The Office of Student Affairs presents

Adjunct Diversity, Equity, and Inclusion Training Session
INTERCULTURAL SUCCESS STRATEGIES FOR LAW SCHOOL INSTRUCTORS

Fordham Law School
via Zoom Webinar

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Fordham Law School Adjunct Diversity, Equity, and Inclusion
Training Session

INTERCULTURAL SUCCESS STRATEGIES FOR LAW SCHOOL INSTRUCTORS

Speaker Bios

Kamille Dean
Senior Director of Diversity, Equity & Inclusion
Fordham University School of Law

Kamille Dean is the Senior Director of Diversity, Equity, and Inclusion at Fordham University School of Law. Dean also served as the inaugural Director of Diversity and Inclusion at St. John’s University School of Law. In addition, she was the Director of the Ronald H. Brown Center for Civil Rights and the Ronald H. Brown Law School Prep Program for College Students at St. John’s Law where she administered innovative pre-law pipeline programs.

Prior to her position at St. John’s Law, Director Dean was a law school faculty member. She taught courses on a range of business law subjects. Her research interests include diversity in higher education and economic justice. She publishes her writings in books, law journals, and encyclopedias that are focused on achieving equality through education and corporate social responsibility.

Director Dean regularly presents on topics concerning diversity, equity, inclusion, and belonging. Her seminars, workshops, and panel discussions are conducted at events that highlight civil rights and social justice issues. Director Dean serves on the board of directors for a local credit union, and she co-founded the nonprofit Cans 4 Cancer. She is a graduate of CUNY Queens College and the University of Pennsylvania Law School.

Marion Cloete
Legal Education Consultant and Resource Analyst
Marion Cloete Consulting Services

Marion Cloete [klu’ti] is a legal education consultant and resource analyst. Her work is focused on diversity, equity, inclusion, and belonging in law schools and legal education organizations. She served as Director of Diversity Services at California Western School of Law for 15 years. There, she focused on institutional advancement in Diversity and Equity, and mentoring law students and new attorneys.

Her leadership extends to a national network of DEIB professionals, engaging thought leadership and strategic advancement in legal education. She is a co-founder of the Annual Meeting of Law School Diversity Professionals, and has served as an advisor for the National Conference on Race and Ethnicity in Higher Education (NCORE). She has been a speaker for law schools and legal organizations across the nation.

Marion Cloete’s work and collaborations have been recognized by The ABA Judicial Clerkship Program, the Council on Legal Educational Opportunity (CLEO), and the Earl B. Gilliam Bar Association. She is a South African expat and Apartheid survivor devoted to the cause of racial and societal justice.
Conscious Identity Performance

LESLIE P. CULVER*

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* © 2018 Leslie P. Culver. Professor of Legal Writing and Director of A.I.M. for Law, California Western School of Law; Visiting Professor of Lawyering Skills, University of California, Irvine School of Law. First, I thank God for directing my steps. Second, my husband Carl, for his unending support in providing the space to work and encouragement to excel. Third, to Devon Carbado (UCLA) for his comments that pushed this important contribution further. Fourth, Dr. Mark P. Orbe (Western Michigan), whose groundbreaking work in co-cultural communication, and for his comments on earlier drafts. Fifth, my colleagues at California Western whose comments, and research support were invaluable in earlier stages: William Aceves, Hannah Brenner, Scott Ehrlich, India Thusi, and Linda Weathers—my research guru. Sixth, to my Lutie Lytle sisters whose insightful comments on this work were transformative, particularly Stacy Hawkins (Rutgers), Osamudia James (Miami), and Angela Onwuachi-Willig (UC Berkeley). Next, to my wonderful legal writing colleagues who helped provide shape and affirmation when this article was just an idea, Terrill Pollman (UNLV), Alyssa Dragnich (ASU), Linda Berger (UNLV), and Teri McMurtry-Chubb (Mercer). Finally, my sincere gratitude to my research assistants Shandi Korte and Liza Ahmed for their faithful dedication.
I. INTRODUCTION

I hear [the Soul of White Folk,—this modern Prometheus’s] mighty cry reverberating through the world, “I am white!” Well and good, O Prometheus, divine thief! Is not the world wide enough for two colors, for many little shinings of the sun? Why, then, devour your own vitals if I answer even as proudly, “I am black!”

—W.E.B. Du Bois

I offer the story of Jason and Keith, two of my former students, both black males. Jason was outgoing and outwardly perceived as a gregarious individual usually surrounded by his law school peers, most of whom were white. Keith, on the other hand, appeared more reserved in the law school setting and I frequently observed him sitting with a little distance between himself and his predominately white classmates. In the year that both of these young men were in my class I do not recall observing them interacting with each other. Keith was a member of the Black Law Student Association (BLSA) and a regular visitor during my office hours to talk about both academic and nonacademic items—as relevant disclosure, I am a black female. Jason, to my knowledge, was not an active member of BLSA and, as I recall, attended my office hours only during mandatory writing conferences or group presentations. Presume that both of these young men will graduate law school with comparable academic credentials, similar work

2. These names have been changed to preserve anonymity.
3. I recognize his peer choice may also reflect the predominantly white racial make-up of his law school class.
experience, and laudable extracurricular activities, and thereafter apply to the same predominantly white law firm. Affording individual freedom to how these young men choose to wear or give meaning to their race, one might wonder what inferences will be drawn when asked whether Jason or Keith is more likely to have a successful legal career at that law firm.

People in the legal profession from traditionally marginalized groups—termed “outsiders”—sometimes feel pressure to perform strategies to communicate their identity in a predominantly white, heterosexual, male profession. Building upon outsider strategies to combat prejudice or assimilate, which legal scholarship describes in terms such as covering and passing, the diversity crisis in the legal profession signals the need for a deeper understanding of identity communication and strategies. The existence of such strategies raises important questions, such as whether attorneys from marginalized groups should be intentional or passive in performing their identity. This question assumes attorneys are consciously choosing such strategies, as opposed to responding subconsciously to their circumstances. Ultimately, the discussion of identity strategies already prevalent in legal scholarship provides a valuable starting point for the communication scholars’ co-cultural theory to offer further insight into communication strategies that may move the needle in this critical space.

This Article centers on the application of the co-cultural theory, which largely discusses the communication styles of nondominant groups within a dominant culture. In summary, the co-cultural theory views, from the standpoint of the marginalized person, how nondominant cultures communicate and negotiate their identity within dominant structures. The co-cultural theory is a blend of the muted group theory and standpoint theory. First, the muted group theory, from the field of anthropology, suggests that where there is a power difference between two groups in a society, one group is rendered mute. For example, men are the dominant group in many societal hierarchies, so when men and women are present in the same space, it is likely that men talk more and not only for themselves, but potentially for


5. See Orbe, supra note 4, at 4; Edwin Ardener, Belief and the Problem of Women, in PERCEIVING WOMEN 1, 2 (Shirley Ardener ed., 1975).
women too. Second, the standpoint theory, originating from feminist scholars, analyzes the lived experiences of marginalized people from their individual vantage point. Equally important to this theory is to remain both conscious of, and sensitive to, the standpoints “among” various groups—for example, women, people of color, and LGBTQ+—as well as “within specific groups”—for example, African Americans.

By unifying these two theories, communication scholars created a valuable framework in the co-cultural theory. Specifically, the theory studies the communication practices of marginalized groups, who are normally without a significant voice in the dominant white culture—muted group theory—and does so from their viewpoint—standpoint theory. One of the hallmark features of the co-cultural theory is its reliance on a German-developed human science research process known as “phenomenology.” This methodology focuses on the conscious experiences of how a person relates to the world, and with such focus, it moves away from traditional empirical research and toward inclusion of the subject group members’ perspective, as they are best positioned as the expert on their own life and life experiences. Another highly regarded feature is the communication orientation paradigm that communication scholar Dr. Mark Orbe developed after his significant studies on the intergroup communicative practices of African-American men. This notable orientation identifies twenty-six communication practices that describe how nondominant cultures communicate with the dominant culture. Now, which communication practice is employed turns on several factors, two preeminent being the “preferred outcome” the nondominant group member desires with the dominant culture, as well as which “communication approach” the nondominant group member chooses to utilize.

Orbe’s “communication orientation” paradigm, with its micro-level narratives, provides insight into how better to understand the basic identity performance strategies legal scholars rely upon. This Article explores

6. See Ardener, supra note 5.
7. See ORBE, supra note 4, at 30.
8. Id. at 28 (emphasis added).
9. Id. at 36; Orbe, supra note 4, at 159.
10. ORBE, supra note 4, at 36; Orbe, supra note 4, at 159.
11. ORBE, supra note 4, at 48 (discussing his 1992 graduate paper, African American Graduate Students, Their Majority Host Institution, and Ethnic Prejudice: A Bright Side?, for which he interviewed nine African American male graduate students and later thirty-five African American men in 1993 as part of his dissertation, resulting in his 1994 work, “Remember, It’s Always Whites’ Ball”: Descriptions of African American Male Communication); Orbe, supra note 4, at 159.
12. ORBE, supra note 4, at 55.
13. Id. at 15.
14. Id. at 129.

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what it might look like if an outsider had more tools by which to make a conscious choice on identity performance, absent any normative judgment on that choice, particularly as it affects their legal career.

This exploration of identity strategies begins, in Part II, with a discussion of the forerunners in legal scholarship whose work touches on identity performance strategies of outsider attorneys. Part III provides relevant background on the co-cultural theory, and most importantly, the communicative practices, outcomes and approaches of traditionally marginalized group members within a dominant society. Finally, Part IV demonstrates the depth of identity strategies outsiders gain through the co-cultural communication practices by applying the theory on attorney narratives. The overarching claim of this Article is that conscious identity performance is an indispensable step toward empowerment for outsiders in the legal profession, who might otherwise internalize the insiders’ stereotypes to their detriment.

At the outset, I offer a few clarifications. The terms diverse, marginalized, nondominant/dominant, outsider/insider, and co-cultural are used at different points. While the terms collectively point to members of society traditionally seen as underrepresented, including women, racial and ethnic minorities, LGBTQ+, and people with disabilities, the terms connote a different meaning in context. The term diverse, more readily known in the legal community, is used primarily when discussing the legal profession. The term marginalized is used to describe the societal and emotional positioning of these diverse groups, who may often be discriminated against and be a source of discomfort for those unfamiliar with the respective cultural identity. Similarly, the terms nondominant and dominant are used when discussing the power differential between marginalized groups in society—for example, white and black people. Finally, the use of certain terms is maintained in context with a particular theory or attributing scholar. For example, the terms outsider and insider are used when discussing identity strategies in legal scholarship, and the term co-cultural, when examining the co-cultural theory.
II. IDENTITY PERFORMANCE STRATEGIES IN LEGAL SCHOLARSHIP

Several legal scholars have examined how marginalized attorneys negotiate their identity through various strategies in predominantly white work settings. In *Working Identity*, Devon Carbado and Mitu Gulati highlight the multiple ways in which nonwhites constantly make choices—or are perceived to make choices—about how to present their differences. In addition, Kenji Yoshino’s work, *Covering*, examines similar terrain, focusing particular attention on the tension between retaining an identity stigma—for example, being gay—without participating in activities stereotypically associated with that stigma—for example, gay activism. He frames this tension in terms of “assimilation bias.” Below, I elaborate on these works and illustrate how the communication framework builds on each of them.

In *Working Identity*, Carbado and Gulati discuss the strategies that people use when negotiating and performing their identity in the workplace, particularly in the face of positive and negative stereotypes. Falling along a continuum, Carbado and Gulati discuss “passing” and “comforting” as basic strategies used to combat prejudice, with the strategy choice turning on “[t]he individual and institutional context.” “Passing” is described as “the phenomenon of fooling insiders into believing that an outsider is one of them.” The term passing can arguably be traced back to the 1929 novel of the same name, by Nella Larsen, and described in more detail in the 1981 work of Marsha Houston Stanback and W. Barnett Pearce. This strategy may occur, for example, where a “light-skinned, straight-haired” African-American is perceived as white; a gay person is perceived as a heterosexual; or Jew as a gentile. Because only a small subset can pass 100% of the time, an outsider may try “partial passing . . . where the outsider’s

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17. Id.
19. Id. at 1300–01. For discussion on how these strategy categories are similar to Orbe’s influential factors, situational context and field of experience, see *infra* notes 104, 132–135 and accompanying text.
21. See NELLA LARSEN, QUICKSAND AND PASSING 150, 157–61 (Deborah E. McDowell ed. 1986) (detailing a scene in Harlem in the 1920’s where character Irene Redfield, a light-skinned black woman, questions whether another woman, Clare Kendry, “suspect[s] that she was a Negro,” as she had always been taken “for an Italian, a Spaniard, a Mexican or a gipsy[,]” and then discussing how Clare, also a light-skinned black woman, gets on with the “hazardous business of ‘passing.’”); see generally Stanback & Pearce, *supra* note 4.
22. Id. at 25 (citing HAROLD GARFINKEL, STUDIES IN ETHNOMETHODOLOGY 116–85 (1967)).
status is known, but he or she can take actions to modify the social meaning of or stereotypical assumptions about that status.”24 Second, “comforting” is when an outsider performs certain acts to “make insiders comfortable with their outsider status.”25 In this strategy the outsider’s status is clear, but how the outsider will “work her identity to make the insider feel at ease” is the question.26 These two strategies often work in concert. That is, the more an outsider engages in passing—100% or partial—the more comfort insiders derive from this implicit racial subordination.27

As a vivid example of both passing and comforting, Carbado and Gulati provide the scenario of an Asian-American scientist, who is subject to a racial perception that Asian-Americans, while “exceptional” in the scientific field, “are not deemed trustworthy” and are “conflicted about their loyalty to the United States.”28 In this scenario, a pending promotion will require both success in scientific knowledge as it relates to weapons research and the ability to work well in teams.29 The authors ask, “[w]hat kinds of strategies might the . . . Asian-Americans take in order to comfort (appear less foreign and more ‘American’ to) their seniors?”30 The authors suggest comforting strategies including emphasizing an American college education, playing stereotypical American sports such as football or baseball, associating only with mainstream Americans, altering Asian sounding names to sound white, or even “mak[ing] fun of stereotypical Asian accents.”31 In so doing, these comforting strategies are chosen to make white superiors feel at ease and simultaneously are intended to make Asian-American outsiders seem like “‘one of the guys,’ despite [their] outsider status”—that is, partial passing.32

Kenji Yoshino’s work also demonstrates the use of identity strategies in legal scholarship. In Covering, Yoshino confronts an “antidiscrimination schism” between racial minorities and women on the one hand, and gays on the other.33 His work explores the view that in antidiscrimination law, groups such as gays, who are perceptively able to assimilate into mainstream

24. Id. at 1301 (emphasis added).
25. Id.
26. Id. at 1301–02.
27. See id. at 1301 n.111.
28. Id. at 1302.
29. Id.
30. Id.
31. Id.
32. Id. at 1302–03 (footnote omitted).
33. Yoshino, supra note 16, at 772, 779, 875–89.
society, are perceived as less worthy of societal concern and legal protection. In challenging this notion that assimilation is somehow “the cure to many social ills,” he argues that sexual minorities find a common cause with racial minorities and women by offering “a new perspective on the relationship between assimilation and discrimination.” Readily acknowledging that gays can assimilate in more ways than women or racial minorities, who are limited by their “‘immutable’ and ‘visible characteristics,’” he frankly challenges antidiscrimination jurisprudence that embodies an assimilationist bias against gays by distinguishing among three forms of assimilation: conversion, passing, and covering. His work defines conversion to mean “the underlying identity is altered,” and it occurs, for example, “when a lesbian changes her orientation to become straight.” “Passing means the underlying identity is not altered, but hidden” and it occurs, for example, “when a lesbian presents herself to the world as straight.” Finally, “[c]overing means the underlying identity is neither altered nor hidden, but is downplayed [and] occurs when a lesbian both is, and says she is, a lesbian, but otherwise makes it easy for others to disattend her orientation.”

As an extensive cultural example of covering, which he maintains is an often-subtle form of discrimination worthy of protection, Yoshino sets forth the story of Lawrence Mungin. Mungin, an African-American Navy veteran and Harvard College and Law School graduate, sued his former law firm employer for race discrimination in 1994. Mungin worked most of his life “to be one of the ‘good blacks’ [and] assimilate[d]” into white culture, but after a series of career setbacks, he resigned to the fact that these roadblocks were due to his race. Mungin’s narrative sets out many ways in which he sought to cover his race, beginning in his early childhood. For example, even though his black mother was not ashamed of being black, she told her children, “You are a human being first, . . . an American second, a black

34. Id. at 771, 779.
35. Id. at 771–72.
36. Id. at 771, 779.
37. Id. at 772.
38. Id.
39. Id.
40. Id. at 879 (citing PAUL M. BARRETT, THE GOOD BLACK: A TRUE STORY OF RACE IN AMERICA (1999).
third,” thereby emphasizing covering.\footnote{Id. at 880; PAUL M. BARRETT, THE GOOD BLACK: A TRUE STORY OF RACE IN AMERICA 24 (1999).} Her children were punished if they spoke improper English, she discouraged racial activist politics, and she advised her children that the “existing system would treat them fairly if they played by its rules.”\footnote{Yoshino, supra note 16, at 881; see also BARRETT, supra note 43, at 24; KENJI YOSHINO, COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS 128–30 (2006); Richard D. Kahlenberg, The Practice, N.Y. TIMES ON WEB (Jan. 3, 1999), http://www.nytimes. com/books/99/01/03/reviews/990103.03kahlent.html [https://perma.cc/6FQP-ZHHZ].} On this motherly advice, in middle school Mungin skipped lunch to avoid being seen in the black lunch line, and in high school he participated in the debate team, student government, and became “the school’s first African-American senior class president.”\footnote{Id. at 881 (citing BARRETT, supra note 43, at 29–31).}

After high school, Mungin continued to ignore his racial identity. He attended Harvard University based off a non-racially orientated college tour, laughed at “racially laden comments,” and avoided black affinity campus groups or spaces.\footnote{Id. (citing BARRETT, supra note 43, at 64–66); Kennedy, supra note 41 (“He did not participate in black student organizations, did not sit at the black table in dining halls, did not seek out black roommates, and did not commit himself to changing society on behalf of black interests. He thought that it made little sense to come to Harvard, the apex of the white power elite, only to retreat into a black social cocoon.”).} During his time at Harvard Law School, he continued his racial avoidance and essentially disassociated himself from all black groups\footnote{Yoshino, supra note 16, at 881 (citing BARRETT, supra note 43, at 75) (noting Mungin refused to join the Black Law Student Association and had a white roommate, who was Paul Barrett); Kahlenberg, supra note 44.} as well as criticized his black peers for concerning themselves over issues such as the lack of tenured minority professors.\footnote{BARRETT, supra note 43, at 76; Kennedy, supra note 41 (“While many of [his black colleagues] worked on remembering where they came from, he worked on trying to escape the clinging grip of his roots. He saw race consciousness not as a vehicle for liberation, but as an old, unattractive cage. He sought his salvation not in challenging established protocols, but in carefully respecting them. He embraced passionately his mother’s oft-stated axiom—‘Play by the rules and the system will treat you right.’”).} Mungin covered his blackness well by remaining silent concerning racial incidents he did encounter, with such omissions intended to increase “the comfort level of whites around” him.\footnote{Yoshino, supra note 16, at 882.} As Mungin moved into his prestigious law firm, Katten Muchin & Zavis, his covering continued, “extend[ing] to his dress, his speech, his dissociation from other African Americans, and his silence in the face of perceived racial slights,” and he further underscored his

43. Id. at 880; PAUL M. BARRETT, THE GOOD BLACK: A TRUE STORY OF RACE IN AMERICA 24 (1999).
46. Id. (citing BARRETT, supra note 43, at 64–66); Kennedy, supra note 41 (“He did not participate in black student organizations, did not sit at the black table in dining halls, did not seek out black roommates, and did not commit himself to changing society on behalf of black interests. He thought that it made little sense to come to Harvard, the apex of the white power elite, only to retreat into a black social cocoon.”).
47. Yoshino, supra note 16, at 881–82 (citing BARRETT, supra note 43, at 75) (noting Mungin refused to join the Black Law Student Association and had a white roommate, who was Paul Barrett); Kahlenberg, supra note 44.
48. BARRETT, supra note 43, at 76; Kennedy, supra note 41 (“While many of [his black colleagues] worked on remembering where they came from, he worked on trying to escape the clinging grip of his roots. He saw race consciousness not as a vehicle for liberation, but as an old, unattractive cage. He sought his salvation not in challenging established protocols, but in carefully respecting them. He embraced passionately his mother’s oft-stated axiom—‘Play by the rules and the system will treat you right.’”).
Harvard education in part because he knew this pedigree was a “reassuring signal to whites.”

Mungin’s story goes on, and he was ultimately successful in his lawsuit against his law firm.

Carbado and Gulati’s story of Asian-American junior scientists and Yoshino’s recount of Mungin’s story pointedly demonstrates, as Yoshino comments, “how pervasively and deeply such covering [and other strategic identity] demands affect the individuals on whom they are made.” These stories also raise critical questions: Do outsiders, almost as if by some normative matter, rightly reject their cultural identity for professional success? Is there a cost in doing so? Moreover, is there any cost or effect upon insiders as contributors to the outsiders’ burden? In the end, Mungin felt the sting of his choice to assimilate and dissociate himself from his culture.

Despite his conscious investment in the “‘racial-comfort strategy’ of covering,” Mungin ultimately failed in his attempt to “show that [he] was like white people,” that he was “one of the good blacks.”

Notably, the impact of comfort and passing as identity strategies on insiders, as Carbado and Gulati intuitively suggest, is that the insider employer escapes confronting assumptions and stereotypes about the outsider.

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50. Id. at 882–83 (citing Barrett, supra note 43, at 41); see also Kennedy, supra note 41 (noting Mungin joined the law firm in Washington, D.C. in 1992).

51. See Kahlenberg, supra note 44 (“Mungin believed that he was seen as ‘a racial token’ rather than as ‘a real lawyer,’ but white appeals court judges nullified the jury verdict, finding it not ‘reasonable.’ One of Mungin’s own lawyers told Barrett it was ‘questionable’ whether Mungin’s mistreatment was related to race.”); Kennedy, supra note 41 (“A jury consisting of a white person and five blacks agreed and awarded him an astounding $2-million judgment—$1 million in compensatory damages, and $1 million in punitive damages—one of the largest awards of this type on record. . . . But [interestingly while the white judge upheld the jury’s verdict,] a divided panel of the United States Court of Appeals nullified Mungin’s victory, [with one judge maintaining the jury verdict was erroneous, but still upholding the finding of racial discrimination, while] two conservative Republican white judges . . . decided that no reasonable juror could have concluded on the basis of evidence presented at trial that [the firm] racially discriminated against Mungin in terms of pay, work environment, or promotion.”).

52. Yoshino, supra note 16, at 880.

53. This notion of rejecting with a cost is aptly considered in Orbe’s communication practice of perceived costs and rewards, discussed infra notes 104, 132 and accompanying text.


55. Id. at 884 (footnote omitted). Expressing the cost of covering, Mungin remarked: I was going to have to be more publicly honest about the lie that I was living. It wasn’t that I was around people who were open minded, who thought blacks are terrific. It’s that I was bending over backward all the time to avoid making white people uncomfortable. Like my neighbors in Alexandria: Now I’m just tired of making them feel comfortable, I don’t even talk to them. If they say hello, I’ll say hello, but I don’t even bother anymore making them feel comfortable late at night. It’s too much work.

Id. at 885 (quoting Barrett, supra note 43, at 163).

56. Carbado & Gulati, supra note 15, at 1303.
example, when an insider states, “We don’t really think of you as . . . Asian-American,” the insider is deceitfully granted liberation from their own stereotyping by engaging in “outsider exceptionalism.” 57 In other words, simply because the insider believes the outsider is an exception to the stereotype, subjective freedom from being a racist sets in. 58

Carbado and Gulati’s work alongside Yoshino’s work are presented to show not only the existing discourse of identity strategies in legal scholarship, but also to demonstrate a fundamental gap in outsider empowerment—and subsequently insider reform. That is, the urgency for outsiders to have more tools to intentionally or consciously choose how they perform their identity in the dominant culture.

