INTRODUCTION

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"Diversity in practice" carries dual meanings. First, it refers to the growing demographic diversity of law and other professions. One of the most profound transformations in professional fields in the last four decades has been the entry of large numbers of women and people of color. The title also refers to enduring inequalities in professional careers, despite rhetorical commitments to diversity and investments in pro-diversity initiatives. An established feature of contemporary professional associations and prestigious professional firms is their embrace of diversity as a goal, and diversity and inclusion programming is widely used. However, in practice, inequalities persist. This volume critically addresses both aspects of diversity in practice, examining the current state of inequality and identifying mechanisms that reproduce advantage and disadvantage.

The research reported here reveals dramatic gaps between rhetoric and reality in achieving diversity in law and other professions. Despite professional leaders' public pronouncements about the importance of diversity and inclusion, the chapters contained here document the persistence of inequalities of race, gender, and class in the professions. These chapters demonstrate that these inequalities are often sustained through more subtle mechanisms than the kinds of explicit discrimination that characterized earlier periods of the Anglo-American legal profession (Abel 1989; Auerbach 1976; Epstein 1981). These mechanisms include the ongoing impact of stereotypes and discrimination; forms of credentialism that prioritize elite educational pedigrees and have disproportionate effects on

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members of historically underrepresented groups; inequalities in network ties and social capital; and structural changes in professional work that intensify intra-professional stratification, including globalization, technological advances, and blurring lines between law and business.

The weight of these collective findings was not preordained by our selection of authors and papers. As part of an ongoing effort by the Research Group on Legal Diversity of the American Bar Foundation, we issued a call for papers on "Pursuing Diverse Talent in Legal and Professional Services: Research within and across Professions, Organizations, and Societies." We chose for publication those papers that made original empirical contributions to the central theme of the conference. It is a fair reading of this research, conducted by scholars from different disciplines and with different methods, that inequalities of race, gender, and class remain a fundamental problem for law and other modern professions.

In this introduction we first provide an overview of the theoretical and empirical literature on the sources of inequality in legal and professional careers. We discuss several dimensions of professional inequality relevant to this volume's new empirical contributions. First, we document the significant underrepresentation of racial/ethnic minorities in the legal profession and introduce how characteristics of higher and professional education contribute to the problem. Next, we briefly touch on the large body of literature on the social psychology of inequality and discrimination, discussing the impact of stereotype threat and implicit bias on aspiring lawyers who are people of color or women. We then review research that demonstrates persistent gender inequality in the legal profession. This research shows that relatively modest earnings gaps between men and women early in careers grow over time; this section goes on to describe public policies and features of workplaces that drive the trend of growing inequality over the course of careers.

We then consider patterns of exclusivity in the kinds of elite contexts that are at the pinnacle of the legal, professional, and business worlds, and the focal points of many of the chapters in this volume. After briefly discussing patterns of inequality in large law firms, which have dominated the corporate sector of the legal profession since their emergence in the early twentieth century, we note recent developments that threaten to shake up the established order and consider their implications for diversity. We conclude this part of the

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introduction by discussing how this volume's findings fit into broader theories of inequality and noting the wide-reaching implications of inequalities in legal careers. Much more is at stake than equality of opportunity in the professions. Law cannot provide equal justice to all segments of society, nor will law be perceived as capable of equal justice, if the professionals that serve in the justice system do not resemble the diversity of society at large.

Following this introduction of background information on inequalities in the professional world, we introduce the remainder of the volume. The chapters are organized in three sections that address central features of equality and opportunity in modern professions. The chapters in the first section directly address the rhetoric of diversity in elite contexts and juxtapose that rhetoric with measures of actual progress. In the second section, chapters examine points of entry to professional careers in law, in science, and in professional services. These chapters emphasize the continuing significance of professional education for early career opportunities. Professional education shapes the identities of aspirants to professional careers and thereby shapes their prospects for success. The chapters in the third section of the book analyze the determinants of success in the careers of diverse attorneys. Working from a variety of innovative approaches, these chapters reveal both the challenges and the opportunities that diverse attorneys face in the current marketplace for professional services.

THEORETICAL AND EMPIRICAL BACKGROUND

Race and ethnicity, education, and the leaky pipeline to professional practice

We begin with simple statistics about the pipeline to professional careers in law. Overall, Black Americans make up 12.6% of the general population (Humes, Jones, and Ramirez 2011: 4) and 14.5% of high school graduates (Snyder and Dillow 2011), but their presence among college graduates declines to 9.8% (Snyder and Dillow 2011), among law school graduates to 6.9% (Snyder and Dillow 2011), and they comprise some 4.3% of lawyers (US Census Bureau 2012: 394). Latinos make up 16.3% of the general population (Humes, Jones, and Ramirez 2011: 4) and 15.1% of high school graduates (Snyder and Dillow 2011), but only 7.9% of college graduates (Snyder and Dillow 2011) and 6.5% of law school graduates (Snyder and Dillow 2011).

