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## ESSAY

# LANGUAGE AND SILENCE: MAKING SYSTEMS OF PRIVILEGE VISIBLE

Stephanie M. Wildman\* with Adrienne D. Davis\*\*

A colleague of mine once had a dream in which I appeared.<sup>1</sup> My colleague, who is African-American, was struggling in this dream to be himself in the presence of a monolithic white maleness that wanted to oppress my friend and deny his intellect, his humanity, and his belonging in our community. In his dream, I, a white woman, attempted to

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I acknowledge an intellectual debt to two colleagues, Adrienne Davis and Trina Grillo. The three of us worked together for almost two years, writing several working papers examining privilege and subordination. The "with" designation for authorship of this essay reflects Davis' contribution in paragraphs concerning "isms" language and categories, which we wrote together for the working papers. The "I" in this essay refers to me. Thanks to the community of people who have made my work possible, particularly Margalynne Armstrong, Marsha Berzon, Laura Brown, Phyllis Bursh, Linda Clardy, June Carbone, Walter Cohen, Adrienne Davis, Richard Delgado, Mary Dunlap, Trina Grillo, Beverly Horsburgh, Francie Kendall, Julian Kossaw, Janet Lee, Charles Lawrence, Christine Littleton, Martha Mahoney, Charles Reich, Margaret Russell, Wil Rumble, Lee Ryan, Marian Shostrom, Jean Stefancic, Michael Tobriner, Catharine Wells, and Eric Wright.

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1. Charles R. Lawrence, III, *A Dream: On Discovering the Significance of Fear*, 10 NOVA L.J. 627 (1986), republished in Charles R. Lawrence, III, *The Word and the River: Pedagogy as Scholarship as Struggle*, 65 S. CAL. L. REV. 2231, 2231-2236 (1992).

speak on his behalf, but the white man and I spoke as if my friend were not there.

This portrayal disturbed me because I know my friend can speak for himself. Recognizing this fact, he described my discomfort at participating in this conversation that made him invisible.<sup>2</sup> But I think this portrayal also disturbed me because it made clear my privileged role, a role I had not acknowledged.

My friend was describing the privilege of whiteness that would allow me and the man in the dream to talk about my friend and issues of race in a particular way, between ourselves. Our shared privilege meant that our conversation mattered in terms of whether my friend would ultimately be part of the community. The community was defined by our whiteness, without either of us articulating that fact or even necessarily being aware of it. The fact that we were both white gave us more than something in common; it gave us the definitive common ground that transcended our differences and gave shape to us as a group with power to determine who else would be included in the circle of our community.

In reporting his dream, my friend described me as someone who does not like conflict, a description I found both troubling and inaccurate, but containing a kernel of truth. It is true that I don't *like* conflict; I do not enjoy external or internal conflict. I prefer life flowing smoothly and people getting along with each other. But my life has been one about facing internal conflict all the time, although the way in which I face it is rarely confrontational.

The conflicts I continually face in my life are about privilege. I am committed to finding strategies to combat subordination directed at others. That clarity rarely leads to internal conflict. The conflicts I have faced have not been about oppression or the privileges that I do not have, such as gender privilege or being Jewish and not part of a dominant culture that is, curiously, alternatively Christian and non-religious. Rather, the conflicts are about the privileges that I do have, including class, race, and heterosexual privilege, and how to live my life of privilege consonant with my beliefs in equal opportunity and inclusive community.

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2. *Id.* at 2232.

I could not, however, have told my friend about these conflicts when he told me about his dream fifteen years ago, because I would not have described my life, then, as centering on conflicts about privilege. And even if I could have perceived these conflicts, describing privilege as a hardship is a luxury of privilege. Nevertheless, I could not have described the conflicts with which my life is full as being about privilege at all, because privilege is usually invisible to the holder of the privilege.

Rather than describing privilege as something bestowed upon us specially, privilege appears as the fabric of life, as the way things are. So I noticed if someone treated me differently because I am a woman. I noticed when classes were cancelled for Christmas but not for Yom Kippur. But I did not notice the myriad ways in which my white, class, and heterosexual privileges made it easier for me to move in the world.

Then I started to notice.

Many books and articles begin by acknowledging the help the author has received in completing the work. I want to start by recognizing my intellectual debt to two colleagues, Adrienne Davis and Trina Grillo, both professors of law and both women of color. I know that I see more now, because of my friendship with them. For me, the importance of friendship in talking about power systems should not be underestimated.

In a class I once taught, an African-American student observed, "White people always ask me what they can do to fight racism. My answer to them is—Make a friend of color as the first step in this long process."

This advice is important, but I worry about it being misunderstood. For many white people, making a friend of color means they are able to convince themselves that they must not be racist, because they have this trophy friend. Another woman of color I know commented that she has many white friends, but avoids discussing race with them. She is afraid of being hurt by her white friends' small stake in issues of race, when her stake is so large. It is easier for her just to avoid the whole conversation.

Given these difficulties, let me say why I am so taken by this simple, yet serious advice—"make a friend." Most of us who are white lead lives that are segregated by race. Race is

imprinted on most neighborhood patterns, which means it is transferred to schools. Our lives as straight people are also generally segregated by sexual orientation. Most of us who are heterosexual tend to socialize with other heterosexuals, with couples if we ourselves are part of a couple. The lives we lead affect what we are able to see and hear in the world around us. So if you make a friend across categories of difference, realize that this means working on listening to what is important to your friend.

A university is a special place, offering the opportunity not only to make friends, but also to listen intently to many others who are not friends. This opportunity to hear differing views is particularly important in a law school, making a law school within a university an even more special place. Law and justice are symbolic of deeply held values in American culture. Law school is a place where we should be able to think about systems of privilege and the role of law in maintaining or constraining power.