Intuitively, Carbado and Gulati raise this question of intentionality as they discuss outsider employees that would signal concern: (1) the outsider who intends to use an identity strategy—that is, partially pass; (2) the outsider who is aware her conduct could be perceived as employing a particular identity strategy, but does not necessarily intend that perception as the outcome; and (3) the outsider who is simply clueless as to how his conduct may be interpreted. 59 Central to this Article’s thesis, an appropriate query arises: What might it look like for these outsiders to have an expanse of identity communication strategies in order to be mindful of both their communication approach and intended outcome? This Article suggests the tools to engage in this mindfulness or “intentionality,” per Carbado and Gulati’s recommended vocabulary, 60 are inadequate within the current legal scholarship and yet arguably necessary so outsiders do not have their work performance subject to the whim of the insiders’ interpretations of intentional or unintentional identity strategies. To this point, Carbado and Gulati almost foreshadow the room and need for outsider empowerment over their own identity performance, stating, “[e]ven without any intentionality on the employees’ part, [an outsider’s] professional standing within an institution can be enhanced or diminished depending on whether and to what extent their workplace conduct can be interpreted [by insiders] as partial passing.” 61

57. Id. (emphasis omitted).
58. Id.
59. Id. at 1303–04.
60. Id. at 1303.
61. Id. at 1304.
III. TALKING TO THE MAN: FOUNDATIONS OF CO-CULTURAL THEORY
EXTENDING FROM MUTED GROUP, STANDPOINT, AND
SUBORDINATE COMMUNICATION THEORIES

The interdisciplinary theoretical framework in this Article is responsive
to what I believe are the identity strategy gaps in the current legal scholarship,
as identified in Part II. Specifically, marginalized attorneys would benefit
from a deeper understanding of identity based on the equally formative
work by feminist and communication scholars known as the co-cultural
theory. The level of detail described in the communication practices,
almost a micro-level catalogue of descriptive choices, empowers the outsider
to govern their professional choices. The following Section briefly provides
relevant background on the co-cultural theory, discussing first its anthropological
roots in the muted group theory—examining women’s subdued speech in
the presence of men; second, its incorporation of the standpoint theory—
deriving its name from focusing on life from the standpoint of the outsider;
and finally, the broadening of co-cultural theory based on general communication
strategies for subordinate social groups.

A. Muted Group Origins: From Cameroon to the United States

We are, for practical purposes, in a male world. The study
of women is on a level little higher than the study of ducks and
fowls they commonly own—a mere bird-watching indeed. . . . It
is the very inarticulateness of women that is the technical part of
the problem they present.

–Edwin Ardener

Muted groups exist in any society that includes asymmetrical power
relationships. The muted group theory originated with England’s Shirley
and Edwin Ardener in 1968 and was then adopted as a theoretical framework
in the United States by feminist communication theorists, Cheris Kramarae
in 1981, and later by Mark P. Orbe in 1994. The extension of the muted
group from England to the United States proved worthwhile, as muted
group became one of the formative components of the co-cultural theory.

62. Ardener, supra note 5, at 1–2.
63. See Orbe, supra note 4, at 4.
65. See generally Cheris Kramarae, WOMEN AND MEN SPEAKING: FRAMEWORKS
FOR ANALYSIS (1981).
66. See generally Orbe, supra note 4.
In 1968, Edwin Ardener, an English social anthropologist, had a revolutionary discovery that led to the muted group theory. During his study of female puberty rites of the Bakweri women living in Cameroon, Ardener found that the interpretation and symbolism of these female rites were articulated by the male voice. In his findings, he noted that social anthropology had purported to “‘crack the code’ of [various] societies, without any direct reference to the female group.” To be clear, Ardener was not suggesting the problem was the “position of women,” rather it was the problem women presented to anthropologists. Most notably, men in the group were bridging the communication gap for women, and the ethnographer’s models of an entire society were derived from having conversed only with men, though the men purported to have included women. The problem with a society’s code being male dominated was more than an “injustice to women” in two respects: first, women’s models were not deemed “acceptable at first sight to men or to ethnographers,” and second, women’s metalanguage for describing their model of society was insufficient in the male structure. Ardener’s perceived inability for women to communicate in the male-dominated society insightfully segues into feminist theorist contention, that is, women are arguably unlikely to be heard entirely or even just distinctly unless they adopt the male voice or idiom that established the asymmetrical hierarchy to begin with.

67. See Obituary, supra note 64, at 23 (noting Ardener’s “1968 Documentary and Linguistic Evidence for the Rise of the Trading Policies between Rio del Rey and Cameroon 1500–1650,” which led to the development of the muted group theory).
68. Ardener, supra note 5, at 1.
69. Id.
70. Id. at 1–2. Technically, where any linguistic difficulties were present between the ethnographer and the studied group, not surprisingly, the men of the group, more so than women, were willing to bridge that communication gap. Id. at 2. In other words, the men were speaking for the entire group, thus, the interpreters, and ethnographers were “more likely to be found among men than among women.” Id. at 3 (emphasis added).
71. Id. at 1–3. As to the analytical quandary, Ardener poetically revealed a disturbing problem, that is, if the models of a society made by most ethnographers tend to be models derived from the male portion of that society, how does the symbolic weight of that other mass of persons—half or more of a normal human population, as we have accepted—express itself? The fact is that no one could come back from an ethnographic study of “the X,” having talked only to women, and about men, without professional comment and some self-doubt. The reverse can and does happen constantly.
In 1981, Cheris Kramarae was arguably the first to extend Ardener’s muted group theory to the field of communication.73 One of her greatest contributions was her view that unless women used a male idiom to speak, they were largely muted because their language was “developed largely out of male perception of reality.”74

In this space of potential female silence, Kramarae’s work demonstrates women’s creativity in brokering their identity and voice in a male-dominated world. For example, because men determine the acceptable values and models of the world, “women have had to learn the language structure of the dominant group, [and] men have seldom had to discern or have wanted to discern the women’s model of the world.”75 In addition, females have found ways to “express themselves outside the systems used by males,” not surprisingly, because his language—written or spoken—is acceptable by other males, far more acceptable than any forms or modes women produce.76 It follows then, as Kramarae’s work found, that men’s language simply did “not fit the expressive needs of women.”77 And so, in this male-dominated society, her work foreshadows a sentiment of this Article, when she asks, “What happens if women define the nature of their interactions?”78

Ultimately, the overlay of the muted group theory and Kramarae’s gender and language research is remarkable in that the muted group’s theoretical

73. KRAMARAE, supra note 65, at xvi–xvii.
74. Id. at 2. The three frameworks, outside of the muted group theory that Kramarae analyzed, include the work of Jacques Lacan, a French psychoanalyst, modified by Cora Kaplan, which is labeled reconstructed psychoanalysis. Id. at xvi–xvii. Like the muted group theory, reconstructed psychoanalysis is concerned with “general organization of culture and thought, and the relation of language structure to both women’s and men’s self-conceptions and to their articulation of their experience.” Id. The other two frameworks—“speech styles,” which includes the work of Howard Giles, social psychologist, and “strategy model,” which includes the work of several American and British anthropologists—both stress “the uses of language in social life—the how and why men and women speak the way they do.” Id. at xvii, 2, 4. Also noteworthy is Nancy Henley’s work in 1977 and Judith Hall’s work in 1977, which suggests women are restricted to a language structure primarily designed by men, and thus are often largely reduced to nonverbal expression. Id. at 17–18. Kramarae posits that, Henley’s material on the way nonverbal expression can be used to establish and maintain power differentials indicates both sexes understand basically the same communication system. But they may not have equal access to all parts of the system. The muted group theory suggests that we need to look at the possibly different ways women and men use verbal and nonverbal methods of communication. Id. at 18.
75. Id. at 9 (referencing work, in addition to her own, by George Gerbner and Nancy Signorielli).
76. Id. at 12, 14.
77. Id. at 25.
78. Id. at 30 (emphasis added).
tenets, paradoxically, gave voice, vocabulary, and vision to an important but under regarded population.

B. Standpoint Theory and Subordinate Social Groups

In addition to the muted group theory, Orbe’s co-cultural communication work relied upon the standpoint theory\(^\text{79}\) and general communication strategies proposed across all subordinate group members.\(^\text{80}\)

Briefly, standpoint theory is a feminist theoretical framework that explores marginalized viewpoints from both within and outside male dominated institutions.\(^\text{81}\) Its most notable feature is its starting point. That is, this theory makes a conscious attempt to start by capturing the lived experiences of marginalized group members while remaining sensitive to the various standpoints within any one co-cultural group.\(^\text{82}\) In other words, this theory explores the communication strategies of those without societal power

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\(^{79}\) See Orbe, supra note 4, at 1, 27; see also Russell Powell, Theology in Public Reason and Legal Discourse: A Case for the Preferential Option for the Poor, 15 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 327, 382 (2009); Nancy C. M. Hartsock, Money, Sex, and Power: Toward a Feminist Historical Materialism 12 (Nicole Benevento et al. eds., 1983); Sandra Harding, Whose Science? Whose Knowledge?, at vii, x (1991). Although the work of Hartsock and Harding is beyond the scope of this Article, both authors used standpoint theory as an epistemological lens for transforming unjust societies that have largely ignored women and to philosophically challenge any arguments that suggest some social situations are better than others. Powell, supra, at 383 (quoting Sandra Harding, Rethinking Standpoint Epistemology: What is “Strong Objectivity”? in Feminist Epistemologies 49, 61 (Linda Alcoff & Elizabeth Potter eds., 1993); see also Dorothy E. Smith, Women’s Perspective as a Radical Critique of Sociology, in The Feminist Standpoint Theory Reader: Intellectual & Political Controversies 21, 25–26 (Sandra Harding ed., 2004).

\(^{80}\) See Stanback & Pearce, supra note 4, at 23.

\(^{81}\) Orbe, supra note 4, at 4. In 1972, Dorothy E. Smith, a feminist scholar, was the earliest standpoint theorist to remark that women are “outside and subservient to” a male dominated structure, one that men both live and work in, unlike women. Smith, supra note 79, at 26. With a sociological focus, Smith noted that the methods and theories foundational to sociology were built in a “male social universe (even when women have participated in its doing),” thus it was difficult for sociologists to transpose the “actualities of what people say and do” into governing conceptions when what was relevant was viewed “from the top”—that is, from the male perspective. Id. at 22–23. In many ways similar to Kramarae’s work, Smith explored how the women’s point of view, as both within and outside male dominated institutions, might change how society views social relations. Powell, supra note 79; see also Orbe, supra note 4, at 27.

\(^{82}\) Orbe, supra note 4, at 25, 28 (noting standpoint theory rejects traditional research methodology that generalizes scientific findings).
from *their own* lived experiences—from *their* individual vantage point. It is this outsider-within perspective that fortifies its critical inclusion within the co-cultural theory. Specifically, because marginalized group members live and function on the outside of dominant societal structures, they can view not only their own position, but are best positioned to see a more complete picture of the existing dominant structure, a view largely unattainable by privileged dominant group members.

As Orbe comments, To survive and succeed in society, those persons marginalized by dominant structures must be attentive to the perspective of the dominant group and their own. In other words, a "double vision" is established that advocates an awareness of and sensitivity to both the dominant worldview and their own perspective. Because of the privileged stance, those persons positioned in the center of societal structures do not develop a similar double vision but focus solely on the dominant worldview of society. The result of this, as compared to the standpoint of marginalized groups members, is a partial view of reality.

In some respects, in the same way the dominant group has only a partial view of reality due to its inside positioning, it could be suggested that nondominant groups similarly have an incomplete or biased picture of reality based on their outside positioning. But the converse is more likely, namely that at some point nondominant group members will "gain access . . . into dominant structures," even if temporary, and thus be able to experience behaviors and thought processes from a unique yet distant vantage point that most dominant group members will not have. For example, take the previously mentioned light-skinned, African-American woman with straight, black hair who passes as white: as long as white people believe she fits into their dominant structure and they treat her accordingly, she has gained access into the dominant group and thus obtained both inside and outside positioning—otherwise known as double vision.

Finally, later work proposed four general communication strategies across all subordinate group members, to which many legal scholars could attribute their identity strategy lexicon. These strategies are used by nondominant—

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83. Id. at 30. For example, scholars should be mindful of the standpoints among co-cultural groups—women, people of color, LGBTQ—as well as within specific groups—African Americans.
84. See id. at 29 (“Since life perspectives emerge from one’s daily life experiences, knowledge from the standpoint of marginalized group members cannot be fully grasped by those persons privileged by a dominant group positioning.”).
85. Id.
86. Id. (citation omitted).
87. Id. at 29–30.
88. See supra text accompanying note 22.
89. See Stanback & Pearce, supra note 4, at 21–22 (“There are particularly stringent demands on the performances by members of ‘inferior’ groups when they communicate with persons from the dominant group. Somehow they must work within the constraints
or “lower-statused”

imposed by their own intentions and concepts of self and the ‘agreed-upon’ script lines about how such communication should go.

90. Id. at 23–24 (discussing perspectives that “lower-statused” persons assume based on how they perceive the relationship between themselves and the dominate culture, of which the “co-cultural” perspective is the most relevant, where it accepts the hierarchical or status differences between these groups, “but strives to develop a culture which includes selected aspects of both”). The other two perspectives are “monocultural,” which denies any unequal status, thus the person “treats the two groups as if they were the same” and “other-cultural,” which “accepts the differences between the groups and is willing to maintain it.” Id. at 23.

91. ORBE, supra note 4, at 32–33; Stanback & Pearce, supra note 4, at 23 (noting these strategies are all performed from the perspective of the lower-statused person and presume the dominant person has a specific expectation about how the communication between the two groups should proceed).

92. See supra pp. 582–84, 586–87. The other three strategies include: (1) Tomming: drawn from the main character in Harriet Becher Stowe’s Uncle Tom’s Cabin. ORBE, supra note 4, at 32. “Tomming occurs when a member of a subordinate group accepts the way s/he is perceived and expected to act as valid, and communicates with members of the dominant group exactly as they expect him/her to do.” Stanback & Pearce, supra note 4, at 24. Each instance of tomming serves to further separate the dominant from the nondominant group, as the latter group sadly reflects a self-concept that has internalized a negative but pervasive stereotype rooted in the dominant social structure. Id. In this regard, tomming reinforces the division of the two groups by participating in a process that exemplifies this divergent social hierarchy. Id. (2) Shucking: “a term used by American Blacks to identify a form of communication in which they behaviorally conform to racial stereotypes while cognitively rejecting the meaning associated with those behaviors and stereotypes.” Id. at 25. Similar to tomming, in that it conforms to the behavioral expectations of the dominant culture, shucking nonetheless involves a different cognitive experience by the nondominant group member. Id. at 25–26. Specifically, where those who engage in tomming do so consistently, implying a sense of internalization, those who engage in shucking do so “only when they must,” with a conscious realization that the performance of a particularly stereotype, often disliked, is necessary “to accomplish particular goals.” Id. (3) Dissembling: this “occurs when a person of a lower-statused group conforms to the behavioral expectations but disregards the meaning associated with those behaviors by the higher statused group.” Id. at 26. Like tomming and shucking, a dissembler engages in the expected behavior. Id. But unlike tomming, dissembling does not accept those stereotypes as true, rather simply pretends that he or she does, and unlike shucking, the negative values of particular stereotype are irrelevant to the dissembler. Id. Why would a person do this? The researchers suggest that because dissemblers essentially disassociate themselves from any meaning that may be ascribed to a behavior, the dissembler is affirmatively choosing to perform them simply “defines them as a stratagem to accomplish particular purposes, not as an involuntary participation in a degrading act.” Id. at 26–27. In putting these strategies together, sans the passing strategy, take for example a woman who receives help from a man to put gas into her car or lift a heavy box. If she were tomming, she would accept and have internalized
Pearce, “[p]assing occurs when a member of a subordinate group acts as if s/he were actually a member of the dominant group.”93 Interestingly, this strategy has a subtle form of deception: the person passing is walking in a role they know to be fraudulent, yet the passer has, to varying degrees, intimate knowledge of the communicative role of the dominant group to be successful in this pseudo-dominant capacity.94

The distinctive combination of the muted group theory, standpoint theory, and particularly the subordinate communication strategies provides the foundation for Orbe’s co-cultural communication orientations and strategies.

the stereotype that woman are weaker and less capable than men, and thus accept the help. If she were shucking, she would cognitively detest the stereotype that woman are weaker and less capable than men, but would still accept the help because she desires neither to put the gas in her car nor to lift a heavy box. Finally, if she were dissembling she would again allow the man to help her pump gas into her car or lift the heavy box, but she would not put any value in his perceived stereotype of her; rather, she would voluntarily play the proverbial damsel-in-distress because she just ridded herself of having to engage in the mundane tasks. Neither her self-perception nor worldview are altered. Life goes on as she planned.

93. Stanback & Pearce, supra note 4, at 25. For example, as has been previously mentioned, when a light-skinned African-American person or a light skinned Mexican, with straight hair, passes as a white person, they choose to navigate their identity in the dominant structure, thus avoiding—without denying their legitimacy—any mannerisms, values or behaviors largely representative of their nondominant group. See id.; see also supra text accompanying note 22.

94. Stanback & Pearce, supra note 4, at 25.
IV. A RICHER PERSPECTIVE: UNDERSTANDING CO-CULTURAL THEORY

The co-cultural theory is the study of interactions between dominant and nondominant cultures. While this definition is simplistic in nature, one person can live at the intersection of both a dominant—for example, male or heterosexual—and nondominant—for example, African-American or lesbian—group. This intersectionality, as critical race theorists would

95. I take care to maintain the use of the term co-cultural when discussing Orbe’s co-cultural theory—or co-cultural theorizing as he later describes it—based on the belief that the United States is a country made up of different cultures that co-exist with each other, but do not necessarily stand in co-equal positioning. See ORBE, supra note 4, at 2, Mark P. Orbe & Tabatha L. Roberts, Co-Cultural Theorizing: Foundations, Applications, and Extensions, 23 HOW. J. COMM. 293, 294, 302 (2012). Co-cultural also acknowledges how real power differences are not inherent or natural but can be socio-politically created. See generally Mark P. Orbe, The Rhetoric of Race, Culture, and Identity: Rachel Dolezal as Co-cultural Group Member, 6 J. CONTEMP. RHETORIC 23 (2016) [hereinafter Rhetoric of Race] (analyzing rhetoric of Rachel Dolezal, a biologically white woman who embraces a black cultural identity, thus claiming a cultural outsider identity that prompted various co-cultural communication orientations and practices geared toward specific preferred outcomes, namely accommodation and ultimately total assimilation). Orbe comments that previous terms as used by other researchers, such as subordinate, inferior, minority, subcultural, nondominant, or muted, are not reflective of modern communication scholar’s adoption of co-cultural, which represent “a conscious attempt to avoid the problematic nature of existing terms that frame marginalized group members as secondary in importance and submissive to the powers of dominant society.” ORBE, supra note 4, at 30. That said, even in the use of the term co-cultural that supposes no single culture is inherently superior to another, Orbe readily acknowledges that over time, one co-culture group, that of the “European-American heterosexual middle- or upper-class males[,] has acquired dominant group status in the major societal institutions.” Id. at 2. I wrestle with the use of this term in the legal context because co appropriately and ambitiously signals equal positioning of sorts, or at least the ideal of that positioning. As Orbe recognizes, however, the European white heterosexual able-bodied male is the dominant co-cultural group. Id. More pointedly, because the European heterosexual white male so dominates in the legal profession, will the term co-cultural readily resonate with the legal community? In accordance with that query, perhaps there is room for the co-cultural theory to add a plus factor to the intersectionality work of Kimberlé Crenshaw, which aptly parsed out race from gender, for example, in antidiscrimination law. See generally Kimberlé Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, 1989 U. CHI. LEGAL F. 139, 139. For a discussion of how the power difference between nondominant and dominant groups adds an additional burden to identity performance, see infra note 180 and accompanying text.

96. ORBE, supra note 4, at 50.

97. Id. at 51. Interestingly, later work by Orbe and related scholars posit that the co-cultural theory can apply “both to traditionally marginalized group members as well as majority group members whose localized context places them in the minority.” Orbe, Rhetoric of Race, supra note 95, at 28 (commenting that research on white students in an
term it, or “multileveled co-cultural group position[ing],” as Orbe describes it, demonstrates the complexity that can result from “co-cultural oppression”—oppression between co-cultural group members.98 To some extent, we are all privileged in some aspects and disadvantaged in others.99

With this complex, multi-level positioning in mind, co-cultural communication research explores the “common patterns of communication across . . . different marginalized groups” by creating a theoretical framework to promote understanding as to how marginalized group members, those seemingly without societal power, communicate within dominant structures.100 To be clear, while Orbe is not credited with coining the term “co-cultural,”101 he maintains its use to affirm the modern movement of communication scholars away from seemingly negative terms previously assigned to marginalized group members.102 He is rightly credited, however, with creating twenty-six communication strategies and orientations that co-researchers use when interacting with the dominant culture, which are influenced by preferred communication outcomes and approaches.103

98. ORBE, supra note 4, at 51 (discussing research confirming “the existence of co-cultural oppression” as in the 1982 work of Hull, Scott, and Smith—which drew attention to sexism and racism facing African-American women—and Luna’s 1989 work on gay racism).

99. Id. (discussing work by Collins from 1990 regarding “penalty and privilege”).

100. Id. at 4 (emphasis omitted). Born from his early work exploring the communicative practices and experiences of African-American graduate students, Orbe questioned whether other underrepresented groups—people of color, LGBT, women, those from lower socioeconomic status—similarly communicated with an inter-group cultural system, and if these groups created “communication strategies and coping mechanisms to function in an oppressive society.” Id. at 48 (discussing his 1992 graduate paper, African American Graduate Students, Their Majority Host Institution, and Ethnic Prejudice: A Bright Side?, for which he interviewed nine African-American male graduate students, and later thirty-five African-American men in 1993 as part of his dissertation, resulting in his 1994 work “Remember, It’s Always Whites’ Ball”: Descriptions of African American Male Communication).

101. For example, Stanback and Pearce used this term in their work in 1981, as noted in the previous section, to describe a “perspective [that] accepts the difference between the groups but strives to develop a culture which includes selected aspects of both.” Stanback & Pearce, supra note 4, at 23.

102. Regarding the use of “co-cultural” in the legal profession, see supra note 95.

103. ORBE, supra note 4, at 55. Central to understanding the communication strategies of co-cultural groups is capturing the personal experiences of its members, which is achieved through the phenomenological process. See id. at 35–36. Developed by German scholars, phenomenology, the study of life world, is a popular communication research methodology focusing on “the conscious experience of a person relating to the lived world that she or he inhabits.” Id. at 36 (citations omitted); Orbe, Laying the Foundation, supra note 4, at 159. The method reflects a general movement in the communication field away from traditional empirical research and toward inclusion of the subject group members as “co-researchers” who are naturally viewed as the expert on their own life and life experiences.
Without undermining the sophistication of the co-cultural theory, its tenets can be simplified in the following regard: from the oral narratives of nondominant, co-cultural members—or outsiders—numerous communication themes or practices developed that described how they communicated in a dominant society. The intriguing query is when certain practices are used. Simply put, the answer turns on six interrelated factors: preferred outcome, field of experience, abilities, situational context, perceived costs and rewards, and communication approach.104 The two most prominent are the preferred outcome for an interaction with the dominant culture and the communication approach that nondominant person relies on.105 In view of this multistep conscious consideration for identity performance, the value of this framework to the marginalized within the legal profession is almost palpable.106

For a visual illustration, Orbe’s communication orientation chart demonstrates how the communication practices—text within the box—might be organized in relation to the two most influential factors, preferred outcome—along the horizontal axis: separation, accommodation, assimilation—and the communication approach—along the vertical axis: nonassertive, assertive, aggressive.107

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ORBE, supra note 4, at 13 (noting the term “co-researchers” is intentionally used by communication scholars to recognize “the interactive role these persons play in shaping research outcomes”); see also Orbe, Laying the Foundation, supra note 4, at 160. This phenomenological approach, that is, human science research, purports to give a “voice to the voiceless,” thus making it both a logical and critical research method for co-cultural theorizing as the latter relies on gaining insight into the dominant society from the standpoint of the nondominant group member. Orbe, Laying the Foundation, supra note 4, at 160. Relevant is phenomenology’s reliance on the conscious experiences of co-researchers who self-assign meaning to their experiences—that is, capta—rather than hypothetical situations where the interviewers assign meaning, usually via a pre-set agenda—that is, data. Id.