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The 2010 Census recorded 3.4% of lawyers as Latino (US Census Bureau 2012: 394).[1]

The pipeline to professional practice is long and leaky, and the factors that produce the observed demographic inequities are numerous and complex. Focusing for the moment just on the world of higher education, relatively low rates of college graduation represent a significant source of leaks in the pipeline carrying people of color into the law and other prestigious professional occupations. Less than half of the Latino, Black, and Native American students who enroll in four-year colleges graduate in six years: among 2002 new enrollees, the rough percentages who did so were 49, 40, and 38, respectively, compared to 67% of Asian-American/Pacific Islander students and sixty percent of White students (Snyder and Dillow 2011: 485). Trends in choices of college majors also hold implications for the talent pool from which future lawyers emerge. The majority of law school graduates were social sciences or humanities majors in college, and less than 10% majored in natural science or technical fields like engineering or computer science. Holding other relevant factors constant, students from less advantaged socioeconomic backgrounds are considerably less likely than their more affluent peers to choose majors in the arts and humanities, and more likely to choose technical or vocational majors (Goyette and Mullen 2006; Ma 2009).

Minority aspirants are further hindered by the importance of undergraduate grades in the law school admission process, with Black men and women and Latino men graduating with significantly worse grade point averages than their White male counterparts (Massey and Probasco 2010). Although Black and Latino students comprise a larger portion of applicants to law school than of college graduates, they are more likely to be "shut out" in the application process – that is, accepted by no law school (Nussbaumer and Johnson 2011). Further, Black and Latino students who successfully complete the application process and matriculate into law school are more likely to drop out and less likely to graduate than their White counterparts.

Data on variation in bar passage rates are unfortunately limited; however, the results from the Law School Admission Council's (1998) National Longitudinal Bar Passage Study indicate that members

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[1] According to the After the JD (AJD) sample, Latinos make up 4.5% of the population of US lawyers seven years after passing the bar and 3.2% twelve years after (Sandefur and Nelson 2014: 21).

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of racial/ethnic minority groups who graduate from law school are less likely to eventually pass the bar (77.6% of Black graduates, 87.7% of Latino graduates, and 91.9% of Asian-American graduates, compared to 96.7% for White graduates) (Wightman 1998: 32). In terms of overall legal employment, a recent survey of law school graduates by the National Association for Law Placement found that 79.2% of non-minority 2013 graduates were employed full-time in February 2014, compared to 72.3% of minority graduates. The discrepancy is slightly more pronounced considering specifically jobs for which bar admittance is a requirement: 66.8% of non-minority graduates held those jobs, compared to 57.6% of minority graduates (NALP 2014: 59).

Overall, members of historically marginalized racial and ethnic groups remain starkly disadvantaged in gaining entry to legal careers. While an array of historical and structural causes are at work in producing this disadvantage, attention to higher education contexts reveals significant factors that impede the prospects of minority aspirants who reach that relatively late stage of the professional pipeline.

The social psychology of inequality and discrimination

Along with structural and institutional factors, social psychology can help explain disparities in educational outcomes across demographic groups. Research on educational achievement has demonstrated the impact of racial and gender stereotypes on performance. Stereotype threat effects occur when individuals from ability-stigmatized groups feel pressure when completing academic tasks on which poor performance could confirm negative group stereotypes. This pressure leads to anxiety and distraction, which in turn lead to underperformance. These reduced outcomes are observed specifically when tests are presented as measures of ability, rather than non-diagnostic exercises, demonstrating the significance of stereotypes regarding the intellectual abilities of members of different demographic groups to performance on such examinations. In a landmark study, Steele and Aronson (1995) showed that Black test-takers performed comparably to their White counterparts on a verbal assessment presented as non-diagnostic of ability, while performing relatively worse when the test was presented as an assessment of intellectual ability. Subsequent research has demonstrated similar effects for women, for instance, showing women to underperform on a math test presented as indicative of gender disparities, an effect curtailed by presenting the test as gender-neutral (Spencer, Steele, and Quinn 1999). Threat effects are, perhaps ironically,

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strongest among students who strongly identify with academic achieve-
ment, as these students feel the greatest pressure to avoid confirming
negative group stereotypes (Steele 2010: 58).

Stereotype threat effects have been most frequently studied at the
collegiate level, but researchers have also demonstrated the impact of
stereotype threat on middle school (Cohen et al. 2006; Cohen et al.
2009) and high school (Reardon et al. 2009) students. These effects
grow in significance under accountability-driven educational reforms
such as the No Child Left Behind Act, which link school funding to
performance on standardized assessments. These types of measures
incentivize faculty and administrators to dedicate considerable portions
of educational time and resources to increasing students' test scores,
inculcating "teaching to the test" approaches that sacrifice other cur-
ricular areas. Linkages of school funding to mean proficiency scores can
lead to reduced funding and shortages of highly qualified teachers for
disadvantaged schools; cyclical entrenchment of test-driven curricula;
and substantial incentives to displace low-scoring students (Darling-
Hammond 2007; Kim and Sunderman 2005; Meier and Wood 2004;
Ryan 2004).