However, the power I am concerned with is not the power of an unchecked executive or a runaway Congress. It is the power of privilege maintained by distinct, yet interlocking, power systems. In this essay, I address power systems of race, gender, and sexual orientation. Other systems such as class, religious belief, or other-abledness, sometimes called "dis"ability, should also be explored, but are not my focus here.

I start this examination with some assumptions. I believe everyone reading this essay is a person of good faith, who does not *want* to discriminate on the basis of race, sex, sexual orientation, religion, economic wealth, or physical ability. I know bigotry and hatred exist in the world, and it is important for us to combat that kind of ill will. I assume, however, that people who read a paper entitled, "*Language and Silence: Making Systems of Privilege Visible*" are trying to "Do the Right Thing" in their daily lives. I want to explain why privilege is so hard to see, even for people of good will.

I begin, first, with an examination of the language that we use to discuss discrimination and subordination. This language makes privilege invisible. Second, I turn to privilege, describing its forms and stressing the importance of addressing privilege as well as oppression. Next, I show that intersectionality can help reveal privilege by reminding us of the

complex interactions of the systems of privilege and subordination. Finally, I conclude by considering the importance of looking for the operation of privilege systems in our classrooms.

Consider some definitions of language and silence. The definition of silence is fairly self-evident, yet very important in the maintenance of systems of power. Silence is the lack of sound and voice. Silence may result from appreciation of quiet or may signify the operation of intense mental processes. Silence may also arise from oppression or fear. Whatever the reason for silence, its presence means the absence of verbal criticism. What we do not say, what we do not talk about, maintains the status quo. But to describe or to talk about these unspoken systems means we need to use language. But even when we try to talk about privilege, the language that we use inhibits our ability to perceive the systems of privilege that comprise the status quo.

#### I. HOW LANGUAGE VEILS THE EXISTENCE OF SYSTEMS OF PRIVILEGE

Language contributes to the invisibility and regeneration of privilege. To begin the conversation about subordination we sort ideas into categories such as race and gender. These words are part of a system of categorization, one that we use without thinking and that seems linguistically neutral. Race and gender are, after all, just words. Yet when we learn that someone has had a child, our first question is usually, "Is it a girl or a boy?" Why do we ask that question, instead of something like, "Are the mother and child okay?" We ask, "Is it a girl or a boy?", according to philosopher Marilyn Frye, because we don't know how to relate to this new being without knowing its gender.<sup>3</sup> Imagine how long you could have a discussion with or about someone without knowing her or his gender. We place people into these categories because our world is gendered.

Similarly our world is also raced, making it hard for us to avoid taking mental notes as to race. We use our language to categorize by race, particularly, if we are white, when that race is other than white. Professor Marge Shultz has written

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3. See MARILYN FRYE, *THE POLITICS OF REALITY: ESSAYS IN FEMINIST THEORY*, at 19-34 (1983) (discussing sex marking and sex announcing, the necessity to determine gender).

of calling on a Hispanic-American student in her class.<sup>4</sup> She called him "Mr. Martinez", but his name was Mr. Rodriguez. The class tensed up at her error; earlier that same day another professor had called Mr. Rodriguez, "Mr. Hernandez", the name of the defendant in the criminal law case under discussion. Professor Shultz talked with her class, at its next session, about how her error and our thought processes pull us to categorize in order to think. She acknowledged how this process leads to stereotyping which causes pain to individuals. We all live in this raced and gendered world, inside these categories that make it hard to see each other as whole people.

The problem does not stop with the general terms, such as race and gender. Each of these categories contains the image, like an entrance to a tunnel with different arrows, of sub-categories. Race is often defined as Black and white, even though there are other races. Sometimes it is defined as white and of color; sometimes the categories are each listed, for example, as African-American, Hispanic-American, Asian-American, Native American, and White American, if whiteness is mentioned at all. All of these words, lists of racial sub-categories, seem neutral on their face, like equivalent titles. But however the sub-categories are listed, however neutrally the words are expressed, these words mask a system of power and that system privileges whiteness.

Gender, too, is a seemingly neutral category that leads us to imagine sub-categories of male and female. A recent scientific article suggested that five genders might be a more accurate characterization of human anatomy, but there is a heavy systemic stake in our image of two genders.<sup>5</sup> The apparently neutral categories, male and female, mask the privileging of males that is part of the gender power system. Try to think of equivalent gendered titles, like king and queen, prince and princess, and you will quickly see that male and female are not equal titles in our cultural imagination.

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4. Angela Harris & Marge Shultz, "A(nother) Critique of Pure Reason": *Toward Civic Virtue in Legal Education*, 45 STAN. L. REV. 1773, 1796 (1993).

5. Anne Fausto-Sterling, *The Five Sexes: Why Male and Female Are Not Enough*, THE SCIENCES, Mar./Apr. 1993, at 20. (Thanks to Gregg Bryan for calling my attention to this article.) See also Frye, *supra* note 3, at 25.

Poet and social critic Adrienne Rich has written convincingly about the compulsory heterosexuality that is part of this gender power system.<sup>6</sup> Almost everywhere we look, heterosexuality is portrayed as the norm. In Olympic ice skating and dancing, couples are defined to mean a man partnered with a woman.<sup>7</sup> Rampant heterosexuality is everywhere. What is amazing, says Rich, is that there are any lesbians or gay men.<sup>8</sup> Heterosexuality is privileged over any other relationships. The words we use, such as marriage, husband, and wife, are not neutral, but convey this privileging of heterosexuality.

Our culture suppresses conversation about economic class. Although money or access to money is tied to human necessities such as food, clothing, and shelter, those fundamental needs are recognized only as an individual responsibility. The notion of privilege based on economic wealth is viewed as an idiosyncratic throwback to the past, conjuring up countries with monarchies, nobility, serfs, and peasants, or as a radical, dangerous idea. Yet even the archaic vocabulary makes clear that no one wants to be categorized as a have-not. So the economic power system is not invisible in the sense that every one knows money brings privilege. Rather the myth persists that all have access to that power through individual resourcefulness. This myth of potential economic equality supports the invisibility of the other power systems that prevent fulfillment of that ideal.