104. ORBE, supra note 4, at 89–106.
105. Id. at 89, 104.
106. The term “identity performance” is credited to Devon Carbado and Mitu Gulati. Carbado & Gulati, supra note 15, at 1262 (offering a general discussion of identity performance theory broadly and narrowly in the context of workplace discrimination).
107. ORBE, supra note 4, at 110 fig.5.2.
A. Communication Practices

The co-cultural communication practices provide an expansive lexicon that enhances the current identity strategies already common within legal scholarship. In this regard, the intricate detail of the co-cultural communication practices, of which Orbe identified twenty-six at the start,\(^{108}\) arose from oral narratives and simply cannot be underscored enough.

Beginning with those communication practices that foster a preferred outcome of assimilation,\(^{109}\) they include: (1) emphasizing commonalities — focusing on human similarities while downplaying or ignoring co-cultural differences; (2) developing positive face — assuming a gracious communicator stance where one is more considerate, polite, and attentive to dominant

\footnotesize{\(^{108}\) Orbe, Rhetoric of Race, supra note 95, at 27 (commenting that over the past twenty years, scholars have identified additional co-cultural practices).  
\(^{109}\) Starting from the top right of the chart above and moving down.}
group members; (3) censoring self—remaining silent when comments from dominant group members are inappropriate, indirectly insulting, or highly offensive; (4) averting controversy—veering communication away from controversial or potentially dangerous subject areas; (5) extensive preparation—engaging in an extensive amount of detailed (mental, concrete) groundwork prior to interactions with dominant group members; (6) overcompensating—conscious attempts consistently enacted in response to a pervasive fear of discrimination; (7) manipulating stereotypes—conforming to commonly accepted beliefs about group members as a strategy to exploit them for personal gain; (8) bargaining—striking a covert or overt arrangement with dominant group members where both parties agree to ignore co-cultural differences; (9) dissociating—making a concerted effort to elude any connection with behaviors typically associated with one’s co-cultural group; (10) mirroring—adopting dominant group codes in an attempt to make one’s co-cultural identity less (or totally not) visible; (11) strategic distancing—avoiding any association with other co-cultural group members in attempt to be perceived as a distinct individual; and (12) ridiculing self—invoking or participating in discourse, either passively or actively, that is demeaning to co-cultural group members.\textsuperscript{110}

Next, those communication practices that foster a preferred outcome of accommodation\textsuperscript{111} include: (13) increasing visibility—covertly, yet strategically, maintaining a co-cultural presence within dominant structures; (14) dispelling stereotypes—myths of generalized group characteristics and behaviors are countered through the process of just being one’s self; (15) communicating self—interacting with dominant group members in an authentic, open, and genuine way;\textsuperscript{112} (16) intragroup networking—identifying and working with other co-cultural group members who share common philosophies, convictions, and goals; (17) utilizing liaisons—identifying specific dominant group members who can be trusted for support, guidance, and assistance; (18) educating others—taking the role of teacher in co-cultural interactions; enlightening dominant group members of co-cultural norms, values, etc.; (19) confronting—using the necessary aggressive methods, including ones that seemingly violate the rights of others, to assert one’s voice; (20) gaining advantage—inserting references to co-

\textsuperscript{110} ORBE, supra note 4, at 16–18 tbl.1.1.

\textsuperscript{111} Starting from the middle column of the chart supra p. 598 and moving downward.

\textsuperscript{112} This is used by those with strong self-concepts.
cultural oppression as a means to provoke dominant group reactions and gain advantage.¹¹³

And finally, those communication practices that may result in a preferred outcome of separation¹¹⁴ include: (21) avoiding—maintaining a distance from dominant group members by refraining from activities or locations where interaction is likely; (22) maintaining interpersonal barriers—imposing, through the use of verbal and nonverbal cues, a psychological distance from dominant group members; (23) exemplifying strengths—promoting the recognition of co-cultural group strengths, past accomplishments, and contributions to society; (24) embracing stereotypes—applying a negotiated reading to dominant group perceptions and merging them into a positive co-cultural self-concept; (25) attacking—inflicting psychological pain through personal attacks on dominant group members’ self-concept; and (26) sabotaging others—undermining the ability of dominant group members to take full advantage of their privilege inherent in dominant structures.¹¹⁵ Also included in this group are the communication practices of communicating self and intragroup networking, explained in the accommodation section above.¹¹⁶

B. Factors that Influence a Communication Practice

Next, the six interrelated factors that influence which communication practice a person may choose are: preferred outcome, field of experience, abilities, situational context, perceived costs and rewards, and communication approach.¹¹⁷

One of the fundamental factors is the preferred outcome of interacting with the dominant culture; this factor exists along the horizontal axis of the chart, and includes separation, accommodation, and assimilation.¹¹⁸ When a person assimilates they may “attempt[] to eliminate culture differences, and the loss of any distinctive characteristics, to fit in with the dominant society.”¹¹⁹ This strategy is probably the most well-known among legal

¹¹³.  ORBE, supra note 4, at 16–18 tbl.1.1.
¹¹⁴.  Starting from the top left of the chart supra p. 598 and moving downward.
¹¹⁵.  ORBE, supra note 4, at 16–18 tbl.1.1.
¹¹⁶.  Id.
¹¹⁷.  Id. at 89–106.
¹¹⁸.  See id. at 89.
¹¹⁹.  Id. One African-American woman whose job requires her to perform a lot of business over the phone commented:

[T]hey think that they are talking to a white lady on the phone. . . . I didn’t say anything, so I know that they think that I am white when they talk to me on the phone. They talk about me coming down [to Florida] and getting a super tan and all this kind of stuff. That’s fine with me as long as it doesn’t affect my job performance.

Id. at 89–90.
Conscious Identity Performance

scholars, as specifically mentioned in Yoshino’s work, Covering. 120 In accommodating, the co-cultural member does not “live by dominant social rules,” rather they “insist that dominant structures ‘reinvent or, in the least, change the rules’ so that they incorporate the life experiences of each co-cultural group.” 121 The essence of accommodation is really to work with other cultures, and any attempt to mute nondominant voices is resisted. 122 For example, confronting and gaining advantage, both involve aggressive or assertive methods to assert one’s cultural presence in order to provoke dominant group reactions and gain advantage. 123 As a point of comparison, some of the communication practices within this accommodation approach may bear some resemblance to the “discomfort strategy” discussed in legal scholarship, where an outsider chooses to emphasize their outsider status to make insiders feel uncomfortable. 124 Lastly, the third outcome is separation, which “rejects the notion of forming a common bond with dominant group members and other co-cultural groups.” 125 This outcome seeks instead to maintain identities separate and largely outside the dominant culture. 126

The second fundamental factor, communication approach, exists along the vertical axis of the chart, 127 and includes nonassertive, assertive, and aggressive approaches. 128 Nonassertive behavior puts the needs of others

120. Yoshino, supra note 16, at 884.
121. ORBE, supra note 4, at 91.
122. Id. One co-cultural group member who had grown up in a housing project, on and off welfare, commented on modest satisfaction gained in sharing their past with the dominant culture:
   Everyone is generally pretty good about it and very supportive and encouraging. But every now and then, I’ll make certain comments that catch them off guard. Like once when we were discussing childhood memories, everyone was talking about these “golden moments,” so I said, “the best thing that ever happened to us was when my father deserted us so that we could get more food stamps.” I love to see their pitiful reactions!
   Id. at 81.
123. Id. at 79–81.
125. ORBE, supra note 4, at 92. An African-American man remarked that it is futile to change or work within the dominant structure:
   If you look at the plight of African Americans and other people of color in regards to the beginning of time in this country, an institutional legacy of racism has been ingrained and perpetuated through the years. It has been here so long that you or I are not going to change it.
   Id.
126. Id.
127. See supra p. 598.
128. ORBE, supra note 4, at 104.
before one’s own in a nonconfrontational way; this may be inherent in being soft-spoken or strategic.129 Assertive behavior takes into account both self-needs and the needs of others in an attempt to promote everyone’s rights.130 And Aggressive behavior would be that “perceived as hurtfully expressive, self-promoting, and assuming control over the choices of others.”131

Briefly, but relevant, the other four factors include (3) field of experience— “[t]he influence of one’s past experiences is an important consideration in the constant, cyclical process of contemplating, choosing, and evaluating co-cultural communicative practices”;132 (4) abilities—“the person’s relative ability to enact different practices . . . may vary greatly depending on specific personal characteristics and situational circumstances”;133 (5) situational context—the person’s situation, for example, work, home, school, public or social places, and the existence of others, dominant or co-cultural, in the setting, are all important considerations and may change the person’s communication practice;134 and (6) perceived costs and rewards—“[d]epending on the situational context and preferred outcome, co-cultural group members will evaluate the pros and cons of specific communicative practices differently; often this reflective process is governed by a person’s field of experience.”135

The heightened insight these factors provide are illuminated when analyzed within attorney narratives.

V. CO-CULTURAL THEORY AS A FRAMEWORK FOR CONSCIOUS IDENTITY PERFORMANCE

As a normative matter, the discussion of identity strategy in the legal profession affects all attorneys. It may noticeably target traditionally underrepresented attorneys as the struggle for promotion opportunities for these groups continues, but it also tacitly exposes the negative stereotyping

129. Id. (commenting that a soft-spoken example may be a “first-generation Asian American wom[a]n,” while strategic may be the Fortune 500 female employee who knows her male co-workers “won’t listen to women who come off as too confident.”).
130. Id. at 105.
131. Id. (emphasis omitted).
132. Mark Orbe, From the Standpoint(s) of Traditionally Muted Groups: Explicating A Co-Cultural Communication Theoretical Model, COMM. THEORY, Feb. 1998, at 1, 11 [hereinafter Traditionally Muted Groups].
133. Id.
134. Id. at 12; Orbe, supra note 4, at 98–99 (noting one African-American young man stated, “I’m going to be black no matter what situation I’m in but the ways in which that blackness is communicated depends on the specific situation.”).
135. Orbe, Traditionally Muted Groups, supra note 132, at 12.
and other biases within the dominant culture, many of which escape legal exposure under traditional antidiscrimination law.136

To my knowledge, this Article is the first to extend the co-cultural theory to legal scholarship and does so as a complementary identity strategy framework. Specifically, the discussion thus far has demonstrated where basic identity strategies have appeared in legal scholarship to provide a base for the co-cultural theory to find common ground.

At the outset, there are potential limitations in suggesting identity strategies. First, the outsider’s identity performance may be subconscious, as Carbado and Gulati observed in Working Identity, foreclosing then the ability to operate with conscious consideration.137 Second, even if outsiders were conscious of their strategic choices, do they really want to—and should they have to—work that hard purely to communicate with an insider? Recall Lawrence Mungin, who eventually found himself in this space when his near lifetime of racial covering efforts still did not permit him entrance into the white-only club.138 The focus of this Article, however, is introducing, through an interdisciplinary lens, depth to the existing identity strategies in legal scholarship. This enhancement is useful even if we have not yet resolved future problems.139

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136. Carbado & Gulati, supra note 15, at 1293 (noting identity negotiations are problematic in antidiscrimination law in three senses: “First, identity negotiations involve costs that are not captured by current antidiscrimination regimes (the ‘capture problem’). Second, to the extent that a person engages in certain strategic identity negotiations, she undermines her ability subsequently to bring a discrimination claim (the ‘evidentiary problem’). Third, antidiscrimination law reflects the problematic presumption that an employer who hires several outsiders, and fails to promote some is not motivated by discriminatory reasons (the ‘doctrinal problem’”).).”

137. Id. at 1277–78 (“In modeling identity performance as a function of conscious strategic choices, we do not mean to suggest that all identity-related decisions are a product of conscious strategizing. Just as a significant amount of the stereotyping that occurs tends to operate at a subconscious or unconscious level, we expect that a significant portion of the outsider responses to these stereotypes also operates at the subconscious or unconscious level. The conscious-behavior model is a simplifying mechanism to understand what is undoubtedly a more complex phenomenon.”) (footnote omitted).

138. See supra pp. 584–86.

139. Future work will discuss the need to teach conscious identity performance in the law school curriculum, as an arm of professional responsibility and ethics curricula. Specifically, the need to broaden existing identity categories through the incorporation of co-cultural theory, thus deepening teaching tools for professors. As a result, I suggest that diverse law students, in particular, are empowered to consciously navigate their academic journey and legal careers, and not internalize the insiders’ stereotypes to their detriment. Further, students are provided with the lexicon and social intelligence for representing clients within marginalized communities.

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With this background, the following section applies the co-cultural theory to the narrative experiences of diverse attorneys, by first suggesting co-cultural communication practice(s) their experiences might demonstrate, and thereafter articulating the availability of a conscious strategic choice for negotiating their identity. This section also demonstrates the insight one gains from viewing the communication practices from the marginalized perspective. The application is both broadening and empowering.

A. To Be Gay or Not to Be Gay, That Is the Question: James Leipold

James Leipold, Executive Director of the National Association of Law Placement (NALP), recounts his own law school experience in the early nineties, particularly regarding whether to reveal his sexual orientation on his resume. He writes,

At the time I experimented by circulating two different resumes, one on which I was out, noting my leadership role in the LGBT student organization at my law school, and one on which I was not out. In my experience with virtually one hundred percent consistency I would get interviews with law firms when I left my LGBT status off my resume and would not be invited for a law firm interview when I included the LGBT reference. I eventually summered at an Am Law 100 firm where I had not been out in the screening and interviewing process, but during my summer work, and against the advice of the one gay lawyer at the firm I had been able to identify, I did come out. At the end of the summer I did not receive an offer for post-graduate employment, and no explanation was ever offered other than an inference that it would not have been a good fit.

Now, the current legal scholarship may end Leipold’s story here. More expressly, it might toss Leipold into a pool of statistics, followed by a lengthy report, more legal scholarship espousing frustration at the possible homophobic behavior, and likely culminate in a re-actively drafted law firm diversity statement that touts both inclusiveness and progressiveness.

Yet, the co-cultural theory’s outside-within perspective heightens our insight to understand Mr. Leipold’s experiences through his own words;

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141. Id.
142. For additional research regarding the experience of LGBT lawyers, see Thomas H. Garrett III et al., 20th Anniversary Reprint of the 1995 HCBA Report: Legal Employers’ Barriers to Advancement and to Economic Equality Based Upon Sexual Orientation, 41 WM. MITCHELL L. REV. 243, 256 (2015) (“For those interviewees who have chosen to be out in law firms, the relief that comes with being out is balanced by a need to be on one’s guard. Most of those persons who are out report expending energy to confront homophobia and to cope with varying degrees of fear that harm will befall them. Some interviewees reported that upon coming out at work, formerly positive relationships deteriorated. Out interviewees also reported that they encountered undue suspicion of their work, including concerns about leadership abilities and mistrust of their substantive skills.”).
namely by analyzing the relationship between Leipold’s communication practices and the related influential factors.\textsuperscript{143}

To start, when Mr. Leipold removed any reference to his LGBT status he perhaps employed the communication practices of dissociating—making a concerted effort to elude any connection with behaviors typically associated with one’s co-cultural group; or mirroring—adopting dominant group codes in an attempt to make one’s co-cultural identity completely invisible or at least less visible.\textsuperscript{144} A co-cultural group member who is influenced by the preferred outcome of assimilation into the dominant culture could use both of these communication practices. While it is unclear whether he was cognizant of a preferred outcome, when Leipold intentionally hid his LGBT status, he obtained temporary access and assimilated into the “good ol’ heterosexual boys club.” He was able to experience the privileged life, and if his conscious goal was to keep the job, then his chosen communication practice—for example, disassociation was effective.

However, when he later chose to make his sexual identity known, risking a future job offer, he possibly employed the communication practices of increasing visibility, dispelling stereotypes, or communicating self.\textsuperscript{145} This aspect of Leipold’s narrative arguably demonstrates two interrelated factors influencing his communication practice(s). First, focusing on the influential factor of preferred outcome, the above communication practices are commonly used by co-cultural group members who choose to accommodate the dominant culture, while simultaneously maintaining their cultural identity. Second, and equally insightfully, is the influential factor of perceived costs and rewards.\textsuperscript{146} Specifically, Leipold’s decision to reveal his sexual identity required him to weigh the perceived cost of not being offered a job in comparison to the cost of being closeted. Regardless of the influential factors—preferred outcome or perceived costs and rewards, or both—paramount is the notion that the communication practice and strategy was his conscious choice; thus, even the loss of a job is equally as empowering as assimilating to keep the job.

\textsuperscript{143} For a discussion of outsider-within perspective, see supra note 84–85 and accompanying text.

\textsuperscript{144} ORBE, supra note 4, at 16–18 tbl.1.1.

\textsuperscript{145} Id.

\textsuperscript{146} For a discussion of influential factors affecting chosen communication practices, see supra Section IV.
This theoretical framework reveals a powerful double vision. Unlike a partial view of reality that limits the dominant group, as they are standing in the center of societal structures, Leipold, a nondominant group member has “an awareness of and sensitivity to both the dominant worldview and [his] own perspective”—a valuable positioning for understanding communication structures. Under the co-cultural theory, in the latter scenario when he did not receive a job offer, Leipold still engaged in a conscious, albeit unfair, choice resulting in his return to the nondominant group and his fall from privilege. In this case, no job offer or meaningful explanation exposes negative stereotypes or bias from the dominant culture.

It must be emphasized that heterosexual white males will never have to negotiate their identity in this manner because they simply do not stand outside the dominant societal structure of which they actually define. In this way, their view of reality can only be partial.

Herein lies the value of a theory whose significance, indeed its very existence, is constructed through voices from the margins. By understanding the reasoning behind a chosen communication practice, both sides gain insight. First, nondominant groups can be more intentional with their communication and identity strategies in view of their preferred outcome or interaction with the dominant culture. Second, the dominant group gains valuable insight into the very real and exhausting process nondominant attorneys go through daily in negotiating their identity within a dominant society.

B. It Does Matter if You’re Black or White: Black Law Firm Associates

As additional examples, Kevin Woodson’s work on homophily-based behavior vividly reveals opportunities to demonstrate co-cultural communicative practices. While Woodson’s work does not indicate the use of the phenomenological method communication scholars use, his extensive interviews with seventy-five black law firm associates certainly

147. See supra notes 86–87 and accompanying text.
148. ORBE, supra note 4, at 29.
149. Recall the earlier notion that a discussion of identity strategy is broadly relevant. See supra note 136.
150. For a discussion of dominant social structure and positioning, see supra notes 84–86 and accompanying text.
152. For an in-depth discussion of the phenomenological process, see supra note 103 and accompanying text.
details the power of relationship capital between black and white attorneys. A few narratives were selected where the interviewees described their experience in their own words, to demonstrate further the application of Orbe’s co-cultural theory communicative practices.

1. The Racially Isolated Attorney: Avoiding and Separation

One interviewee who had attended a predominantly white university had no close social relationships with her white classmates. She described her time as an undergraduate at an elite public university:

If you looked at my photo albums from school, you would have thought that I went to Howard or Hampton or Spelman because all my friends were black. And we just had the community . . . All your friends were black, you were going to the black mixers, the Kappa parties . . . you were in the black organizations . . . . My college experience—it was [a Historically Black College and University] experience, essentially.

The possible communication practice exhibited here might be avoiding—maintaining a distance from dominant group members; refraining from activities or locations where interaction is likely. This identity performance was perhaps not seemingly detrimental during college, but theoretically her actions suggest a preferred outcome of separation from white people. This separation or racial isolation will naturally decrease her social comfort with white people, arguably making successful career navigation at a predominantly white law firm very difficult and exhausting.

2. The Networking Attorney: Increasing Visibility, Utilizing Liaisons, and Accommodation

Another interviewee, in discussing the power of relationship capital, commented that junior attorneys who have the strongest relationships and rapport with senior colleagues tend to receive greater access to “work

153. See Woodson, supra note 151, at 2560 n.22 (describing the interviews as conducted as part of Woodson’s “dissertation research, which consisted of interviews of a larger sample of black workers who held professional or managerial positions in large corporate firms and a smaller comparison sample of white workers”).
154. Given that I did not personally conduct these interviews, I recognize the excerpts may not capture the full intent of each interviewee.
155. See id. at 2564.
156. Id. (footnotes omitted).
assignments and other opportunities." Specifically the interviewee explained:

Though law firms have formal ways to distribute assignments, the way that you’re really going to get the assignment that you want to get is to know senior associates, to know partners . . . by being someone that they want to have a conversation with, being somebody that they wouldn’t mind talking to outside of the office.

In this situation, the possible communication practices could be increasing visibility—covertly, yet strategically, maintaining a co-cultural presence within dominant structures—and utilizing liaisons—identifying specific dominant groups members who can be trusted for support, guidance, and assistance. Both of these communication practices suggest a preferred outcome of accommodation toward the dominant culture. I proffer these two suggestions because from this excerpt the associate seems to recognize the value of networking with the dominant group, and his or her tone seems comfortable with the idea of trying to be “someone that [white people] want to have a conversation with” but not at the risk of sacrificing their own cultural identity.

3. The Anti-Party Attorney: Avoiding, Increasing Visibility, and More

A third interviewee “explained how social and cultural differences rendered informal firm-related social events and gatherings problematic for some of his black colleagues.” If black associates are not acclimated to social interactions with the dominant culture, they relinquish potential social and work opportunities, “thereby reinforcing their isolation.” The interviewee remarked:

There’s another layer of complication, stress, and almost like another layer of the job that you have to go through if you’re not comfortable. So for example, if you don’t like to go out and drink beer. . . . There’s small annoyances. If you go to a firm event you know there’s gonna be shi**y music. That’s just the way it is. You almost ignore it but why should you? Why is it that there are only certain genres . . . what it meant to go out and have a good time was very monolithic. I’m sure there are certain people who have a very difficult time adapting to that or have no desire to adapt and don’t think it’s worth the price.

157. Id. at 2566.
158. Id. at 2567.
159. See ORBE, supra note 4, at 16–18 tbl.1.1.
160. Woodson, supra note 151, at 2567.
161. Id. at 2568.
162. Id.
163. Id.
Here, there are a number of possible communication practices available depending upon the preferred—or even unintended—outcome. First, if this black associate chooses not to interact socially by avoiding or maintaining interpersonal barriers—imposing, through the use of verbal and nonverbal cues, a psychological distance from dominant group members), his communication practices suggest a preferred outcome of separation.164 But, even in spite of the social entertainment differences, if he consciously chooses to attend the various work events he may intentionally be increasing visibility, dispelling stereotypes (myths of generalized group characteristics and behaviors are countered through the process of just being one’s self), communicating self, (interacting with dominant group members in an authentic, open, and genuine manner; used by those with strong self-concepts) or educating others (taking the role of teacher in co-cultural interactions; enlightening dominant group members of co-cultural norms, values, etc.).165 Similar to the previous interviewee, any of these communication practices suggest a preferred outcome of accommodation toward the dominant culture.

