra* note 20, at 117 (citing Conway et al., *supra* note 10). See Conway et al., *supra* note 10 for a list of schools that issued faculty resolutions against racism and another list of those that issued solidarity and antiracism statements.

“One either allows racial inequities to persevere, as a racist, or confronts racial inequities, as an antiracist.”³⁷ Similarly, we learn from the concept of *praxis* in CRT that theories of racial justice “must transcend the page to inspire ‘theory-informed action.’”³⁸ We now see praxis at work, in real time, throughout legal education.

“The push for *antiracism* itself reflects an update in both language and priorities, signaling a shift from protecting diversity to promoting broader action-oriented change. In previous years, advocates were steadfastly focused on promoting racial diversity to advance racial justice.”³⁹ More recently, scholars have pushed for those intent on promoting diversity to go further to accentuate inclusion, equity, and belonging.⁴⁰ In doing so, faculty, staff, and administrators have shifted their perspective to consider not only who is admitted but also the quality of the interactions and experiences of students of color once on campus.⁴¹

“A change in terminology does more than add to the lexicon; it also signals a change in priorities for those working towards racial justice.”⁴² At this moment of reckoning, we have the opportunity and responsibility to reexamine our language and the terms we use to name and claim racism and resistance. Advocates, allies, and academics must be sophisticated in their language use when discussing issues of race and racism.

Earlier work has explored why BIPOC fails as a new term.⁴³ This Article examines how the term is both overbroad and underinclusive, although language about race instead should be precise. BIPOC is overbroad because Black and Indigenous people are specifically foregrounded by the term, though not every example of race or racism readily applies, or applies equally, to these two groups. For instance, mass incarceration affects the Black community not only at disproportionate

37. IBRAM X. KENDI, *HOW TO BE AN ANTIRACIST* 9 (2019). Note also already persistent stagnation and even backlash on the path to antiracism. Matt DiSanto, *Penn State Scraps Plans for Racial Justice Center*, STATECOLLEGE.COM (Oct. 27, 2022), <https://www.statecollege.com/penn-state-scraps-plans-for-racial-justice-center/> [<https://perma.cc/4LJ9-CZTS>]; Meera E. Deo, *Progress and Backlash in our Unequal Profession*, 51 SW. L. REV. 310 (2022).

38. Deo, *supra* note 20, at 123 (quoting Chandra L. Ford & Collins O. Airhihenbuwa, *Critical Race Theory, Race Equity, and Public Health: Toward Antiracism Praxis*, 100 AM. J. PUB. HEALTH S30, S31 (2010)).

39. Deo, *supra* note 20, at 122; see *Bollinger*, 539 U.S. 306.

40. See Elizabeth Bodamer, *Do I Belong Here? Examining Perceived Experiences of Bias, Stereotype Concerns, and Sense of Belonging in U.S. Law Schools*, 69 J. LEGAL EDUC. 455 (2020); Meera E. Deo, *The End of Affirmative Action*, 100 N.C. L. REV. 237 (2021).

41. See MEERA E. DEO & CHAD CHRISTENSEN, IND. UNIV. CTR. FOR POSTSECONDARY RSCH., LSSSE 2020 ANNUAL SURVEY RESULTS: DIVERSITY & EXCLUSION (2020).

42. Deo, *supra* note 20, at 117.

43. *E.g.*, *id.* at 117–18 (considering whether BIPOC can be an effective term without intentional community engagement and while marginalizing certain racial groups).

but at stunningly inequitable rates. “Black men are six times as likely to be incarcerated as white men,’ a disparity larger than any other raceXgender group.”⁴⁴ Thus, mass incarceration is not, and should not be labeled as, an issue affecting “the BIPOC community” because Indigenous people face unique causes and contexts for their lower levels of incarceration.⁴⁵ The term BIPOC is also underinclusive because it relegates Latino men—who are twice as likely to be incarcerated as white men—to an amorphous remnant category rather than naming them as a racial group managing this challenge.⁴⁶

The term is thus underinclusive because it centers Black and Indigenous populations in every instance, including those in which they are, at most, peripheral. As such, even when they are at the center of a particular controversy, “Asian and Latin[x] Americans are often left to wonder whether they are covered by the ‘POC’ part of the acronym.”⁴⁷ For instance, while hate crimes overall decreased by 7% between 2020 and 2021, those targeting people from Asian backgrounds rose by nearly 150%.⁴⁸ Attacks ranged from thousands of instances of racist verbal abuse to the horrific killing of six Asian American women working in Atlanta spas.⁴⁹ Political and media figures increased anti-Asian animosity by tying racism to COVID-19, calling it the “Chinese virus” or “Kung flu.”⁵⁰ Because these attacks are the most recent iteration of “racial projects” in a long history of anti-Asian attacks in the United States, there is no reason to center Black and Indigenous communities in this context.⁵¹ The BIPOC term would be underinclusive here because it fails to center or even

44. *Id.* at 138 (quoting *Criminal Justice Facts*, THE SENT’G PROJECT (2020), [https://perma.cc/4Y2H-4VZY]). While African American and Latinx individuals together represent about 33% of the U.S. population, see *QuickFacts United States*, U.S. CENSUS BUREAU, [https://www.census.gov/quickfacts/fact/table/US/RHI225221 [https://perma.cc/D9FS-E482], together they comprise 56% of the incarcerated population, and Black Americans alone comprise 33% of those incarcerated, see E. ANN CARSON, U.S. DEP’T OF JUST., PRISONERS IN 2019 (2020), [https://bjs.ojp.gov/content/pub/pdf/p19.pdf [https://perma.cc/YGY3-A92L].

45. See, e.g., DESIREE L. FOX, CIARA D. HANSEN & ANN M. MILLER, OVER-INCARCERATION OF NATIVE AMERICANS: ROOTS, INEQUITIES, AND SOLUTIONS (2022), [https://safetyandjusticechallenge.org/wp-content/uploads/2022/07/OverIncarcerationOfNativeAmericans.pdf [https://perma.cc/4BLB-PQ4F].

46. *At a Glance*, THE SENT’G PROJECT, [https://www.sentencingproject.org/research/detailed-state-data-tool/ [https://perma.cc/CR95-PZYW].

47. Harmon, *supra* note 33.

48. Yam, *supra* note 4.

49. Hannah Miao, *Lawmakers Call for Change in Covid Rhetoric Amid Rise in Violence Against Asian Americans*, CNBC (Mar. 18, 2021), [https://www.cnbc.com/2021/03/18/lawmakers-call-for-change-in-covid-rhetoric-amid-violence-against-asianamericans.html?&qsearchterm=lawmakers%20call%20for%20change%20in%20cov id%20rhetoric [https://perma.cc/62N7-YE]6]; STOP AAPI HATE, *supra* note 4.

50. Miao, *supra* note 49.

51. See *supra* note 13 (describing racial projects).

mention the very population (Asian Americans) targeted by racism in the context of ongoing hate crimes.

Naming the main group(s) affected is key, as is clear in the straightforward examples of mass incarceration and contemporary hate crimes. Applying the thesis to the more complicated context of legal education, this Article asserts that 1) we must understand the experiences of People of Color vis-à-vis that of whites, 2) Women of Color have unique challenges as compared to both Men of Color and white women and should be centered in the raceXgender context, and 3) BIPOC is the wrong term to use when discussing people of color in any context. Furthermore, in each context, we must carefully examine different groups gathered beneath various umbrella groups so that those who face distinct barriers and opportunities are not always lumped together with the whole. Thus, in instances where more than one group is implicated, we should center the groups that are included in the data or are most salient to the issue at hand rather than using an umbrella group that renders them invisible.

Part I shares the historical and ongoing importance of using precise racial language in the white-normative context and culture of the United States. Part II introduces the origins and development of the terms animating this Article, starting with the development of “People of Color,” adding the usage of “Women of Color,” and introducing “BIPOC.” It culminates in the assertion that instead of utilizing BIPOC as a synonym for People of Color, we should draw from its strength to prioritize particular groups at appropriate times. Part III applies the primary thesis—that careful usage of racial terms should be utilized for particular projects—to the context of legal education. Here, we see in detail how specific priorities and populations are best served when academics, advocates, and allies use appropriate terms in specific contexts; both quantitative and qualitative data revealing various challenges facing law students and law faculty illuminate when terms may be most useful or, conversely, harmful. The Conclusion examines the parameters of this thesis, including limitations and additional questions to continue this discussion, examining how and why we can do better than BIPOC.

I. Language, Law, and Race

Many theories of race, racial formation, and racial resistance can be applied directly to the label “People of Color.”⁵² Even before there was a People of Color title, there was power in whiteness and resistance to it in the United States.⁵³ In *Whiteness as Property*, Critical Race Theorist and law professor Cheryl Harris draws from the privileged social status of whiteness to argue that “whiteness as a theoretical construct evolved for the very purpose of racial exclusion [and is thus] built on both exclusion and racial subjugation.”⁵⁴ As white dominance was anointed with the sanction of law, it was seen as the natural order—a “normal” feature of American life.⁵⁵ In conjunction with the power of whiteness, racism itself was sometimes rendered “relatively invisible—at least to those who do not experience” its negative effects.⁵⁶ When noticed, racism was considered an individual problem, the result of a few bad actors working within an otherwise just system.⁵⁷ With the normalization of whites sitting atop the racial hierarchy, American society remained “structured on racial subordination, [and] white privilege became an expectation.”⁵⁸ The law, which many hoped would further equality, was instead used as an instrument to perpetuate the unequal racial status quo.⁵⁹

Among the many examples of the law being deployed as a means of racial oppression is its role in defining, facilitating, and regulating the language of whiteness.⁶⁰ The Constitution itself codified the worth of

52. See, e.g., OMI & WINANT, *supra* note 12; JOE R. FEAGIN, *SYSTEMIC RACISM: A THEORY OF OPPRESSION* (2006); Chris K. Iijima, *Race as Resistance: Racial Identity as More Than Ancestral Heritage*, 15 *TOURO L. REV.* 497 (1999).

53. Note that whiteness itself is a fluid and modern construct, so much so that some ethnic groups that are today considered white in the United States—including descendants from Ireland, Italy, Greece, and Poland—were not treated as white when they first arrived as immigrants. See, e.g., DAVID R. ROEDIGER, *WORKING TOWARD WHITENESS: HOW AMERICA'S IMMIGRANTS BECAME WHITE* (2018); NOEL IGNATIEV, *HOW THE IRISH BECAME WHITE* (1995).

54. Cheryl I. Harris, *Whiteness as Property*, 106 *HARV. L. REV.* 1707, 1720–21, 1737 (1993) (“White identity and whiteness were sources of privilege and protection; their absence meant being the object of property.”).

55. Eduardo Bonilla-Silva, *Rethinking Racism: Toward a Structural Interpretation*, 62 *AM. SOCIO. REV.* 465, 475 (1997) (“Racial phenomena are regarded as the ‘normal’ outcome of the racial structure of a society.”).

56. MICHAEL K. BROWN, MARTIN CARNOY, ELLIOTT CURRIE, TROY DUSTER, DAVID B. OPPENHEIMER, MARJORIE M. SCHULTZ & DAVID WELLMAN, *WHITENESS AS PROPERTY: THE MYTH OF A COLOR-BLIND SOCIETY* 226 (2003).

57. Sociologists—and many others—consider racism not simply an individual problem, but one that has deep structural and systemic roots. See Bonilla-Silva, *supra* note 55, at 469; FEAGIN, *supra* note 52.

58. Harris, *supra* note 54, at 1730.

59. *Id.* at 1725 (“Whiteness at various times signifies and is deployed as identity, status, and property, sometimes singularly, sometimes in tandem.”).

60. See generally IAN HANEY LOPEZ, *WHITE BY LAW* (2006) (exploring how the legal construction of race and rise of the racial ideology of “colorblind White dominance” employ

Black Americans as three-fifths of a white man—yet even that applied solely when considering taxation and legislative representation.⁶¹ In 1857, the Supreme Court ruled in *Dred Scott v. Sandford* that Black Americans “are not included, and were not intended to be included, under the word ‘citizens’ in the Constitution, and can therefore claim none of the [accompanying] rights and privileges.”⁶² Even after the Civil Rights Amendments granted citizenship to Black Americans, promised them (still distant) Equal Protection rights, and allowed them the cursory right to vote, racial injustice remains enshrined in law.⁶³

There were also legal mechanisms in place to continue the subjugation of racial groups besides Black Americans, again using racial terminology to maintain white privilege.⁶⁴ The Asian American experience is a prime example not only of those seeking the protections of American law by claiming whiteness but also of how whiteness itself was fluidly exercised by the law to maintain power among a preferred few.⁶⁵

In the 1854 case of *People v. Hall*, the California Supreme Court extended to people of Chinese descent a state law preventing those who were “Black,” “Mulatto,” or “Indian” from testifying against whites, disregarding the testimony of three Chinese witnesses in a white man’s prosecution for the death of a Chinese miner.⁶⁶ In this instance, the court preferred the miscarriage of justice that resulted from making “Chinese” synonymous with “Black” (or “Mulatto” or “Indian”) to suggesting it could be equivalent or even comparable to “White.”

Yet even when ostensibly working toward racial justice, courts have promoted white privilege. Justice Harlan’s 1896 dissent in *Plessy v.*

restrictive definitions of what counts as race and racism in the eyes of the law).

61. U.S. CONST. art. I, § 2, cl. 3; Raymond T. Diamond, *No Call to Glory: Thurgood Marshall’s Thesis on the Intent of a Pro-Slavery Constitution*, 42 VAND. L. REV. 93, 108–09 (1989); Kaimipono David Wenger, *Slavery as a Takings Clause Violation*, 53 AM. U. L. REV. 191, 214–15, n.94 (2003) (arguing that the value of Black enslaved people had nothing to do with their humanity; instead, it was relevant only in apportioning white masters extra voting power as an early example of structural racism).

62. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 404 (1856) (enslaved party), *superseded by constitutional amendment*, U.S. CONST. amend. XIV.

63. Ellen D. Katz, *Enforcing the Fifteenth Amendment*, in THE OXFORD HANDBOOK OF THE U.S. CONST. 365–86 (Mark Tushnet, Mark A. Graber & Sanford Levinson eds., 2015).

64. See HANEY LOPEZ, *supra* note 60; STEVEN W. BENDER, *GREASERS AND GRINGOS: LATINOS, LAW, AND THE AMERICAN IMAGINATION* (2003).

65. Though this Article highlights the example of Asian Americans, most basic social science textbooks will include documentation of historical and ongoing racism against Native Americans, Latinos, and other people of color, too. See ANTHONY GIDDENS, MITCHELL DUNEIER, RICHARD P. APPELBAUM & DEBORAH CARR, *INTRODUCTION TO SOCIOLOGY* (Sasha Levitt et al. eds., 11th ed. 2018).

66. *People v. Hall*, 4 Cal. 399, 399 (1854) (“Section 14 of the Act Concerning Crime and Punishment provides, ‘No Black, or Mulatto person, or Indian shall be allowed to give evidence in favor of, or against a White man.’”).

Ferguson was meant to shame the majority upholding segregation through the “separate but equal” doctrine; yet, it nevertheless nonchalantly adhered to white supremacy, stating, “The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth and in power. So, I doubt not, it will continue to be for all time”⁶⁷ Justice Harlan further asserted that while *segregation* between Black and white should be ruled unconstitutional, the Court need not go as far as to promote actual *integration*.⁶⁸ He tempered his dissent of segregation with support for continuing the exclusion of “Chinamen,” whom he called “a race so different from [whites] that . . . [they] are, with few exceptions, absolutely excluded from our country.”⁶⁹ Even for Justice Harlan, who condemned his fellow Justices for facilitating the ongoing legal separation of white and Black Americans, segregation from Asians remained acceptable.

In these instances, and many others, courts and the law centered inquiries of race on maintaining white privilege. Attempts by immigrants at assimilation or inclusion into whiteness had little to do with shared culture or ancestry. Instead, these outsiders sought to be included in definitions of the term “white” to gain legal protection at a time when non-whites were denied the myriad of benefits afforded to whites.⁷⁰

One hundred years ago, the Supreme Court ruled that Japanese immigrant Takao Ozawa was clearly not white—a term they held “synonymous with” Caucasian—and therefore could not gain citizenship.⁷¹ The Court stated that “the federal and state courts, in an almost unbroken line, have held that the words ‘white person’ were meant to indicate only a person of what is popularly known as the Caucasian race,” and because Ozawa “is clearly of a race which is not Caucasian,” he could not be eligible for citizenship.⁷²

Just one year later, however, the Court took great pains to navigate the fictions of a biologically-determined racial construct, concluding that those who are “Caucasian” are not necessarily “white” according to

67. *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting).