Furthermore, individual performance on placement tests like the
ACT and SAT is an essential prerequisite of higher education, and
similar testing requirements obtain for admission to graduate and pro-
fessional schools; stereotype threat is implicated in each of these testing
situations. For aspiring law students, the Law School Admission Test
(LSAT) is immediately relevant. The use of LSAT scores – and
particularly minimum required scores – in law school admissions has a
disproportionate negative impact on racial and ethnic minorities, espe-
cially Black and Latino aspirants (Godsil, Banner, and Kang 2012;
Randall 2006). According to data from the Law School Admission
Council (LSAC), the nonprofit corporation that administers the
LSAT, both women and racial/ethnic minorities exhibit struggles with
the LSAT. Female test-takers' average scores over recent years have
been between 2.3 and 2.6 points lower than those of their male
counterparts (Dalessandro, Anthony, and Reese 2012: 17).[2] With the
exception of Asian Americans, whose scores are comparable to those of

[2] Interestingly, test-takers who chose not to report a gender have had the highest
average scores of any group over recent years, with a larger advantage over male test-
takers than that of men over women since the 2006–2007 testing year (Dalessandro,
Anthony, and Reese 2012: 17).

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White test-takers, scores for members of racial/ethnic minority groups have also been relatively low. In the 2011–2012 testing year, Black test-takers' average score was more than ten points lower than that of their White counterparts, and test-takers who self-reported as Hispanic/ Latino averaged scores more than six points lower than White test-takers (Dalessandro, Anthony, and Reese 2012: 20).

At each stage in the professional pipeline that involves evaluation based on subjective judgments, explicit prejudices among decision-makers against members of particular demographic groups clearly can have negative effects on the prospects of members of those groups. However, conscious biases (whether explicit or concealed) about the characteristics or capacities of different categories of people are not necessary for unequal outcomes from evaluation and selection processes that involve discretionary judgments. Implicit bias – the unconscious attachment of stereotypes and attitudes to members of different demographic groups – can affect decision-making processes without the implicated actors even being aware (Kang et al. 2012). The implications of implicit bias are suggested by foundational research, such as results from the Implicit Association Test (IAT) demonstrating disparities in evaluative attributions of positive and negative characteristics to members of different racial/ethnic groups (Greenwald, McGhee, and Schwartz 1998; Greenwald et al. 2009). Similarly, gender remains an important dimension of the status hierarchies that order cultural, occupational, and organizational life. Gender may also implicitly influence the assessment of skills and performance, thus contributing to the perpetuation of gender inequality in professional contexts (Ridgeway 2011).

These social psychological phenomena can help explain research findings that demonstrate the ongoing impact of employment discrimination in both professional and nonprofessional settings (see Bertrand, Chugh, and Mullainathan 2005). Audit studies measuring callbacks offered by real prospective employers to fabricated resumes for a range of jobs, from entry-level to managerial, in Chicago and Boston found that fictitious applicants with very "White-sounding" names needed to send out about ten resumes to get a callback, compared to the about fifteen resumes required for callbacks for applicants with very "African-American-sounding" names. In total, a White-sounding name provided the same callback advantage as an additional eight years of work experience. Furthermore, the positive effects of a stronger resume are diluted for ostensibly Black applicants, relative to their ostensibly

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White counterparts (Bertrand and Mullainthan 2004). A similar field experiment, focused on low-paying positions in New York City, recruited real people to apply for jobs. In this research, White applicants were twice as likely as their Black counterparts to be called back or offered a job, and Latino and Black applicants whose fictitious backstories included clean criminal records saw comparable outcomes to White applicants presented as recently released from prison (Pager, Western, and Bonikowski 2009). Related research has demonstrated that such effects are not limited to racial/ethnic minorities, showing evidence of employment discrimination against openly gay male applicants (marked by fictitious resumes listing service as the treasurer in a gay community organization, with service as treasurer in a campus "Progressive and Socialist Alliance" as the control condition) (Tilcsik 2011).

While not the primary focus of this volume's empirical contributions, these types of social psychological threats and biases represent an important dimension of the subtle mechanisms so important in driving contemporary inequality. They play a crucial role not only in shaping the population of would-be professionals who reach the career stages this volume addresses, but in a host of other important social arenas as well. Their effects on law and legal institutions demand careful consideration.

