LOOKING IN THE HONEST MIRROR OF PRIVILEGE: "POLITE WHITE" REFLECTIONS

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When I look in the honest mirror of white feminist legal scholarship I see reflected back at me a failure by those of us "polite white" feminists to seriously address the substantive critiques authored by women of color in the last twenty years. It is time to develop an agenda that does more than cite to the work of these important critiques. It is time to follow their lead and work to transform our own thinking to confront personal privilege that may shape our approaches to scholarship. At the final panel of the Conference, "Why a Feminist Law Journal?", which is the subject of this symposium, one of the professors present made a statement that went unaddressed. The bold, honest observation made by Professor Taunya Lovell Banks continues to concern me, particularly because no one really responded. She referred to the many Black, Latina, and Asian women who have pointed out that white legal feminist scholars have not broadened the inquiry to challenge the essentialist assumptions inherent in their focus. Professor Banks added that "nothing I have heard here today makes me feel any differently about this failure."

I prepared myself for the intense discussion that would follow. As someone who works to uncover my own white privilege I waited a moment to listen to how others would respond to her very frank comment. I appreciated her honesty and wanted to engage in examining our own actions to figure out what should be done to further the dialogue about this problem. I wanted to figure out how to make those concerns a part of my responsibility as a critical race feminist. I am learning to take my part in admitting the limits of my own evolving perspective as a critical white feminist legal scholar.[1]

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[1] Professor Taunya Lovell Banks has written about the importance of engaging in a meaningful dialogue about race which requires white participants to see their own color and privilege. She does not see it happening. *See, e.g.*, Taunya Lovell Banks, Race Talk: Review Essay: Seeing A Color-Blind Future: The Paradox of Race Patricia J. Williams, 24 T. Marshall L. Rev. 235, 248 (1998) (book review). Patricia Williams's book, The Alchemy of Race and Rights, and the article that preceded it, were important, eye-opening resources for

Any articulation of exclusion or omission ought to be seriously addressed in an environment where all participants help to shape the nature of the dialogue. As most of the feminist scholars present appeared to identify a commitment to support critical race scholarship, I expected that we would engage in a fruitful self-examination of her point, or at least act as if we heard what she said. Instead, silence loomed large in the room for a telling moment and then the moderator called on the next person to ask a question of the panel. We moved on, congratulating ourselves for a good conference, and busied ourselves with receptions and goodbyes that did not address her concerns.

Professor Banks identified the fact that the Emperor was not wearing any clothes and we chose to ignore this critical observation.[2] In this age when opponents of affirmative action are raising the mantle of color-blind equality, where the assumptions of white privilege remain hidden under that mantle, how can we even consider ourselves "polite" if we refuse to help uncover the hidden assumptions we perpetuate that blind us to the voices of women of color or that blind us to our own role as "polite whites"? Our willful blindness helps shield what may be under the Emperor's make-believe mantle. We do specialize, as feminists all, in trying to name hidden assumptions, do we not? If we cannot address this failure to accept responsibility for engaging in the dialogue on these tough issues that keep us separated or isolated or silenced, then we are not doing much of value. One starts with one's own house to examine whether the foundations are solid.

The critique based on essentialism is a familiar one. It is wonderfully diverse and challenging.[3] The observation articulated by

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me when I first encountered her writing. I knew at the time that her words punched me toward the truth about the work that had to be done. She made me doubt my blind allegiance to liberal left assumptions about equality, rights, and race. She continues to provide me with hope and inspiration to do my part for this dialogue.

Her words echoed the new world I was encountering as a privileged white who had just become the mother of a Black infant. I had many lessons to learn and I spent many a sleepless night for the next sixteen years learning that the world was a far different home than the one I had occupied before parenting my Black son. I absorbed the lessons I learned from her writing and the writing of many of the women of color who raised issues that spoke to my heart and to my responsibilities as a white feminist of legal scholarship. (These influential writers included Twila Perry, Mari Matsuda, Cheryl Harris, Kimberlé Crenshaw, Maggie Chon, Margaret Montoya, Elizabeth Inglesias, Regina Austin, Paula Johnson, Paulette Caldwell, Taunya Lovell Banks, Emma Coleman Jordan, Tanya Kateri Hernandez, among a long list of others.)

