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**BEYOND BIG LAW:  
Toward a More Inclusive Study of Gender in  
the Legal Profession**

Brittany Arsiniega

ABSTRACT

This Article reviews research and theory in the field of gender in the legal profession using a framework developed by feminist theorist Barbara Risman. Risman asserts that gender is a social structure, “an entity in and of itself,” which operates on the individual, interactional, and institutional levels. Using Risman’s tripartite framework, I explore two prominent questions in the gender and legal professions literature: (1) Why do men and women advance differently in their careers? and (2) Are women more or less satisfied with their legal careers than men? In doing so, I demonstrate that the vast majority of theories of gender inequality in the legal profession, and the research methods undertaken to test them, focus on individual and institutional analysis to the exclusion of interactional analysis.

I further highlight a lack of research focusing on the ways in which gender is embedded in interactions between female lawyers and those who shape their career choices: partners, friends, mentors, and colleagues. I argue that existing research reifies Big Law partnership by using such positions as the measuring stick against which all other legal positions are valued. I further argue that current studies unintentionally perpetuate gender stereotypes by conceiving of gender inequality as a women-only issue. Work-life balance is conflated with having children such that the notion of having a life outside of work is itself now gendered. I call for a renewed study of the interaction between gender and other intersectional identities like race and class, given the unique set of challenges faced by female attorneys who are also racial minorities and/or live on

less than a Big Law salary. I further offer policy recommendations, including government- or firm-sponsored childcare and gender-related legal education for law students and lawyers.

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## INTRODUCTION

Upon skimming the literature on gender in the legal professions, readers will likely find that things are still bleak for women in the legal field. Apparently, the body of scholarly work, which has documented roughly fifty years of gender inequality among lawyers, has done little to change the lived reality of female attorneys.

Women now enter law school at rates equal to men,<sup>1</sup> but they continue to earn less than men,<sup>2</sup> are more likely to be employed outside of the lucrative Big Law sector,<sup>3</sup> are less likely to attain partnership status within the private sector,<sup>4</sup> and are more likely to exit the practice of law altogether.<sup>5</sup> Scholars have proposed a number of theories to explain these disparities, and they have performed hundreds of empirical studies to understand why these discrepancies exist. Nevertheless, different outcomes for male and female lawyers persist, leading some researchers to call this “a puzzle” that has yet to be solved.<sup>6</sup>

A problem so well recognized, but apparently so enduring, invites creative solutions from researchers, policy makers, and laypeople. In this Article, I use the “gender as structure”<sup>7</sup> theoretical

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1. See GITA Z. WILDER, NALP, *WOMEN IN THE PROFESSION: FINDINGS FROM THE FIRST WAVE OF THE AFTER THE JD STUDY* 6 (2007).

2. See Ronit Dinovitzer et al., *The Differential Valuation of Women’s Work: A New Look at the Gender Gap in Lawyers’ Incomes*, 88 SOC. FORCES 819, 819 (2009); Fiona M. Kay & John Hagan, *The Persistent Glass Ceiling: Gendered Inequalities in the Earnings of Lawyers*, 46 BRIT. J. SOC. 279, 280 (1995); Mary C. Noonan et al., *Pay Differences Among the Highly Trained: Cohort Differences in the Sex Gap in Lawyers’ Earnings*, 84 SOC. FORCES 853, 853 (2005).

3. See Kathleen E. Hull & Robert L. Nelson, *Assimilation, Choice, or Constraint? Testing Theories of Gender Differences in the Careers of Lawyers*, 79(1) SOC. FORCES 229, 239, 241, 245, 251 (2000).

4. See *id.* at 233, 239, 250.

5. Fiona M. Kay & Elizabeth Gorman, *Women in the Legal Profession*, 4 ANN. REV. OF LAW AND SOC. SCI. 300, 319 (2008).

6. See Noonan et al., *supra* note 2, at 867.

7. See BARBARA J. RISMAN, *GENDER VERTIGO: AMERICAN FAMILIES IN TRANSITION* 13–44 (1998).

model, developed by feminist theorist Barbara Risman, to explore, evaluate, and critique the existing literature discussing gender in the legal profession. My Article demonstrates four key limitations in the existing research. First, research on gender in the legal profession overemphasizes survey research, resulting in a lack of meaningful in-depth study of the interactions between women attorneys and those close to them. Second, Big Law partnership is generally used as the measuring stick against which all other legal careers are evaluated and therefore, other legal careers, including government and public interest work and the satisfaction that such work brings, is not reflected in most existing data. Third, gendered inequality is often discussed as a women-only problem that carries with it an assumption that child rearing is the only legitimate source of work-life balance, concealing other meaningful pursuits outside of work that might also bring richness to lawyers' lives. Fourth, intersectionality between gender, race, and class are underexplored, which creates an enduring knowledge gap between the lived experiences of white lawyers (especially men) and those with intersectional identities. By applying Risman's "gender as structure" model to research on gender in the legal profession, I hope to shed light on the areas that have been underexplored and that are ripe for new and creative research.

In the first Part, I briefly describe the development of feminist theories that eventually led to Risman's "gender as structure" model. Then, I explain Risman's model, which envisions gender as a deeply embedded, structural component of society with individual, institutional, and interactional consequences.<sup>8</sup> Her three-tier framework suggests that gender is embedded in multiple dimensions of society. Specifically, gender is present in an individual's lived experience and choices, in the interactions that constitute their social life, and in the institutions that both provide opportunities and place constraints on the individual based on their gender category.

In the second Part, I use Risman's model to explore two prominent questions in the gender and legal professions literature: (1) Why do men and women advance differently in their careers? and (2) Are women more or less satisfied with their legal careers than men? I explore the research seeking to answer these questions, sorting them according to Risman's three levels of analysis. In doing so, I demonstrate that the vast majority of research—both the theories themselves and the research methods undertaken to test them—focus on individual and institutional analysis, at the exclusion of interactional analysis.

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8. *See id.* at 13.

In the third Part, I critique the available theories and empirical answers provided by the aforementioned research, highlighting what I see as the major flaws in the existing literature. First, there is a lack of research focusing on the ways in which gender is embedded in the interactions between female lawyers and those that shape their career choices, like partners, friends, mentors, and colleagues. Second, the existing research reifies the private law firm partnership by using such positions as the measuring stick against which all other legal positions are valued. In doing so, the existing research does not account for the variety of career paths lawyers undertake. It also ignores the impossibility of a significant surge in the number of private firm partners given how these firms are structured. Third, the current studies unintentionally perpetuate gender stereotypes by conceiving of gender inequality as a women-only issue. That is, work-life balance is conflated with having children. Because having (and caring for) children is itself so closely associated with women, but not men, the notion of having a life outside of work is itself now gendered.

Lastly, I call for a renewed study of the interaction between gender and other intersectional identities like race and class, given the unique set of challenges faced by female attorneys who are also racial minorities and/or living on less than a Big Law salary. I use these critiques to inform a small number of policy recommendations, such as government- or firm-sponsored childcare and gender-related legal education for law students and lawyers.

## I. RISMAN'S "GENDER AS STRUCTURE" MODEL

In a 1998 article, Barbara Risman summarizes three distinct theoretical approaches in the study of sex and gender. These theories are not specific to the study of gender in the legal profession—they are applicable to the field of gender studies generally—but they are particularly useful as they provide a potential analytic leverage point for systematically investigating the existing research theories, findings, and methodologies used by researchers interested in the legal field.

The first theoretical tradition, *gendered selves*, holds that maleness and femaleness are biological properties of individuals. Risman calls such approaches "individualist" because of their focus on sex differences and the implications of each in different human behavior. This tradition envisions gender as a predisposition—a set of individual traits or characteristics with which individuals are

born.<sup>9</sup> This theory has support from biosociologists, sociobiologists, feminist psychoanalysts, and economists.<sup>10</sup>

The individualist approach of *gendered selves* was widely embraced in the mid-to-late twentieth century, but it was eventually challenged by feminist sociologists who ascribed gender differences to *social structuralism*. Scholars in this second theoretical tradition rejected notions of inherent differences between men and women, either biological or resulting from socialization. Rather, these scholars argued that men and women behave differently, not due to any innate differences, but because they fill different positions in institutional work settings, organizations, and families.<sup>11</sup> These scholars called the individualists' findings of sex differences "*deceptive distinctions*"<sup>12</sup> and instead focused on the way that structure, not biology or sex-role socialization, determines outcomes.<sup>13</sup> Proponents of this theory depict structure as something that exists outside of, and exerts pressure on, the individual, resulting in different outcomes. For example, as applied to the labor force, women enjoy less professional success in the form of promotions and pay increases, because they are provided different, fewer opportunities.<sup>14</sup>

A third theoretical tradition is that of *Doing Gender*, named after the eponymous article by Candace West and Don Zimmerman.<sup>15</sup> In this article, the authors suggest that gender is the product of neither biology, sex-role socialization, nor an external constraint

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9. See *id.* at 13–14. A variation of this theory understands maleness and femaleness as traits that individuals possess but which are not necessarily present from birth. See *id.* at 13. Rather, individuals become distinctly different through socialization. See *id.* at 14. Socialization early in life shapes later behavior. See *id.* In this view, "societies create feminine women and masculine men." *Id.*

10. See *id.* at 14–16, 44. For a useful summary of the research in *gendered selves*, *social structuralism*, and *Doing Gender* theories, see *id.* at 13–24.

11. See *id.* at 19.

12. Risman cites CYNTHIA FUCHS EPSTEIN, *DECEPTIVE DISTINCTIONS: SEX, GENDER, AND THE SOCIAL ORDER* (1988) as propounding the strongest support for the *social structuralism* theory that women's lack of opportunity in a male-dominated society is responsible for the differences between men and women. See RISMAN, *supra* note 7, at 19–20. Kanter posits that structure better explains sex differences in workplace behavior than sex-role socialization by showing that women behave like men when provided with similar advantages like access to mentors and the possibility for upward mobility. See *id.* at 20.

13. See EPSTEIN, *supra* note 12, at 15–16.

14. See RISMAN, *supra* note 7, at 20.

15. Notably, the article has been cited 14,359 times in Google Scholar as of March 2020. This theory is also called *gender performance theory*. See, e.g., JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* 189 (1990).

on the individual.<sup>16</sup> Rather, they envision gender as the result of daily social practices and interactions. This means that an individual performs their gender according to what others expect of that particular gender. In this view, “doing gender” is thus a self-fulfilling prophecy.

Risman felt that, although each theory offered something important to the field of gender studies, each of the three theories alone was inadequate. She argued that the theoretical tradition of *gendered selves*, which attributes gender differences to individuals, ignores the power of embedded structure. The *social structuralism* tradition offers institutional-level explanations for gender differences, especially in the workplace, but it downplays the importance of daily interactions in reinforcing differences between men and women. Finally, she believed that the gender performance theory overemphasizes interactions between individuals without acknowledging how gender inequality in organizations informs our gendered identities.<sup>17</sup> To address these shortcomings, Risman developed a new conception of gender as a social structure or “an entity in and of itself.”<sup>18</sup> Rather than seeing structure and individual action as separate from one another, she proposes a model wherein gender is a structural property of society. Specifically, Risman quotes notable gender scholar Judith Lorber as arguing that gender “establishes patterns of expectations for individuals, orders [the] social processes of everyday life, and is built into all other major social organizations of society.”<sup>19</sup> She explains:

Gender itself must be considered a structural property of society. It is not manifested just in our personalities, our cultural rules, or other institutions. Gender is deeply embedded as a basis for stratification, differentiating opportunities and constraints. This differentiation has consequences on three levels: (1) at the individual level, for the development of gendered selves; (2) at the interactional level, for men and women face different expectations even when they fill the identical structural position; and (3) at the institutional level . . . based on explicit regulations or laws regarding resource distribution, whether resources be defined as access to opportunities or actual material goods.<sup>20</sup>

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16. See Candace West & Don H. Zimmerman, *Doing Gender*, 1 *GENDER & SOC'Y* 125, 129, 131–35, 141 (1987).

17. See RISMAN, *supra* note 7, at 23.

18. See *id.* at 25.

19. *Id.*

20. *Id.* at 28.



She found that gendered outcomes could not be explained based exclusively on individual experience, as the result of interactions, or from the level of institutions. Indeed, each level of analysis alone fails to explain why differences in men and women's experiences persist.

The strength of Risman's theory lies in its ability to embrace and encompass the three theories discussed above. She does not cast aside decades of research and empirical findings from scholars before her or from her contemporaries. Instead, she sees merit in all waves of feminist scholarship and all levels of analysis. Her approach instead helps these theories cohere to explain gender stratification as we presently see it: we must study gender as a social structure by using three discrete levels of analysis.<sup>21</sup>

The individual level of analysis examines socialization, identities, and the ways in which sex-role socialization and culturally determined family patterns create gendered individuals who are motivated to fill what they perceive as socially appropriate roles. This level of analysis includes empirically identified sex differences in social behavior.<sup>22</sup> The *gendered selves* theory discussed above and related empirical research falls into this level of analysis.

