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Spring 2015


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Acting White? Or Acting Affluent?
A Book Review of Carbado & Gulati’s
Acting White? Rethinking Race in “Post-Racial” America

Lisa R. Pruitt

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I. INTRODUCTION

“Acting White?: Rethinking Race in Post-Racial America” is the latest installment in Devon Carbado and Mitu Gulati’s decade-plus collaboration regarding issues of race and employment.¹ The monograph is a comprehensive treatment of a subject they have previously taken up: the double bind that racial minorities—especially blacks—experience within principally white institutions,

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along with the employment law implications of that bind. Indeed, the book format allowed the authors to expand their discussion of that racial double bind to new contexts: Barack and Michelle Obama’s presence on the national political stage; racial identity and performance in the context of higher education admissions; and racial profiling by law enforcement. It is a highly accessible book—sometimes laugh-out-loud funny—and should find audiences beyond law and the legal professoriate.

The double bind that is the book’s focus is the pressure blacks experience to demonstrate they are “white enough” to make whites comfortable (and therefore not invite negative consequences such as discrimination or racial profiling), but also “black enough” from the perspective of other blacks and to be true to themselves. A black person’s goal, Carbado and Gulati explain, is to perform her racial identity—in the authors’ parlance, to “work” her identity—in a way that prevents her race from being seen as salient. Such deft identity work by blacks soothes whites, who seek to diversify their institutions in name or superficial appearance, but who wish to do so in a way that causes whites the least discomfort. Anti-discrimination law, the authors assert, has not kept pace with this change in institutional practice, a lag that leaves unprotected those black employees who cannot or will not assimilate.

Although their book is principally about race, Carbado and Gulati acknowledge that everyone “feel[s] the pressure to fit in,” and we all work our identities, whatever the component parts of those identities. The authors write in the introduction: “Women work their identities as feminine or not. Men are expected to act like men. Gays and lesbians are viewed along a continuum of acting straight or not. Racial performance is but part of a broader Working Identity phenomenon.” Even the heterosexual white man must work his

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3 CARRADO & GULATI, supra note 1, at 9–14, 18–19, 40.

4 Id. at 1–3, 35–37.

5 Ian Haney López offers a related observation in his new book, calling these “managed interactions” and explaining that: “well-off whites have experienced integration only on their own terms—in controlled settings, such as elite colleges and universities, and with only token numbers of non-whites.” IAN HANEY LOPEZ, DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS 172 (2014).


7 Id. at 3. The authors pay special attention, as in prior publications, to the intersection of gender and race for black women. Id. at ch. 3. In doing so, they draw on intersectionality theory and methodology, as pioneered by Kimberlé Crenshaw. See infra notes 61–90 (discussing Marlene and Fay hypotheticals).

8 CARRADO & GULATI, supra note 1, at 3; see also Carbado & Gulati, Working Identity, supra note 2 (introducing the concept of Working Identity—the highpressure negotiation between an individual’s sense of self and the external, stereotype-laden expectations placed upon that individual—and identifying this as a common means of employment discrimination).
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identity, the authors note. Absent from the book, however, are the poor or working class heterosexual white man and—of more relevance given the mostly upscale workplaces and contexts examined—any poor or working class white who is in the process of upward migration into the professional/managerial class.

In these introductory comments as elsewhere, Carbado and Gulati might have enumerated class as a component of identity. They might have listed it as a basis on which one may be an Outsider (their generic term for those who must do more identity work). But they do not. The authors do discuss—somewhat opaquely and belatedly—the intersection of class with blackness, but they never take up the intersection of class with whiteness. Instead, they conflate whiteness with affluence. Indeed, throughout the book Carbado and Gulati emphasize the significance of intra-racial diversity, but they discuss that phenomenon only as it relates to racial and ethnic minorities. Largely missing is all but the most perfunctory acknowledgement of intra-racial diversity among whites. In considering whiteness only to the extent that it is the foil for black identity work, Carbado and Gulati overlook the struggle for assimilation that poor and working class whites—aspiring, striving class migrants—experience when seeking success in these same “white institutions.” Indeed, all employees are expected to assimilate to institutional norms which, in highbrow professional settings, are as much about class (affluence) as about race (whiteness). Yet contemplation of the white class migrant’s struggle to integrate the sort of upmarket settings that are the backdrop for most of Carbado and Gulati’s analysis might have led them to title the book “Acting Affluent?” rather than “Acting White?” In the final analysis, of course, neither the title they chose nor

