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On Selecting Black Women as Paradigms for Race Discrimination Analyses

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For the past several years, I have been working on a series of articles regarding something I call the transparency phenomenon. This is my label for the fact that white people tend to be unconscious of whiteness as a distinct racial characteristic, and so tend to equate whiteness with racelessness. Most white people will be able to identify this phenomenon in their own experience. For example, if I asked you, a white reader, to select three adjectives that describe you, would you be likely to include the word “white”? Do you think about race as a factor in the way other whites treat you? Do you think of whiteness as affecting the way other whites are treated? It’s likely that you discussed race in connection with the nomination of Clarence Thomas. But how many of you had conversations about how race might have affected the character and personality of Justice Breyer, or pondered whether his whiteness might predispose him to a racially skewed perspective on legal issues?

This transparency phenomenon affects whites’ decisionmaking as well; behaviors and characteristics associated with whites take on the same aura of race neutrality. Thus white people frequently interpret norms adopted by a dominantly white culture as racially neutral, failing to recognize the ways in which those norms may be in fact covertly race-specific.

In each of my articles on transparency I have told one or more stories in which people of color have been affected by transparently white decisionmaking, and it has turned out that most of these fictional characters are

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1 This essay is not addressed solely to white readers, though the questions that follow are aimed primarily at whites.
2 This is an exercise that Pat Cain uses, and describes in Patricia A. Cain, Feminist Jurisprudence: Grounding the Theories, 4 Berkeley Women's L.J. 191, 208 (1989-90).
women.³ (In reality, all of them are women, because the one story that appears to be about a male is based on a real letter of recommendation written for a woman law student.) So my paradigms in writing about a particular form of racism always have been women. One of my colleagues recently asked me why this is so—if I want to write about race discrimination, and not sex discrimination, shouldn’t my characters be black men rather than women? Before responding to that query, let me recount my transparency tales.

Deloris is a black woman who is being considered for a seat on the majority white Board of Directors of a national public interest organization. She is the sole proprietor of a very successful small business that supplies technical computer services to other businesses. She founded the company eleven years ago; it now grosses $700,000 annually and employs ten people. Deloris dropped out of high school at sixteen and later obtained a G.E.D., but did not attend college. She was able to open her business in part because of a state program designed to encourage the formation of minority business enterprises. Moreover, Deloris has been active for many years at both the local and state level on the issues that are of concern for this national organization. In fact, she came to the organization’s attention because she is considered a leader on those issues in her state.

Deloris comes to an interview before the Nominating Committee responsible for making recommendations regarding new members for the Board. During the course of this interview, several members of the Nominating Committee question Deloris closely about the operation of her business, and seek detailed financial information that she becomes increasingly reluctant to provide. Then the questioning turns to her educational background. “Why,” one Committee member asks, “didn’t you go to college later, when you were financially able to do so?” “Will you be comfortable on a Board where everyone else has at least a college degree?” another asks. Deloris’ tone becomes sharper as this line of questioning proceeds, and the interview concludes on a tense note. After some deliberation, the Nominating Committee forwards Deloris’ name to the full Board, but with strong reservations. “We found her to be quite hostile,” the Committee reports. “She has a solid history of working on our issues, but she might be a disruptive presence at Board meetings.”

³ It’s noteworthy as well that all of them are black. It’s my view that race discrimination takes many and varied forms, ranging from hatred and hostility to unconscious bias to selective misperception, among others, and that many of these modes of discrimination play themselves out in significantly different ways with respect to different nonwhite groups (e.g., black people, Latinos, Asians, Native Americans, etc.). However, because the transparency analysis focuses on the way white people see themselves, I believe it is relatively less variable than other forms of racism. Moreover, because my intended audience is predominantly white, and because I believe that for many whites the experience of black people is the paradigm for race discrimination, I think it facilitates introduction of the transparency concept if I confine my examples to black people.
Deloris appeared, though without a name, in my first article on the transparency phenomenon. I provided two examples of transparently white decisionmaking in my next article on the subject. The first involved a character I named David in memory of a dear friend who died of AIDS. In my story, David was a black man who attended a top ten law school. During his years in school, David was an extremely active participant in class discussions, who generally was interested in the ways a rule or policy affected black people and other nonwhites. He acquired a reputation as a "gunner," but with a special twist: the white students criticized him as someone who was only interested in "race stuff," not law. David ultimately graduated in the top 10% of his class. During his second year, when both his academic potential and his interest in racial justice already were evident, he applied for post-graduation federal judicial clerkship positions. A letter of reference written for him by a member of the law faculty included this comment: "David has shown great concern with problems of racial equality, both in and outside the classroom. In general, I have found that these interests don't interfere with his ability to engage in legal analysis."