[2] Patricia J. Williams, The Emperor's New Clothes, *in* Race Talk: Seeing a Color-Blind Future: The Paradox of Race 3, 3 (1998).

[3] *See, e.g.*, Patricia Cain, Lesbian Perspective, Lesbian Experience, and the Risk of Essentialism, 2 Va. J. Soc. Pol'y & L. 43 (1994); Angela Harris, Race and Essentialism in Feminist Theory, 42 Stan. L. Rev. 581 (1990); Celina Romany, Ain't I a Feminist, 4 Yale J.L. & Feminism 23 (1991); *see also* bell hooks, Ain't I a Woman (1981); bell hooks,

Professor Banks was not new. She made the room of feminists acknowledge, if only by our silence, as we joined together as feminist law students, law professors, attorneys, and staff, that we had not truly engaged in the real dialogue and we continued to make assumptions that reflected that same old essentialist box. Professor Banks made her comments in the place that should be the most receptive to inclusiveness and openness. Her position as a valuable member of this community meant that we needed to actively hear her concern and engage in the kind of dialogue that took her comment to heart. The conference focused on the future of feminist law journals and yet we continued to ignore a major stumbling block to real dialogue.

How could this be right when some of the panels were devoted to topics, for example, as "Moving the Margins: Assimilation, and Enduring Marginality," "Unity and Communities: Intersectionality, Privilege, and Membership," "Autonomy and Integration: Choosing Which Master to Serve," and "Gender, Sexuality, and Power"? Each of these panels had been arranged with careful consideration to adding many different kinds of voices on panels that seemed to deal with these issues. Women of other colors did address and analyze the essentialist problem. I think, however, that Professor Banks's comment was meant for the "polite white" feminist crowd. That critique seems right to me. The problem is not that women of other colors than white are failing to address issues of white privilege or white color-blindness.

The silence suggested a difficulty for "polite white" feminists to either understand or give value to her view. We responded with silence and moved on. Perhaps this happened because the hour was late, the comment was not a particularly new one, and the statement came close to the end of a demanding day-long conference.

In an earlier panel, Professor Twila Perry called for meaningful dialogue in order to get beyond these difficulties. I think we have not had the kind of dialogue she is referring to because of the failure of those of us I call "polite white" legal feminists to be willing to do the honest self examination that would be required to truly enter the dialogue.

"Polite white" legal feminists still have difficulty entertaining the idea that we might be wrong, or oblivious to our own privileges, and, since it would cause such a fuss, we refuse to engage, or take seriously, the indications that all is not well in the camp of feminist legal theory. Silence is the unconscious, or willfully blind, weapon of "polite white" approaches to the issues raised by women of other colors. As "polite whites," we tend to focus on the issues we feel we can manage and we either do not recognize or do not name those that we cannot handle. Civility seems to demand that we refuse to admit that the Emperor is not wearing any clothes.

Feminist Theory: from margin to center (1984); bell hooks, Talking Back: thinking feminist, thinking black (1989); bell hooks, Yearning: race, gender and cultural politics (1990).

There are so many other battles to face as a feminist legal scholar that it seems all we can do to fight within our own deliberately shaped boundaries to the dialogue.

It is often difficult to admit to our failures with regard to other feminists; as "polite whites," we engage in perpetuating the myth that all feminists share at least a core set of agreements about the underlying assumptions of the feminist critique. Any discussion of differences based on race are difficult and, too often, laced with defensive postures that act as a barrier to real learning. We avoid the hard discussions because we are human and we want to be civil and we can only maintain a facade of civility if we choose not to engage. That is a privilege we need to abandon.