9 CARBADO & GULATI, supra note 1, at 3.
10 I borrow the terms “professional/managerial class” and “class migrant” from Joan Williams, RESHAPING THE WORK-FAMILY DEBATE: WHY MEN AND CLASS MATTER, passim (2010).
11 More precisely, they would be talking about class of origin. See infra text accompanying notes 45–47, 80–111 for a more robust discussion of class as identity.
12 CARBADO & GULATI, supra note 1, at ch. 6 & 7 (discussed in more detail at infra notes 81–87, 109–11, 121 and accompanying text).
13 Id. at 165–66, 168–69.
14 Id. at 1, 15, 170.

My sense that the authors were talking about socioeconomic privilege as much or more than race privilege was perhaps strongest where they list the fifty items from the website “stuff white people like.” The list includes Whole Foods, hating your parents, diversity, making you feel bad about not going outside, Wes Anderson movies, Asian fusion food, writers’ workshops, and film festivals. My instinctive reaction was that family and friends in my community of origin in rural Arkansas do not know what many items on the list are or mean, let alone “like” them. Regarding other listed items, those family and friends certainly could not afford them. The list reflects the privileges of an America that is foreign to most socioeconomically disadvantaged people. CARBADO & GULATI, supra note 1, at 29–31. See WILLIAMS, supra note 10, at 152–53 (noting that working class folks are likely to see upper class choices in food, vacations, sports as reflections of class
the one I suggest is truly precise because affluent white identity and affluent black identity are unlikely to be identical. But even as Carbado and Gulati grapple with some very complex and potent intersections of race and class, their book glosses over many other critical intersections, including that of white skin privilege with class disadvantage.

II. A POST-RACIAL AMERICA? NOT.

A. Presidential Example

Carbado and Gulati write in an era that many consider post-racial, as alluded to by the quotation marks around that phrase in the book’s subtitle. In many ways, Acting White? serves as a sophisticated and nuanced challenge to the post-racial claim. Moving beyond their prior publications, the authors make extensive use of Barack Obama’s racial performance on the national stage to illustrate their points about working identity. This not only makes the book timely, but the racially fraught public life of our nation’s first black president also provides a touchstone to which any reader can relate, even those who might find the book’s analysis of the finer points of employment discrimination law less accessible.

Carbado and Gulati use many vignettes from Obama’s 2008 campaign (the book went to press in the midst of his 2012 campaign) and his handling of race as President. The authors observe that Obama’s navigation of the double bind is “rarely racially didactic,” and one of the best illustrations of this point is their analysis of Obama’s response when George Zimmerman shot and killed Trayvon Martin.

