

FOREWORD

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For those living in the United States, race and gender exist as consequential factors in daily existence. Individuals project race and gender onto others and perform and internalize race and gender themselves. American society's ascription of hierarchical value to race and gender¹ also gives rise to the possibility of an identity misalignment of sorts: what a person knows to be true about themselves might differ vastly—and often does—from the stereotypes and assumptions society maps onto that person based on their gender and the color of their skin. W.E.B. Du Bois termed this phenomenon a “double-consciousness.”² He described it as “a peculiar sensation, this double-consciousness, this sense of always looking at one's self through the eyes of others, of measuring one's soul by the tape of a world that looks in in amused contempt and pity.”³

Indeed, for women and girls of color, the consequential nature of race, gender, and the double-consciousness the stereotyping of those social constructs necessitate, permeates the abstract boundaries of the personal sphere, and travels with us into classrooms, courtrooms, and boardrooms.⁴ Though scholars and practitioners began developing entire

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1 For a historical account of the way American courts have reinforced and legally codified a racial hierarchy that values whiteness above other racial identities see generally Professor Cheryl Harris's seminal article, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993).

2 W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* 3 (Random House 2005) (1903).

3 *Id.*

4 See Melissa V. Harris-Perry, *SISTER CITIZEN: SHAME, STEREOTYPES, AND BLACK WOMEN IN AMERICA* 5 (2011) (explaining that the “psychological, emotional, and personal experiences of black women are inherently political . . . because black women in America have always had to wrestle with derogatory assumptions about their character and identity” and examining how the politicization of black womanhood affects efforts of Black women to engage in participatory citizenship); Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 140 (1989) [hereinafter Crenshaw, *Demarginalizing*] (“Black women are sometimes excluded from feminist theory and antiracist policy discourse because both are predicated on a discrete set of experiences that often does not accurately reflect the interaction of race and gender.”).

bodies of theory and legal strategies around this observation decades ago,⁵ a layperson might conclude otherwise upon reading Supreme Court cases decided in the same span of time.⁶ The Supreme Court rarely engages directly with race and the particular way it informs and impacts individuals' experiences. Instead, the Court often discusses issues related to race in terms of abstract legal principles that require one to read between the lines to understand the real impact of the Court's decision on the lives of people of color.⁷ A few recent exceptions appear in dissents written by Justice Sonia Sotomayor—the first and only woman of color to serve on the Supreme Court to date—acknowledging a dual reality in which minority Americans enjoy a more limited set of constitutional protections than non-minority Americans.⁸

As such, for women of color who make it their lives' work to examine, debate, and engage deeply with the law and legal institutions, Du Bois' double-consciousness takes on

5 Professor Kimberlé Crenshaw first coined the term “intersectionality” in an article published the same year I was born. Nearly twenty-two years later, as I read that article for an undergraduate course assignment, that single word shifted my self-awareness in a significant way. See Crenshaw, *Demarginalizing*, *supra* note 4, at 139. As I worked through Professor Crenshaw's meticulous deconstruction of the theoretical and legal erasure of the multi-dimensional lived experiences of Black women, a deeper understanding of my own position as a woman of color in academia, and the world more generally, crystalized.

6 See, e.g., Reva B. Siegel, *From Colorblindness to Antibalkanization: An Emerging Ground of Decision in Race Equality Cases*, 120 *YALE L.J.* 1278, 1293 (2011) (“[R]ace conservative[] [Justices] emphasizing themes of colorblindness have succeeded in applying strict scrutiny to affirmative action, . . . with the help of ‘swing’ Justices.”); Enid Trucios-Haynes & Cedric Merlin F. Powell, *The Rhetoric of Colorblind Constitutionalism: Individualism, Race and Public Schools in Louisville, Kentucky*, 112 *PENN. STATE L. REV.* 947 (2008).

7 See, e.g., Devon W. Carbado, *(E)Racing the Fourth Amendment*, 100 *MICH. L. REV.* 946 (2002) (adding to a body of scholarship deconstructing the way in which the Supreme Court decides Fourth Amendment cases without acknowledgement of or concern for the cotemporary reality of race and racially-disparate policing in America); Jayne Chong-Soon Lee, *Navigating the Topology of Race*, 46 *STAN. L. REV.* 747, 774 (1994) (book review) (“[C]ourts construct definitions of race and racial difference every day, even as they claim to merely reflect preexisting scientific and social facts.”).

8 See *Schuette v. Coalition to Defend Affirmative Action, Integration & Immigrant Rights & Fight for Equality by Any Means Necessary (BAMN)*, 134 *S. Ct.* 1623, 1676 (2014) (Sotomayor, J., dissenting) (“The way to stop discrimination on the basis of race is to speak openly and candidly on the subject of race, and to apply the Constitution with eyes open to the unfortunate effects of centuries of racial discrimination.”); *Utah v. Strieff*, 136 *S. Ct.* 2056, 2070–71 (2016) (Sotomayor, J., dissenting); see also Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 *YALE L.J.* 2054, 2057–58 (2017) (noting the “boldness” of Justice Sotomayor's dissent in *Utah v. Strieff* and acknowledgment therein of the “troubling implications of our Fourth Amendment jurisprudence” for minority Americans, yet suggesting that Justice Sotomayor “might not have gone quite far enough”); I. Bennett Capers, *Criminal Procedure and the Good Citizen*, 118 *COLUM. L. REV.* 653, 656 (“[S]o many criminal procedure opinions are also on a certain level race opinions . . .”).

even more complexity.⁹ Not only must women lawyers of color negotiate the “two-ness” of both their own self-conception and the conception the world then projects onto them,¹⁰ they might also need to balance and, at times, subordinate this double-consciousness to a third consideration: zealous representation of their clients. Women lawyers of color must also undertake this disparately onerous task in a context that avoids directly naming the very reason for their dual realities—a context that instead prefers “neutral” terms and measures of merit that in reality may more deeply entrench and obscure inequality.¹¹

The third annual conference of Empowering Women of Color¹² (EWOC), *Double-Consciousness: Women of Color as Advocates for Ourselves and Others*, gathered law students, practitioners, and academics together to discuss and strategize around double-consciousness as a phenomenon shared among women lawyers of color yet unique to each person’s idiosyncratic and multi-faceted identities. The conference sought to address ever-present questions of balance: How do we balance our reality as private citizens who are subject to the law with our role as advocates armed with the power of the law? How do we balance our individual professional pursuits with the quest for collective advancement of our identity groups in society?

