

A Vehicle to Inequity: Law School Merit Scholarships

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INTRODUCTION

Law schools across the country suffer from inequities and a lack of diversity stemming from historically racist structures that determine the legal education funding. Although many law schools aspire to attract a diversity of students to the profession, the scholarship system is counteracting such ambitions. Specifically, as schools increase opportunities for merit scholarship, White applicants disproportionately serve as the dominant beneficiaries and recipients.¹ As a result, Black, Latinx, and first-generation applicants are disadvantaged to the benefit of students receiving merit-aid.

In 2016, 79% of all law school scholarships were merit-based.² Meanwhile, the percentage of need-based scholarships—just 19% of all scholarships—remained unchanged and continued to pull from a smaller financial pool.³ In the last fifteen years, law schools have largely (but not entirely) shifted their need-based scholarship money to “merit-based.”⁴ The goal of merit aid has predominately been to attract students with scores that will boost a school’s target Law School Admission’s Test (“LSAT”) range, and therefore, its national ranking and appeal.⁵ Nevertheless, up close, “merit” is an objective notion as it is usually determined by those in power, not by those who are seeking social and educational mobility. Aaron Taylor, the Executive Director of the AccessLex Center for Legal Education Excellence, suggests that, “within social systems, notions of merit form the bases of dominant values, giving merit a moralistic, often sacrosanct character. But, at its core, merit is not about morality; it is about power.”⁶

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¹ See generally LSSSE, 2016 ANNUAL SURVEY RESULTS 9 (2016), <http://lssse.indiana.edu/wp-content/uploads/2015/12/LSSSE-2016-Annual-Report-1.pdf>.

² *Id.* at 8.

³ Aaron N. Taylor, *Robin Hood, in Reverse: How Law School Scholarships Compound Inequality*, 47 J.L. & EDUC. 41, 58 (2018) (citing AM. BAR ASS’N, TASK FORCE ON FIN. LEGAL EDUC. 29 (June 17, 2015), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/2).

⁴ Diane Curtis, *The LSAT and the Reproduction of Hierarchy*, 41 W. NEW ENG. L. REV. 307, 322 (2019).

⁵ Deborah Merritt, *Law School Rankings Still Drive Scholarship Awards (Perspective)*, BLOOMBERG L. (Feb. 10, 2017, 3:47 PM), <https://news.bloomberglaw.com/business-and-practice/law-school-rankings-still-drive-scholarship-awards-perspective>.

⁶ Taylor, *supra* note 3, at 41; see also Daria Roithmayr, *Deconstructing the Distinction Between Bias and Merit*, 85 CAL. L. REV. 1449, 1455 (1997).

The general consensus is that merit aligns most closely with LSAT scores.⁷ The LSAT is not an inclusive nor equitable assessment, and consequently is not the best way to assess tuition aid and large pools of money.

The American Bar Association (“ABA”) has studied the issue of law firm attrition, non-diversity in law schools, and pipeline problems. The ABA set a goal to “promote full and equal participation in the association, our profession, and the justice system by all persons [and] [e]liminate bias in the legal profession and the justice system.”⁸ Although progress has been made, the ABA and law schools fail to examine and reverse the role merit scholarships play in the exacerbation of law school inequality. As a result, the status quo of racial exclusion in the legal profession persists. The wider impacts of increasing merit, but not need-based, scholarships are a lack of diversity in legal profession and significant wealth disparities—as Black and Latinx law students shoulder a disproportionate amount of debt.⁹

This article aims to analyze data gathered from students offered admission to law school and the scholarships that they were or were not offered. Through careful examination, Black and Latinx applicants are adversely impacted at a disproportionate rate compared to their White counterparts. The merit scholarship inequality is compounded for first-generation law students.¹⁰

If law schools continue to gatekeep the legal profession, the processes in which students are awarded scholarships, educated, and retained must be entrenched in equity and inclusion. At an extreme, law schools can eliminate merit-based scholarships full-stop and revert all scholarship funding into a need-based program that helps students based on financial status. Short of eliminating merit-scholarships, law schools can redefine merit so it does not align so closely with the LSAT—an exam that has a disparate impact on Black and Latinx students.¹¹ Outside of scholarship allocation, law schools could adopt loan forgiveness programs that make law school affordable for all students regardless of what, if any, scholarship they receive. Finally, law schools could encourage the ABA to require reporting of merit-scholarships awarded, broken down by race, class, socioeconomic status, and gender in the 509 report.¹² If legal education is to serve as a means of opportunity for

⁷ Roithmayr, *supra* note 6, at 1452.

⁸ AM. BAR ASS’N, *Goal III*, https://www.americanbar.org/groups/diversity/disabilityrights/initiatives_awards/goal_3/#:~:text=Objectives%3A&text=The%20tenets%20of%20ABA%20Goal,sexual%20orientations%20and%20gender%20identities.%22 (last visited May 1, 2021).