I wanted to take Professor Banks's comment to heart. Upon my return to my own law school I started rereading articles by scholars, including Professor Banks, who have continually raised this essentialist critique in both feminist and mainstream journals. My search focused on the following question: is there evidence in the feminist legal theory literature that "polite white" feminists are engaging in the dialogue about issues raised by feminists of other color? After a review of the scholarship it is my opinion that the following ideas have not been adequately addressed by those of us who need to look into the mirror and figure out how our own privileges, assumptions, and lack of engagement contributes to closing the dialogue upon which the growth of feminist legal scholarship depends.[4]

Feminist law journals, in addition to other forms of published scholarly work, need to dedicate in-depth attention to the lack of response from "polite white" feminists to the substantial insights provided by women of other colors. "Polite white" legal feminists need to discard the mantle of "politeness" and report on the reflection we see in this important mirror we have ignored. Leadership has been provided by women of other colors that could help us as "polite whites" inspect our own color and what it brings to us that is hidden. Before we can progress and shed the not-so-polite silence, we need to spend a good amount of space to the following problems, among others that should be identified.

1. "Polite whites" operate from a position of safety with respect to race and this contributes to the amount of ignorance and willful blindness of our relative positions of power. What is the full extent of our position of safety? How is it protected by us and by the law? How do we personally benefit from that position of safety? Our decisions about what has to be important are often shaped by the assumptions of neutrality we make about that position of safety we occupy; before we can dialogue with others in a

[4] Due to the space limitations of this symposium format I can only suggest these items that need further discussion. I am sure that there are many other points that should be added and each deserves a thorough analysis. I plan to take my own advice and devote future work to this topic.

meaningful way we have to come to terms with our own privilege of safety *vis-à-vis* women of other colors or cultures.[5]

2. "Polite whites" are good at rationalizing away the differences and experiences brought up by women of other colors when the differences or experiences do not resonate with our own experience based on unexamined and privileged assumptions.[6]

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[5] I am reminded of the scholarship on transracial adoption and the voices of scholars like Professor Twila Perry and other scholars of color who published numerous articles identifying their serious concerns about removing race as a consideration in transracial adoptions. *See, e.g.*, Gilbert A. Holmes, The Extended Family System in the Black Community: A Child-Centered Model for Adoption Policy, 68 Temp. L. Rev. 1649 (1995); Ruth-Arlene W. Howe, Redefining The Transracial Adoption Controversy, 2 Duke J. Gender L. & Pol'y 131 (1995); Twila L. Perry, Race and Child Placement: The Best Interests of the Child and the Costs of Discretion, 29 J. Fam. L. 51 (1990-91); Twila L. Perry, The Transracial Adoption Controversy: An Analysis of Discourse and Subordination, 21 N.Y.U. Rev. L. & Soc. Change 33 (1993) ("I do not unequivocally oppose transracial adoption, but I strongly support the placement of Black children with Black adoptive parents whenever feasible." *Id.* at 39.) [hereinafter Transracial Adoption Controversy]; Dorothy E. Roberts, The Genetic Tie, 62 U. Chi. L. Rev. 209, 267 (1995) ("Transracial adoptions permit white families to embrace Black children without eliminating the structures that preserve white supremacy."). The National Association of Black Social Workers ("NABSW") had denounced transracial adoptions as "cultural genocide." NABSW, Position Paper (Apr. 1972), *reprinted in* R. Simon & H. Altstein, Transracial Adoption 50 (1977). A number of white scholars dismissed the position of the NABSW as "militant" or insensitive to the needs of children languishing in foster care without learning from or taking seriously the substantive concerns of scholars of color who raised these issues. *See, e.g.*, Margaret Howard, Transracial Adoption: Analysis of The Best Interests Standard, 59 Notre Dame L. Rev. 503, 517 (1984) ("In 1972 the National Association of Black Social Workers ('NABSW') condemned transracial adoption in terms so militant that transracial adoption fell by 39 percent in a single year."); Elizabeth Bartholet, Where Do Black Children Belong? The Politics of Race Matching in Adoption, 139 U. Pa. L. Rev. 1163 (1991). Professor Perry and others attempted to engage in a dialogue that focused on the complexity of the issue of cultural genocide and why so many Black scholars applied this terminology to the problem of transracial adoptions. She indicated that "it is important to understand why Blacks have seized upon this language. Genocide is a powerful word, and its continued use is both strategic and symbolic. It represents Blacks' attempt to seize the terminology of the debate about race by naming their own experience." Transracial Adoption Controversy, *supra* at 74. It is this experience that is either ignored or misunderstood or undervalued that is the heart of the failure of "polite whites" to engage in a meaningful dialogue with scholars of other colors. But see Sharon Rush, Loving Across the Color Line, A White Adoptive Mother Learns About Race (2000) and my book, Polite White Mom, currently under submission for publication (draft on file with the author), for the experiences of white mothers identifying their own failures to come to terms with the privileged "polite white" perspective in these debates. We have learned the hard way that the concerns raised by women of color need to be addressed and that race should be a factor in the consideration of placements based on the child's real needs as a child of color.