The interactional level of analysis concerns cultural expectations and taken-for-granted situational meanings. Specifically, as Risman explains, "[e]xpectations attached to sex category—accurate or not—provide a cluster of behaviors that we can expect from strangers and that help us to guess how we should behave toward them. Gender is something we do in order to make daily life more manageable."<sup>23</sup> Over time, members of society develop cognitive images, meaning "abstractions" or "unwritten rules and unspoken beliefs" that "we have learned . . . over time both from interaction with others and through cultural images from television, movies, and other media."<sup>24</sup> When people respond to these cognitive images in real-life interactions, they perpetuate gender stratification.<sup>25</sup> This level encompasses the *Doing Gender* theory.

Finally, the institutional level of analysis investigates the distribution of material advantage, formal organizational schemas, and

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21. Risman agrees that the three theories are not incompatible. *See id.* at 24.

22. *See* Alice H. Eagly & Wendy Wood, *Explaining Sex Differences in Social Behavior: A Meta-Analytic Perspective*, 17 PERSONALITY & SOC. PSYCHOL. BULL. 306 (1991).

23. RISMÁN, *supra* note 7, at 33.

24. *Id.* at 32.

25. *See id.* at 32–33.

ideological discourse at the societal level.<sup>26</sup> What Risman considers “institutional-level analysis” is what others simply call “structure,” but both imply external constraints on individual action. As explained by sociologist Elizabeth Gorman, these “structural mechanisms include established, often formalized, policies and practices—job descriptions, eligibility requirements, recruitment practices, and so on.”<sup>27</sup> Thus, gender differentiation at the institutional level is based on explicit laws or policies, which, in turn, define access to opportunities or actual material goods.<sup>28</sup> This level parallels *social structuralism* theories of gender stratification.

Risman’s gender as structure theory encompasses three levels of analysis: the individual, the interactional, and the institutional.<sup>29</sup> In developing the three-level model, Risman recognized the need to address discrepancies between policies at the institutional level and actions and outcomes at the individual level. Thus, she proposes that we pay attention to daily interactions, while considering the cognitive images and cultural expectations constantly in play. In what follows, I apply Risman’s gender as structure theory to gender research in the legal field. This approach reveals that most research on gender in the legal profession focuses on individualist or structuralist theories and that the interactional factors that contribute to gender inequality are generally undertheorized. In addition, when applied to research methodologies, this approach highlights an overreliance in the literature on largescale survey methods and a dearth of in-depth ethnographic research.

## II. APPLYING RISMAN’S MODEL TO GENDER IN THE LEGAL PROFESSION

In this Part, I use Risman’s model of gender as structure, with its three levels of analysis, to assess and critique the literature studying gender in the legal profession. Specifically, I explore two

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26. See *id.* at 29.

27. Elizabeth H. Gorman, *Gender Stereotypes, Same-Gender Preferences, and Organizational Variation in the Hiring of Women: Evidence from Law Firms*, 70 AM. SOC. REV. 702, 702 (2005).

28. See RISMAN, *supra* note 7, at 29.

29. See *id.* at 24–25. The chapter in *Gender Vertigo* in which Risman presents this model focuses primarily on gender in marriage and family relationships. See *id.* at 35–43 (using marriage to analyze how interactional and institutional levels of gender structure affect individuals). However, I believe (and Risman elucidates elsewhere in the book) that her model can be usefully applied to studies of gender generally. See *id.* at 156–58 (advocating for the use of the gender as structure model to break down gender barriers in familial, as well as economic, interpersonal, and personal contexts).

dominant questions in the research, examining where among the three levels of analysis the existing research-based theories and empirical answers situate themselves. These questions include: (1) Why do men and women advance differently in their careers? and (2) Are women more or less satisfied with their legal careers than men?<sup>30</sup> In doing so, I summarize the available theories and highlight areas most ripe for continued research.

A. *Why do Differences in Career Attainment Exist Between Female and Male Lawyers?*

Empirical scholarship in the legal professional literature is dominated by inquiries into the disparities in career attainment. In this context, the research defines “career attainment” as the differences in pay and promotion to partnership within and among private firms. Consequently, advancement to law firm partnership is the frame of reference against which all other legal positions are compared. Consider the following as examples: “Have women successfully entered all legal specialties, practice settings, and higher echelons of status and influence?”<sup>31</sup> and “This is a study exploring women’s integration into large corporate law practices and their mobility within firms.”<sup>32</sup> To understand why career advancement falls along gendered lines, I summarize the work of other scholars and categorize their research according to Risman’s three levels of analysis. The analysis illuminates opportunities for research in areas that are currently underdeveloped within the legal professions literature, particularly legal careers outside of Big Law and the various pursuits that give meaning to lawyers’ personal lives besides having children.

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30. These questions are drawn in part from Fiona M. Kay and Elizabeth Gorman’s *Women in the Legal Profession*, which reviews approximately 250 books and articles in the field. See Kay & Gorman, *supra* note 5, at 300. While these are dominant questions, they are not the only questions being asked nor the only questions I considered for inclusion in this Article. Two other runners-up for consideration here were “Why do women attrite from the profession more than men?” and “How have women reshaped the substantive practice of law?,” also drawn from Kay and Gorman’s *Women in the Legal Profession*. *Id.* at 315, 320. Ultimately, I chose not to include them due to space constraints and my own evaluation of which questions present the most problematic empirical answers and theoretical explanations.

31. *Id.* at 300.

32. Cynthia F. Epstein, et al., *Glass Ceilings and Open Doors: Women’s Advancement in the Legal Profession*, 64 *FORDHAM L. REV.* 291, 302 (1995).

### 1. Individual Level of Analysis

First, I present research that illustrates how gender stratification is created and recreated at the individual level in the legal profession. Legal research generally labels this as the *gendered choice* model, though it is also known as the *gendered selves* theory.<sup>33</sup> This approach or model is “supply-side,” meaning that gender differences in careers are believed to be the result of choices made by individual female workers, who form a part of the labor supply in law firms. The predominant *gendered selves* research is based on the human capital theory, which is an economic model used to predict and explain differences in attainment between male and female lawyers.<sup>34</sup> In essence, human capital theory “[a]ttempts to explain gender differences as the result of efficiency and choice. According to this theory, individuals within the professions make efficient choices to invest in their own human capital (skills, contacts, etc.) in accordance with their personal interests and goals. Biological differences play an important, perhaps even determinant, role in these decisions.”<sup>35</sup> Under this model, women are less likely than men to possess the cognitive and technical skills that legal employers look for due to lower law school grades, less frequent participation in law reviews, poorer law school quality, fewer clerkships, or less on-the-job experience.<sup>36</sup> This results in disparate earnings based on sex, because, allegedly, women do the bulk of child rearing, therefore they acquire less experience and fewer job-related skills than men over the course of their legal careers.<sup>37</sup>

This supply-side rationale, though popular, has been largely disproven by significant empirical evidence. Numerous researchers

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33. Risman employs the term *gendered selves* in her writing because it encompasses biological and social determinism—theories that assume differences between men and women to be meaningful and enduring properties of individuals. See RISMAN, *supra* note 7, at 13–14.

34. See GARY BECKER, *HUMAN CAPITAL: A THEORETICAL AND EMPIRICAL ANALYSIS, WITH SPECIAL REFERENCE TO EDUCATION* (1964); Hull & Nelson, *supra* note 3, at 232.

35. Kathleen E. Hull & Robert L. Nelson, *Gender Inequality in Law: Problems of Structure and Agency in Recent Studies of Gender in Anglo-American Legal Professions*, 23 *LAW & SOC. INQUIRY* 681, 684 (1998). Proponents of this theory include Mincer and Polachek and Gary Becker, Nobel-prize winning economist, who expressed his belief in this theory in his 1991 book, *A Treatise on the Family*.

36. See Kay & Gorman, *supra* note 30, at 304, 309 (explaining but not endorsing the theory).

37. See Jacob Mincer & Solomon Polachek, *Family Investments in Human Capital: Earnings of Women*, in *ECONOMICS OF THE FAMILY: MARRIAGE, CHILDREN, AND HUMAN CAPITAL* 397, 425–26 (Theodore W. Schultz ed., 1974).

have verified that differences in lawyers' salaries and partnership attainment fall along gendered lines and persist over time, even after controlling for law school quality and other human capital factors.<sup>38</sup> Mary C. Noonan and Mary E. Corcoran present a compelling rebuttal to the human capital theory in their article, *The mommy track and partnership: Temporary delay or dead end?* They argue that individuals never make choices in a vacuum. Instead, each choice is informed—and often constrained—by numerous other factors. They write:

The distinction between institutional and personal constraints is fuzzy. For instance, a woman associate may “choose” to work part-time for several years, and this choice may reduce her chances of making partner. But this choice may be a response to discrimination within a firm, or this choice may be all that is available in a firm. Furthermore, the ‘choice’ itself may be strongly conditioned by the expectations of others—family, colleagues, the larger culture—expectations that do not constrain men’s labor supply choices.<sup>39</sup>

Moreover, within this critique, Noonan and Corcoran implicitly embrace Risman’s tri-level analysis by stressing the importance of paying attention to both interactional and institutional factors. They do so by highlighting the influence of others’ expectations and discrimination by the firm, rather than focusing only on the choices female lawyers make.

Kathleen E. Hull and Robert L. Nelson helped debunk choice theory in a 2000 article, *Assimilation, Choice, or Constraint? Testing Theories of Gender Differences in the Careers of Lawyers*. They collected information about lawyers’ career histories during personal

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38. For some empirical studies that highlight the flaws in the human capital theory, see, e.g., Hull & Nelson, *supra* note 3, at 234, 241, 246, 248, 259 n.9 (citing Kay and Hagan’s 1995 published research on Toronto lawyers that reflects lower partnership prospects in private firms for women after controlling for nongender variables, and Kay and Hagan’s 1998 published research on Ontario lawyers who began and remained in private firms that finds that “the very criteria for partnership decisions are gendered,” and concluding from their own research on Chicago lawyers that human capital factors such as law school prestige and class rank have no influence on the probability of holding a senior position in a firm or non-firm setting); see also Timothy T. Clydesdale, *A Forked River Runs Through Law School: Toward Understanding Race, Gender, Age, and Related Gaps in Law School Performance and Bar Passage*, LAW & SOC. INQUIRY 711, 732–33 (2004) (no statistically significant difference between genders in first-year grade point average; and women have higher final GPA based on 27,000 students who entered law school in 1991).

39. Mary C. Noonan & Mary E. Corcoran, *The Mommy Track and Partnership: Temporary Delay or Dead End?*, 596 THE ANNALS OF THE AM. ACAD. 130, 132, 146–47 (2004).

interviews with a random sample of 788 lawyers practicing in the city of Chicago in 1995, focusing on a subsample of 649 lawyers who graduated from law school in 1970 or later. They found that gendered difference in lawyers' careers (including disproportionate departure from private firms before earning partnership and overrepresentation in government and non-firm settings) persist even after controlling for lawyers' investment in their own human capital in law school and through practice experience.

Overall, research shows that gendered differences in career attainment cannot be explained purely by choice theory. Instead, women advance differently in their careers not only because of the choices they make, but also because of social interactions and institutional constraints that perpetuate gender inequality in the legal profession.

## 2. Interactional Level of Analysis

In addition to individual analysis, research within the legal profession explores gender from an interactional level of analysis, proposing that interaction between female lawyers and others explains the differences in career attainment. Generally, the literature in this area focuses either on hiring decisions or on mentoring relationships. It is important to note that though Risman calls research at the interactional level the *Doing Gender* theory of gender stratification, the scholars in this area have yet to formally or explicitly adopt the moniker.

First, the literature at the interactional level of analysis focuses on hiring decisions. Researchers—among them Cecilia Ridgeway, Elizabeth Gorman, and Barbara Reskin—have assessed these decisions. Ridgeway describes interactional processes as those that occur when organizational decisionmakers form impressions and evaluate employees or job candidates in face-to-face or mediated social encounters and then use those impressions and evaluations as the basis for selection decisions.<sup>40</sup> These selection decisions include hiring, task assignment, performance evaluation, and promotion. Reskin predicts that sex categorization by organizational decisionmakers triggers the application of cultural schemas<sup>41</sup> and favoritism towards their own sex.<sup>42</sup> Gorman applies both Ridgeway and Reskin's models and finds both to be true in large law firm

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40. See Cecilia L. Ridgeway, *Interaction and the Conservation of Gender Inequality: Considering Employment*, 62 AM. SOC. REV. 218, 218 (1997).