Initially, Obama said nothing. Then, in response to pressure

\[\text{Cf. Obama’s Reaction to Ferguson Raises Questions About President’s Role, NPR (Aug. 22, 2014), available at http://npr.org/templates/transcript/transcript.php?storyid=341935015 (analyzing President Obama’s relative silence about difficult race issues raised by the police shooting death of unarmed teenager Michael Brown in Ferguson, Missouri, in August 2014, particularly in comparison to the response of Attorney General Eric Holder, who visited the St. Louis suburb and spoke openly about having been racially profiled himself).}\]
from leaders in the black community (who pointed out that he had not hesitated to reach out to the Georgetown law student whom Rush Limbaugh had called a “slut”), he intervened, observing that: “If I had a son, he’d look like Trayvon.” This carefully crafted statement reminded all Americans that Obama is black, and it reminded African Americans in particular that Obama conceives of himself as black. Moreover, the statement signaled that, because Obama exists within a black family context, he and his family are vulnerable to racism. Essentially, Obama was saying: If I had a son, he’d be black; as such, he would be subject to the kind of risk that resulted in Trayvon Martin’s death. All of this subtle signaling solidified Obama’s connection to African Americans. In that moment, he was “black enough.”21 At the same time, Obama’s comments did not alienate white Americans. This is because they were not explicitly racialized. Few quarreled with Obama’s statement “If I had a son, he’d look like Trayvon.” How could they? It is descriptively accurate at least in the sense that if Obama had a son he would indeed look black. This is hardly a controversial claim, and at any rate, is not the kind of statement that would make Obama “too black.” Like his speech on race, then, this was another successful “double bind” racial performance.22

Another illustration is Obama’s response to Henry Louis Gates’s arrest in 2009 for suspicion of breaking into what turned out to be Gates’s own home.23 After parsing the president’s response to this incident—which included inviting Gates and the police officer to the White House for a beer—the authors suggest that the entire situation was a “no-win” for Obama.24

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21 CARBADO & GULATI, supra note 1, at 13.
22 Id. at 13–14. This discussion reminded me of Nigerian-American novelist Chimamanda Ngozi Adichie’s description of what whites expect of Obama as “a Magic Negro”:

> [O]nly a Magic Negro can win an American election. And what’s a Magic Negro, you ask? The black man who is eternally wise and kind. He never reacts under great suffering, never gets angry, is never threatening. He always forgives all kinds of racist shit. He teaches the white person how to break down the sad but understandable prejudice in his heart. You see this man in many films. And Obama is straight from central casting.

CHIMAMANDA NGOZI ADICHIE, AMERICANAH 322 (2013).
23 CARBADO & GULATI, supra note 1, at 98–99.
24 Id.
B. Living the Double Bind

Just as Obama’s racial double bind plays out before the nation, so it plays out for blacks and other Outsiders in professional and managerial settings day in and day out.\textsuperscript{25} Using multiple illustrations from such contexts (and a few from the elite higher education admissions offices that are the most certain gateways to those employment settings), Carbado and Gulati explain that minimizing white discomfort at having blacks present can have legal ramifications because whites are less likely to discriminate against a black with whom they are comfortable.\textsuperscript{26} The authors call such assimilating blacks (along with assimilating Asian-Americans, Latina/os, etc.) “racial exceptions” because the identity work they do makes their race appear less salient.\textsuperscript{27}

While the effort of being a racial exception is costly for those who make that effort (as detailed further below), blacks who do not assimilate arguably bear even greater costs. That is, blacks whose race appears salient may ruffle the proverbial feathers of whites, leading them to discriminate against non-assimilating blacks.\textsuperscript{28} Such discrimination may not be cognizable under current anti-discrimination law principles because it appears to be the fault of the black for not changing, for not fitting in.

A similar phenomenon is at play with racial stereotyping by law enforcement. As Carbado and Gulati explain in Chapter Five, “(Not) Acting Criminal,” police are less likely to harass a black who looks non-threatening or who behaves in a compliant way in a stop-and-ask context.\textsuperscript{29} But the black who cannot or does not act in a sufficiently obsequious fashion will suffer consequences.\textsuperscript{30} Indeed, even middle-class trappings are sometimes insufficient to protect blacks from the negative stereotypes associated with their skin color.\textsuperscript{31}