4. The Unplugged and Cosmopolitan Attorneys: Extensive Preparation, Increasing Visibility, and More

Finally, several interviewees confessed that their inability to develop rapport with colleagues was a handicap, as compared to others, who admitted their “cosmopolitan background better enabled [them] to build rapport with” their colleagues.166 Those who struggled in developing rapport with colleagues, as compared to their peers who were comfortable talking to white people, described their difficulties stating:

There’s just nothing that goes on that feels race related; I just don’t feel plugged in . . . that would be the only thing that I could say would be race but then it’s not racism, it’s just that I’m different and I have no idea how to fit in here. I have no idea how to be the person that you want to drink with.167

Whereas we were doing the same in law school, and I even had an easier time getting a job . . . she excelled and just did really, really well at her firm . . . . I always attribute the difference to being that she knows how to get along better with those sort of people who are decision makers . . . and it had huge differences in

164. See Orbe, supra note 4, at 16–18 tbl.1.1.
165. See id.
166. Woodson, supra note 151, at 2569.
167. Id. at 2569–70.
For these interviewees who appeared to have difficulty culturally acclimating to their law firms, they may have found themselves falling into *extensive preparation*—engaging in an extensive amount of detailed (mental, concrete) groundwork prior to interactions with dominant group members—or *overcompensating*—conscious attempts-consistently enacted in response to a pervasive fear of discrimination to become a superstar.169 First, I offer these two communication practice suggestions because trying to acclimate to the dominant culture for diverse associates can become an exhaustive mental process where diverse attorneys assess each action or inaction for its potential interpretation by white attorneys, and the implications or consequences for diverse attorneys. Second, reading between the lines of the narratives, two influential factors surface: (1) the *preferred outcome* as a desire to *assimilate*—based on the statements of wondering how to fit in, and recognizing the value of getting along well with others—and (2) the importance of *field of experience*—namely, the significance of background experience in developing relationships with white people.170 Conversely, other interviewees were a bit more cosmopolitan, believing their background experiences in developing relationships with white people afforded them the comfort and acculturation necessary to develop relationship capital in their firms.171 One explained:

> From the day you walk in the door, it’s based on who you know, who you can create relationships with, so it’s a very tricky place to navigate . . . . For me, to be clear, this wasn’t really a problem because I’ve pretty much been operating in these environments . . . for most of my life. . . . it didn’t feel any different than anywhere else I’ve ever been.172

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168. *Id.* at 2569–70; see also Anastasia M. Boles, *The Culturally Proficient Law Professor: Beginning the Journey*, 48 N.M. L. REV. 145, 148 (2018) (identifying and “examining steps individual law faculty members can take to begin the journey of delivering culturally proficient instruction to law students and engaging in culturally proficient student interactions”); Leslie P. Culver, *White Doors, Black Footsteps: Leveraging “White Privilege” to Benefit Law Students of Color*, 21 J. GENDER, RACE & JUST. 37, 69–70 (2017) (discussing the need for the development of relationships between white professors and law student of color becomes imperative in preparing these students for the futures in a cosmopolitan and culturally competent world).

169. See *Orbe*, supra note 4, at 16–18 tbl.1.1.

170. *Id.* For a discussion of influential factors affecting chosen communication practices see *supra* Section IV.B.

171. See Woodson, *supra* note 151, at 2574. The recognition of background experience in developing relationships with white people as important demonstrates that field of experience is an important factor a person considers in determining their communication practice with the dominant culture. See *supra* Section IV.B.

172. See Woodson, *supra* note 151, at 2574.
Another interviewee noted, “I’ve just been in a lot of different social environments, and I have a lot of different types of friends so for me fitting in is not something that’s that difficult . . . but I think for other black attorneys it is a lot more difficult.”\textsuperscript{173} And the final cosmopolitan example is an interviewee who held close interracial friendships throughout her life.\textsuperscript{174} She commented on her ability to form a bond with one of the most powerful partners at the firm, an older white man, “who eventually became a valuable sponsor who greatly enhanced her experience at her firm.”\textsuperscript{175} The interviewee stated:

I knew he liked art . . . so I sat down with him at a big dinner . . . sort of a black tie event, and I said, “I really want to tell you about this exhibit that I saw recently when I was in New York.” And all the other partners are looking around . . . and finally someone said, “I thought you were talking about a trial exhibit” and he says, “Oh no—she knows where my heart is really at; she’s talking about an exhibit at the Metropolitan Museum of Art.”\textsuperscript{176}

These cosmopolitan associates, primarily because of their close relationships with white people, may have been employing one or more of the following communication practices: \textit{increasing visibility} (covertly, yet strategically, maintaining a co-cultural presence within dominant structures); \textit{dispelling stereotypes} (myths of generalized group characteristics and behaviors are countered through the process of just being one’s self); \textit{communicating self} (interacting with dominant group members in an authentic, open, and genuine manner; used by those with strong self-concepts); \textit{intragroup networking} (identifying and working with other co-cultural group members who share common philosophies, convictions, and goals); \textit{utilizing liaisons} (identifying specific dominant group members who can be trusted for support, guidance, and assistance); or \textit{educating others} (taking the role of teacher in co-cultural interactions; enlightening dominant group members of co-cultural norms, values, etc.).\textsuperscript{177} The above list is communication practices common to a preferred outcome of \textit{accommodation}. To be sure, while \textit{accommodation} or \textit{assimilation} could support the black associates’ engagement with their white colleagues, based on professed comfort, length of interethnic communications, and even similar artistic taste, there is little indication that they had to

\begin{itemize}
\item \textsuperscript{173} \textit{Id.}
\item \textsuperscript{174} \textit{Id.} at 2574–75.
\item \textsuperscript{175} \textit{Id.}
\item \textsuperscript{176} \textit{Id.} at 2575.
\item \textsuperscript{177} See ORBE, \textit{supra} note 4, at 16–18 tbl.1.1.
\end{itemize}
disappear culturally for those relationships to develop, as would more likely be the case in assimilation.

The existence of such detailed micro-level communication strategies, while empowering, simultaneously demonstrate how exhausting and consuming it is to be an outsider living and working in a world whose norms are established and dictated by whiteness. In some respects, the discomfort and uncertainty of our culture for traditionally marginalized and underrepresented groups, has seemingly generated a lifelong examination of identity performance, where questions beget questions. However, to not have discussions, to avoid the need for the intellectual journey, is perhaps the greater transgression.

C. Performing One’s Identity

The previous section demonstrates the depth of awareness the co-cultural communication strategies bring to identity performance. The reaction to this strategy expansion, however, is really bittersweet. On the one hand, perhaps there is freedom or empowerment for the attorney in the nondominant group as they now have additional tools to navigate the dominant white, heterosexual, male profession. For example, if a Muslim woman in a predominantly white law firm wants to fit into the dominant culture, but also seeks to maintain her own culture, she may choose to accommodate, thus consciously bring her culture to work each day, aware of positive or negative reactions. This may include wearing her hijab,178 letting her co-workers know she is observing Ramadan—for example, attending the work lunches even though she is fasting, allowing others to see her culture. In this way, she may be nonassertively increasing visibility, dispelling stereotypes, or communicating self,179 in view of the dominant group.

On the other hand, there is arguably a huge burden on the nondominant group member—less in the selection of the identity strategy and subsequent performance, but more in the very fact that a strategy has to exist at all. Sadly, it is not clear whether the dominant culture is aware of the burden of making this conscious identity choice. For example, the Muslim attorney, in publicly displaying her culture in the workplace, must daily weigh the

178. Hijab is an Arabic word that has its origins in the word “hajaba,” which means “to prevent from seeing.” In Islamic culture, hijab concerns conceptions of “modesty, privacy, and morality.” While hijab refers to the headscarf worn by Muslim women, the word also implicates broader notions of a Muslim woman’s religious beliefs and practices. Thus, hijab can be more readily understood as both an item of clothing and a way of life for Muslim women. Kelly A. Harrison, Hiding Under the Veil of “Dress Policy”: Muslim Women, Hijab, and Employment Discrimination in the United States, 17 GEO. J. GENDER & L. 831, 836 (2016) (footnotes omitted).

179. See ORBE, supra note 4, at 16–18 tbl.1.1.
perceived costs and rewards of doing so in fear of discrimination.180 She may rehearse how she will respond to cultural questions and public glances, in effect preparing herself for an emotional and psychological cloud that may frame much of her interactions with others throughout the day. In short, on top of simply trying to do her work as an attorney, she will always be reminded, explicitly or implicitly, not just that she is not white, but that she is an “other.”

In addition to “greater depth of identity” strategies based on more traditional markers of diversity that co-cultural theory offers, I recognize some critiques of conscious identity performance, particularly that of adding a “cost of choosing” burden to already marginalized groups. One such cost is rooted in the reality that an asymmetrical power relationship exists between nondominant and dominant cultures.181 Thus, looking again at the Muslim woman, she is reminded not only of her ethnicity and gender, but also of how her lack of positional power can aggravate, and in some cases compete against, a conscious performance of her multidimensional identities. So, if she chooses to accommodate the dominant culture by displaying her own culture, perhaps an empowering choice, she now must weigh the cost of whether that same performance actually reinforces her inferior power position to the white male norm in that work setting. Another cost, perhaps more solemn, is the burden that one nondominant group member’s identity performance can have on other members of that same group. For example,

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180. The scholarship discussing growing religious discrimination for Muslims in the workplace is increasing as this ethnic group has been under close scrutiny since 9/11. See Harrison, supra note 178, at 832 (discussing issues of religious discrimination and protection in the workplace for Muslims, including the 2015 United States Supreme Court case EEOC v. Abercrombie & Fitch Stores, Inc. where the Justices considered whether retailer Abercrombie & Fitch violated Title VII when it rejected a qualified female applicant under its grooming policy “because she wore a Muslim headscarf, known as a hijab, in accordance with her adherence to Islam”); see also Zehra Naqvi, What’s it Like Being Muslim in America?, HUFFINGTON POST (Nov. 16, 2015, 9:30 AM), https://www.huffingtonpost.com/zehra-naqvi/what-its-like-being-muslim-in-america_b_8569378.html [https://perma.cc/WXU6-9KXK] (“Being Muslim in America means no one is informing non-Muslim Americans about the actual basis of the ideology that underlies ISIS—Saudi-exported hate-mongering, supremacist Wahhabism—or explaining that as long as we, as a nation, are more in love with oil than troubled by the true cost of that oil and what kind of ideology may be imported alongside that oil, we will all be at risk for more attacks, the reputation of the majority of Muslims around the world who don’t buy into ISIS’ distorted views of Islam will continue to be maligned and our kids will pay the price for all of our ignorance, having to stand up to misdirected bias and hate over and over again.”).

181. For a discussion on muted groups and asymmetrical relationships, see supra Section III.A.
a black male’s choice to assimilate into a predominantly white environment has consequences for other minorities in that same environment who choose to perform their identity differently—that is, not assimilate. To this cost, Teri McMurtry-Chubb, a prominent scholar on how systems of oppression are replicated in the legal profession, raises a grave concern: “[w]here there are multiple minorities, those who choose to ignore issues of discrimination and to assimilate are used to punish and exclude those who speak up and choose not to assimilate.” I would call this an interconnected cost that is almost a hallmark of nondominant groups—that is, the actions of one black person are presumed normative for all Black people. Given this interconnected cost, how free is that black male to consciously choose his identity performance strategy? If that choice furthers white supremacy and patriarchy, is it even a choice at all? There are no easy answers. But all of these perspectives become relevant considerations when thinking about one’s possible identity strategies and the desired outcome or response from the dominant culture. For all the empowerment that conscious identity performance can bring, particularly in light of the generous strategic expansion the co-cultural theory offers, it is disheartening to still be reminded of the burden that marginalized groups bear.

Despite any critiques, I believe the benefits to conscious identity performance outweigh the harms of potential unconscious assimilation or uncertainty of one’s identity. Equally important, the benefits of conscious identity performance do not rest on the shoulders of marginalized groups alone. While beyond the scope of this Article, the dominant group bears its own accountability to become educated on systems of oppression, so that this burden to educate is not continually upon the nondominant group. As Audre Lorde once wrote, “[w]henever the need for some pretense of communication arises, those who profit from our oppression call upon us to share our knowledge with them. In other words, it is the responsibility of the oppressed to teach the oppressors their mistakes.”

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182. Text message from Teri McMurtry-Chubb, Professor of Law, Mercer University School of Law (Aug. 18, 2018, 10:11 PST).
183. See e.g., Robert J Razzante & Mark P. Orbe, Two Sides of the Same Coin: Conceptualizing Dominant Group Theory in the Context of Co-Cultural Theory, COMM. THEORY (forthcoming 2018) (introducing dominant group theory, which, of relevance, discusses dominant group members using white privilege to benefit nondominant group members).
184. Audre Lorde, Age, Race, Class, and Sex: Women Redefining Difference, in SISTER OUTSIDER: ESSAYS AND SPEECHES 114 (1984). See Russell G. Pearce, White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law, 73 FORDHAM L. REV. 2081, 2082 (2005) (“As white people, we too often view racial issues as belonging to people of color. We tend to do that in one of two ways. Some whites believe that race generally does not matter except in the rare case of an intentional racist. Other whites view whites generally as racists and look to people of color to tell them how to understand issues of race.”) (footnote omitted);
Specifically, the dominant group can no longer rest on diversity trainings to teach them how to talk to their own colleagues who simply bear a diverse identity. Diversity trainings need to be replaced with inter-cultural communication and inclusivity discussions that begin with coming to terms with the privileges associated with whiteness and undue white privilege and continue with a commission to share the nondominant culture’s burden of identity performance through cultural competency, integration, and acceptance. To be sure, the conversation should never end.

VI. CONCLUSION

Let us return to the story of Jason and Keith, the two young, black, male law students. Recall that Keith was generally more reserved with more distance between himself and his white classmates, while Jason was fairly outgoing and usually surrounded by his white law school peers. If both choose to begin their careers within a predominantly white law firm, what can a co-cultural consciousness mean to both men? How could it facilitate successful careers for both men, even if each man defines success differently?

For example, Keith, who is relatively reserved around white people, once knowledgeable about the depth of identity performance the co-cultural theory offers, may choose a more assertive approach if he deems a better relationship with white people is relevant for his professional growth. Even still, in this conscious space, what if Keith is also mindful that his field of experience reveals limited skills in developing such relationships? He may recognize his need for a mentor of either his own race, who has strong relationships with the dominant culture, or a white mentor, who is willing to assist him in genuinely and professionally navigating the dominant terrain.185

WOC Faculty, A Collective Response to Racism in Academia, MEDIUM.COM (May 8, 2018), https://medium.com/@wocfaculty/a-collective-response-to-racism-in-academia-35dc725415c1 [https://perma.cc/EMM4-N6LY] (publishing a response by women of color faculty in academia who, in response to Chronicle in Higher Education’s (CHE) survey asking about experiences with racism in the academy, commented that this information already exists, and encouraging CHE to engage with the decades of scholarship to gain insight and further noting that “[t]his request made by CHE is more than a microaggression: it is an insult to our presence in the academy as it invalidates our collective experiences we grapple with daily. Others remain immune while weaponizing their whiteness against BIPOC (Black, Indigenous, and People of Color) even as they demand BIPOC perform the thankless labor of teaching a white academic audience about racism”).

185. For a discussion on white people using their white privilege to benefit law students of color, see Culver, supra note 168.
And what about Jason? What if he, like Mungin, had consciously weighed the perceived costs and rewards in communicating with white people significantly more than communicating with his in-group peers—which is perhaps reflective of his upbringing. If he seeks legal employment in a predominantly white setting, he may have acquired the cultural capital to be successful at developing relationships in that setting. For both Keith and Jason, the consciousness of their own identity choice creates an empowered voice regardless of the ultimate professional decision. In this way, what the co-cultural theory provides is an almost tactical and proactive mindfulness of their own box of tools—for example, background experience or comfort, desired career goal, natural abilities to build relationships, the costs and risks to any chosen action—to consciously navigate their career ascent.

Notable legal scholars have set a foundation of performance identity strategies for traditionally marginalized groups in the legal profession. To their credit, our profession has greatly benefited from almost two decades of discussion as we press the law to both recognize and accommodate these essential voices from the margins.

But there is still more work to be done. Reaching into other disciplines broadens our depth of understanding of these identity issues. Specifically, the co-cultural theory and Orbe’s communication practices not only capture the lived experiences of outsiders but also thematically categorize their experiences from their perspective. This framework is a valuable contribution to the current legal scholarship in that the co-cultural theory would allow traditionally marginalized group members to consciously, and proactively, be equipped with indispensable tools of empowerment to perform their own identity. A relevant question is whether the conversation regarding identity performance is more dynamic among scholars, and minimized, or absent altogether, in the law school classroom where many diverse law students lack coping strategies to navigate their identity in predominantly white, heterosexual law schools, and eventually in a predominantly white, male, heterosexual profession.

In a future article that considers this question, I suggest that there is a need to teach conscious identity performance, premised on co-cultural theory, as a vital component of professional responsibility. The value of such consciousness awakens students to be empowered over their own academic journey and legal careers and not internalize the insiders’ stereotypes to their detriment, as well as provides students with the lexicon and social intelligence for representing clients within marginalized communities.

186. See supra pp. 584–86.
Disarming Racial Microaggressions: Microintervention Strategies for Targets, White Allies, and Bystanders

Derald Wing Sue, Sarah Alsaidi, Michael N. Awad, Elizabeth Glaeser, Cassandra Z. Calle, and Narolyn Mendez
Teachers College, Columbia University

Given the immense harm inflicted on individuals and groups of color via prejudice and discrimination, it becomes imperative for our nation to begin the process of disrupting, dismantling, and disarming the constant onslaught of micro- and macroaggressions. For too long, acceptance, silence, passivity, and inaction have been the predominant, albeit ineffective, strategies for coping with microaggressions. Inaction does nothing but support and proliferate biased perpetrator behaviors which occur at individual, institutional, and societal levels. This article introduces a new strategic framework developed for addressing microaggressions that moves beyond coping and survival to concrete action steps and dialogues that targets, allies, and bystanders can perform (microinterventions). A review of responses to racist acts, suggest that microaggression reactions/interventions may be primarily to (a) remain passive, retreat, or give up; (b) strike back or hurt the aggressor; (c) stop, diminish, deflect, or put an end to the harmful act; (d) educate the perpetrator; (e) validate and support the targets; (f) act as an ally; (g) seek social support; (h) enlist outside authority or institutional intervention; or (h) achieve any combination of these objectives. We organize these responses into four major strategic goals of microinterventions: (a) make the invisible visible, (b) disarm the microaggression, (c) educate the perpetrator, and (d) seek external reinforcement or support. The objectives and rationale for each goal are discussed, along with specific microintervention tactics to employ and examples of how they are executed.

Keywords: microinterventions, microaggressions, macroaggressions, metacommunication, race

“...”

“We will have to repent in this generation not merely for the hateful words and actions of the bad people but for the appalling silence of the good people.”

—Dr. Martin Luther King Jr.

“The world is a dangerous place to live, not because of the people who are evil, but because of the people who don’t do anything about it.”

—Albert Einstein

These notable quotes echo the sentiment of many social justice advocates regarding the appalling worldwide silence and inaction of people in the face of injustice, hatred, and oppression directed toward socially marginalized group members (Freire, 1970; Potok, 2017; Tatum, 1997). In the United States, the omnipresence of racial bias and bigotry has led many to question the reasons for their persistence in light of widespread public condemnation. Social scientists have proposed a number of reasons for people’s failure to act: (a) the invisibility of modern forms of bias, (b) trivializing an incident as innocuous, (c) diffusion of responsibility, (d) fear of repercussions or retaliation, and (e) the paralysis of not knowing what to do (Goodman, 2011; Kawakami, Dunn, Karmali, & Dovidio, 2009; Latané & Darley, 1968; Scully & Rowe, 2009; Shelton, Richeson, Salvatore, & Hill, 2006; Sue, 2003).

These reasons apply equally to targets of discrimination, White allies, and “innocent” bystanders (Scully & Rowe, 2009; Sue, 2015). In many cases, bias and discrimination go unchallenged because the behaviors and words are disguised in ways that provide cover for their expression and/or the belief that they are harmless and insignificant. Even when the biased intent and detrimental impact are
unmasked, the possible actions to be taken are unclear and filled with potential pitfalls. The reasons for inaction appear particularly pronounced and applicable to the expression of racial microaggressions (Sue et al., 2007), and racial macroaggressions, a concept to be introduced shortly (Huber & Solorzano, 2014).

The bombardment of racial micro/macroaggressions in the life experience of persons of color has been described as a chronic state of “racial battle fatigue” that taxes the resources of target groups (Smith, Hung, & Franklin, 2011). In the stress-coping literature, two forms of managing stress have been identified: emotion-focused coping and problem-focused coping (Lazarus & Folkman, 1984). The former is a strategy utilized by individuals to reduce or manage the intensity of the emotive distress (internal self-care) and tends to be more passive, whereas the latter is used to target the cause of the distress (external). Problem-focused strategies are more long term solutions that are proactive and directed to altering, or challenging the source of the stressor. Although there is considerable scholarly work on general models of stress-coping (Lazarus, 2000; Lazarus & Folkman, 1984), there is less research that take into consideration how people of color cope with prejudice and discrimination (Brondolo, Brady Ver Halen, Pencille, Beatty, & Contrada, 2009). Even when race-related stress and coping are discussed, it seldom explores questions about what people of color can do to disarm, challenge and change perpetrators or institutional systems that oppress target populations (Mellor, 2004). We anchor our proposed race-related coping strategies to the more active problem-focused strategies in navigating prejudice and discrimination, preserving well-being, and promoting equity.

Additionally, scholars have largely ignored the role that White allies and well-intentioned bystanders play in the struggle for equal rights (Scully & Rowe, 2009; Spanierman & Smith, 2017). Most research and training have attempted to identify how White Americans become allies, but there is an absence of work on the types of actions or intervention strategies that can be used to directly combat racism (Sue, 2017). In this article, we present a conceptual framework that (a) emphasize the harmful impact of race-related bias on persons of color (b) include a distinction between individual microaggressions that arise interpersonally and macroaggressions that arise on a systemic level, (c) acknowledge the central value of self-care in coping used by persons of color, (d) highlight the importance of disarming and neutralizing harmful microaggressions, (e) suggest intervention strategies that can be used by targets and antiracists, and (f) relate them to the goals of social justice.

### The Harmful Impact of Microaggressions

Racial microaggressions are the everyday slights, insults, putdowns, invalidations, and offensive behaviors that people of color experience in daily interactions with generally well-intentioned White Americans who may be unaware that they have engaged in racially demeaning ways toward target groups (Sue et al., 2007). In addition to being communicated on an interpersonal level through verbal and nonverbal means, microaggressions may also be delivered environmentally through social media, educational curriculum, TV programs, mascots, monuments, and other offensive symbols. Scholars conclude that the totality of environmental microaggressions experienced by people of color can create a hostile and invalidating societal climate in employment, education, and health care (Clark, Spanierman, Reed, Soble, & Cabana, 2011; Neville, Yeung, Todd, Spanierman, & Reed, 2011; Solorzano, Ceja, & Yasso, 2000; Sue, 2010). Likewise, the current political climate (Potok, 2017) has been identified as a significant stressor for many Americans, especially to people of color because of its racially charged connotation (American Psychological Association [APA], 2017a, 2017b).

Many critics have downplayed the harmful impact of microaggressions, and have described them as trivial, negligible slights, insignificant offenses and as having inadequate empirical support (Campbell & Manning, 2014; Lilienfeld, 2017). Schacht (2008) believes microaggressions are no different from the everyday incivilities and rudeness in any human encounter. Thomas (2008) called microaggressions “macrononsense” that “hardly necessitate the handwringing reactions” by people of color. Lukianoff and Haidt (2015) asserted that we are teaching people of color to catastrophize and have no tolerance for being offended. In many respects, these assertions minimize the harmful impact of microaggressions and make an erroneous assump-
tion that nonrace-based offenses are no different from race-based ones (Sue, 2010).

Sue (in press) has made a strong case that racial microaggressions are different from “everyday rudeness” in the following ways. They are (a) constant and continual in the lives of people of color, (b) cumulative in nature and represent a lifelong burden of stress, (c) continuous reminders of the target group’s second-class status in society, and (d) symbolic of past governmental injustices directed toward people of color (enslavement of Black people, incarceration of Japanese Americans, and appropriating land from Native Americans). In one revealing study on Asian Americans, for example, Wang, Leu, and Shoda (2011) found that race-based microaggressions were much more harmful to the targets than nonraced-based insults because their lower social status in society was a constant reminder of their overall subjugation and persecution. They concluded that racial microaggressions differed significantly in quality and quantity from general nonrace-based incivilities.

In a major survey of over 3,300 respondents, the APA (2016) found that daily discrimination experienced by people of color had a profound impact on stress levels and contribute to poorer health. An astoundingly high number of African Americans (over 75%) reported daily discrimination; Asian Americans, Latina/o Americans, and Native Americans also all report significantly higher discriminatory experiences than their White counterparts. Among the reported discriminatory treatments were unjustified questioning by police and/or threats, receiving second-class health care treatment, unfair labor practices (being fired or not promoted when otherwise qualified), treated with disrespect, considered less intelligent, having teachers discourage them from further education, and unfriendly neighbors who made life difficult for them. According to microaggression theory, these individual forms of discriminatory behavior can be classified as microassaults, microinsults, and microinvalidations that vary on a continuum from being overt, intentional and explicit to subtle, unintentional, and implicit (Sue, 2010; Sue et al., 2007).