68. *Id.*

69. *Id.* at 561; see also Gabriel J. Chin, *The Plessy Myth: Justice Harlan and the Chinese Cases*, 82 IOWA L. REV. 151, 156 (1996) (exploring Justice Harlan’s “Chinese jurisprudence” and his consistent opposition to the constitutional rights of Chinese people and Chinese Americans).

70. WILLIAM J. ACEVES, WHO ARE PEOPLE OF COLOR? 8 (2021) (manuscript on file with author) (“[D]esignating someone as white or a person of color was a life-altering decision. The legal consequences of color were significant and would continue for centuries.”).

71. *Ozawa v. United States*, 260 U.S. 178, 198 (1922). The etymology of the term “Caucasian” refers to those with ancestors from the Caucasus mountains in Central Asia. See, e.g., THE EDs. OF THE ENCYCLOPAEDIA BRITANNICA, CAUCASIAN PEOPLES, <https://www.britannica.com/topic/Caucasian-peoples> [https://perma.cc/RK2G-3EEL].

72. *Ozawa*, 260 U.S. at 198.

conventional conceptions or the law.⁷³ Bhagat Singh Thind, an immigrant from Northern India, convinced the district court that because his ancestors came from the Caucasus mountains, he should be considered Caucasian and therefore legally white.⁷⁴ The Supreme Court pushed back, asserting that “‘Caucasian’ is a conventional word of much flexibility.”⁷⁵ Although in *Ozawa* they had claimed that “Caucasian” and “white” were synonymous, they now concluded that the two words were actually “not of identical meaning.”⁷⁶ Ultimately, the Court determined that Thind could not become an American citizen because he was not white according to phenotype or law, regardless of ancestry.⁷⁷

Soon thereafter, the Court again tried to balance a fiction of biological race with the realities of American racism, this time in the elementary school context. In *Gong Lum v. Rice*, Martha Lum and her parents argued that with only white schools and “colored” schools to choose from in segregated Mississippi, a Chinese American schoolgirl should be granted the right to attend a white school, since clearly she was not Black.⁷⁸ Yet, in a unanimous decision, the Court disagreed, holding that while she was not technically Black, she most certainly was not white, and therefore could not expect to attend school with white children.⁷⁹ Even after policy changes resulted in Asian immigrants becoming eligible for citizenship, other forms of discrimination drawing directly from racism and xenophobia persisted.⁸⁰

From that sordid history to contemporary times, state-sanctioned racism continues to disadvantage non-whites in virtually all facets of American life, from banking, to mass incarceration, to tax codes.⁸¹ The

73. *United States v. Thind*, 261 U.S. 204, 208 (1923); HANEY LOPEZ, *supra* note 61, at 64.

74. *Thind*, 261 U.S. at 210; *see also* Vinay Harpalani, *Desicrit: Theorizing the Racial Ambiguity of South Asian Americans*, 69 N.Y.U. ANN. SURV. AM. L. 77, 130 (2013) (summarizing the district court’s ruling).

75. *Thind*, 261 U.S. at 208.

76. *Id.*

77. *Id.* at 209 (“It may be true that the blond Scandinavian and the brown Hindu have a common ancestor in the dim reaches of antiquity, but the average man knows perfectly well that there are unmistakable and profound differences between them today . . .”).

78. *Gong Lum v. Rice*, 275 U.S. 78, 81 (1927).

79. *Id.* at 82 (finding that pupils of “the brown, yellow and black races” belonged in “colored” schools).

80. *See generally* FRANK H. WU, *YELLOW: RACE IN AMERICA BEYOND BLACK AND WHITE* 133–43 (2003) (discussing the racial problems that persist in the United States today); ERIKA LEE, *THE MAKING OF ASIAN AMERICA: A HISTORY* (2016) (telling the story of Asian Americans in the United States and the discrimination they faced throughout history); CATHY PARK HONG, *MINOR FEELINGS: AN ASIAN AMERICAN RECKONING* (2021) (sharing the racial and xenophobic problems Asian Americans experience growing up in the United States).

81. *See* MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 224–25 (2012) (discussing the problem of mass incarceration for People of Color). *See generally* MEHRSA BARADARAN, *THE COLOR OF MONEY: BLACK BANKS AND THE RACIAL WEALTH GAP* (2019) (explaining banking as one reason for the persistence of the racial

legal language of whiteness provided cover to extend benefits to a select few while excluding others based on phenotype, ancestry, or “common sense” notions.

The historical record reveals that the law has forged its own unsteady definitions of race and whiteness rather than relying on academic research or community engagement. Contemporary notions of antiracism are abundant in popular culture but virtually invisible in legal discourse.⁸² Courts—as well as the law more generally—give scant attention to the importance of contextually grounding racial categories and the social construction of those labels.⁸³ To start to bridge this gap, we now turn to the origins and evolutions of the three terms highlighted in this Article.

II. The Origin and Evolution of Racial Terms

As racism evolved over the years, so did terms used to define, explain, and resist it. This Part introduces three terms in particular: People of Color, Women of Color, and BIPOC. In reviewing the origins and development of each term, we can better appreciate the appropriate context for usage.

A. *People of Color*

i. Strength and Solidarity Through Identity

While the origins are uncertain, the term People of Color likely initially referred to enslaved Black Americans.⁸⁴ It was first cited in the Oxford English Dictionary in 1796 in reference to “light-skinned people of mixed African and European heritage.”⁸⁵ The term quickly became “well-established in the English-speaking world.”⁸⁶ Although color and

wealth gap); DOROTHY A. BROWN, *THE WHITENESS OF WEALTH: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS AND HOW WE CAN FIX IT* (2021) (explaining the inequities the United States tax system has on Black Americans).

82. See KENDI, *supra* note 37, at 234 (comparing racism to cancer and discussing how people deny racial inequity in policy).

83. See generally JONATHAN ROSA, *LOOKING LIKE A LANGUAGE, SOUNDING LIKE A RACE: RACIOLINGUISTIC IDEOLOGIES AND THE LEARNING OF LATINIDAD* (2019) (discussing the various Latinx categories created and how they shape Latinx identities).

84. ACEVES, *supra* note 70, at 6; Edward Yuen, *Social Movements, Identity Politics and the Genealogy of the Term ‘People of Color,’* 19 *NEW POL. SCI.* 97 (1997); see JULIE WINCH, *BETWEEN SLAVERY AND FREEDOM: FREE PEOPLE OF COLOR IN AMERICA FROM SETTLEMENT TO THE CIVIL WAR* (THE AFRICAN AMERICAN EXPERIENCE SERIES) xiii (2014) (describing how enslaved Black Americans were classified as “colored persons” on the census during the Civil War era).

85. HOUGHTON MIFFLIN CO., *THE AMERICAN HERITAGE GUIDE TO CONTEMPORARY USAGE AND STYLE* 356 (2005); Sandra E. Garcia, *Where Did BIPOC Come From?*, *N.Y. TIMES* (June 17, 2020), <https://www.nytimes.com/article/what-is-bipoc.html> [<https://perma.cc/4593-6WM3>].

86. ACEVES, *supra* note 70, at 1 (citing WILLIAM GUTHRIE, *A NEW SYSTEM OF MODERN*

race are often related, though not synonymous, the term People of Color signals race by referencing skin color and phenotype.⁸⁷ At some point, “colored people” became synonymous with Black, as it was used in the creation of the National Association for the Advancement of Colored People (NAACP).⁸⁸ Over time, the term expanded to include others, such as those who are Latinx, Asian American, Native American, Arab American, etc.⁸⁹

From its origins, People of Color has been a relational term of identity with strict boundaries denoting difference or “otherness.”⁹⁰ People of Color is defined as different from the white (American) norm,⁹¹ as well as “a phrase chosen by Black, Latin[x], Native American, and Asian and Pacific Islander activists . . . to actively decenter whiteness.”⁹²

Rather than using a term that focuses on *exclusion* from powerful groups, as with “non-white” or “minority,” the term People of Color emerged in part “to counter the condescension implied in the other two.”⁹³ Using the term “non-white” “identifies [individuals] by means of a negative and implies exclusion from a European commonality,” whereas People of Color instead “substitutes a positive and emphasizes inclusion in a diverse group of peoples . . .”⁹⁴ The People of Color term also utilizes “person first” language, highlighting the humanity of people described by

GEOGRAPHY: A GEOGRAPHICAL, HISTORICAL, AND COMMERCIAL GRAMMAR; AND PRESENT STATE OF THE SEVERAL NATIONS OF THE WORLD 619–21 (1796); WILLIAM WINTERBOTHAM, AN HISTORICAL, GEOGRAPHICAL, COMMERCIAL AND PHILOSOPHICAL VIEW OF THE AMERICAN UNITED STATES, AND OF THE EUROPEAN SETTLEMENTS IN AMERICA AND THE WEST-INDIES 323–25 (1795); JEAN-PAUL RABAUT, THE HISTORY OF THE REVOLUTION OF FRANCE 191–94 (James White trans., 1792)).

87. Vinay Harpalani, *To Be White, Black, or Brown? South Asian Americans and the Race-Color Distinction*, 14 WASH. U. GLOB. STUD. L. REV. 609, 609 (2015); Angela R. Dixon & Edward E. Telles, *Skin Color and Colorism: Global Research, Concepts, and Measurement*, 43 ANN. REV. SOCIO. 405, 406 (2017); Salvador Vidal-Ortiz, *People of Color*, in ENCYCLOPEDIA RACE, ETHNICITY & SOCIETY 1037, 1037 (Richard T. Schaefer ed., 2008).

88. PATRICIA SULLIVAN, LIFT EVERY VOICE: THE NAACP AND THE MAKING OF THE CIVIL RIGHTS MOVEMENT 15 (2009).

89. See PÉREZ, *supra* note 21, at 33–36; Vidal-Ortiz, *supra* note 87, at 1038.

90. See Fredrik Barth, *Introduction* to ETHNIC GROUPS AND BOUNDARIES, 9–38 (Fredrik Barth ed., 1969) for an introduction to the classic “us” vs. “them” conception for ethnic boundaries. See also RICHARD ALBA, ETHNIC IDENTITY: THE TRANSFORMATION OF WHITE AMERICA 17 (1990); STEPHEN STEINBERG, THE ETHNIC MYTH: RACE, ETHNICITY, AND CLASS IN AMERICA 169 (2001); BEVERLY DANIEL TATUM, “WHY ARE ALL THE BLACK KIDS SITTING TOGETHER IN THE CAFETERIA?” AND OTHER CONVERSATIONS ABOUT RACE 22 (2003).

91. While People of Color is a global term, this Article discusses it in the American context, including the context of American whiteness, power, and privilege.

92. Andrea Plaid & Christopher Macdonald-Dennis, ‘BIPOC’ Isn’t Doing What You Think It’s Doing, NEWSWEEK (Apr. 9, 2021), <https://www.newsweek.com/bipoc-isnt-doing-what-you-think-its-doing-opinion-1582494> [<https://perma.cc/EZ3P-SHTP>].

93. CHRISTINE CLARK & TEJA ARBOLEDA, TEACHER’S GUIDE FOR IN THE SHADOW OF RACE: GROWING UP AS A MULTIETHNIC, MULTICULTURAL, AND “MULTIRACIAL” AMERICAN 17 (2000).

94. HOUGHTON MIFFLIN CO., *supra* note 85, at 356.

the term.⁹⁵ In this way, the move from “non-white” to “People of Color” signals a shift in power and preference—from exclusion to inclusion, from negative to positive.

Due in part to the rigid racial hierarchy that placed whites at the top and excluded people from other races, those from different backgrounds began recognizing the benefits of cooperation and coalition building between what had heretofore been disparate racial groups.⁹⁶ Scholars have documented how racially marginalized groups historically competed for marginal favors doled out by the white majority.⁹⁷ With the influx of immigrants arriving after the 1965 Immigration Act, came the opportunity for collaboration and connection instead.⁹⁸ During that time, pro-Black and pro-Brown groups found commonalities and reasons to band together through a shared non-white identity and accompanying legal and social exclusion from the full benefits of American life.⁹⁹

Black Americans, Asian Americans, Native Americans, those from the Latinx community, and other non-whites that had been working separately to advance their own group interests recognized that they might achieve more by working together.¹⁰⁰ The possibility that collective

95. Constance Grady, *Why the Term ‘BIPOC’ is So Complicated, Explained by Linguists*, VOX (June 30, 2020), <https://www.vox.com/2020/6/30/21300294/bipoc-what-does-it-mean-critical-race-linguistics-jonathan-rosa-deandra-miles-hercules> [https://perma.cc/CW2P-GX6F]. “Person-first” language is distinguished from “disability-first” or “identity-first” language, wherein the diagnosis, disability, or condition is used as the first descriptor of a person. Tara Haelle, *Identity-First vs. Person-First Language is an Important Distinction*, ASS’N OF HEALTH CARE JOURNALISTS: COVERING HEALTH (July 31, 2019), <https://healthjournalism.org/blog/2019/07/identity-first-vs-person-first-language-is-an-important-distinction/> [https://perma.cc/JYL8-AQVN].

96. PAULA McCLAIN & JESSICA D. JOHNSON CAREW, “CAN WE ALL GET ALONG?” RACIAL AND ETHNIC MINORITIES IN AMERICAN POLITICS 251–53 (7th ed. 2017). Also at this time, groups initially seen as non-white—including Italians and the Irish—became slowly incorporated into whiteness. See IGNATIEV, *supra* note 53, at 40, 79. See generally ROEDIGER, *supra* note 53 (recounting how various ethnic groups assimilated into a white United States). Even today there are debates about who counts as white—with some considering Jews a separate non-white ethnic identity and others counting them as a religious minority comprised primarily of white people. See generally KAREN BRODKIN, HOW JEWS BECAME WHITE FOLKS AND WHAT THAT SAYS ABOUT RACE IN AMERICA (1998) (arguing the process and reasons behind how the Jewish people in the United States became “white”).

97. See McCLAIN & CAREW, *supra* 96, at 27, 254; Carolyn Sorisio, *Introduction: Cross-Racial and Cross-Ethnic Collaboration and Scholarship: Contexts, Criticism, Challenges*, 38 MELUS 1, 2 (2013).

98. Claire Jean Kim & Taeku Lee, *Interracial Politics: Asian Americans and Other Communities of Color*, 34 POL. SCI. & POL. 631, 631 (2001).

99. Grady, *supra* note 95 (describing how in the 1960s and 70s, “groups like the Black Panther Party for Self Defense and the Brown Berets came together in solidarity as [P]eople of [C]olor, which was a new instantiation of the idea of people *having* color”).

100. EDUARDO BONILLA-SILVA, WHITE SUPREMACY AND RACISM IN THE POST-CIVIL RIGHTS ERA 203 (2001) (“[T]he new civil rights movement must have a multiclass, multiracial minority group agenda.”); see also MICHAEL DAWSON, BEHIND THE MULE: RACE AND CLASS IN AFRICAN-AMERICAN POLITICS (1994) (discussing linked fate); Bonilla-Silva, *supra* note 55, at 472

unity could produce outcomes that were greater than the sum of their individual parts bound them together politically and strategically.¹⁰¹ This coalition building continues today; even when their immediate interests do not converge, People of Color remain united in working toward the broader goal of a more antiracist future.¹⁰²

Contemporary scholars also theorize and document a People of Color consciousness, one that co-exists with other deeply held racial identities.¹⁰³ Still today, “the emergence of a broader *person of color* identity underscores the adage of ‘strength in numbers.’”¹⁰⁴ A People of Color consciousness mirrors decades of coalition building in other pan-ethnic and pan-racial groups.¹⁰⁵ For example, those who may have thought of themselves distinctly as Salvadoreans, Mexicans, Colombians, or Cubans abroad often willingly group together for political power in the United States with others already comfortable being part of a Latinx or Hispanic community.¹⁰⁶ Similarly, while nationalistic divisions permeate identity for those with ancestors from Korea, China, India, Pakistan, Japan, Vietnam, Sri Lanka, the Philippines, and other Asian countries, in the United States they choose at times to assemble under the Asian American banner for mutual support and strength.¹⁰⁷

(describing how dark-skinned immigrants from Africa, Latin America, and the Caribbean “accepted the duality of their social classification as Black in the United States while retaining and nourishing their own cultural or ethnic heritage”).

101. MCCLAIN & CAREW, *supra* note 96, at 246.

102. *E.g.*, Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 528–33 (1980) (describing racial interest-convergence in pursuing educational effectiveness).

103. Co-existing identities is not a new concept. The Civil Rights Movement saw significant connections between communities of color, as well as class solidarity, as evidenced in Martin Luther King Jr.’s Poor People’s Campaign and Malcolm X’s Afro-American liberation movement, both of which promoted unity. Drew Dellinger, *The Last March of Martin Luther King Jr.*, ATLANTIC (Apr. 4, 2018), <https://www.theatlantic.com/politics/archive/2018/04/mlk-last-march/555953/> [<https://perma.cc/G82B-XTY>]; Reiland Rabaka, *Malcolm X and/as Critical Theory: Philosophy, Radical Politics, and the African American Search for Social Justice*, 33 J. BLACK STUD. 145, 151–52 (2002).

