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Requiem for a Rock: Teaching Race for the Last Time

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Requiem for a Rock: Teaching Race for the Last Time

David Dante Troutt*

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INTRODUCTION

Teaching race within the law school curriculum has always been absurd. After 20 years of trying, I liken the exercise to the Myth of Sisyphus. In a lovely little essay by that name, Albert Camus wrote of the relevant self-torture—"the face screwed up, the cheek tight against the stone, the shoulder bracing the clay-covered mass, the foot wedging it, the fresh start with arms

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* Professor of Law, Justice John J. Francis Scholar, Director, Center on Law in Metropolitan Equity, Rutgers School of Law-Newark. There are too many colleagues and mentors of race, regional equity, and law teaching to thank individually for their contributions to these insights, but I am grateful. I have been fortunate to teach the students referred to here as well as a full generation who have challenged and molded me as a professor. Everlasting gratitude goes to my wife Shawn and our daughters for keeping me going in this pursuit as in all things.

outstretched”¹—of delving into issues with which no one contends easily, few understand beyond their own anecdotes, and even whose necessity everyone secretly hates. Sisyphus was consigned to rolling the boulder up the hill forever; we who teach race generally ask for it. Teaching race once or twice is intellectual duty. Teaching race regularly is somewhat reckless. Teaching race for 20 years is absurd. Says Camus: “One does not discover the absurd without being tempted to write a manual of happiness.”²

So, at the end of a long climb, this is an effort to make written peace with the vocation before quitting it. Camus was fascinated by one particular moment for Sisyphus, the moment when the boulder rolls back down the mountain for the countless time. It’s the long breath that signals the teacher’s descent back through the subject matter he or she has just worked up a hill. There is a lot to learn in that walk back to wherever the boulder rests and waits. “That hour like a breathing-space which returns as surely as his suffering, that is the hour of consciousness.”³ This essay is intended as that moment of consciousness about a profound pedagogy that always begins with as much hope as trepidation. Like Sisyphus, I would like to learn more about what I have done. Unlike Sisyphus, I will take the lesson and move on to lesser boulders. I share because I am not alone on this mountain.

Three factors make race so hard to teach. First and most obvious is the scope of the subject matter. Even if one were to limit race to the subjects most closely associated with it—civil rights, criminal and constitutional law, poverty and housing, clinical practice—the combined state and federal statutory and case law mountain is unwieldy. It can only be mined in parts and themes. But if you teach from either theory or from perspectives that connect race to unlikely topics, the scope becomes endless.

The scope is also affected by racial realities, some dormant and some explosive, that arrive with no warning. Had I been teaching race this past year, everything we learned in the two classes I describe next would have been influenced by the avalanche of pain and protest around the police shootings of unarmed black men and boys, the outrage over the assassination of nine black parishioners in a South Carolina church by a white supremacist that led to the fall of many Confederate flags across Southern capitols, and the historic visit—the first by a sitting president—of a federal penitentiary by President Obama, as part of an effort to reevaluate drug laws that have contributed to mass incarceration in the United States.⁴ There are always events and legal

1. Albert Camus, “The Myth of Sisyphus,” 120 in *The Myth of Sisyphus and other essays* (Vintage 1955).

2. *Id.* at 122.

3. *Id.* at 121.

4. See President Obama’s remarks from El Reno Federal Penitentiary: *Obama on Trump*: “Outrageous attacks have become far too commonplace,” NY Times (March 16, 2015) <http://www.nytimes.com/video/multimedia/10000003821912/obama-on-trump-outrageous-attacks-have-become-far-too-commonplac.html?playlistId=1194811622186>.

developments that have singular resonance on American race relations and which literally color classroom discussions of racial dynamics. But the many events this year may comprise an especially powerful moment, if not a turning point, that complicates the scope of this difficult subject matter.

Second, there are the students and the faculty who must reach them.⁵ This seems obvious, but the students have a habit of changing all the time, and they bring masked sensitivities that can make even the most banal class topic volcanic. They are also getting younger and younger each year, which only means there is a gulf—much of it deliberately made by all the influences before me—between, on the one hand, the racial norms and lexicon they know, the history, the highpoints and the very sense of historical memory that *always* informs how we process racial issues on and me, a middle-aged black man on the other.⁶ This often means they come willingly but on the sly. They want to talk about taboos, and race talk is largely taboo where they come from. Some bring an axe to grind. Some come to confirm that racism is dead. And they all get to meet me, that imperfect mover of the rock upward—always up, never across—until it is time to let it return to the inevitable starting point. The semester cannot really end otherwise. Unlike securities regulation or federal courts, students expect a wrap up of race and, if not a happy ending, a hopeful one.

Finally, there is the institution in which you teach race. Suffice it to say that mine has a reputation for social justice despite a racial ambivalence common to all schools. Like everyone else, developments in the legal academy over the last few years have forced us to imagine our own demise. The place of law and law schools in society is uncertain.⁷ Our resources are scarce. Our time may be limited. Our bar passage rates could improve. We must engage in something for which few law schools are known: strategic planning. And work like mine, which I'll describe next, may no longer fit the emerging model of a robust 21st century law school.

My approach to boulders has changed a lot in 20 years. I don't teach race head-on anymore. Mine is a structural materialist approach through *regional equity* in an effort to understand how opportunity works. In contrast, some of

5. See, e.g., Margalyn J. Armstrong and Stephanie M. Wildman, *A Tribute to Professor John O. Calmore: Teaching Race/Teaching Whiteness: Transforming Colorblindness to Color Insight*, 86 N.C.L. Rev. 635, 652-55, March 2008 (describing the tensions often occurring in classes when race is discussed and self-censuring dynamics among students seeking the "real issue").

6. Judith Scully, *Seeing Color, Seeing Whiteness, Making Change: One Woman's Journey in Teaching Race and American Law*, 39 U. Tol. L. Rev. 59, 61-63 (2007)(discussing student reactions as well as the fear of committing "academic suicide" by even teaching the course).

7. See Mark Hansen, *As law school enrollment drops, experts disagree on whether the bottom is in sight*, ABA Journal, Mar. 1, 2015, at http://www.abajournal.com/magazine/article/as_law_school_enrollment_drops_experts_disagree_on_whether_the_bottom.

the best research on race, racism, and inequality of opportunity begins with frames—the ideological foundations for social interaction, classificatory schemes characterized by hierarchies between self and other, as well as heuristic narratives.⁸ These help us explain the history of racial and racist thought and how it functions in our relationships. These approaches are central, for example, to an understanding of white privilege. They are important and should be known by all educated people. But I have come to forego them in law school classes in favor of approaches to systemic inequality that has become rooted in our institutions—typically with the aid and protection of law. The curriculum I use is intended to make the most use of our primary aim in law’s professional training—to solve individual harms by resort to interrogation of our institutional rules and arrangements.