As for the costs borne by blacks whose racial performances successfully soothe whites and facilitate assimilation into the institutions controlled by whites, Carbado and Gulati explain that this shadow work “requires time, effort,
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and energy” and “is part of an underground racial economy.” 32 The authors elaborate on the various costs, including “The Costs of Compromising,” “The Costs of Poor Performance,” and “The Backfire Costs.” 33 Regarding “the Backfire Costs,” for example, Carbado and Gulati explain how “Outsiders are typically subject to a number of interconnected stereotypes” 34 or “identity priors.” 35 Thus, “a strategy to repudiate one stereotype, like laziness, will confirm another, like intellectual incompetence.” 36 Many who are Outsiders on any number of bases will relate to these scenarios. 37

But not all Outsiders are burdened with all of the categories of costs that Carbado and Gulati identify. The authors explain, for example, that “The Associational Pressure of Colorblindness” 38 does not apply to whites because of “the one-directional way in which the colorblind norm works,” creating a “color conscious burden” on people of color. 39 Carbado and Gulati argue that people of color are implicitly required “to avoid other people of color (the negative racial duty) and to associate with whites (the affirmative racial duty).” 40 On the other hand, whites, regardless of any characteristic that makes them Outsiders, are not similarly burdened by their race and can freely associate with people of all races. 41

By detailing the effort that blacks must expend to pass and cover so that they are considered palatable or non-threatening within largely white institutions (or, in the case of racial profiling, within broader society and in the eyes of law enforcement in particular), Carbado and Gulati brilliantly refute the “happily

32 Id. at 3. The incentive for blacks to work their identity arises, Carbado and Gulati explain, because “racial salience threatens colorblindness.” Id. at 43. The authors are quick to clarify that colorblindness has implications for whites, too, and some of them are positive for everyone—namely that “colorblindness creates a disincentive for whites to engage in intentional discrimination or exhibit behavior that is overtly racially offensive.” Id. at 39.

33 Id. at 40.

34 Id. at 41.

35 Id. at 66.

36 CARBADO & GULATI, supra note 1, at 41.

37 Elsewhere, the authors observe: “Given that racial minorities, and blacks in particular, are generally subject to negative stereotypes, it follows that they likely end up doing more work to negate those stereotypes than their white counterparts.” Id. at 35.

38 Id. at 33.

39 Id. at 39.

40 Id. (citations omitted). Presumably these duties would apply by analogy to members of the LGBT community. That is, sexual minorities in the workplace are implicitly required to avoid other sexual minorities and to associate with heterosexuals.

41 While this is true, as a class migrant with a non-elite legal education, I found myself drawn to the only other law professor with a non-elite education, when, as a junior professor, I was selected to participate in the Yale–Stanford Junior Faculty Forum. That other law professor was also white. Thus marginal whites may choose to associate with other marginal whites, not availing themselves of the opportunity to associate with a broader cross section of whites, across class, because doing so requires more energy. Indeed, it requires what Carbado and Gulati call working one’s identity.
ever after” post-racial narrative. They explain how discrimination has evolved from overt to subtler forms. For example, whites may pat themselves on the back for supporting Obama, whose racial “performance offers some people racial cover,” just as whites have long taken cover by virtue of having black friends. Meanwhile Carbado and Gulati vividly remind us that blacks and other minorities are still living lives laden with racial meaning and racial pressures.

III. OVERLOOKING CLASS PASSING AND ITS COSTS

What Carbado and Gulati overlook, however, is the impact of the increasing social, economic, and even geographic removal of those in lower income and wealth strata from those in our nation’s increasingly insular plutocracy. In a socioeconomic landscape in which upward class mobility has been declining since the 1980s, would-be class migrants of all colors face enormous pressure to “class pass” effectively. Yet doing so compels abandonment or suppression of aspects of identity. Consider Bill Clinton as a candidate for the U.S. Presidency in 1992. We presumably would not have been very open to that candidacy had Clinton not worked his (white) classed identity for different purposes and audiences: Clinton’s prestigious tertiary education made his class migration palatable to elites, while his ability to lapse into a mild twang, leverage his up-by-the-bootstraps story, and connect with the working man and woman operated to his advantage when the playing field was the national electorate.

