

Revisiting the Work We Know So Little About: Race, Wealth, Privilege, and Social Justice

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and Beverly Moran***

In his article, *The Work We Know So Little About*,¹ Gerald López introduces María Elena, a housekeeper, mother, tutor, seamstress, and cook. He connects her daily life struggles to make ends meet, to care for her family, and to survive with the issue of social justice for all members of society. He underlines the gap between such clients and legal education, which does so little to help students learn about the Maria Elenas of our community, what these clients would seek in a lawyer, or even how these clients might find a lawyer. Lawyers and law seem irrelevant when viewed from Maria Elena's perspective. Low-income women of color have developed their own survival mechanisms without much thanks to law.² While some lawyers do connect to these clients, López observes that this contact occurs in spite of, not because of, legal education.³

López says the miracle is that attorney-client relationships happen at all and are less than dysfunctional.⁴ López describes the many obstacles faced by clients who, like Maria Elena, often opt for more informal solutions for problems rather than engaging the legal system.⁵ When these clients do make contact with lawyers,

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1. Gerald P. López, *The Work We Know So Little About*, 42 STAN. L. REV. 1 (1989).
2. *Id.* at 8.
3. *Id.* at 9–10.
4. *Id.* at 9.
5. *Id.* at 8.

these attorney-client relations, across race, economic class, and other multiple-identity categories that radiate forms of privilege, represent a “magnificent mutual adaptation” according to López.⁶ López believes that “fighting political and social subordination” is the work we know so little about.⁷

When I [Stephanie] teach López’s article, I ask my students two questions: “If López is right and fighting subordination is the work we know so little about, does that work require knowledge that can be taught and learned?” and “Why might it be difficult for lawyers or law students to connect with the Maria Elenas in our communities?”

Of course the answers implicate education, particularly legal education and its role in keeping systems of privilege unspoken, unidentified, and unexamined. And the answers underline the need for each of us to pursue an education about systems of privilege ourselves. Work against subordination does require knowledge—in fact many kinds of knowledge. Provocateurs for social justice⁸ must learn self-awareness of their own privileges and limitations as well as a sense of the role that systems of privilege play in the social order.

This Essay considers why privilege—with a particular emphasis on white racial privilege and socioeconomic wealth—is so hard for the holder of the privilege to see. Individual holders of privilege—perhaps you, the reader of this Essay—possess multiple privileges, even as you might be on the unprivileged side of the “power line”⁹ with respect to certain identity categories. Those situated above the power line share privileged characteristics that define societal norms.¹⁰ “[P]rivileged group members can rely on their privilege and avoid objecting to oppression,” giving them the significant benefit of opting for silence when facing examples of subordination impacting others.¹¹ The normalization of privilege as the ordinary societal order makes the privilege hard for its holder to separate from “just the way things are.”¹²

Most Americans believe in a legal system that aspires to, and often achieves, neutrality in matters of class and equality in matters of race.¹³ They do not view

6. *Id.* at 9.

7. *Id.* at 9–10.

8. Jane Aiken uses this phrase in her essay, Jane H. Aiken, *Provocateurs for Justice*, 7 *CLINICAL L. REV.* 287 (2001) (describing the education process to make her students “justice ready”). Provocateurs for justice desire to make change toward greater social justice.

9. STEPHANIE M. WILDMAN WITH CONTRIBUTIONS BY MARGALYNNE ARMSTRONG, ADRIENNE D. DAVIS, & TRINA GRILLO, *PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA* 29 (1996) (explaining Frances Ansley’s use of a power line to delineate privileged attributes from those that are not privileged, across culturally significant identity categories like race, gender, and sexual orientation).

10. *Id.* at 13.

11. *Id.*

12. *Id.* at 13–14; see also Beverly I. Moran, *Quantum Leap: A Black Woman Uses Legal Education to Obtain Her Honorary White Pass*, 6 *BERKELEY WOMEN’S L.J.* 118 (1991).

13. See, e.g., Terry Carter, *Divided Justice*, 85 *A.B.A. J.* 42, 43 (1999) (reporting that 80.7% of

law and the legal system as one way that American society polices and enforces race and wealth disparities. Rather, because of the prevalent view that American law and legal institutions are class and colorblind, most of those working within law see no place for considerations of race and wealth disparities in their education or practice.