Being burdened with and contending with a lifetime of microaggressions have been found to increase stress in the lives of people of color (APA, 2016), deny or negate their racialized experiences (Neville, Awad, Brooks, Flores, & Bluemel, 2013), lower emotional well-being (Ong, Burrow, Fuller-Rowell, Ja, & Sue, 2013), increase depression and negative feelings (Nadal, Griffin, Wong, Hamit, & Rasmus, 2014), assail the mental health of recipients (Sue, Capodilupo, & Holder, 2008), create a hostile and invalidating campus and work climate (Purdie-Vaughns, Steele, Davies, Ditlmann, & Crosby, 2008; Solorzano et al., 2000), impede learning and problem solving (Salvatore & Shelton, 2007), impair employee performance (Hunter, 2011), and take a heavy toll on the physical well-being of targets (Clark, Anderson, Clark, & Williams, 1999).

### The Harmful Impact of (Macro-)Aggressions

In addition to focusing on the detrimental impact of individual forms of microaggressions, some social justice advocates have indicated that institutional and cultural racism forms the foundations of prejudice and discrimination at the systemic levels (Jones, 1997; Tatum, 1997; Sue, 2010). Cultural racism has been identified as the individual and institutional expression of the superiority of one group’s cultural heritage (arts, crafts, language, traditions, religion, physical appearance, etc.) over another group with the power to impose those standards (Jones, 1997). Its ultimate manifestation is ethnocentric monoculturalism (Sue & Sue, 2016), or in the case of the United States, an ideology of White supremacy that justifies policies, practices and structures which result in social arrangements of subordination for groups of color through power and White privilege. Huber and Solorzano (2014) used the term macroaggression to refer to the power of institutional and structural racism.

Considerable confusion surrounds the term (micro-)aggression regarding its usage, overtness, intentionality, and impact. It appears to be a misnomer when used to refer to people angrily shouting racial epithets, police officers unjustly profiling and shooting an African American suspect, or White parents not allowing their sons or daughters to date people of color. For many, these do not appear to be micro- but are instead macroacts of bias and discrimination. Microaggression theory, however, considers these acts as one of three forms of microaggressions (microassaults) that are conscious and deliberate (like old-fashioned racism) but occur...
on an interpersonal rather than a systemic level. This is not to deny that microaggressions cannot have major harmful impact such as the unwarranted shooting and killing of a Black male suspect (Sue, 2010). However, whether an act is subtle or blatant, deliberate or unintentional, or whether it has a shockingly harmful impact on targets are not criteria used to judge whether it is a micro- or a macroaggression. Chester Pierce (1969, 1970), credited with introducing the term microaggression, meant “micro” to refer to “everyday” rather than being lesser or insignificant.

We concur with Huber and Solorzano (2014) that the term racial macroaggression be reserved for systemic and institutional forms of racism that is manifested in the philosophy, programs, policies, practices and structures of governmental agencies, legal and judicial systems, health care organizations, educational institutions, and business and industry. Unlike microaggressions which have a more limited impact on an individual level, macroaggressions affect whole groups or classes of people because they are systemic in nature. The philosophy and belief in “manifest destiny,” for example, justified unrestrained 19th century American expansion resulting in the forced removal of Native American from their lands, and provided a rationale for going to war with Mexico. There was a belief that God had decreed to Whites the right to expand and to impose their way of life on indigenous people who were described as heathens, uncivilized and primitive (Cortes, 2013; Sue, 2003). Like their individual counterparts, macroaggressions from a societal viewpoint can also be classified as macroassaults (Jim Crow laws), macroinsults (governmental policies aimed at civilizing American Indians), and macroinvalidations (forced assimilation and acculturation). In contemporary times, for example, the proposed building of the southern border wall, travel bans from Muslim-majority countries, and voting laws that limit early or weekend voting that disproportionately impacts people of color are examples of macroaggressions. In many respects, racial macroaggressions represent an overarching umbrella that validates, supports, and enforces the manifestation of individual acts of racial microaggressions.

The Need to Take Action: People of Color, White Allies, and Bystanders

Given the immense harm inflicted on individuals and groups of color via prejudice and discrimination, it becomes imperative for our nation to begin the process of disarming, disrupting, and dismantling the constant onslaught of micro- and macroaggressions. In this section, we describe the potential antiracist actions of three major groups—targets, allies, and bystanders—in their struggle against racism; we advocate the need for these constituents to take a proactive stance against the discriminatory actions of perpetrators. Through our review of the literature, we extract guiding principles that provide suggestions, strategies and interventions that disrupt, diminish, or terminate prejudice and discrimination at the individual level. Because of space limitations, however, we confine our discussion of micro-interventions to primarily individual offenders. This is not to deny the importance of addressing macroaggressions, as there is a huge need for scholars and practitioners to develop antiracist microintervention strategies directed at biased institutional programs and practices and toward biased societal social policies as well.

Targets

Targets are people of color who are objects of racial prejudice and discrimination expressed through micro/macroaggressions. The experience of a macroaggression can often feel isolating, painful and filled with threat (Sue, 2010). In the race-related stress-coping literature, the first rule of thumb for targets is to take care of oneself (Holder, Jackson, & Ponterotto, 2015; Mellor, 2004). In this respect, it is important to distinguish between the internal (survival and self-care goals of the target), and the external (confronting the source) objectives in dealing with bias and discrimination. It is often problematic to ask people of color to educate or confront perpetrators when the sting of prejudice and discrimination pains them. A number of coping or self-care strategies in the face of racism have been identified: social support (Shorter-Gooden, 2004), spirituality and religion (Holder et al., 2015), humor (Houshmand, Spanierman, & De Stefano, 2017), role shifting (Jones & Shorter-Gooden, 2003), armoring (Mellor, 2004), cognitive reinterpretation (Brondolo et al., 2009).
withdrawing for self-protection (Mellor, 2004), self-affirmations (Jones & Rolon-Dow, in press), and directly or indirectly confronting the racism (Obear, 2016). It is this last proactive response that we believe merits much more attention as it is one of the main explanations for inaction in the face of microaggressions.

Little has been done to offer people of color the tools and strategies needed to disarm, diminish, deflect, and challenge experiences of bias, prejudice, or aggression (Mellor, 2004). Although it is important not to negate the functional survival value of self-care for people of color, it represents a defensive or reactive strategy that does not eliminate the source of future acts of bias. The experiences of discrimination can be jarring and can cause a “freeze effect” (Goodman, 2011). Without knowing what to do or how to respond, targets often experience great anxiety, guilt, and self-disappointment. People of color often wish to confront the aggressor but their lack of action or paralysis leads to later rumination about the situation and to negative self-evaluations (Shelton et al., 2006; Sue et al., 2007). Additionally, individuals who do not stand up for themselves often experience feelings of helplessness and hopelessness. The result may be a fatalistic attitude and belief that racism is normative and must be accepted (Williams & Williams-Morris, 2000).

Rather than perpetuate a sense of resignation, it would be beneficial to (a) provide targets with a repertoire of interpersonal responses to racism, (b) arm them with the ability to defend themselves, (c) offer guiding principles and a rationale behind using external intervention strategies, and (d) decrease the negative impact on their mental health and well-being. Response strategies provide targets with the tools to be brave in the face of adversity and to feel dignified, leading to an increased sense of self-worth. They also provide targets with the ability to dispel racist attitudes of perpetrators through educational and action-oriented approaches, leading to a greater sense of self-efficacy. Unfortunately, not responding often leads to internalizing prevalent racist attitudes and negative beliefs about oneself (Speight, 2007).

White Allies

Allies are individuals who belong to dominant social groups (e.g., Whites, males, heterosexuals) and, through their support of nondominant groups (e.g., people of color, women, LGBTQ individuals), actively work toward the eradication of prejudicial practices they witness in both their personal and professional lives (Broido, 2000; Brown & Ostrove, 2013). Allies surpass individuals who simply refrain from engaging in overt sexist, racist, ethnocentrist, or heterosexist behaviors; but rather, because of their desire to bolster social justice and equity, to end the social disparities from which they reap unearned benefits, and to maintain accountability of their actions to marginalized group members, they are motivated to take action at the interpersonal and institutional levels by actively promoting the rights of the oppressed (Brown & Ostrove, 2013). Like targets, allyship development involves internal and painful self-reckoning, and a commitment to external action.

The internal component for potential White allies involves soul searching as to who they are as racial/cultural beings, acknowledging and overcoming their biases, confronting their motivations for engaging in antiracism work, and recognizing how their lives would be changed for the better in the absence of oppression (Edwards, 2006; Helms, 1996). As indicated by Helms’ (1996), developing a non-racist White identity is a major step toward social justice work; allies are motivated by an intrinsic desire to advocate for equity rather than by White guilt or to seek glorification as a “White savior.” Her theory of White racial identity development addresses this issue profoundly, and is central to our understanding of the difference between the development of a nonracist identity (interpersonal reconciliation with Whiteness) and an antiracist identity (taking external actions against racism). When individuals expect credit for being an ally, broadcast their self-righteousness to others, or do not accept criticism (especially from persons of color) thoughtfully, their work as an ally becomes questionable (Spanierman & Smith, 2017).

Scholars in the field of racism have been advocating for dialogue, openness, and social action for many years (Helms, 1996; Sue, 2015; Tatum, 1997). These works have often been the basis of colloquial strategies for breaking down racism and developing an “allied” identity for White people. It is a concerted movement from words toward
action, from privilege toward understanding one’s positionality in oppression, and from identifying oppression to making a daily effort to resist that make allies distinct from bystanders, families, or friends (Brown, 2015; Reason & Broido, 2005). Allies possess affirmative attitudes on issues of diversity (Broido, 2000), consciously commit to disrupting cycles of injustice (Waters, 2010), and do not view their work as a means to a measurable end but a constant dismantlement of the individual and institutional beliefs, practices, and policies that have impeded the social growth and wellbeing of persons of color.

The shift from a nonracist identity to an action-oriented approach, however, assumes that activists have in their response repertoire the knowledge and skills to combat racism effectively. This may be a fallacious assumption as most educational and training programs often fall far short of teaching White allies the concrete and direct action strategies needed to influence perpetrators and social systems (Scully & Rowe, 2009; Sue, 2017).

Bystanders

Bystanders can be anyone who become aware of and/or witness unjust behavior or practices that are worthy of comment or action (Scully & Rowe, 2009). In many respects, the definitions of targets, allies, and bystanders may overlap, but research on White allyship suggests that allies are more likely to have an evolved awareness of themselves as racial/cultural beings, and to be more attuned to sociopolitical dynamics of race and racism (Broido, 2000; Helms, 1996). Although anyone can be a bystander, including targets (witnessing discrimination against a member of their group), we reserve this term for individuals who may possess only a superficially developed or a nebulous awareness of racially biased behaviors, and of institutional policies and practices that are not fair to a person of color or racial group. These individuals do not fall into the classes of targets or White allies but represent the largest plurality of people in society.

Most bystanders experience themselves as good, moral, and decent human beings who move about in an invisible veil of Whiteness (Sue & Sue, 2016), have minimal awareness of themselves as a racial/cultural being (Helms, 1996), and who possess limited experiences with people of color (Jones, 1997). Their naiveté about race and racism makes it very difficult for them to recognize bias or discrimination in others, and/or how institutional policies and practices advantage select groups and disadvantage groups of color. When they witness a discriminatory incident, for example, they may have difficulty labeling it as a racist act or they may excuse or rationalize away the behavior as due to reasons other than racism (Dovidio, Gaertner, Kawakami, & Hodson, 2002; Obear, 2016). Even when right or wrong behavior is recognized, inaction seems to be the norm rather than the exception.

Considerable scholarly work has attempted to explain the passivity of bystanders, even in the face of clear normative violations (Latané & Darley, 1968, 1970; Scully, 2005). Diffusion of responsibility, fear of retaliation, fear of losing friends, not wanting to get involved, and other anticipated negative consequences have all been proposed as inhibiting active bystander interventions. A number of social scientists, however, have begun to turn their attention to exploring conditions that would enhance or enable bystanders to intervene (Ashburn-Nardo, Morris, & Goodwin, 2008; Rowe, 2008; Scully, 2005). Four requirements for bystander action seem important: (a) the ability to recognize acceptable and unacceptable behaviors, (b) the positive benefits that accrue to the target, perpetrator, bystander, and organization through taking action, (c) providing a toolkit for active bystander interventions, and (d) the use of bystander training and rehearsal (Scully & Rowe, 2009).

Responding to Microaggressions

People of Color, White allies, and bystanders would all benefit from being cognizant of concrete strategies to disarm microaggressions. Although our focus is on interpersonal microaggressions, we propose a broader conceptual framework based on intervention strategies directed toward biased (a) individual perpetrator actions, (b) institutional programs, practices, and structures, and (c) social and community policies (see Figure 1). The choice and appropriateness of an action strategy may depend on which group is responding to racism, and whether the intervention strategy is directed toward a perpetrator, institution or societal pol-
icy. The antiracist techniques and strategies are not meant to be exhaustive, nor are they seen as universally applicable to all groups, populations, or institutional/societal structures, but rather are an attempt to list a few of the strategic goals and objectives that underlie antiracism interventions.

Microinterventions

We define microinterventions as the everyday words or deeds, whether intentional or unintentional, that communicate to targets of microaggressions (a) validation of their experiential reality, (b) value as a person, (c) affirmation of their racial or group identity, (d) support and encouragement, and (e) reassurance that they are not alone. The term microaffirmation has occasionally been used to refer to some of these behaviors (Jones & Rolon-Dow, in press), but microinterventions are much broader in scope. In many respects, they have two primary functions. First, they serve to enhance psychological well-being, and provide targets, allies, and bystanders with a sense of control and self-efficacy. Second, they provide a repertoire of responses that can be used to directly disarm or counteract the effects of microaggressions by challenging perpetrators. They are interpersonal tools that are intended to counteract, change or stop microaggressions by subtly or overtly confronting and educating the perpetrator.

Although some may perceive microinterventions to be small and insignificant actions that potentially trivialize the nature of racism, many scholars have suggested that the everyday interventions of allies and well-intentioned bystanders have a profound positive effect in creating an inclusive and welcoming environment, discouraging negative behavior, and reinforcing a norm that values respectful interactions (Aguilar, 2006; Houshmand et al., 2017; Jones & Rolon-Dow, in press; Mellor, 2004; Scully & Rowe, 2009). In other words, microinterventions can have a macroimpact by creating a societal climate in public forums, employment settings, and educational institutions that encourage the positive and discourage the negative (Scully & Rowe, 2009).

Microaggression interventions undertaken by individuals may vary in the degree of subtlety or directness. Unless adequately armed with strategies, microaggressions may occur so quickly that they are oftentimes over before a counteracting response can be made. A review of responses to racism, suggest that microaggression reactions/interventions may be primarily to (a) remain passive, retreat, or give up, (b) strike back or hurt the aggressor, (c) stop, diminish, deflect, or put an end to the harmful act, (d) educate the perpetrator, (e) validate and support the targets, (f) act as an ally, (g) seek social support, (h) enlist outside authority or institutional intervention, or (i) achieve any combination of these objectives (Aguilar, 2006; Brondolo et al., 2009; Houshmand et al., 2017; Joseph, & Kuo, 2009; Mellor, 2004; Obear, 2016).

Table 1 provides a listing of a few of the individual intervention strategies identified in our review of the literature. It has been a monumental undertaking to classify and organize the many tactics suggested by antiracist activists because they are often presented as simple comebacks without a clear explication of their rationale. We provide a conceptual framework of microinterventions divided into five categories: strategic goals, objectives, rationale, tactics, and examples. We elaborate on some of these to illustrate the principles for their inclusion, provide examples of microintervention tactics that can be taken, and discuss their potential desired outcome. It is important to note, however, that developing microinterventions is not only a science but also an art. Implementing or using the tactics can be manifested in many ways and is most influenced by creativity and life experiences (Sue, 2015). The strategic goals of microinterventions are to (a) make the “invisible” visible, (b) disarm the microaggression, (c) educate the offender about the metacommunications they send, and (d) seek external support when needed. It is important to note, however, that almost all the tactics outlined in Table 1 may overlap with one another, depending on the motives of the target, ally, or bystander. Oftentimes, the same tactic may be used either to disarm the microaggression or to educate the offender. In many cases, a microintervention tactic may operate from a combination of these goals.

Strategic Goal: Make the “Invisible” Visible

It is oftentimes much easier to deal with a microaggression that is explicit and deliberate because there is no
guesswork involved about the intent of the perpetrator (racial epithets or hate speech). Most microaggressions, however, contain both a conscious communication and hidden or metacommunication that is outside the level of perpetrator awareness (Nadal et al., 2014). Naïveté and innocence make it very difficult for offenders to change, if they perceive their actions as devoid of bias and prejudice (Jones, 1997). Microintervention tactics aimed at making the “invisible” visible can take many forms. Undermining or naming the metacommunication is an example of one of these tactics outlined in Table 1. For example, a White teacher says to a third-generation Asian American student, “You speak excellent English!” The metacommunication here may be “You are a perpetual alien in your own country. You are not a true American.” In using a microintervention tactic, the student responds, “Thank you. I hope so. I was born here.” This tactic may seem simplistic, but it does several things. It acknowledges the conscious compliment of the perpetrator, lowers defensiveness for the comeback to follow, subtly undermines the unspoken assumption of being a foreigner, and plants a seed of possible future awareness of

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**DISARMING MICROAGGRESSIONS**

**Figure 1. Microintervention strategies.**

Directed Toward Perpetrator Microaggressions
- Undermine the metacommunication
- Make the meta-communication explicit
- Challenge the stereotype
- Broaden the ascribed trait to a universal human behavior
- Ask for clarification

Directed Toward Institutional Macroaggressions
- Keep a log of inequitable practices as you see them
- Run your observations by allies who can corroborate
- Solicit feedback from fellow coworkers/students
- Monitor trends around recruiting, hiring, retention, promotion

Directed Toward Societal Macroaggressions
- Create partnerships with academic institutions to analyze data related to disparities in education, health care, employment
- Disseminate research on disparity trends to general public and media
- Organize peaceful demonstrations

**Make the “Invisible” Visible**
- Boycott, strike, or protest the institution
- Request meetings with intermediary or senior leadership to share perspectives
- Exercise right to serve on boards to voice your concerns
- Delineate financial repercussions of continued macroaggressions
- Notify press or other media outlets

**Disarm the Microaggression/Macroaggression**
- Express disagreement
- State values and set limits
- Describe what is happening
- Use an exclamation
- Use non-verbal communication
- Interrupt and redirect

**Educate the Offender**
- Point out the commonality
- Appeal to the offenders values and principles
- Differentiate between intent and impact
- Promote empath
- Point to how they benefit

**Seek External Intervention**
- Alert Authorities
- Report the act
- Seek therapy/counseling
- Seek support through spirituality/religion/community
- Set up a buddy system
- Attend support groups

- Report inequitable practices to your union
- Create networking/mentoring opportunities for underrepresented employees/students
- Maintain an open, supportive, and responsive environment
- Call on consultants to conduct external assessments/cultural audits

- Foster cooperation over competition
- Foster a sense of community belonging
- Create caucuses for allies and targets
- Participate in healing circles, vigils, memorials that remind us of the consequences of hate
<table>
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<tr>
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<tr>
<td>Make the “invisible” visible</td>
<td>Bring the micro-/macroaggression to the forefront of the person’s awareness</td>
<td>Allows targets, allies, and bystanders to verbally describe what is happening in a nonthreatening manner</td>
<td>Undermine the metacommunication</td>
<td>“Relax, I’m not dangerous.”</td>
</tr>
<tr>
<td>Strike back, defend yourself, or come to the defense of others</td>
<td>When allies or bystanders intervene, reassures targets they are not “crazy” and that their experiences are valid</td>
<td></td>
<td></td>
<td>“Don’t worry, John is a good person.”</td>
</tr>
<tr>
<td>Indicate to the perpetrator that they have behaved or said something offensive to you or others</td>
<td>When those with power and privilege respond, has greater impact on perpetrator</td>
<td>Name and make the metacommunication explicit</td>
<td></td>
<td>“You assume I am dangerous because of the way I look.”</td>
</tr>
<tr>
<td>Force the perpetrator to consider the impact and meaning of what was said/done or, in the case of the bystander, what was not said/done</td>
<td></td>
<td>Challenge the stereotype</td>
<td></td>
<td>“I might be Black, but that does not make me dangerous.”</td>
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<td></td>
<td></td>
<td>Broaden the ascribed trait</td>
<td></td>
<td>“Robberies and crimes are committed by people of all races and backgrounds.”</td>
</tr>
<tr>
<td>Disarm the microaggression</td>
<td>Instantly stop or deflect the microaggression</td>
<td>Provides targets, allies, and bystanders with a sense of control and self-efficacy to react to perpetrators in the here and now</td>
<td>Express disagreement</td>
<td>“I don’t agree with what you just said.”</td>
</tr>
<tr>
<td>Force the perpetrator to immediately consider what they have just said or done</td>
<td>Preserves targets’ well-being and prevents traumatization by or preoccupation with what transpired</td>
<td></td>
<td></td>
<td>“That’s not how I view it.”</td>
</tr>
<tr>
<td>Communicate your disapproval or disapproval towards the perpetrator in the moment</td>
<td>Allows perpetrator to think before they speak or behave in future encounters with similar individuals</td>
<td>State values and set limits</td>
<td></td>
<td>“You know that respect and tolerance are important values in my life and, while I understand that you have a right to say what you want, I’m asking you to show a little more respect for me by not making offensive comments.”</td>
</tr>
</tbody>
</table>

**Scenario:** African American male enters an elevator occupied by a White heterosexual couple. The woman appears anxious, moves to the other side of her partner, and clutches her purse tightly.

**Metacommunication:** Black men are dangerous, potentially criminals, or up to no good.

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**Scenario:** Colleague makes the following statement about a new employee with a visible disability: “He only got the job because he’s handicapped.”

**Metacommunication:** People with disabilities only receive opportunities through special accommodations rather than through their own capabilities or merit.
<table>
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<td>Engage in a one-on-one dialogue with the perpetrator to indicate how and why what they have said is offensive to you or others</td>
<td>Allows targets, allies, and bystanders the opportunity to express their experience while maintaining a relationship with the offender</td>
<td>Differentiate between intent and impact</td>
<td>“I know you didn’t realize this but that comment you made was demeaning to Maryam because not all Arab Americans are a threat to national security.”</td>
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<td>Facilitate a possibly more enlightening conversation and exploration of the perpetrator’s biases</td>
<td>Lowers the defense of the perpetrator and helps them recognize the harmful impact</td>
<td>Appeal to the offender’s values and principles</td>
<td>“I know you really care about representing everyone on campus and being a good student government leader but acting in this way really undermines your intentions to be inclusive.”</td>
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<tr>
<td>Encourage the perpetrator to explore the origins of their beliefs and attitudes towards targets</td>
<td>Perpetrator becomes keen to microaggressions committed by those within their social circle and educates others</td>
<td>Point out the commonality</td>
<td>“That is a negative stereotype of Arab Americans. Did you know Maryam also aspires to be a doctor just like you? You should talk to her; you actually have a lot in common.”</td>
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<td>Seek external reinforcement or support</td>
<td>Partake in regular self-care to maintain psychological and physical wellness</td>
<td>Mitigates impact of psychological and physiological harm associated with continuous exposure to microaggressions</td>
<td>Alert leadership</td>
<td>Ask to speak to a manager or someone who is in authority</td>
</tr>
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<td>Check in with self and others to ensure optimal levels of functioning</td>
<td>Reminds targets, allies, and bystanders that they are not alone in the battle</td>
<td>Report</td>
<td>Report the incident in person or use anonymous online portals such as the Southern Poverty Law Center or use a hashtag on social media to make your experience go viral</td>
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<td>Send a message to perpetrators at large that bigoted behavior will not be tolerated or accepted</td>
<td>Ensures situations of discrimination or bias do not go unnoticed</td>
<td>Therapy/counseling</td>
<td>Seek out individual counseling with culturally competent providers for self-care and well-being</td>
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**Scenario:** Student in a chemistry class makes the following comment about an Arab American student: “Maybe she should not be learning about making bombs and stuff.”