Therefore, my focus is on the role of place in conditioning opportunity, mostly economic, a premise that allows the analyst to examine the rules governing the institutions most responsible for conferring or denying human capital development. I often use phrases like “a thousand feet in the air” to describe how this lens is structural; we want to see what’s holding up good outcomes like strong tax bases, high rates of democratic participation, stable median incomes, and high-performing schools.⁹ We also must understand what facilitates bad outcomes like high rates of segregation, concentrated poverty, weak schools, and closed housing markets. That means race has only material relevance; it must be correlated with certain measurable outcomes. It enters as the racial layer of a multi-dimensional map of opportunity, as does socio-economic status. Determining cause and effect is one of the hardest parts of the analysis. The work is intradisciplinary (among fields of law) and interdisciplinary (among disciplines), reflecting different narrative frameworks for similar phenomena. Thus, we examine state and local government law, land use, fair housing, banking and civil rights law, as well as the related work of other disciplines (sociology, economics, political science, urban planning, public health, etc.) to better understand the geography of opportunity scaled to neighborhoods, municipalities, or across regions. The approach has been scrubbed of most critical theory over the years in favor of more direct concepts such as equity—a process term—and inequality—an outcome.

This essay chronicles how I taught this approach in the spring of 2014 to two classes of law students at Rutgers Law School-Newark, one an introductory survey, the other an advanced class for fellows. In the first, called “Race, Class and Metropolitan Equity” (RCME), eight students from all three

8. See generally, Imani Perry, *More Beautiful and More Terrible: The Embrace and Transcendence of Racial Inequality in the United States* (2011); Gordon Allport, *The Nature of Prejudice* (1958); W.E.B. DuBois, *The Souls of Black Folk* (1903).

9. See, e.g., Heather Schwartz, *Housing Policy Is School Policy: Economically Integrative Housing Promotes Academic Success in Montgomery County, Maryland*, The Century Foundation Report (2010), <https://www.tcf.org/assets/downloads/tcf-Schwartz.pdf>.

class levels worked through an assumptions-based paradigm that I outline in the next Part. Four women and four men enrolled (fewer than usual). Ours is an improbably diverse student body and that was reflected here. There were four Whites (two males, two females), a black Latina, an African-American man, an Indian woman and a Chinese man. The core text was my new book, *The Price of Paradise: The Costs of Inequality and a Vision for a More Equitable America* and a great many supplemental readings. Among the class requirements, students were expected to write a significant research paper in which they conduct an “equity audit” of at least two disparate municipalities, comparing the structure of opportunity in each and developing a thesis as to whether equitable change could alter outcomes and if so, how.¹⁰ I will try to limit identifying references only to those qualities whose mention serves to explain an important part of the classroom dynamic and I have changed the students’ names.

The second class was called “Advanced Metropolitan Equity” and consisted of only four students, all of whom had either taken RCME or at least one of a group of pre-requisite courses. There were three men and a woman student—one Korean, two white, and one Latino. The students are deemed “fellows” of the nascent Center on Law in Metropolitan Equity (CLiME), which I founded and briefly directed. Their work is similar to the writing assigned in RCME, but fellows are expected to engage in more intensive applied or “clinical research” on a regional equity problem, to push the discourse on this emerging topic and to publish their work on CLiME’s website.

The remainder of the essay is divided into two essential parts: the theory of the work and an analysis of its applied design. I will not give away the ending except to say that the semester was a profound journey—again. The rock that we pushed together is still a rock and it’s not always round. Nothing reveals like race. Connections were uncovered, stereotypes destroyed, and faith—for most but not all—was somehow restored. My look back down the mountain begins with the basic theory of regional equity as a study of race and the use of assumptions as the portal for broader inquiry. The next Part contains an analysis in diary form of discrete issues, revealing high and low points in the slow development of a racial dialogue among sometimes skeptical strangers. A final Part concludes with what Sisyphus learned on his walk back down the mountain and whether he will ever go up again.

10. The “equity audit” is preparation for performing what the Department of Housing and Urban Development’s (HUD) recent final rule on Affirmatively Furthering Fair Housing calls an “Assessment of Fair Housing” (AFH), formerly an Analysis of Impediments (AI) to fair housing, in a region receiving HUD funding. See Fed. Reg. §5.154 (July 16, 2015), at <http://www.gpo.gov/fdsys/pkg/FR-2015-07-16/pdf/2015-17032.pdf>.

I. TEACHING RACE THROUGH REGIONAL EQUITY

A. *Regional Equity: Law as Butler and Bouncer*

The premise of this way of teaching race is that the various constructed meanings of race we discover along the way are relevant mainly to an understanding of structural inequality.¹¹ In the early 21st century, this is represented by a series of interlocking relationships at the center of which is place. Our job is essentially to identify and interrogate those relationships, and to recognize the role that law plays in sustaining them. This is what is really meant by a structural inequality—the study of institutional relationships that consistently reproduce socioeconomic disparities, or inequalities.¹² However, when we talk about structural inequalities, we suggest structure itself; whenever we suggest structure, we tend to imply intelligent design. In fact, a lot of structural inequality is deliberate, but most of it is not. That is a rub for many law students.¹³ They expect structural inequality to play by the rules of intentional racism, and they expect the law to facilitate that racism with Jim Crow-like certitude. Of course, it's messier than that, especially at the local level where so many relationships reflect mixed motives, political necessity, and historical conventions whose racial origins have long faded into business as usual. For these reasons, the study of regional equity begins with discussions about how opportunity is produced in the United States. Only then do we begin considering the six major assumptions of the “American Dream.”¹⁴

Everyone likes to talk about opportunity. From a teaching perspective, a class on the constituent elements of opportunity—however defined—is a cannot-lose festival of raised hands, personal anecdotes and political theories. This year we happened to use a New York Times series about a little girl in my old neighborhood in Brooklyn.¹⁵ Dasani and her family are homeless, worse off than the people in the projects across the way and light years away from the new gentrifiers among the brownstones just blocks away. It is a heart-

11. I leave to other classes the study of more interpersonal dynamics in racial constructions. We examine perception—including implicit and explicit bias—only briefly. See R. Richard Banks, Jennifer L. Eberhardt and Lee Ross, *Discrimination and Implicit Bias in a Racially Unequal Society*, 94 Cal. L. Rev. 1169 (2006).

12. Disparity is not necessarily the same thing as inequality in the equitable sense. Lots of differential outcomes are produced by neutral factors. Inequality reflects the kinds of disparities that result from inequitable processes—that is, from hidden flaws and persistent wrongs in our legal and political processes.

13. That is the rub for theory, too, since a lot of critical analysis, including Critical Race Theory, demonstrates how the law's structural tendencies—say, the various means of constructing property interests out of whiteness—reproduce predictable racial results as if by deliberate design.

14. I use this term with deliberate regard for its vagueness. Unpacked, I'm generally referring to the package of cultural and material entitlements that sustain, through private ownership and public participation, a life of good things and reasonable stresses.