104. Efrén Pérez, *(Mis)Calculations, Psychological Mechanisms, and the Future Politics of People of Color*, 6 J. RACE, ETHNICITY & POL. 33, 38 (2021); PÉREZ, *supra* note 21.

105. YEN LE ESPIRITU, ASIAN AMERICAN PANETHNICITY: BRIDGING INSTITUTIONS AND IDENTITIES 19–20 (1992) (“[T]he pan-Asian concept, originally imposed by non-Asians, became a symbol of pride and a rallying point for mass mobilization by later generations.”).

106. See CRISTINA BELTRÁN, THE TROUBLE WITH UNITY: LATINO POLITICS AND THE CREATION OF IDENTITY (2010) (using key moments in U.S. Latinx political history to explore how Latinx electoral and protest politics have aimed to erase diversity in favor of images of commonality). At other times, they are lumped into groups even though they may prefer to remain separate until their distinct priorities are made clear, as in the 2020 election. Hilary Sonneland, *Chart: How U.S. Latinos Voted in the 2020 Presidential Election*, AMERICAS SOC’Y/COUNCIL AMERICAS (Nov. 5, 2020), <https://www.as-coa.org/articles/chart-how-us-latinos-voted-2020-presidential-election> [<https://perma.cc/22PN-LGMT>].

107. Viet Thanh Nguyen, *What the Asian-American Coalition Can Teach the Democrats*,

In his pathbreaking book *Diversity's Child: People of Color and the Politics of Identity*, Professor of Political Science and Psychology Efrén Pérez provides evidence to support his thesis that there exists “a sense of solidarity among [People of Color]” as a whole, even while individuals retain distinct ethnic and national identities.¹⁰⁸ In other words, “a person’s sense of being African American, Asian American, or Latino is *nested under* this broader category, *people of color*.”¹⁰⁹ Many individuals maintain their specific racial identity while also developing a broader sense of belonging in a community of People of Color. Thus, “the interface between racial identity and one’s identity as a [person of color] can be understood as a relation between a subordinate and superordinate identity, where narrower racial groups are nested below the broader [People of Color] category.”¹¹⁰ In search of broader political power, “many of these disparate, unique racial and ethnic groups have now coalesced—by design and through elite action—into a larger mega-group, with African Americans, Asian Americans, Latinos, and others identifying, many times, as *people of color*.”¹¹¹ The origins and evolution have thus prioritized identity and engagement with a People of Color identity primarily for purposes of political progress and mutual benefit, with added opportunities for social connection and solidarity.¹¹²

ii. Limitations of the Term

Although strength in numbers, political support, and social solidarity are clear benefits of the People of Color moniker, the term also has drawbacks. There may be tensions in the inevitability of conflict between an individual’s personal racial/ethnic identity and a broader coalition-based People of Color identity.¹¹³ This is especially true because the People of Color coalition is comprised of people from different

N.Y. TIMES (Dec. 16, 2020), <https://www.nytimes.com/2020/12/16/opinion/asian-american-democrats.html?referringSource=articleShare> [<https://perma.cc/G2ZY-7S2U>] (stating both that “people in Asia do not typically imagine themselves as Asians, but rather tend to identify with specific nationalities or ethnicities” and that immigrants from Asia “have always become ‘Asian-American’ in response to anti-Asian racism”); Ishisaka, *supra* note 19 (reporting that the term “Asian American” is a direct rejection of the term “Oriental” and grew out of the civil rights movement of the 1960s); ESPIRITU, *supra* note 105, at 24 (describing certain labor movements as “inter-Asian solidarity”); see DINA G. OKAMOTO, *REDEFINING RACE: ASIAN AMERICAN PANETHNICITY AND SHIFTING ETHNIC BOUNDARIES* (2014).

108. PÉREZ, *supra* note 21, at 39.

109. PÉREZ, *supra* note 104, at 42.

110. PÉREZ, *supra* note 21, at 43.

111. PÉREZ, *supra* note 104, at 36.

112. ACEVES, *supra* note 70, at 33–34.

113. DAWSON, *supra* note 100, at 182 (describing how political views may differ among African Americans even though those views are most often compared to white Americans); Bonilla-Silva, *supra* note 55, at 469–70 (discussing the structural racial hierarchy in racialized social systems).

racial/ethnic groups that have “fractious political histories, goals, and aspirations.”¹¹⁴ When conflict between the two identities occurs, individuals must choose; according to Sociology Professor Eduardo Bonilla-Silva’s research on in-group preferences, many individuals will likely prefer their own racial/ethnic group at the expense of not only their People of Color identity but of People of Color power more generally.¹¹⁵

Relatedly, the People of Color umbrella may conceal circumstances that are unique to particular groups, or that are not relevant or critical for others. As an example: “for many activists and linguists, it feels disingenuous to have a conversation about police brutality against ‘people of color’ when we know that police brutality disproportionately targets Black people.”¹¹⁶ Thus, including Asian Americans, for instance, in the People of Color umbrella as victims of police violence can be a distraction from what should be the main focus: anti-Black racism.

A related challenge is that preferring a People of Color identity runs the risk of subsuming other perspectives within the People of Color umbrella. Although Pérez does not expect “that individuals forget” their particular racial identity, he argues that “each of these categories becomes temporarily subsumed under the larger collective, *people of color* . . .”¹¹⁷ Yet even a willingness to “temporarily subsume” a strongly held personal identity forged from birth in service of an emerging identity concept may be too much to expect.¹¹⁸ This is especially true when we consider marginal perspectives within the larger People of Color collective. Research has shown that “in achieving Latin[x] or Asian [American] unity, the unique perspectives and needs of the smaller groups who contribute to the whole, such as Cubans or Koreans, are often lost.”¹¹⁹ The interests of those who are overlooked within their own pan-ethnic community—such as South Asians in the larger Asian American umbrella—should not be overlooked under an even broader People of

114. PÉREZ, *supra* note 21, at 2.

115. *See, e.g.*, Bonilla-Silva, *supra* note 55, at 472 (describing how dark-skinned immigrants historically rejected their classification as “Black” in the United States out of preference for their own ethnic or cultural identity); BONILLA-SILVA, *supra* note 12, at 190–202 (finding that Latinx and Asian Americans continue to have negative racial attitudes about Black Americans); *see also* Henri Tajfel, M. G. Biling, R. P. Bundy & Claude Flament, *Social Categorization and Intergroup Behavior*, 1 EUR. J. SOC. PSYCH. 149, 172 (1971); HENRI TAJFEL, *HUMAN GROUPS AND SOCIAL CATEGORIES: STUDIES IN SOCIAL PSYCHOLOGY* (1981) (telling the story of individuals and their affiliations with larger social groups).

116. Grady, *supra* note 95; *see also* Deo, *supra* note 20, at 137–38.

117. PÉREZ, *supra* note 21, at 3.

118. *But see* MARK LILLA, *THE ONCE AND FUTURE LIBERAL: AFTER IDENTITY POLITICS* (2017) (suggesting Americans emphasize political commonalities above or even at the expense of personal identity).

119. PÉREZ, *supra* note 21, at 21.

Color umbrella.¹²⁰ There is also the concern that relying on the term People of Color misses intersectional attention and analysis, which we turn to next.

B. *Women of Color*

In response to gender-based marginalization within the larger feminist movement, as well as from within the People of Color community, many women identify instead of, or in addition to, People of Color as Women of Color.¹²¹ Their preference for this term is based in part on their own peripheral (gendered) existence within both the People of Color identity group as well as the traditional (white) feminist movement.¹²² The purposeful centering of intersectional identity is thus a key component. The origins, evolution, and limitations of the term are discussed next.

i. The Intersection of raceXgender

Just as distinct People of Color identities and organizations were formed due to their exclusion from benefits extended to whites, gender has marginalized women from both white and non-white communities since perhaps the dawn of time.¹²³ Women's voices, perspectives, and priorities are marginalized within communities of color—including pan-racial groups (e.g., People of Color) and individual racial groups (e.g., Latina).¹²⁴

The very concern that minority groups within the larger People of Color umbrella would be ignored led to the creation of a separate umbrella identity: Women of Color. The Women of Color community adds

120. See Jennifer Lee & Karthick Ramakrishnan, *Who Counts as Asian?*, 43 RACIAL & ETHNIC STUD. 1733 (2019) (describing the pattern of “South Asian exclusion” in which South Asians classify Indians and Pakistanis as Asian, while others, including Asian Americans, are significantly less likely to do so).

121. See ALL THE WOMEN ARE WHITE, ALL THE BLACKS ARE MEN, BUT SOME OF US ARE BRAVE: BLACK WOMEN'S STUDIES (Akasha Gloria Hull, Patricia Bell-Scott & Barbara Smith eds., 2nd ed. 2015); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 604 (1990). But see Catharine A. MacKinnon, *From Practice to Theory, or What Is a White Woman Anyway?*, 4 YALE J.L. & FEMINISM 13, 20 (1991) (“[T]o argue that oppression ‘as a woman’ negates rather than encompasses recognition of the oppression of women on other bases, is to say that there is no such thing as the practice of sex inequality.”).

122. Adrien Katherine Wing, *Introduction to CRITICAL RACE FEMINISM* 7 (Adrien Katherine Wing, ed., 2d ed. 2003) (explaining that many proponents of Critical Race Feminism have not joined the mainstream feminist movement because of its “essentialization of all women, which subsumes the variable experiences of women of color under the experience of white middle-class women”).

123. CATHARINE A. MACKINNON, BUTTERFLY POLITICS 11–22 (2017).

124. See Wing, *supra* note 122, at 1 (“Whether they be African American, Latina, Asian [American], or Native American, these women have failed to be successfully integrated into the mainstream.”).

gender identity to People of Color to focus on the minority perspective within gender: women.¹²⁵ The decisive emphasis on what Kimberlé Crenshaw termed intersectionality—here, a combination of the two devalued identity groups of gender (“women”) and race (“of color”)—centers two heretofore marginalized groups in one powerful voice.¹²⁶ Additional research building on intersectionality introduces the concept of *raceXgender*, which reflects “the compound effects of devaluation based on both race and gender,” showcasing how these two identity characteristics yield unique experiences for Women of Color.¹²⁷

Volumes of research have explored how “[m]ainstream feminism has paid insufficient attention to the central role of white supremacy’s subordination of women of color.”¹²⁸ Even within CRT, which “constitutes a race intervention in leftist discourse and a leftist intervention in race discourse,” issues of gender have not always been prioritized.¹²⁹ CRT scholar and Professor Richard Delgado notes that because “[f]eminism is white-themed, while civil rights discourse is largely geared toward the problems of men of color;” thus, a separate space is critical to document and address the needs of women of color.¹³⁰ Hence, the need for “a feminist intervention within CRT.”¹³¹

Law professor and CRT foremother Patricia Williams reminds us that women have a different experience and legacy from men, even those sharing the same racial background; for instance, being “the object of property” means different things based on gender, which makes “reclaiming that . . . from which [one] ha[s] been disinherited” even more

125. There is increasing recognition of those who identify as neither a man nor a woman “with growing acceptance of gender-neutral pronouns, such as ‘they, them, and theirs,’ and recognition of a third-gender category by [a number of] U.S. states.” Jessica Clarke, *They, Them, and Theirs*, 132 HARV. L. REV. 894, 895 (2019). After conducting an analysis of the empirical data used in this Article, the author uncovered that there were no faculty in the Diversity in Legal Academia study who identified as non-binary and a very small number of students—1% of the full sample in 2019—who have done so since 2016 when LSSSE introduced the response option of “another gender identity” to a survey question about gender.

126. Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 166–67 (1989). Others have written about similar concerns using the terms “multiple consciousness, cosynthesis, holism, interconnectivity, and multidimensionality.” Wing, *supra* note 122, at 7.

127. Deo, *supra* note 29, at 241.

128. Wing, *supra* note 122, at 7; see also Chandra Talpade Mohanty, *Under Western Eyes: Feminist Scholarship and Colonial Discourses*, 13 BOUNDARY 2, at 333 (1984) (explaining that feminist women of color use the term “colonization” to refer to white women’s appropriation of their experiences).

129. Wing, *supra* note 122, at 5.

130. Richard Delgado, *Foreword* to CRITICAL RACE FEMINISM xiv (Adrien Katherine Wing ed., 2d ed. 2003).

131. Wing, *supra* note 122, at 7.

profound for women of color and Black women specifically.¹³² Even in academia, a supposedly “liberal” bastion, there are raceXgender disparities including “formidable obstacles that Women of Color encounter on the road to tenure and promotion” and identity-based “tools that can be deployed to resist, fight back, and prevail.”¹³³ The term Women of Color is thus “a solidarity definition, a commitment to work in collaboration with other oppressed women of color who have been minoritized.”¹³⁴ There is also strength in the power of the collective to “recognize and honor the connections among body, mind, culture, and spirit” that are shared among women of color.¹³⁵

ii. Constraints of Women of Color

While women of color deserve safe space, there are also times when the People of Color umbrella is a more powerful tool to reach stated goals.¹³⁶ Furthermore, in contexts where gender significantly impacts the experience of people even from the same racial background (i.e., criminal justice reform), the experiences of men of color should be prioritized within People of Color.¹³⁷

Additionally, the Women of Color umbrella can obscure unique experiences of particular groups who gather underneath it.¹³⁸ As one important example, the racial history of attempted genocide combined with gender-based family expectations means that Native American women face unique challenges that differ not only from those that Native American men face (because of different gendered expectations) but also

132. PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 216–17 (1992).

133. Yolanda Flores Niemann, Gabrielle Gutiérrez y Muhs & Carmen G. Gonzalez, *Introduction* to *PRESUMED INCOMPETENT II: RACE, CLASS, POWER, AND RESISTANCE OF WOMEN IN ACADEMIA 7* (Yolanda Flores Niemann, Gabrielle Gutiérrez y Muhs & Carmen G. Gonzalez eds., 2020); Meera E. Deo, *Unequal Profession: Race and Gender in Legal Academia* (2019).

134. Grady, *supra* note 95 (quoting the remarks of Loretta Ross, the co-founder of SisterSong Women of Color Reproductive Justice Collective, as she discussed the creation of the term Women of Color at the 1977 National Women’s Conference).

135. Angela P. Harris & Carmen G. González, *Introduction* to *PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA 7* (Yolanda Flores Niemann, Gabrielle Gutiérrez y Muhs & Carmen G. González eds., 2012).

136. One example of how using “People of Color” would be effective is when considering the lack of corporate CEOs from diverse backgrounds. Richie Zweigenhaft, *Fortune 500 CEOs, 2000-2020: Still Male, Still White*, *SOC’Y PAGES* (Oct. 28, 2020), <https://thesocietypages.org/specials/fortune-500-ceos-2000-2020-still-male-still-white> [https://perma.cc/TTH4-BTHM]; see Afra Afsharipour, *Women and M&A*, 12 U.C. IRVINE L. REV. 359 (2022).

137. See generally AKIVA M. LEIBERMAN & JOCELYN FONTAINE, *URB. INST., REDUCING HARMS TO BOYS AND YOUNG MEN OF COLOR FROM CRIMINAL JUSTICE SYSTEM INVOLVEMENT (2015)* (discussing challenges facing boys and men who are African American, Latino, Native American, and Asian American); Deo, *supra* note 20, at 137.

138. At other times (e.g., the gendered upbringing of girls with dolls), the experiences of white women and women of color will be so similar that there will be no need to highlight race and scholars can write more broadly about gender.

those that other women of color face (because their communities have not suffered the same atrocities).¹³⁹ Subsuming all of these women within the category Women of Color can discount the unique experiences of women from particular groups, especially those that may otherwise be overlooked.¹⁴⁰

C. BIPOC

i. What is BIPOC?

BIPOC is a relatively new label used by some anti-racism advocates and rejected by others. Because of the nascent nature of the term, there is little scholarship or other commentary that explains its origins or traces its evolution. This introduction to the moniker attempts to decipher where it started and how/why it has grown, though again the term is so new that its history is not completely clear. Similarly, while the contours have not yet been defined, it does depend on some relatively fixed boundaries and preferences that are explored in this Section.¹⁴¹

BIPOC is a synonym for People of Color that foregrounds Black (“B”) and Indigenous (“I”) people within the larger People of Color community.¹⁴² By listing their letters first, the term centers two groups—Black and Indigenous—that proponents of BIPOC argue are critical for understanding the origins of race and racism in the United States.¹⁴³ Those who use BIPOC see Indigenous and Black Americans as sharing a common historical experience vis-à-vis whites; they therefore center these two communities linguistically and conceptually because they see them as fundamental to understanding the origins of all racial experiences in the United States.¹⁴⁴ Using the term BIPOC signals an explicit decision “to acknowledge that not all people of color face equal levels of injustice.”¹⁴⁵ Employing a hierarchy of oppression among

139. See SARAH DEER, *THE BEGINNING AND END OF RAPE: CONFRONTING SEXUAL VIOLENCE IN NATIVE AMERICA* 31–43 (2015) (linking the sexualization and related sexual violence against Native American women to their dispossession as a community).