In that same article I introduced another character with the initials "C.W." She was named after Clara Watson, of the Watson v. Fort Worth Bank & Trust case, though I changed the facts somewhat to suit my transparency analysis. My fictional C.W. was a black woman who had worked for eight years at the Big Bank, a predominantly white institution located in a white neighborhood. During that time, she was successively promoted from an entry-level position to drive-in bank teller, to lobby teller, and finally to commercial teller. However, during the last year of her employment, C.W. unsuccessfully sought promotion four times to supervisory positions, each of which was awarded to a white employee.

The bank relied on C.W.'s performance evaluations in justifying its decisions not to promote her. These evaluations required supervisors to rate employees in a number of categories, such as attendance, drive, and ambition. However, supervisors tended to emphasize the category of leadership potential. In each of the four instances in which C.W. was denied promotion, she was rated poorly on "leadership potential" by her white supervisor.

Finally, I have recently completed a Title VII article featuring Keisha Akbar. Keisha was given the name Deborah by her parents, but legally

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6 Id. at 969. As noted earlier, this story is based on a letter of recommendation written for a woman law student.
7 Law students use this term to describe a student who in their view participates too frequently in class discussions.
8 Id. at 971-72.
changed her name while in college. As her name change suggests, Keisha places a special emphasis on her African heritage, and she has adopted speech and grooming patterns consistent with an Afrocentric perspective. Keisha majored in biology at Howard University, and after graduation went to work as the only black scientist at a small research firm dedicated to identifying and developing environmentally safe agricultural products for commercial uses. Keisha excelled at the technical aspects of her work, but she brought to it a decidedly nonassimilationist personal style. At first, her cultural differences had no particular impact on her job performance. However, the once small firm began to grow rapidly, and it became necessary to reorganize into research divisions. The general plan was to elevate each of the original members of the research team to positions as department heads, but Keisha was not asked to head a department because the individuals responsible for making that decision felt that she lacked the personal qualities needed by a successful manager. They saw Keisha as just too different from the researchers she would supervise to communicate effectively with them, and articulated this reason as a need for a department head who shared the perspectives and values of the employees under his or her direction.

I don’t want to delve at all deeply into analyzing these cases as instances of the transparency phenomenon. I think it will suffice to point out that the criteria of decision employed in each case are thoroughly infused with white norms and expectations. Deloris was perceived as "hostile" from a white perspective; David was implicitly too interested in race issues; C.W. lacked leadership potential; and Keisha was just plain too different from white folks to be made a department head. Each of these criteria of decision qualifies as transparently white because its race-specificity was not apparent to the white decisionmaker who employed it. Each of these decisionmakers saw himself or herself as applying race-neutral criteria of decision.

I return to the question with which I began: Because I am writing about a form of race discrimination rather than sex discrimination, shouldn’t my characters be black men? I imagine that most of you can see the fallacy underlying that question. Just as the transparency phenomenon treats whiteness as racelessness, my colleague’s question implicitly equates maleness with genderlessness, and so assumes that I would be able to study race discrimination in isolation if only I would focus my analytic attention on black men.

This seems a relatively elementary error. Maleness is a gender, just as whiteness is a race, and so it’s wrong to think of either as somehow "neutral." Men are as different from women as women are from men. In the

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abstract, there is no basis for regarding one gender as the norm and the
other as a deviation from it.

However, a more sophisticated version of my colleague's question
should be considered. It is a fact that males are dominant in this society,
just as whites are dominant. Thus, one might suppose that studying particu-
lar forms of oppression would be facilitated if one focused on groups that
occupy a subordinate position solely with respect to the characteristic with
which the investigator is interested. For example, one would study race
discrimination by looking at black male paradigms because one could then
be relatively confident of excluding the effects of gender subordination.12

However, this analysis also is mistaken. Every form of oppression is
contextual, and the relevant context always includes all other socially sali-
ent personal attributes of the oppressed. Thus, because gender has social
salience, race oppression plays itself out in some ways for black women and
in other ways for black men. Similarly, gender oppression plays itself out
in some ways for white women, and in other ways for women of color.
Neither race nor gender oppression is a single, monolithic entity, and thus
it's a mistake to suppose that either can be comprehended in the abstract.13

Because race cannot be disentangled from its gendered manifestations,
it would not make sense for me to tell stories about transparently white
decisionmaking that exclusively feature men, in the hope that doing so
would isolate race as the sole characteristic that mattered in these stories.
However, one might then wonder whether it would make sense to construct
a series of stories involving both men and women, thus highlighting race in
a different way. If my tales included both men and women equally as
targets of transparently white decisionmaking, race might emerge as the
single thread running through all of them.