**Metacommunication:** All Arab Americans are potential terrorists.

**EdOctober 2021:**

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<td>Describe what is happening</td>
<td>“Every time I come over, I find myself becoming uncomfortable because you make statements that I find offensive and hurtful.”</td>
<td>“Ouch!” “Ahhh, C’mon!”</td>
<td>Nonverbal communication</td>
<td>Looking down or away Covering your mouth with your hand</td>
</tr>
<tr>
<td>Use an exclamation</td>
<td>“Ahhh, C’mon!”</td>
<td>“Whoa, let’s not go there. Maybe we should focus on the task at hand.”</td>
<td>Interrupt and redirect</td>
<td>“That behavior is against our code of conduct and could really get you in trouble.”</td>
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<td>Remind them of the rules</td>
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**Scenario:** Student in a chemistry class makes the following comment about an Arab American student: “Maybe she should not be learning about making bombs and stuff.”

**Metacommunication:** All Arab Americans are potential terrorists.
false assumptions. With some modification, this type of response can also be made by White allies or bystanders who hear or see the transgression.

For targets, especially, there are other advantages to making the “invisible” visible. Disempowering the innuendo by “naming” it has been advocated by Paulo Freire (1970) in *Pedagogy of the Oppressed*. He concluded that the first step to liberation and empowerment is “naming” an oppressive event, condition or process so it no longer holds power over those that are marginalized. It demystifies, deconstructs and makes the “invisible” visible. Naming is (a) liberating and empowering because it provides a language for people of color to describe their experiences and (b) reassures them that they are not crazy. It further forces those with power and privilege to consider the roles they play in the perpetuation of oppression.

Likewise, White allies and bystanders cannot intervene when they are unable to recognize that a microaggression has occurred. The first rule of effective intervention is the quality of perspicacity or the ability to see beyond the obvious, to read between the lines, and to deconstruct conscious communications from metacommunications. Being able to decipher the double meanings of microaggressions is often a challenging task. Sternberg (2001) described perspicacity as a quality that goes beyond intellect but encompasses wisdom that allows for a person’s clarity of vision, and penetrating discernment. Racial awareness training has been found to be effective in helping individuals recognize prejudicial and discriminatory actions, and to increase bystander intervention in the workplace (Scully & Rowe, 2009).

### Strategic Goal: Disarm the Microaggression

A more direct means of dealing with microaggression is to disarm them by stopping or deflecting the comments or actions through expressing disagreement, challenging what was said or done, and/or pointing out its harmful impact. This more confrontive approach is usually taken because of the immediate injurious nature to targets and those who witness it. One technique advocated by Aguilar (2006) is to state loudly and emphatically, “Ouch!” This is a very simple tactic intended to (a) indicate to the perpetrator that they have said something offensive, (b) force the person to consider the impact and meaning of what they have said or done, and (c) facilitate a possible more enlightened conversation and exploration of his or her biases. Some examples are the following: “Those people all look alike” (“Ouch!”); “He only got the job because he’s Black” (“Ouch!”); and “I’m putting you on the finance committee, because you people (Asian Americans) are good at that” (“Ouch!”).

Another tactic found to be useful is to interrupt the communication and redirect it. During the course of a conversation when a microaggression, or a biased, and misinformed statement is made, simply interrupt it by directly or indirectly stopping the monologue, and communicating your disagreement or displeasure. This is very effective when a racist or sexist joke is being told. Examples of verbal microinterventions are these (Aguilar, 2006): “Whoa, let’s not go there,” “Danger, quicksand ahead!” and “I do not want to hear the punchline, or that type of talk.” Nonverbal responses may include shaking your head (disapproval) and physically leaving the situation.

### Strategic Goal: Educate the Perpetrator

Although microinterventions often create discomfort for perpetrators, most are not meant to be punitive, but rather educational (Sue, 2015). When microinterventions are used, the ultimate hope is to reach and educate the perpetrator by engaging them in a dialogue about what they have done that has proven offensive, what it says about their beliefs and values, and have them consider the worldview of marginalized group members (Goodman, 2011). We realize that education is a long-term process and brief encounters seldom allow an opportunity for deep discussions, nevertheless, over the long run, microinterventions plant seeds of possible change that may blossom in the future. This is especially true if they are exposed to frequent microinterventions by those around them, creating an atmosphere of inclusion and an environment that values diversity and differences (Purdie-Vaughns et al., 2008; Scully & Rowe, 2009). Many brief educational tactics can be taken by targets, allies, and bystanders to educate perpetrators. In Table 1, these include appealing to the offender’s values and principles, pointing out the commonalities, increasing the

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<td>Spiritual/religion/community</td>
<td>Turn to your community leaders or members for support</td>
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<tr>
<td>Buddy system</td>
<td>Choose a friend with whom you can always check in and process discriminatory experiences</td>
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<tr>
<td>Support group</td>
<td>Join a support group such as “current events group” that meets weekly to process issues concerning minorities</td>
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awareness of professional and societal benefits, and promoting empathy.

One of the most powerful educational tactics is to help microaggressors differentiate between good intent and harmful impact. When microaggressions are pointed out to perpetrators, a common reaction is defensiveness and shifting the focus from action to intention (Sue, 2015). Here, the person who may have engaged in behaviors or made a statement perceived as biased claims that “I did not intend it that way.” In racial dialogues, shifting the topic to intent is tactically very effective because proving biased intent is virtually impossible. To overcome the blockage, it is often helpful to refocus the discussion on impact instead of intent. Some common statements may be the following: “I know you meant well, but that really hurts”; “I know you meant it as a joke, but it really offended Aisha (or me)”; “I know you want the Latinas on this team to succeed, but always putting them on hospitality committees will only prevent them from developing leadership skills”; I know you kid around a lot, but think how your words affect others”; and “I know you meant it to be funny, but that stereotype is no joke.”

**Strategic Goal: Seek External Reinforcement or Support**

There are times in which individual efforts to respond to microaggressions may be contraindicated, and the most effective approach is to seek external support from others or from institutional authorities (Brondolo et al., 2009; Mellor, 2004). Targets, allies, and bystanders oftentimes put themselves at risk by confronting others about their microaggressions, and such efforts are often emotionally draining (Sue, 2017). Although the concept of racial battle fatigue is very applicable to targets, social justice advocates must also be prepared for the huge pushback likely to occur from others around them. Perpetrators may deny a target’s experiential reality by claiming the person of color is oversensitive, paranoid, or misreading the actions of others. For allies and bystanders who choose to intervene, they may be accused as White liberals, or troublemakers, and consequently isolated or avoided by fellow White colleagues. A family member who objects to a racist joke told by an uncle, for example, may be admonished not to rock the boat for the sake of family harmony, or threatened to be disowned by the family. Antiracism work is exhausting and seeking support and help from others is an aspect of self-care.

Some important actions that can be taken are to find a support group, utilize community services, engage in a buddy system, or seek advice and counseling from understanding professionals. These external sources are meant to allow targets, allies, and bystanders to express their emotions in ways that are safe, to connect with others who validate and affirm their being, and to offer advice and suggestions. In many ways, these actions are meant to better prepare advocates for the challenges likely to be encountered, and to immunize them to the stresses of social justice work.

On another front, microinterventions often dictate seeking help from institutional authorities, especially when (a) a strong power differential exists between perpetrator and target, (b) the microaggression is blatant and immediately harmful (microassault), (c) it would be risky to respond personally, or (d) institutional changes must be implemented. A discriminatory act by a manager may best be handled by reporting to a higher authority or seeking an advocate with the same social/employment standing as the perpetrator within the company. Reporting racist graffiti and/or hate speech to university administrators, law enforcement agencies, and other community organizations are all possible microinterventions.

**Context Matters**

It would be erroneous and even dangerous for anyone to recommend microintervention strategies devoid of context and environmental considerations. Microaggressions do not occur in a vacuum and neither do antiracism strategies. White allies and bystanders who intervene after witnessing racial microaggressions may have a greater impact on the White perpetrator than targets who respond. Yet, it is also possible that a well-intentioned bystander might “make matters worse” by intruding on the privacy of the target (Scully & Rowe, 2009). It is important for all individuals engaging in microinterventions to operate with perspicacity and to understand the repercussions—both positive and negative. A few of these considerations are the following.

First, pick your battles. Although applicable to all three groups, this imperative seems more appropriate to people of color. Responding to frequent and endless microaggressions can be exhausting and energy depleting. For the purposes of self-preservation and safety, it is important to determine which offense or abuse is worthy of action and effort.

Second, consider where and when you choose to address the offender. Calling out someone on a hurtful comment or behavior in public may provoke defensiveness or cause an ugly backlash that does not end microaggressions but increases them. Determine the place (public or private), or time (immediate or later) to raise the issue with perpetrators.

Third, adjust your response as the situation warrants. If something was done out of ignorance, educate rather than just confront. A collaborative rather than an attacking tone lowers defensiveness and allows perpetrators to hear alternative views.

Fourth, be aware of relationship factors and dynamics with perpetrators. Interventions may vary depending on the relationship to the aggressor. Is the culprit a family member, friend, coworker, stranger or superior? Each relationship may...
dictate a differential response. For a close family member, education may have a higher priority than for a stranger.

Last, always consider the consequences of microinterventions, especially when a strong power differential exists between perpetrator and target. Although positive results can ensue from a microintervention, there is always the potential for negative outcomes that place the target, White ally, or bystander at risk.

**Discussion**

In closing, we would like to suggest possible future directions in the study of microinterventions and provide a few general observations. First, although the existing stress-coping literature has identified valuable strategies in dealing with general stress, there is little research on microintervention coping strategies. It is imperative to identify new race-related response strategies, to determine their impact on microaggressive comments or actions, and to establish their effectiveness. It would also be valuable to determine the potency of microintervention training, and whether increasing the arsenal of antiracism strategies for targets have any positive effect on mental health, feelings of increased efficacy, and self-esteem. Likewise, does arming targets, allies, and bystanders with microinterventions increase the likelihood of challenging microaggressions? A reason often given for inaction in the face of bias is “not knowing” what to do. Additionally, “Do targets always want bystanders and allies to intervene?” Are there specific instances when interventions would be harmful to targets by reducing self-efficacy and autonomy, or actually increasing microaggressions? If so what are those situations and conditions? Further, what is the relationship of racial, cultural, and gender differences in responding to racist acts or statements? Do certain coping responses or specific microintervention strategies align better with some cultures or social identities? Lee, Soto, Swim, and Bernstein (2012) found that Asian Americans typically utilize indirect and more subtle approaches to maintain interpersonal harmony, whereas African Americans tend to confront racism more directly. To assume one is more functional than the other is to make an ethnocentric value judgment. It may be better to approach this issue by asking, “What role does race, culture, and ethnicity play in confronting discrimination, and what are the advantages and disadvantages that arise from their culture-specific use?” It is clear, that the concept of microinterventions is a complex issue, and future research is needed to clarify their manifestation, dynamics and impact.

Second, in the arena of education and training, identifying microintervention strategies and skills is not enough to produce actions on the part of well-intentioned individuals. It is clear that active interventions will only occur when other inertia and inhibitions are overcome, and when these skills are learned, practiced, and rehearsed. Some organizations in the business sector have begun “active bystander” training in confronting prejudiced responses (Aguilar, 2006; Ashburn-Nardo et al., 2008; Scully & Rowe, 2009). We believe such training would also benefit targets and White allies, and suggest similar microintervention training programs for psychology, education and other social service professions.

Third, this article has mainly addressed the microaggressions delivered on individual and interpersonal levels. Future research and work aimed at disarming macroaggressions at the institutional and societal levels are equally if not more important to develop. What can targets, allies, and bystanders do to impact macroaggressions that flow from the programs, procedures, practices, and structures of institutions and from societal social policies? We are currently working on delineating microintervention strategies at the institutional and societal levels shown on Figure 1.

Fourth, readers are probably aware that some of our examples and statements are not simply confined to racial microaggressions. Almost any marginalized group in our society can be subjected to microaggressions. Thus, many of our microintervention strategies may be equally applicable to gender, sexual orientation/identity, disability and other group-based micro/macroaggressions as well. We strongly encourage other scholars and practitioners to explore microintervention strategies that may not only share commonalities with other target populations, but also those unique to the group.

Last, it would be a monumental mistake to believe microinterventions alone would cure the omnipresent onslaught of microaggressions, and lead to the enlightenment of perpetrators. It is important to note that microaggressions are reflections of explicit and implicit biases and simply stopping prejudicial actions is not enough, unless serious internal self-reckoning occurs. Although microinterventions are short-term frontline actions that deal with the immediacy of racism expression, we believe they have major potential positive benefits for targets, White allies, bystanders, and ultimately our society.

**References**


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Kimberle Crenshaw
Kimberle.Crenshaw@chicagounbound.edu

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Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics

Kimberle Crenshaw†

One of the very few Black women's studies books is entitled *All the Women Are White, All the Blacks Are Men, But Some of Us are Brave.*¹ I have chosen this title as a point of departure in my efforts to develop a Black feminist criticism² because it sets forth a problematic consequence of the tendency to treat race and gender as mutually exclusive categories of experience and analysis.³ In this talk, I want to examine how this tendency is perpetuated by a single-axis framework that is dominant in antidiscrimination law and that is also reflected in feminist theory and antiracist politics.

I will center Black women in this analysis in order to contrast the multidimensionality of Black women's experience with the single-axis analysis that distorts these experiences. Not only will this juxtaposition reveal how Black women are theoretically erased, it will also illustrate how this framework imports its own theoretical limitations that undermine efforts to broaden feminist and an-

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¹ Acting Professor of Law, University of California, Los Angeles Law School.
³ The most common linguistic manifestation of this analytical dilemma is represented in the conventional usage of the term “Blacks and women.” Although it may be true that some people mean to include Black women in either “Blacks” or “women,” the context in which the term is used actually suggests that often Black women are not considered. See, for example, Elizabeth Spelman, *The Inessential Woman* 114-15 (Beacon Press, 1988) (discussing an article on Blacks and women in the military where “the racial identity of those identified as ‘women’ does not become explicit until reference is made to Black women, at which point it also becomes clear that the category of women excludes Black women”). It seems that if Black women were explicitly included, the preferred term would be either “Blacks and white women” or “Black men and all women.”

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tiracist analyses. With Black women as the starting point, it becomes more apparent how dominant conceptions of discrimination condition us to think about subordination as disadvantage occurring along a single categorical axis. I want to suggest further that this single-axis framework erases Black women in the conceptualization, identification and remediation of race and sex discrimination by limiting inquiry to the experiences of otherwise-privileged members of the group. In other words, in race discrimination cases, discrimination tends to be viewed in terms of sex- or class-privileged Blacks; in sex discrimination cases, the focus is on race- and class-privileged women.

This focus on the most privileged group members marginalizes those who are multiply-burdened and obscures claims that cannot be understood as resulting from discrete sources of discrimination. I suggest further that this focus on otherwise-privileged group members creates a distorted analysis of racism and sexism because the operative conceptions of race and sex become grounded in experiences that actually represent only a subset of a much more complex phenomenon.

After examining the doctrinal manifestations of this single-axis framework, I will discuss how it contributes to the marginalization of Black women in feminist theory and in antiracist politics. I argue that Black women are sometimes excluded from feminist theory and antiracist policy discourse because both are predicated on a discrete set of experiences that often does not accurately reflect the interaction of race and gender. These problems of exclusion cannot be solved simply by including Black women within an already established analytical structure. Because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated. Thus, for feminist theory and antiracist policy discourse to embrace the experiences and concerns of Black women, the entire framework that has been used as a basis for translating “women’s experience” or “the Black experience” into concrete policy demands must be rethought and recast.

As examples of theoretical and political developments that miss the mark with respect to Black women because of their failure to consider intersectionality, I will briefly discuss the feminist critique of rape and separate spheres ideology, and the public policy debates concerning female-headed households within the Black community.
DEMARGINALIZING THE INTERSECTION

I. THE ANTIDISCRIMINATION FRAMEWORK

A. The Experience of Intersectionality and the Doctrinal Response

One way to approach the problem of intersectionality is to examine how courts frame and interpret the stories of Black women plaintiffs. While I cannot claim to know the circumstances underlying the cases that I will discuss, I nevertheless believe that the way courts interpret claims made by Black women is itself part of Black women's experience and, consequently, a cursory review of cases involving Black female plaintiffs is quite revealing. To illustrate the difficulties inherent in judicial treatment of intersectionality, I will consider three Title VII cases: DeGraffenreid v General Motors, Moore v Hughes Helicopter and Payne v Travenol.

1. DeGraffenreid v General Motors.

In DeGraffenreid, five Black women brought suit against General Motors, alleging that the employer's seniority system perpetuated the effects of past discrimination against Black women. Evidence adduced at trial revealed that General Motors simply did not hire Black women prior to 1964 and that all of the Black women hired after 1970 lost their jobs in a seniority-based layoff during a subsequent recession. The district court granted summary judgment for the defendant, rejecting the plaintiffs' attempt to bring a suit not on behalf of Blacks or women, but specifically on behalf of Black women. The court stated:

[P]laintiffs have failed to cite any decisions which have stated that Black women are a special class to be protected from discrimination. The Court's own research has failed to disclose such a decision. The plaintiffs are clearly entitled to a remedy if they have been discriminated against. However, they should not be allowed to combine statutory remedies to create a new 'super-remedy' which would give them relief beyond what the drafters of the relevant statutes intended. Thus, this lawsuit must be examined to see if it states a cause of action for race discrimination, sex discrimination, or alternatively either, but not a combination of both.

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5 413 F Supp 142 (E D Mo 1976).
6 708 F2d 475 (9th Cir 1983).
7 673 F2d 798 (5th Cir 1982).
8 DeGraffenreid, 413 F Supp at 143.
Although General Motors did not hire Black women prior to 1964, the court noted that "General Motors has hired...female employees for a number of years prior to the enactment of the Civil Rights Act of 1964." Because General Motors did hire women—albeit white women—during the period that no Black women were hired, there was, in the court's view, no sex discrimination that the seniority system could conceivably have perpetuated.

After refusing to consider the plaintiffs' sex discrimination claim, the court dismissed the race discrimination complaint and recommended its consolidation with another case alleging race discrimination against the same employer. The plaintiffs responded that such consolidation would defeat the purpose of their suit since theirs was not purely a race claim, but an action brought specifically on behalf of Black women alleging race and sex discrimination. The court, however, reasoned:

The legislative history surrounding Title VII does not indicate that the goal of the statute was to create a new classification of 'black women' who would have greater standing than, for example, a black male. The prospect of the creation of new classes of protected minorities, governed only by the mathematical principles of permutation and combination, clearly raises the prospect of opening the hackneyed Pandora's box.

Thus, the court apparently concluded that Congress either did not contemplate that Black women could be discriminated against as "Black women" or did not intend to protect them when such discrimination occurred. The court's refusal in DeGraffenreid to

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* Id at 144.
10 Id at 145. In Mosley v General Motors, 497 F Supp 583 (E D Mo 1980), plaintiffs, alleging broad-based racial discrimination at General Motors' St. Louis facility, prevailed in a portion of their Title VII claim. The seniority system challenged in DeGraffenreid, however, was not considered in Mosley.
11 Id at 145.
12 Interestingly, no case has been discovered in which a court denied a white male's attempt to bring a reverse discrimination claim on similar grounds—that is, that sex and race claims cannot be combined because Congress did not intend to protect compound classes. White males in a typical reverse discrimination case are in no better position than the frustrated plaintiffs in DeGraffenreid: If they are required to make their claims separately, white males cannot prove race discrimination because white women are not discriminated against, and they cannot prove sex discrimination because Black males are not discriminated against. Yet it seems that courts do not acknowledge the compound nature of most reverse discrimination cases. That Black women's claims automatically raise the question of compound discrimination and white males' 'reverse discrimination' cases do not suggest
Demarginalizing the Intersection

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Acknowledgment that Black women encounter combined race and sex discrimination implies that the boundaries of sex and race discrimination doctrine are defined respectively by white women's and Black men's experiences. Under this view, Black women are protected only to the extent that their experiences coincide with those of either of the two groups.\textsuperscript{13} Where their experiences are distinct, Black women can expect little protection as long as approaches, such as that in \textit{DeGraffenreid}, which completely obscure problems of intersectionality prevail.

2. \textit{Moore v Hughes Helicopter, Inc.}

\textit{Moore v Hughes Helicopters, Inc.}\textsuperscript{14} presents a different way in which courts fail to understand or recognize Black women's claims. \textit{Moore} is typical of a number of cases in which courts refused to certify Black females as class representatives in race and sex discrimination actions.\textsuperscript{15} In \textit{Moore}, the plaintiff alleged that the employer, Hughes Helicopter, practiced race and sex discrimination in promotions to upper-level craft positions and to supervisory jobs. Moore introduced statistical evidence establishing a significant disparity between men and women, and somewhat less of a disparity between Black and white men in supervisory jobs.\textsuperscript{16}

\begin{itemize}
  \item[I] That the notion of compoundedness is somehow contingent upon an implicit norm that is not neutral but is white male. Thus, Black women are perceived as a compound class because they are two steps removed from a white male norm, while white males are apparently not perceived to be a compound class because they somehow represent the norm.
  \item[13] I do not mean to imply that all courts that have grappled with this problem have adopted the \textit{DeGraffenreid} approach. Indeed, other courts have concluded that Black women are protected by Title VII. See, for example, \textit{Jefferies v Harris Community Action Ass'n.}, 615 F2d 1025 (5th Cir 1980). I do mean to suggest that the very fact that the Black women's claims are seen as aberrant suggests that sex discrimination doctrine is centered in the experiences of white women. Even those courts that have held that Black women are protected seem to accept that Black women's claims raise issues that the "standard" sex discrimination claims do not. See Elaine W. Shoben, \textit{Compound Discrimination: The Interaction of Race and Sex in Employment Discrimination}, 55 NYU L Rev 793, 803-04 (1980) (criticizing the \textit{Jefferies} use of a sex-plus analysis to create a subclass of Black women).
  \item[14] 708 F2d 475.
  \item[15] See also \textit{Moore v National Association of Securities Dealers}, 27 EPD (CCH) ¶ 32,238 (D DC 1981); but see \textit{Edmondson v Simon}, 86 FRD 375 (N D Ill 1980) (where the court was unwilling to hold as a matter of law that no Black female could represent without conflict the interests of both Blacks and females).
  \item[16] 708 F2d at 479. Between January 1976 and June 1979, the three years in which Moore claimed that she was passed over for promotion, the percentage of white males occupying first-level supervisory positions ranged from 70.3 to 76.8%; Black males from 8.9 to 10.9%; white women from 1.8 to 3.3%; and Black females from 0 to 2.2%. The overall male/female ratio in the top five labor grades ranged from 100/0% in 1976 to 98/1.8% in 1979. The white/Black ratio was 85/3.3% in 1976 and 79.6/8% in 1979. The overall ratio of men to women in supervisory positions was 98.2 to 1.8% in 1976 to 93.4 to 6.6% in 1979; the Black to white ratio during the same time period was 78.6 to 8.9% and 73.6 to 13.1%

For promotions to the top five labor grades, the percentages were worse. Between 1976
Affirming the district court's refusal to certify Moore as the class representative in the sex discrimination complaint on behalf of all women at Hughes, the Ninth Circuit noted approvingly:

... Moore had never claimed before the EEOC that she was discriminated against as a female, but only as a Black female. . . . [T]his raised serious doubts as to Moore's ability to adequately represent white female employees.17

The curious logic in Moore reveals not only the narrow scope of antidiscrimination doctrine and its failure to embrace intersectionality, but also the centrality of white female experiences in the conceptualization of gender discrimination. One inference that could be drawn from the court's statement that Moore's complaint did not entail a claim of discrimination "against females" is that discrimination against Black females is something less than discrimination against females. More than likely, however, the court meant to imply that Moore did not claim that all females were discriminated against but only Black females. But even thus recast, the court's rationale is problematic for Black women. The court rejected Moore's bid to represent all females apparently because her attempt to specify her race was seen as being at odds with the standard allegation that the employer simply discriminated "against females."

The court failed to see that the absence of a racial referent does not necessarily mean that the claim being made is a more inclusive one. A white woman claiming discrimination against females may be in no better position to represent all women than a Black woman who claims discrimination as a Black female and wants to represent all females. The court's preferred articulation of "against females" is not necessarily more inclusive—it just appears to be so because the racial contours of the claim are not specified.