41. See Barbara F. Reskin, *Employment Discrimination and its Remedies*, in SOURCEBOOK OF LAB. MKT.: EVOLVING STRUCTURES AND PROCESSES 567, 589–90 (Ivar Berg & Arne L. Kalleberg eds., 2001).

42. See *id.*

settings. Specifically, she found that when selection criteria includes a greater number of stereotypically masculine characteristics, women constitute a smaller proportion of new hires and vice versa. Moreover, she saw that female decisionmakers tend to fill more vacancies with women than do male decisionmakers.<sup>43</sup>

Second, signaling or legitimacy theory, which is another means of interactional analysis, focuses on relationships between mentors and protégés. Signaling theory predicts that protégés gain legitimacy, recognition, exposure, and connections through their association with mentors.<sup>44</sup> The assumption behind this theory is that organizational decisionmakers, with incomplete and imperfect information about employees, rely on cues like employees' social relations when making personnel decisions.

Under this theory, research suggests that the gender of both the lawyer protégé and the mentor matters. While conducting a study for the Committee on Women in the Profession for the Association of the Bar of the City of New York, researchers interviewed associates and partners from eight corporate law firms in New York City. Respondents almost uniformly agreed that there were costs of being associated with female mentors, because they tended to be less politically powerful and less available.<sup>45</sup> Jean E. Wallace reaffirmed this finding in a 2001 article titled *The benefits of mentoring for female lawyers* in which she revealed that male-mentored female lawyers had greater earnings than female-mentored lawyers.<sup>46</sup> More recently, researchers tested and found support for the prediction that women with senior male mentors have the highest career returns: mentorship by powerful men sends a signal that the mentee possesses desirable qualities and competencies typically associated with her male peers.<sup>47</sup>

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43. See Gorman, *supra* note 27, at 703. Gorman analyzed survey reports from a National Directory of Legal Employers (NALP) sample. See *id.* at 708. She restricted her sample to "large firms" of more than thirty lawyers; the average firm in her sample had 258 lawyers across multiple offices. See *id.* Gorman's finding that female decisionmakers fill more vacancies with female compared to male decisionmakers had a diminished effect as women's share of high-ranking positions in a firm increased. See *id.* at 722.

44. See Aarti Ramaswami, et al., *Gender, Mentoring, and Career Success: The Importance of Organizational Context*, 63 PERS. PSYCHOL. 385, 386–87, 390 (2010).

45. See Epstein, *supra* note 32, at 353.

46. See Jean E. Wallace, *The Benefits of Mentoring for Female Lawyers*, 58 J. OF VOCATIONAL BEHAV. 366, 366 (2001). Wallace sent a survey to 1300 active members of the legal profession in a large metropolitan city in Western Canada. See *id.* at 373. She received and analyzed 512. See *id.*

47. See Ramaswami, *supra* note 44, at 399. The researchers collected mail-in survey data from 236 male and female graduates from a "relatively



Overall, although there is ample research examining gender disparities in the legal profession, very little of this research focuses explicitly on the interactions between individuals and the ways that such interactions perpetuate gender inequality in the legal profession (e.g. studying the conversations that women have with their colleagues, friends, family, or partners when considering major career shifts). Instead, the current research focuses generally on hiring decisions or on mentor-protégé relationships, which leaves unexplored the important relationships that lawyers have with others in their lives, including those outside of work, and how such relationships may contribute to enduring gender inequality in the legal profession.

### 3. Institutional Level of Analysis

Compared to the paucity of interactional-level analyses, there is ample research that uses an institutional approach to gender inequality for career attainment in the legal profession. These approaches focus on the legal profession as an institution, paying specific attention to how top-down policies and procedures contribute to gender inequality. These structural theories are sometimes called *gendered constraint* models because they examine how external constraints influence individual actions and decisionmaking.<sup>48</sup> These models indicate that firms often hold men and women to different standards in evaluating their skills, social networks, and cultural dispositions. Unlike *gendered choice* theories, which have generally been disproven by empirical research, *gendered constraint* models find wide support from those who have empirically tested them.<sup>49</sup>

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large and selective” private Midwestern law school; this represented a response rate of 21 percent. *Id.* at 392. Males and females in their sample were equally likely to have senior male mentors, and those who did had higher compensation, career progress satisfaction, and organizational position. *See id.* at 388–89. Further, their findings suggest that female lawyers with senior male mentors had higher career attainment than male lawyers with senior male mentors. *See id.*

48. *See* Kay & Gorman, *supra* note 30, at 323.

49. *See, e.g.,* Noonan & Corcoran, *supra* note 39, at 130, 143 (surveys of University of Michigan law school graduates showed that law school grades matter more for promotion for women for men); Kay & Gorman, *supra* note 5, at 310 (extrapolating from Kay & Hagan’s 1998 study of Ontario lawyers, *Raising the bar: the gender stratification of law firm capitalization*, that men’s affinity for firm culture and capacity for forming valuable social ties were taken for granted, while women must demonstrate their proficiency in these areas); Kay & Hagan, *supra* note 2, at 287–99 (finding from a survey of Toronto lawyers that women earn less than men in private practice and corporate settings, even when controlling for a host of human capital and practice-related variables).



Proponents of the institutional-level structural theory focus their research on the ways in which certain organizational practices and policies disadvantage women within private law firms. For example, researchers have found that ‘rainmaking demands’—that is, bringing in highly lucrative new clients—disadvantage women because, while women are able to perform their legal work as well as men, they lack the “benefit of access to the social networks that men use to develop business relationships.”<sup>50</sup> Similarly, extraordinarily long work hours,<sup>51</sup> with employers expecting their employees to be available 24/7, disadvantage women who, even as fulltime workers, continue to bear a disproportionate burden of domestic and childrearing labor in heterosexual partnerships.<sup>52</sup> Together, these kinds of policies marginalize women within private law firms, leading to pronounced gender disparity in career advancement.

Institutional-level research also focuses on gender stereotypes, discrimination, and harassment in legal workplaces. These facets of gender inequality can stretch beyond formal policies and procedures and can pervade the entire workplace, coloring the institution as a whole. Although bias and stereotyping occur within individual interactions, I discuss them at the institutional level here because they are not confined to these one-off interactions. Multiple studies demonstrate that gender stereotypes in the legal profession persist, especially as they relate to employers and employees.<sup>53</sup> These stereotypes include the assumption that women are less competent, motivated, and committed to their careers and that they are more suited for less challenging or low-profile career opportunities than men.<sup>54</sup> These stereotypes also assume that women, especially women with children or partners, will not have the availability to fulfill the same ‘rainmaking’ demands as their male counterparts.<sup>55</sup>

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50. Epstein, *supra* note 32, at 332.

51. A lack of provision of mentors at the institutional level is also considered within structural theories, though due to the nature of the interactional protégé-mentor relationship I believe that studying the substance of those relationships, rather than their mere existence or inexistence, is more appropriately placed at the institutional level.

52. See Hull & Nelson, *supra* note 3, at 232, 252; see also Fiona M. Kay, Stacey Alarie & Jones Adjei, *Leaving Private Practice: How Organizational Context, Time Pressures, and Structural Inflexibilities Shape Departures from Private Law Practice*, 20 IND. J. OF GLOBAL LEGAL STUD. 1223, 1260 (2013).

53. See Kay & Gorman, *supra* note 30, at 305–06.

54. See CYNTHIA F. EPSTEIN, WOMEN IN LAW 160–61 (1981); Cynthia F. Epstein, *Tinkerbells and Pinups: The Construction and Reconstruction of Gender Boundaries at Work*, in CULTIVATING DIFFERENCES: SYMBOLIC BOUNDARIES AND THE MAKING OF INEQUALITY 232, 244 (Michèle Lamont & Marcel Fournier eds., 1992).

55. See Epstein, *supra* note 32, at 331–33, 442.

Paradoxically, some lawyers and clients think that women lack the aptitude for certain ‘masculine’ tasks but then are rated lower when they adopt ‘masculine’ authoritative styles.<sup>56</sup> The literature also documents harassment and gender disparagement, through demeaning comments that undermine women’s authority and competence.<sup>57</sup> These include statements about female lawyers’ style of clothing in front of litigants, witnesses, and jurors, as well as statements by judges and other lawyers about the appropriate (i.e. traditional) role of women in society.<sup>58</sup>

#### 4. Gender Stratification Theory: A Catch-All

Much of the research in the gender and the legal professions field does not fit cleanly within Risman’s tripartite analysis. Researchers often approach their work from a particular level of analysis but then cannot explain why the gender disparity persists after controlling for many other variables. In response, researchers have created a “catch-all” theory that is called *gender stratification* theory. *Gender stratification* theory is a variation of the *gendered constraint* models discussed above. A catch-all theory is necessary because “even when women’s levels of work commitment and human capital investment are comparable to those of male peers, women do not enjoy comparable rewards. Work arrangements structure opportunities and rewards in the profession in ways that discriminate against women and impede their advancement.”<sup>59</sup>

A prominent application of this theory comes from Fiona Kay and John Hagan, who<sup>60</sup> tested human capital theory—or the *gendered selves* theory—using surveys of Canadian lawyers. They found that, even after controlling for other “human capital” variables like experience and law school background, gender is still a significant predictor of partnership attainment.

Gender stratification is the go-to explanation for the “puzzle” of the large gap between men and women law school graduates’ salaries, both before and after controlling for sex differences in human capital.<sup>61</sup> However, because gender stratification is used as a residual explanation after other explanatory variables have

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56. See DEBORAH L. RHODE, AM. BAR ASS’N COMM’N ON WOMEN IN THE PROFESSION, *THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION* 15 (2001).

57. See Kay & Gorman, *supra* note 30, at 306.

58. See Stephanie Riger et al., *Gender Bias in Courtroom Dynamics*, 19 *LAW & HUM. BEHAV.* 465, 470 (1995).

59. Hull & Nelson, *supra* note 35, at 684.

60. See generally Kay & Hagan, *supra* note 2.

61. See Noonan et al., *supra* note 2, at 867.

already been controlled for, the theories do not account for the reasons behind the persisting stratification. That is to say, identifying gender stratification does not explain *how* this stratification is created and perpetuated nor does it illuminate how it can be fixed. There is, perhaps, a small comfort in at least having a term for the inequality that studies repeatedly unearth, as it gives researchers a common language to use when puzzling over their findings. But how this stratification occurs, and why it persists—even when the choices and decisions of individual women are controlled for—remains a mystery.

In sum, the legal professions literature seeks to answer the question, “Why do differences in career attainment, like pay and promotion to partnership, persist between male and female lawyers?” Various theories exist to explain this enduring phenomenon, as do dozens of empirical studies seeking to test them. At the individual level of analysis, which I have called the *gendered selves* approach, gendered choice and human capital theories focus on the individual decisions and actions that lead to a particular career outcome. Interactional-level literature, called *Doing Gender*,<sup>62</sup> is relatively sparse. The interactional studies that do exist explore dynamics in hiring and mentorship. At the institutional level, the *gendered constraint* theory explains different outcomes by focusing on the profession-wide policies and procedures, as well as bias, discrimination, and stereotyping, that contribute to inequality between male and female lawyers. Finally, gender stratification serves as a catch-all theory when no other explanation for persistent inequality seems to fit.

B. *Are Women More or Less Satisfied With Their Legal Careers Than Men?*

The second important question within the literature is whether women are satisfied with their legal careers, and if so, how their levels compare to the career satisfaction of men. This is a complex research question due to a lack of consensus as to how “satisfaction” should be defined and measured.

The central issue in many studies is the “satisfaction paradox,” which is also known as “the paradox of the contented working woman:” despite being less satisfied with specific aspects of their work, female lawyers report overall job satisfaction that is equivalent to men’s satisfaction.<sup>63</sup> As researchers have found:

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62. See, e.g., West & Zimmerman, *supra* note 16.

63. Kay & Gorman, *supra* note 30, at 317.

One of the persistent puzzles is why the overall job satisfaction of female lawyers, in spite of their circumstances (work setting, income, work/family conflicts, etc.), is equivalent to that of males. When we examined their evaluations of more specific aspects of their employment, such as their chances for advancement, salary, and level of responsibility, we found that women were significantly (though not hugely) more likely than men to say that they would not again choose to become a lawyer. So we should be careful that we do not overstate the equivalence of men's and women's job satisfaction. Here again, however, the findings regarding lawyers mirror more general findings. Women's job satisfaction, regardless of occupational setting, has usually been found to be equal to—sometimes, greater than—that of men.<sup>64</sup>

In other words, women's job satisfaction overall seems to be greater than the sum of its parts.

Virtually all of the theories used to address the question of career satisfaction among men and women lie at the individual level of analysis. The studies that focus on the experiences of individual women find that women are happier with their careers than men, despite the inequalities in career attainment discussed in the previous Subpart. I found no theories or empirical tests addressing satisfaction from an interactional or institutional perspective. As discussed below, this suggests that research focused on interactions between lawyers and others, or research anchored at the institutional level, could help shed light on the 'satisfaction paradox' that has puzzled researchers for so many years.