Ironically, neutrality and equality can support subordination and hierarchy. French writer Anatole France illustrated this point when he sarcastically applauded the majestic equalitarianism of the law, which “forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.”¹⁴

Echoing France’s sentiment, legal realist Robert Hale wrote in 1943 about the law’s role in creating unequal bargaining relationships and unequal wealth effects.¹⁵ Hale explained that wealth gives its owner control over his or her own life and leisure and over other people’s lives as well.¹⁶ Hale illustrated this control of the wealthy over the working classes by describing the greater bargaining power that capital has over labor, especially low-skilled workers.¹⁷ This unequal bargaining power leads to inequitable distributions of wealth as those with control over capital can extract work from others without providing just compensation.¹⁸ As seen in Hale’s article, legal neutrality claims that law has no effect on this wealth distribution.¹⁹ Instead, law simply protects property rights and freedom of contract.²⁰ Under this concept of legal neutrality, institutions other than the law, such as the market, fuel the wealth distribution occasioned by unequal bargaining power.

Hale rejected the claim that legal neutrality has no wealth effects. Rather, Hale pointed out that legal rules lead to particular wealth distribution patterns and that different legal rules create different wealth distribution patterns while still protecting property rights and freedom of contract.²¹ For Hale, the allegedly neutral system of American property and inheritance laws does more than merely

white attorneys and 59.1% of Black attorneys polled were “hopeful” that the justice system would eliminate racial bias). Other versions of material discussed *infra* text accompanying notes 13 through 37 appear in Beverly Moran & Stephanie M. Wildman, *Race and Wealth Disparity: The Role of Law and the Legal System*, 34 *FORDHAM URB. L.J.* 1219 (2007), and in *RACE AND WEALTH DISPARITIES: A MULTIDISCIPLINARY DISCOURSE* (Beverly Moran ed., 2008).

14. ANATOLE FRANCE, *LE LYS ROUGE* [THE RED LILY] (1894), as reprinted in JOHN BARTLETT, *FAMILIAR QUOTATIONS* 655 (1980).

15. Robert L. Hale, *Bargaining, Duress, and Economic Liberty*, 43 *COLUM. L. REV.* 603 (1943).

16. *Id.* at 626–28.

17. *Id.* at 626–27.

18. *Id.* at 627–28.

19. *Id.* at 626.

20. *Id.*

21. *Id.* at 627–28 (“Bargaining power would be different were it not that the law endows some with rights that are more advantageous than those with which it endows others.”).

protect private property and freedom of contract; these laws also give property owners power over workers to the detriment of most Americans.²²

Most people are aware of the failures of the post-Civil War Reconstruction²³ and the emergence of the Jim Crow system of segregation.²⁴ Few are as aware of how the liberal New Deal tied race and wealth together. The New Deal introduced the notion of an economic safety net into American politics, and as a result, pulled many Americans out of poverty. But the New Deal also excluded agricultural and domestic workers from that economic safety net because those occupations served as a “neutral” proxy for race.²⁵ After World War II, the government continued to enrich its citizens based on race through the Federal Housing Administration, which made home ownership available to working class whites, while excluding Black buyers through redlining and other exclusionary practices.²⁶ These seemingly race-neutral rules actually shifted wealth away from Blacks and towards whites.

Wealth disparities and race both play marginal roles in the law school curriculum.²⁷ Although all first year law students study subjects that involve issues

22. *Id.*

23. Angela P. Harris, *Equality Trouble: Sameness and Difference in Twentieth-Century Race Law*, 88 CALIF. L. REV. 1923, 1931–33 (2000).

24. *Id.* at 1962–66.

25. See MARTHA R. MAHONEY, JOHN O. CALMORE & STEPHANIE M. WILDMAN, SOCIAL JUSTICE: PROFESSIONALS, COMMUNITIES, AND LAW 451–571 (2003) (discussing livelihood and the economic safety net). See generally IRA KATZNELSON, WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA (2005) (reporting how U.S. social programs favored whites); William E. Forbath, *Constitutional Welfare Rights: A History, Critique, and Reconstruction*, 69 FORDHAM L. REV. 1821, 1835–38 (2001); Joel F. Handler, “Constructing the Political Spectacle”: *The Interpretation of Entitlements, Legalization, and Obligations in Social Welfare History*, 56 BROOK. L. REV. 899, 912–20 (1990).