⁹ LSSSE, *supra* note 1, at 12 (defining first generation law students as “respondents for whom neither parent has more than a high school diploma.”).

¹⁰ First generation Black students are the least likely to receive merit scholarships. *See infra*, at 12.

¹¹ Taylor, *supra* note 3, at 65.

¹² A 509 report is a required disclosure accredited law schools must submit to the ABA. The report includes breakdowns on admitted student grade point averages (“GPAs”), LSAT scores, gender, and other demographics. *See infra*, at 18.

individuals seeking better lives for themselves and others, equity must underlie how students are financially supported.

I. HISTORY OF LAW SCHOOL MERIT SCHOLARSHIPS

Becoming a lawyer originally consisted of a legal apprenticeship for working class opportunists,¹³ but has turned into formalized education, rooted in elitism, adversarial rankings, and stringent professional standards. In 1891, 80% of lawyers entered the profession without any formalized legal education.¹⁴ The rise of the ABA in the early twentieth century radically transformed the pipeline for lawyers. Legal education increasingly became a requirement of state bar admission and more law schools were created.¹⁵ Today, all but four states require attendance at an ABA accredited school before taking the bar.¹⁶ In turn, a hierarchy of prestige is inevitable. As a result of law school rankings, schools are competing to attract students with high LSAT scores with the hope that they will raise the school's ranking by gaining prestigious internships and post graduate positions. To attract the "best" future lawyers, schools offer merit scholarships for students who appear worthy of such investment.¹⁷

According to the 2015 ABA Report on Financing Legal Education, merit scholarship funding increased by 68% at public law schools and 53% at private law schools between 2005 and 2010.¹⁸ Meanwhile, need-based funding has remained essentially flat.¹⁹ To provide a local example, the University of Connecticut in 2016 awarded 60% of its class a merit scholarship; in 2019 over 90% of students received a merit-based scholarship.²⁰ In the last twenty-years, the total dollars for merit-based programs have grown roughly ten times faster than total dollars available for

¹³ Olufunmilayo B. Arewa et al., *Enduring Hierarchies in American Legal Education*, 89 IND. L.J. 941, 945 (2014).

¹⁴ *Id.* at 946.

¹⁵ During the Depression the ABA was able to convince the federal and state governments to grant law licenses only to graduates of law schools that the ABA accredited, *see* George B. Shepherd, *No African-American Lawyers Allowed: The Inefficient Racism of the ABA's Accreditation of Law Schools*, 53 J. LEGAL EDUC. 103, 112 (2003); Gabriel Kuris, *Law School Applicants and the Bar Exam*, U.S. NEWS EDUC. (July 19, 2021), <https://www.usnews.com/education/blogs/law-admissions-lowdown/articles/what-law-school-applicants-should-know-about-the-bar-exam#:~:text=As%20a%20law%20school%20applicant,instead%2C%20like%20California%20and%20Washington>.

¹⁶ California, Virginia, Vermont, and Washington allow aspiring lawyers to take the bar exam without going to law school. Instead, they are given the option to apprentice with a practicing attorney or judge. Zachary Crockett, *How to Be a Lawyer Without Going to Law School*, PRICEONOMICS (Jan. 6, 2017), <https://priceonomics.com/how-to-be-a-lawyer-without-going-to-law-school/>.

¹⁷ *See* Taylor, *supra* note 3, at 58.

¹⁸ AM. BAR ASS'N, *supra* note 3, at 31.

¹⁹ Taylor, *supra* note 3, at 58.

²⁰ Frequently Asked Questions (F.A.Q.), UNIV. CONN. SCH. L. (last visited May 10, 2021), [https://web.archive.org/web/20210116150003/\[https://www.law.uconn.edu/admissions/juris-doctor-admissions/frequently-asked-questions-faq#\]](https://web.archive.org/web/20210116150003/[https://www.law.uconn.edu/admissions/juris-doctor-admissions/frequently-asked-questions-faq#]).

need-based grants.²¹ As a result, merit has become a primary measure that determines how much law school is going to cost for students. When looking at what defines merit, Black, Latinx, and first-generation law students are disproportionately impacted and at a historic disadvantage.

II. MERIT DEFINED BY LSAT SCORES

The rise in law school merit scholarships positively aligns with increased reliance placed on the LSAT. The LSAT was first administered in 1948 and has remained the dominant entrance exam at all law schools.²² For the vast majority of schools, law school applicants are required to take and submit their LSAT scores, in addition to the typical application requirements: a transcript, a personal statement, and letters of recommendation.²³ The LSAT is meant to test an applicant's ability to "[c]omprehend complex texts with accuracy and insight."²⁴ Although the LSAT has not been validated for any other purpose than the admissions process,²⁵ the heavy reliance placed on the test has profound financial impacts on prospective lawyers that ultimately affect legal careers.²⁶ As the pressure to attract the "best" students increases among law schools,²⁷ merit aid has grown as the predominant form of tuition discounting and it is directly tied to LSAT scores. Applicants with high LSAT scores are significantly more likely to receive merit scholarships than students with lower LSAT scores.²⁸