15. Andrea Elliot, *Girl in the Shadows: Dasani's Homeless Life*, N.Y. Times, Dec. 9, 2013, <http://www.nytimes.com/projects/2013/invisible-child/#/?chapt=1>.

wrenching story of dire poverty amid growing wealth. The key institutions are pretty well identified—schools, child welfare and other public services offices, real estate markets, housing laws, criminal justice. Even though it is New York City and a more intensely urban example than I might prefer at this stage of my teaching, it will do. It is stuck in a binary of black and white (Dasani and her family are black). It lacks more shades of wealth—hardly much true middle class here. And we have to imagine a metropolis of eight million as similar to most metropolitan areas half that size. But it will do, because it starts them thinking deeply, even introspecting, and we can make modifications later.

The Dasani example also illustrates how normative impulses can work in a class like this. Part of what makes race hard is the normative underlay that creeps beneath all discussions of difference and racial supremacy. Students and a great many of us in the liberal academy assume that a calculus is being made at the end of racial analyses for which there will be blame for the racial winners and sympathy, reparations, or victimhood for the losers. I try to avoid that tendency. Opportunity introduces normative considerations because opportunity is an unalloyed good beyond debate, an efficient, fair, and morally just goal for everyone. Starting a U.S. class about race on the consensus of opportunity is like agreeing we are all human. It is also a particularly nice moment of collective introspection at a public law school like Rutgers where so many students are living the goal of upward mobility simply by being in the room. They readily tell stories of the institutions that changed them for the better and fed their capacity for greater things (and they also remember to stop and thank parents and a key person here or there along the way).

Once we have identified (and admitted to) the institutional supports that produce or hinder opportunity, including the intangibles like a lack of fear, trauma, and hunger, we proceed to mapping them and their origins. This is really the introduction of an interdisciplinary exploration. Every inquiry about opportunity production through an institutional lens asks two questions: First, *what created this set of arrangements*, and second *what role does law play in sustaining them?* We might ask the first question about housing. We could plum the different priorities of promoting private housing markets versus planning for public housing. What we find, of course, is only remotely legal. We see the creation by market actors of a homeownership “dream,” how the dream became an economic engine determining so many other social and fiscal realities, including, of course, the property tax.¹⁶ This set of arrangements would rarely be interfered with by public housing, which came later, out of a different set of beliefs, and only where it was allowed. This is the essential patchwork of our institutional lineage in U.S. communities, a dynamic of basic

16. See Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* at 130-33 (1985).

values that serves some communities more effectively in producing opportunity than others.¹⁷

When we then ask what law has got to do with it, we find two primary roles: butler and bouncer. Both indicate the role of law as a service provider to other professions, the necessary formal instantiation of public and private values. The butler role reflects the benign codifier, a formalist master of convention, brokering interests with technocratic precision. Once a town decides to have trash pick up twice a week, they need some ordinances to effectuate those rules—and so forth.

Sometimes the role of law is as bouncer, an enforcer of values through rules and the penalties for breaking them. This role is more strategic than tactical, because it lays out deliberate structures that serve to enforce certain relationships in and beyond local communities. Again, federal housing law is a good example. For all the good the National Housing Act did to build a broad American middle class, it enforced norms of exclusion and segregation from at least the New Deal on.¹⁸ Even when fair housing became a central part of our anti-discrimination laws, federal housing law reinforced socioeconomic disparities on a racial basis by *failing to enforce* significant penalties for resistance and discrimination.¹⁹ The distinction between the two roles of law— butler and bouncer—is not always clear or consistent, but it is another heuristic device to keep students thinking about the different ways law works to facilitate structural inequality, as well as its potential to do otherwise.

From a theoretical perspective, this is simply the work of what I and a lot of local government law scholars call localism.²⁰ Localism is the legal and political commitment to local control through decentralized democracy. In a state like New Jersey, local sovereignty is formally expressed through the proliferation of incorporated municipalities (565) and the doctrine of home rule. In other states, localism may be formally weaker but still recognized through political norms of deference to local decision making. The benefits of localism are myriad (community, participation, expertise).²¹ The institutions of localism are primary (schools, safety, housing, infrastructure, growth

17. We could do the same exercise by asking about public education. What if school location was based on how best to concentrate the most effective resources for the greatest range of learners? Or we could inquire about garbage pick up, public parks or police. What we find when we ask the question expansively is only remotely legal.

18. 73 P.L. 479, 48 Stat. 1246, 73 Cong. Ch. 847 (1934). Jackson, *supra*, at 203-18.

19. See, e.g., Leland B. Ware, *New Weapons for an Old Battle: The Enforcement Provisions of the 1988 Amendments to the Fair Housing Act*, 7 Admin. L.J. Am. U. 59 (1993)(discussing the numerous enforcement shortcomings of the original Fair Housing Act as well as some of the continued problems in the amended scheme).

20. Sherryl Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 Geo. L.J. 1985 (2000); Richard Briffault, *Our Localism: Part I - The Structure of Local Government Law*, 90 Colum. L. Rev., at 1 - 59 (1990).

21. See, e.g., Richard Schragger, "The Limits of Localism," 100 Mich. L. Rev. 371 (2001).

management). But localism's weaknesses are the aims of both courses (segregation, waste, sprawl, exclusion, and interlocal competition).²²

The term regional equity essentially refers to the reform of localism.²³ Localism is appealing in part because it suggests an essential equality of places, all of which possess the same race-neutral toolbox of police powers. This would be nice if the regional landscape was not such a competitive arena, but it is. In the ensuing competition, it is clear that the unequal resources among places are produced by the relative advantages that some places have and then reproduced time and again by the deft manipulation of those tools to secure market advantages. These advantages often begin with racial homogeneity and are reproduced by the manipulation of tools that legally exclude others. The resulting inequalities, then, reflect moves that are inequitable but not always illegal. Then why is it a problem for law, Professor Troutt? Because the unfairness of maximizing localist tools of exclusion concentrates opportunity in certain privileged places and denies it to others; concentrations of wealth or poverty are hard to undo. Hence the premise for reform.

A map of the race-neutral landscape consistently reveals disparities based on race. Thus, we focus on localism because it deals in the institutions where equity counts—that is, those most responsible for opportunity. Let me pause here to acknowledge a deliberate assumption of my own: My approach seeks every student regardless of background or ideology. That is not always so with teaching race. In the 1980s and 1990s, we often came to class with ideological precepts about racial justice and expected discussions of race to fill in the law. Many more of us were ready to fight and needed arms. Today is not then, I have found. Students (even Rutgers law students) come to class with various degrees of curiosity, or out of professional necessity, but almost never out of ideology based on historical experience. Most are not ready to fight. Most do not particularly want to. I take them where they are and hope to provide a foundation for the conflicts to come. Most leave expecting, even excited, to do more.

22. Laurie Reynolds, *Intergovernmental Cooperation, Metropolitan Equity, and the New Regionalism*, 78 Wash. L. Rev. 93 (2003); Clayton P. Gillette, *Regionalization and Interlocal Bargains*, 76 N.Y.U. L. Rev. 190 (2001); Gerald E. Frug, *Against Centralization*, 48 Buff. L. Rev. 31 (2000); Richard T. Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 Harv. L. Rev. 1841 (1994).