26. For more on the private and public practices that operated to deny Black Americans home ownership, see generally William J. Collins & Robert A. Margo, *Racial Differences in Wealth: A Brief Historical Overview*, in RACE AND WEALTH DISPARITIES, *supra* note 13, at 23, 23–40, and M. Elizabeth Kirkland & Sheila R. Peters, “Location, Location, Location”: *Residential Segregation and Wealth Disparity*, in RACE AND WEALTH DISPARITIES, *supra* note 13, at 11, 11–22. See also SHERYL CASHIN, THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM (2004); DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS (1993); MELVIN L. OLIVER & THOMAS M. SHAPIRO, BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY (1995); Margalynne Armstrong, *Race and Property Values in Entrenched Segregation*, 52 U. MIAMI L. REV. 1051 (1998); Martha R. Mahoney, *Segregation, Whiteness, and Transformation*, 143 U. PA. L. REV. 1659 (1995); Florence Wagman Roisman, *Teaching About Inequality, Race, and Property*, 46 ST. LOUIS U. L.J. 665 (2002).

27. Class in America, according to bell hooks, is the subject the culture does not address. “Nowadays it is fashionable to talk about race or gender; the uncool subject is class.” BELL HOOKS, WHERE WE STAND: CLASS MATTERS, at vii (2000) (grieving that greed sets “the standard for how we live and interact in everyday life”). Her comment is reminiscent of Patricia J. Williams’s description of race as the elephant in the room that gets tiptoed around and is not discussed. PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS 49 (1991). Although both wealth and race tend to be ignored in law school classrooms, several good casebooks are available on these subjects, including DERRICK

of wealth and race, legal educators rarely teach those subjects in ways that raise or highlight those concerns. Instead, legal pedagogy adopts a mode of “perspectivelessness,” as Kimberlé Crenshaw has pointed out, reinforcing the ideal that legal discourse is objective and analytical.²⁸ Perspectivelessness supports the myth of legal neutrality.²⁹ Although legal scholars like Hale have been very explicit about the role of wealth in American law³⁰ and critical race theory has been equally explicit about the role race plays in American legal institutions,³¹ both topics remain relegated to boutique seminar courses. Students can, and often do, study law for three years without ever considering either wealth or race as legitimate topics of study.³²

We all have a stake in changing this omission. Students and faculty of color should not be the only ones to care about race, nor should they shoulder the primary responsibility for educating white colleagues, who also have a race, about the role of race and socioeconomic wealth in society. As colorblindness has emerged as a dominant aspiration in our society, conversation about race has become even more difficult.³³ People of color know that society racializes them

BELL, RACE, RACISM AND AMERICAN LAW (6th ed. 2008), EMMA COLEMAN JORDAN & ANGELA P. HARRIS, ECONOMIC JUSTICE: RACE, GENDER, IDENTITY AND ECONOMICS (2005), and JUAN F. PEREA, RICHARD DELGADO, ANGELA P. HARRIS, JEAN STEFANCIC & STEPHANIE M. WILDMAN, RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA (2d ed. 2007).

28. Kimberlé Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 4 S. CAL. REV. L. & WOMEN'S STUD. 33, 35 (1994). The above citation refers to the article as reproduced by the *Southern California Review of Law and Women's Studies* as part of its 1994 symposium entitled “Bringing Values and Perspectives Back into the Law School Classroom: Practical Ideas for Teachers.” Professor Crenshaw originally wrote this article as a foreword to an issue of the *National Black Law Journal*. Kimberlé Williams Crenshaw, *Foreword: Towards a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L.J. 1 (1989).

29. Perspectivelessness suggests that legal discourse properly excludes any culturally specific or experiential knowledge. Crenshaw, *supra* note 28, at 39. As Crenshaw suggests, it masks the existence of a dominant perspective, *supra* note 28, at 40, thus supporting the myth of legal neutrality.