In a 2016 survey, applicants in the highest LSAT band (scoring between a 166 and 180) were nearly 6 times more likely to receive merit scholarships than applicants in the lowest band (140 and under).²⁹ While the extremes do not seem that surprising, a closer look at the middle LSAT bands reveal a stark divide. For example, someone who scored between a 156 and 160 was

²¹ Bill Henderson, *Rocks on the Back of First-Generation College Grads Attending Law School (182)*, LEGAL EVOLUTION (July 21, 2020), <https://www.legalevolution.org/2020/07/rocks-on-the-back-of-first-generation-college-grads-attending-law-school-182/> (citing data from the American Bar Association).

²² The LSAT is a requirement at the majority of law schools, while only a third of schools accept GRE scores. Ilana Kowarski, *9 Key Differences Between the LSAT and GRE*, U.S. NEWS (Jan. 21, 2021, 9:37 AM), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2018-06-11/10-key-differences-between-the-lsat-and-gre>; *Mission & History*, L. SCH. ADMISSION COUNCIL, <https://www.lsat.org/about/mission-history> (last visited May 15, 2021).

²³ *J.D. Application Requirements*, L. SCH. ADMISSION COUNCIL, <https://www.lsat.org/applying-law-school/jd-application-process/jd-application-requirements> (last visited May 11, 2021).

²⁴ *The Law School Admission Test: Reliability and Validity in Brief*, L. SCH. ADMISSION COUNCIL, <https://www.lsat.org/data-research/research/lsat-reliability-validity> (last visited May 11, 2021).

²⁵ *Cautionary Policies Concerning LSAT Scores and Related Services*, L. SCH. ADMISSION COUNCIL (July 2014), [http://www.lsat.org/docs/default-source/publications-\(lsac-resources\)/cautionarypolicies.pdf](http://www.lsat.org/docs/default-source/publications-(lsac-resources)/cautionarypolicies.pdf).

²⁶ See Taylor, *supra* note 3, at 59.

²⁷ Kyle McEntee, *The Law School Rankings Rat Race Has New Cheese*, ABOVE THE L. (Mar. 23, 2021, 11:43 AM), <https://abovethelaw.com/2021/03/the-law-school-rankings-rat-race-has-new-cheese/>.

²⁸ LSSSE, *supra* note 1, at 9.

²⁹ *Id.*

18 percentage points more likely to receive a scholarship than someone who scored between 151 and 155.³⁰ More specifically though, 69% of respondents who scored a 156 received merit scholarships, compared to 59% of those who scored a 155.³¹ In comparison, undergraduate GPAs (“UGPAs”) trended higher across the ranges in the form or merit-scholarships, but never exceeded one-tenth of one point between adjoining ranges.³² Thus, a greater, and frankly unexplained, value is placed on LSAT scores compared to more common academic achievement metrics in the allocation of merit scholarships.

LSAT scores are also predictive of other law school attractions. Higher median scores are correlated with lower student to faculty ratios, more advanced courses, lower student attrition, and higher employment rates among graduates.³³ The higher a school’s median LSAT scores, the higher the school’s ranking will be compared to schools with the lowest median LSAT scores.³⁴ As schools vie for better rankings, a prisoner’s dilemma spirals as schools choose prestige over affordability.³⁵ The unfortunate result is an adverse impact on embracing diversity—something law schools are in a unique position to foster rather than reject.

III. INCREASING MERIT SCHOLARSHIPS AND RELIANCE ON LSAT SCORES IS ACCELERATING RACIAL AND SOCIOECONOMIC EQUITY

A. Methodology

To convey the argument that merit scholarships have adverse impacts on Black and Latinx applicants, this article sourced data gathered from the 2016 Law School Survey of Student Engagement (“LSSSE”). The LSSSE is a roughly 100-item annual survey of the effects of legal education on law students. Although the LSSSE is an annual survey, 2016 was the most recent year that asked questions regarding law school financing. It was administered—on an opt-in basis—to 17,828 students from 72 ABA accredited schools in the United States and Canada.³⁶ The racial and ethnic demographics of LSSSE respondents align closely with legal education

³⁰ *Id.*

³¹ Taylor, *supra* note 3, at 73.

³² Aaron N. Taylor, *The Marginalization of Black Aspiring Lawyers*, 13 FIU L. REV. 489, 505 (2019).

³³ 2020 Raw Data Law School Rankings, PUB.LEGAL, <https://www.ilrg.com/rankings/law/index/1/desc/LSATLow> (last visited May 11, 2021).

³⁴ Curtis, *supra* note 4, at 322.

³⁵ Henderson, *supra* note 21.