23. See Manuel Pastor, Jr., C. Benner, & M. Matsuoka, *This Could Be the Start of Something Big: How Social Movements for Regional Equity Are Reshaping Metropolitan America* 22-58 (Cornell 2009); See generally, Myron Orfield, *American Metropolitanities* (2002); David Rusk, *Cities Without Suburbs: A Census 2010 Perspective* (2013).

B. Teaching Race through Six Core Assumptions about American Opportunity

The foregoing has a certain academic tone that is appealing to a few students, but feels sterile to most, at least in the beginning of class. I do not do it. Instead, we attempt a gradual deconstruction of racial inequality through the study of all of the above wrapped in six commonly held but increasingly erroneous assumptions about place and mobility. This section briefly outlines what those assumptions are and how they work in the classroom. The next Part discusses them in the specific context of these two 2014 classes and the experience of applying them for the last time.

These six assumptions have been sufficient to reach a pretty full scope of issues. Each performs specific functions, some routinely work in tandem, and all comprise the expired blueprint for the American Dream. They are that:

1. Being middle-class means being self-sufficient;
2. Remaining middle-class means maintaining physical distance from the poor;
3. Segregation no longer exists unless it's voluntary;
4. Racism no longer limits minority chances;
5. Poverty results from weak values and poor decisions; and,
6. Racial labels no longer matter.

The first one, about *the coexistence of self-sufficiency and middle-class identity*, is an aspirational ethos. It is important to believe an article of faith about American personhood dating before rugged individualism and becoming the antithesis to the hand-out receiving sloths of the contemporary welfare state. We explore why this is important to believe and how the belief is manifest in law and development policy. It soon becomes clear, however, that much of the self-sufficiency ideal in American homeownership, housing policy, and resulting tax bases is in fact profoundly subsidized by a generous (mostly federal) government. The biggest, unacknowledged subsidy, though, is exclusion of undesirable people—for generations by race, now just as often by socioeconomic class. Students fundamentally have to understand that exclusion of undesirable people and institutions that must go someplace else deeply subsidizes the excluder's sense of opportunity. One can imagine living next door to a crack house/meth lab.

The issues soon crystallize into the economics of place, and the classroom terminology comfortably follows. *Remaining middle class requires physical distance from the poor*—the second assumption—raises the place issue squarely by valorizing stratification. Because residential sorting is what nearly every one of us does, it is intuitively uncomplicated to grasp yet awkward to discuss. Again, there is lots of material (cultural, legal, regulatory) to show how the assumption has been codified at all levels of law. These are the

clearest examples of law playing both butler and bouncer roles. Again, exclusion is made specific.

The third assumption—that *we have overcome segregation*—enters naturally here. Were I to begin with it, even showing maps and charts and introducing the undisputable math constructs of neutral social science, I suspect it would not be absorbed so easily. The world of race is so fraught with terms deemed archaic or turned upside down. Segregation is one of those words understood in historical black and white (hence the assumption). However, this is precisely why evidenced-based interrogation of the assumption works so effectively; the evidence of segregation—especially in states like New Jersey—is powerful.²⁴ My students come mainly from this state with the third highest rate of racial segregation in the country, so they have lived it. Given the relatively privileged background of most U.S. law students, the same is probably true for them.²⁵ Once rhetorical resistance to the assertion of segregation is overcome, teaching the myriad public and private policies that have sustained it then and now is not as difficult. Seeing contemporary maps of racial segregation further demonstrates the lasting institutional power of specific exclusions.

The process of segregation and re-segregation is an essential example of the relationship between legal yet inequitable processes giving rise to indisputable inequality of outcomes. Our review of federal housing policies that historically segregated black households from both Whites and from high-growth areas (e.g., urban renewal, red-lining lending criteria, siting of public housing) introduces the important concept of segregative effects. Once we're comfortable recognizing how otherwise neutral sounding policies can easily have direct segregative effects on living arrangements across a region, we are well into a more intuitive understanding of disparate impact analyses. Without this understanding we are defenseless against the anti-intellectual tendencies of modern day colorblindness. My goal in conveying a sense of disparate impacts and pervasive inequality is not so much legal, we get to that later. Rather, it is to enrich the meaning of equity. We are discerning processes not necessarily to litigate them but to subject them to tests of fundamental fairness. Inequality is not against the law.

We could not really do otherwise. A key lesson of the civil rights movement learned by those who wanted to sustain white economic and political supremacy was to eliminate rights-based arguments based on overt

24. Paul Tractenberg, Gary Orfield & Greg Flaxman, *New Jersey's Apartheid and Intensely Segregated Urban Schools* (2013), <http://ielp.rutgers.edu/docs/IELP%20final%20report%20on%20apartheid%20schools%20101013.pdf>.

25. See Debra Cassens Weiss, *Study Finds 'Lop-Sided' Concentration of Socioeconomic Elites at Law Schools*, ABA Journal (2011), http://www.abajournal.com/news/article/study_finds_lopsided_concentration_of_socioeconomic_elites_at_law_schools/.

racial consciousness. Such a move enabled institutions to reproduce lawfully what had become unlawful. This is why localism is potentially more materially devastating to the interests of lower-income people of color over the long term. The traditional grounds of attack—violation of a protected group’s rights—are unavailable to its opponents while its effects—growing racial and economic inequality—continue uninterrupted. Therefore, the first three assumptions help students frame the place-based realities of contemporary communities in a more robust and neutral value, equity, with which to re-examine the benefits and burdens of localism.²⁶

Only now are we ready to take on racism, which is not meant as the climax of the course. The fourth assumption—that *racism no longer limits minority chances*—enters at a point when most students have already privately concluded that it does. As we’ll see in the next Part, this assumption is never easy, either because white students remain concerned about a sense of blame or students of color protect against stigmatizing notions of victimhood. So we look at large structural examples of materially devastating racism—predatory lending, mass incarceration and environmental racism—before breaking them down into more individualized harms.