140. See Sutton, *supra* note 27 (explaining the need for disaggregated data on Native Americans and Native American women).

141. The origins and limitations referenced here are less reliant on scholarly sources (since there are few) and more dependent on popular culture to navigate usage.

142. Garcia, *supra* note 85.

143. Grady, *supra* note 95 (“Some activists have responded by turning to the term ‘BIPOC’ in an attempt to center the voices of Black and Indigenous communities.”); Deo, *supra* note 20, at 118.

144. The BIPOC Project states, “[w]e address how three pillars of racism—Native invisibility, anti-Blackness and white supremacy—are internalized and show up in mutually reinforcing, distinct, and specific ways within BIPOC spaces and impede our efforts to collaborate across difference.” *Our Theory of Change*, THE BIPOC PROJECT, <https://www.thebipocproject.org/our-approach> [<https://perma.cc/NE6F-V2RN>].

145. Chevaz Clarke, *BIPOC: What Does it Mean and Where Does it Come From?*, CBS NEWS

communities of color, advocates of BIPOC purposefully prioritize the two groups that they argue are most affected by race and racism in the United States.¹⁴⁶ They do so by listing their initials both separately and first, followed by a remnant group: *and other People of Color*.¹⁴⁷

In contrast to the origins of the People of Color and Women of Color monikers, proponents of BIPOC as a racial term openly resist calls for unity.¹⁴⁸ They do so because they believe that aggregating with others as People of Color contributes to “Native invisibility [and] anti-Blackness.”¹⁴⁹ Instead, they argue that use of their new term serves to “center BIPOC most at the margins”—meaning that Black and Indigenous people are more marginalized than other communities of color and should therefore be foregrounded in the label.¹⁵⁰ Supporters of the BIPOC term argue that this is because “Black and Indigenous people are severely impacted by systemic racial injustices,” apparently to greater degrees than other people of color and in all racial contexts.¹⁵¹

ii. The Dangers of BIPOC

Despite the reasons proponents share, there are significant shortcomings with using BIPOC. Three are discussed briefly here.¹⁵² First,

(July 2, 2020), <https://www.cbsnews.com/news/bipoc-meaning-where-does-it-come-from-2020-04-02> [<https://perma.cc/AFY3-W6J3>].

146. See Deo, *supra* note 20, at 126.

147. *Id.* at 133 (citing NATIONAL NURSES UNITED, SINS OF OMISSION 5 (2020), https://www.nationalnursesunited.org/sites/default/files/nnu/documents/0920_Covid19_SinsOfOmission_Data_Report.pdf [<https://perma.cc/XA6W-K5WP>]).

148. THE BIPOC PROJECT, *supra* note 144, asserts the following: “We disrupt calls for ‘unity’ by making explicit dynamics of power across intersectional identities within a racial hierarchy underpinned by Native invisibility, anti-Blackness and white supremacy, and center BIPOC most at the margins.”

149. *Id.*

150. *Id.*

151. Clarke, *supra* note 145.

152. While three related concerns are raised here, there are many other problems with the term BIPOC—starting with general confusion about what the acronym references. Apparently, some people think it references bisexual people of color. Garcia, *supra* note 85. Also, because the term is promoted largely on social media among “woke” elites and corporate entities, there has not been a process for community engagement of the BIPOC term. See Harmon, *supra* note 33. By contrast, People of Color and Women of Color were adopted by academics, advocates, and allies after considerable conversation and over the course of time. Grady, *supra* note 95. Additionally, BIPOC ignores the vital importance of multiracial and multiethnic communities—not only forgetting that people can be both Black and Indigenous, but that they can be, for example, Black and Asian American or Latinx and Native American. Are individuals from those communities contemplated within the BIPOC term? If so, are they part of the foregrounded Black and Indigenous label while the rest of their identity is relegated to the background? Furthermore, there are complex interactions between legal identity and cultural identity for Native Americans with some being legally recognized members of federal tribes without any particular cultural affiliation (and without an automatic shared racial identity) and others being steeped in culture and tradition without formal legal recognition or membership (though perhaps sharing a racial

although advocates assert that the term “seek[s] to intentionally reframe the Black/white binary,”¹⁵³ BIPOC arguably maintains the binary—simply adding the word “Indigenous” to the side of Black Americans, and relegating all other non-whites to an amorphous leftover category.¹⁵⁴ Second, by intentionally centering two groups, BIPOC by definition marginalizes other communities of color with significant and important histories of race and racism in the United States—including those from the Latinx, Asian American, and Arab American communities—while also prioritizing historical oppression over contemporary discrimination.¹⁵⁵ Third, the term promotes *virtue signaling*—using words or actions to suggest support for a cause for the primary purpose of showcasing moral superiority—without pushing for substantive change or drawing from the actual context of the issue at hand.¹⁵⁶ Each drawback is discussed in greater detail below.

1. *Maintaining the Black/white Binary*

There are times when centering Black and Indigenous experiences while keeping those of other People of Color apart makes sense. When Black and Indigenous communities have been marginalized and are central to the debate at issue, they should be highlighted. The horrors of forced migration or mandated assimilation of Native peoples and Black enslaved people are examples of when it is imperative for academics, advocates, and allies to center Black and Indigenous voices and experiences and name these two groups directly. In those instances, even the term People of Color would be inappropriate; so too would the term

identity with other Indigenous people). Hilary N. Weaver, *Indigenous Identity: What Is It, and Who Really Has It?*, 25 AM. INDIAN Q. 240 (2001); see Alex T. Skibine, *Culture Talk or Culture War in Federal Indian Law*, 45 TULSA L. REV. 89 (2013). These and other complexities are entirely missing from BIPOC’s foundations and are not easily incorporated into its structure of preferring certain groups to others.

153. THE BIPOC PROJECT, *supra* note 144 (“We seek to intentionally reframe the Black/white binary . . .”).

154. “For much of the twentieth century and long before, American courts and even scholars assumed that people were either White or non-White, or in the alternative Black or non-Black.” Meera E. Deo, *Affirmative Action Assumptions*, 52 U.C. DAVIS L. REV. 2407, 2417 (2019) (citing Juan F. Perea, *The Black/White Binary Paradigm of Race: The “Normal Science” of American Racial Thought*, 85 CAL. L. REV. 1213 (1997)).

155. Deo, *supra* note 20, at 127.

156. Cambridge Dictionary notes that virtue signaling “is the popular modern habit of indicating that one has virtue merely by expressing disgust or favour for certain political ideas or cultural happenings.” *Virtue Signalling*, CAMBRIDGE ADVANCED LEARNER’S DICTIONARY AND THESAURUS, <https://dictionary.cambridge.org/us/dictionary/english/virtue-signalling> [<https://perma.cc/D98F-7498>]. This definition from Urban Dictionary is even more direct: “[t]o take a conspicuous but essentially useless action ostensibly to support a good cause but actually to show off how much more moral you are than everybody else.” *Virtue Signalling*, URB. DICTIONARY, <https://www.urbandictionary.com/define.php?term=Virtue%20Signalling> [<https://perma.cc/4LQA-FUZS>].

BIPOC, as “other People of Color” have not endured the same horrors and the term would incorrectly reference them peripherally.

In many instances, however, BIPOC is even more ill-fitting as a stand-in for People of Color. For example, BIPOC is both awkward and incorrect when discussing xenophobia—more likely experienced by Asian American, Latinx, and other People of Color populations who are more likely to have immigrant backgrounds.¹⁵⁷ Furthermore, when Latinx, Asian American, Arab American, and other communities of color are purposefully pushed to the periphery, this signals *racial triangulation*—using these groups as a “buffer” separating whites from Black Americans which perpetuates the binary and divides groups that should be unified.¹⁵⁸ Similarly, those in power may draw on xenophobia in an attempt to pit communities with large populations of recent immigrants against those without as another strategy of divide-and-conquer that seeks to split the collective power of People of Color.¹⁵⁹

2. Prioritizing Historical Oppression

Second, and relatedly, while historical context matters, it cannot have exclusive purchase of claims of racism or oppression. BIPOC begins by overstating a shared exclusive history between Black and Indigenous people, suggesting false parallels in the horrors of slavery as compared with attempted genocide and the dispossession of land and culture—both horrific, but not the same.¹⁶⁰ Furthermore, highlighting these two groups

157. See Efrén O. Pérez, *Xenophobic Rhetoric and its Political Effects on Immigrants and Their Co-Ethnics*, 59 AM. J. POL. SCI. 549 (2015); Wu, *supra* note 80, at 12–20 (noting that Asian and Latinx populations have higher rates of immigration and are more likely to be viewed as foreign).

158. Claire Jean Kim, *The Racial Triangulation of Asian Americans*, 27 POL. & SOC'Y 105, 107 (1999).

159. See PHILIP KRETSEDEMAS, MIGRANTS AND RACE IN THE U.S.: TERRITORIAL RACISM AND THE ALIEN/OUTSIDE 28–36 (2014).

160. Some note that these two groups suffered at the hands of white supremacy without their own individual agency; Native people were here before white settlers and Black Americans were enslaved and brought against their will. See, e.g., Erfan Moradi, *How ‘Race’ Came Into Being*, BERKELEY NEWS (Sept. 25, 2020), <https://news.berkeley.edu/2020/09/25/race-the-power-of-an-illusion-biological-or-social-determinants-of-race/> [<https://perma.cc/J6GS-P594>] (describing and linking to a docuseries about “how the story of race was created to rationalize the enslavement of Africans and the genocide of Indigenous people”). One could also draw parallels to the ancestors of Chicanos (Mexican Americans) who, like Native Americans, lived on this land before it was the United States. See Guadalupe T. Luna, *Chicana/Chicano Land Tenure in the Agrarian Domain: On the Edge of a ‘Naked Knife,’* 4 MICH. J. RACE & L. 39, 43–44 (1998). While refugees and asylees are obviously not enslaved in the same way as Black Americans were (though many are detained, including children removed from parents like Native children were, and continue to be), all are here less of their own free will and more because external forces pushed them out of their native lands. See Mark Trahant, *Indian Country Remembers the Trauma of Children Taken from Their Parents*, THE WORLD: INDIAN COUNTRY TODAY (June 19, 2018), <https://www.pri.org/stories/2018-06-19/indian-country-remembers-trauma-children->

both prioritizes past (as compared to ongoing) discrimination and ignores commonalities of marginalization from white America shared by other People of Color. The experiences of Japanese internment and Latinx family separation/childhood detention are more recent race-based atrocities that have no place under the BIPOC banner because, by definition, neither Asian American nor Latinx experiences are spotlighted by the term though individuals from these groups disproportionately suffered through these experiences.¹⁶¹

Even membership in the two communities, Native American and Black, has different historical and contemporary realities. Since antebellum times, “the one-drop rule” has held that “anyone with as much of ‘one drop’ of Black heritage is automatically Black.”¹⁶² Yet, “the inverse logic applies when it comes to identifying as Indigenous: You have to prove that you have enough Indigenous heritage to belong in the group” as a formal legal citizen.¹⁶³ Furthermore, the U.S.-centric nature of the term BIPOC makes it virtually irrelevant globally.¹⁶⁴

Purposefully prioritizing Black and Indigenous communities in every instance involving race also supports what some have called the *Oppression Olympics*—ranking the suffering of various groups resulting in “intergroup competition and victimhood” rather than racial solidarity

taken-their-parents [<https://perma.cc/78CD-Z8QT>] (comparing current family separation at the United States/Mexico border with separation of Native children from their families when sent to boarding schools). Others have argued that the term genocide applies to the Black American context too. Etienne C. Toussaint, *American Fugitive*, CURRENT AFFAIRS (Apr. 25, 2021), <https://www.currentaffairs.org/2021/04/american-fugitive> [<https://perma.cc/YH5A-KBVN>] (sharing the example of the Civil Rights Congress, arguing that “the U.S. government had violated international human rights law by sanctioning ‘persistent, constant, widespread, [and] institutionalized’ genocide of African Americans”).

161. While these contemporary events are specific to the Asian American and Latinx communities, both share parallels with atrocities committed against Native Americans—before Native Americans were removed from ancestral lands, many were interned in camps; forced boarding school and adoption experiences predate modern family separation. Laura Rice, *For Survivors of Native American Boarding Schools, Family Separation is Nothing New*, TEX. STANDARD (June 26, 2018), <https://www.texasstandard.org/stories/for-survivors-of-native-american-boarding-schools-family-separation-is-nothing-new> [<https://perma.cc/LF95-44GH>].

162. Grady, *supra* note 95.

163. *Id.* Some have argued that “blood quantum” was purposefully used differently for various groups in order to maintain white privilege. See, e.g., Patrick Wolfe, *Settler Colonialism and the Elimination of the Native*, 8 J. GENOCIDE RSCH. 387, 387–88 (2006). Fewer Native Americans meant fewer contestations to land—prioritizing Native American assimilation. *Id.* In contrast, fewer Black enslaved people meant less free and later cheap labor—incentivizing whites to count more people as Black. *Id.* As Professor Kirsten Matoy Carlson wrote to the author in private correspondence, “The settler-colonial project actually depended on treating the two groups differently.” Letter from Kirsten Matoy Carlson, Professor of L., Wayne State Univ., to author (2021) (on file with author).

164. See, e.g., Grady, *supra* note 95.

and collective progress.¹⁶⁵ Solidifying a hierarchy of racial oppression cannot be the way forward.

3. *Promoting Virtue Signaling*

The term BIPOC reflects purely or primarily symbolic unity between Black and Indigenous communities, which Professor Derrick Bell and others would argue is not actual progress, and which today could be considered simply virtue signaling.¹⁶⁶ For groups to be at the center of a broader community of color, they must be represented in membership, leadership, and in the priorities of the group.¹⁶⁷ It is unclear whether BIPOC is the preferred term of Indigenous communities or individuals, let alone whether Native Americans use the term in their own advocacy or scholarship. Furthermore, the systematic invisibility—the “paper genocide” resulting from a lack of data on Native Americans—means it will be virtually impossible for Indigenous interests, preferences, priorities, or perspectives to be fully represented; while the name implies that the group has been centered, they instead remain excluded.¹⁶⁸

Why “center” Native Americans in name if they are not included in substance? By foregrounding them in name only, BIPOC pretends to represent Indigenous people but actually contributes to their erasure by not including them in substance. This is an example of *virtue signaling*—pretending to center the experiences or preferences of a group to signal equity-driven principles while actually being indifferent to the goals of

165. ANGE-MARIE HANCOCK, SOLIDARITY POLITICS FOR MILLENNIALS: A GUIDE TO ENDING THE OPPRESSION OLYMPICS 4 (2011); *see also* Plaid & Macdonald-Dennis, *supra* note 92 (discussing the shortcomings of BIPOC, particularly in relation to the usage and history of the phrase People of Color).

166. BELL, *supra* note 12, at 18–19 (arguing that “symbolic progress” maintains the status quo by providing the oppressed with the illusion of progress without ceding real power). Furthermore, the political goals of Black vs. Indigenous populations are also divergent. Long before *Brown v. Board of Education*, Black Americans have prioritized integration and full inclusion. *But see* Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976) (discussing the vein of Black activists pushing for equality, even if separate, over integration). Whereas Native American groups have purposefully resisted assimilation and fought to preserve their own separate spaces as sovereign nations. *See* VINE DELORIA, JR., CUSTER DIED FOR YOUR SINS: AN INDIAN MANIFESTO 1–27 (1960); WILL KYMLICKA, MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS 10–33 (1995).

167. Meera E. Deo, *Centering Marginalized Populations*, in ANTIRACIST LEADERSHIP (forthcoming 2023).

168. Sutton, *supra* note 27. Even published LSSSE findings do not always include disaggregated data on Native Americans because of the relatively small numbers of Native American law students in the United States., though the Diversity in Legal Academia data presented in this Article and published elsewhere includes a purposeful oversampling of Native Americans to fully include the variety of perspectives from that community. *See infra* Section III.B.i. Creative methods are key to inclusivity.

the group not being adequately represented.¹⁶⁹ It could also be considered *identity capitalism*—“efforts by ingroup members to benefit from outgroup members” by highlighting the outgroup’s race, gender, or other identity characteristics primarily for show.¹⁷⁰ When the term Indigenous is named as important in BIPOC, this centers the speaker and their purported priorities rather than the needs of the group itself. It confirms the priorities of those who use the term as acting “to show how ‘woke’ they are, not because they value action.”¹⁷¹

Some have argued that this very failure has occurred with advocates and scholars who use the term “Asian American and Pacific Islander” or “AAPI” in an attempt to be inclusive of Pacific Islanders when in actuality they are reporting data, analyses, findings, or the interests only of Asian Americans.¹⁷² The same has been said of the inclusive term LGBTQIA+ which does not necessarily prioritize the experiences or outcomes of Transgender, Intersex, or Asexual populations.¹⁷³ The inclusion signaled by this term is simply an illusion. While foregrounding a group’s name implies that the group has power, referencing the name without the group experience is not only inaccurate but actively maintains an unequal status quo. We should not make the same mistake by using BIPOC.