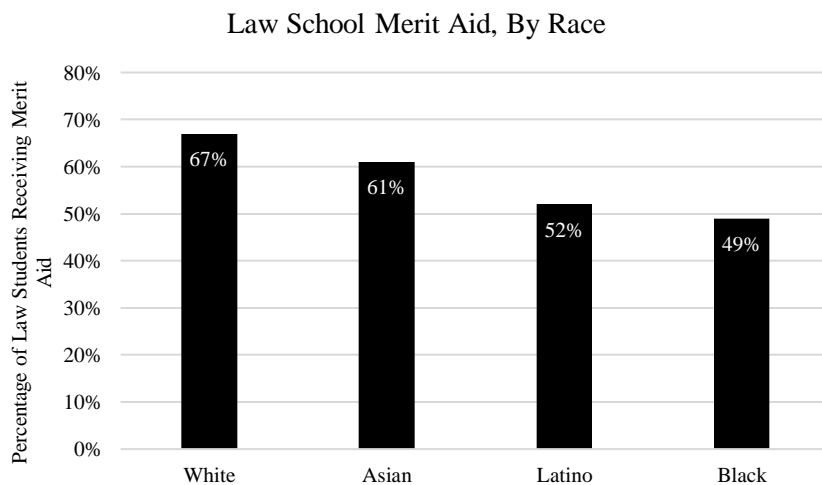
³⁶ LSSSE, *supra* note 1, at 4.

generally.³⁷ Fundamentally, the concepts surveyed capture the intricate web of individual and institutional decisions that reflect law school scholarships.

B. Merit Scholarships and Race

In 2016, White applicants were most likely to receive a scholarship.³⁸ The LSSSE calculates that 74% of White applicants were offered a scholarship.³⁹ Meanwhile, 65% of Black applicants and 66% of Latinx applicants were offered a scholarship.⁴⁰ When looking specifically at merit scholarships, the divide becomes more distinguishable. Although 67% of White applicants were offered merit-scholarships, only 49% of Black applicants and 52% of Latinx applicants were offered one.⁴¹

FIGURE 1.⁴²



This begs the question, do White applicants actually exude more merit upon applying to law school? Closer analyses reveal a positive correlation between LSAT scores and merit-aid. White respondents had the highest average LSAT scores and the highest chance of receiving a merit

³⁷ Taylor, *supra* note 3, at 60.

³⁸ LSSSE, *supra* note 1, at 9.

³⁹ Aaron N. Taylor, *Law School Scholarships: Engines of Inequity?*, LSSSE, http://www.americanbarfoundation.org/uploads/cms/documents/taylor_issse_scholarship_equity2a.pdf (last visited May 11, 2021).

⁴⁰ *Id.*

⁴¹ LSSSE, *supra* note 1, at 9.

⁴² *Id.* at 10, fig.7.

scholarship.⁴³ Conversely, Black respondents had both the lowest average LSAT scores and the lowest chance of receiving a merit scholarship. The scholarship chances among Asian and Latinx applicants were correlated.⁴⁴

In terms of numbers, the average score for Black LSAT-takers is 142; this is 13 points lower than the 155 average for White test-takers and 12 points lower than the 154 average for Asian test-takers.⁴⁵ Latinx test-takers score an average of 146.⁴⁶ Some scholars explain these racial gaps with disparities in K-12 education and unequal access to LSAT prep.⁴⁷ This article does not venture to discover the root causes of LSAT score disparities. Rather, this article concedes that disparities do exist, and thus the LSAT is not the best benchmark to rely on when attempting to cultivate a more diverse and inclusive legal profession. By placing undue weight on the LSAT during scholarship appropriation decisions, accredited law schools feed into statistical norms that favor privilege and racially divided hierarchies.⁴⁸

The derivative impact of linking LSAT scores to merit aid is felt in every step of the legal education process and beyond. Since schools with higher ranks also use a higher LSAT range to determine the applicants who receive merit, Black and Latinx students are less likely to receive a merit scholarship to schools with higher rankings. Studies suggest that the law school decision for Black, first-year, students is inexorably aligned with affordability.⁴⁹ As a result, Black, first year applicants are more likely to attend a school that offers aid, even if it has a lesser rank.⁵⁰ In 2010, 33% of Black first-year students were enrolled in schools with the two highest median LSAT groupings.⁵¹ In 2015, that population declined to 29%.⁵² On the flip side, 39% of White first-year students were enrolled in these schools in 2011, and in 2015 that proportion increased to 47%.⁵³ Consequently, White students are increasingly more likely to receive merit scholarships at higher ranked schools. As a result, the aid disproportionately shifted towards

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Taylor, *supra* note 3, at 64–65.

⁴⁶ *Id.*

⁴⁷ LaTasha Hill, *Less Talk, More Action: How Law Schools Can Counteract Racial Bias of LSAT Scores in the Admissions Process*, 19 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 313, 314 (2019).