The court's preference for "against females" rather than "against Black females" reveals the implicit grounding of white female experiences in the doctrinal conceptualization of sex discrimination. For white women, claiming sex discrimination is simply a statement that but for gender, they would not have been disadvantaged. For them there is no need to specify discrimination as white

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and 1979, the percentage of white males in these positions ranged from 85.3 to 77.9%; Black males 3.3 to 8%; white females from 0 to 1.4%, and Black females from 0 to 0%. Overall, in 1979, 98.2% of the highest level employees were male; 1.8% were female.

17 708 F2d at 480 (emphasis added).
females because their race does not contribute to the disadvantage for which they seek redress. The view of discrimination that is derived from this grounding takes race privilege as a given.

Discrimination against a white female is thus the standard sex discrimination claim; claims that diverge from this standard appear to present some sort of hybrid claim. More significantly, because Black females' claims are seen as hybrid, they sometimes cannot represent those who may have "pure" claims of sex discrimination. The effect of this approach is that even though a challenged policy or practice may clearly discriminate against all females, the fact that it has particularly harsh consequences for Black females places Black female plaintiffs at odds with white females.

Moore illustrates one of the limitations of antidiscrimination law's remedial scope and normative vision. The refusal to allow a multiply-disadvantaged class to represent others who may be singularly-disadvantaged defeats efforts to restructure the distribution of opportunity and limits remedial relief to minor adjustments within an established hierarchy. Consequently, "bottom-up" approaches, those which combine all discriminatees in order to challenge an entire employment system, are foreclosed by the limited view of the wrong and the narrow scope of the available remedy. If such "bottom-up" intersectional representation were routinely permitted, employees might accept the possibility that there is more to gain by collectively challenging the hierarchy rather than by each discriminatee individually seeking to protect her source of privilege within the hierarchy. But as long as antidiscrimination doctrine proceeds from the premise that employment systems need only minor adjustments, opportunities for advancement by disadvantaged employees will be limited. Relatively privileged employees probably are better off guarding their advantage while jockeying against others to gain more. As a result, Black women—the class of employees which, because of its intersectionality, is best able to challenge all forms of discrimination—are essentially isolated and often required to fend for themselves.

In Moore, the court's denial of the plaintiff's bid to represent all Blacks and females left Moore with the task of supporting her race and sex discrimination claims with statistical evidence of discrimination against Black females alone. Because she was unable to represent white women or Black men, she could not use overall

18 Id at 484-86.
statistics on sex disparity at Hughes, nor could she use statistics on race. Proving her claim using statistics on Black women alone was no small task, due to the fact that she was bringing the suit under a disparate impact theory of discrimination.\(^{19}\)

The court further limited the relevant statistical pool to include only Black women who it determined were qualified to fill the openings in upper-level labor jobs and in supervisory positions.\(^{20}\) According to the court, Moore had not demonstrated that there were any qualified Black women within her bargaining unit or the general labor pool for either category of jobs.\(^{21}\) Finally, the court stated that even if it accepted Moore's contention that the percentage of Black females in supervisory positions should equal the percentage of Black females in the employee pool, it still would not find discriminatory impact.\(^{22}\) Because the promotion of only two Black women into supervisory positions would have achieved the expected mean distribution of Black women within that job category, the court was "unwilling to agree that a prima facie case of disparate impact ha[d] been proven."\(^{23}\)

The court's rulings on Moore's sex and race claim left her with such a small statistical sample that even if she had proved that there were qualified Black women, she could not have shown discrimination under a disparate impact theory. Moore illustrates yet another way that antidiscrimination doctrine essentially erases Black women's distinct experiences and, as a result, deems their discrimination complaints groundless.

3. \emph{Payne v Travenol}.

Black female plaintiffs have also encountered difficulty in

\(^{19}\) Under the disparate impact theory that prevailed at the time, the plaintiff had to introduce statistics suggesting that a policy or procedure disparately affects the members of a protected group. The employer could rebut that evidence by showing that there was a business necessity supporting the rule. The plaintiff then countered the rebuttal by showing that there was a less discriminatory alternative. See, for example, \emph{Griggs v Duke Power}, 401 US 424 (1971); \emph{Connecticut v Teal}, 457 US 440 (1982).

A central issue in a disparate impact case is whether the impact proved is statistically significant. A related issue is how the protected group is defined. In many cases a Black female plaintiff would prefer to use statistics which include white women and/or Black men to indicate that the policy in question does in fact disparately affect the protected class. If, as in \emph{Moore}, the plaintiff may use only statistics involving Black women, there may not be enough Black women employees to create a statistically significant sample.

\(^{20}\) Id at 484.

\(^{21}\) The court buttressed its finding with respect to the upper-level labor jobs with statistics for the Los Angeles Metropolitan Area which indicated the there were only 0.2% Black women within comparable job categories. Id at 485 n 9.

\(^{22}\) Id at 486.

\(^{23}\) Id.
their efforts to win certification as class representatives in some race discrimination actions. This problem typically arises in cases where statistics suggest significant disparities between Black and white workers and further disparities between Black men and Black women. Courts in some cases24 have denied certification based on logic that mirrors the rationale in Moore: The sex disparities between Black men and Black women created such conflicting interests that Black women could not possibly represent Black men adequately. In one such case, Payne v Travenol,25 two Black female plaintiffs alleging race discrimination brought a class action suit on behalf of all Black employees at a pharmaceutical plant.26 The court refused, however, to allow the plaintiffs to represent Black males and granted the defendant's request to narrow the class to Black women only. Ultimately, the district court found that there had been extensive racial discrimination at the plant and awarded back pay and constructive seniority to the class of Black female employees. But, despite its finding of general race discrimination, the court refused to extend the remedy to Black men for fear that their conflicting interests would not be adequately addressed;27 the Fifth Circuit affirmed.28

Notably, the plaintiffs in Travenol fared better than the similarly-situated plaintiff in Moore: They were not denied use of meaningful statistics showing an overall pattern of race discrimination simply because there were no men in their class. The plaintiffs' bid to represent all Black employees, however, like Moore's attempt to represent all women employees, failed as a consequence

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26 The suit commenced on March 2, 1972, with the filing of a complaint by three employees seeking to represent a class of persons allegedly subjected to racial discrimination at the hands of the defendants. Subsequently, the plaintiffs amended the complaint to add an allegation of sex discrimination. Of the original named plaintiffs, one was a Black male and two were Black females. In the course of the three-year period between the filing of the complaint and the trial, the only named male plaintiff received permission of the court to withdraw for religious reasons. Id at 250.

27 As the dissent in Travenol pointed out, there was no reason to exclude Black males from the scope of the remedy after counsel had presented sufficient evidence to support a finding of discrimination against Black men. If the rationale for excluding Black males was the potential conflict between Black males and Black females, then "[i]n this case, to paraphrase an old adage, the proof of plaintiffs' ability to represent the interests of Black males was in the representation thereof." 673 F2d at 837-38.

28 673 F2d 798 (5th Cir 1982).
of the court's narrow view of class interest.

Even though *Travenol* was a partial victory for Black women, the case specifically illustrates how antidiscrimination doctrine generally creates a dilemma for Black women. It forces them to choose between specifically articulating the intersectional aspects of their subordination, thereby risking their ability to represent Black men, or ignoring intersectionality in order to state a claim that would not lead to the exclusion of Black men. When one considers the political consequences of this dilemma, there is little wonder that many people within the Black community view the specific articulation of Black women's interests as dangerously divisive.

In sum, several courts have proved unable to deal with intersectionality, although for contrasting reasons. In *DeGraffenreid*, the court refused to recognize the possibility of compound discrimination against Black women and analyzed their claim using the employment of white women as the historical base. As a consequence, the employment experiences of white women obscured the distinct discrimination that Black women experienced.

Conversely, in *Moore*, the court held that a Black woman could not use statistics reflecting the overall sex disparity in supervisory and upper-level labor jobs because she had not claimed discrimination as a woman, but "only" as a Black woman. The court would not entertain the notion that discrimination experienced by Black women is indeed sex discrimination—provable through disparate impact statistics on women.

Finally, courts, such as the one in *Travenol*, have held that Black women cannot represent an entire class of Blacks due to presumed class conflicts in cases where sex additionally disadvantaged Black women. As a result, in the few cases where Black women are allowed to use overall statistics indicating racially disparate treatment Black men may not be able to share in the remedy.

Perhaps it appears to some that I have offered inconsistent criticisms of how Black women are treated in antidiscrimination law: I seem to be saying that in one case, Black women's claims were rejected and their experiences obscured because the court refused to acknowledge that the employment experience of Black women can be distinct from that of white women, while in other cases, the interests of Black women were harmed because Black women's claims were viewed as so distinct from the claims of either white women or Black men that the court denied to Black females representation of the larger class. It seems that I have to say that Black women are the same and harmed by being treated differ-
ently, or that they are different and harmed by being treated the same. But I cannot say both.

This apparent contradiction is but another manifestation of the conceptual limitations of the single-issue analyses that intersectionality challenges. The point is that Black women can experience discrimination in any number of ways and that the contradiction arises from our assumptions that their claims of exclusion must be unidirectional. Consider an analogy to traffic in an intersection, coming and going in all four directions. Discrimination, like traffic through an intersection, may flow in one direction, and it may flow in another. If an accident happens in an intersection, it can be caused by cars traveling from any number of directions and, sometimes, from all of them. Similarly, if a Black woman is harmed because she is in the intersection, her injury could result from sex discrimination or race discrimination.

Judicial decisions which premise intersectional relief on a showing that Black women are specifically recognized as a class are analogous to a doctor’s decision at the scene of an accident to treat an accident victim only if the injury is recognized by medical insurance. Similarly, providing legal relief only when Black women show that their claims are based on race or on sex is analogous to calling an ambulance for the victim only after the driver responsible for the injuries is identified. But it is not always easy to reconstruct an accident: Sometimes the skid marks and the injuries simply indicate that they occurred simultaneously, frustrating efforts to determine which driver caused the harm. In these cases the tendency seems to be that no driver is held responsible, no treatment is administered, and the involved parties simply get back in their cars and zoom away.

To bring this back to a non-metaphorical level, I am suggesting that Black women can experience discrimination in ways that are both similar to and different from those experienced by white women and Black men. Black women sometimes experience discrimination in ways similar to white women’s experiences; sometimes they share very similar experiences with Black men. Yet often they experience double-discrimination—the combined effects of practices which discriminate on the basis of race, and on the basis of sex. And sometimes, they experience discrimination as Black women—not the sum of race and sex discrimination, but as Black women.

Black women’s experiences are much broader than the general categories that discrimination discourse provides. Yet the continued insistence that Black women’s demands and needs be filtered
through categorical analyses that completely obscure their experiences guarantees that their needs will seldom be addressed.

B. The Significance of Doctrinal Treatment of Intersectionality

DeGraffenreid, Moore and Travenol are doctrinal manifestations of a common political and theoretical approach to discrimination which operates to marginalize Black women. Unable to grasp the importance of Black women’s intersectional experiences, not only courts, but feminist and civil rights thinkers as well have treated Black women in ways that deny both the unique compoundedness of their situation and the centrality of their experiences to the larger classes of women and Blacks. Black women are regarded either as too much like women or Blacks and the compounded nature of their experience is absorbed into the collective experiences of either group or as too different, in which case Black women’s Blackness or femaleness sometimes has placed their needs and perspectives at the margin of the feminist and Black liberationist agendas.

While it could be argued that this failure represents an absence of political will to include Black women, I believe that it reflects an uncritical and disturbing acceptance of dominant ways of thinking about discrimination. Consider first the definition of discrimination that seems to be operative in antidiscrimination law: Discrimination which is wrongful proceeds from the identification of a specific class or category; either a discriminator intentionally identifies this category, or a process is adopted which somehow disadvantages all members of this category. According to the dominant view, a discriminator treats all people within a race or sex category similarly. Any significant experiential or statistical variation within this group suggests either that the group is not being discriminated against or that conflicting interests exist which de-

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29 In much of antidiscrimination doctrine, the presence of intent to discriminate distinguishes unlawful from lawful discrimination. See Washington v Davis, 426 US 229, 239-45 (1976) (proof of discriminatory purpose required to substantiate Equal Protection violation). Under Title VII, however, the Court has held that statistical data showing a disproportionate impact can suffice to support a finding of discrimination. See Griggs, 401 US at 432. Whether the distinction between the two analyses will survive is an open question. See Wards Cove Packing Co., Inc. v Atonio, 109 S Ct 2115, 2122-23 (1989) (plaintiffs must show more than mere disparity to support a prima facie case of disparate impact). For a discussion of the competing normative visions that underlie the intent and effects analyses, see Alan David Freeman, Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine, 62 Minn L Rev 1049 (1978).
feat any attempts to bring a common claim. Consequently, one generally cannot combine these categories. Race and sex, moreover, become significant only when they operate to explicitly disadvantage the victims; because the privileging of whiteness or maleness is implicit, it is generally not perceived at all.

Underlying this conception of discrimination is a view that the wrong which antidiscrimination law addresses is the use of race or gender factors to interfere with decisions that would otherwise be fair or neutral. This process-based definition is not grounded in a bottom-up commitment to improve the substantive conditions for those who are victimized by the interplay of numerous factors. Instead, the dominant message of antidiscrimination law is that it will regulate only the limited extent to which race or sex interferes with the process of determining outcomes. This narrow objective is facilitated by the top-down strategy of using a singular “but for” analysis to ascertain the effects of race or sex. Because the scope of antidiscrimination law is so limited, sex and race discrimination have come to be defined in terms of the experiences of those who are privileged but for their racial or sexual characteristics. Put differently, the paradigm of sex discrimination tends to be based on the experiences of white women; the model of race discrimination tends to be based on the experiences of the most privileged Blacks. Notions of what constitutes race and sex discrimination are, as a result, narrowly tailored to embrace only a small set of circumstances, none of which include discrimination against Black women.

To the extent that this general description is accurate, the following analogy can be useful in describing how Black women are marginalized in the interface between antidiscrimination law and race and gender hierarchies: Imagine a basement which contains all people who are disadvantaged on the basis of race, sex, class, sexual preference, age and/or physical ability. These people are stacked—feet standing on shoulders—with those on the bottom being disadvantaged by the full array of factors, up to the very top, where the heads of all those disadvantaged by a singular factor brush up against the ceiling. Their ceiling is actually the floor above which only those who are not disadvantaged in any way reside. In efforts to correct some aspects of domination, those above the ceiling admit from the basement only those who can say that “but for” the ceiling, they too would be in the upper room. A hatch

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*See, for example, Moore, 708 F2d at 479.*
is developed through which those placed immediately below can crawl. Yet this hatch is generally available only to those who—due to the singularity of their burden and their otherwise privileged position relative to those below—are in the position to crawl through. Those who are multiply-burdened are generally left below unless they can somehow pull themselves into the groups that are permitted to squeeze through the hatch.

As this analogy translates for Black women, the problem is that they can receive protection only to the extent that their experiences are recognizably similar to those whose experiences tend to be reflected in antidiscrimination doctrine. If Black women cannot conclusively say that “but for” their race or “but for” their gender they would be treated differently, they are not invited to climb through the hatch but told to wait in the unprotected margin until they can be absorbed into the broader, protected categories of race and sex.

Despite the narrow scope of this dominant conception of discrimination and its tendency to marginalize those whose experiences cannot be described within its tightly-drawn parameters, this approach has been regarded as the appropriate framework for addressing a range of problems. In much of feminist theory and, to some extent, in antiracist politics, this framework is reflected in the belief that sexism or racism can be meaningfully discussed without paying attention to the lives of those other than the race-, gender- or class-privileged. As a result, both feminist theory and antiracist politics have been organized, in part, around the equation of racism with what happens to the Black middle-class or to Black men, and the equation of sexism with what happens to white women.

Looking at historical and contemporary issues in both the feminist and the civil rights communities, one can find ample evidence of how both communities’ acceptance of the dominant framework of discrimination has hindered the development of an adequate theory and praxis to address problems of intersectionality. This adoption of a single-issue framework for discrimination not only marginalizes Black women within the very movements that claim them as part of their constituency but it also makes the illusive goal of ending racism and patriarchy even more difficult to attain.

II. Feminism and Black Women: “Ain’t We Women?”

Oddly, despite the relative inability of feminist politics and theory to address Black women substantively, feminist theory and
tradition borrow considerably from Black women's history. For example, "Ain't I a Woman" has come to represent a standard refrain in feminist discourse. Yet the lesson of this powerful oratory is not fully appreciated because the context of the delivery is seldom examined. I would like to tell part of the story because it establishes some themes that have characterized feminist treatment of race and illustrates the importance of including Black women's experiences as a rich source for the critique of patriarchy.

In 1851, Sojourner Truth declared "Ain't I a Woman?" and challenged the sexist imagery used by male critics to justify the disenfranchisement of women. The scene was a Women's Rights Conference in Akron, Ohio; white male hecklers, invoking stereotypical images of "womanhood," argued that women were too frail and delicate to take on the responsibilities of political activity. When Sojourner Truth rose to speak, many white women urged that she be silenced, fearing that she would divert attention from women's suffrage to emancipation. Truth, once permitted to speak, recounted the horrors of slavery, and its particular impact on Black women:

Look at my arm! I have ploughed and planted and gathered into barns, and no man could head me—and ain't I a woman? I could work as much and eat as much as a man—when I could get it—and bear the lash as well! And ain't I a woman? I have born thirteen children, and seen most of 'em sold into slavery, and when I cried out with my mother's grief, none but Jesus heard me—and ain't I a woman?

By using her own life to reveal the contradiction between the ideological myths of womanhood and the reality of Black women's experience, Truth's oratory provided a powerful rebuttal to the claim that women were categorically weaker than men. Yet Truth's personal challenge to the coherence of the cult of true womanhood

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31 See Phyliss Palmer, *The Racial Feminization of Poverty: Women of Color as Portents of the Future for All Women*, Women's Studies Quarterly 11:3-4 (Fall 1983) (posing the question of why “white women in the women's movement had not created more effective and continuous alliances with Black women” when “simultaneously . . . Black women [have] become heroines for the women's movement, a position symbolized by the consistent use of Sojourner Truth and her famous words, “Ain't I a Woman?”.


was useful only to the extent that white women were willing to reject the racist attempts to rationalize the contradiction—that because Black women were something less than real women, their experiences had no bearing on true womanhood. Thus, this 19th-century Black feminist challenged not only patriarchy, but she also challenged white feminists wishing to embrace Black women’s history to relinquish their vestedness in whiteness.

Contemporary white feminists inherit not the legacy of Truth’s challenge to patriarchy but, instead, Truth’s challenge to their forbearers. Even today, the difficulty that white women have traditionally experienced in sacrificing racial privilege to strengthen feminism renders them susceptible to Truth’s critical question. When feminist theory and politics that claim to reflect women’s experience and women’s aspirations do not include or speak to Black women, Black women must ask: “Ain’t We Women?” If this is so, how can the claims that “women are,” “women believe” and “women need” be made when such claims are inapplicable or unresponsive to the needs, interests and experiences of Black women?

The value of feminist theory to Black women is diminished because it evolves from a white racial context that is seldom acknowledged. Not only are women of color in fact overlooked, but their exclusion is reinforced when white women speak for and as women. The authoritative universal voice—usually white male subjectivity masquerading as non-racial, non-gendered objectivity—is merely transferred to those who, but for gender, share many of the same cultural, economic and social characteristics. When feminist theory attempts to describe women’s experiences through analyzing patriarchy, sexuality, or separate spheres ideology, it often overlooks the role of race. Feminists thus ignore how their own race functions to mitigate some aspects of sexism and, moreover, how it often privileges them over and contributes to the domination of other women. Consequently, feminist theory remains white, and its potential to broaden and deepen its analysis by addressing non-privileged women remains unrealized.

An example of how some feminist theories are narrowly con-

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24 “Objectivity is itself an example of the reification of white male thought.” Hull et al, eds, But Some of Us Are Brave at XXV (cited in note 1).
25 For example, many white females were able to gain entry into previously all white male enclaves not through bringing about a fundamental reordering of male versus female work, but in large part by shifting their “female” responsibilities to poor and minority women.
structured around white women's experiences is found in the separate spheres literature. The critique of how separate spheres ideology shapes and limits women's roles in the home and in public life is a central theme in feminist legal thought. Feminists have attempted to expose and dismantle separate spheres ideology by identifying and criticizing the stereotypes that traditionally have justified the disparate societal roles assigned to men and women. Yet this attempt to debunk ideological justifications for women's subordination offers little insight into the domination of Black women. Because the experiential base upon which many feminist insights are grounded is white, theoretical statements drawn from them are overgeneralized at best, and often wrong. Statements such as "men and women are taught to see men as independent, capable, powerful; men and women are taught to see women as dependent, limited in abilities, and passive," are common within this literature. But this "observation" overlooks the anomalies created by crosscurrents of racism and sexism. Black men and women live in a society that creates sex-based norms and expectations which racism operates simultaneously to deny; Black men are not viewed as powerful, nor are Black women seen as passive. An effort to develop an ideological explanation of gender domination in the Black community should proceed from an understanding of how crosscutting forces establish gender norms and how the conditions

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36 Feminists often discuss how gender-based stereotypes and norms reinforce the subordination of women by justifying their exclusion from public life and glorifying their roles within the private sphere. Law has historically played a role in maintaining this subordination by enforcing the exclusion of women from public life and by limiting its reach into the private sphere. See, for example, Deborah L. Rhode, Association and Assimilation, 81 NW U L Rev 106 (1986); Frances Olsen, From False Paternalism to False Equality: Judicial Assaults on Feminist Community, Illinois 1869-95, 84 Mich L Rev 1518 (1986); Martha Minow, Foreword: Justice Engendered, 101 Harv L Rev 10 (1987); Nadine Taub and Elizabeth M. Schneider, Perspectives on Women's Subordination and the Role of Law, in David Kairys, ed, The Politics of Law 117-39 (Pantheon Books, 1982).

37 See works cited in note 36.

38 This criticism is a discrete illustration of a more general claim that feminism has been premised on white middle-class women's experience. For example, early feminist texts such as Betty Friedan's The Feminine Mystique (W. W. Norton, 1963), placed white middle-class problems at the center of feminism and thus contributed to its rejection within the Black community. See Hooks, Ain't I a Woman at 185-96 (cited in note 33) (noting that feminism was eschewed by Black women because its white middle-class agenda ignored Black women's concerns).

39 Richard A. Wasserstrom, Racism, Sexism and Preferential Treatment: An Approach to the Topics, 24 UCLA L Rev 581, 588 (1977). I chose this phrase not because it is typical of most feminist statements of separate spheres; indeed, most discussions are not as simplistic as the bold statement presented here. See, for example, Taub and Schneider, Perspectives on Women's Subordination and the Role of Law at 117-39 (cited in note 36).
of Black subordination wholly frustrate access to these norms. Given this understanding, perhaps we can begin to see why Black women have been dogged by the stereotype of the pathological matriarch or why there have been those in the Black liberation movement who aspire to create institutions and to build traditions that are intentionally patriarchal.

Because ideological and descriptive definitions of patriarchy are usually premised upon white female experiences, feminists and others informed by feminist literature may make the mistake of assuming that since the role of Black women in the family and in other Black institutions does not always resemble the familiar manifestations of patriarchy in the white community, Black women are somehow exempt from patriarchal norms. For example, Black women have traditionally worked outside the home in numbers far exceeding the labor participation rate of white women. An analysis of patriarchy that highlights the history of white women’s exclusion from the workplace might permit the inference that Black women have not been burdened by this particular gender-based expectation. Yet the very fact that Black women must work conflicts with norms that women should not, often creating personal, emotional and relationship problems in Black women’s lives. Thus, Black women are burdened not only because they often have to take on responsibilities that are not traditionally feminine but, moreover, their assumption of these roles is sometimes interpreted within the Black community as either Black women’s failure to live up to such norms or as another manifestation of racism’s scourge upon the Black community. This is one of the many aspects of intersectionality that cannot be understood

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"For example, Black families have sometimes been cast as pathological largely because Black women’s divergence from the white middle-class female norm. The most infamous rendition of this view is found in the Moynihan report which blamed many of the Black community’s ills on a supposed pathological family structure. For a discussion of the report and its contemporary reincarnation, see pp 163-165.

"See Hooks, Ain’t I a Woman at 94-99 (cited in note 33) (discussing the elevation of sexist imagery in the Black liberation movement during the 1960s).