30. See, e.g., Cass R. Sunstein, *Why Does the Constitution Lack Social and Economic Guarantees?*, 56 SYRACUSE L. REV. 1, 20 (2005) (supporting the idea that the Nixon appointments to the Supreme Court removed the potential for a progressive understanding of wealth distribution); see also Hale, *supra* note 15, at 626.

31. See generally CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado & Jean Stefancic eds., 2d ed. 2000); CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw et al. eds., 1995).

32. See WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

33. Most identify Justice Harlan's dissent in *Plessy v. Ferguson* with the concept of colorblindness. In that dissent Harlan chastised the separate but equal doctrine and proclaimed, “Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law.” *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting). Thus, the notion of colorblindness resonates with themes of racial equality and justice. Prior to *Plessy*, supporters of civil rights for people of color argued that the Fourteenth Amendment established the principle that citizenship was a national entitlement and that government could no longer make distinctions among citizens based on their color. MARK ELLIOTT, COLOR-BLIND JUSTICE: ALBION TOURGÉE AND THE QUEST FOR RACIAL EQUALITY FROM THE CIVIL WAR TO

with a race other than white. Yet whites often do not think about race, except when they notice people of color as having a race. Whites tend not to notice that they too have a race that carries social meaning and generally positive presumptions. Whites often aspire to colorblindness, believing that it promotes equality. However, they fail to see how their whiteness privileges them in so many societal interactions—from making purchases in a store without being asked for identification to entering a hospital for visiting hours without being stopped.³⁴ The myth that everyone can work hard and become a millionaire further veils the social stratification and the dynamic of class creation.³⁵

Sixty years after Hale wrote about how law makes choices about what to protect, labor economist Stephen J. Rose depicted, in a book and poster, the interrelationships of income, wealth, occupation, race, gender, and household type.³⁶ The book reports that only five percent of the United States population owns nearly sixty percent of the nation's wealth.³⁷ Using an icon representing 190,000 people as its primary unit, Rose created a poster approximately two feet wide and three feet tall. The left side of the poster shows the American population by annual income up to \$150,000. Ninety-two percent of the American population earns at or below \$150,000 in combined household income. All ninety-two percent fit within the physical frame of the three-foot tall poster.

To include people who earn combined annual incomes of up to \$300,000 and maintain the 190,000-per-icon scale, the poster's height must increase to eight feet. To reflect the 20,000 households with more than \$10 million in yearly

PLESSY V. FERGUSON 250 (2006). The contemporary colorblindness doctrine revives the call for equal treatment under the law but does not acknowledge or remedy continuing inequality attributable to decades of legally sanctioned racial discrimination. As Neil Gotanda has observed, a colorblind perspective characterizes race as “objective and apolitical.” Neil Gotanda, *A Critique of “Our Constitution Is Color-Blind,”* 44 STAN. L. REV. 1, 34 (1991). Further, and seemingly at odds with its goals, a colorblind perspective divorces race from historical realities of minority, particularly Black, oppression. *Id.* at 6–7, 37. This “unconnectedness,” as Gotanda describes it, perceives modern manifestations of that historical oppression as isolated phenomena, rather than symptoms of the complex and systemic issue of race. *Id.* at 44–45. Thus, proponents of colorblindness “live in an ideological world where racial subordination is ubiquitous yet disregarded—unless it takes the form of individual, intended, and irrational prejudice.” *Id.* at 46; see also Stephanie M. Wildman, *The Persistence of White Privilege*, 18 WASH. U. J.L. & POL'Y 245, 251 (2005) (identifying a “contemporary cultural push to colorblindness”).

34. For a particularized and extensive itemization of white privileges, see Peggy McIntosh, *White Privilege and Male Privilege: A Personal Account of Coming to See Correspondences Through Work in Women's Studies*, in POWER, PRIVILEGE, AND LAW: A CIVIL RIGHTS READER 22 (Leslie Bender & Daan Braveman eds., 1995). See also Stephanie M. Wildman, *Reflections on Whiteness and Latina/o Critical Theory*, 2 HARV. LATINO L. REV. 307 (1997) (detailing how white privilege adversely affects Latinas/os).

35. See generally Martha R. Mahoney, *Class and Status in American Law: Race, Interest, and the Anti-Transformation Cases*, 76 S. CAL. L. REV. 799 (2003) [hereinafter Mahoney, *Class and Status*].