⁴⁸ To the contrary, the LSAT has been touted by the Law School Admission Council as the best predictor of law school success, and more specifically first year grades. See Lily Knezevich & Wayne Camara, *The LSAT is Still the Most Accurate Predictor of Law School Success*, LSAC, <https://www.lsac.org/data-research/research/lSAT-still-most-accurate-predictor-law-school-success> (last visited March 3, 2022). However, scholars have minimized this assessment, as the LSAT has no significant correlation with bar passage rates, legal skills, or legal performance. See discussion *infra* Section IV.B.

⁴⁹ Curtis, *supra* note 4, at 322–23.

⁵⁰ *Id.*

⁵¹ Taylor, *supra* note 3, at 87.

⁵² Taylor, *supra* note 32, at 500.

⁵³ *Id.* at 501.

White students is often subsidized by students with lower LSAT scores paying sticker price—most notably Black and Latinx students. This paradigm shift suppresses legal opportunities and generates higher levels of student loan debt for Black and Latinx law students.

C. The Influence of Merit Scholarships on Student Debt

Unsurprisingly, law school remains one of the most expensive forms of graduate education and places significant financial burdens on students. About 83% of applicants surveyed by the LSSSE reported that they incurred or expected to incur student debt.⁵⁴ In 2020, the average debt of law school students was 160,000.⁵⁵ The disproportionate allocation of merit-based scholarships has perpetuated a greater—and durational—law school debt divide along racial lines.⁵⁶ According to the LSSSE Survey, 95% of Black and 92% of Latinx applicants reported relying on student loans to pay for law school.⁵⁷ In 2021, Black law graduates expected to have 97% more student loan debt than White law school graduates.⁵⁸ The following chart from 2016 depicts the average debt carried by Black students being close to double the average debt carried by White students.⁵⁹

⁵⁴ *Id.* at 506.

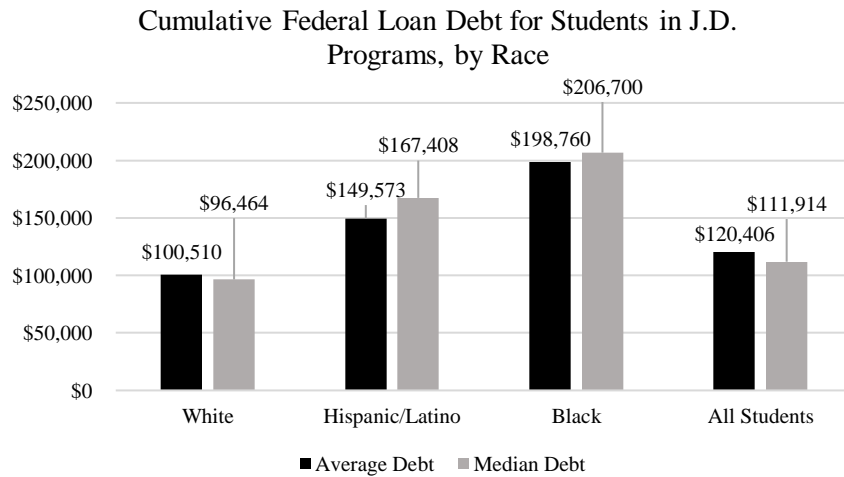
⁵⁵ Melanie Hanson, *Average Law School Debt*, EDUC.DATA (Dec. 5, 2021), <https://educationdata.org/average-law-school-debt>.

⁵⁶ Past LSSSE research has also found that Latino and Black women are more likely to borrow over \$200,000 than men of the same race/ ethnicity or women from any other background. Longitudinal data show that this race and gender disparity is also consistent over time. Meera E. Deo, *Student Debt is a RaceXGender Issue*, LSSSE (July 9, 2021), <https://lssse.indiana.edu/uncategorized/student-debt-is-a-racexgender-issue/>.

⁵⁷ Taylor, *supra* note 32, at 507.

⁵⁸ Hanson, *supra* note 55.

⁵⁹ Henderson, *supra* note 21.

FIGURE 2.⁶⁰

Data from *After the J.D. (Wave III)* reveals the decades long impact of student debt. Twelve years after graduation, 39.9% of Asian law graduates and 51.6% of White graduates had some student debt.⁶¹ Disproportionately though, 69.6% of Hispanic and 76.7% of Black law graduates had student debt twelve years after graduation.⁶²

While a myriad of other factors not discussed here contribute to disproportionate ratios of student debt,⁶³ merit scholarships play a prominent role in the widening of racial wealth gaps. Consequently, swift and comprehensive action is necessary to reverse the tides of inequity. If the legal community desires an inclusive and diverse profession, merit-

⁶⁰ *National Postsecondary Student Aid Study: 2016*, NATIONAL CENTER FOR EDUCATION STATISTICS, <https://nces.ed.gov/surveys/npsas/> (last visited May 11, 2022). Reliable estimates of Asian J.D. graduates were unavailable at the time of this figure's creation. Black law school graduates carry twice the debt of White law students.