IV. THE COMPLEXITIES OF PROFESSIONAL EMPLOYMENT SETTINGS

But a narrower, more select milieu, e.g., elite law firms, is the employment staple of Acting White?. As we have come to expect from Carbado and Gulati,

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42 See infra notes 61–88 and accompanying text.

43 CARBADO & GULATI, supra note 1, at 6.

44 Id.

45 See, e.g., SHERRYL CASHIN, PLACE, NOT RACE: A NEW VISION OF OPPORTUNITY IN AMERICA (2014) (documenting the relationship of economic stratification to place and arguing for affirmative action based on place); NICHOLAS CARNES, WHITE COLLAR GOVERNMENT: THE HIDDEN ROLE OF CLASS IN ECONOMIC POLICY MAKING 12 (2013) (arguing that “the shortage of people from the working class in American legislatures skews the policy-making process toward outcomes that are more in line with the upper class’s economic interests”); Lisa R. Pruitt, The Geography of the Class Culture Wars, 34 SEATTLE U. L. REV. 767 (2011).

46 See, e.g., Gregory Acs, Downward Mobility from the Middle Class: Waking Up From the American Dream, PEW CHARITABLE TRUSTS (2011), http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Economic_Mobility/Pew_PollProject_Final_SP.pdf; Daniel Aaronson & Bhashik Mazumder, Intergenerational Economic Mobility In The U.S., 1940 To 2000, 43 J. HUM. RESOURCES 139 (2008) (finding that first-generation college students made up 40% of all college students in 1960, and 58% by 1970, but that by 2000, the percentage had fallen to just over 20%).

47 See supra text accompanying notes 32–40.

48 See, e.g., CARBADO & GULATI, supra note 1, at 64–65, 71–77, 143–44.
the book features fine-grained observations of these upmarket employment settings, as well as keen analyses of the problems of bias and the limits of employment law in responding to them. While their admitted focus is on race, Carbado and Gulati draw heavily from anti-discrimination doctrine and case law about gender bias.49 They pay special attention to the intersection of race and gender, as in earlier articles, analyzing how black women’s discrimination claims may slip through the doctrinal cracks.50

As the authors readily acknowledge, their hypotheticals are often exaggerated.51 Those exaggerations—as well as our ability to see ourselves and our institutions in these hypotheticals—make it impossible not to chuckle at times. The book is frequently entertaining but, in turn, also sobering as we are compelled to see the burdens that racial Outsiders face in institutions whose upper echelons are largely racially homogeneous, controlled by whites.

A. The Junior Faculty Member Example

One hypothetical that is sure to resonate with law professors involves our own ilk. Featured in Chapter Two, “Talking White,” it illustrates the perils of saying too little, too much, or the “wrong thing” at a faculty seminar.52 Carbado and Gulati explain that this pressure is heightened in the context of such “high visibility” opportunities within otherwise low visibility institutions.53 The topic of the seminar is a racially sensitive one—racial profiling by law enforcement—but the race angle struck me as secondary to a broader point: Everyone is on guard in this setting, with junior faculty out to impress senior colleagues, who are scrutinizing every word.54 Outsiders are likely to be even more cautious, censoring themselves:

JUNIOR FACULTY MEMBER [to speaker]: Now, even as I agree with your account of [this case that implicates racial profiling] and what it does and doesn’t do, you have provided us with no indication as to how courts can actually manage this problem. You don’t use this term in your paper, but lots of