Indeed, this approach seems consistent with my original conception of
the transparency phenomenon. I began by asking myself what I know about
whiteness, and the first thing that came to mind is that whiteness means not
having to think about it. Transparency, then, refers to whites' unconsci-
ousness of whiteness, and derivatively, to whites' use of white-specific criteria
of decision. Viewed in this light, transparency is a concept that is grounded
in the experience of white people. Because it originates in the perpetrator's
perspective14 on race, one might suppose that the personal attributes (other
than race) of its targets would be irrelevant to the transparency story.

12 Catharine MacKinnon, for example, has taken the position that black men are oppressed as black,
but not as men. Catharine A. Mackinnon, Toward a Feminist Theory of the State 160
(1989).

13 This is the antiessentialist critique of existing categories of discrimination. See Angela P. Harris,
Race and Essentialism in Feminist Legal Theory, 42 Stan. L. Rev. 581, 581-86 (1990). See also
Grillo, supra note 11, at 17.

14 This terminology is Alan Freeman's. See Alan D. Freeman, Legitimizing Racial Discrimination
Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine, 62 Minn. L.
However, unlike the reified categories employed in traditional discrimination analyses—race, gender, etc.—transparency is a process; it's something that happens. In the conventional conceptual framework, race (for example) is a static quality, an attribute of the individual that is natural and immutable. In contrast, the transparency phenomenon is a product of social forces, and hence dynamic and changeable. I have begun to wonder whether it would be useful to frame the problem of discrimination from the outset as a matter of social processes, rather than to attempt to force it into the unwieldy categorical matrix of race, gender, class, etc., that we currently employ.

From this perspective, transparency appears to be a form of marginalization, which I define as any social process that functions prospectively to prevent its targets from sharing power, prestige, or privilege in a given social context. Employing transparently white norms is a form of marginalization because it ensures that nonwhites will be assessed less positively than whites, and so has the consequence that whites will retain the bulk of social power and privilege.

Another social process that often impacts people of color is retaliation, which is a reactive dynamic that divests social power after some measure of it has been attained. Consider, for example, Clarence Thomas' complaint that the Judiciary Committee's investigation of Anita Hill's allegations of sexual harassment constituted a "high tech lynching for uppity blacks." Whatever one may think of the merits of that complaint, it appeals to the undeniable fact that black men often are seen as threats to white society, and so have been the targets of the most severe forms of retaliation imaginable.

As I reflect on these two generic methods of maintaining the status quo, I wonder whether the dynamics of marginalization and retaliation tend...
to diverge along gender lines; marginalization may be a mode of discrimination directed most often at women, and retaliation one aimed more frequently at men. This is not to say that processes of marginalization happen only to black women, or that only black men provoke retaliation. However, it seems to me that black men are more likely than black women to be perceived by whites as threatening, either in a personal sense or as threats to an existing social order, and so are more likely to be the targets of retaliatory strategies. In contrast, because black women are relatively less likely to be seen by whites as posing a threat to white supremacy, they experience marginalization more frequently than retaliation.

This possible correlation between gender and strategies for maintaining the status quo may explain why it makes sense to tell the story of the transparency phenomenon as affecting black women, and so I return to Deloris, C.W., and Keisha. The simplest answer to the question why I made these fictional characters all women is because in constructing their not-wholly-fictional stories it just seemed right to me to tell them as stories about women. Further reflection on the nature of transparency has suggested the possibility that this was no accident; transparency might be the sort of process most naturally directed at women of color. If that is so, the transparency phenomenon could be the point of departure for a much broader reexamination of the processes of white supremacy, and for a reevaluation of the reified categories we currently employ in race discrimination analysis.

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20 In thinking about marginalization and retaliation, I have been helped by Martha Chamallas' discussion of "containment" in Martha Chamallas, Structuralist and Cultural Domination Theories Meet Title VII: Some Contemporary Influences, 92 Mich. L. Rev. 2370, 2385-94 (1994).

21 For instance, Kendall Thomas points out that black women as well as men were lynched. Kendall Thomas, Strange Fruit, in RACE-ING JUSTICE, EN-GENDERING POWER, supra note 19, at 364, 370-71.

22 I acknowledge that this argument is highly speculative, and even if accepted, does not fully establish that men of color do not suffer marginalization as often as they are the objects of retaliation. If whites employ marginalizing strategies more often than retaliatory ones, it might be the case that many black men and women are the targets of marginalization, while some black men and very few black women are subjected to retaliatory measures. Even so, however, there would be some degree of correlation between these two strategies and gender.

23 On the other hand, further examination of the transparency phenomenon may reveal that it unfolds in relatively similar ways across gender lines. Even if that turns out to be the case, it still seems right to begin the presentation of the transparency thesis by focusing on stories of black women. No longer a matter of analytic necessity, the decision to place black women at center stage then becomes a matter of political choice. Constructing one's analysis around a core of women's experience cannot be other than the right thing to do in a world so thoroughly dominated and defined by men as this one.