Other words we use to describe subordination also serve to mask the operation of privilege. Increasingly, people use terms like racism and sexism to describe disparate treatment and the perpetuation of power. -isms language serves as a way to describe discriminatory treatment. Yet this vocabulary of -isms as a descriptive shorthand for undesirable, disadvantageous treatment creates several serious problems.

First, calling someone racist individualizes the behavior, ignoring the larger system within which the person is situated. To label an individual a racist veils the fact that racism

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6. ADRIENNE RICH, *Compulsory Heterosexuality and Lesbian Existence*, in BLOOD, BREAD, AND POETRY, SELECTED PROSE 1979-1985 (1986).

7. See Stephanie M. Wildman & Becky Wildman-Tobriner, *Sex Roles Iced Popular Team?*, S.F. CHRON., Feb. 25, 1994, at A23.

8. RICH, *supra* note 6, at 57 ("Heterosexuality has been both forcibly and subliminally imposed on women.").



can only occur where it is culturally, socially, and legally supported. It lays the blame on the individual rather than the forces that have shaped that individual and the society that the individual inhabits. For white people this means that they know they do not want to be labeled racist. They become concerned with how to avoid that label, rather than worrying about systemic racism and how to change it.

Second, the -Isms language focuses on the larger category such as race, gender, and sexual preference. -Isms language suggests that within these larger categories two seemingly neutral halves exist, equal parts in a mirror. Thus, Black and white, male and female, heterosexual and gay/lesbian appear, through the linguistic juxtaposition, as equivalent subparts. In fact, although the categories do not take note of it, Blacks and whites, men and women, heterosexuals and gays/lesbians are not equivalently situated in society. Thus, the way we think and talk about the categories and sub-categories that underlie the -Isms, considering them as parallel parts, obscures the pattern of domination and subordination within each classification.

Similarly, the phrase -Isms itself gives the illusion that all patterns of domination and subordination are the same and interchangeable. The language suggests that someone subordinated under one form of oppression would be similarly situated to another person subordinated under another system or form. Thus, someone subordinated under one form may feel no need to view himself/herself as a possible oppressor, or beneficiary of oppression, within a different form. For example, white women, having an -Ism that defines their condition—sexism—may not look at the way they are privileged by racism. They have defined themselves as one of the oppressed.

Finally, the focus on individual behavior, the seemingly neutral sub-parts of categories, and the apparent interchangeability underlying the vocabulary of -Isms all obscure the existence of systems of privilege and power. It is difficult to see and talk about how oppression operates when the vocabulary itself makes these systems of privilege invisible. White supremacy is a phrase associated with a lunatic fringe, not with the everyday life of well-meaning white citizens. Racism is something whites define as bad action by others. The vocabulary allows us to talk about discrimination and oppres-

sion, but it hides the mechanism that makes that oppression possible and efficient. It also hides the existence of specific, identifiable beneficiaries of oppression, who are not always the actual perpetrators of discrimination. The use of -isms language, or any focus on discrimination, masks the privileging that is created by these systems of power.

Thus, the very vocabulary that we use to talk about discrimination obfuscates these power systems and the privilege that is their natural companion. To remedy discrimination effectively we must make the power systems and privileges which they create visible and part of the discourse. To move toward a unified theory of the dynamics of subordination, we have to find a way to talk about privilege. When we discuss race, sex, and sexual orientation, each needs to be described as a power system which creates privileges in some people as well as disadvantages in others. Most of the literature has focused on disadvantage or discrimination, ignoring the element of privilege. To really talk about these issues, privilege must be made visible.

Law plays an important role in the perpetuation of privilege by ignoring that privilege exists. And by ignoring its existence, law, with help from our language, ensures the perpetuation of privilege.

## II. WHAT IS PRIVILEGE?

A Merriam-Webster electronic dictionary defines privilege as "a right granted as an advantage or favor." It is true that the holder of a privilege might believe she or he had a right to it, if you tried to take it away. But a right suggests the notion of a deserved entitlement. A privilege is not a right.

The American Heritage Dictionary of the English Language (1978) defines privilege as "a special advantage, immunity, permission, right, or benefit granted to or enjoyed by an individual, class, or caste." The word is derived from the Latin *privilegium*, a law affecting an individual, *privus* meaning single or individual and *lex* meaning law.

This definition includes the important root of the word privilege in law. The legal, systemic nature of the term privilege has become lost in its modern meaning. And it is the systemic nature of these power systems that we must begin to examine.

What, then, is privilege? We all recognize its most blatant forms. "Men only admitted to this club." "We won't allow African-Americans into that school." Blatant exercises of privilege certainly exist, but they are not what most people will say belongs as part of our way of life. They are also only the tip of the iceberg in examining privilege.

When we look at privilege, we see several elements. First, the characteristics of the privileged group define the societal norm, often benefiting those in the privileged group. Second, privileged group members can rely on their privilege and avoid objecting to oppression. Both conflicting privilege with the societal norm and the implicit choice to ignore oppression mean that privilege is rarely seen by the holder of the privilege.

#### A. The Normalization of Privilege

Examining privilege reveals that the characteristics and attributes of those who are privileged group members are described as societal norms—as the way things are and as what is normal in society.<sup>9</sup> This normalization of privilege means that members of society are judged, and succeed or fail, measured against the characteristics that are held by those privileged. The privileged characteristic comes to define the norm. Those who stand outside are the aberrant or "alternative."

For example, a thirteen year old girl who aspires to be a major-league ball player can have only a low expectation of achieving that goal, no matter how superior a batter and fielder she is. Maleness is the foremost "qualification" of major league baseball players. Similarly, couples who are legally permitted to marry are heterosexual. A gay or lesbian couple, prepared to make a life commitment, cannot cross the threshold of qualification to be married.