[6] Peggy McIntosh identified a list of forty-six privileges that she, as a white woman, discovered as previously unconscious privileges operating in her life. Peggy McIntosh, Power, Privilege and Law, A Civil Rights Reader 22, 25-27 (Wellesley College Center for Research on Women, Working Paper No. 189, 1988). While this was a wonderful

3. "Polite whites" participate in denying and dismissing the truth of the experience of others based on our own lack of acceptance of a responsibility for familiarity with these experientially-based truths.[7]

4. "Polite whites" often characterize the claims or harms perceived by women of other colors as "hypersensitive" based on our own reaction or ignorance of the harm identified.[8] "Polite whites" sometimes prioritize our own sense of harm over the harms of other women or we equate an isolated harm to a systemic harm without giving hard consideration to the relative sense of power we have retained as white feminists.[9]

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step forward in response to an essentialist critique, and has been cited by many others, very little work has been done by scholars in applying the consequences of these privileges as they operate in the law or as they operate in our failure to dialogue with women of other colors. *See* Ruth Frankenberg, Whiteness and Americanness: Examining Constructions of Race, Culture, and Nation in White Women's Life Narratives, *in* Race 62 (Steven Gregory & Roger Sanjek eds., 1994); Stephanie M. Wildman et al., Privilege Revealed: How Invisible Preference Undermines America (1996).

[7] *See, e.g.*, Daniel A. Farber & Suzanna Sherry, Beyond All Reason: The Radical Assault on Truth in American Law (1997).

[8] Margaret Chon, On the Need for Asian American Narratives in Law: Ethnic Specimens, Native Informants, Storytelling and Silences, 3 Asian Pac. Am. L.J. 4 (1995); Mari Matsuda, When the First Quail Calls: Multiple Consciousness as Jurisprudential Method, 11 Women's Rts. L. Rep. 7 (1989); Margaret E. Montoya, Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy and Discourse, 5 Mich. J. Race & L. 847 (Summer 2000). These scholars are among the many legal scholars who have provided insights on the silence in the law and in feminist theory about women of other colors and backgrounds. These authors and others have produced wonderful, insightful work providing all of us with a way of understanding the perspective of multiple perspectives and yet I do not see them engaged by "polite whites" in ways that transform the thinking of "polite white" feminists. The perspectives are added as footnotes when the "Asian afterthought" or the "Latina afterthought" is added to the broader screen. A real dialogue would require us to engage and be willing to be transformed by the new insights offered by these scholars. We tend to cite and move on, acclaiming their contributions without addressing the challenges they raise for all of us.

[9] Some of this conference alluded to the consequences of the battles we have already fought. My panel devoted a good deal of the time allotted to discussions of the consequences for feminist legal scholars during the tenure process as a result of publishing in feminist legal publications. My presentation recounted my experience when a noted historian submitted the obligatory "outside review" and blasted my piece, published in the Yale Journal of Law and Feminism as "silly feminist nonsense." Professor Elvia Arriola recounted her experiences and her eventual move away from the University of Texas law school because of the denigration of her chosen area of scholarship by some of the key players in her tenure process.