Gender, time, and workplace culture

Despite some progress, women continue to lag behind men in legal careers. In the period immediately following law school graduation, they are less likely than men to be employed (83.6% to 85.3%), employed full time (75.9% to 78.6%), and (narrowly) less likely to be employed in jobs requiring bar passage (64.2% to 64.5%) (NALP 2014: 59). Women's mean salaries in these first jobs are less than $80,000, compared to men's mean salaries of more than $84,000 (NALP 2014: 72).

These initial disparities grow as careers progress. Workplaces of all types exhibit common patterns of less favorable outcomes over the course of women's careers, as initial disparities in hiring are compounded by lower rates of promotion and higher rates of turnover, limiting opportunities to take leadership roles and fill executive positions (Milligan et al. 2014). In the legal profession, women are less likely to make partner than men, and are more likely than men to be found in non-equity partnerships twelve years after admission to the bar (Sterling, Sandefur, and Plickert 2014: 66). A 5% income gap after

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two to three years of work grows to 20% after twelve years (Sterling, Sandefur, and Plickert 2014: 67).

For those members of underrepresented groups who make it over the hurdles of the education and job application processes, the workplace often presents a fresh set of difficulties. These difficulties may take the form of struggles to balance work and home life. The distribution of household labor has failed to track women's expanded presence in the labor market since the mid-twentieth century, as women continue to dedicate far more time than men to household work and family caregiving. US public policy on work and family trails the rest of the developed world, exacerbating the problems of work-life balance that disproportionately affect women, contributing to the pressures that cause many to leave their careers (Williams 2010). Despite some progress in women's economic status, women's full-time earnings are still around 80% of men's (Blau and Khan 2007), although there is evidence of continued narrowing of the gender pay gap in primary labor market jobs with voluntary turnover (Kronberg 2013).

Professional employment presents a particular organization of time that holds different implications for men than for women. Professional careers tend to be "greedy" when it comes to working hours; now more than ever in the era of email and smartphones, professionals are expected to always be "on." The unbounded time demands of professional careers often translate into both men and women dedicating long hours to their work. For women, these work demands are often coupled with relatively less control over private time and a greater share of household and child-rearing tasks, to which they continue to dedicate far more time than men (Bianchi et al. 2000; Hochschild 2012 [1989]; Seron and Ferris 1995). Professional men are more likely than their female counterparts to have a significant other who stays at home to care for young children. One recent study found that among rainmakers – highly successful partners in law firms who generate business by recruiting new clients or developing relationships with established clients – men were more than ten times more likely than women to have a stay-at-home spouse (Drake and Parker-Stephen 2013: 15).

Studies of professional culture have identified characteristics in these work environments that may be inhospitable to members of historically underrepresented groups, including women. Scholars working in this vein have highlighted the significance of professional role confidence – "individuals' confidence in their ability to fulfill the expected roles, competencies, and identity features of a successful member of their

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profession" – in explaining persistence in a professional career (Cech et al. 2011; see also Pan, this volume; Seron, this volume). In workplaces dominated by masculine culture, women find themselves pressed into conventional roles that entrench and exacerbate gender inequality, while simultaneously impeding individuals' prospects for career advancement (Williams 2010). Other research, focusing only on single people (and thus eliminating the potential impact of discrimination against married women and caregivers), has suggested that female professionals who challenge gender stereotypes – say, by possessing strong quantitative skills – may appear incongruent with expectations within the professional culture, and accordingly face penalties in promotion (Merluzzi and Phillips 2013).

The historical dominance of men and marginalization of women in the professional world has precipitated the construction of work structures and cultures that continue to advantage men. As many of this volume's contributors suggest, these sexist structures and cultures are less obvious than the blatant forms of discrimination and harassment that were more common in previous decades (although these still occur with some regularity). It is the systematic but obscured character of these mechanisms that make them so entrenched and difficult to change.

Large firms and elite exclusivity

As a professional occupation that has a monopoly on legal services and the power of self-regulation, lawyers enjoy noteworthy prosperity and prestige (Abel 1989; Larson 1977). However, these rewards are not equally distributed across all members of the profession. Scholars of the legal profession have long observed dramatic differences in the incomes and prestige of lawyers working in different fields of law and for different clients (Carlin 1962; Carlin 1966; Heinz and Laumann 1982; Heinz et al. 2005; Ladinsky 1963). Heinz and Laumann (1982) developed the highly influential concept of the two hemispheres of the legal profession: the personal client and corporate client hemispheres. Personal client lawyers often came from ethnic and religious minorities, attended lower prestige local law schools, and practiced in fields serving personal clients. Corporate client lawyers often came from traditionally elite ethnic and religious backgrounds, attended elite national law schools, and practiced in fields serving corporate clients. While corporate hemisphere lawyers enjoyed higher prestige and often higher earnings in the mid-1970s, at the time of the first Chicago Lawyers survey, these advantages grew dramatically between 1975 and 1995. In 1975,