D. Better than BIPOC

This Article rejects adopting BIPOC as a synonym for People of Color. In instances where individual groups should be highlighted, the actual populations involved should be named and their experiences prioritized. If we move beyond the BIPOC term to consider what it stands for—the centering of particular groups—we can find inspiration. The

169. Urban Dictionary shares this definition of virtue signaling: “[t]o take a conspicuous but essentially useless action ostensibly to support a good cause but actually to show off how much more moral you are than everybody else.” *Virtue Signalling*, *supra* note 156.

170. NANCY LEONG, *IDENTITY CAPITALISTS: THE POWERFUL INSIDERS WHO EXPLOIT DIVERSITY TO MAINTAIN INEQUALITY* 3 (2021).

171. Meera E. Deo, Book Review, 56 *LAW SOC’Y REV.* 311, 311 (2022) (reviewing LEONG, *supra* note 170).

172. Ishisaka, *supra* note 19. Some have included Pacific Islanders—or at least Native Hawaiians—with Indigenous populations while others have integrated them into the Asian American community. See ROBERT T. TERANISHI, ANNIE LE, ROSE ANN E. GUTIERREZ, RIKKA VENTURANZA, ‘INOKE HAFOKA, DEMETURIE TOSO-LAFAELE GOGUE & LAVINIA ULUAVE, *APIA SCHOLARS, NATIVE HAWAIIANS AND PACIFIC ISLANDERS IN HIGHER EDUCATION: A CALL TO ACTION* 1 (2019) (“Although NHPIs [Native Hawaiians and Pacific Islanders] have been federally recognized as a separate racial category due to advocacy from the NHPI community, an underlying barrier to the study of the NHPI population has been data that aggregates NHPIs with Asian Americans.”).

173. The LGBTQIA+ example is particularly salient as the term names overlooked groups (transgender, intersex, and asexual) though they, like Native Americans, are rarely included in data or priorities. See, e.g., JULIE A. GREENBERG, *INTERSEXUALITY AND THE LAW* 101–03 (2012).

flexibility of mixing and matching various groups within the People of Color umbrella to fit particular instances or examples allows us to address racism with specificity. Matching the terms used with the data at hand is critical, though scholars should not begin with the *terms* in selecting the data or they risk hiding the very groups they seek to amplify.

For instance, when analyzing an issue affecting immigrants, advocates should use data collected from Latinx, Asian American, and other communities with long histories of immigration to the United States, specifying these groups as most likely to be affected by immigration policies and preferences.¹⁷⁴ When writing or speaking about original inhabitants of what is currently considered the American Southwest, we should specify our focus is on the Latinx and Indigenous communities that originally inhabited that land.¹⁷⁵

There may be similar reasons for specificity beneath the Women of Color umbrella. In those instances, highlighting groups directly is preferable to discussing the issue as one broadly relevant to Women of Color as one entity. For example, significant medical complications among Black and Latina pregnant women implicate raceXgender bias specific to Black and Latina women, not People of Color or Women of Color, and certainly not BIPOC (which would relegate the Latina women centered in the data to the leftover part of the label).¹⁷⁶

There may also be instances where it is important to both fully disaggregate the data and correspondingly name one or two particular race or raceXgender groups. While aggregating groups, pursuing commonalities, and drawing from shared experiences is often critical for political and strategic purposes, it is not always advisable. Police violence is one clear example that has yielded massive uprisings largely about how police interact specifically with Black men and Black women; while Latino men and others have also suffered the consequences of this violence, the issue of race-based police brutality is first and foremost an emergency targeting the Black community and should be presented as such.¹⁷⁷

174. Abbi Budiman, *Key Findings about U.S. Immigrants*, PEW RSCH. CTR. (Aug. 20, 2020), <https://www.pewresearch.org/fact-tank/2020/08/20/key-findings-about-u-s-immigrants/> [<https://perma.cc/9Q9K-J2TL>] (“By region of birth, immigrants from Asia combined accounted for 28% of all immigrants, close to the share of immigrants from Mexico (25%).”); Deo, *supra* note 20, at 139.

175. Chicanos within the Latinx community as well as Native Americans have claims to land in the West and Southwest from hundreds of years before Columbus arrived. Luna, *supra* note 160, at 40; Angelique EagleWoman, *Tribal Hunting and Fishing Lifeways and Tribal State Relations in Idaho*, 46 IDAHO L. REV. 81, 82 (2009).

176. Leila Goldstein, *Latina and Black Pregnant Women Show High Rates of COVID-19 in Southwest Ohio*, WOSU PUB. MEDIA (July 14, 2020), <https://radio.wosu.org/post/latina-and-black-pregnant-women-show-high-rates-covid-19-southwest-ohio#stream/0> [<https://perma.cc/WN37-H629>].

177. Black Americans represent a full 22.5% of those killed by police in 2020, and 23.6%

Pretending that there is a crisis of police violence affecting People of Color or Women of Color or BIPOC eclipses the centrality of the Black body in this fight.

Previous scholarship has suggested both theoretical and practical explanations for why BIPOC fails.¹⁷⁸ Questions about whether to always center Black and Indigenous communities in conversations about people of color, concerns about virtue signaling, and highlighting historical atrocities over contemporary ones raise theoretical issues with using the BIPOC term.¹⁷⁹ There are also a range of contexts—from health disparities to mass incarceration, family separation to police violence—where it is obvious that either Black and Indigenous communities should not be lumped together or should not be centered in discussions about communities of color.¹⁸⁰

The next Part of this Article delves more deeply into one particularly complex context: legal education. While it may not be initially obvious how and why language matters in legal education, the data explored below reveal that being specific with terminology, referencing the groups who have the most to lose, and ensuring they are represented beyond name is the best way forward.

III. Applying Racial Terms to Legal Education

With a clearer understanding of the terms and the antiracism efforts served by being precise in our language about race, we can now consider how various terms apply to different contexts. The Introduction of this Article shared simple examples of Black mass incarceration and anti-Asian hate crimes to illustrate the over- and under-inclusiveness of BIPOC.¹⁸¹ Legal education is a useful and more nuanced canvas for this experiment, as it brings into one physical space People of Color (whom we can compare to whites), Women of Color (whom we can compare to Men of Color, as well as white women), and also (instead of using the BIPOC term) separate racial or even raceXgender groups.

In the law school environment, faculty and students are tested and expected to succeed though all have different backgrounds, experiences, and outcomes. Through the examples shared in this Part, we learn that there may be instances where People of Color is the best term to use,

of those killed in 2021, but they represent only 13.6% of the U.S. population. MAPPING POLICE VIOLENCE, <https://mappingpoliceviolence.org/> [<https://perma.cc/T9YX-ZLRT>] (Nov. 15, 2022); Deo, *supra* note 20, at 137–38.

178. Deo, *supra* note 20, at 127–39.

179. *Id.* at 127–31.

180. *Id.* at 131–39.

181. See discussion *supra* Introduction.

because their collective experience differs significantly from whites.¹⁸² At other times it will be critical to engage with intersectionality “and the compound effects of . . . raceXgender . . . to highlight experiences that are specific to women of color faculty [and students] in an environment centered around and focused on white men.”¹⁸³ In those instances, we can consider the umbrella group of Women of Color. In other instances still, the specific groups affected—the individual racial or even raceXgender groups most relevant to the matter at hand—should be named directly and highlighted purposefully. Each of these is better than BIPOC.

This Part draws on empirical data collected from law students as well as from law faculty to explore when to use People of Color, contexts where Women of Color may be more appropriate, and times when individual groups should be featured directly. The first Section presents quantitative (survey) data, illustrating how reliance strictly on numbers can hide the experiences of smaller populations. Aggregating qualitative (interview) data can mask experiences of less powerful groups as well. The second Section shares qualitative data in the form of quotes collected after analyzing patterns from study participant interviews, giving agency to the voices of marginalized populations that strive at times to be included in larger groups but at other times to be named and recognized for their unique experiences.¹⁸⁴

In each Section, the goal of precision in data analysis and dissemination goes hand-in-hand with furthering anti-racism efforts by using appropriate racial terminology. Though the two priorities of accuracy and anti-racism are distinct, each is served by avoiding BIPOC and instead matching the issue at hand to the identities involved.

A. Law Students

i. Data from LSSSE

This Section applies the Article’s thesis—that academics, advocates, and allies should use the terms People of Color, Women of Color, and those specific to each racial group involved in any given project rather

182. This is especially true in predominantly white institutions/campuses (PWIs) as compared to historically Black colleges and universities/institutions (HBCUs). The LSSSE survey draws on data from both PWIs and HBCUs while participants in the Diversity in Legal Academia study are from PWIs exclusively. It may be that different campus contexts also draw out various nuances between People of Color, Women of Color, and BIPOC, though that is beyond the scope of this Article. *Annual Results*, LSSSE, <https://lssse.indiana.edu/annual-results/> [https://perma.cc/RE42-CMMY].

183. Deo, *supra* note 29, at 242.

184. For a more detailed understanding of the methods involved in the qualitative findings presented here, see MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* 171–74 (2019).

than BIPOC—to the law student context, utilizing data from the Law School Survey of Student Engagement (LSSSE). LSSSE measures the effect of law school on law students, with the understanding that the more invested students are, the better their outcomes.¹⁸⁵ For almost twenty years, LSSSE has partnered with law schools to conduct an annual survey of law students, asking about demographics, experiences, preferences, attitudes, and more.¹⁸⁶ LSSSE staff then share results with individual law schools, offering comparisons to “peer schools” and national averages.¹⁸⁷ LSSSE also conducts analyses to identify and share findings on various trends in legal education, publishing results on the LSSSE Insights Blog as well as in various reports.¹⁸⁸ Recent LSSSE Reports include: *Success with Online Education*, *The COVID Crisis in Legal Education*, *The Changing Landscape of Legal Education*, *Diversity & Exclusion*, *The Cost of Women’s Success*, and *Relationships Matter*.¹⁸⁹

LSSSE houses the largest dataset on law students in the country, with almost 400,000 responses collected since 2004 and opportunities to disaggregate by race, gender, first-gen status, debt level, and other characteristics.¹⁹⁰ The project shares longitudinal trends—including on debt, diversity, and overall satisfaction—in addition to offering assistance to academics and scholars interested in furthering their own research using LSSSE data.¹⁹¹ The findings presented in this Section on both debt and diversity are drawn from LSSSE data highlighting how quantitative data connect with the terms People of Color, Women of Color, and other racial labels that are better than BIPOC.

ii. Debt Differentials

Investigating debt reveals how relying on People of Color vs. Women of Color vs. a more specific term serves to highlight different priorities. The term People of Color may drive us to do a simple analysis by race—comparing debt loads of People of Color to those of white

185. GEORGE D. KUH, JILLIAN KINZIE, JENNIFER A. BUCKLEY, BRIAN K. BRIDGES & JOHN C. HAYEK, NAT’L POSTSECONDARY EDUC. COOP., *WHAT MATTERS TO STUDENT SUCCESS: A REVIEW OF THE LITERATURE* 31–40 (2006); TERRELL L. STRAYHORN, *COLLEGE STUDENTS’ SENSE OF BELONGING* 124–39 (2d ed. 2018).

186. *LSSSE Survey: The LSSSE Survey Tool*, LSSSE, <https://lssse.indiana.edu/about-lssse-surveys/> [<https://perma.cc/56Y8-52LL>].

187. *Id.*

188. See *LSSSE Insights Blog*, LSSSE, <https://lssse.indiana.edu/insights/> [<https://perma.cc/8X4X-2BK4>]; *Annual Results*, *supra* note 182.

189. See *id.* for access to LSSSE Reports.

190. For more about LSSSE, see *Who We Are*, LSSSE, <https://lssse.indiana.edu/who-we-are> [<https://perma.cc/ZB4J-PHUF>].

191. See MEERA E. DEO, CHAD CHRISTENSEN & JAKKI PETZOLD, IND. UNIV. CTR. FOR POSTSECONDARY RSCH., *LSSSE SPECIAL REPORT: THE CHANGING LANDSCAPE OF LEGAL EDUCATION: A 15-YEAR LSSSE RETROSPECTIVE* (2020).

students. While this analysis is useful when looking broadly and only at race, it masks the complex raceXgender dynamics at play as well as the ways in which different groups within People of Color (e.g., Asian Americans vs. Black Americans) have different debt realities.¹⁹²

The LSSSE 2015 and 2016 Annual Reports, which focused on debt and scholarships, revealed not only rising debt levels but debt disparities based on race and gender.¹⁹³ Similarly, the American Bar Association found that within twenty years, “median tuition increased almost 6-fold at private law schools and more than 12-fold at public law schools.”¹⁹⁴ These increases outpaced inflation during the same years while living expenses and book costs grew as well. LSSSE data reveal that almost 90% of law students graduate with educational debt.¹⁹⁵ While increased debt is common to students overall, disparities persist once we disaggregate the data.

1. *People of Color*

How do People of Color fit into this larger trend of increasing debt? Analyzing debt based solely on People of Color vs. whites yields interesting results. Clearly, “racial and ethnic wealth disparities in the U.S. have broad implications on student debt trends.”¹⁹⁶ LSSSE data show that higher percentages of students of color than whites owe over \$200,000 on educational loans upon law school graduation.¹⁹⁷ Longitudinal research from LSSSE has documented that this is an ongoing trend, with law students of color carrying higher debt loads than whites for years and with widening disparities in recent years.¹⁹⁸ In 2019, just over one-third (35%) of white students expected to graduate with over \$100,000 in loans, compared to roughly *half* (49%) of students of color.¹⁹⁹ Conversely, 76% of all students who have *no* educational debt are white.²⁰⁰

192. Intersectionality could go further here by examining *raceXclass*—the compound effects of race combined with socioeconomic status—which would likely also yield interesting results otherwise hidden beneath aggregate data based on race or class alone.

193. AARON N. TAYLOR, CHAD CHRISTENSEN & LOUIS M. ROCCONI, IND. UNIV. CTR. FOR POSTSECONDARY RSCH., LSSSE 2015 ANNUAL SURVEY RESULTS: HOW A DECADE OF DEBT CHANGED THE LAW STUDENT EXPERIENCE (2016); AARON N. TAYLOR & CHAD CHRISTENSEN, IND. UNIV. CTR. FOR POSTSECONDARY RSCH., LSSSE 2016 ANNUAL SURVEY RESULTS: LAW SCHOOL SCHOLARSHIP POLICIES: ENGINES OF INEQUALITY (2017).

194. TAYLOR, CHRISTENSEN & ROCCONI, *supra* note 193, at 6.

195. *Id.*

196. *Id.* at 12.

197. MEERA E. DEO & CHAD CHRISTENSEN, IND. UNIV. CTR. FOR POSTSECONDARY RSCH., LSSSE 2019 ANNUAL REPORT: THE COST OF WOMEN'S SUCCESS 9 (2019).

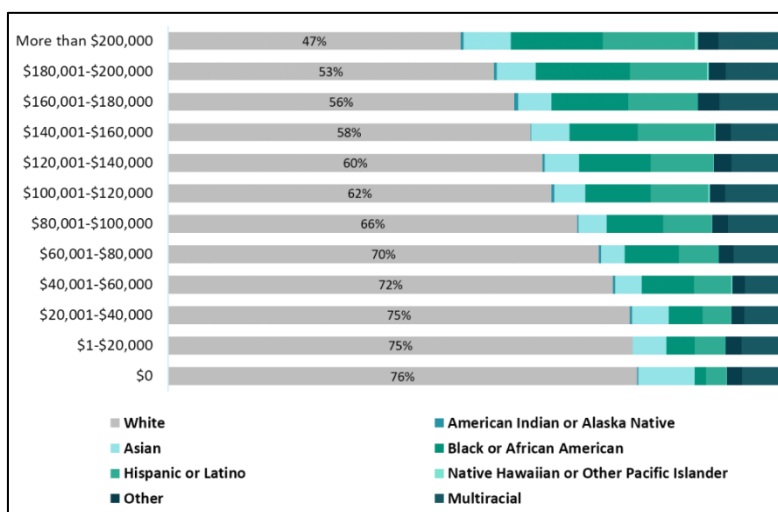
198. DEO ET AL., *supra* note 191, at 10–11.

199. *Id.* at 10.

200. *See infra* Figure 1.