49 Id. at 68–79 (Chapter 3, Acting Like a Black Woman), 80–95 (Chapter 4, Acting Like a (White) Woman), 134–48 (Chapter 7, Acting Within the Law).
50 Id. at 69–71, 74.
51 See id. at 52, 64, 66, 122.
52 Id. at 50–52. Related to this “Talking White” phenomenon, I believe, is the attention the media have devoted to Justice Clarence Thomas’s long stints of silence during oral arguments before the U.S. Supreme Court. See, e.g., Adam Liptak, Clarence Thomas Breaks His Silence, N.Y TIMES (Jan. 14, 2013), http://www.nytimes.com/2013/01/15/us/clarence-thomas-breaks-silence-in-supreme-court.html. Such scrutiny presumably deters Justice Thomas from speaking, especially after a long period of silence, because anything he might say will be fodder for so much commentary and analysis. A negative feedback loop is created whereby his silence creates greater scrutiny of what he says if and when he does speak, and that scrutiny in turn is a deterrent to his speaking.
53 Id. at 52.
54 CARBADO & GULATI, supra note 1, at 52.
people refer to the phenomenon you describe as DWB—Driving While Black. Again, I think this is a real problem. Parenthetically, I think that white people are stopped pretextually as well, and you might want to think about how that social reality affects your analysis. But that might just be a quibble. My larger point is that it is unclear how, in practical terms, courts should deal with this problem. Isn’t that, after all, the real question?

The speaker, taken aback by this barrage, looks crestfallen. He reaches for his bottle of water.

JUNIOR FACULTY MEMBER THINKS: How about that, colleagues? I’m real-world oriented, solution-driven, nuanced, racially sensitive—but not too sensitive (pretextual stops are a problem for white people as well). What’s more, I crushed the speaker with that last question—but in a very collegial way.\(^{55}\)

Interestingly, the junior faculty member in this hypothetical brackets possible white disadvantage in the way Carbado and Gulati do, acknowledging its specter, but leaving it at that.

**B. Analyzing Media Representations**

As with these detailed hypotheticals, the use of images is another strength of *Acting White*\(^{56}\). Photos and magazine covers not only amuse, they bring the reader along to a better understanding of the analysis proffered. We see, for example, in Chapter Seven, “Acting Within the Law,” three images of Michelle Obama.\(^{56}\) The first is a photo of Obama in an evening gown, which the authors say depicts her as respectable, sophisticated, and charming, the kind of woman who could be on the cover of *Vogue*. It presents a palatable image of a black woman. She is smiling. Her hair, while not straightened, is neither in braids nor an afro. She looks conventionally feminine. She fits what we have called the “but for” racial category—*but for* the fact that, in terms of physical features and skin tone, she looks black, she is otherwise indistinguishable from other normatively feminine white women.\(^{57}\)

The second is a cover illustration of *The New Yorker* showing Michelle Obama as a “gun-wielding separatist” with “afroed” hair and a “smirk [that]
portrays both disloyalty and untrustworthiness."

She is giving President Obama the now infamous fist bump. The third is an apparently photo-shopped image of Michelle Obama as “Mrs. Grievance,” which appeared on the cover of National Review in April 2008. Gulati and Carbado describe this image, which has Obama, hair relaxed and in professional attire, wagging her finger and looking disapprovingly at the camera, as “a woman who complains about everything, especially race. She is unhappy, ornery, and believes that society owes her—everything. She, too, is unpalatable, notwithstanding her straight hair.”

C. Comparing Two Black Candidates for Law Firm Partnership: Marlene and Fay

Carbado and Gulati use these images of Michelle Obama to segue into a discussion of two models of anti-discrimination law, the Assimilationist Model and the Difference Model. To further illustrate, the authors sketch the profiles of two black women who have been denied partnership in their respective elite San Francisco law firms. Marlene—like the smiling Michelle Obama in evening dress—is a model of assimilation. Fay, on the other hand, has arguably remained true to her roots, true to her blackness. As in the unpalatable images of Michelle Obama, Fay’s race appears more “salient,” which is presumptively unsettling to whites. Carbado and Gulati then consider which has a stronger claim under existing anti-discrimination law for her denial of partnership in her law firm.