### 1. Individual Level of Analysis

Researchers who explore career satisfaction from the individual level of analysis examine whether and how women and men differ in their subjective career satisfaction and enjoyment, and this is often gauged through survey instruments or interviews with individual lawyers. One approach utilized by some researchers is the *differential values* theory, which predicts that women's work satisfaction is determined by more subjective or intrinsic work characteristics than by objective, extrinsic characteristics, like

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64. John P. Heinz et al., *Lawyers and Their Discontents: Findings from a Survey of the Chicago Bar*, 74 *IND. L.J.* 735, 755 (1999).

salary.<sup>65</sup> The theory is both supported<sup>66</sup> and challenged<sup>67</sup> in the literature. Research that attempts to measure lawyers' satisfaction does so both in terms of career satisfaction and satisfaction with one's life generally. In one report, researchers analyzed satisfaction with both careers and work-life balance, finding that, despite the double burden borne by women with children, female law school graduates were generally more satisfied on both metrics.<sup>68</sup> However, these findings from 1989 were later contradicted by a 2007 study<sup>69</sup> which found that female lawyers were more despondent and depressed about their lives than men.<sup>70</sup>

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65. Carrie Menkel-Meadow, *Exploring a Research Agenda of the Feminization of the Legal Profession: Theories of Gender and Social Change*, 14 LAW & SOC. INQUIRY 289, 307-08 (1989).

66. See Fiona M. Kay & John Hagan, *Building Trust: Social Capital, Distributive Justice, and Loyalty to the Firm*, 28 LAW & SOC. INQ. 483, 510-11 (finding that extrinsic factors play a greater role in motivating men to leave firms than women, whose exit plans are guided by a lack of intrinsic rewards).

67. See Kathleen E. Hull, *The Paradox of the Contented Female Lawyer*, 33 LAW & SOC'Y. REV. 687, 687-702 (1999). Hull's study analyzed data from a Chicago lawyers survey, measuring satisfaction with job context (extrinsic components of satisfaction like salary, advancement, policies and administration of firm, prestige of firm, recognition, supervisors, and opportunities for pro bono work) and job content (intrinsic components of satisfaction like control over amount and manner of work, level of responsibility, content of work, relations with colleagues). See *id.* Hull found that content and context scores both predicted overall satisfaction with similar effects for men and women. See *id.* at 693. Chiu (1998) analyzed a 1990 National Survey of Lawyer's Career Satisfaction and found that women report lower overall job satisfaction, based on four aspects of their work: (1) influence/promotional opportunity, (2) financial rewards, (3) noncompetitive atmosphere, and (4) time, supporting the assertion that women have the same expectations as professional men. See Charlotte Chiu, *Do Professional Women have Lower Job Satisfaction than Professional Men? Lawyers as a Case Study*, 38 SEX ROLES 521, 530 (1998).

68. See David L. Chambers, *Accommodation and Satisfaction: Women and Men Lawyers and the Balance of Work and Family*, 14 LAW & SOC. INQUIRY 251, 287 (1989).

69. See John Hagan & Fiona M. Kay, *Even Lawyers Get the Blues: Gender, Depression, and Job Satisfaction in Legal Practice*, 41 LAW & SOC'Y REV. 51, 54 (2007).

70. Hagan and Kay analyzed a three-wave mail-in survey study of Toronto lawyers. Their sample consisted of 436 men and women lawyers. See *id.* at 58. There is room to argue that Chambers' findings are unrepresentative of the average lawyer, given his exclusive focus on graduates from the elite program at the University of Michigan. Kay and Gorman note that, "[Chambers'] findings may be unique to graduates of elite law schools. After all, the sample consisted of graduates from a highly ranked law school, many of whom were rewarded with lucrative careers and the means to afford extensive in-home childcare and other household services, thereby reducing work/family conflict." Kay & Gorman, *supra* note 30, at 317. With 205 ABA-approved J.D. programs in the United

In their 2007 article, *Even Lawyers Get the Blues: Gender, Depression, and Job Satisfaction in Legal Practice*, John Hagan and Fiona Kay explored the satisfaction paradox, identifying three ways that gender indirectly causes job dissatisfaction for women. First, women have lower occupational power and thus higher rates of despondency and feelings of powerlessness. Second, women are more likely than men to perceive themselves to be powerless, even outside of the occupational realm, which indirectly contributes to career dissatisfaction. And third, women feel despondent when they consider the career consequences of having children, because they expect that advancing in their legal careers will become more difficult. The authors suggest that these realities create the aforementioned satisfaction paradox, because women are more likely than men to internalize their negative feelings, rather than externalize them “through protests about work dissatisfaction.”<sup>71</sup> Overall, this research suggests that women and men may react differently to challenges at work, with women “more likely to privatize” and men more likely to “publicize” their professional troubles.<sup>72</sup>

Some research implies the *differential values* theory without explicitly applying it.<sup>73</sup> Ronit Dinovitzer and Bryant Garth analyzed data from the *After the JD (AJD)* study, a national longitudinal survey of law school graduates. They found that women were significantly more satisfied than men with the substance of their work but less satisfied with certain aspects of work. Their dissatisfaction exceeded that of men in regards to job setting, workplace diversity, opportunities for pro bono work, and the social value of their work. Women were also more dissatisfied with what the authors call the “power track” aspects of their work, including compensation and opportunities for advancement. These results may hint at differential values: that is, men and women experience dissatisfaction differently in different aspects of their work. The authors suggest that “well-established structures of inequality in the profession” help explain why women are less satisfied than men with certain aspects of their work, but these same structures do not

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States, there is plenty of reason to agree with Kay and Gorman that graduates of the top ten ranked law schools may not be representative of lawyers at large. Many other studies rely on data from Canadian lawyers. *See generally*, Kay & Hagan, *supra* note 2; Hagan & Kay, *supra* note 66. Given differing policies like parental leave and universal healthcare, plus ideological differences between the governments of the United States and Canada, there is reason to doubt whether research from Canada should be generalized to U.S. lawyers.

71. Hagan & Kay, *supra* note 69, at 56.

72. *Id.* at 69.

73. *See e.g.*, Ronit Dinovitzer & Bryant Garth, *Lawyer Satisfaction in the Process of Structuring Legal Careers*, 41 *LAW & SOC'Y REV.* 1 (2007).

explain why female lawyers report higher levels of satisfaction in other areas of their professional lives.

Another theory addressing the question of female lawyers' satisfaction is *reference group differences and perceived justice*, which argues that working women compare themselves only to other women or to women who stay at home.<sup>74</sup> This theory suggests that, as the result of these limited comparisons, women might have lower expectations or a lower sense of personal entitlement, making them more easily satisfied.<sup>75</sup>

A third theory is *relative deprivation*, which explains the satisfaction paradox by suggesting that female lawyers have "made peace with second best"<sup>76</sup> or are socialized not to express discontent.<sup>77</sup>

A fourth theory that addresses the satisfaction paradox from an individual point of view is *role spillover*,<sup>78</sup> also known as *synergy between roles*.<sup>79</sup> This theory holds that a woman's satisfaction with family life leads to increased satisfaction at work. In a study of surveys completed by University of Michigan law graduates,<sup>80</sup> David Chambers found that women with children continue to bear the principal responsibilities for the care of their children, but that they are more satisfied with their careers and with their work-life balance than men.<sup>81</sup> Chambers suggests that:

Many women with children say that they are especially satisfied with their careers because they really have something to feel especially good about. Their days are extremely busy, but they are succeeding simultaneously in several important spheres in their lives. They enjoy their family lives. They enjoy their jobs. And to the extent that each causes stress, *each also provides respite from the other*.<sup>82</sup>

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74. See Randy Hodson, *Gender Differences in Job Satisfaction: Why Aren't Women More Dissatisfied?*, 30 Soc. Q. 385, 385-86 (1989).

75. See FAYE J. CROSBY, *RELATIVE DEPRIVATION AND WORKING WOMEN* (1982); Brenda Major & Blythe Forcey, *Social Comparisons and Pay Evaluations: Preferences for Same-Sex and Same-Job Wage Comparisons*, 21 J. EXPERIMENTAL SOC. PSYCHOL. 393, 403 (1985); Jo Phelan, *The Paradox of the Contented Female Worker: An Assessment of Alternative Explanations*, 57 Soc. PSYCHOL. Q. 95, 95 (1994).

76. Chambers, *supra* note 68, at 280.

77. Hodson, *supra* note 74, at 396.

78. See Jeffrey Greenhaus & Saroj Parasuraman, *Research on Work, Family, and Gender: Current Status and Future Directions*, in HANDBOOK OF GENDER AND WORK 391, 392 (Gary N. Powell ed., 1999).

79. See *id.*

80. Chambers surveyed University of Michigan graduates from the classes of 1976 through 1979. See Chambers, *supra* note 68, at 260.

81. See *id.* at 251-52.

82. Chambers, *supra* note 68, at 282 (emphasis added).



Chambers' view finds some support in recent literature, including from Jean E. Wallace, who suggested that fulfilling multiple, diverse roles generates new energy and leads to self-enhancement.<sup>83</sup> However, this contradicts Hagan and Kay's findings that women lawyers are more likely to feel depressed and despondent about their work than men.<sup>84</sup> Ultimately, there is no consensus in the literature about whether female lawyers are actually more satisfied than their male counterparts, especially given the difficulty of defining "satisfaction" and of measuring it in studies large enough to generate generalizable findings.

In sum, multiple theories exist to explain the satisfaction paradox of female lawyers. Some researchers find that women are less satisfied with their careers;<sup>85</sup> others find equal career satisfaction between men and women;<sup>86</sup> some suggest that women are happier than men when considering work and family life;<sup>87</sup> and still others find that women report similar levels of job satisfaction as do men but are nonetheless more likely to be depressed.<sup>88</sup> There is little coherence and uniformity among these findings, due, in part, to the differing conceptions of satisfaction and how it is best measured.

### III. DISCUSSION

In the previous Part, I explored the two questions that dominate the gender disparity research in the legal profession: (1) Why do men and women advance differently in their careers? and (2) Are women more or less satisfied with their legal careers than men? I surveyed the relevant research in order to analyze it according to Risman's tripartite model, which suggests that gender inequality is created and recreated at the individual, interactional, and institutional levels. In this Part, I explore the limitations of the preceding research and the implications of such limitations. Notably, I discuss the ways in which interactional-level analysis is thin, owing to inadequate ethnographic research methods. I propose refocusing research efforts on examining the day-to-day lived experiences of male and female lawyers. This will help us better understand the

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83. See Jean E. Wallace, *Can Women in Law Have it All? A Study of Motherhood, Career Satisfaction and Life Balance*, in 24 *PROFESSIONAL SERVICE FIRMS: RESEARCH IN THE SOCIOLOGY OF ORGANIZATIONS* 283, 299–303 (Royston Greenwood & Roy Suddaby eds., 2006).

84. See Hagan & Kay, *supra* note 69, at 58.

85. See Chiu, *supra* note 67, at 532.

86. See Hull, *supra* note 67, at 688.

87. See Chambers, *supra* note 68, at 274.

88. See Hagan & Kay, *supra* note 69, at 58.



processes by which lawyers make the decisions that fundamentally shift the course of their legal careers and personal lives.

A. *Individual Level of Analysis: A Call to Focus on Intersectional Identities and Geographic Variation Among (Women?) Lawyers*

In this Subpart, I argue that research at the individual level of analysis would be enriched by focusing on two areas that are currently understudied. First, focusing research on female lawyers with intersectional identities, especially those with differing racial and class identities, we would increase our collective understanding of gender inequality. This would supplement the growing body of research that sheds light on the many challenges faced by women who experience multiple forms of oppression.<sup>89</sup> Second, researchers should study the range of experiences of female lawyers across geographical locations. This would help provide insight into whether the experience of being a female lawyer differs in meaningful ways depending on where one works, e.g. between urban and rural areas.

This Article has focused on heteronormative gender issues to the exclusion of other important intersectional identities including race, sexual orientation, non-cisgender identities, etc. Yet, there is ample evidence that lawyers with intersectional identities face particular challenges in the legal profession. In fact, former Chair of the American Bar Association (ABA) Commission on Women in the Profession, Pamela J. Roberts, wrote in 2006 that:

[w]omen of color experience a double whammy of gender *and* race . . . Women of color may face exclusion from informal networks, inadequate institutional support, and challenges to their authority and credibility. They often feel isolated and alienated, sometimes even from other women.<sup>90</sup>

Moreover, in 2004, the ABA's Commission on Women surveyed women of color who had shared their contact information with the Commission.<sup>91</sup> The survey revealed that 62 percent of women of color reported being excluded from formal and informal networking opportunities, compared to 60 percent of white women

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89. See, e.g., Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, 1989 U. OF CHI. LEGAL F. 139 (1989); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

90. JANET E. GANS EPNER, A.B.A. COMMISSION ON WOMEN IN THE PROFESSION, *VISIBLE INVISIBILITY: WOMEN OF COLOR IN LAW FIRMS* vii (2006).