36. STEPHEN J. ROSE, SOCIAL STRATIFICATION IN THE UNITED STATES: THE NEW AMERICAN PROFILE POSTER (2007).

37. *Id.* at 34.

income, again maintaining the same scale, the poster must grow to twenty stories high. That difference from three feet to twenty stories, coupled with the population density in the bottom three feet, illustrates the unlikelihood of an individual moving from the chart's bottom to its top. Yet, in the United States, we believe that anyone can climb those twenty stories in one lifetime. This belief coexists with public rules and private practices that have tied wealth to race for generations.³⁸ As a result, nonwhites are even less likely to move out of poverty than whites.

In March 2011, the UC Irvine School of Law convened a symposium, *Searching for Equality: A Conference on Law, Race & Socio-Economic Class*. The symposium provided a forum to recognize the income distribution disparities portrayed by Rose's poster and book and to acknowledge the prevalence of "rags to riches fairytales" in spite of this hard evidence. The symposium premise further acknowledged: "[P]eople of color are much more likely than their White counterparts to be impoverished, to have lower incomes, to be incarcerated, and to be uninsured and unemployed."³⁹ Symposium participants examined the interplay between race and class in a number of substantive areas.

In the months since the symposium convened, the Occupy Wall Street movement took hold in cities across the United States. The movement originated with an initial demonstration held in New York's financial district during September 2011.⁴⁰ Claiming no goals but raising awareness of economic inequities and aiming to expose how "the richest 1% of people are writing the rules of an unfair global economy,"⁴¹ the movement has spread both online⁴² and offline to multiple cities across the nation. Although support and momentum have fluctuated, Occupy Wall Street has already made a strong impact in the public consciousness: "It altered political discourse, forced debate away from the deficit

38. See generally OLIVER & SHAPIRO, *supra* note 26 (examining patterned disparities between Black and white communities' living standards, access to opportunity, and command over resources in light of public laws and resulting private practices from Reconstruction through the New Deal and civil rights era up to contemporary America). See also TIM WISE, *DEAR WHITE AMERICA: LETTER TO A NEW MINORITY* 112–42 (2012) (examining the same policies, including a brief discussion concerning the impact of the recent housing crisis).

39. *Searching for Equality: A Conference on Law, Race & Socio-Economic Class*, UCI LAW, http://www.law.uci.edu/law-race-class_March2011.html (last visited Aug. 10, 2012).

40. *Occupy Movement (Occupy Wall Street)*, N.Y. TIMES, http://topics.nytimes.com/top/reference/timestopics/organizations/o/occupy_wall_street/index.html (last updated Sept. 17, 2012) ("The Occupy Movement began on Sept. 17, 2011, when a diffuse group of activists began a loosely organized protest called Occupy Wall Street, encamping in Zuccotti Park, a privately owned park in New York's financial district.").

41. *About Us*, OCCUPYWALLST., <http://occupywallst.org/about> (last visited Aug. 10, 2012).

42. Jennifer Preston, *Wall Street Protest Spurs Online Dialogue on Inequity*, N.Y. TIMES, Oct. 9, 2011, at A22, available at <http://www.nytimes.com/2011/10/09/nyregion/wall-street-protest-spurs-online-conversation.html> ("These Occupy pages around the country are being used not only to echo the issues being discussed in New York about jobs, corporate greed and budget cuts, but also to talk about other problems closer to home.").

towards inequality and, via a series of high-profile actions, marches and—most dramatically—clashes with police, shot up the news agenda worldwide.”⁴³

Noticing economic inequality in the United States is a bit like Captain Louis Renault in *Casablanca* saying, “I’m shocked, shocked to learn there is gambling going on in here,” as he collects the winnings from his last wager.⁴⁴ But, as the Occupy movement has highlighted, the vast economic disparity between the wealthiest one percent of Americans and the rest of the nation bears notice.⁴⁵ Union leaders have started lending their support, adopting some of the Occupy movement’s rhetoric and social media tactics because they were so impressed with how the protesters have brought these issues into the public consciousness.⁴⁶