First, more about how Marlene and Fay worked their identity at their respective firms:

[Marlene] was an active member of the recruiting committee and the training committee, and she could be counted on when emergency projects arose. Marlene was liked at the firm. Her senior colleagues considered her a team player. She had a reputation for professional appearance; both clients and her co-workers admired her understated but elegant Armani suits. Finally, Marlene and her husband, Jeremy, an investment banker at Goldman Sachs, were frequent attendees at the firm’s social functions.

Marlene is thus the “but for her race” employee. But for her skin color,

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58 Id. at 135.
59 Id. at 136.
60 CARBADO & GULATI, supra note 1, at 136.
61 Id. at 140–41.
62 Id. at 137–42.
63 Id. at 15, 43, 67, 77, 139–40.
64 Id. at 146–48.
65 Id. at 137.
Marlene “was just like the white associates the firm promoted.” 66 To put it another way, “she was unconventionally, and thus only phenotypically, black.” 67 The legal argument to be made on Marlene’s behalf, then, is that she must have been discriminated against on the basis of her skin color because she got everything else right. 68 A related argument for taking Marlene’s assimilationist case is that elite law firms desire and promote assimilation of all attorneys, including the white ones. 69 If they wanted Marlene there, Carbado and Gulati query, why did they not promote her? 70 Racial discrimination must have been the culprit.

The authors then turn to Fay.

In sharp contrast, Fay arguably made little effort to assimilate into her firm:

[Fay] was an active member of the diversity committee. She was outspoken in urging the firm to hire more women, minorities, and students from less prestigious schools such as her alma mater. Fay was also known for her boisterous personality and exuberance. Her slight Caribbean accent was often commented upon as “cute,” and her clothes were considered “funky.” She insisted on wearing her hair in braids, despite comments from some senior women that this might be perceived as being unprofessional. She attended few of the firm’s social functions, although she always played in softball games. The partners often commented on how well she got along with the predominantly “colored” support staff. “They interact like family members,” was how one partner put it. 71

Carbado and Gulati explain that Fay is better off relying on the “Difference Model” to advance her discrimination claim. 72 The difference argument is “that the firm draws a line between black people who do identity work to fit in at the firm and black people who do not perform such work, and that white associates are not subject to this sub-categorization and therefore are unfairly advantaged.” 73 Acknowledging that these “are not fully worked-out doctrinal

66 Carbado & Gulati, supra note 1, at 138.
67 Id. at 141.
68 Id. at 138.
69 Id.
70 Of course, this point could cut either way. That is, if the firm wants black lawyers, perhaps the fact Marlene did not make partner signals that her work was not good enough. On the other hand, the authors stipulate regarding Marlene that many at the firm had assumed she would make partner and some partners expressed disappointment at her partnership denial. Id. at 137.
71 Id. at 137.
72 Carbado & Gulati, supra note 1, at 142–45.
73 Id. at 142.
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arguments.”

Carbado and Gulati assert that Fay’s partnership denial can be said to violate anti-discrimination law in one of three ways: “(1) the sub-categorization constitutes a racial term and condition of employment; (2) it is a form of “race plus” discrimination[75]; and (3) sub-categorizing reflects racial stereotyping.”

I am not troubled by the fact that the authors’ arguments are not on all fours with employment law doctrine, and their analysis of these black women’s claims strikes me as sound. But some of the assumptions that Carbado and Gulati make here about white workers are flawed. Referring to the sub-categorization of black workers as a term and condition of employment, Carbado and Gulati assert:

> [D]rawing intra-racial distinctions based on Working Identity is tantamount to establishing the racial terms upon which people will be hired or promoted. This alone would seem to violate anti-discrimination law. The problem is compounded if the plaintiff establishes that white people are not sub-categorized to the same degree based on the performance of their white racial identity. As such, they are not subject to the racial terms and conditions of employment.