I had an example of being outside the norm when I was called to jury service. Jurors are expected to serve until 5 p.m. During that year, my family's life was set up so that I picked up my children after school at 2:40 p.m., and made sure that they got to various activities. If courtroom life were designed to privilege my needs, then there would be an after-

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9. Richard Delgado & Jean Stefancic, *Pornography and Harm to Women: "No Empirical Evidence?"*, 53 OHIO ST. L.J. 1037 (1992) (describing this "way things are." Because the norm or reality is perceived as including these benefits, the privileges are not visible).

noon recess to honor children. But in this culture children's lives, and the lives of their caretakers, are the alternative or other and we must conform to the norm.

Even as these childcare needs were outside the norm, I was privileged economically to be able to meet my children's needs. My conduct would be described as mothering, not as privilege. My ability to pick them up and be present in their after school lives was a benefit of my association with privilege.

Members of the privileged group gain many benefits by their affiliation with the dominant side of the power system. This affiliation with power is not identified as such. Often it may be transformed into and presented as individual merit. For example, legacy admissions at elite colleges and professional schools are perceived to be merit-based when this process of identification with power and transmutation into qualifications occurs. Achievements by members of the privileged group are viewed as meritorious and the result of individual effort, rather than as privileged.

Many feminist theorists have described the male tilt to normative standards in law, including the gendered nature of legal reasoning,<sup>10</sup> the male bias inherent in the reasonable person standard,<sup>11</sup> and the gender bias in classrooms.<sup>12</sup> Looking more broadly at male privilege in society reveals that definitions based on male models delineate many societal norms. As Catharine MacKinnon has observed:

Men's physiology defines most sports, their health needs largely define insurance coverage, their socially designed biographies define workplace expectations and successful career patterns, their perspectives and concerns define quality in scholarship, their experiences and obsessions define merit, their military service defines citizenship, their presence defines family, their inability to get along with each other—their wars and rulerships—

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10. See Lucinda M. Finley, *Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning*, 64 NOTRE DAME L. REV. 886 (1989).

11. See Leslie Bender, *A Lawyer's Primer on Feminist Theory and Tort*, 38 J. OF LEGAL EDUC. 1 (1988).

12. See Taunya Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137 (1988); Stephanie M. Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. LEGAL EDUC. 147 (1988).

defines history, their image defines god, and their genitals define sex.<sup>13</sup>

Male privilege thus defines many vital aspects of American culture from a male point of view. The maleness of that view becomes masked as that view is generalized as the societal norm, the measure for us all. The use of "he" as a generic pronoun stated to include all people, but making women in a room invisible when it is used, is seen as a norm. But a generic "she" is not permitted, and many people become upset when women try to use it. This emotion is not about the grammatically correct use of English, but about the challenge to the system of male privilege, veiled as the norm of using "he."

#### B. Choosing Whether to Struggle Against Oppression

Members of privileged groups experience the comfort of opting out of struggles against oppression if they choose. This is another characteristic of privilege. Often this privilege may be exercised by silence. At the same time that I was the outsider in jury service, I was also a privileged insider. During voir dire, each prospective juror was asked to introduce herself or himself. The plaintiff's and defendant's attorneys then asked supplementary questions. I watched the defense attorney, during voir dire, ask each Asian-looking male prospective juror if he spoke English. No one else was asked. The judge did nothing. The Asian-American man sitting next to me smiled and flinched as he was asked the question. I wondered how many times in his life he had been made to answer questions such as that one. I considered beginning my own questioning by saying, "I'm Stephanie Wildman, I'm a professor of law, and yes, I speak English." I wanted to focus attention on the subordinating conduct of the attorney, but I did not. I exercised my white privilege by my silence. I exercised my privilege to opt out of engagement, even though this choice may not always be consciously made by someone with privilege.

Depending on the number of privileges someone has, she or he may experience the power of choosing the types of struggles in which to engage. Even this choice may be

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13. CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 224 (1989).

masked as an identification with oppression, thereby making the privilege that enables the choice invisible. This privilege advantage in societal relationships benefits the holder of privilege, who may receive deference, special knowledge, or a higher comfort level to guide societal interaction. Privilege is not visible to its holder; it is merely there, a part of the world, a way of life, simply the way things are. Others have a *lack*, an absence, a deficiency.

### III. SYSTEMS OF PRIVILEGE

In spite of the common characteristics of normativeness, ability to choose whether to object to the power system, and invisibility that different privileges share, the form of privilege may vary based on the type of power relationship which produces it. Within each power system, privilege manifests itself and operates in a manner shaped by the power relationship from which it results. White privilege derives from the race power system of white supremacy.<sup>14</sup> Male privilege<sup>15</sup> and heterosexual privilege result from the gender hierarchy.<sup>16</sup>

Examining white privilege, Peggy McIntosh has found it "an elusive and fugitive subject."<sup>17</sup> She observes that as a white person who benefits from the privileges, "[t]he pressure to avoid it is great."<sup>18</sup> She defines white privilege as:

an invisible package of unearned assets which [she] can count on cashing in each day, but about which [she] was

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14. See Cheryl Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709 (1993) (describing the allocation of societal benefits based on white racial identity). See also Neil Gotanda, *A Critique of "Our Constitution Is Color-Blind"*, 44 STAN. L. REV. 1, 23-36 (1991) (describing the contingent, socially constructed nature of racial categories).

15. See MACKINNON, *supra* note 13.

16. See Sylvia Law, *Homosexuality and the Social Meaning of Gender*, 1988 WIS. L. REV. 187, 197 (1988); Marc Fajer, *Can Two Real Men Eat Quiche Together? Storytelling, Gender-Role Stereotypes, and Legal Protection for Lesbians and Gay Men*, 46 U. MIAMI L. REV. 511, 617 (1992). Both articles describe heterosexism as a form of gender oppression. Yet describing heterosexual privilege as part of another system of oppression, i.e. gender, may ultimately contribute to the maintenance of heterosexism.