Research on law school scholarships also shows that students of color are more likely to receive need-based aid than whites, and still the overall debt loads of students of color remain significantly higher than those of white students.²⁰¹ Thus, there are important disparities based solely on race that are revealed when analyzing debt loads for People of Color compared to whites. When considering debt, the term People of Color is both empirically supported and in line with broader racial justice efforts that make race-based comparisons with whites.

Figure 1. Educational Debt by Race (LSSSE, 2019)



2. Women of Color

We must also look within People of Color to see whether and how the combination of raceXgender changes the narrative. In the context of student debt, there are certainly gender disparities under the People of Color umbrella. Important raceXgender realities involving debt are masked when considering People of Color alone, marking the need to analyze the data by gender and utilize the term Women of Color in this instance. LSSSE data found not only that people of color carry more law school debt than whites, but also that women overall have heavier debt burdens than men, within every racial group.²⁰² Combining data on Native Americans, Black Americans, Asian Americans, and Latinx

201. TAYLOR & CHRISTENSEN, *supra* note 193, at 10 (“Black respondents were the most likely recipients of need-based scholarship aid; white respondents were least likely.”).

202. DEO & CHRISTENSEN, *supra* note 197, at 9 (“Among those who expect to graduate from law school with over \$160,000 in debt are 19% of women and 14% of men[.] . . . 7.9% of women will graduate from law school owing over \$200,000 as compared to 5.5% of men.”).

populations, higher percentages of Women of Color (23%) graduate with over \$160,000 in law school debt, as compared with Men of Color (18%), white women (15%), and white men (12%).²⁰³ Looking specifically at raceXgender reveals that women borrow more for law school than men, even controlling for race.²⁰⁴

Combining data on racial inequities with gender disparities reveals that Women of Color as an aggregate group have more debt than Men of Color, white men, or white women. Without looking specifically at this raceXgender intersection, this compound inequity would not be obvious, but instead hidden by how race and gender independently affect debt. Instead, recognizing both race and gender promotes efforts toward equity as well as accuracy in data reporting.

3. *Better than BIPOC: Naming Specific Groups*

Disaggregating the data even further by specific race and gender groups is particularly instructive in the law school debt context. Just as grouping together all People of Color masks gender disparities, it also conceals differences between unique communities of color. By considering how levels of debt intersect with specific racial groups as well as gender, we see that not all People of Color or even all Women of Color have similar levels of debt. While reporting on debt for People of Color or Women of Color can be helpful, we should also use precise language by naming the groups most affected. This serves the anti-subordination efforts discussed earlier, avoiding virtue signaling and prioritizing equity-based solutions targeting the groups most affected; it also preserves accuracy in reporting on data.

A full 53% of Black students and 57% of Latinx students expect to graduate law school over \$100,000 in debt, while 43% of Black students report debt over \$120,000.²⁰⁵ Combining Black and Latinx students with Asian Americans—40% of whom expected to graduate owing over \$100,000—would have diluted the disparities between Black and Latinx students as compared with whites (whose debt levels are similar to Asian Americans).²⁰⁶ Furthermore, while white and Asian American students have comparable rates of merit-based awards, “Black and Latin[x] respondents were least likely” to receive them.²⁰⁷ Although higher percentages of Native American women (8.5%) than men (6.0%) graduate with the highest debt levels of over \$200,000, these statistics

203. *Id.* More detailed original survey data analysis using 2019 LSSSE data is also included here, beyond what is revealed in the cited report.

204. *Id.*

205. TAYLOR & CHRISTENSEN, *supra* note 193, at 12.

206. *Id.*

207. *Id.* at 9.

are not at the same startling levels as for Black women or Latina women.²⁰⁸ Looking *within* People of Color is therefore critical to understanding and addressing distinct racial challenges.

We cannot simply state this as a BIPOC issue, as debt loads for Latinas are actually higher than for any other group, and Indigenous women have lower debt levels than both Latinas and Black women.²⁰⁹ In these and other instances, disaggregating data further by raceXgender and naming the groups appropriately is critical. A larger percentage of Latinas (16%) borrow at the highest levels (\$200,000+) to attend law school, followed by Black women (14%). Comparing these data with Latino men (12%) and Black men (7.3%) reveals a gender disparity between people from the same racial background that would otherwise be hidden.²¹⁰ Similarly, we can compare differences in debt load between Latinas and Black women with the debt load of Asian American women—only 7.7% of whom borrow over \$200,000.²¹¹ In this instance, there is a synergy in the experiences of Latinas and Black women; aggregating their data with Asian American and Native American women in order to expound on the Women of Color experience would mask the severity of their debt burden and overstate the debt loads of others. Because the two groups that share similarities are Latinas and Black women, the term BIPOC would be especially inappropriate in this instance, both because Latinas are not even included in the title and Indigenous people are. Instead, we must do better than the term BIPOC to consider a deeper purpose: highlighting the experiences of the most relevant marginalized groups. With regard to debt, those groups are Latinas and Black women.

Table 1. Students with Over \$200,000 in Educational Debt, by raceXgender (LSSSE, 2019)

	Native American	Asian American	Black	Latinx	White
Women	0%	7.7%	14%	16%	5.5%
Men	0%	9.9%	7.3%	12%	4.3%

208. The 2019 LSSSE Annual Survey Results touches on raceXgender debt disparities, DEO & CHRISTENSEN, *supra* note 197, though these results on particular groups (Native Americans, Women of Color, Men of Color, etc.) are original data analysis done for this Article specifically.

209. *Id.*

210. *Id.* at 9; *see infra* Table 1.

211. DEO & CHRISTENSEN, *supra* note 197, at 9.

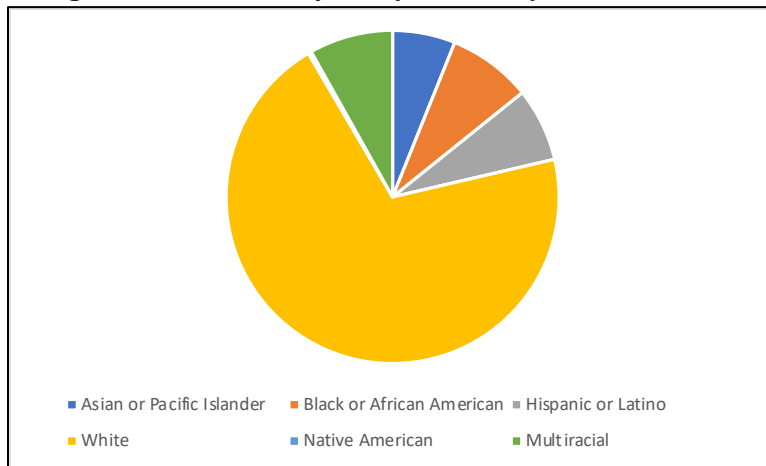
iii. Experiences with Diversity and Inclusion

As with debt levels, there are experiences shared by People of Color regarding diversity vis-à-vis whites. Because Women of Color have unique experiences as compared even with Men of Color it also is helpful to disaggregate by raceXgender and, when doing so, to use the Women of Color label. There are also reasons to delve *within* the People of Color category to examine the experiences of particular racial groups and highlight those as separate even from the People of Color category as a whole. It would serve neither empirical accuracy nor racial justice to assume that any two groups—Black and Indigenous, for BIPOC—have similar experiences and lump them together while marginalizing other People of Color.

1. People of Color

More People of Color are in law school today than ever before. Over the past fifteen years, the percentage of white students has declined from 83% to 70% of all students as the share of non-whites increased.²¹² Today, law students of color include 8% who are Black, 7% Latinx, 6% Asian or Pacific Islander, under 1% Native American, and 9% multiracial.²¹³

Figure 2. Law Students by Race (LSSSE, 2020)



212. DEO ET AL., *supra* note 191, at 7.

213. *See infra* Figure 2.

While structural diversity—the raw numbers of students of color in law school²¹⁴—has increased, to maintain and build on diversity, schools must also practice inclusion: the practice of making non-traditional participants feel welcome, such that they engage fully and participate freely.²¹⁵ One important aspect of inclusion is creating a sense of community.

There are important ways in which People of Color have different experiences from whites with regard to inclusion, which makes the People of Color moniker appropriate in this context. Among law students, 28% of whites “very much” believe their school “emphasizes the importance of ‘creating an overall sense of community among students’” though “smaller percentages of students of color feel similarly.”²¹⁶ Similarly, a full 31% of white law students “strongly agree” they are part of the law school community, though “lower percentages of students of color do.”²¹⁷ These troubling data suggest that students of color are less integrated into campus life than their white classmates and that People of Color in law school share similar experiences of exclusion as compared to white students.

“Students of color are also more likely than their [w]hite classmates to think their schools do ‘very little’ to ensure students are not stigmatized based on various identity characteristics, including race/ethnicity, gender, religion, and sexual orientation.”²¹⁸ Again, similarities among People of Color and distinctions between students of color and white students signal the benefit of sharing data on People of Color as a whole, especially to highlight disparities between them as a group compared with whites. This correctly reflects the groups in the data while also promoting racial equity.

214. Structural diversity refers to the “numerical representation of individuals with diverse backgrounds.” Meera E. Deo, Maria Woodruff & Rican Vue, *Paint by Number? How the Race and Gender of Law School Faculty Affect the First-Year Curriculum*, 29 CHICANA/O-LATINA/O L. REV. 1, 7 n.21 (2010) (citing Sylvia Hurtado, Jeffrey F. Milem, Alma R. Clayton-Pedersen & Walter R. Allen, *Enacting Diverse Learning Environments: Improving the Climate for Racial/Ethnic Diversity in Higher Education*, 26 ASHE-ERIC HIGHER EDUC. REP. SERIES 8 (1999)).

215. See Ella Washington & Camille Patrick, *3 Requirements for a Diverse and Inclusive Culture*, GALLUP (Sept. 17, 2018), <https://www.gallup.com/workplace/242138/requirements-diverse-inclusive-culture.aspx> [<https://perma.cc/4YBA-U9CQ>] (“Inclusion refers to a cultural and environmental feeling of belonging. It can be assessed as the extent to which employees are valued, respected, accepted and encouraged to fully participate in the organization.”); Deo, *supra* note 40, at 276–77.

216. DEO & CHRISTENSEN, *supra* note 41, at 8.

217. *Id.* at 9.

218. *Id.* at 10.

2. *Women of Color*

While the People of Color label is helpful in discussing diversity and inclusion in law school, it is important to also consider gender. Although there are higher percentages of students of color in law school today, this progress is somewhat interrupted by gender disparities in inclusion; this again underscores the importance of going beyond People of Color to consider data and language representing Women of Color. If we peek under the People of Color umbrella, there are significant distinctions between Women of Color and Men of Color in law school necessitating the use of Women of Color as a data point and advocacy tool to share unique raceXgender experiences regarding diversity and inclusion.

For instance, “women of color are more likely than men from their same racial/ethnic backgrounds to feel that they are not part of the campus community.”²¹⁹ Fewer than one-quarter (23%) of women of color “strongly agree” that they are part of the institutional community, compared to almost one-third (31%) of men of color.²²⁰ Among students who “strongly agree” that they are valued by their institutions are just 22% of Women of Color, compared to 29% of Men of Color, 31% of white men, and 26% of white women.²²¹ Collapsing Women of Color into the People of Color category would have excluded their lower sense of being valued and included.

Additionally, Women of Color have unique insights into laws and policies most relevant to their lives. LSSSE data show that “while 32% of [w]hite men believe their schools do ‘very much’” to share information on anti-discrimination and harassment, Women of Color students disagree in greater numbers than even Men of Color and white women.²²² While it is never prudent to dismiss disaggregated raceXgender experiences of Women of Color, they are especially relevant when considering the very issues of discrimination and harassment that affect Women of Color disproportionately and differentially, as documented even in early works on intersectionality.²²³ Thus, naming Women of Color in this context promotes their advancement while also accurately reporting the data.

3. *Better than BIPOC: Naming Specific Groups*

While People of Color and Women of Color are useful terms, they may mask important disparities *within* those groups when it comes to diversity and inclusion; in these instances, it is important to disaggregate

219. *Id.* at 9.

220. *Id.*

221. *Id.* at 8.

222. *Id.* at 13.

223. See Crenshaw, *supra* note 126.

the data by each racial group. Doing so and using the relevant language—People of Color, Women of Color, and the actual groups involved (e.g., Black)—reveals distinctions that are otherwise hidden beneath umbrella terms.

As one example, only 21% of Native American and Black law students see themselves as part of their law school community—compared to 31% of their white classmates, 25% of multiracial students, 26% of Asian Americans, and 28% of Latinx students.²²⁴ Here, specifying Black and Native American exclusion would be more appropriate than using People of Color since their experience is distinct even from other People of Color (namely students who are Asian American, Latinx, or multiracial).²²⁵

We can also consider intersectionality in this context, looking at individual raceXgender groups rather than Women of Color as one group. Black women are least likely to “strongly agree” that they are part of the campus community—only 20%, compared to 25% of Latinas, 23% of Asian American women and multiracial women, and 29% of white women.²²⁶ This shows the difference between Black women Latinas is about the same as that between Latinas and white women. Combining all statistics on Women of Color in this instance would both obscure the experience of Black women and signal a similarity between Black women and Latinas when in fact the experiences of Latinas may be more similar to those of their white women classmates.

224. DEO & CHRISTENSEN, *supra* note 41, at 9.

225. Here, it would still be more useful to use specific “Black and Indigenous” than to use the BIPOC label because the latter assumes some commonality between “Black, Indigenous, and other People of Color” when in fact the data highlight differences *between* Black and Indigenous groups on the one hand and other People of Color on the other.

226. DEO & CHRISTENSEN, *supra* note 41, at 9; *see infra* Table 2.

Table 2. Level of Agreement with being Part of the Campus Community, by Race and Gender (LSSSE, 2020)

	Asian American		African American		Latinx		White		Multiracial	
	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
Strongly disagree	4.8%	4.1%	6.8%	11%	6.3%	5.2%	6.7%	4.1%	6.2%	7.4%
Disagree	17%	20%	8.5%	24%	11%	24%	13%	14%	20%	20%
Agree	48%	54%	56%	46%	47%	47%	47%	52%	45%	50%
Strongly Agree	30%	23%	29%	20%	36%	25%	34%	29%	29%	23%

When considering both debt and diversity, the People of Color term serves a purpose if the goal is to show distinctions between this large umbrella group as compared to white students. Yet, Women of Color may be an even more useful data point and moniker when considering distinctions from Men of Color. Furthermore, we should name specific groups (e.g., Black women or Asian Americans) to fully explore the unique

experiences of each group as compared to the larger constituency of People of Color or Women of Color. Using clear language that connects with the data and the community is both more effective and more correct than using the term BIPOC.

B. Law Faculty

The law faculty context can also distill distinctions between labels for various groups. There will be times when it is appropriate to use People of Color—such as when considering differences between white professors and all others. Elsewhere, scholars should use Women of Color—for example, when raceXgender priorities are important in the data or argument. When neither People of Color nor Women of Color will tell the full story, particular groups should be named individually (e.g., Latina faculty), both to advance equity and to maintain empirical integrity.

i. Data from DLA

The various experiences of law professors provide a unique canvas to explore effective usage of People of Color, Women of Color, and separate race and raceXgender groups. The Diversity in Legal Academia (DLA) study collected quantitative and qualitative data from almost 100 U.S. law professors, with particular attention to raceXgender.²²⁷ Data collection followed a painstaking sampling process to ensure broad representation with regard to race/ethnicity, gender, region, school selectivity, tenure status, leadership, and more.²²⁸ Sixty-three women of color participated in the study—including women who are Black, Latina, Native American, Middle Eastern, Asian American, and multiracial; the sample also includes thirty white women, white men, and men of color to allow for comparison and contrast.²²⁹ Every participant completed an online survey and participated in an in-depth interview with the author of this Article.²³⁰

227. DEO, *supra* note 184; Deo, *supra* note 29. The study included tenured and tenure-track faculty teaching doctrinal courses but, consistent with existing empirical research, did not feature professors who specialize in legal writing, clinics, academic skills, bar preparation, library sciences, or other non-traditional but critical areas of law teaching and scholarship. Nevertheless, their experiences are likely represented, especially as women of color are concentrated in these positions, which also have less security, status, and pay than others. See Renee Nicole Allen, Alicia Jackson & DeShun Harris, *The "Pink Ghetto" Pipeline: Challenges and Opportunities for Women in Legal Education*, 96 U. DET. MERCY L. REV. 525 (2019).

228. DEO, *supra* note 184, at 172-73; Deo, *supra* note 29, at 243.

229. Deo, *supra* note 29, at 243.

230. *Id.* at 244.