91. The study's total sample size was 920 lawyers. See *id.* at xi. Of those, 437 were women of color. See *id.*

and four percent of white men. Further, 67 percent of women of color wanted more and better mentoring by senior attorneys and partners, compared to 32 percent of white men.<sup>92</sup> These statistics underscore that lawyers with multiple marginalized identities—especially women who are racial minorities—face profoundly different challenges and experience the legal profession differently than white lawyers.

However, the dearth of available data, especially that gleaned from nationwide studies, limits knowledge creation about the experiences of lawyers with intersectional identities.<sup>93</sup> Deborah L. Rhode, who authored a 2001 study for the American Bar Association Commission on Women in the Profession, explains that “[d]ata is hard to come by because research on race and gender differences rarely considers women of color as a separate category.”<sup>94</sup> This is at least in part because the quantitative research in sociology and other social sciences depends on generalizing from small samples, and there are exceedingly small numbers of minority female lawyers to begin with. In fact, in 2019, only five percent of lawyers were African American, a proportion that has remained virtually unchanged since 2009.<sup>95</sup> Data from 2018 revealed that in firm settings, black women comprised only 2.55 percent of associates and 0.68 percent of partners.<sup>96</sup> Moreover, a 2017–2018 National Association for Law Placement survey of 1063 law offices found that 45 percent did not have a single minority woman partner and nearly 20 percent did not have a single minority woman associate.<sup>97</sup>

Given that there are, unfortunately, still so few lawyers with intersectional identities,<sup>98</sup> our current research practices create a

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92. *See id.* at 35–36.

93. *See, e.g., NALP Bulletin: Women and Minorities at Law Firms—Additional Findings for 2017*, NALP (May 2018), <https://www.nalp.org/0518research> [<https://perma.cc/KQ8E-WJL4>].

94. Rhode, *supra* note 56, at 40.

95. *See ABA National Lawyer Population Survey*, A.B.A. (2019), [https://www.americanbar.org/content/dam/aba/administrative/market\\_research/national-lawyer-population-demographics-2009-2019.pdf](https://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-demographics-2009-2019.pdf) [<https://perma.cc/4DUF-UVBF>]. The percentage of lawyers who identify as African American has remained unchanged since 2009. *See id.* One limitation of the ABA’s population survey, however, is that only 16–22 states reported statistics on race/ethnicity each year between 2009 and 2019. *See id.* In 2019, for example, only 20 states reported. *See id.*

96. *See A.B.A., ABA PROFILE OF THE LEGAL PROFESSION 69* (2019), <https://www.americanbar.org/content/dam/aba/images/news/2019/08/ProfileOfProfession-total-hi.pdf> [<https://perma.cc/NQ37-R8C3>].

97. *See NALP, supra* note 93.

98. *See A.B.A., supra* note 95. The American Bar Association’s 10-Year Trend in Lawyer Demographics shows that, in 2019, 64 percent of active

cycle whereby the experiences of already marginalized individuals remain invisible; studies continue to focus on the population that is easiest to study through largescale sampling: white men. Because lawyers with intersectional identities are a small population, using large sampling does not capture their experiences. Instead, alternative research methods like targeted surveys and ethnographic research should be used to ensure that intersectional identities in the legal profession are not further marginalized. I propose such ethnographic research methods below.

Additionally, researchers should look more closely at those who fall at the intersection of gender and class, because income and wealth have significant implications for the lives of lawyers. A female lawyer who makes \$35,000 at a nonprofit organization faces entirely different challenges than does a female lawyer who is a partner in a private firm. Even within a single legal organization, a junior attorney who is at the bottom of the firm's pay scale and who likely has significant education debt faces different obstacles than a senior attorney in the same firm. For example, higher incomes may allow a lawyer to hire someone to help with childcare and other tasks necessary for the maintenance of daily life, such as cooking and cleaning. Even within private firms, there are vast class differences between associates and partners.<sup>99</sup> It is not possible to examine the experience of women in the legal profession without paying particular attention to the position within each firm's hierarchy that they occupy, and the differential resources that these hierarchical positions entail.

Further, studies must account for geographical differences when assessing lawyers at the intersection of gender and class. The same salary will not buy the same goods and services everywhere, but the national surveys on which most studies are based fail to account for this disparity. Cost of living varies greatly across and within counties and cities around the country.<sup>100</sup> Quality of life and

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attorneys were men (based on 44 states reporting) and 85 percent of active attorneys were white (based on 20 states reporting). *See id.* This report sorts separately by gender and race and does not provide the racial breakdown by gender. *See id.*

99. Anecdotally, the author worked for a plaintiffs' side firm in which entry-level associates are paid around \$90,000 but partners reportedly earn \$5 million each. The author, the sole income-earner in her family, has a child the same age as her supervising partner, whose husband is also a partner. One can easily envision the vast lifestyle differences (childcare, housing, other household help, etc.).

100. Dinovitzer & Garth found, from data from the *After the JD (AJD)* longitudinal study of law school graduates, that "living in a metropolitan area decreases satisfaction." They explain this finding by suggesting that "working

the balancing of professional and familial responsibilities may be more easily achieved in places where housing, childcare, and other services are more affordable. Some places require an exponentially greater income to achieve the same quality of life. Thus, the research should explore variation in lawyers' experiences across geography because it would illuminate the ways in which female lawyers' lives, experiences, and challenges are not uniform across the country. Instead, women face distinct challenges which vary according to a wide number of factors, geographic location included.

### B. *Interactional Level of Analysis*

Within the literature on the legal profession, there is a general lack of theorizing and testing at the interactional level of analysis. While many studies in the literature seek to explain, for example, the persistent gap in earnings between genders, they largely do so from an institutional level of analysis.<sup>101</sup> In this Subpart, I argue that an increased use of interactional-level analysis may help explain the “puzzle” of continued gender discrepancies in the legal profession. I further assert that interactional, ethnographic research methodologies (e.g., projects in which the researcher is actually embedded in a law office for an extended period time) may help answer the questions still lingering from existing survey-based literature.

Very little scholarship examines the interactional level when addressing the career attainment question, and virtually no interactional studies address the satisfaction question. This is unfortunate because interactional studies can help fill gaps in our understanding when it appears that women and men want equality and that legal employers and institutions, at least nominally, do too. The interactional level, which Risman describes as embodying cognitive images<sup>102</sup> and cultural expectations, creates limitations that are not

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life in large cities—with its higher cost of living and longer commutes—is in and of itself a more challenging experience.” Dinovitzer & Garth, *supra* note 73, at 20.

101. Notable exceptions include EPSTEIN, *supra* note 12, at 84; *see also* CYNTHIA F. EPSTEIN ET AL., *THE PART-TIME PARADOX: TIME NORMS, PROFESSIONAL LIFE, FAMILY AND GENDER* (1999) (exploring how cultural perspectives of what it means to be a ‘true professional,’ regardless of office policies, can influence individual decisionmaking process, but specifically in the decision to work part-time). Another exception is a study by Epstein, finding that even when a firm’s official policy states that family leaves and part-time work do not disqualify women from partnership, women law firm associates reported during qualitative interviews that they had been assigned less important cases and labeled as less motivated after having worked part-time. *See* Epstein, *supra* note 32, at 395–98.

102. Cognitive images are “abstractions” or “unwritten rules and unspoken beliefs” that “we have learned . . . over time both from interaction with

adequately recognized. Specifically, cultural boundaries continue “to impose controls on free choice and often limit the possibilities promised by an ideology of equality between the sexes.”<sup>103</sup> That is, individuals go about their day-to-day lives with ideas in their heads about how people ought to act, and these normative ideas about gender have the power to shape and constrain behavior even for those who aspire to gender equality. In the aforementioned article, Rhode describes the necessity of an interactional approach:

The most important factor in ensuring equal opportunity for women in the legal profession is a . . . commitment that is reflected in both *institutional* and *individual* priorities.”<sup>104</sup>

Thus, future research questions and research methods must be oriented to the interactional level, focusing explicitly on the ways in which lawyers engage with their friends, partners, and professional colleagues within legal hierarchies.

Researchers should consider the following questions: who influenced the woman when she decided to attend law school and when she decided to practice in a particular area of law;<sup>105</sup> with whom does she consult when she decides to take a job in a large firm, when she contemplates leaving that firm, or when she considers modifying her work hours; who guides her when she decides to forego having children to focus on her career, when she seeks out a mentor, or when she decides to take on a protégé? Certainly, women do not navigate their careers alone, and the interactions with those who most closely advise them—including friends, families, romantic partners, spouses, coworkers, religious figures, and other mentors—are fertile sites to examine the reproduction of what so many hundreds of empirical studies have shown to be enduring inequality in the careers of male and female lawyers.

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others and through cultural images from television, movies, and other media.” RISMÁN, *supra* note 7, at 32.

103. CYNTHIA F. EPSTEIN, *Border Crossings: The Constraints of Time Norms in Transgressions of Gender and Professional Roles*, in *FIGHTING FOR TIME: SHIFTING BOUNDARIES OF WORK AND SOCIAL LIFE* 317, 318 (Cynthia F. Epstein & Arne L. Kalleberg eds., 2004).

104. Rhode, *supra* note 56, at 10 (emphasis added).

105. Gorman, *supra* note 27, at 724. Gorman notes that “because application is easy and relatively costless, candidates tend to apply to large numbers of establishments and wait to see which ones respond favorably, instead of making a careful selection before application.” *Id.* The selection of job offer among various potential options is one site for interactional research. *See id.*

### 1. Interactions Between Lawyers, Especially Regarding Mentorship

Few, if any, studies exist on interactions between peer lawyers. Instead, in addressing the question of career attainment, researchers focus on hierarchical relationships and the decisions of a firm's leadership. Law firms are notoriously and increasingly pyramidal,<sup>106</sup> with only a few partners sitting atop an enormously expanded group of associates. This means that a vast majority of a lawyer's daily interactions, at least in the firm setting, are likely to be with fellow associates. It is therefore important to understand how relationships between associates influence career outcomes for men and women. When women interact with their colleagues, the cognitive images that each party brings to the interaction—that is, the ideas about the “proper” roles of men and women—contribute to the creation and reinforcement of longterm disparities in the careers of male and female lawyers.

Mentorship relationships provide another rich site for exploration at the interactional level. Interactional level research should include more in-depth examinations of attorneys and those they mentor, as well as those who are mentored by them. The mentorship literature previously discussed suggests one means by which inequality in the workplace is perpetuated: through mentoring relationships between lawyers and their superiors and through professional relationships between female lawyers generally. This research establishes that there are different returns on mentor-protégé relationships, depending on the gender of the mentor. But other forms of mentorship need to be explored, with specific attention paid to whether female lawyers will help younger female lawyers. In their interviews with female lawyers, who themselves were mentors, researchers noted that some women were deeply ambivalent about mentoring.<sup>107</sup> Some expressed feelings of guilt for not being more available, but felt they could not be due to time constraints. Other women cited generational envy, questioning “whether women of the younger generation in the firms should be nurtured in ways that female partners were not.”<sup>108</sup> Another study showed that when all new hires were considered together, firms with female hiring partners filled a higher proportion of positions with women.<sup>109</sup> The percentage of female partners has risen since those

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106. See JOHN R. SUTTON, LAW/SOCIETY: ORIGINS, INTERACTIONS, AND CHANGE 256, 265–66 (2001).

107. See Epstein, *supra* note 32, at 354–55.

108. *Id.*

109. See Gorman, *supra* note 27, at 722.

studies were conducted: 12.27 percent in 1993<sup>110</sup> and 21.5 percent in 2016.<sup>111</sup> With an increasing number of female partners, there will likely be an increase in female mentors charged with making hiring decisions and mentoring junior associates. However, the most recent literature focuses almost exclusively on male mentors.<sup>112</sup> As more women attend law school and then enter the legal profession, the question remains: will and do accomplished female lawyers “pull up the ladder behind them”?<sup>113</sup> Exploring the mentoring relationships among present-day female lawyers would bring the related literature up-to-date and would provide important insight into the reproduction of gender inequality via intragender dynamics.