"As Elizabeth Higginbotham noted, “women, who often fail to conform to ‘appropriate’ sex roles, have been pictured as, and made to feel, inadequate—even though as women, they possess traits recognized as positive when held by men in the wider society. Such women are stigmatized because their lack of adherence to expected gender roles is seen as a threat to the value system.” Elizabeth Higginbotham, Two Representative Issues in Contemporary Sociological Work on Black Women, in Hull, et al, eds, But Some of Us Are Brave at 95 (cited in note 1)."
through an analysis of patriarchy rooted in white experience.

Another example of how theory emanating from a white context obscures the multidimensionality of Black women’s lives is found in feminist discourse on rape. A central political issue on the feminist agenda has been the pervasive problem of rape. Part of the intellectual and political effort to mobilize around this issue has involved the development of a historical critique of the role that law has played in establishing the bounds of normative sexuality and in regulating female sexual behavior. Early carnal knowledge statutes and rape laws are understood within this discourse to illustrate that the objective of rape statutes traditionally has not been to protect women from coercive intimacy but to protect and maintain a property-like interest in female chastity. Although feminists quite rightly criticize these objectives, to characterize rape law as reflecting male control over female sexuality is for Black women an oversimplified account and an ultimately inadequate account.

Rape statutes generally do not reflect male control over female sexuality, but white male regulation of white female sexuality. Historically, there has been absolutely no institutional effort to regulate Black female chastity. Courts in some states had gone so far as to instruct juries that, unlike white women, Black women were not presumed to be chaste. Also, while it was true that the

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45 See Brownmiller, *Against Our Will* at 17; see generally Estrich, *Real Rape*.

46 One of the central theoretical dilemmas of feminism that is largely obscured by universalizing the white female experience is that experiences that are described as a manifestation of male control over females can be instead a manifestation of dominant group control over all subordinates. The significance is that other nondominant men may not share in, participate in or connect with the behavior, beliefs or actions at issue, and may be victimized themselves by “male” power. In other contexts, however, “male authority” might include nonwhite men, particularly in private sphere contexts. Efforts to think more clearly about when Black women are dominated as women and when they are dominated as Black women are directly related to the question of when power is male and when it is white male.

47 See Note, *Rape, Racism and the Law*, 6 Harv Women’s L J 103, 117-23 (1983) (discussing the historical and contemporary evidence suggesting that Black women are generally not thought to be chaste). See also Hooks, *Ain’t I a Woman* at 54 (cited in note 33) (stating that stereotypical images of Black womanhood during slavery were based on the myth that “all black women were immoral and sexually loose”); Beverly Smith, *Black Women’s Health: Notes for a Course*, in Hull et al, eds, *But Some of Us Are Brave* at 110 (cited in note 1) (noting that “... white men for centuries have justified their sexual abuse of Black women by claiming that we are licentious, always ‘ready’ for any sexual encounter”).

48 The following statement is probably unusual only in its candor: “What has been said by some of our courts about an unchaste female being a comparatively rare exception is no doubt true where the population is composed largely of the Caucasian race, but we would blind ourselves to actual conditions if we adopted this rule where another race that is largely
attempt to regulate the sexuality of white women placed unchaste women outside the law’s protection, racism restored a fallen white woman’s chastity where the alleged assailant was a Black man. No such restoration was available to Black women.

The singular focus on rape as a manifestation of male power over female sexuality tends to eclipse the use of rape as a weapon of racial terror. When Black women were raped by white males, they were being raped not as women generally, but as Black women specifically: Their femaleness made them sexually vulnerable to racist domination, while their Blackness effectively denied immoral constitutes an appreciable part of the population.” Dallas v State, 76 Fla 358, 79 So 690 (1918), quoted in Note, 6 Harv Women’s L J at 121 (cited in note 47).

Espousing precisely this view, one commentator stated in 1902: “I sometimes hear of a virtuous Negro woman but the idea is so absolutely inconceivable to me . . . I cannot imagine such a creature as a virtuous Negro woman.” Id at 82. Such images persist in popular culture. See Paul Grein, Taking Stock of the Latest Pop Record Surprises, LA Times § 6 at 1 (July 7, 1988) (recalling the controversy in the late 70s over a Rolling Stones recording which included the line “Black girls just wanna get fucked all night”).

Opposition to such negative stereotypes has sometimes taken the form of sexual conservatism. “A desperate reaction to this slanderous myth is the attempt . . . to conform to the strictest versions of patriarchal morality.” Smith, Black Women’s Health, in Hull et al, eds, But Some of Us Are Brave at 111 (cited in note 1). Part of this reaction is reflected in the attitudes and policies of Black schools which have been notoriously strict in regulating the behavior of female students. See Gail Elizabeth Wyatt, The Sexual Experience of Afro-American Women, in Martha Kirkpatrick, ed, Women’s Sexual Experience: Exploration of the Dark Continent 24 (Plenum, 1982) (noting “the differences between the predominantly Afro-American universities, where there was far more supervision regarding sexual behavior, and the majority of white colleges, where there were fewer curfews and restrictions placed on the resident”). Any attempt to understand and critique the emphasis on Black virtue without focusing on the racist ideology that places virtue beyond the reach of Black women would be incomplete and probably incorrect.

Because of the way the legal system viewed chastity, Black women could not be victims of forcible rape. One commentator has noted that “[a]ccording to governing stereotypes [sic], chastity could not be possessed by Black women. Thus, Black women’s rape charges were automatically discounted, and the issue of chastity was contested only in cases where the rape complainant was a white woman.” Note, 6 Harv Women’s L J at 126 (cited in note 47). Black women’s claims of rape were not taken seriously regardless of the offender’s race. A judge in 1912 said: “This court will never take the word of a nigger against the word of a white man [concerning rape].” Id at 120. On the other hand, lynching was considered an effective remedy for a Black man’s rape of a white woman. Since rape of a white woman by a Black man was “a crime more horrible than death,” the only way to assuage society’s rage and to make the woman whole again was to brutally murder the Black man. Id at 125.

See The Rape of Black Women as a Weapon of Terror, in Gerda Lerner, ed, Black Women in White America 172-93 (Pantheon Books, 1972). See also Brownmiller, Against Our Will (cited in note 44). Even where Brownmiller acknowledges the use of rape as racial terrorism, she resists making a “special case” for Black women by offering evidence that white women were raped by the Klan as well. Id at 139. Whether or not one considers the racist rape of Black women a “special case,” such experiences are probably different. In any case, Brownmiller’s treatment of the issue raises serious questions about the ability to sustain an analysis of patriarchy without understanding its multiple intersections with racism.
them any protection. This white male power was reinforced by a judicial system in which the successful conviction of a white man for raping a Black woman was virtually unthinkable.

In sum, sexist expectations of chastity and racist assumptions of sexual promiscuity combined to create a distinct set of issues confronting Black women. These issues have seldom been explored in feminist literature nor are they prominent in antiracist politics. The lynching of Black males, the institutional practice that was legitimatized by the regulation of white women’s sexuality, has historically and contemporaneously occupied the Black agenda on sexuality and violence. Consequently, Black women are caught between a Black community that, perhaps understandably, views with suspicion attempts to litigate questions of sexual violence, and a feminist community that reinforces those suspicions by focusing on white female sexuality. The suspicion is compounded

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41 Lerner, Black Women in White America at 173.
42 See generally, Note, 6 Harv Women’s L J at 103 (cited in note 47).
43 Paula Giddings notes the combined effect of sexual and racial stereotypes: “Black women were seen having all of the inferior qualities of white women without any of their virtues.” Giddings, When and Where I Enter at 82 (cited in note 32).
44 Susan Brownmiller’s treatment of the Emmett Till case illustrates why antirape politicization makes some African Americans uncomfortable. Despite Brownmiller’s quite laudable efforts to discuss elsewhere the rape of Black women and the racism involved in much of the hysteria over the Black male threat, her analysis of the Till case places the sexuality of white women, rather than racial terrorism, at center stage. Brownmiller states: “Rarely has one single case exposed so clearly as Till’s the underlying group-male antagonisms over access to women, for what began in Bryant’s store should not be misconstrued as an innocent flirtation . . . . In concrete terms, the accessibility of all white women was on review.” Brownmiller, Against Our Will at 272 (cited in note 44).

Later, Brownmiller argues:
And what of the wolf whistle, Till’s ‘gesture of adolescent bravado’? We are rightly aghast that a whistle could be cause for murder but we must also accept that Emmett Till and J. W. Millam shared something in common. They both understood that the whistle was no small tweet of hubba-hubba or melodious approval for a well-turned ankle. Given the deteriorated situation . . . . it was a deliberate insult just short of physical assault, a last reminder to Carolyn Bryant that this black boy, Till, had a mind to possess her.

Id at 273.

While Brownmiller seems to categorize the case as one that evidences a conflict over possession, it is regarded in African American history as a tragic dramatization of the South’s pathological hatred and fear of African Americans. Till’s body, mutilated beyond recognition, was viewed by thousands so that, in the words of Till’s mother, “the world could see what they did to my boy.” Juan Williams, Standing for Justice, in Eyes on the Prize 44 (Viking, 1987). The Till tragedy is also regarded as one of the historical events that bore directly on the emergence of the Civil Rights movement. “[W]ithout question it moved black America in a way the Supreme Court ruling on school desegregation could not match.” Id. As Williams later observed, “the murder of Emmitt Till had a powerful impact on a generation of blacks. It was this generation, those who were adolescents when Till was killed, that would soon demand justice and freedom in a way unknown in America before.”
by the historical fact that the protection of white female sexuality was often the pretext for terrorizing the Black community. Even today some fear that antirape agendas may undermine antiracist objectives. This is the paradigmatic political and theoretical dilemma created by the intersection of race and gender: Black women are caught between ideological and political currents that combine first to create and then to bury Black women's experiences.

III. WHEN AND WHERE I ENTER: INTEGRATING AN ANALYSIS OF SEXISM INTO BLACK LIBERATION POLITICS

Anna Julia Cooper, a 19th-century Black feminist, coined a phrase that has been useful in evaluating the need to incorporate an explicit analysis of patriarchy in any effort to address racial domination.\(^6\) Cooper often criticized Black leaders and spokespersons for claiming to speak for the race, but failing to speak for Black women. Referring to one of Martin Delaney's public claims that where he was allowed to enter, the race entered with him, Cooper countered: "Only the Black Woman can say, when and where I enter . . . then and there the whole Negro race enters with me."\(^6\)

Cooper's words bring to mind a personal experience involving two Black men with whom I had formed a study group during our first year of law school. One of our group members, a graduate from Harvard College, often told us stories about a prestigious and exclusive men's club that boasted memberships of several past United States presidents and other influential white males. He was one of its very few Black members. To celebrate completing our first-year exams, our friend invited us to join him at the club for drinks. Anxious to see this fabled place, we approached the large door and grasped the brass door ring to announce our arrival. But our grand entrance was cut short when our friend sheepishly slipped from behind the door and whispered that he had forgotten

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\(^{6}\) See Anna Julia Cooper, A Voice from the South (Negro Universities Press, 1969 reprint of the Aldine Printing House, Ohio, 1892).

\(^{6}\) Id at 31.

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a very important detail. My companion and I bristled, our training as Black people having taught us to expect yet another barrier to our inclusion; even an informal one-Black-person quota at the establishment was not unimaginable. The tension broke, however, when we learned that we would not be excluded because of our race, but that I would have to go around to the back door because I was a female. I entertained the idea of making a scene to dramatize the fact that my humiliation as a female was no less painful and my exclusion no more excusable than had we all been sent to the back door because we were Black. But, sensing no general assent to this proposition, and also being of the mind that due to our race a scene would in some way jeopardize all of us, I failed to stand my ground. After all, the Club was about to entertain its first Black guests—even though one would have to enter through the back door.\(^8\)

Perhaps this story is not the best example of the Black community's failure to address problems related to Black women's intersectionality seriously. The story would be more apt if Black women, and only Black women, had to go around to the back door of the club and if the restriction came from within, and not from the outside of the Black community. Still this story does reflect a markedly decreased political and emotional vigilance toward barriers to Black women's enjoyment of privileges that have been won on the basis of race but continue to be denied on the basis of sex.\(^9\)

The story also illustrates the ambivalence among Black women about the degree of political and social capital that ought to be expended toward challenging gender barriers, particularly when the challenges might conflict with the antiracism agenda. While there are a number of reasons—including antifeminist ones—why gender has not figured directly in analyses of the subordination of Black Americans, a central reason is that race is still seen by many as the primary oppositional force in Black lives.\(^9\)

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\(^8\) In all fairness, I must acknowledge that my companion accompanied me to the back door. I remain uncertain, however, as to whether the gesture was an expression of solidarity or an effort to quiet my anger.

\(^9\) To this one could easily add class.

\(^9\) An anecdote illustrates this point. A group of female law professors gathered to discuss “Isms in the Classroom.” One exercise led by Pat Cain involved each participant listing the three primary factors that described herself. Almost without exception, white women in the room listed their gender either primarily or secondarily; none listed their race. All of the women of color listed their race first, and then their gender. This seems to suggest that identity descriptions seem to begin with the primary source of opposition with whatever the dominant norm is. See Pat Cain, *Feminist Jurisprudence: Grounding the Theories* 19-20 (unpublished manuscript on file with author) (explaining the exercise and noting that “no
one accepts that the social experience of race creates both a primary group identity as well as a shared sense of being under collective assault, some of the reasons that Black feminist theory and politics have not figured prominently in the Black political agenda may be better understood.\textsuperscript{60}

The point is not that African Americans are simply involved in a more important struggle. Although some efforts to oppose Black feminism are based on this assumption, a fuller appreciation of the problems of the Black community will reveal that gender subordination does contribute significantly to the destitute conditions of so many African Americans and that it must therefore be addressed. Moreover, the foregoing critique of the single-issue framework renders problematic the claim that the struggle against racism is distinguishable from, much less prioritized over, the struggle against sexism. Yet it is also true that the politics of racial otherness that Black women experience along with Black men prevent Black feminist consciousness from patterning the development of white feminism. For white women, the creation of a consciousness that was distinct from and in opposition to that of white men figured prominently in the development of white feminist politics. Black women, like Black men, live in a community that has been defined and subordinated by color and culture.\textsuperscript{61} Although patriarchy clearly operates within the Black community, presenting yet another source of domination to which Black women are vulnerable, the racial context in which Black women find themselves makes the creation of a political consciousness that is oppositional to Black men difficult.

Yet while it is true that the distinct experience of racial otherness militates against the development of an oppositional feminist consciousness, the assertion of racial community sometimes supports defensive priorities that marginalize Black women. Black

\textsuperscript{60} For a comparative discussion of Third World feminism paralleling this observation, see Kumari Jayawardena, Feminism and Nationalism in the Third World 1-24 (Zed Books Ltd, 1986). Jayawardena states that feminism in the Third World has been “accepted” only within the central struggle against international domination. Women’s social and political status has improved most when advancement is necessary to the broader struggle against imperialism.

\textsuperscript{61} For a discussion of how racial ideology creates a polarizing dynamic which subordinates Blacks and privileges whites, see Kimberle Crenshaw, Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law, 101 Harv L Rev 1331, 1371-76 (1988).
women's particular interests are thus relegated to the periphery in public policy discussions about the presumed needs of the Black community. The controversy over the movie *The Color Purple* is illustrative. The animating fear behind much of the publicized protest was that by portraying domestic abuse in a Black family, the movie confirmed the negative stereotypes of Black men. The debate over the propriety of presenting such an image on the screen overshadowed the issue of sexism and patriarchy in the Black community. Even though it was sometimes acknowledged that the Black community was not immune from domestic violence and other manifestations of gender subordination, some nevertheless felt that in the absence of positive Black male images in the media, portraying such images merely reinforced racial stereotypes. The struggle against racism seemed to compel the subordination of certain aspects of the Black female experience in order to ensure the security of the larger Black community.

The nature of this debate should sound familiar to anyone who recalls Daniel Moynihan's diagnosis of the ills of Black America. Moynihan's report depicted a deteriorating Black family, foretold the destruction of the Black male householder and lamented the creation of the Black matriarch. His conclusions prompted a massive critique from liberal sociologists and from civil rights leaders. Surprisingly, while many critics characterized the report as racist for its blind use of white cultural norms as the standard for evaluating Black families, few pointed out the sexism apparent in Moynihan's labeling Black women as pathological for their "failure" to live up to a white female standard of motherhood.

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63 A consistent problem with any negative portrayal of African Americans is that they are seldom balanced by positive images. On the other hand, most critics overlooked the positive transformation of the primary male character in *The Color Purple*.


66 Id at 395-97 (critics included Martin Luther King, Jr., Benjamin Payton, James Farmer, Whitney Young, Jr. and Bayard Rustin).

67 One of the notable exceptions is Jacquelyne Johnson Jackson, *Black Women in a*
The latest versions of a Moynihanesque analysis can be found in the Moyers televised special, *The Vanishing Black Family,* and, to a lesser extent, in William Julius Wilson's *The Truly Disadvantaged.* In *The Vanishing Black Family,* Moyers presented the problem of female-headed households as a problem of irresponsible sexuality, induced in part by government policies that encouraged family breakdown. The theme of the report was that the welfare state reinforced the deterioration of the Black family by rendering the Black male's role obsolete. As the argument goes, because Black men know that someone will take care of their families, they are free to make babies and leave them. A corollary to the Moyers view is that welfare is also dysfunctional because it allows poor women to leave men upon whom they would otherwise be dependent.

Most commentators criticizing the program failed to pose challenges that might have revealed the patriarchal assumptions underlying much of the Moyers report. They instead focused on the dimension of the problem that was clearly recognizable as racist. White feminists were equally culpable. There was little, if any, published response to the Moyers report from the white feminist community. Perhaps feminists were under the mistaken assumption that since the report focused on the Black community,

*Racist Society,* in *Racism and Mental Health* 185-86 (University of Pittsburgh Press, 1973).

*The Vanishing Black Family* (PBS Television Broadcast, January 1986).


Columnist Mary McGrory, applauding the show, reported that Moyers found that sex was as common in the Black ghetto as a cup of coffee. McGrory, *Moynihan was Right 21 Years Ago,* The Washington Post B1 and B4 (Jan 26, 1986). George Will argued that over-sexed Black men were more of a menace than Bull Conner, the Birmingham Police Chief who in 1968 achieved international notoriety by turning fire hoses on protesting school children. George Will, *Voting Rights Won't Fix It,* The Washington Post A23 (Jan 23, 1986).

My guess is that the program has influenced the debate about the so-called underclass by providing graphic support to pre-existing tendencies to attribute poverty to individual immorality. During a recent and memorable discussion on the public policy implications of poverty in the Black community, one student remarked that nothing can be done about Black poverty until Black men stop acting like "roving penises," Black women stop having babies "at the drop of a hat," and they all learn middle-class morality. The student cited the Moyers report as her source.

Although the nearly exclusive focus on the racist aspects of the program poses both theoretical and political problems, it was entirely understandable given the racial nature of the subsequent comments that were sympathetic to the Moyers view. As is typical in discussions involving race, the dialogue regarding the Moyers program covered more than just the issue of Black families; some commentators took the opportunity to indict not only the Black underclass, but the Black civil rights leadership, the war on poverty, affirmative action and other race-based remedies. See, for example, Will, *Voting Rights Won't Fix It* at A23 (cited in note 70).
the problems highlighted were racial, not gender based. Whatever the reason, the result was that the ensuing debates over the future direction of welfare and family policy proceeded without significant feminist input. The absence of a strong feminist critique of the Moynihan/Moyers model not only impeded the interests of Black women, but it also compromised the interests of growing numbers of white women heads of household who find it difficult to make ends meet.\(^2\)

William Julius Wilson’s *The Truly Disadvantaged* modified much of the moralistic tone of this debate by reframing the issue in terms of a lack of marriageable Black men.\(^3\) According to Wilson, the decline in Black marriages is not attributable to poor motivation, bad work habits or irresponsibility but instead is caused by structural economics which have forced Black unskilled labor out of the work force. Wilson’s approach represents a significant move away from that of Moynihan/Moyers in that he rejects their attempt to center the analysis on the morals of the Black community. Yet, he too considers the proliferation of female-headed households as dysfunctional *per se* and fails to explain fully why such households are so much in peril. Because he incorporates no analysis of the way the structure of the economy and the workforce subordinates the interests of women, especially childbearing Black women, Wilson’s suggested reform begins with finding ways to put Black men back in the family.\(^4\) In Wilson’s view, we must change the economic structure with an eye toward providing more Black jobs for Black men. Because he offers no critique of sexism, Wilson fails to consider economic or social reorganization that directly empowers and supports these single Black mothers.\(^5\)

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\(^2\) Their difficulties can also be linked to the prevalence of an economic system and family policy that treat the nuclear family as the norm and other family units as aberrant and unworthy of societal accommodation.

\(^3\) Wilson, *The Truly Disadvantaged* at 96 (cited in note 69).

\(^4\) Id at 154 (suggestions include macroeconomic policies which promote balanced economic growth, a nationally-oriented labor market strategy, a child support assurance program, a child care strategy, and a family allowances program which would be both means tested and race specific).

\(^5\) Nor does Wilson include an analysis of the impact of gender on changes in family patterns. Consequently, little attention is paid to the conflict that may result when gender-based expectations are frustrated by economic and demographic factors. This focus on demographic and structural explanations represent an effort to regain the high ground from the Moyers/Moynihan approach which is more psycho-social. Perhaps because psycho-social explanations have come dangerously close to victim-blaming, their prevalence is thought to threaten efforts to win policy directives that might effectively address deteriorating conditions within the working class and poor Black communities. See Kimberle Crenshaw, *A Comment on Gender, Difference, and Victim Ideology in the Study of the Black Family*, in
My criticism is not that providing Black men with jobs is undesirable; indeed, this is necessary not only for the Black men themselves, but for an entire community, depressed and subject to a host of sociological and economic ills that accompany massive rates of unemployment. But as long as we assume that the massive social reorganization Wilson calls for is possible, why not think about it in ways that maximize the choices of Black women? A more complete theoretical and political agenda for the Black underclass must take into account the specific and particular concerns of Black women; their families occupy the bottom rung of the economic ladder, and it is only through placing them at the center of the analysis that their needs and the needs of their families will be directly addressed.

IV. Expanding Feminist Theory and Antiracist Politics by Embracing the Intersection

If any real efforts are to be made to free Black people of the constraints and conditions that characterize racial subordination, then theories and strategies purporting to reflect the Black community’s needs must include an analysis of sexism and patriarchy. Similarly, feminism must include an analysis of race if it hopes to express the aspirations of non-white women. Neither Black liberation politics nor feminist theory can ignore the intersectional experiences of those whom the movements claim as their respective constituents. In order to include Black women, both movements must distance themselves from earlier approaches in which experiences are relevant only when they are related to certain clearly identifiable causes (for example, the oppression of Blacks is significant when based on race, of women when based on gender). The praxis of both should be centered on the life chances and life situations of people who should be cared about without regard to the source of their difficulties.

I have stated earlier that the failure to embrace the complexities of compoundedness is not simply a matter of political will, but

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For instance, Wilson only mentions in passing the need for day care and job training for single mothers. Wilson at 153 (cited in note 69). No mention at all is made of other practices and policies that are racist and sexist, and that contribute to the poor conditions under which nearly half of all Black women must live.

is also due to the influence of a way of thinking about discrimination which structures politics so that struggles are categorized as singular issues. Moreover, this structure imports a descriptive and normative view of society that reinforces the status quo.

It is somewhat ironic that those concerned with alleviating the ills of racism and sexism should adopt such a top-down approach to discrimination. If their efforts instead began with addressing the needs and problems of those who are most disadvantaged and with restructuring and remaking the world where necessary, then others who are singularly disadvantaged would also benefit. In addition, it seems that placing those who currently are marginalized in the center is the most effective way to resist efforts to compartmentalize experiences and undermine potential collective action.

It is not necessary to believe that a political consensus to focus on the lives of the most disadvantaged will happen tomorrow in order to recenter discrimination discourse at the intersection. It is enough, for now, that such an effort would encourage us to look beneath the prevailing conceptions of discrimination and to challenge the complacency that accompanies belief in the effectiveness of this framework. By so doing, we may develop language which is critical of the dominant view and which provides some basis for unifying activity. The goal of this activity should be to facilitate the inclusion of marginalized groups for whom it can be said: “When they enter, we all enter.”