⁶¹ Rebecca Sandefur et al., *Financing Legal Education – The View Twelve Years Out of Law School*, AM. BAR FOUND. & NALP FOUNDATION FOR L. CAREER RSCH. & EDUC. 80 (Gabriele Plickert et al., 2014), https://www.americanbarfoundation.org/uploads/cms/documents/ajd3report_final_for_distribution.pdf; Katharine W. Hannaford, *After the J.D. III: The Third Wave of a National Study of Legal Careers*, BAR EXAMINER (2015), <https://thebarexaminer.ncbex.org/article/september-2015/after-the-jd-iii-the-third-wave-of-a-national-study-of-legal-careers/>.

⁶² Hannaford, *supra* note 60.

⁶³ Such as undergraduate education disparities, generational wealth gaps, loan qualification, access to high paying jobs.

scholarships should not act as a barrier to entry and success for prospective law students.

D. Compounding Inequity: First Generation Students

Being born from college educated parents is not meritorious—it is serendipitous. However, it does increase one’s chances of receiving a merit-based scholarship. Looking at respondents to the LSSSE survey, first-generation law students (meaning their parents did not graduate college with a BS or BA) were the least likely to receive a merit scholarship.⁶⁴ In 2016, only 52% of all first-generation students received merit scholarships.⁶⁵ Broken down on racial lines, Black first-generation law students were the least likely out of all demographic groups surveyed to receive a scholarship at only 42%. Not far from it, only 44% of Latinx first-generation students received merit scholarships.⁶⁶ For White students with a college educated parent, 68% of students received a merit-based scholarship—the highest among any demographic studied.⁶⁷ The difference between Black and White first-generation students receiving a merit-scholarship also correlates positively with the LSAT. The average LSAT for first-generation students was 152, for Black first-generation students it was 148, and for White first-generation students it was a 156.⁶⁸

The impact on first-generation students is magnified when looking at debt. Almost 50% of all first-generation students surveyed expected to be in over \$100,000 of debt.⁶⁹ Contrarily, only 34% of students with at least one college parent expected to have \$100,000 worth of debt.⁷⁰ Meanwhile, 62% of Latinx first-generation students expected to be in over \$100,000 of debt.⁷¹

IV. FRAMEWORK FOR REFORM

Surely, there are alternative structural problems that create a disparate impact on the attainment of merit scholarships—such as LSAT framing, education achievement gaps, wealth gaps, and access to pre-law programs/classes. However, that does not change the fact that law school merit scholarships continue to perpetuate inequality at the detriment of Black, Latinx, and first-generation law students. This detriment carries to the legal profession and community. If the legal profession continues to adopt policies that exacerbate segregation for the sake of prestige, clients are

⁶⁴ LSSSE, *supra* note 1, at 10.

⁶⁵ *Id.*

⁶⁶ Taylor, *supra* note 3, at 75.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ LSSSE, *supra* note 1, at 12.

⁷⁰ *Id.*

⁷¹ Taylor, *supra* note 3, at 78.

adversely affected and the lure of being a lawyer is less attractive to individuals from disadvantaged communities.

To prevent what is, essentially, price discrimination, law schools and regulatory bodies need to acknowledge and reform the way merit scholarships advance inequity. Black and Latinx lawyers are already underrepresented; a system that asks prospective Black and Latinx law students to subsidize the education of wealthier students from privileged backgrounds will only create greater underrepresentation. The following reforms are not exclusive nor comprehensive, but they offer an example and path for how the legal system can change for the betterment of all lawyers and future of our society.

A. *Shift to Only Need-Based Aid*

Need based scholarships are the most equitable way to award financial incentives to attend law school. Harvard, Yale and other law schools ranked in the top fourteen in the country (“T-14 law schools”) already award scholarships primarily based on need.⁷² This is possible due to the unique position (also could be deemed privilege) of Harvard and Yale, as they do not need merit scholarships to attract the best and the brightest. Looking beyond Harvard and Yale, just 19 to 21% of scholarships are need-based, which means the total pool of scholarship money solely for those with the greatest need is extremely limited.⁷³ Students expecting more than \$200,000 in debt were five times more likely to have qualified for a need-based scholarship than those who had no debt.⁷⁴ That subgroup of student applicants disproportionately consisted of Black and Latinx individuals.⁷⁵ Unfortunately, many students who cannot access the need-based aid they require must instead seek schools that offer merit-based aid. For those who scored average or below on the LSAT, this means seeking a lower ranked school.⁷⁶

Need-based scholarships would achieve the greatest equity. Those who could afford to pay sticker price would; all other students would receive scholarship funding in a manner that is fair and equitable. One policy solution proposed by Diane Curtis is to utilize the ABA's Section of Legal Education authority to require law schools to set a minimum percentage of need-based scholarships.⁷⁷

⁷² *Financial Aid Support*, YALE LAW SCHOOL, <https://law.yale.edu/admissions/financial-aid> (last visited, June 4, 2022); *Meeting Need*, HARVARD LAW SCHOOL, <https://hls.harvard.edu/dept/sfs/basics-for-prospective-and-admitted-students/meeting-the-cost-of-attendance/meeting-need/> (last visited May 4, 2022).