## 2. Interactions Between Lawyers and Their Families, Friends, and Peers

Interactional-level studies between women and their significant others is another research area that can illuminate why gender inequality continues to plague the legal profession. Law is one of the professions in which intermarriage is most common. In fact, 45 percent of female lawyers are married to men who are also lawyers,<sup>114</sup> and in 2014 the U.S. Census Bureau found that, with men included, most lawyers marry other lawyers.<sup>115</sup> This means that, for many female lawyers, their partners and the fathers of their children are also lawyers. However, the number of fathers who take parental leave is so small that it cannot be meaningfully researched.<sup>116</sup> Similarly, researchers have found that “[m]any women lawyers (and virtually no men lawyers) with children trade reduced work hours and reduced earnings for more time with their children.”<sup>117</sup>

Despite the fact that so many female lawyers are married to other lawyers, we know very little about the dynamics within these couples. Studies of gender in the legal profession tend to focus

110. See Aviva Cuyler, *Diversity in the Practice of Law: How Far Have We Come?*, GPSOLO MAGAZINE, Sept./Oct. 2012, at 10, 12.

111. *A Current Glance at Women in the Law*, A.B.A. 2 (2016), [https://www.americanbar.org/content/dam/aba/administrative/women/current\\_glance\\_statistics\\_may2016.pdf](https://www.americanbar.org/content/dam/aba/administrative/women/current_glance_statistics_may2016.pdf) [<https://perma.cc/F6PG-M8GP>].

112. See, e.g., Aarti Ramaswami, et al., *The Interaction Effects of Gender and Mentoring on Career Attainment: Making the Case for Female Lawyers*, 37 J. CAREER DEV. 692, 692 (2010).

113. Ben A. Barres, *Does Gender Matter?*, 442 NATURE 133, 134 (2006).

114. See Chambers, *supra* note 68, at 263.

115. See Steven Chung, *Back in the Race: So Who Do Lawyers Commonly Marry? A Chart Will Tell You*, ABOVE THE L. (Feb. 17, 2016), <https://abovethelaw.com/2016/02/back-in-the-race-so-who-do-lawyers-commonly-marry-a-chart-will-tell-you> [<https://perma.cc/SG2A-LV6P>].

116. See Kay & Gorman, *supra* note 30, at 309.

117. Noonan et al., *supra* note 2, at 868.



on a woman's professional experience, without examining how interactions with a woman's partner—who is likely to be a lawyer himself—may contribute to continued gender inequities. We know very little, for example, about when and how decisions about family leave and family responsibilities are made, but the process of making such decisions likely contributes to the gender disparity we see in the legal profession. Each member of a partnership brings to these conversations cognitive ideas about normative gender roles, and these cognitive images likely lead to decisions that further perpetuate the kinds of inequalities in career attainment discussed in this Article.

Overall, research questions should take a more holistic approach to a female lawyer's social interactions and consider her experiences: at home with her children and with a significant other; at work with coworkers, clients, bosses, and subordinates; in the courtroom with judges, juries, and opposing counsel; and in social lives with friends, romantic partners, acquaintances, and strangers. Many of the important decisions in a female lawyer's life are made with input from these other parties, but we know very little about how such conversations go. Without insight into these interactions, we cannot fully understand how others influence a woman's decision to attend law school, to pursue a particular field of legal practice, to decide to have (or forego having) children, or to scale back on work to engage in other pursuits. Across all of these spheres and within these various relationships, a woman's experience is likely more nuanced and the impacts of interactional influences more substantial than any existing empirical research can actually measure. Thus, more targeted research methods are necessary if we are to understand how a female lawyer's interactions likely perpetuate the gender disparities we see within the legal profession.

### 3. Broadening Research Methodologies to Include Interactional Methods

Not only do researchers neglect interactional theories when attempting to answer questions about gender inequality in the legal profession, they also neglect research methods that require extensive interactions between researcher and research subject. Despite the volume of work that theorizes about institutional-level forces, few researchers have actually penetrated the institutions and organizations that they seek to study. The result is that research employing interactional methods of data collection—namely, ethnography—is sorely lacking. Though sending mail-in surveys to lawyers has been effective in demonstrating that the legal field still



suffers from gender inequality,<sup>118</sup> these methods have yet to provide a satisfactory answer to why this inequality exists or how it can be remedied.

Existing studies consist primarily of reviewing surveys with large sample sizes—known generally as ‘large-n’ surveys—and this presents a number of advantages and disadvantages. One advantage of relying on these surveys is that the data is already collected for researchers, so they need only to analyze the information. In past studies, researchers have been able to draw from extensive data sets, like the University of Michigan surveys<sup>119</sup> and the ABA’s longitudinal “After the JD” study,<sup>120</sup> which followed the career trajectories of three lawyer cohorts beginning in 2002.<sup>121</sup> Another benefit of large national surveys is that they can be generalized to a greater population of lawyers, helping us understand the experiences of women lawyers writ large. Thus, it is no surprise that researchers—especially those working at large, Research 1 institutions (i.e., those institutions that are classified as conducting the highest level of research activity by the Carnegie Classification of Institutions of Higher Education) often use largescale surveys in their work in order to draw generalizable conclusions from their empirical analyses.

There are, however, limitations to the research that relies on quantitative data drawn from largescale surveys. Kathleen Hull and Robert Nelson, for example, highlight the inability of empirical studies to dig deeper into why correlations between gender and career attainment persist. Their interviews with nearly 800 lawyers practicing in Chicago in 1995 revealed a correlation between work-family tensions and constrained career opportunities. But the researchers were unable to decipher from their interviews why

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118. See Kay & Gorman, *supra* note 30.

119. See, e.g., Chambers, *supra* note 68; Kenneth G. Dau-Schmidt & Kaushik Mukhopadhyaya, *The Fruits of Our Labors: An Empirical Study of the Distribution of Income and Job Satisfaction Across the Legal Profession*, 49.3 J. OF LEGAL EDUC. 342, 343 (1999); Noonan et al., *supra* note 2; Noonan & Corcoran, *supra* note 39.

120. See Ronald L. Hirsch, *Will Women Leave the Law?*, 16 BARRISTER 22, 22 (1989); Ronald L. Hirsch, *National Survey of Lawyer's Career Satisfaction, Wave I, 1984, and Wave II, 1990*, INTER-UNIV CONSORT. POLIT. & SOC. RES. (1992); David N. Laband & Bernard F. Lentz, *The Effects of Sexual Harassment on Job Satisfaction, Earnings, and Turnover Among Female Lawyers*, 51 INDUS. & LAB. REL. REV. 594, 594–95 (1998).

121. See Dinovitzer & Garth, *supra* note 73. The After the JD (AJD) study is a longitudinal study that follows the careers of new lawyers over the first ten years following their law school graduation. See WILDER, *supra* note 1, at 5. The first cohort was surveyed in 2002, the second in 2007, and the third in 2012. See *id.*

such constraints result from work-family tensions or why women move into legal positions that require fewer working hours.<sup>122</sup> By failing to capture the lived reality of women and their daily interactions with their spouses, coworkers, and bosses, we are still unable to “neatly disentangle” the decisionmaking processes that result in women moving into less demanding legal positions.<sup>123</sup>

In a 2010 study of mentorships in the legal profession, the authors emphasized the need to use different research methods to explore the gender disparity. They note:

A weakness of our study is that we did not measure these processes directly. Indeed, doing so will require a new approach. Most prior research has collected information on mentoring from protégés. To understand whether mentors help protégés overcome gender stereotyping will require in-depth data collection from mentors and those making promotion and partnership decisions. Other aspects of the mentoring process may be behind the scenes, not readily observable to the protégé.<sup>124</sup>

The information that these authors call for cannot be gathered through largescale surveys or easily quantified. For example, a survey administered to protégés would fail to capture any aspects of the mentoring process that occur “behind the scenes.” In-depth interviews with or observation of lawyers who are mentored by others, as well as lawyers who mentor others, could provide critical insight into these processes.

Lastly, the research methodologies presently used make learning about the experiences of lawyers with intersectional identities much more difficult. With so few lawyers of intersectional identities, current research methodology helps to obscure the experiences of already marginalized individuals by focusing on white male lawyers, who constitute most of the population available for largescale sampling. After all, “measurement makes things visible, while the unmeasured disappear.”<sup>125</sup> Thus, researchers should employ alternative research methods like targeted surveys and ethnographic observation to ensure that intersectional identities are not further overlooked.

In the end, gender disparity is an issue that affects more than just our professional lives. Surveys cannot adequately portray the lived experiences of women across the multiple sites in their

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122. See Hull & Nelson, *supra* note 3, at 252.

123. See *id.*

124. Ramaswami et al., *supra* note 112, at 708.

125. SALLY ENGLE MERRY, THE SEDUCTIONS OF QUANTIFICATION: MEASURING HUMAN RIGHTS, GENDER VIOLENCE, AND SEX TRAFFICKING 219 (2016).

lives—from their homes, to their offices, to the places where they go for recreation or worship. By focusing on Risman's notion of gender as a ubiquitous structure with implications on the individual, interactional, and institutional levels, we can uncover how, when, and where gender inequalities are reified and reinforced. Thus, Risman's framing requires a different kind of sociological work, one where researchers embed themselves in law offices to closely observe and even participate in repeated interactions among lawyers and their most influential contacts.<sup>126</sup> If researchers gain access to the interactions that otherwise happen behind the scenes, they could, perhaps, resolve the many questions unanswered by the survey-based literature.

C. *Institutional Level of Analysis: Gender Inequality is About More Than Women Raising Children*

When studies take an institutional approach to examining gender inequality in the legal field, the problem is usually seen as at least indirectly linked to birthing and raising children. Women's participation in the legal profession is understood to be "limited by the ongoing need to do two jobs ('the double day'), working in both the home and in the labour market."<sup>127</sup> Therefore, while attempting to study gender inequities in the legal profession, research may unintentionally lead to the conception of "work-life" balance as a women-only issue, with "children" being the overwhelming focus of the "life" part of that illusory balance. But the profession's demands do not fall on women alone. The legal profession prioritizes around-the-clock availability from all its members, men and women alike. A 1996 *Harvard Law Review*<sup>128</sup> study argued that high billable-hour requirements create a "time famine" among lawyers, which ultimately reduces time for everything else, including family, community service, pro bono work, scholarship, and education.<sup>129</sup> These requirements range between 1,700 and 2,300 hours a year.<sup>130</sup>

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126. See Barbara B. Kawulich, *Participant Observation as a Data Collection Method*, 6 F.: QUALITATIVE SOC. RES. (May 2005), <http://nbn-resolving.de/urn:nbn:de:0114-fqs0502430> [<https://perma.cc/Q7T6-T8LN>].

127. Ivana Bacik & Eileen Drew, *Struggling with Juggling: Gender and Work/Life Balance in the Legal Professions*, 29 WOMEN'S STUD. INT'L F. 136, 136 (2006).

128. Unsigned Student Note, *Why Law Firms Cannot Afford to Maintain the Mommy Track*, 109 HARV. L. REV. 1375, 1378–79 (1996).

129. *Id.* This study's title, *Why Law Firms Cannot Afford to Maintain the Mommy Track*, perpetuates the gendered nature of this issue.

130. See NALP *Bulletin: Update on Associate Hours Worked*, NALP (May 2016), <https://www.nalp.org/0516research> [<https://perma.cc/5HUT-AGT3>]; see also *The Truth about the Billable Hour*, YALE L. SCH. (July 2002),

Therefore, assuming that they receive only two weeks of vacation per year, lawyers are expected to bill, on average, 40 hours a week for 50 weeks per year (and, it is well-known that actual working hours far exceed billable hours;<sup>131</sup> 60–70 hour work weeks for attorneys are not unusual<sup>132</sup>). As a result, it is not just family time that suffers when lawyers are expected to work increasingly long hours. Indeed, everything that is not legal work suffers, and this is the case for both genders.

Questions of personal and professional balance are important for lawyers, especially given workload demands, stressors related to the substance of legal work, and high rates of depression and substance abuse.<sup>133</sup> However, even the concept of balance, in this context, is gendered.<sup>134</sup> One might venture to say that men, too, desire challenging and fulfilling professional careers as well as families, friends, and enriching pursuits outside of work. While raising children is surely made more difficult by increasing billable hours demands, so too is every other nonwork activity.

By studying work-life balance as a women's issue, researchers may reify the very dynamics they wish to challenge by perpetuating the perceived link between women and a life outside legal practice. Existing research makes clear that women in particular suffer differences in career attainment on objective measures like salary and

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yale.edu/sites/default/files/area/department/cdo/document/billable\_hour.pdf [https://perma.cc/4K8A-KJYC] (noting that to meet a 2200 hour requirement, assuming a one-hour lunch break, an hour and a half of breaks, nonbillable emails, and meetings each day, and a 30-minute commute (with three weeks of vacation, two weeks of holidays, and no sick or personal days), one would have to be away from home 7:30AM to 8:30 PM Monday–Friday and 9:30AM–5:30PM three Saturdays a month).