17. Peggy McIntosh, *Unpacking the Invisible Knapsack: White Privilege*, CREATION SPIRITUALITY, Jan./Feb. 1992, at 33.

18. McIntosh, *supra* note 17, at 33. Martha Mahoney has also described aspects of white privilege. See Martha Mahoney, *Whiteness and Women, In Practice and Theory: A Reply to Catharine MacKinnon*, 5 YALE J. LAW & FEMINISM 217 (1993).

“meant” to remain oblivious.<sup>19</sup> White privilege is like an invisible weightless knapsack of special provisions, assurance, tools, maps, guides, codebooks, passports, visas, clothes, compass, emergency gear, and blank checks.<sup>20</sup>

McIntosh identified forty-six conditions available to her as a white person that her African American co-workers, friends, and acquaintances could not count on.<sup>21</sup> Some of these include: being told that people of her color made American heritage or civilization what it is; not needing to educate her children to be aware of systemic racism for their own daily protection; and never being asked to speak for all people of her racial group.<sup>22</sup>

Privilege also exists based on sexual orientation. Society presumes heterosexuality, generally constituting gay and lesbian relations as invisible.<sup>23</sup> Professor Marc Fajer describes what he calls three societal pre-understandings about gay men and lesbians: the sex-as-lifestyle assumption, the cross-gender assumption, and the idea that gay issues are inappropriate for public discussion.

According to Professor Fajer, the sex-as-lifestyle assumption means that there is a “common non-gay belief that gay people experience sexual activity differently from non-gays” in a way that is “all-encompassing, obsessive and completely divorced from love, long-term relationships, and family structure.”<sup>24</sup> As to the cross-gender assumption, Professor Fajer explains that many non-gay people believe that gay men and lesbians exhibit “behavior stereotypically associated with the other gender.”<sup>25</sup> The idea that gay issues are inappropriate for public discussion has received prominent press coverage recently as “Don’t ask; don’t tell” concerning the military.<sup>26</sup> Thus, even if being gay is acceptable, “talking about being gay is not,” according to Professor Fajer.<sup>27</sup> One professor I know has a picture of his lover of twenty years, who is also

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19. The quotations around “meant” evidently refer in an unspoken way to the unwritten rules that surround the subject of white privilege.

20. McIntosh, *supra* note 17, at 33.

21. *Id.* at 34.

22. *Id.*

23. See RICH, *supra* note 6.

24. Fajer, *supra* note 16, at 514.

25. Fajer, *supra* note 16, at 515.

26. See, e.g., Michael R. Gordon, *Pentagon Spells Out Rules For Ousting Homosexuals; Rights Groups Vow a Fight*, N.Y. TIMES, Dec. 23, 1993, at A1.

27. Fajer, *supra* note 16, at 515.

male, on his desk, along with a photo of their son. No one has ever said to him, "What a lovely family you have."

Professor Fajer does not discuss these pre-understandings explicitly in terms of privilege. Nevertheless, he is describing aspects of the sexual orientation power system which allow heterosexuals to function in a world where these assumptions are not made about their sexuality. Not only are these assumptions not made about heterosexuals, but also their sexuality may be discussed and even advertised in public.

In spite of the pervasiveness of privilege, it is interesting that anti-discrimination practice and theory has generally not examined privilege and its role in perpetuating discrimination. One notable exception is the work of Professor Kimberlè Crenshaw, who has explained [using the examples of race and sex]: "Race and sex . . . become significant only when they operate to explicitly *disadvantage* the victims; because the *privileging* of whiteness or maleness is implicit, it is generally not perceived at all."<sup>28</sup>

Anti-discrimination advocates focus only on one portion of the power system, the subordinated characteristic, rather than seeing the essential links between domination, subordination, and the resulting privilege.

Professor Adrienne Davis has explained:

Domination, subordination, and privilege are like three heads of a hydra. Attacking the most visible heads, domination and subordination, trying bravely to chop them up into little pieces, will not kill the third head, privilege. Like a mythic multi-headed hydra, which will inevitably grow another head, if all heads are not slain, dis-

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28. Kimberlè Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, CHICAGO LEGAL ISSUES FORUM 139, 151 (1989). Another important exception, Mari Matsuda, urges those who would fight subordination to "ask the other question," showing the interconnection of all forms of subordination:

The way I try to understand the interconnection of all forms of subordination is through a method I call "ask the other question." When I see something that looks racist, I ask, "Where is the patriarchy in this?" When I see something that looks sexist, I ask, "Where is the heterosexism in this?"

Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 STAN. L. REV. 1183, 1189 (1991).



crimination cannot be ended by focusing only on . . . subordination and domination.<sup>29</sup>

Subordination will grow back from the ignored head of privilege, yet the descriptive vocabulary and conceptualization of discrimination hinders our ability to see the hydra-head of privilege. This invisibility is serious because that which is not seen cannot be discussed or changed. Thus, to end subordination, one must first recognize privilege. Seeing privilege means articulating a new vocabulary and structure for anti-subordination theory. Only by visualizing this privilege and incorporating it into discourse can people of good faith combat discrimination.

#### IV. VISUALIZING PRIVILEGE

For me, the struggle to visualize privilege most often has taken the form of the struggle to see my white privilege.<sup>30</sup> Even as I write about this struggle, I fear that my own racism will make things worse, causing me to do more harm than good. Some readers may be shocked to see a white person contritely acknowledge that she is racist. I do not say this with pride. I simply believe that no matter how hard I work at not being racist, I still am. Because part of racism is systemic, I benefit from the privilege that I am struggling to see.

In an article I wrote with Professor Trina Grillo, we chose to use the term racism/white supremacy to talk about racism.<sup>31</sup> We got this idea from Professor bell hooks who had written, "The word racism ceased to be the term which best expressed for me exploitation of black people and other people of color in this society and . . . I began to understand that the most useful term was white supremacy."<sup>32</sup>

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29. Adrienne D. Davis, *Toward A Post-essentialist Methodology or a Call to Countercategorical Practice* (1994) (unpublished manuscript on file with the author); see also Adrienne D. Davis, *Playing in the Light*, 45 AM. U. L. REV. — (forthcoming 1995) (where she discusses the black/white paradigm in the context of domination, subordination, and privilege).