As this Essay goes to press, it remains to be seen whether the Occupy movement’s “discovery” of economic disparity within American capitalism will yield any meaningful social change. Pure focus on socioeconomic class, without attention to other systems of privilege, seems an unlikely formula for success. Yet again, unexamined attitudes make it hard to consider race along with socioeconomic class as part of the struggle for social justice.⁴⁷

Whites may fear that talking about race makes them seem racist.⁴⁸ But it

43. Karen McVeigh, *Occupy Movement Plans Spring Offensive as Momentum Stalls*, GUARDIAN (U.K.) (Nov. 11, 2011, 11:28 EST), <http://www.guardian.co.uk/world/2011/nov/11/occupy-movement-winter-what-next>.

44. CASABLANCA (Warner Brothers Pictures 1942).

45. Nicholas D. Kristof, *Occupy the Agenda*, N.Y. TIMES, Nov. 20, 2011, at SR11, available at <http://www.nytimes.com/2011/11/20/opinion/sunday/kristof-occupy-the-agenda.html> (“The top 1 percent of Americans possess a greater net worth than the entire bottom 90 percent, according to an analysis by the Economic Policy Institute.”).

46. Steven Greenhouse, *Standing Arm in Arm: Occupy Movement Inspires Unions to Embrace Bold Tactics*, N.Y. TIMES, Nov. 9, 2011, at B1, available at <http://www.nytimes.com/2011/11/09/business/occupy-movement-inspires-unions-to-embrace-bold-tactics.html>.

47. Several scholars offer a compelling example of the power of joining attention to race within a socioeconomic class-based protest. At the end of 1995, the predominantly Black labor force at the Greensboro, North Carolina K-Mart distribution center earned an average of \$5.10 per hour less than workers in identical jobs at other locations. The workers had complained for years of racial and sexual harassment, unsafe working conditions, and low wages. The union won a contract, marking the first time a K-Mart center was organized, yet K-Mart resisted. Black clergy planned a protest strike, facing arrest. They couched the campaign as one for “authentic community” or “sustainable community.” A description highlighting racial justice made white workers feel excluded, but an organizing tactic that ignored race made Black workers and community members feel the movement was unresponsive to their concerns. Protest that enabled a coalition between the white and Black communities succeeded. LANI GUINIER & GERALD TORRES, *THE MINER’S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* 131–67 (2002); see also Penda D. Hair, *Prayer and Protest: Bringing a Community Vision of Justice to a Labor Dispute*, 2 U. PA. J. LAB. & EMP. L. 657, 670–73 (2000); Reverend Nelson Johnson, *Reflections on an Attempt to Build “Authentic Community” in the Greensboro Kmart Labor Struggle*, 2 U. PA. J. LAB. & EMP. L. 675 (2000); Mahoney, *Class and Status*, *supra* note 35, at 838–39.

48. Other versions of material discussed *infra* text accompanying notes 48 through 57 appear in Margalynne J. Armstrong & Stephanie M. Wildman, *Teaching Race/Teaching Whiteness: Transforming Colorblindness to Color Insight*, 86 N.C. L. REV. 635 (2008), and Margalynne J. Armstrong & Stephanie M. Wildman, *Working Across Racial Lines in a Not-So-Post-Racial World*, in PRESUMED INCOMPETENT:

would be more helpful for *everyone* to notice when racism is present and to think about how to combat it. Society cannot battle a phantom that it fails to recognize and name. Whites ignore race at our peril and risk causing unintended harm to colleagues of color as the dynamics of racism grind on people of color's daily lives.

Race remains a formative identity category that impacts the lives of both whites and people of color in different ways. So seeing race for whites must mean noticing whiteness, not just noticing race when a person of color is present. The dominant value of colorblindness maintains the status quo of white privilege: "Colorblindness is the new racism," as one of our students poignantly said at a recent social justice event.⁴⁹

To counter the idea of colorblindness or the notion that society is post-racial,⁵⁰ co-authors Margalynne and Stephanie have proposed the idea of using "color insight." Color insight provides a vocabulary for teaching across racial lines—a lens with which to examine situations and conversations. Color insight contrasts with colorblindness and offers an alternative that serves the purported goals of colorblindness: racial equality and justice. Color insight recognizes that a racial status quo exists in which society attributes race to each member. While colorblindness urges us not to notice, color insight says, "Don't be afraid—notice your race and the race of others around you and consider and learn about what that means." Adopting color insight would serve to promote equality and to emphasize nondiscrimination among races. Employing color insight would admit that most of us do see race and underline the need to understand what that racial awareness might mean.