131. *The Truth About the Billable Hour*, *supra* note 130 (stating that billable hour requirements “do not account for personal calls at work, training/observing, talking with coworkers, a longer lunch (to exercise or shop perhaps), a family funeral, pro bono work (if not treated as billable hours), serving on a Bar committee, writing an article for the bar journal, or interviewing an applicant”).

132. See Leigh McMullan Abramson, *Making One of the Most Brutal Jobs a Little Less Brutal*, THE ATLANTIC (Sept. 10, 2015), <https://www.theatlantic.com/business/archive/2015/09/work-life-balance-law/404530> [https://perma.cc/A4A2-5ZLG].

133. See Priscilla Henson, *Addiction & Substance Abuse in Lawyers: Stats You Should Know*, AMERICAN ADDICTION CENTERS (Feb. 19, 2020), <https://americanaddictioncenters.org/rehab-guide/workforce/white-collar/lawyers> [https://perma.cc/4C37-7D52].

134. See Janet Walsh, *Not Worth the Sacrifice? Women's Aspirations and Career Progression in Law Firms*, 19 GENDER, WORK AND ORG., 508, 525 (2012) (noting that the author found that female professionals, even those with strong aspirations to partnership and those without children, want to engage in “multiple roles and activities”).

ascension to partnership. But there is less clarity regarding gender differences in job satisfaction. While many researchers explore the satisfaction paradox—that women seem to be more contented than men in their work despite persisting inequality—there is no consensus as to whether women are truly happier or whether they are just better at “privatizing” their discontent. When large law firms ramp up billable hour requirements and expect lawyers to be on-call for their clients most hours of the day, it is not only women who suffer. Indeed, men also lose the ability to engage in any life activities outside of work. But when work-life balance is studied exclusively, or even primarily, as a women’s issue, men also suffer from the individual, interactional, and institutional-level signaling that dissuades them from engaging in meaningful pursuits outside of the office.<sup>135</sup>

Further, women are not the only ones who suffer from taking time away from legal work. Studies of parental leave show that men, like women, experience negative professional outcomes from assuming caretaking roles outside of work. Using survey data from University of Michigan graduates, researchers found that a year of leave reduced men’s predicted chances of making partner from 58 to 0 percent and that a year of part-time work reduced male partners’ predicted earnings by 41 percent.<sup>136</sup> The authors could not explain the precipitous drop, noting that, “[t]hese could be very unusual men or it could be that male lawyers who behave in non-traditional ways face high penalties. If the latter were true, it is not surprising that so few male lawyers reduce labor supply.”<sup>137</sup> That is to say, men may refrain from reducing the amount that they work because of the harsh professional consequences resulting from such reductions. Such evidence demonstrates the need for assessing institutional issues without an approach that itself perpetuates gender bias.

Men and women have a variety of reasons to take off work, beyond providing childcare. But studies of leave<sup>138</sup> imply that childcare is the only reason that people take leave from work.<sup>139</sup> In the literature and in popular imagination, “work-life balance” is synonymous with “raising a family.” But, privileging childrearing over all

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135. For example, Bacik and Drew note that women in particular “have immense difficulty in achieving work/life balance, due to the long hours culture, an ingrained hostility to flexible work arrangements, and the fact that they retain a disproportionate caring burden in the private sphere.” Bacik & Drew, *supra* note 127, at 136.

136. See Noonan & Corcoran, *supra* note 39, at 146–47.

137. *Id.* at 147.

138. See e.g., Epstein, *supra* note 32; Noonan & Corcoran, *supra* note 39.

139. See Epstein, *supra* note 32, at 32.

other extraprofessional pursuits is itself problematic. Without too much effort, one can easily envision other motivations for working less or taking extended time off work: caring for elderly parents, traveling, enjoying an intellectual sabbatical, maintaining mental health, or investing time in a hobby.<sup>140</sup> Expanding our understanding of “work-life” balance to include pursuits that are not seen as affecting only women can help breathe new life into the study of the legal profession. Such study can enrich our understanding of the full, lived experiences of lawyers by revealing the myriad pursuits that make lawyers’ lives richer and more fulfilling, regardless of their gender.

Overall, in examining the existing literature, there is an over-emphasis on, and conflation of, work-life balance and work-family balance which results in ‘balance’ itself being a gendered concept. Thus, researchers must think more broadly of the myriad ways in which men too are disadvantaged by such a framework. The legal profession is a “greedy” one, demanding complete devotion from men and women alike.<sup>141</sup> Both male and female lawyers are discouraged from investing in roles outside the workplace, including caretaking and any other meaningful personal pursuits. Perhaps, we can collectively challenge the greediness of the legal profession by focusing on the ways in which all lawyers suffer from the profession’s untenable time demands.

#### D. *Looking Beyond Big Law and Private Firm Partnership*

For the most part, existing empirical studies fail to capture the experiences and interests of lawyers who define success and satisfaction based on more than income or promotion to partnership at a Big Law or other large or medium-sized firm.<sup>142</sup> I echo the call made by Carrie Menkel-Meadow over thirty years ago: we should study career satisfaction for men and women through the lens of work-life balance and look beyond the Big Law success metrics of equal salaries and ascension to law firm partnership. Framed in this way, the inquiry prevents us from thinking of private-firm incentives as the knee-jerk measure of success.<sup>143</sup> Menkel-Meadow

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140. In particular, I’m thinking of lawyers I know who are engaged in pursuits like studying towards divinity degrees, learning how to sail, and creating nonprofits to serve their communities.

141. Claire Cain Miller, *Women Did Everything Right. Then Work Got ‘Greedy.’*, THE N.Y. TIMES (Apr. 26, 2019), <https://www.nytimes.com/2019/04/26/upshot/women-long-hours-greedy-professions.html> [https://perma.cc/J95E-992L].

142. See Chambers, *supra* note 68.

143. See Menkel-Meadow, *supra* note 65, at 304–12.

inquires further: “By focusing on other sites of legal work, might we not discover whether satisfaction measures are, in fact, gendered, or would we find that some men, too, have chosen to achieve alternative definitions of success in other forms of practice?”<sup>144</sup> In fact, researchers found that, of those surveyed, almost half of women and one-third of men placed work-life balance among their top reasons for selecting their current legal employer.<sup>145</sup> This suggests that work-life balance is far from a women-only issue. Instead, researchers might examine the ways in which men, too, are discouraged from admitting that they want it all.

Gender research in the legal professions literature still focuses almost exclusively on large firms. In fact, ascension to private firm partnership is the measuring stick against which all legal careers are evaluated. For example, in a 1995 study on gender in the legal profession, the positions held by men and women were ranked in terms of relative power, with corporate partnership as the pinnacle of power.<sup>146</sup> The rankings were based on ownership relation, the firm’s number of employees, level of authority, decisionmaking power, autonomy, and hierarchical position within the lawyer’s firm or organization. This capitalistic conception of success, with its emphasis on ownership, hierarchy, and income, illustrates how researchers unwittingly perpetuate some of the gendered norms they seek to challenge. Partnership in large firms, especially given rapid changes in the legal profession that make large firms pyramidal, is not a realistic goal for the majority of law school graduates. The vast majority of lawyers will never work in Big Law or achieve that position considered by so many to be the ‘pinnacle’ of the profession, private firm partnership.<sup>147</sup> In fact, for the class of 2018, only about half (54.8 percent) of employed graduates obtained a job in private practice; less than a third (29.1 percent) of all graduates secured employment at the largest firms known colloquially as Big Law.<sup>148</sup> Thus, the current literature does not speak to the experienc-

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144. Menkel-Meadow, *supra* note 65, at 307.

145. See Rhode, *supra* note 58, at 7.

146. See Hull & Nelson, *supra* note 3, at 235; Kay & Hagan, *supra* note 2, at 286.

147. *Firm Size: From Solo to BigLaw*, U. OF MASS. AMHERST: PRE-LAW ADVISING OFF., [http://prelaw.umass.edu/topics/firm\\_size#:~:text=https://perma.cc/TE8U-359R](http://prelaw.umass.edu/topics/firm_size#:~:text=https://perma.cc/TE8U-359R) (noting that “[O]nly about 13 percent of law grads—roughly 4,600 out of the 35,000 who graduated law school in 2015—enter jobs in the very large law firms (those with 500 or more attorneys), and an even smaller percentage work there long term. More than half of all attorneys are either solo or small-firm (2–25) practitioners.”).

148. See Danielle A. Taylor, *Employment Rate Continues to Improve; Total Number of Law Firm Jobs Increases for First Time in Five Years*, NALP



es of lawyers outside the large private firm—roughly half of all new law school graduates in the United States.<sup>149</sup> Therefore, research that focuses exclusively on Big Law and private firm partnership might further marginalize the experience of women lawyers, given the fact that women are overrepresented in less prestigious and less remunerative firms outside of Big Law.<sup>150</sup>

This means that the experiences of all of those lawyers who work outside of Big Law—as solo practitioners, in small- or medium-sized firms, for nonprofit organizations or private public interest firms, in-house, or for the government—will not see their experiences reflected in most of the legal professions research. It also means that researchers, and by extension, society in general, lacks insight into the experiences of women at these different sites of legal practice. Menkel-Meadow recognized this years ago, noting that “virtually all study of women in the legal profession has focused on these limited issues: the intersection of large law firms and mothers as lawyers—a somewhat confined area for examining the impact of women on the profession.”<sup>151</sup> She further noted that:

[M]onetary and prestige measures of success, drawn from conventional male-constructed sociology, all too often are taken as the measure of women’s progress in the profession, even where there is some evidence women themselves look to other measures, like doing socially useful work or having meaningful relationships at work with clients and co-workers.<sup>152</sup>

When we study lawyers as a homogenous group and then mistake the experience of white male lawyers for the lived experience of lawyers nationwide, we miss the stories that are most worthy of amplification. These stories are important because each lived experience is an important one, but also because each sheds light on how gender inequality plays out in areas outside of Big Law, where the majority of lawyers practice. Moreover, there is reason to believe that the findings from Big Law should not be extrapolated to apply

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(2019), [https://www.nalp.org/uploads/SelectedFindingsClassof2018\\_FINAL.pdf](https://www.nalp.org/uploads/SelectedFindingsClassof2018_FINAL.pdf) [<https://perma.cc/W7C3-M9NW>].

149. See Victor Li, *Inside the Legal Profession: What the Industry Looks Like in 2019*, A.B.A. J. (Sept. 1, 2019), <https://www.abajournal.com/magazine/article/inside-the-legal-profession> [<https://perma.cc/5KNJ-267Z>].

150. See Hull & Nelson, *supra* note 3, at 229.

151. Menkel-Meadow, *supra* note 65, at 310. Even if, miraculously, all women lawyers attained associate positions and earned partnership at large firms (an outcome that would lead to professional and financial parity), it is not sufficient to study large firms and why women might move out of them, or not rise to partnership at the same rate as men. We need public interest and government lawyers.

152. Menkel-Meadow, *supra* note 66, at 307.



to all lawyers. Researchers<sup>153</sup> used data from a survey of University of Michigan graduates<sup>154</sup> and found that lawyers in government, education, and public interest fields were all significantly more satisfied than those in large private firms. However, lawyers, law schools,<sup>155</sup> and evidently, the researchers themselves continue to see private firm metrics as the exclusive markers of success.

#### IV. POLICY RECOMMENDATIONS

Before concluding, I will make a few suggestions based on my reading of the gender research in the literature on the legal profession. I believe these suggestions offer the potential to improve the experiences of both female and male lawyers in the United States.

One solution is government-sponsored childcare. While often considered a radical socialist policy in the United States, especially by political conservatives, many Western European governments provide universal day care for small children.<sup>156</sup> This removes a barrier that otherwise forces parents to choose between paying for childcare and keeping one parent at home, which is, so often, the woman.<sup>157</sup> I would go further and suggest that Big Law firms implement in-house, firm-sponsored childcare. As it stands, the profits

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153. Kenneth Glen Dau-Schmidt & Kaushik Mukhopadhaya, *supra* note 119.

154. Their study includes graduates sampled five years after graduation (classes of 1987–1991) and fifteen years after graduation (classes of 1977–81). *See id.* at 344. Tangentially, with so many scholars relying on the same set of University of Michigan survey data, don't we get a skewed vision of what life is like for all female lawyers across the country?

155. *See* Robert Morse, et. al., *Methodology: 2021 Best Law Schools Rankings*, U.S. NEWS & WORLD REPORTS (Mar. 16, 2020), <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology> [<https://perma.cc/CGS2-ZQMN>] (finding that law schools benefit when more of their graduates accept Big Law positions in a number of ways. U.S. News Rankings take into account the percentage of law schools' graduates who obtain fulltime legal employment; law schools also collect their graduates' salary figures and use these to attract incoming students).