30. See Barbara J. Flagg, "Was Blind, But Now I See": *White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953 (1993) (concerning the privileging of whiteness and the difficulty for whites to see whiteness as part of the decision making process).

31. Trina Grillo & Stephanie M. Wildman, *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (or Other -isms)*, 1991 DUKE L.J. 397.

32. bell hooks, *Overcoming White Supremacy: A Comment*, in TALKING BACK: THINKING FEMINIST, THINKING BLACK 112 (1989).

Whites do not look at the world through a filter of racial awareness, even though whites are, of course, a race. The power to ignore race, when white is the race, is a privilege, a societal advantage. The term racism/white supremacy emphasizes the link between the privilege held by whites to ignore their own race and discriminatory racism.

As bell hooks explains, liberal whites do not see themselves as prejudiced or interested in domination through coercion, yet, "they cannot recognize the ways their actions support and affirm the very structure of racist domination and oppression that they profess to wish to see eradicated."<sup>33</sup> The perpetuation of white supremacy is racist.

All whites are racist in this use of the term because we benefit from systemic white privilege. Generally whites think of racism as voluntary, intentional conduct, done by horrible others. Whites spend a lot of time trying to convince ourselves and each other that we are not racist. A big step would be for whites to admit that we are racist and then to consider what to do about it.<sup>34</sup>

I also work on not being sexist. This work is different from my work on my racism, because I am a woman and I experience gender subordination. But it is important to realize that even when we are not privileged by a particular power system, we are products of the culture that instills its attitudes in us. I have to make sure that I am calling on women students and listening to them as carefully as I listen to men.

While we work at seeing privilege, it is also important to remember that each of us is much more complex than simply our race and gender. Just as I have a race, which is white, and a gender, which is female, I have a sexual orientation (heterosexual) and a religious orientation (Jewish) and thin fingers and I'm a swimmer.

The point is that I am, and all of us are, lots of things. Professor Kimberle Crenshaw introduced the idea of the intersection into feminist jurisprudence.<sup>35</sup> Her work examines the intersection of race, as African-American, with gender, as

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33. *Id.* at 113.

34. See also Jerome McCristal Culp, Jr., *Water Buffalo and Diversity: Naming Names and Reclaiming the Racial Discourse*, 26 CONN. L. REV. 209 (1993) (urging people to name racism as racism).

35. Crenshaw, *supra* note 28.

female. Thus, Crenshaw's intersectionality analysis focused on intersections of subordination. Privilege can intersect with subordination or other systems of privilege as well.

Seeing privilege at the intersection is complicated by the fact that there is no purely privileged or unprivileged person. Most of us are privileged in some ways and not in others. A very poor person might have been the oldest child in the family and exercised power over his siblings. The wealthiest African-American woman, who could be a federal judge, might still have racial, sexist epithets hurled at her as she walks down the street. The presence of both the experience of privilege and the experience of subordination in different aspects of our lives causes the experiences to be blurred, further hiding the presence of privilege from our vocabulary and consciousness.

Often we focus on the experience of oppression and act from privilege to combat that oppression without consciously making that choice. An African-American woman professor may act from the privilege of power as a professor to overcome the subordination her white male students would otherwise seek to impose upon her. Or a white female professor may use the privilege of whiteness to define the community of her classroom, acting from the power of that privilege to minimize any gender disadvantage that her students would use to undermine her classroom control. Because the choice to act from privilege may be unconscious, the individual, for example, the white female professor, may see herself as a victim of gender discrimination, which she may in fact be. But she is unlikely to see herself as a participant in discrimination for utilizing her white privilege to create the classroom environment.

Intersectionality can help reveal privilege, especially when we remember that the intersection is multi-dimensional, including intersections of both subordination and privilege. Imagine intersections in three dimensions, where multiple lines intersect. From the center one can see in many different directions. Every individual exists at the center of these multiple intersections, where many strands meet, similar to a Koosh ball.<sup>TM36</sup>

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36. The image of the Koosh ball to describe the individual at the center of many intersections evolved during a working session between Adrienne Davis, Trina Grillo, and me. I believe that Trina Grillo uttered the words, "It's a

The Koosh ball is a popular children's toy. Although it is called a ball and that category leads one to imagine a firm, round surface used for catching and throwing, the Koosh ball is neither hard nor firm. Picture hundreds of rubber bands, tied in the center. Mentally cut the end of each band. The wriggling, unfirm mass in your hand is a Koosh ball, still usable for throwing and catching, but changing shape as it sails through the air or as the wind blows through its rubbery limbs when it is at rest. It is a dynamic ball.

The Koosh ball is the perfect post-modern ball.<sup>37</sup> Its image "highlights that each person is embedded in a matrix of . . . [categories] that interact in different contexts" taking different shapes.<sup>38</sup> In some contexts we are privileged and in some subordinated, and these contexts interact.

Societal efforts at categorization are dynamic in the same way as the Koosh ball is, changing, mutating, yet keeping a central mass. When society categorizes someone on the basis of race, as either white or of color, it picks up a strand of the Koosh, a piece of rubber band, and says, "See this strand, this is defining and central. It matters." And race might be a highly important strand, but looking at one strand does not really help anyone to see the shape of the whole ball or the whole person. Even naming the experience "race" veils its many facets because race may be a whole cluster of strands including color, culture, identification, and experience.

This tendency to label with categories obfuscates our vision of the whole Koosh ball, where multiple strands interrelate with each other. No individual really fits into any one category; rather everyone resides at the intersection of many categories. Categorical thinking makes it hard or impossible to conceptualize the complexity of an individual. The cultural

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Koosh ball." San Francisco, California, March, 1992. Koosh ball is a registered trademark of Oddzon Products, Inc., Campbell, CA.