In her opening keynote, the Honorable Sheila Abdus-Salaam of the New York Court of Appeals, Columbia Law School ’77, shared her journey to the bench from the racially-

9 See Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 333–34 (1987) (“The dissonance of combining deep criticism of law with an aspirational vision of law is part of the experience of people of color. . . . Applying the double consciousness concept to rights rhetoric allows us to see that the victim of racism can have a mainstream consciousness of the Bill of Rights as well as a victim’s consciousness.”).

10 See DU BOIS, *supra* note 1, at 2.

11 See generally Kimberlé Williams Crenshaw, *Race Liberalism and the Deradicalization of Racial Reform*, 130 HARV. L. REV. 2298, 2318 (2018) (detailing the origins of Critical Race Theory and its emphasis on “the ways that legal rules continued to facilitate the social construction of race, not simply as a long-term consequence of past segregation, but through rules that helped constitute racial interests and that continued to insulate them from both judicially and legislatively mandated redistribution”).

12 Columbia Law School students founded Empowering Women of Color at Columbia Law School in 2010 to create space for members with intersecting ethnicities, genders, nationalities, orientations, and beliefs to feel valued, respected, and empowered to fully participate in the academic, professional, and personal communities of the law school and legal field. See *Student Organizations*, COLUMBIA LAW SCH., <http://www.law.columbia.edu/students/student-services/connecting/student-organizations/student-organization-list#d-i> [perma.cc/KU7K-7V3X].

segregated public schools she attended as a child.¹³ Judge Abdus-Salaam shared her own double-consciousness of aspiration and self-doubt, and remembered the allies and personal ethics that helped her rise to her full potential and become the first African American woman to serve on the highest court in the state of New York in its 169-year history.¹⁴

Though the panelists of *Advocacy in Practice: Women of Color and Our Allies* drew from a range of professional legal experiences extending several decades back, the events of recent years inspired the questions asked of them. The conversation included reflection on each panelist's personal experiences in her respective legal field, as well as a discussion of how to be an effective ally to other women of color and how to use one's professional platform to generate opportunities for others.¹⁵

Law professor Kristen Underhill, journalism professor June Cross, and practicing attorney and advocate Nia Weeks discussed an interdisciplinary approach to healthcare advocacy in the context of women of color living with HIV/AIDS in the panel *Women of Color and Health: Issues and Solutions*.¹⁶ Professor Cross' film *Wilhemina's War*¹⁷ framed a candid conversation on how the healthcare system imposes systemic and structural barriers for those with intersectional identities. The panelists tied together academic discourse and the practical realities of advocating on behalf of impoverished communities of color.

Advocacy in Ideas: Legal Education and Social Movements focused on the challenges faced by women of color in navigating legal academia. Panelists spoke to their own development as law students and academics, the pressures of "prepar[ing] [] for the teaching market," in search of a first job as a professor,¹⁸ and shared advice for students interested in following in their footsteps. Panelists also discussed the ways in which they seek to actualize legal theories and ideas from specific areas of work.¹⁹

13 See Judge Sheila Abdus-Salaam, *Introduction and Keynote*, 36 COLUM. J. GENDER & L. 1 (2018).

14 See *id.* at 2.

15 See Paulette Brown et al., *Advocacy in Practice: Women of Color and Our Allies*, 36 COLUM. J. GENDER & L. 8 (2018).

16 June Cross et al., *Women of Color and Health: Issues and Solutions*, 36 COLUM. J. GENDER & L. 21 (2018).

17 WILHEMINA'S WAR (June Cross 2015).

18 Monica Bell et al., *Advocacy in Ideas: Legal Education and Social Movements*, 36 COLUM. J. GENDER & L. 40, 43 (2018).

19 See *id.*

On behalf of EWOC, I would like to thank each speaker for their contribution to the panel, including Paulette Brown, Madeline Gomez, Jin Hee Lee, Professor June Cross, Nia Weeks, Professor Monica Bell, Professor Tanya K. Hernández, Professor Solangel Maldonado, Professor Rachelle Perkins, and Professor Chantal Thomas.

A special thank you to our conference moderators Amreeta Mathai, Professor Kristen Underhill, and Professor Olatunde Johnson, for guiding the panel conversations and encouraging this work. And thank you to Chloe Bootstaylor, Elise Lopez, and Cindy Li, for their dedication to this project of creating a space for marginalized voices as President, Vice President, and Conference Co-Chair of EWOC, respectively.

In addition to validating and acknowledging the lived intersectional experiences of women of color in the legal profession and beyond, I hope this Symposium issue of the *Columbia Journal of Gender and Law* will inspire continued progress forward. More specifically, I hope readers will undertake genuine self-reflection and challenge themselves to take concrete steps toward increased inclusivity in legal spaces as a way of engaging with the issues raised herein. I encourage legal advocates, scholars, and law students alike to think critically about how the law currently constructs and understands personhood and citizenship in ways that might require the subordination or prioritization of one of an individual's multiple identities, and to apply intellectual pressure in favor of distributing those burdens more equally.