Establishing an environment in the classroom or workplace in which the mention and discussion of race are possible is a key first step.⁵¹ If students,

THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA (Gabiella Gutiérrez y Muhs et al. eds., 2012).

49. Benjamin Kuo, then Santa Clara Law student, Comment During Social Justice Thursday Discussion at Santa Clara University Law School (Oct. 19, 2006). For a discussion of Social Justice Thursday, see Stephanie M. Wildman, *Democracy and Social Justice: Founding Centers for Social Justice in Law Schools*, 55 J. LEGAL EDUC. 252, 260, 265–66 (2005).

50. "Post-racial" refers to the notion that America has moved beyond antiquated racial stereotypes and now operates, or should operate, both legally and socially, without concern to race. Sumi Cho suggests that the Supreme Court's 2007 decision in *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007) marked the genesis of the "post-racial" era. Sumi Cho, *Post-Racialism*, 94 IOWA L. REV. 1589, 1605 (2009). Cho argues that post-racial theory represents a "retreat from race" on several fronts. *Id.* at 1594. Post-racial theory posits that "due to the significant racial progress . . . the state need not engage in race-based decision-making or adopt race-based remedies, and that civil society should eschew race as a central organizing principle of social action." *Id.* Thus, post-racialism "rejects the centrality of race as an organizing feature in American society and holds that policymakers formulate social and legal remedies best without any consideration of group identity, especially racial identity." *Id.* at 1603. Kimberlé Crenshaw further notes that "post-racialism has become tied to a rhetoric that stigmatizes race-conscious advocacy, social policy and institutional critique." Kimberlé Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 43 CONN. L. REV. 1253, 1327 (2011).

51. See John O. Calmore, *A Call to Context: The Professional Challenges of Cause Lawyering at the*

faculty, or colleagues at work can understand how their perception of race may have already evolved, they may be more willing to consciously move from favoring the notion of colorblindness to supporting color insight. In doing so, they can recognize that we all have much to learn from the insights of examining race and racialization, as well as socioeconomic class.

Three key aspects of color insight are: (1) examining systems of privilege, (2) unmasking perspectivelessness, and (3) combating stereotyping and looking for the “me” in each individual. Examining systems of privilege provides a first step toward color insight. Conversations about race in any classroom take place against a national backdrop in which race still matters and white privilege continues. Race remains a formative identity category that impacts the lives of both whites and people of color in different ways. So seeing race for whites must mean noticing whiteness, not just noticing race when a person of color is present.

It is not that whiteness simply privileges white people. Whiteness can also negate people of color who are judged by their conformance to white norms, disparaged by their perceived dependence on whiteness, or silenced by invisible presumptions of nonwhite deviance. Both whites and people of color need to recognize their own and each other’s individual privileges. Education, gender, sexual orientation, economic wealth, language or accent, physical appearance and ability, and religious privileges, to name a few, all continue as societal impediments to equality, as does race.

A second key to color insight is unmasking perspectivelessness. The norms and cultural boundaries of legal academics are products of a specific, educationally elite subset of the larger society in which their schools operate. Reflecting on these societal norms, most law schools would contend that they espouse objectivity and neutral principles. Crenshaw critiques this objectivity-neutrality myth, writing:

In many instances, minority students’ values, beliefs, and experiences clash not only with those of their classmates but also with those of their professors. Yet because of the dominant view in academe that legal

Intersection of Race, Space and Poverty, 67 *FORDHAM L. REV.* 1927, 1927–46 (1999). John Calmore issued a call for context in a different setting:

By issuing a call to context, I am directing attention to the inner-city poor’s lived experiences, including the interconnection of legal and non-legal issues they confront, the web of experiences within which they live, and what Michael Katz calls “their anchor in context.” This suggests that we cannot view their issues or the features of context as fixed and unchanging. Instead, we must view them as historically evolving, relational, changing in meaning, and, as Katz says, “to be interpreted in terms of time and place.”