There is a danger in things running so smoothly, though, and this year I wanted to confront it with more force. Structural study has the disadvantage of being abstract, as if real people at ground level are not actually struggling with the violence, depression, and deficit of options that we know accompany marginalization. At the bottom, much of the materialist study of race is the recognition of mistreatment and its consequences. No matter how a course is organized, it cannot—if it is honest and seeks a deeper understanding—avoid a genuine reckoning with ugliness. I mean that the tension is always to diminish the horror of the realities we have repeatedly documented by applying an inbred colorblind veneer even as we attempt to unmask colorblindness. Students who have lived the horror close up know this; they shrink from conveying it plainly. So in this section, I begin with an outline of racial construction. I begin by suggesting that long-discarded notions of biological race are still mediated through perceptual pathways by which physical cues are read, consciously and unconsciously, into stereotypes.²⁷ I call the exercise “Why I Can’t Pass for Asian.”²⁸ This allows the distinction between

26. Nothing about this should seem subversive, but of course it is.

27. See Claude M. Steele, *Whistling Vivaldi: How Stereotypes Affect Us and What We Can Do* 63-84 (2010).

28. This provocatively named exercise tends to be fun. It begins with acknowledging remaining biological notions of race (e.g., phenotypic traits, rare genetic strains) and their scientific limitations before moving from physical stimuli—how I happen to appear to them—to social constructions of what an Asian man sounds and looks like compared to me. This takes us through a pathway from assimilating me through biological race cues to processing me through various conscious and unconscious stereotypes. It is meant to show the continued saliency of biological race notions that trigger common, often unconscious, perceptions of socially

intentional racism, institutional racism, and implicit bias. Once we get through the preliminaries, we get to light readings. I let them use the anecdotes boiling up inside them, but my follow-ups are typically pretty fierce. No one gets a break; no perspective is favored or given instant legitimacy. The conversations in each class got heated. I do not pick fights, but I do not shy from them. We are, after all, sitting in a room in Newark, New Jersey.

The fifth and my favorite assumption to discuss is also widely shared among students and the public alike—*that poverty, at least deep and persistent poverty*—results from weak values and bad decisions. Again, the next Part will reveal some of the interesting personal dynamics that emerge with this topic. The overall approach is to examine the different forms of poverty (e.g., working poor, short-term, persistent, concentrated), to listen to the social science carefully, and then to pit what amounts to a culture-of-poverty theory against some other (more useful) explanation. I have used several in 20 years. Lately, I tend to subject the questions about moral character and bad habits to public health concerns about chronic trauma, violence, nutrition, and cognitive expectations. The growing revelations about the links between poverty and biology make this easier.²⁹ Students are often relieved to look at poverty beyond the standard statistics of persons unemployed, out of the labor force, or on welfare. Discussions often end broadly, with a more comprehensive look at the collective sources of individual resource deficits.

Finally, we wade briefly through material on my least favorite assumption, *that racial labels no longer matter*. This, I am convinced, you have to broach if you are from a different generation than your students. There is so much rumor that they view race differently, that the old labels really have been replaced, that you have to give them room to make the anti-essentialist case in a material context. Frankly, the trick up my sleeve here is to make quick work of colorblindness in one form or another so that we can struggle through a rarely discussed aspect of it: racial solidarity among nonwhites. Nonwhites know of the public presumption of consistent interests, yet they live the reality of warring factions impatient with the other Other. Nobody really wants to talk much about this part of the assumption. Yet it makes no logical sense to ignore it, since the first thing a place-based analysis of racial inequality shows you is that people of color are generally poorer than the rest of the population, they live in the same or similar aging parts of the metropolitan area, and together they are losing—in part because of their own antagonisms. In other words, there is no relevant discussion of race anymore that only assumes and never transcends the black-white binary.

constructed race. The catch is that I happen to be able to assume a certain degree of racial ambiguity—black? Latino? Arab?—but never Asian.

29. See Anandi Mani, Sendhil Mullainathan, Eldar Shafir, & Jiaying Zhao, *Poverty Impedes Cognitive Function*, Vol. 341 no. 6149, *Science*, August 30, 2013, at 976-980.

The final section of each course concerns remedies and the various approaches used under the umbrella of regional or metropolitan equity. Briefly, these are strategies based on the dual notions of regional balance and resource integration. There are several strains of regional equity work, but all share the goal of facilitating more equitable distributions of people and the resources associated with stable opportunity. It nearly always entails the spatial de-concentration of inequitable burdens as they are disproportionately located in certain areas, such as environmental threats, a relative excess of affordable housing, or concentrations of poverty. Such strategies lower the constraints on struggling areas, often by curtailing localism in exchange for more regional policymaking. However, the linchpin of the work is in increasing the institutional capacity of weaker regional actors, from their tax base to their schools to their transportation access. The field is new and full of ideas abandoned decades ago but ready for fresh creativity. The students sense the possibilities; they are engaged to engage. When it works, we create a fabric that's equal parts efficiency, dispassionate analysis, and moral righteousness. As the next Part shows, it is a journey through a village of personalities, archaic customs, the latest technological tools and, ultimately, rocks—big ones—that by semester's end lay at the base of a familiar mountain.

II. TEACHING DIARY: A DRAMA IN FOUR ACTS

I taught two sections of my structural approach to inequality in the wintry spring semester of 2014, one introductory (“*Introductory*”) and the other advanced fellows (“*Advanced*”). The order of everything was constantly disrupted by the worst weather on record. Frigid temperatures and heavy snowfalls that seemed to blanket us every other day led to cancelled classes and threats to momentum. Still they came—the intrepid eight in the Introductory class and the formidable four in the Advanced. Trying to discern the arch of this fascinating final climb, I see the term in four acts: (1) the warm beginning, (2) confronting localism, (3) the intrusion of reality, and (4) blaming race.

A. *The Warm Beginning*

The nice thing about getting older is that I no longer harbor standard illusions about the political composition of my classes, even at a school like Rutgers, known for its historical commitment to social justice. The center-right movement of race rhetoric that has occurred over the last fifteen years has so reconfigured the liberal-conservative scale from what I grew up understanding that a student has to consistently prove her positions. I will not assume them. Nevertheless, I felt very fortunate to hear by his own account that I had a white male Republican in the *Introductory* class of eight students. We will call him Rob, and I had never had him in a class before. He sat near the other white male, a self-described moderate from a more blue-collar background. We will

call him John. Rob and John were major, if not dominant, voices in class. Also outspoken were two white women from very different backgrounds, one more blue collar and the other fairly affluent. We will call them Jennifer and Lisa, respectively. Harold, a Chinese student, was hesitant but strong. A woman of Indian descent was virtually silent all semester. A first-generation Dominican woman with dark skin—we will call her Yvette—rarely spoke. And finally a black man, physically large, confident and eager, spoke often, positioned opposite the white men. He asked me to challenge him, and I frequently did. His pseudonym is Alex.

I am doing many things at the start of a class like this—setting a tone of rigor and mutual respect, introducing a new language, laying a social science foundation by weaving legal and non-legal materials and teaching basics of local government and constitutional law. I am also trying to lay the groundwork for excellent writing, making frequent references to the process of topic selection, the idea of equity audits, getting them nervous about the tools they will need to learn to analyze two communities, engaging their curiosity. It is a warm beginning. Within a few classes we have a nice rapport. I am enjoying the small size more than I thought I would. By the third week, it is still impossible to tell one's politics from another. This, I believe, is a good thing, because often the disclosure is a tipping point after which students of different beliefs tune each other out.