Numerous articles and a book drawing from the DLA data have explored a multitude of topics and findings, including pathways to academia and leadership,²³¹ faculty insights on educational diversity,²³² and relationships with colleagues and students.²³³ While those works were necessarily limited by a focus on women of color, this Article goes deeper by examining counter-narratives and distinctions between groups within Women of Color rather than only commonalities. This Article draws from data on intersectional—raceXgender—experiences with bias in student evaluations as well as challenges with work/life balance to reveal how terms like People of Color and Women of Color add clarity and further community. Naming individual groups is also critical in contexts where the People of Color or Women of Color umbrella would obscure the experiences of sub-groups.

Qualitative data are presented in the form of quotes from respondents to the study, giving voice to their lived experiences while protecting confidentiality and anonymity by using pseudonyms.²³⁴ Showcasing this methodology (in addition to the quantitative data shared for law students) underscores how even interview analyses can mask minority experiences if the data are not conveyed accurately and in pursuit of equity efforts.

ii. Bias in Student Evaluations

Research shows that student evaluations are not adept at measuring excellence in teaching, regardless of discipline.²³⁵ Instead, they echo existing biases in terms of race, gender, and raceXgender.²³⁶ As such, it is a useful backdrop to consider racialized terms. As we think through

231. See Meera E. Deo, *Trajectory of a Law Professor*, 20 MICH. J. RACE & L. 441 (2015).

232. See Meera E. Deo, *Faculty Insights on Educational Diversity*, 83 FORDHAM L. REV. 3115 (2015).

233. See Meera E. Deo, *The Ugly Truth about Legal Academia*, 80 BROOK. L. REV. 943 (2015).

234. This Article draws from original empirical research conducted through the DLA study, as well as from LSSSE. There are no citations for the DLA data shared or for some of the LSSSE data because these findings are presented here for the first time based on original data analysis, not drawn from other published sources. Requirements from Institutional Review Board protocols and the protection of human research subjects state that all transcripts will remain on file with the author while dissemination of the data is ongoing. They will not be shared with others or released to the public to maintain the confidentiality and anonymity of research participants.

235. For an excellent literature review and original analysis on student evaluations, see Sylvia R. Lazos, *Are Student Teaching Evaluations Holding Back Women and Minorities?: The Perils of "Doing" Gender and Race in the Classroom*, in PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA 167–69 (Gabriella Gutiérrez y Muhs et al. eds. 2012).

236. See Meera E. Deo, *A Better Tenure Battle: Fighting Bias in Teaching Evaluations*, 31 COLUM. J. GENDER & L. 7 (2015); Lazos, *supra* note 235.

new frameworks and consider which data or arguments to use for particular projects, we should carefully consider usage of each term to make sure the conclusions are appropriate. Otherwise, we distract from the larger goal of antiracism while harming overlooked communities.

1. *People of Color*

Because people of color face racial bias in law teaching, including in student evaluations, it is a useful term to use in contrast to the experience of whites. These race-based challenges stem in part from the low numbers of people of color in law teaching, who account for under 15% of all law professors.²³⁷ Thus, “racial bias also ties together the experiences of men of color and women of color” into a broad People of Color experience.²³⁸ Law schools on predominantly white campuses (as compared to HBCUs) are widely accepted as spaces that were created by and for white men and remain centered on the white normative experience.²³⁹ For this reason, non-whites have rarely felt fully welcomed or accepted either as students or as faculty.²⁴⁰

DLA data reveal numerous examples confirming the white-centered space of legal academia, resulting in an analogous set of experiences for People of Color. Brianna, a Black woman professor and administrator who participated in the DLA study, is familiar with research on student evaluation bias affecting People of Color and other non-traditional faculty. She ties it directly to “the ways in which students are hypercritical and scrutinize you more” if you are a person of color. A multiracial male professor named Ed recalls, “[T]he students second-guessed everything that I had done, so they wanted a recall on the exam and they demanded explanations.” Anticipating similar classroom confrontations and the negative evaluations that generally plague faculty of color, a Latino Assistant Professor named Jorge says, “I met with a teaching coach last year, one-on-one, every week for the full year.” These are all examples of

237. Although the Association of American Law Schools no longer publishes law faculty data, their statistics are available at Deo, *supra* note 233, at 962.

238. Deo, *supra* note 29, at 242.

239. Renee Nicole Allen, *From Academic Freedom to Cancel Culture: Silencing Black Women in the Legal Academy*, 68 UCLA L. REV. 364, 366 (2021); Nancy E. Dowd, Kenneth B. Nunn & Jane E. Pendergast, *Diversity Matters: Race, Gender, and Ethnicity in Legal Education*, 15 U. FLA. J.L. & PUB. POL'Y 11, 12 (2003). Men also participate in class more than women. Jakki Petzold, *Classroom Participation by Gender Identity*, UNDERSTANDING LEGAL EDUC. BLOG (July 20, 2018), <https://lssse.indiana.edu/blog/classroom-participation-by-gender-identity/> [<https://perma.cc/QQ3Q-R2YS>].

240. Shaun Ossei-Owusu, *For Minority Law Students, Learning the Law Can Be Intellectually Violent*, ABA J. (Oct. 15, 2020), https://www.abajournal.com/voice/article/for_minority_law_students_learning_the_law_can_be_intellectually_violent [<https://perma.cc/Q7LL-5HJM>]; Meera E. Deo, *Diversity and Exclusion Within Legal Education, in Racism, Regulation, and the Administrative State*, REGUL. REV. 3 (2020).

people of color who experienced or expected student challenges in the classroom based on their racial identity. Their collective experience as People of Color facing pushback from students, despite being professors (those with ostensible authority in the classroom) warrants use of the term in this context in comparison to whites who did not share in this experience.

Patricia understands her students expect “a white male professor,” since most professors are white men; however, as a Black professor, she notes, “[T]hat’s just not a model that I can follow.” Stuart, a Native American professor, says many of his colleagues trot out “the same old crap from [the movie] *Paper Chase*,” following the lead of Professor Kingsfield in scaring students into shape. Stuart says they assert some version of, “one-third of you doesn’t deserve to be here; you’re going to flunk the bar exam; and you’re not going to be a good lawyer.” Stuart thinks “that’s horrible,” but knows most students expect it; more nurturing faculty of color are an aberration from the white norm. In this sense the People of Color experience is relatively uniform, especially in contrast to the white male norm of law teaching. The racialized law school context makes use of the People of Color term appropriate (as well as empirically accurate to aggregate racial groups) when comparing their experience to those of their white faculty colleagues.

2. *Women of Color*

Gender biases are also another barrier to success for Women of Color. When considering the raceXgender perspective, gender distinctions become apparent, even within the People of Color community. As a result, it can be useful to name Women of Color specifically and share their relatively similar experience as distinct from those of men of color.²⁴¹

Melissa, a Native American professor, has experienced raceXgender bias first-hand, noting, “I don’t think that women of color fit the mold of the *Paper Chase* professor.” She echoes Stuart’s assertion that students expect white male faculty, so her own raceXgender identity creates a compound disadvantage. Women of color—distinct even from men of color—face a presumption of incompetence, with pushback from students in the classroom as well as raceXgender bias evident in student evaluations.²⁴² A Black woman professor named April has faced this from literally day one; she recalls, “I’m presumed incompetent; it’s true. The

241. There are also distinctions from white women, more of which are explored in DEO, *supra* note 184.

242. This raceXgender bias has been well documented in two separate volumes as well as other research. Flores Niemann et al., *supra* note 133, at 7; Harris & Gonzalez, *supra* note 135, at 7.

very first year I came to teach I recall the very first day [students] were looking at me and going, 'Who the fuck is this [Black woman]? That's the teacher? [Sigh.]' It was horrible." The misery for April began with the realization that both her race and gender worked against her. Alicia, a Latina professor, suggests women of color accept that some students will see them this way: "the presumption of incompetence is normal and across the board and you're going to face it every day of your life even after you're tenured, even after you're a full professor. So, you're going to have to [find] strategies to deal with it. It's not going away." In her first few years of teaching, a Black professor named Susan received "[t]he worst teaching evaluations of anyone who had ever taught at the law school." These "abysmal" evaluations included vicious comments: "they called me racist because I incorporated Critical Race Theory into the classroom, and I talked about race and from their perspective talking about race meant that you were racist; you shouldn't be talking about that." Imani, a Black professor, endured a similar experience, noting, "You know if the professor is a female of color and she's bringing up certain Critical Race Theory topics in class, you get backlash from that." The compound challenges based on race and gender result in a unique Women of Color-centered phenomenon.

Virtually all women of color in the DLA sample recall comments on student evaluations focused on their physical appearance rather than their pedagogical approach. Again, men of color do not experience this in the classroom—they are neither presumed incompetent nor scrutinized for how they look. Lumping Women of Color into the People of Color category could mask the specific gender-based bias they experience. Trisha, a Black woman professor, notes how numerous times "[students make] inappropriate personal comments about my appearance" on evaluations. Carla, a Latina professor, is forthright about how appearance plays into evaluations, noting, "As a woman there is a constant kind of student concern with my looks." She laughs it off, saying, "I know my hotness factor is low," but she is aware that in addition to her teaching competency, "another element on which I get graded [on student evaluations is] am I 'attractive.'" June, a Black professor, remembers "negative course evals that say racist or sexist things." She even mentioned that she had students write, "I came to class because I wanted to see what you were going to wear." Because men of color are not generally judged on their looks or dress, this is not a broad People of Color phenomenon.²⁴³ Thus, noting this as a Women of Color experience is appropriate given the specific raceXgender context.

243. Similarly, while white women are also more likely than white men to face student confrontations in the classroom, they do not experience the same level of raceXgender pushback and presumption of incompetence facing Women of Color.

Critical students anonymously attack Women of Color in evaluation comments that go beyond the superficial. For instance, June recalls a comment that read: “I know we have to have affirmative action. But do we have to have this woman?” The raceXgender implications in those words are profound. They hinge on a stigma and inferiority associated with those hired (or admitted) through affirmative action—here, based on both race and gender; they also assume that June’s raceXgender identity is divorced from or decreases her merit.²⁴⁴ The student brings gender into the picture directly, questioning whether “this woman” should have been hired, and implying that even other race-based “affirmative action hires”—though not ideal compared to white male faculty hired through merit—would be preferable to June. The race and gender implications of being a woman of color stand out and should be disaggregated from People of Color as a whole, promoting raceXgender equity as well as empirical accuracy.

3. *Better than BIPOC: Naming Specific Groups*

Each label improves our understanding that bias in student evaluations is a concern for all People of Color, and for Women of Color in more specific raceXgender-based ways. The People of Color term reveals race-based realities not experienced by white faculty while Women of Color suffer gender-based evaluation comments that are not shared by men, even men of color. Looking even deeper within categories, it becomes clear that even more specific terminology can be useful. Different raceXgender identities result in very different experiences that are not fully encapsulated by the terms People of Color or even Women of Color.

While People of Color as a whole, and Women of Color in particular, face student challenges to their competence, Black women are more likely than any other raceXgender group to be dismissed as substandard. Keisha and another Black woman were hired at the same time at the same institution; over the course of the year, many students commented negatively on the raceXgender identity of the two hires, including as Keisha remembers: “You hired two Black women this year and that is the downfall of the law school.”

244. For more on the redefinition of merit, see Janice Austin, *The Means to an End: Narrative Expression of Working Recognition*, in DOROTHY EVENSEN & CARLA PRATT, *THE END OF THE PIPELINE: A JOURNEY OF RECOGNITION FOR AFRICAN AMERICANS ENTERING THE LEGAL PROFESSION* (Dorothy Evensen ed. 2012) (describing how law school admissions should look “beyond the numbers” of the LSAT and undergraduate GPA to identify individuals worthy of consideration); Meera E. Deo, *Looking Forward to Diversity in Legal Academia*, 29 *BERKELEY J. GENDER L. & JUST.* 352, 362 n.54 (2014).

While Women of Color are hyper-scrutinized for their appearance, Blackness is tied directly to a presumption of incompetence. A Black female professor named Danielle shared a teaching evaluation comment that read, “She’s Black. Enough said.” Danielle immediately understood this bias was something impossible to fight against, noting, “I’m being evaluated based upon things that have nothing to do with my teaching, like skin color.” Her Blackness is assumed to make her inferior—a different experience from those of Men of Color (even Black men) and non-Black Women of Color alike.

While students also regularly comment on the appearance of Asian American women professors (in that sense, a common experience for all Women of Color), it is not to suggest they are incompetent so much as to view them as sexual objects. Annie recalls that in the early years of her law teaching career she received “a lot of comments about my appearance” on student evaluations—as do many Women of Color as a whole. However, the specifics of those gendered comments are unique to her racial background as an Asian American, distinct from other Women of Color. Annie remembers one comment that read, “She flips her hair over her shoulder too much.” Clearly, this has nothing to do with Annie’s pedagogical approach or teaching effectiveness. It also surprised Annie because, she confided, “Actually, I’m not a coquettish person. I really don’t know how to flirt, and I think this student was interpreting me as being flirtatious.” Though also about her appearance, this comment is distinct from the comments Black women receive about physical appearance connected to (in)competence. Instead, as an Asian American woman, Annie is viewed as a sexual object instead of a national scholar. Lumping together the experiences of Black and Asian American women without giving individual agency to each would be inaccurate empirically and stymie efforts toward raceXgender equity.

Asian American men, on the other hand, rarely receive comments about their competence or looks, even when they themselves worry their youthful appearance could lead to student challenges. Jack was concerned about how his identity might affect student interactions because, as he says, “I think it’s hard to appear before students, especially as a junior faculty and as a minority. And I look really young.” Yet he faced no pushback and received no comments about his appearance. Vijay similarly was concerned about how students would perceive him because, he says, “I look young.” To counter that, all he did was “wear a suit.” He also recalled no challenges or confrontations from students in the classroom or comments on his appearance on evaluations—a distinct contrast from Asian American women, regardless of how they present themselves in class.

Black male professors are more likely to face outright defiance and other forms of bias tied to their raceXgender—different from Black women and from other Men of Color. Grouping Men of Color together or combining their experience with Women of Color, or even Black women, would diminish the overall findings. The language used should instead specify Black men, since they are the raceXgender group affected. Dwayne, a senior Black male scholar, notes that he received “very good teaching evaluations” even from early in his career—likely because he routinely “spent 18-hour days preparing” for class. He also purposefully cultivated a reputation, noting:

I think particularly with the male students, the fact that you’re a couple of steps ahead of them is important [because] they look at that like [you’re] king of the hill. It’s probably a part of the male ego where you’re always trying to test the person at the top.

Whether caused by “male ego” or because a Black man was teaching them, students tested him, and he was ready. He even discovered one white male student had petitioned the Associate Dean to switch out of Dwayne’s first-year course because he “did not want to take instruction from a Black person.” The student’s request was denied.

Michael also navigates disrespect based on his raceXgender as a Black man. One semester, he remembers, “I had a student who would routinely show up five or ten minutes late and he would have to walk behind me [at the podium] to get to his chair,” disrupting and distracting the class. Students purposefully and openly confronted his authority in different ways than they challenged Women of Color, even Black women, professors.

Ryan has experienced even more dramatic forms of raceXgender bias directed at him as a Black man. While he earns positive numerical scores on evaluations, some comments are steeped in bias against Black men—not People of Color, not Black people in general, but Black men. We should not pretend that his experience is representative of People of Color or of Black people generally; his identity as a *Black man* is what generates this response. During Ryan’s first year teaching as a lateral hire, he remembers students complaining in evaluations that “I was a racist and a sexist, and all these other things that were complete nonsense. And the very next year I won the teaching award.” He understands that students are resistant to hearing about sensitive issues, especially from him, noting: “here is this Black guy making you think about racism and sexism and putting it on the table every day; that can be very disturbing to students who never had those conversations and don’t want to think about those things.” Would they respond differently to a white man, or a white woman, or an Asian American woman sharing this material? Perhaps. Some of these experiences are similar to what Black women and other Women of Color experience. But Ryan’s evaluation comments

reflected the students' discomfort, especially because, as he knows, "in evaluations . . . they can be anonymous." Ryan's students did not attack his personal appearance, as they do for Women of Color; instead, they built on stereotypes of Black male criminality and aggression. Ryan recalls, "Even one student commented [that she was a woman and] I made her afraid in the classroom." Students did not make similar fear-based remarks about professors from other raceXgender backgrounds—not about Black women, other Men of Color, or any other Women of Color. As such, this experience should be named directly as applying to Black men not only because this is what the data reveal, but also to respect their reality.