Id. at 1927–28 (footnotes omitted).

Examining oppression faced by his clients, Calmore found that it was “group-based, structured, and systemic.” *Id.* at 1938. He deplored the marginalization of his clients that removed them from the option of societal participation. He suggested that advocates “search for invitation, opportunity, and connection,” urging that “[a]n open mind and a correct sensibility may be more important than the command of technical craft, because often we must learn as we go.” *Id.* at 1956. Similarly, in seeking to set institutional and classroom contexts to discuss race and whiteness, we must be willing to learn as we go.

analysis can be taught without directly addressing conflicts of individual values, experiences, and world views, these conflicts seldom, if ever, reach the surface of the classroom discussion. Dominant beliefs in the objectivity of legal discourse serve to suppress the conflict by discounting the relevance of any particular perspective in legal analysis and by positing an analytical stance that has no specific cultural, political, or class characteristics.⁵²

This theoretically neutral perspectivelessness perfectly diverts students and professors from examining how whiteness and many other factors inform law school culture. Perspectivelessness operates through the use of white normativeness as the default mode.

Finally, color insight requires combating stereotyping and looking for the “me” in each individual. Jerome Culp, who was an African American law professor at Duke, reports on his students asking him, “Where did you go to law school?”⁵³ He had realized that this question was a form of the students asking, “What gives *you* the right to teach this course to *me*?”⁵⁴ He told them that he had attended the University of Chicago and Harvard Law School. Seeking to influence the way the students viewed race within his classroom, he also told them he was the son of a coal miner. Culp explained that he wanted to say to his Black students that “they too can engage in the struggle to reach a position of power and influence.”⁵⁵ He also wanted his white students to see that “[B]lack people have to struggle.”⁵⁶ Yet Culp found that the reaction from students of both races, when he told them his history, was often disbelief. He realized that he was facing the students’ stereotypes of him and his background.

Culp explained that his use of autobiography conveyed more than an effort to put his students at ease about his qualifications. He wrote:

My autobiographical statement—I am the son of a poor coal miner—has informational content that has a transformative potential much greater than my curriculum vitae. *Who we are* matters as much as what we are and what we think. It is important to teach our students that there is a “me” in law, as well as specific rules that are animated by our experiences.⁵⁷

Culp was combating stereotypes by urging students to see the “me,” the individual who transcends those stereotypes and resides at the intersection of

52. Crenshaw, *supra* note 28, at 34–35 (footnote omitted) (discussing her experiences teaching a seminar entitled “Minority Voting Rights and Majoritarian Domination,” which was designed to address some of the difficulties encountered by minority law students).

53. Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 VA. L. REV. 539, 543 (1991) (suggesting that by sharing their lived experiences, law professors of color create a safer space for students of color and enhance education for students of all races). Sadly, Professor Culp died in 2005.

54. *Id.*

55. *Id.* at 539.

56. *Id.*

57. *Id.* at 543.

multiple identity categories. Culp's view of the importance of the "me" in law and his memorable message about where he came from can inspire us all to teach about race and socioeconomic background in the law school classroom.

So please join us in imagining, if you are a law professor, the following hypothetical. If you are a student, please imagine in the hypothetical that you are the law student on the last day of class. Or, if you are a practitioner or other reader, please imagine that someone you work with in a coalition has made a similar statement. For simplicity, this Essay couches the hypothetical to professors.

It is the last day of your class—pick whichever subject you want. You have given students a chance to reflect on what they have learned. With two minutes left in the whole term, a student raises her hand and says, "I have felt invisible throughout this semester. Classroom discussions made assumptions about the resources and lifestyles available to clients, lawyers, and law students. I was the first in my family to go to college, never mind law school. Sometimes I haven't known where the rent money would come from, and I've missed some classes because of that. Most of you don't even know that I am here."

What could you have done in your classroom, if anything, to have prevented this frustrated outburst? How could you have made sure that the student did not feel invisible? Does the student's gender matter to your answer? Race? Physical abledness? Sexual orientation?

By discussing examples like this one and the issues that are implicated, we can make steps toward educating ourselves and future lawyers about "the work we know so little about" and becoming better prepared to work with the Maria Elenas in our communities.