The high point of the early semester was a discussion we had in mid-January about a question of terms: which do you prefer, “mutuality” or “interdependency”? In my writing, which is assigned, I use mutuality to describe a condition of interlocking causation, and progressive mutuality to describe the normative goal of making the interrelationship mutually beneficial. Interdependency might be just as useful a word. On this day we began with their responses to what turned out to be a theoretical question. One spoke of de Tocqueville. We hashed out notions of self-interest. We talked about experiences of groups in relative isolation, like recent immigrants living in enclaves. Eventually, we got to the point of translation, that the choice of preferred term depended on a) whom one was talking about as the unit of comparison—individual/other or place/larger place; and, whether the meaning implied a b) moral/fairness frame or an efficiency frame. The latter at first felt easier for people to engage, they said; efficiency is about cold numbers, not heated opinions. It indicates that we have undeniable causal connections to each other that might be measured and made less costly. I suggested that some people may need to enter through efficiency while that would be off-putting to others. For other people, “mutuality” connotes a moral entrance, which puts the social justice aspect front and center. We concluded that both are possible because the whole story probably entails some of each. It is just how you bring different people to it.

Then we went on to the PowerPoint so that I could show them how these names and categories can be used in a dual narrative of justice and efficiency. For a variety of townships across New Jersey counties, I showed data on tax base per capita, median income, school rankings and achievement scores, segregation rates, racial composition and others, often with trends over time. It was not really planned.

Afterwards, John approached me to say how important this kind of class is, especially for future NJ lawyers. He was glad to see counties he knew up on the PowerPoint maps. He likes how rooted the discussion is; this is what he needs to know. “It’s promised,” he says, “but not really here at the law school and when it is, it’s too polemical.”

How about that? As the days go on, I get a few more of these comments in passing. Jennifer, a first year, feels like she’s contributing. Rob, who is graduating, openly struggles with facts that contradict his more conservative leanings—but not his experience. Alex is trying to use the language of localism to understand achievement divides he grew up with. Everyone is finding an entry point.

The *Advanced* Class of four students does not figure as much into the early going. It is a warm beginning because I know most of them from previous classes, and they are proud to be fellows of the new Center. The four students are Richard, an intellectual of indeterminate race; Elliot, a very strong Asian student who has studied with me in class and on independent research; Belinda, white, a former student who has shown a mixture of great passion and unexplained lapses; and Jesus, a Latino community organizer, whose work I know but who has never taken a class with me. They are cordial, professional, and motivated. I am freer to pick fights with them as time goes by.

B. Progressive Mutuality (Confronting Localism)

I firmly believe that what has occasioned the warm beginning in the *Introductory* class is the embrace of place, rather than race, as the central organizing construct. Race is a mutable category subjectively understood—a moving target—while place is figuratively rooted in facts on the ground, which are less contestable. Yet place is merely a safe landing area after which one has to assemble the factual data into some normative analysis and map the institutional relationships. That is really what the concept of progressive mutuality does, and students in both classes seize it like a rope.

The term “mutuality” quickly appears in their response papers. They try it out in their class comments. The first analytic move most of them make is to absorb the sociology of place-based disparities. John colorfully describes his friends’ academic expectations growing up, the different resources white students took advantage of in his mixed, blue-collar school. Jennifer has similar stories to tell, though she is herself closer to financial instability. Rob’s

family seems more affluent, but he is taking a closer look at the institutions that mattered to his upbringing. All are closely reading Annette Lareau's account of middle-class parenting;³⁰ these white students especially are fascinated by Thomas Shapiro's data and interviews about how families transmit wealth across generations.³¹

The second analytic move students make within this new framework is to pull up to the county or extra-regional level and see how one town's high school rankings and low rates of affordable housing are helping to concentrate poverty in nearby towns. They actually know the towns and schools. This may be why they argued the difference between "interdependency" and "mutuality." Not only are they zeroing in on the relationships that matter (places as proxies for racially-identifiable opportunities), they are deciding which language best encompasses the meaning of those relationships ("interdependency," now a utilitarian notion, versus "mutuality," a more communitarian idea).

The third move they make is to valorize the numbers. Lawyers are not a quantitative bunch. Harold knows a thing or two about regression analyses, but none of us (including me) is terribly comfortable in a world of correlations. Ultimately, an equity analysis rests on arguments about proportionality; mutuality requires causal consequence. These are prerequisites to the logic of law. The students see this. They want to quantify the relationships. They want to count the costs of inequality. They are starting to believe that what is persuasive to them will be convincing to others. They do a census training. They read Myron Orfield with a mixture of dread and curiosity for the maps and tabulations.³² It's not really math. It is probably landscapes, troubling portraits of a larger whole than most had examined before.

I suspect that this is not how localism is taught in most local government law classes. Here it must defend itself against a confrontation that occurs first on the facts. The *Introductory* class students are seeing it in the juxtaposition of rights to self-government, via *Village of Belle Terre*,³³ and the overwhelming empirical evidence of fiscal inequality among New Jersey towns. The latter is amply demonstrated by writers such as David Rusk whose article called "Measuring Regional Equity" is assigned now, but who also presents the paper at the center's first scholarship conference that February.³⁴ Rather than learn localism as a standing virtue to be deconstructed later for flaws, as I studied it,

30. Annette Lareau, *Unequal Childhoods: Class, Race, and Family Life* 14-32 (University of California 2003).

31. Thomas Shapiro, *The Hidden Cost of Being African American: How Wealth Perpetuates Inequality* 87-104 (Oxford 2004).

32. See generally, Myron Orfield, *American Metropolitics*.

33. 416 U.S. 1 (1974).

34. David Rusk, "Measuring Regional Equity," <http://www.clime.newark.rutgers.edu/publications/article/measuring-regional-equity-0>. Many others underscore the analysis for other areas of the country, e.g., Orfield, *American Metropolitics*.

we challenge its assumptions right out of the gate. Given the sedimentation of place-based inequality, we ask, how do rules of local sovereignty—tools ostensibly designed to be in the equal possession of any municipality—contribute to the factual picture of growing disparities?

C. *The Intrusion of Reality*

The students in the *Advanced* class are well past this and on their way to formulating paper theses around stronger theoretical bases and concrete examples in the field. They are pretty fluent in the assumptions approach and the idea of progressive mutuality. However, they have their own issues. An astute student of politics, Jesus wants to study a particular housing crisis in the city of Newark; it involves gentrification, displacement, and the vagaries of re-development. The racial elements are between poor Blacks and working-class Portuguese. Of all the many legal contradictions, however, Jesus wants to take up a theory of social movements.

Richard, a hard-charging young scholar, wants to attack the theory of localism on efficiency grounds by documenting the widening achievement gap between low-income black school districts that receive enormous amounts of school aid from the state and upper-middle class white school districts nearby that receive less. I happen to know he can do anything he wants to do without falling off, even inter-district choice modeling. The interesting rub with Richard is his utter aversion to race. He has looked at the numbers and every time concludes that he is better off arguing socioeconomic class, not race.

Belinda, I know, comes from hard personal circumstances, plus time in the trenches of public housing. She still carries some of the shyness of a first-year while her wings are growing. This class is a rematch for her, after not doing as well in the introductory class last year. Belinda will take on fair housing—nationally and in the state—to interrogate best practices. It is a timely look and almost entirely legal. I just do not want her to be overwhelmed by the scope of the topic; and, I have got to get her to feel more comfortable talking among four outspoken men.