37. See Allan C. Hutchinson, *Identity Crisis: The Politics of Interpretation*, 26 NEW ENG. L. REV. 1173 (1992) (describing the post-modern view of identity as perspectival and fluid).

38. Joan C. Williams, *Dissolving the Sameness/Difference Debate: A Post-Modern Path Beyond Essentialism in Feminist And Critical Race Theory*, 1991 DUKE L.J. 296, 307. Williams acknowledges work by Angela Harris, Mari Matsuda, Patricia Williams, Martha Minow, and Charles Taylor on this identity theme. *Id.* at n.47.

push has long been to choose a category.<sup>39</sup> Yet forcing a choice results in a hollow vision that cannot do justice.

Justice requires seeing the whole person in her or his social context, but the social contexts are complicated. Complex, difficult situations that are in reality subordinating cannot be adequately described using ordinary language, because that language masks privilege. Language masks privilege by making the bases of subordination, themselves, appear linguistically neutral, so that the cultural hierarchy implicit in words such as race, gender, and sexual orientation is banished from the language. Once the hierarchy is made visible, the problems remain no less complex, but it becomes possible to discuss them in a more revealing and useful fashion.

We are all Koosh balls consisting of many threads coming together. These threads are not all treated the same in our culture. Some of these categories have meanings that resonate and create other assumptions. In 1990s America, race is such a category. For example, I have a friend who is seventeen. She has blond hair and hazel eyes and pale skin. She identifies herself as Hispanic and Black and white, because that is her racial heritage. She is also smart and a swimmer. She was excitedly telling a school friend about her acceptance to UC San Diego, which had awarded her a merit scholarship. Her so-called friend said to her, "Yeah, but what race did you put?"

The use of that category, race, had the power to erase all her accomplishments, her late nights studying to get good grades, and her efforts at swim practice. The use of race in the conversation made her feel unworthy and somehow "less than." Her friend's highlighting of race, implying her non-whiteness, made her feel diminished, even though she is proud of her race.

Power categories<sup>40</sup>, such as race, shape our vision of the world and of ourselves. Most of us with white privilege lead pretty white lives. Consider our schools, shops, medical

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39. Thus in 1916 Harold Laski wrote: "Whether we will or no, we are bundles of hyphens. When the centers of linkage conflict a choice must be made." Harold J. Laski, *The Personality of Associations*, 29 HARV. L. REV. 404, 425 (1916).

40. Power categories is my term. In her work on classification Adrienne Davis calls these categories "hegemonic." Davis, *supra* note 29, at 32.

buildings, and neighborhoods. In most places we spend time, we are in white settings, unless we act affirmatively to seek a racially integrated environment.

Our law schools are some of the few places where we have a real chance to participate in an integrated community, one that is truly diverse across these many power categories. Building a sense of community across these power categories is our real challenge. Institutions need to acknowledge this ongoing project of building a diverse community as part of the work of the institution.<sup>41</sup> It is important to make this work visible, because it is a continuing process. One white law professor I know asked why she should continue working on racism when she had already spent eight hours, a whole weekend day, at a workshop, and no end to racism was in sight.

Power systems that interfere with building community have no quick fix, but building community needs to be our life—all of our lives. A white person can recede into privilege and not worry about racism whenever she or he chooses. People of color cannot. Men and heterosexuals can ignore the system of gender hierarchy, if they choose. Women and gay men cannot.

Recently in my torts class I assigned groups of students to write think pieces on tort reform.<sup>42</sup> Part of my purpose was to create a setting in which the students could discuss the issues with each other. I wanted them to think together about what a more perfect world would look like. The local legal newspaper published the best of these reflections, along with the students' photographs, in a tort symposium.

Even in these outwardly benign circumstances, the institutional hierarchies played themselves out. One of the groups whose work was published consisted entirely of women of color. After the piece appeared, I said to one of these women, "You must feel good about having your work published."

"Well," she shrugged, "people are saying that our piece was chosen because we've done so badly in law school that

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41. I was impressed, when I lectured at St. Thomas University School of Law, that they have a human relations committee, which means that the law school takes this process seriously.

42. Another description of this exercise appears in Stephanie M. Wildman, *Bringing Values and Perspectives Back into the Law School Classroom*, 4 S. CAL. REV. OF LAW AND WOMEN'S STUDIES — (forthcoming 1995).

you were just trying to help us out. You know, because you're sympathetic to minorities in law school."

I looked at her in disbelief as many thoughts swirled through my brain. This rumor mill reaction, that their papers were somehow *less than*, although unfounded and untrue, prevented these students from enjoying the experience of publication in the same way that the white students could. For this Hispanic student, even her fleeting happiness at seeing her name in print and having her article published was taken away. She was denied even this shred of self-confidence and achievement by the unnamed entity of "they" that defined the community as white and these students as other.

"You can't even enjoy having your work published, like the other students in the symposium," I said to her. She nodded, "It's just the way it is here. I'm not surprised."

But I was surprised that students would act that way toward other students. Part of my white privilege is being able to be surprised, to forget what people of color cannot forget in order to survive in predominantly white institutions. In addition to surprise, however, I felt both despair and anger that my teaching effort, trying to help *all* students publish their work, would result in pain to these students of color.

And so, it is very important that we, as members of a law school community, take this discussion about power systems and privilege into our classrooms.<sup>43</sup> Classroom dynamics take place, of course, within the context of the systems of power and privilege that this essay has been discussing. The culture in which we live spills into our classrooms, infecting them before we even write on the clean chalkboard. And legal education has its own form of intellectual elite privileging, another Koosh ball strand, in the dynamic of the law school classroom.