Native American women have a different experience still. Perhaps because of the very small numbers of Native Americans on campus as either faculty or students, many tend to band together for community. Most Native American professors enjoy, as Jennifer says and does, "a really wonderful experience" with students overall. They have close relationships with students, especially Native American students who, as Erin notes and experiences, "are just really appreciative" of having a Native American professor.²⁴⁵ Stuart similarly has "an incredible close relationship with a small number of students" because of their shared Native American identity. Greater openness and flexibility often develop between Native American professors and students who see few others from their background on campus. For instance, Erin was counseled before she began law teaching that she "should be very rigid and very professional," establishing clear boundaries between herself and her students, though that did not feel authentic to her. She recalls that her students responded poorly to her posturing; she recalls, "[T]here were a lot of 'jokes' about me having a chip on my shoulder" and perceiving her "as being very cold." She quickly "loosened up" and "realized that in order to be a professor I didn't have to be quite so isolated or not have interactions with students." Mia, also a Native American professor, started off somewhat stilted; once she decided, "I'm not trying to be someone I'm not or be something I'm not," her students appreciated and rewarded her for it. Lumping Native American law professors with other People of Color or even with Black professors to fit the BIPOC term would

245. This is likely due to how Native American individuals and culture have been largely rendered invisible. Having an opportunity to group together with others identifying as Native American provides faculty and students alike with an opportunity to openly express group pride, solidarity, and share cultural traditions with one another and externally. AM. INDIAN COLL. FUND, CREATING VISIBILITY AND HEALTHY LEARNING ENVIRONMENTS FOR NATIVE AMERICANS IN HIGHER EDUCATION 2, 4, 9 (2019) (proposing that to combat "invisibility [which] is in essence the modern form of racism used against Native Americans," institutions of higher education should designate "a place on college campuses that fosters [Native American students'] sense of belonging and importance in their campus community").

therefore dilute their unique experiences as well as the very different experiences of Black and Asian American faculty. Going beyond the term to the nuances behind it—naming relevant groups individually—is the best way forward.

iii. Navigating Work/Life Balance

The final arena discussed in this Article as relevant to language and race is work/life balance. Many people of color face challenges juggling their personal and professional lives. Women of Color encounter unique barriers even as compared to Men of Color. Looking specifically at data collected from particular groups within the Women of Color umbrella reveals that obstacles specific to one raceXgender group may not apply as readily to others. Thus, they should be named separately so as not to conflate their unique experiences.

1. *People of Color*

Many DLA faculty of color participants share challenges navigating work/life balance that are distinct from those of whites. A Latino professor named Fermin says, “I treat every day as a workday.” He says, “I worked about 80 hours a week. I come in every day around 8:00 [am] and stay at least until 7:00 [pm], [though I do] leave early on Friday afternoons and Saturday afternoons.” He notes of he and his partner. “We split the chores and so I go grocery shopping and she goes and gets the laundry. I get the meds and she goes to the bank, and things like that.” Fermin is aware that his schedule does not include much time for social interaction, physical activity, or leisure, admitting, “I’m not sure I recognize balance. I probably don’t have it, but I’m very happy doing what I’m doing.” Many People of Color faculty similarly lack balance.

Raising children complicates work/life balance. Jack, who has a newborn at home, notes, “I feel like I’m just figuring it out and getting sleep where I can.” He is especially grateful that he has job security, stating, “I’m not sure I would have been able to do it pre-tenure.” His wife, though, has just started an academic position in a different department at the same university, forgoing opportunities elsewhere in order to work at Jack’s institution.²⁴⁶ Though they use university-subsidized childcare, Jack says, “It’s a difficult time [and still] feels hard.” Dwayne notes, “In the past, everything was balanced toward my work.” His wife, he says, “took care of the home life and all which freed me up to really focus on my work.” While Dwayne says, “I found time for my family,” he would still sneak in work, editing articles “during halftime” even when attending his

246. This gender-based loss of professional opportunities is discussed at length in DEO, *supra* note 184, at 12–34.

children's sporting events. People of Color, as compared to whites, are working constantly, whether or not they have children or are the *default parent*.²⁴⁷

2. *Women of Color*

Haley, a multiracial female professor, is doing Dwayne's job and his wife's job, noting, "I'm always out of balance. I have no social life. Whenever I'm not at school—and I've been doing twelve-hour days lately—I'm chauffeuring my child." Haley's example reveals how gender-based expectations create unique challenges for women of color. Because women of color carry more service burdens at work and also greater responsibilities at home, they have more to juggle. If we ignored that reality and reported data only on People of Color, we would miss the important gender-based dynamics at play. Reporting on this as simply "women's experiences" would ignore the racial dynamics at play. Instead, both in terms of empirical accuracy and equity goals, we must examine gender combined with race.

A Black woman professor named Kayla notes that while holding extra meetings with students creates "heightened stress" on her time, she cannot shrug off the "burden associated with being one of two or three women of color on my faculty." She says, "The word is out that I am accessible [so] I've definitely had more demands on my time." These demands come not only from students in her classes, but even from others whom, she notes, simply would "like me to formally and informally mentor them."²⁴⁸ Student demands on her time are greater because she is a Woman of Color.

Though Carla negotiated for research leave years in advance, an administrator reneged on their deal just weeks before the start of term, telling her she was needed as Chair of a committee. Looking back, Carla realizes, "It was really shocking, but I dealt with it by saying . . . well, I dealt with it with my ordinary strategy, which was to say, 'Okay.'" For over two decades in law teaching, Carla has acquiesced to every service demand made, noting, "If someone said, 'Do this,' I did that. If someone

247. The default parent in a two-parent household is "the one responsible for the emotional, physical and logistical needs of the children." M. Blazoned, *The Default Parent*, HUFFINGTON POST (Oct. 28, 2014), http://www.huffingtonpost.com/m-blazoned/the-default-parent_b_6031128.html [<https://perma.cc/7F68-MEEL>]; see also Lindsey, *A Letter from the Backup Parent to the Default Parent*, THE MOTHERCHIC BLOG (Nov. 5, 2014), <https://themothorchic.com/2014/11/05/letter-default-parent-back-parent/> [<https://perma.cc/ZG6V-UWA2>]; M., *The Default Parent Resume*, M. BLAZONED BLOG (Feb. 15, 2016), <http://www.mblazoned.com/the-default-parent-resume> [<https://perma.cc/CTK5-6Z7T>].

248. Service demands on Women of Color have increased even further during the pandemic. See Meera E. Deo, *Investigating Pandemic Effects on Legal Academia*, 89 FORDHAM L. REV. 2467, 2486–87 (2021).

said, 'Teach that,' I taught that. If someone said, 'You'll teach at 8am,' I taught at 8am. If someone said, 'You'll teach summer school,' I taught summer school." She could not "risk saying no because then the gossip would start up: 'She's difficult.' 'She's not a team player.'" Despite the extra service and positive attitude, she notes, "I did not get compensated." The raceXgender-based expectations Carla faced are common to Women of Color throughout legal academia. As Men of Color do not face similar demands of *academic caretaking* and other related service obligations, using the People of Color moniker here would be disingenuous and incorrect.²⁴⁹

Women of Color also are more likely to be the default parent at home. Natalie, a multiracial woman professor, shares a common experience: "I cook, I make major parenting decisions like how to discipline, I buy all the clothes." She realizes, "I'm more like the boss of it. If I tell [my husband] to do something, he will do it. I take charge of the domestic realm just because I'm too impatient to let him fumble through it." Men of Color do not say the same about themselves. Helen, an Asian American professor, cannot focus entirely on work even when she is on campus. While her husband is "helpful around the house by doing laundry and doing dishes," family life is always on Helen's mind. She notes that "in terms of occupying mental space . . . my children take up [a lot] in the course of my day as I'm trying to think, 'Do their clothes fit?' 'Do they need snow boots?' You know, that sort of stuff." Because her husband is not carrying the *mental load*, these details are "not in his mind [which] frees him up to think about other things in a way that I am not able to."²⁵⁰ Pretending this was a problem facing People of Color as a whole would ignore the gender-based dynamic; this is a challenge specifically facing Women of Color.

Women of Color are doing more not just at work and with their own children, but also with extended family and in the community. Annie, who started teaching decades ago, notes, "With my generation there was still very much an unwritten but very strong norm that you kept your family and your work life separate." That led her to prioritize work above family because she was "afraid of not being taken seriously at work." Now, she regrets some of those decisions, wondering, "Why did I go to that [faculty] meeting instead of going to the end of the year band award ceremony

249. Women and especially women of color perform more internal service duties at work than their colleagues, leading some to consider them caretakers at work as well as at home. See Cassandra M. Guarino & Victor M. H. Borden, *Faculty Service Loads and Gender: Are Women Taking Care of the Academic Family?*, 58 RES. IN HIGHER EDUC. 672, 690 (2017).

250. The "mental load" refers not only to the daily toil of keeping track of all the things that need to get done, but also how "the scope and volume of managing this many lives and details comes with a surprisingly huge emotional and mental exhaustion that is unique to the default parent." M. Blazoned, *supra* note 247.

where my daughter was getting an award?" Annie's personal responsibilities extended past her own household. Because her father also lived alone nearby, she recalls, "I was going over to his house to clean and cook and chop [vegetables] once a week or more" in addition to "trying to do things with my kids." None of the men of color in the DLA sample reported similar extended family responsibilities—these obligations are specific to Women of Color, and thus Women of Color should be specified as the relevant group.

April is overcommitted in a way that is familiar for most Women of Color. She shares:

The list of things I have to do is long. I have a husband, two children, and a dog. I have a mother, a sister, [and five other relatives] who have all moved [nearby] in the last ten years. Every one of them needs something. I am an active church member. I am the lawyer for all the little church ladies: this one needs a divorce, this one needs a will, this one needs a this, this one's husband is dying and she needs a power of attorney. I have all of those obligations. I have a depressed and oppressed African American community. I try and help them when I can. I am a member of a sorority and a service organization, and I participate actively in those things as well. I got a lot of shit going on all the time.

While People of Color as a whole struggle with work/life balance, it is Women of Color specifically—distinct from Men of Color—who are busy serving others at work, at home, and in the community. As such, we should be clear that this is an experience unique to Women of Color and both center and name them directly.

3. *Better than BIPOC: Naming Specific Groups*

While most people of color struggle with work/life balance and women of color are busy navigating additional gender-based pressures, particular raceXgender communities face distinct challenges and opportunities. Native American women in the DLA sample support their children, partners, and communities while also working impossible hours. Jennifer says, "I need to do a better job with balance." Referencing herself and her husband, she notes, "We're both workaholics." Melissa is uncomfortable with the term, but recognizes its application, saying, "I don't know that I like this label, but I would probably be a workaholic." Similarly, Erin notes that she's "so busy because I pretty much work all the time, like there's no day off." Laura also says:

While I do work long hours . . . [m]y kids became part of it. They sat through part of the bar review course in the back of the room. They waited in my office for me at times. They became part of it and I talked to them about what was going on.

Native American women professors are therefore distinct from People of Color and even Women of Color, in that they both work

constantly and incorporate their children into their work. Aggregating them with other Women of Color or with Black faculty specifically (using the BIPOC moniker) would dilute their lived experience and inaccurately reflect the data.

One clear distinction between Women of Color from different backgrounds relates to support: Asian American women professors are more likely to *receive* support from extended family (including monetary support from parents), whereas Black women are often the breadwinners in their immediate families and also *provide* financial support to others.²⁵¹

Aarti, Vivian, and Smita are illustrative as Asian American women professors who rely on extended family for support. Aarti is the primary earner in her immediate family and relies heavily on her parents and in-laws for support, noting, “Both sets of parents give us a lot of financial support, a lot more financial support than I thought I would be getting.” She is grateful, accepting that “they want to help us make it work.” Vivian relies on extended family for emotional support. She notes, “I’m really lucky my sister lives in town with [her] kids.” Both Vivian’s sister and her father are part of the “primary core” of her support system. Smita has a similarly supportive extended family network, noting, “I rely on my parents and my brother and my children . . . for emotional support.” Smita and her husband split childcare and household duties, alternating days to stay late at work and wrangle their children at home. Smita appreciates that this gives her the flexibility to take “that time in the afternoon to sit down and spend time with them and play with them and help them with homework.” The tradeoff, she notes, is that “once they go to sleep, I end up turning on my computer again and doing more work at night.” Her parents have often “come and taken care of the kids” when Smita and her husband have overlapping work travel. Smita shares that her parents even “check with us ahead of time before they book their vacations being like, ‘Do you have any conferences during this time because we’ll switch the days?’” She knows not everyone is so fortunate, stating, “I’ve been very grateful and touched by the amount of generosity they have extended towards us.” This opportunity to draw support *from* family is most pronounced in data collected from Asian American women—though not representative of People of Color or even Women of Color.

While many of the Black women in the DLA sample are also close with extended family, few rely on them for high levels of support. Instead, many Black women academics *provide* financial, emotional, and even legal support to others. Before joining academia, while Susan was working at a large corporate law firm, she and her husband “were

251. As a counternarrative, two Asian American women faculty have partners who are stay-at-home fathers with primary caretaking responsibilities for their children.

supporting three households.” She states, “The reality is we both came from poverty so we had additional responsibilities that other families didn’t have, and we didn’t have a down payment from Mommy and Daddy for the mortgage and we didn’t have support in law school so we had debt from getting our education.” Alexandra, a Black professor, carries the financial load for her entire extended family, noting, “I’m the primary breadwinner My husband does work but he makes one-third of what I do. And I don’t come from a family that has the financial resources to help us financially.” Alexandra says she currently has “[s]mall financial obligations to my husband’s mother,” and anticipates them growing. As additional financial responsibilities to extended family are “on the horizon, [this] informs my decisions.” She elaborates:

So, for example, we would love to buy a house. We need more space [as] there is no good place for me to work at home. We are renting a tiny two-bedroom [apartment] right now. But I’m uncomfortable dumping all of our savings into a down payment when we have aging parents and we have my mother-in-law basically on welfare I know we are going to have to help [her financially in the future].

Financial pressures add to Alexandra’s overall anxiety and workload because the inability to invest in a workspace or outside childcare means more work for her. She adds, “I never feel balanced by the day. I don’t go through my day thinking, ‘OK, I did a particularly good job balancing everything.’ I consistently feel like something had to give on that particular day.” Overall, Alexandra stresses, “I’m much more tempered in my financial decisions because I know it’s not just about me.”

In these ways, the experiences of Black women faculty differ significantly not only from Black men and other People of Color but also from others in the Women of Color community. Similarly, Asian American women have unique experiences as compared to their Asian American male counterparts as well as other Women of Color. Combining either group under a People of Color or Women of Color label would mask these important differences in the data and impede advocacy efforts. It is therefore critical to name them individually, matching their experiences to the terms we use to define them.

Conclusion

The People of Color moniker serves a purpose. There are many ways in which those who fit within the People of Color community in the United States have collective experiences. Thinking just of legal education, law students of color have different experiences from whites when it comes to debt levels and experiences with diversity. Law faculty of color also share similarities with student evaluations and work/life balance that differ from the white norm.

Disaggregating by gender within the People of Color umbrella to examine the Women of Color experience reveals additional insights. For law students, debt loads of Women of Color are often higher even than for Men of Color, and experiences with diversity have both a racial and a gender dimension. Similarly, Women of Color law faculty face raceXgender-based challenges on student evaluations referencing a presumption of incompetence and in work/life balance with caretaking expectations that differ from those of men.

Deeper investigations reveal that the term BIPOC as a synonym for People of Color adds little value but causes both confusion and division by centering two groups of People of Color—Black and Indigenous—that may not be at the center of the discussion at hand. Instead, it would be better to use purposeful language about the groups at the heart of the data and argument. Sometimes neither the term People of Color nor the label Women of Color can tell the full story; other times, it can even eclipse important narratives for particular groups. In those instances, it is best to be specific about which communities are involved or affected. Black women and Latinas have higher levels of debt not only than other People of Color but even than other Women of Color and Black and Latino men. Asian American women faculty are more likely to draw from extended family resources than Black men or Latina women or even Asian American men. Writing simply about People of Color or even about Women of Color would erase the experiences of groups that may be unique even under those larger umbrellas.

Beyond legal education, the thesis for this new theoretical framework should also be tested in a variety of other contexts. Usage of People of Color, Women of Color, or specifically naming groups rather than using BIPOC or even other broad monikers should be applied to frameworks as diverse as political engagement, workplace harassment, elementary school integration, diversity in corporate boards, and more. Different situations will naturally call for particular groups to be named and studied directly; that context, regardless of the terms currently en vogue, should drive the data used and arguments made in any endeavor.

If BIPOC becomes more broadly accepted, advocates and scholars should only employ the term when both Black and Native Americans truly are at the center of the project or data; otherwise, progress is purely symbolic—literally, in name only. A better strategy is to be specific about the race and gender of the groups central to our agendas and name them directly as comprising the heart of our work.

The umbrella serves a purpose. It shelters people together through the storm. But people may stand in distinct groups even underneath the umbrella—and for good reason. It is critical that we not only appreciate the People of Color umbrella for the solidarity and strength it provides,

but also look beneath it to consider the Women of Color experience as distinct from men, and even name otherwise hidden racial or raceXgender groups when their experiences merit individualized attention. Centering the same two racial groups in every racialized circumstance is both dishonest and a detraction from antiracism goals. Being specific, pursuing precision, and matching identities to issues—all of these are better than BIPOC.