Elliot has the quiet confidence of an A student who has worked with me before and wants to keep working hard. His project involves separation, mostly people from their homes but also through eviction rules, and the associated costs to collective efficacy, neighborhood real estate markets, and cities' fiscal positions. It is a monster at risk of being too much to comprehend adequately, the lessons lost in methodological shortcomings, or too little time. Elliot is simply cool, which of course worries me.

The four have several things in common. First, their self-chosen projects are unreasonably ambitious for three credits, but consistent with what each of them really wants to know. Second, I think the case can be made that all of their topics are aspects of what will possibly become a broader idea of fair

housing law. And three, I like them each as a person. Class with them is enjoyable.

Reality is always intruding into such grounded projects, but we choose a different intrusion: the institutional politics of knowledge about structural inequality. It was spontaneous. I decided to introduce a recent text by a rising sociologist named Patrick Sharkey.³⁵ His *Stuck in Place*, is one of those studies that uses exhaustive amounts of data on families and neighborhoods. Its thesis is right in line with our work and mostly familiar to us: That mobility out of the poorest neighborhoods is extremely rare and that middle-class people tend to remain in the same kinds of middle-class neighborhoods, too.³⁶ In other words, that children “inherit place” from their parents. We read each chapter critically together. We study the wrinkles for new insights, acknowledging the scholars upon whom Sharkey’s works build (many of which are his mentors).³⁷ We had a lot of unanswered questions. For the first time in my teaching career, we discussed the underlying politics of knowledge production. The students were surprisingly non-deferential in their observations. They asked unusual questions about the world *behind* the work. Why were this man’s findings considered so earth-shattering that we read about them all over the place? How had he become an academic star so fast? Why do the social scientists we read always seem to be correct within the limited scope of the questions they pursue? It was academic anarchy. We went so far as to read a recent opinion essay in the New York Times about income inequality. All the noted authors cited were white men. The writer followed the custom of introducing them by their Ivy League institution. Why, they wanted to know? Why is that the convention?

In the end, I think we as a class at Rutgers in Newark felt relieved. I know I was. The legal academy, like academia generally, has always taught its aspirants a certain exceptionalism that the rest of the world calls elitism. We all do it. Junior scholars learn to call their work “the first of its kind” or “the only” when both are not true; like the New York Times, they often cite with brand-name selectivity. My *Advanced* students mostly want the same things as their aspiring peers at higher-ranked schools, but they demonstrated on that day a surprising rejection of the familiar academic mindset. They were not being cocky or disdainful of accomplishment, but they were being openly skeptical of pedigree. It was as if they realized that all they have to do about inequality is try to solve it, using whatever and whoever they can learn from.

35. See generally, Patrick Sharkey, *Stuck in Place: Urban Neighborhoods and the End of Progress toward Racial Equality* (U. Chicago Press 2013).

36. See also Raj Chetty and Nathaniel Hendren, “The Impacts of Neighborhoods on Intergenerational Mobility: Childhood Exposure Effects and County-Level Estimates,” (2015) at http://www.equality-of-opportunity.org/images/nbhds_paper.pdf.

37. E.g., Sampson, Robert J., “The Neighborhood Context of Well Being.” *Perspectives in Biology and Medicine* 46: S53-S73 (2003).

Meanwhile, in the *Introductory* class, we have made it through the first three assumptions. The first two established localism and mutuality as important concepts that determine racial relationships. The third, segregation, penetrates deeply among the students. They are uniformly surprised by the extent of residential segregation by race, and intrigued by the many other ways to see it structuring opportunity in their lives—in education, within schools, labor markets, stress. It will be a cumulative theme, an exclusivity of experience through which they will talk about criminal justice disparities, environmental justice, and predatory lending in the next assumption on continuing racism. One might be expected to make that assumption the climax, but for me the one that follows on poverty is the climax. My goal is to have a room full of lawyers who can capably explain the lasting structures of apartheid in our colorblind lives and, without invective or anecdote, break down how racial inequality continues with the blessing of law. The tension, however, is building.

D. *Blaming Race*

What is racism but the systematic devaluation of people because of their racial identity? If the expectations of black school children are consistently lowered by their teachers and administrators, if the police officer who frisks a black suspect is quick to violence and disrespectful words, if a black lawyer is rarely asked to lead and takes longer to break into management than non-black peers, if ever,—the dynamic in each revolves around an essential devaluation of that person's abilities, does it not? Whether the lesser outcome results from direct animus toward the person or the entrenched assumptions supporting old racial hierarchies, the fact does not change. And even if the classes do not address race and racism in the more conventional way, the evidence of racial devaluation presented in the work is overwhelming. This is why at some point in the semester, racism has to be reckoned with directly; a fact which implicates two sides of the same coin, the whiff of blame and the importance of white innocence.

Some days the boulder is more than structural or theoretical, but represents the real weight of our own lived experiences. It is the personal experiences we have as people of color navigating racial barriers and insensitivities, or it is internalizing the acute difficulties faced by loved ones. We had a glimpse of this power in the *Introductory* class one day when Alex, my lone black male student, recounted the riveting story of being stopped by a cop in front of the law school, the tense exchange that took place and Alex's threat to sue him out of a job. It was amazing material from one of our own, but its favorable outcome and restoration of a black male law student's growing sense of empowerment does not represent the more disempowering experiences of discrimination. By late in the semester, I myself had been feeling it. I was also re-evaluating the materials, challenging the standard proofs of structural

inequality through disparate impacts. In our fruitful discussions about racism, had we ever seriously confronted overt racism as a cause of continuing inequality? Not really. Avoiding anecdote or avoiding the inevitable confrontation with student investment in ideas of colorblind racism, I had not—even in the face of pretty devastating evidence to the contrary.³⁸ It seemed time to call the systematic de-valuation of black people racism and see what my students would do with the assertion.

So, one day in the *Advanced* class I happened to wonder aloud if the empirical case could be made that what we see in this class are the workings of a fundamentally racist society. Could we really prove otherwise?³⁹

This was not my intention. I came to class with a very different question. It was going to be something like the following: ‘There is a nexus between structural racism and unconscious racism that can’t be ignored. We come at it from costs. We are trying to figure out what the *costs* of inequality are and whether they matter. Not to everybody, but to enough people that revealing those costs will facilitate reforms. Of course the evidence will demonstrate all sorts of racial outcomes. Racist outcomes. So, we *have* to talk about race. And when we do, we are trying to find out if *this* generation of Americans remains committed to recreating racist results. I do not think they are. Do you?’⁴⁰ Instead, I asked them to disprove a radical premise: that not just unconscious and institutional racism is to blame but lots of *conscious* racism, too. The chronic de-valuation of certain people by limiting their spatial options is systematic *because* it is both deliberate and unconscious, right?