The traditional Socratic method, the *Paper Chase* model, uses the classroom to insult, to intimidate, to model the professor as one who knows all. Most classrooms are constructed auditorium style, with an elevated, louder voiced, single person in the front, and rows of observing, passive students looking up. This passivity and authoritarian focus is the expecta-

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43. See Stephanie M. Wildman, *Privilege and Liberalism in Legal Education: Teaching and Learning in a Diverse Environment*, 10 BERKELEY WOMEN'S L.J. 88 (1995).

tion and paradigm of legal education. No wonder Professor Duncan Kennedy calls it training for hierarchy.<sup>44</sup>

I once saw Professor Gloria Watkins, also known as bell hooks, step down into such a room and walk among the audience, talking. Her proximity created a closeness and was very effective. Yet some students feel violated when the professor leaves the podium and comes into "their" domain. The professor is still the holder of the privilege, choosing the nature of the interaction.

The authority privilege of the teacher crosscuts with other privilege systems in fascinating ways, because not all professors enter the classroom with the same package of privileges. Every woman professor to whom I have ever spoken about this subject has agreed that men receive a benefit of the doubt, a little chip of "you belong here," that women do not receive when we enter a classroom. A recent Berkeley Women's Law Journal devoted an entire issue to a symposium about the experiences of African-American women teaching in the legal academy.<sup>45</sup> It is very compelling reading.

I recently discussed this phenomenon of male faculty privilege with a male colleague who was quite upset at the idea. He felt that this privilege notion was a disparagement of male teachers. He worked hard in the classroom, he said, and if he did not, students would not say he was a good teacher. I agreed with him that students would quickly discount a poor teacher, male or female. But I was talking about the presumption of competence that occurs *before* anyone says a word. That certain skepticism students feel toward me because I am a woman (some have told me so) means I have to work harder when I stand up in front of a class, even though I wear my white privilege when I walk to the front of the room.

We as teachers struggle with our privilege and position in the hierarchy that is legal education; students struggle too.

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44. See Duncan Kennedy, *Legal Education as Training for Hierarchy*, in *THE POLITICS OF LAW* 40 (ed. David Kairys 1982).

45. See *Black Women Law Professors: Building a Community at the Intersection of Race and Gender*, A Symposium, 6 BERKELEY WOMEN'S L.J. 1 (1990-91).



I have written about silence in the classroom.<sup>46</sup> This silence, or lack of participation, can happen when we make students feel as though they do not belong. While this is something we may do quite unintentionally, sexual subordination has been a stock-in-trade of legal education for several generations, privileging male students who can participate in the laughter at women's expense.

A Yale law student reported this story of a so-called "joke" told by her evidence professor about a hearsay case in which a man killed his wife during an argument. The wife had called her mother during the fight; the legal issue was whether the mother's testimony, which would report what her daughter had said to her over the phone during the fight, was admissible. The professor described the facts and then lightheartedly said, "I guess that's the last argument they'll ever have." The student described her reaction in this internal monologue:

Shall I raise my hand and tell him that it's not funny to make jokes about battered women? Should I talk with him after class? He's not receptive to questions in class, so maybe I should go up later, but then my peers' attention won't be called to the incident. Meanwhile there is a blank space in my notebook and an evidentiary point lost.<sup>47</sup>

The effect of the gender power system is harmful to our women students. As teachers we have to ensure that everyone is part of the educational process.

Ensuring participation by everyone in the educational process means that we, as teachers and students, members of a community, have to think about how our remarks and comments in class are heard. This is basic politeness, not censorship. If we want a community to include all people within it, we will not talk about "Kikes" when we mean Jewish people or say "chicks" when referring to women. We are being hurtful when we use these "words that wound," as Richard Delgado calls them.<sup>48</sup>

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46. See Wildman, *supra* note 12, and Stephanie M. Wildman, *The Classroom Climate: Encouraging Student Involvement*, 4 BERKELEY WOMEN'S L.J. 326 (1989).

47. Wildman, *supra* note 12, at 150.

48. Richard Delgado, *Words that Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling*, 17 HARV. C.R.-C.L. L. REV. 133 (1982).

Also we need to notice who is talking in our classes and who is not. Notice who the professor is calling on, who is being affirmed, who is given longer chances, who is passed over quickly. When women students in my class are doing 10 percent of the talking and they are in fact 50 percent of the class, I have asked them to stay after class and talk about it. These invisible dynamics need to be named and brought out into the open.

My own teaching style is to hear from other people and to listen. The lecture format and the room arrangement grant me the power, privilege me. I understand that this is the art form, but we need to develop better ways to build classrooms. We need to rearrange furniture. And most important, we need to create better ways to communicate with each other for community building. No one is immune from the difficulty of this process.

The Pharisee and the Tax Collector, a parable from Luke, chapter 18,<sup>49</sup> is addressed to those who believe in their own self-righteousness, while holding everyone else in contempt. In the parable the Pharisee describes his own efforts to observe religious precepts, and gives thanks that he is better than the tax collector. The tax collector however is humble, asking only for mercy. The parable concludes that everyone who exalts himself shall be humbled while he who humbles himself shall be exalted.<sup>50</sup>

One cannot hear this story without thinking, "I'm so glad I'm not like that Pharisee, I don't think that way." And then we are lost, because we are thinking that we are better than someone else. This story is important for our own work in looking at our own privileges, which are so difficult to see. Instead of worrying about how not to be racist or sexist or otherwise prejudiced, let's think about the systems of power and the privilege that keeps those prejudices intact. And let's try to do something about it.

Share my hope that people of goodwill can change these power systems by looking at them in our own lives. The power of the feminist slogan of the 1970s "The personal is political" needs to be explored in new ways. Try to make a

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49. Luke 18:9-14; Thanks to Dr. Dan McPherson, who used this parable in a talk he gave at USF during Respect Week 1994. DR. DAN MCPHERSON, *MIDDLE CLASS WHITE GUYS AND THE HETEROSEXUAL AGENDA* (1994).

50. Luke 18:14.

friend with someone who is situated at intersections different from your own.