Perhaps it was a coincidence, but I saw us as a microsample of the way in which the consequences play themselves out for feminists along the racial divide. In my case, the consequences of being "blasted" by my only outside expert reviewer did not include denial of tenure or a move away from my law school. My faculty rallied around me and voted unanimously to give me tenure. In Professor Arriola's case, about the most charitable thing

5. "Polite whites often omit or deny recognition of any difference amongst feminists on basic assumptions of feminist theory."[10]

6. "Polite whites," whether consciously or unconsciously, often resort to silence as a weapon of dismissal when we fail to understand or

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you could say is that many of her faculty did not rally around her. She left for another law school knowing that her work had not been valued. The consequences for her of "adding to her difference" were far more severe than the consequences for me of adding to my difference as a white woman. While I make no claims as to the accuracy of this breakdown for the difference in treatment between white women who speak out and "women of color" who follow the same course of speaking out, I suspect that the statistics would show a decided trend in that direction. Our reactions to the consequences of our publishing choices differed in another interesting way. Even though I received an overwhelming vote of tenure from my faculty, I felt traumatized and subjected to a form of criticism that seemed to assault me from an unexpected source. I should have known better, but I did not. Some of my reaction had to do with the feeling of entitlement to the goodwill and respect of my fellow colleagues. Perhaps I had been lucky, but it was the first time I had ever received such a harsh criticism which hit me at a point of particular vulnerability: the day of my tenure vote by my faculty colleagues. I felt that I should have had an opportunity to defend myself. My colleagues jumped to my defense, for which I am very grateful, but then the victory of my tenure was their victory, not mine.

As I think about the quiet, thoughtful way that Professor Arriola spoke of the difficulties she endured during the tenure process and her decision to leave her law school, I began to feel that my response to my own tenure difficulties had something to do with my own sense of privilege. Despite being a worrier, I expect to be acknowledged for the hard work I do. As an attorney in practice and as a law professor there have been occasions where all my strength has been devoted to overcoming the unfair hurdles placed in my way compared to the favorable way in which male colleagues are treated. I have engaged in these battles on a daily basis, but always with the deeply rooted conviction that my views will be tolerated, if not respected, in the practice, in the courtroom, and in the academy. Many white feminist legal scholars have suffered severe consequences for speaking out and I do not mean to diminish the price we have paid for our courage. I do think, however, that as subgroup on the "privilege" hierarchy, the harms we have suffered have been different and that we need to pay attention and honor the relative differences in the harms that may occur because the person is a feminist of color, and/or a queer theory legal scholar, or a white feminist with a heterosexual orientation. My own difficulties in writing after the unexpected attack at a very vulnerable moment in my professional life led to a multiple-year writing block that should not have happened. It has to be understood for what it is in the context of my own privileges and assumptions based on my status as a "polite white" feminist who is learning not to be so "polite" and the reaction I will receive for failing to conform.

[10] Patricia J. Williams, The Alchemy of Race and Rights 130 (1991), stating that

> The perspective is one beyond those three boxes that have been set up. It is a perspective that exists on all three levels and eighty-five more besides simultaneously. It is this perspective, the ambivalent, multivalent way of seeing, that is at the core of what is called critical theory, feminist theory, and much of the minority critique of law. It has to do with a fluid positioning that sees back and forth across boundary. . . .

refuse to accept statements made by women of other colors.[11] Where is the scholarship that responds to the points raised by women of color from white scholars? Although citations are made to the work of these scholars there is little substantive engagement of their ideas by white women legal scholars.

7. "Polite white" feminists continue to believe in a form of neutrality that fails to take into account differences which do not resonate with our own experience. The critique of essentialism is shifted from the points made by the critique to a defense of the substance of the "feminist" contribution of the "essentialist" author.[12]

8. "Polite white" feminists display a conscious or unconscious disinterest in what Patricia Williams calls "affirmative hearing" or listening to women of other colors.[13]

9. "Polite white" feminists cling, consciously or unconsciously, to the staying power of middle class white perceptions even in helping to form a feminist world view.