⁷³ LSSSE, *supra* note 1, at 8.

⁷⁴ *Id.* at 12.

⁷⁵ *Id.*

⁷⁶ Curtis, *supra* note 4, at 323.

⁷⁷ *Id.* at 330.

While this sounds like a compelling policy, law schools fighting to attract students “out of their league” are placed at a disadvantage if it cannot offer alternative incentives (like merit-based scholarships) to attract students. For a school in need of incentives to attract students beyond its current reach, a feasible compromise may be merit-based scholarships that are contingent on academic performance in law school. Thus, a student could receive a more lucrative scholarship depending on that student’s performance in school. However, this solution may still present greater problems for students with considerable obligations outside of the legal classroom—like child support, caretaker obligations, or employment. Furthermore, a performance-based merit scholarship will likely not establish incentives robust enough to attract the students deciding between Harvard and Yale, and therefore, schools may have to innovate to establish programs that further appeal to students—like making joint degrees significantly more affordable and feasible. Regardless of if there is an absolute shift to need-based scholarships or a partial shift, more money needs to be allocated to meet students where they are, opposed to where schools expect them to be.

B. Adopt a Holistic Definition of Merit

A holistic approach in the law school admissions process would form a more equitable allocation of merit-aid. Such approach can apply directly to merit-based scholarships. Even though schools and employers are starting to consider individuals through a holistic lens, the LSAT remains the most significant criteria in scholarship awarding decisions,⁷⁸ if not the sole decision criteria in some cases. Oddly enough, the Law School Admission Council (“LSAC”)—creators and administrators of the LSAT—recommend that the LSAT not be used outside the admissions context. The LSAC states that the LSAT is “designed to serve admissions functions only.”⁷⁹ This recommendation likely stems from the fact that the LSAT does not predict future law school outcomes besides a positive correlation to first year grades.⁸⁰ Texas Tech professors found that the LSAT explained just 13% of variance in bar exam scores of its law graduates.⁸¹ A team at the University of Cincinnati discovered that among its law graduates, the “LSAT score does not correlate with Ohio bar exam performance.”⁸² Professors from the University of California, Berkeley determined that the LSAT is not useful,

⁷⁸ Paula Lustbader, *Painting Beyond the Numbers: The Art of Providing Inclusive Law School Admission to Ensure Full Representation in the Profession*, 40 CAP. U. L. REV. 71, 86 (2012) (arguing for a holistic review that deemphasizes the LSAT on the ground that the LSAT has a disparate impact on Blacks and Latinx students).

⁷⁹ L. SCH. ADMISSION COUNCIL, *supra* note 24.

⁸⁰ Curtis, *supra* note 4, at 324.

⁸¹ Katherine A. Austin et al., *Will I Pass the Bar Exam?: Predicting Student Success Using LSAT Scores and Law School Performance*, 45 HOFSTRA L. REV. 753, 766 (2017).

⁸² Taylor, *supra* note 3, at 99.

often showing zero correlations to twenty-six different effectiveness factors that correlate with strong performing lawyers.⁸³ Neither the LSAC nor any credible study suggests or claims that the LSAT translates to better performance during the entirety of law school or as a lawyer. Instead of using the LSAT as a criterion for “merit,” law schools should adopt a holistic approach and look at what applicants did with what they were given.

Aaron Taylor proposes that an equitable merit-based system for both admissions and scholarships would recognize achievement in the context of socioeconomic factors and other obstacles.⁸⁴ For example, schools could award scholarships to “students who come from low-wealth and low-income backgrounds, first-generation students, Pell grant recipients, and graduates of under-resourced colleges and universities.”⁸⁵ This could also extend to notable accomplishments outside school: those with a public service background; who are published authors; or even those who have impressive personal statements. In other words, schools could define merit on a range of different factors that contribute to successful students and individuals. Professor Diane Curtis aptly wrote, “scholarships could reward the true homerun hitters, rather than those who just trotted in from second or third base.”⁸⁶

C. Loan Forgiveness

A rather unpopular “solution” to the inequity of merit scholarships is to institute loan forgiveness programs. The unpopularity stems from the fact that it is not really a solution because it does little to address the problems of merit-based scholarships, but it does entice more students to attend law schools no matter the cost to them. Accreditation committees could push law schools and private lenders to offer all students the option of financing half the cost of law school through agreements that pay the school or private lender a fixed percentage of a student's income during the first decade after graduation. If timely payments are made after a decade, the loan should be forgiven no matter how much has been paid back. Such arrangements, which are becoming more common in undergraduate settings and for public interest jobs, give law schools an incentive to foster the long-term success of their students by allowing students to attend school and worry about payment later.⁸⁷ This allows students to invest their dollar wisely during school and

⁸³ MARJORIE M. SHULTZ & SHELDON ZEDECK, FINAL REPORT: IDENTIFICATION, DEVELOPMENT, AND VALIDATION OF PREDICTORS FOR SUCCESSFUL LAWYERING 55 (2008), <https://www.law.berkeley.edu/files/LSACREPORTfinal-12.pdf>.