156. *See, e.g.*, Anna Busse & Christina Gathmann, *Free Daycare Policies and its Effects on Childcare, Maternal Labor Supply and Child Development*, IZA Institute of Labor Economics (Jan. 2018), <http://ftp.iza.org/dp11269.pdf> [<https://perma.cc/93UY-MA8G>]; Ann-Zofie Duvander & Ida Viklund, *How Long is Parental Leave and for Whom? An Analysis of Methodological and Policy Dimensions of Leave Length and Division in Sweden*, INT'L J. SOC. & SOC. POL. 479, 479 (2019); Lucy Rock, *What Britain Could Learn from Denmark's childcare model*, THE GUARDIAN (Feb. 18, 2012), <https://www.theguardian.com/society/2012/feb/18/britain-learn-denmark-childcare-model> [<https://perma.cc/SX8C-3D4A>].

157. Rebecca Korzec, *Working on the Mommy-Track: Motherhood and Women Lawyers*, 8 HASTINGS WOMEN'S L.J. 117, 127–28 (1997).

in large firms accrue to partners, while lower-paid, junior lawyers have to make difficult financial choices about housing, student loan repayment, marriage, and having children.<sup>158</sup> And the track to partnership is taking longer and longer, meaning that the prospect and potential economic benefit of firm ownership is growing ever-distant for junior attorneys.<sup>159</sup> Outside of corporate law, the average median salary is less than \$80,000, even for those with more than ten years of experience.<sup>160</sup> This means that childbearing years<sup>161</sup> overlap with the time period when men and women are not at their peak of income-earning.<sup>162</sup> Thus, they likely cannot afford to pay for help with their day-to-day responsibilities including childcare, cooking, and cleaning. State or firm-sponsored childcare could drastically improve the options available to families, reduce the need to choose between career and family, and improve equality in

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158. See Martha Neil, *First-Year Associate Pay will be \$180K at Multiple BigLaw Firms Following Cravath's Lead*, A.B.A. J. (June 8, 2016), [https://www.abajournal.com/news/article/cravath\\_raises\\_first\\_year\\_associate\\_pay\\_to\\_180k\\_effective\\_july\\_1](https://www.abajournal.com/news/article/cravath_raises_first_year_associate_pay_to_180k_effective_july_1) [<https://perma.cc/SNT4-8KJC>] (noting there is not an implication that entry-level associates are not handsomely paid, with starting salaries of \$180,000 in many “BigLaw” firms like Cravath Swaine & Moore, Cooley, Kirkland & Ellis, Sullivan & Cromwell, and Skadden Arps Slate Meagher & Flom, among others; but as stated elsewhere in this Article, only roughly half of law school graduates accept positions in private firms; the suggestion that firms sponsor in-house childcare is most applicable to Big Law (Am Law 100) firms).

159. See Sara Randazzo, *For This Year's New Partners, Perseverance Pays*, AM. LAW. (Jan. 17, 2012), <https://www.law.com/americanlawyer/almID/1202538405500> [<https://perma.cc/XN9R-EYZ7>].

160. See NALP Bulletin: *Public Sector & Public Interest Salary Report Turns Ten!*, NALP (July 2014), <https://nalp.org/public14research> [<https://perma.cc/9E34-UM8M>] (summarizing a report on salaries for civil legal services, public defenders, local prosecuting attorneys, and public interest organizations). For public sector and public interest lawyers with 11–15 years of experience, the average median salary in 2014 was just over \$76,000, while entry-level lawyers earned an average median salary of \$48,000. See *id.*

161. See e.g., GRETCHEN LIVINGSTON, PEW RESEARCH CTR., *THEY'RE WAITING LONGER, BUT U.S. WOMEN TODAY MORE LIKELY TO HAVE CHILDREN THAN A DECADE AGO 2* (Jan. 18, 2018), <https://www.pewsocialtrends.org/wp-content/uploads/sites/3/2018/01/Pew-Motherhood-report-FINAL.pdf> [<https://perma.cc/2ESW-ZWPK>]. The vast majority of women have children before the age of forty-five. See *id.* at 2.

162. See Jennifer Cheeseman Day, *Number of Women Lawyers at Record High but Men Still Highest Earners*, U.S. CENSUS BUREAU: AM. COUNTS (May 8, 2018), <https://www.census.gov/library/stories/2018/05/women-lawyers.html> [<https://perma.cc/Y9EL-NCKC>]. Day analyzes data from the American Community Survey and decennial censuses, finding that the median annual income for male and female lawyers is lowest between the ages of 25–34 and reaches a midcareer peak between the ages of 45–54. See *id.*

the workplace for women. Cost, of course, is the biggest reason why this service has yet to be offered.<sup>163</sup> But onsite childcare can help recruit and retain attorneys, an important consideration given the cost of conducting searches and training new associates.<sup>164</sup> On-site care can also save firms money by reducing employees' time off work, and the state of Georgia offers tax incentives for employers who offer daycare.<sup>165</sup>

Next, I suggest that firms should be mindful not to conflate work-life balance with raising a family and should commit to offering generous and mandatory vacation time. There is evidence that, despite the generous vacation time offered by many firms, few associates take full advantage of it.<sup>166</sup> A cultural shift within law firms—one that encourages wholly “unplugging” from work when not in the office—will allow lawyers to engage in meaningful pursuits outside of work. In this way, having work-life balance is more than having the time to raise children. Given the hierarchical nature of the legal profession, such change would have to be endorsed and modeled by senior attorneys.<sup>167</sup> I am not ignorant of the many barriers that prevent such a cultural shift, such as billable-hour requirements, client expectations, society-wide values, and other organizational pressures. Yet, a profession in which lawyers are encouraged to take time away from work to not only care for children, but also nurture other parts of their lives, will likely be a more gender-equitable one.

Firms should strive for gender equity for not only normative reasons, but also because parity will make their workplaces more effective. Well-rounded and well-rested lawyers are less likely to

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163. Angela Morris, *Big Law Onsite Day Care: The Trend That Wasn't*, THE AM. LAW. (Jan. 13, 2017), [https://www.mto.com/Templates/media/files/Reprints/Big%20Law%20Onsite%20Day%20Care\\_AmLaw%20Article\\_Jan%202017.pdf](https://www.mto.com/Templates/media/files/Reprints/Big%20Law%20Onsite%20Day%20Care_AmLaw%20Article_Jan%202017.pdf) [<https://perma.cc/DT86-Z7HM>].

164. *Id.*

165. *Id.*

166. See Gayle Cinquegrani, *Lawyers Need Vacations. Closed.*, BLOOMBERG LAW: DAILY LAB. REPORT (May 25, 2018), <https://news.bloomberglaw.com/daily-labor-report/lawyers-need-vacations-case-closed> [<https://perma.cc/8NKC-TF2J>] (“Approximately 40 percent of associates at large firms have unlimited vacation days . . . . At law firms that have official policies, 20 vacation days per year is the norm, with some senior associates getting as many as 25 . . . . But taking vacations while billing enough hours, remaining available to clients, and meeting court deadlines can be tricky . . . . [A recent survey found that] only 31 percent of associates used all their vacation days . . . .”).

167. In the author's own experience working at a medium-sized firm in South Carolina, members (the firm's equivalent for partners) routinely take weeks or months off for extended backpacking trips, cruises, or other recreational activities.

suffer from mental health and substance abuse problems.<sup>168</sup> These issues adversely affect lawyers' capacity to practice law.<sup>169</sup> Firms that fail to prioritize attorney wellbeing risk increased malpractice claims and sanctions, as well as declining productivity and higher lawyer attrition.<sup>170</sup> Attending to lawyers' wellbeing, including prioritizing vacation time, might actually decrease firms direct and indirect costs.<sup>171</sup>

I also suggest that law schools and the legal profession offer opportunities for law students and lawyers to learn about the research on gender in the legal profession. For example, law schools could place greater emphasis on issues of gender and intersectionality in their coursework. The ABA mandates that all law schools offer "one course of at least two credit hours in professional responsibility that includes substantial instruction in the history, goals, structure, values, and responsibilities of the legal profession and its members."<sup>172</sup> In the author's own experience, issues of gender were not mentioned once during this course. A more in-depth study of professional responsibility courses across the country would help reveal if this is an anomaly or a trend. Nevertheless, a change either in ABA policy or in law school practice could help ensure that new lawyers have, at least, some exposure to these issues before graduating from law school. As it stands, there is no guarantee that lawyers entering the legal profession are aware of gender disparities in career attainment or career satisfaction. Coverage of gender issues in law schools would help signal the importance of gender equality to lawyers in training.

Lawyers might also learn about gender disparities in the legal profession through continuing legal education requirements. Many states require mental health and substance use continuing education, in line with ABA Model Rules.<sup>173</sup> Given that many of the findings regarding gender disparities in the legal profession are the result of ABA-sponsored research, it is not a stretch to imagine that they would support some form of gender-related education.

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168. See Lee Norton et al., *Burnout and Compassion Fatigue: What Lawyers Need to Know*, 84 UMKC L. REV. 987, 987 (2016).

169. Mary T. Robinson, *The Professional Cost of Untreated Addiction and Mental Illness in Practicing Lawyers*, 2009 J. PROF. LAW. 101, 101 (2009).

170. Jarrod F. Reich, *Capitalizing on Healthy Lawyers*, 6 PRACTICE (Mar./Apr. 2020), <https://thepractice.law.harvard.edu/article/capitalizing-on-healthy-lawyers> [<https://perma.cc/SWG3-J3WP>].

171. See *id.*

172. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2016–2017 (AM. BAR ASS'N 2016).

173. AMERICAN BAR ASSOCIATION MODEL RULE FOR MINIMUM CONTINUING LEGAL EDUCATION 5–7 (AM. BAR ASS'N 2017).

One would hope that, with more exposure to research about gender inequity, lawyers would make individual changes that, collectively, might lead to interactional and even institutional changes within the legal profession.

These policy suggestions take on gender inequality from many angles. Firm-sponsored childcare could decrease the logistical and financial burden that having children creates, especially for early-career attorneys. An increase in vacation time—and firm-backed support for taking it—would make it normatively acceptable to invest in passions outside of work. And educational offerings, during law school and as continuing legal education, would bring gender disparities to the attention of those who might otherwise unintentionally perpetuate them.

### CONCLUSION

In 2008, researchers asked, “Will women and men successfully dismantle the remaining structural barriers to full gender equality in the legal profession?”<sup>174</sup> A dozen years later, the answer is still ‘not yet.’ In this Article, I employed Risman’s theory of gender as a tripartite structure to highlight certain shortcomings in studies of gender in the legal professions literature. Risman theorized that gender manifests on three distinct levels: individually, in the way that individuals behave, think, and make decisions; interactionally, in the way individuals relate to one another and engage with one another; and institutionally, in formal policies that constrain individual action and widespread beliefs and biases. I applied her theory to two prominent research questions in the literature: (1) Why are there differences in career attainment between male and female lawyers? and (2) Are women more or less satisfied with their legal careers compared to men? In surveying the existing literature, I discovered that interactional-level analysis is scarce for both research questions. This means that few researchers have engaged in in-depth interactions with their research subjects in this field, either in the form of interviews or ethnographic research methods. The result is research that is heavy on statistics but short on stories. Notably, women lawyers with intersectional identities are overlooked, and as a result, very little is known in-depth about the particular challenges facing nonwhite female lawyers, women lawyers of minority religious identities, trans women lawyers, or nonheteronormative female lawyers, among others.

Further, I observed in the research an overemphasis on Big Law firms and their metrics for success, despite the fact that the

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174. Kay & Gorman, *supra* note 30, at 324.

overwhelming majority of lawyers are not in Big Law and will never be private firm partners. This means that the majority of attorneys, who work outside of Big Law, are not studied. I also found that the research conflates work-life balance with work-family balance, which ultimately obscures the range of pursuits that both women and men enjoy. This conflation makes work-life balance appear to be a gendered desire, such that women, alone, must advocate for the opportunity to nurture other parts of their life. If men, too, were to advocate for increased work-life balance, then the chorus of voices demanding change within the legal profession would be much louder.

Finally, I suggest focusing research efforts on the day-to-day lived experiences of male and female lawyers across legal sectors and across states. An interactional approach to this research, coupled with my policy recommendations, will help us better understand the conditions that create gender disparities in the legal profession and provide insight into how these inequalities can be remedied.

## APPENDIX A

The following table summarizes the theories used to explore each question according to level of analysis under Risman's model.

**Figure 1: Two Dominant Questions of Gender in the Legal Professions Literature and Theories Used to Explore Them, According to Level of Analysis**

Question in the literature	Level of Analysis		
	Individual	Interactional	Institutional
Why do differences in career attainment exist between men and women lawyers? (e.g., pay, promotion to partnership)	Gendered choice Human capital	Hiring Signaling / legitimacy	Gendered constraint Gender stratification
How does women's satisfaction with their legal careers compare to men's?	Differential values Reference group differences and perceived justice Relative deprivation Role spillover/ synergy	N/A	N/A