It was not particularly convincing. The first to take it up, not surprisingly, was Richard, who has championed the class-not-race thesis all semester. He was adamant that the idea was wrong enough to be silly. He immediately reframed the question and belittled the very idea of continuing conscious racism; it was irrational, he asserted, and only a eugenicist klansman would be stupid enough to embrace it nowadays. I challenged him repeatedly. Then what is it? Why would we assume such a convergence of race-neutral coincidences producing consistent results that effectuate the same racist objectives in so many different places? Richard was steadfast: It’s rational decision-making by new parents making choices for their children with blinders on; they only want what is best for their kids. How do you know? I ask. Why is it so important to assume that those same parents do not harbor conscious

38. Remember, these facts came four to five months before the shooting death of Michael Brown by a white cop in Ferguson, MO and the chokehold death of Eric Garner, a black man, by white police officers in Staten Island. It came more than a year before the massacre of nine black Christians in Charleston, South Carolina’s Emmanuel African Methodist Episcopal Church by a white supremacist and the widespread decisions by Southern legislatures to take down the Confederate flag.

39. It didn’t help that the students were filling out course evaluations that day.

40. This is probably a classic example of a question that took me years to grow into and represents the full ripening into standard liberal law talk.

aversions to black schoolmates for their children? It devolves from there. Richard gives no quarter. (In an earlier class, I had also learned that Richard happens to be white.) He has assertions; he holds beliefs. He calls my questions “rhetorical.”

I suggest we have stumbled onto the fear of racial blame, reacting quickly to preserve white innocence against the prospective responsibility—born of activated animus—for race-based disadvantage. Maybe one of you wants to write a paper, tracing this theme in legal doctrine, I suggest. No one bites.⁴¹

Jesus tries to help with stirring stories of the Newark schools. It’s a horrifying account of how he was ridiculed as a Latino kid by white students of Portuguese and Italian descent. He watched the mistreatment of smart black kids by black teachers. He internalized the messages, wanting to become white, marry a white girl and move to the suburbs. He was smart, and tracked and tasted the benefits of not being seen as incapable or unworthy. In anger and over time, he converted.

Elliot, the Asian man, is a little surprised at my initial question. He recalls what he considers the incredibly racialized thinking of fellow Koreans. It is not just distinctions. It’s hierarchies, including the kinds of white friends Korean parents encouraged him to make.

By the time we get to Elliot, I know two things. One is that we are almost out of time. Two is that I am really going to miss this and should stop on the hillside and appreciate the boulder’s weight. I do not really need to wait until Camus’ moment of turning to see it roll back down to know the satisfaction of the labor. We have solved nothing, yet we are charged up as if we had. A third observation nags: Belinda, the lone female student in the room, does not speak.

The next day I was hesitant to repeat the challenge. The *Introductory* class was on the brink of understanding the whole regional equity framework. I did not want to risk unraveling it all. With Richard, I watched the rock roll back down the hill. With these students, there remains a collective hopefulness to the end, as if we are approaching a mountaintop where the rock will somehow rest triumphant.

But one student pushed me to it. She began with a pessimism about approaches she considered “triage”, leaving the poorest behind. So, we talked about incremental change and whether certain policies might produce acceptable horizons even for the most marginalized. We balanced a lot of interests. Then Jennifer, the working-class white woman, mentioned race head on. We had five minutes left.

So, once again, I asked the big question about the presence of conscious racism. Only minutes remained. In came Rob, the white male Republican. It was one of the most poignant moments in my teaching career, so I will try to

41. Fortunately, my colleague Elise C. Boddie recently did. See Elise C. Boddie, “The Sins of Innocence in Standing Doctrine,” 68 *Vand. L. Rev.* 297 (2015).

recall his words roughly verbatim. First he admitted being a “small government guy.” Some of the race stuff immediately rubbed him the wrong way, “but the other side of me couldn’t deny it. There’s just so much evidence.” He concluded that “some of the municipalities really need a kick in the pants.” He proposed that they be penalized for recalcitrance and rewarded for change. In a twist of white innocence and interest convergence, Rob acknowledged how inequality, like expanding heroin use in the suburbs, seems to be getting more attention now that it’s affecting Whites.⁴²

Of course, that was my happy ending, my brief but satisfied gaze across the landscape, the promise of a bountiful horizon, only to hear the great rock inch backward, pick up weight and speed and roll downward again until I could no longer hear it.

CONCLUSION

I am not without misgivings about my approach to teaching race. We do not get to the painful experience of racial discrimination in its many modern forms. Taking a structuralist approach with the requirement of material consequences leaves a lot out of the complexity of race pedagogy. This, in my experience, is a common problem for law professors. The teaching of race does not occupy high ground in the legal academy; like writing about race, it is often considered a remote sub-specialty at best, not terribly rigorous or, at worst, no longer valuable. Beyond the limitations of our peers’ understandings, there are our own limitations. We are not psychologists or social workers. Our personal experiences do not always prepare us to tackle the full range of often-nuanced racial dynamics. We read each others’ scholarly limitations more than we read beyond the field and thus cannot help reinforcing those limitations. I accept that. But still I wish there were a way within the conservative, utilitarian strictures of a modern law school to convey, internalize, and analyze the lingering pain and mental exhaustion that comes from being the latest victim of well-worn assaults on one’s racial identity. Why? Because that is probably for most of us the reason we *first* stepped to the boulder and began the upward push. And it is probably why we keep pushing.

Normally, my conclusions are summaries of everything I’ve said before, but this conclusion is actually an epiphany. I realized that for the better part of 20 years, I had adhered to some but not all of the conventions around teaching race in law school. The amount of law that has developed around race is formidable and probably more than any of us can teach in a single semester. Which is partly why we hew to the conventions. We also hew because we do not want it lost. These are frameworks that really came of blood and hoses and enormous suffering and songs no one sings anymore, but whose lyrics people

42. Such racial counterfactuals seem particularly hard to do for many Whites. That he initiated one said a lot.

still remember. But, they are very much us still, and still it is the American story at the heart of why so many people study conflict and why they hope to remove it by becoming lawyers. These are among the good reasons to keep trying, with some editing here and there, to tilt at the windmill known as race in law school.

What has emerged with race over time and in the revisions, is something fairly different, and that what we mean when we say teaching race in law school is teaching race in America. We are teaching a system of identification of place and person, of status and being, a codification of relationships, a hierarchy of those relationships, and an odd arrangement by which we are all meant to survive. It is not a story that can be told or studied exclusively through the lens of the law. It is a multilayered, multidisciplinary study that must necessarily involve our literature and art, our history, our sociology, our economics, our means of accounting our social math, our food, our infrastructure, our trains and automobiles, our workplaces, our families, our loves and, of course, our hatreds. It is the story of what it means to be in a fluid and difficult promised land and survive. It is one of the most important ways that we can fight individually and come to know ourselves collectively.

So I will continue to teach this boulder and be taught by it. I may or may not leave race in the title, if only to signify or to wink at the complexity hidden in this small, four-letter word. But make no mistake, what this Sisyphean task has revealed to me is that we who step to the rock are trying to take on the whole thing for all of us in all of our names, whatever we call ourselves.