⁸⁴ Taylor, *supra* note 3, at 101.

⁸⁵ *Id.*

⁸⁶ Curtis, *supra* note 4, at 330.

⁸⁷ See generally Katie Lobosco, *Nearly 30,000 Borrowers Awarded Public Service Loan Forgiveness So Far Under New Rules*, CNN (Nov. 23, 2021, 5:38 PM), <https://www.cnn.com/2021/11/23/politics/public-service-loan-forgiveness-pslf/index.html>; Richard H. Sander, *Are Law Schools Engines of Inequality?*, 48 J.L. & EDUC. 243, 263 (2019).

work fewer side jobs, rather than being broke and more likely to accept the highest paying job after school. This could make the “payback” portion more equitable across sectors and would entice students from different backgrounds to take on different jobs.

The drawback to loan forgiveness is that it essentially requires students disadvantaged by law school financing to bet on themselves and that they will both be able to repay their loans and make a satisfactory profit beyond their obligations. For students who have already been pushed down by systems, this is a significant risk. Loan forgiveness, while a step in the right direction, still requires an upfront investment for the opportunity to have upward socioeconomic success.

D. Reporting on the ABA 509

The final recommendation to improve scholarship equity focuses on equipping law schools with the knowledge to make an equitable and inclusive decision. 509 Reports are part of required disclosures accredited law schools must submit to the ABA.⁸⁸ Law schools directly submit data to the ABA in the Fall, after its most recent incoming class is solidified.⁸⁹ The reports provide information that is critical to understanding law school admissions and demographic breakdowns of prospective students. This includes, among other useful information: a breakdown of ethnicity and gender for each incoming class, the number of students who received grants or scholarships and in what amounts, and the GPA and LSAT percentiles for both full and part-time programs.⁹⁰ What the ABA 509 Report does not include is the racial or gender breakdown for scholarships, and specifically, merit-based scholarships.

The ABA should require schools to report what percentage of students, based on race and gender,⁹¹ receive merit-aid. Although there would be no legal framework per se for a school to fix racially disproportionate scholarship funding, it would require schools to reflect on its complicity in a historically racist system. Furthermore, it would serve as another measure to rate and review law schools. By reporting the impacts scholarships have on race, it would create transparency among law schools and shine sunlight on racial disparities in the funding process. It could also be used as another public facing measure to show diversity, equity, and inclusion considered in national rankings and, most importantly, by prospective students.

⁸⁸ Rachel Margiewicz, *Why Every Law School Applicant Should Use ABA 509 Reports*, PREL. (May 4, 2020, 1:27 PM), <https://nationaljurist.com/prelaw-why-every-law-school-applicant-should-use-aba-509-reports/>.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Gender identity, while not discussed at length here, has also been linked to disadvantages in the legal profession. Thus, it would be advantageous for empirical reasons to include within 509 reporting requirements.

While 509 reporting itself does not have enforcement power that would require schools to reverse its course of action, it could trigger other enforcement mechanisms set by the ABA under Standards 205 and 206. These standards require schools to create an environment that is equitable on a racial basis.⁹² If schools overwhelmingly charge Black and Latinx students more than White students, the ABA could start enforcing standards 205 and 206, and schools could risk its accreditation statuses.⁹³ A revamped 509 reporting system, coupled with an affirmative duty to create equitable opportunity, might force law schools to look at itself as part of a transaction and not the sole arbiter of power.

CONCLUSION

Creating a more diverse, equitable, and inclusive legal community is an incremental process that constantly requires reforms and revisions. The parallels drawn between equity and merit scholarships in this article identify two major problems: (1) merit-based aid flows most lucratively to students who are either White or have college educated parents; and as a result (2) student debt for Black, Latinx, and first-generation lawyers is significantly higher. Consequently, objective notions that define merit have ignored fairness and equality.

If the legal community is to defend individuals and groups from oppression and inequity, the entire community must purport to address its own contributions to oppression and inequity. Merit-based scholarships increasingly have a disparate impact on Black and Latinx students who already face significant barriers in the legal profession. While this article proposes that law schools and the ABA reform how scholarships are awarded, it is incumbent on all lawyers and students to take an active role in ensuring that legal institutions truly provide for equal opportunity.

⁹² AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2017–18 11–13 (2018), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABASStandardsforApprovalofLawSchools/2017_2018_standards_chapter2.authcheckdam.pdf.

⁹³ *Id.*