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[11] The active silence that occurred in response to Professor Banks's comment at this feminist conference is a very real example of one form of silence utilized consciously or unconsciously.

[12] Catharine MacKinnon's dominance theory became a lightning rod for the critique of essentialism. *See* Catharine MacKinnon, Feminism Unmodified (1987); Catharine MacKinnon, Toward a Feminist Theory of the State (1989). The debate centered on her theory and the critiques of her theory. Instead of treating the claims of essentialism from the perspective of the women of other colors who raised such claims, with a directed response or dialogue with these scholars, the focus became a question of the validity of Catharine MacKinnon's truths. Martha Mahoney, Whiteness and Women, In Practice and Theory: A Response to Catharine MacKinnon, 5 Yale J.L. & Feminism 217 (1993). The "essentialist" critique that occupied the attention of many "polite white" legal feminists focused on the way this related to Catharine MacKinnon's feminist theory of dominance as a description of sexual relations between men and women. The response had less to do with a real dialogue about the critiques being raised about essentialism by women of color and more about the way in which the essentialism critique was understood to be a divisive rift between heterosexual possibilities of loving men and dominance theory. It lacked focus on the way race and sex must intersect in the complicated issues that women of color address and the way oppression of men of color plays into the understanding of any theory of dominance that claims universal validity. Katharine T. Bartlett, MacKinnon's Feminism: Power on Whose Terms? 75 Cal. L. Rev. 1559 (1987) (book review); Frances Olsen, Feminist Theory in Grand Style, 89 Colum. L. Rev. 1147 (1989) (book review). *But see* Christine A. Littleton, Does It Make Sense to Talk About "Women"?, 1 UCLA Women's L.J. 15 (1991); Carrie Menkel-Meadow, Review of MacKinnon, Toward A Feminist Theory of the State, and Rhode, Justice and Gender, 16 Signs 603 (1991).

[13] Patricia J. Williams, The Alchemy of Race and Rights 121 (1991) ("Blacks and women are the objects of a constitutional omission . . . It is thus that affirmative action is an affirmation: the affirmative act of hiring—or hearing." *Id.*).

10. "Polite white" feminists insist on the priority of safety zones for ourselves as women at the expense of a reliance on faulty racial stereotypes and assumptions.

11. "Polite white" feminists become defensive when we do not understand the critique that is addressed to us by women of other colors.

12. "Polite white" feminists still render our own color invisible.

13. "Polite white" feminists still insist on being considered "the good guys." We consider ourselves the experts on feminist theory. We shut down when we are not viewed as leaders of the movement.[14]

Feminist law journals, in addition to other forms of published scholarly work, need to dedicate in-depth attention to the lack of response from "polite white" feminists to the substantial insights provided by women of other colors.[15] "Polite white" legal feminists need to discard the mantle

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[14] I think that "polite white" feminist theory is in danger of replicating the reactions of many of the original founders of critical theory to the onset of groups that focused on critical race theory, or critical race feminist theory, or queer theory, or other theories viewed as "offshoots" of their original critical legal studies (CLS) efforts. Instead of allowing themselves to be transformed and reformed as a result of what they learned from the insights, energy, and creativity of the "offshoots" it seemed as if there was a vested energy in maintaining the integrity of the "original CLS" emphasis. The separatist notions of maintaining some kind of "old CLS" integrity are problematic to me. It seems paternalistic to regard these movements as offshoots or to maintain that CLS is something that is not obliged to evolve in response to the new insights we all take responsibility for in our real dialogue with each other. *See, e.g.*, Frances Olsen, Politics Without a Movement, 22 Cardozo L. Rev. 1105 (2001).

[15] I suggest that the Columbia Journal of Gender and Law dedicate at least one full volume of the journal next year to this topic and a real dialogue amongst women of all colors.

of "politeness" and report on the reflection we see in this new mirror we have been provided. Leadership has been provided by women of other colors that could help us as "polite whites" inspect our own color and what it brings to us that is hidden. We might even discover our own true colors hidden underneath the layers of unexamined assumptions and unearned privileges.