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74 Id.
75 “Race plus” refers to courts’ gender discrimination doctrine that “employers may not sub-categorize women based on gender plus some ‘other characteristic’ where the other characteristic is (a) a fundamental right, (b) an immutable characteristic, or (c) a significant burden on only one sex that deprives that sex of employment opportunities.” Id. at 143 (citations omitted).
76 Id. at 142.
77 This analysis somewhat backs off a position the authors took in their 2001 article, The Fifth Black Woman. There, they depict a black lawyer named Mary who is very similar to Fay in terms of apparent racial salience because she has not assimilated. Like Fay, Mary is denied partnership. Part of their analysis follows.

> The problem is that the firm draws a line between black people who do (or whom the firm perceives as performing) identity work to fit in at the firm and black people who do not perform (or whom the firm perceives as not performing) such work. The interracial problem is that white people are not subject to this [sub-categorization].

Carbado & Gulati, The Fifth Black Woman, supra note 2, at 721.

A few sentences later, they rephrase the fundamental assertion:

> The problem is compounded by the fact that white people are not [sub-categorized] based on their performance of (white) racial identity. In other words, they are not subject to racial terms and conditions of employment.

Id.

This assertion that white people are not subject to sub-categorization has always struck me as fundamentally wrong for the reasons I explain infra Parts IV.D and E (discussing the Oralea hypothetical). I note that in Acting White?, Carbado and Gulati retreat from their earlier assertion. They acknowledge that white workers, too, may be sub-categorized into those performing the work of assimilation and those not doing so, but they maintain that white workers are not categorized to the same degree. See CARBADO & GULATI, supra note 1, at 142–43.
Applied to Fay, the argument would be that the employer denied Fay a promotion because she failed to perform the work of racial palatability, and that white people are not required to perform this work. To be clear: the fact that the employer might sub-categorize whites would not, without more, defeat Fay’s claim.78

I will return to this issue of sub-categorization of whites below.79 It is just one point within Carbado and Gulati’s thorough discussion of the strengths, weaknesses, and costs of the two models. As for the competing models of anti-discrimination law, the authors do not articulate a clear preference for either but posit that the Assimilationist model may be outdated because it does not take into account the fact that most institutions now “want to hire and promote at least some blacks.”80

What Carbado and Gulati downplay in this comparison is that Fay is a class migrant,81 while Marlene is at least second-generation middle class. Indeed, Marlene is probably upper middle class because she is the child of academics, both professors at elite private universities in the Boston area.82 Marlene is a graduate of Yale College—where, we are told, she played squash—and Harvard Law.83

Fay, on the other hand, emigrated from Trinidad and Tobago with her family when she was twelve.84 As a teenager, she helped out in her family’s roti restaurant in Queens. Fay earned a degree in ethnic studies at Hunter College before studying law at Seton Hall.85 She was at the top of her class and the only graduate in her class to get an offer from the elite firm that has now denied her

78 Carbado & Gulati, supra note 1, at 142–43 (emphasis added).
79 See infra text accompanying notes 92–93.
80 Carbado & Gulati, supra note 1, at 148.
81 Williams, supra note 10, at 154 (using the term “class migrant” to refer to “individuals born and raised working class, who join the upper-middle class through access to elite education.”).
82 Carbado & Gulati, supra note 1, at 137.
83 Id.
84 Id.
85 Id. In a similar vein, Mary, Fay’s predecessor in The Fifth Black Woman, attended “a large local state law school at the bottom of the second tier of schools.” Carbado & Gulati, The Fifth Black Woman, supra note 2, at 718. These educational details could be read as an acknowledgement that a degree from a lower ranked school, public or private, is often a proxy for being working class or otherwise socioeconomically disadvantaged. See also infra text accompanying notes 109–111 (discussing prospects of a “State” university graduate applying to an elite business school); Lucille A. Jewel, Bourdieu and American Legal Education: How Law Schools Reproduce Social Stratification and Class Hierarchy, 56 BUFF. L. REV. 1155, 1224 (2008) (discussing the ways in which legal education and the legal profession perpetuate hierarchies among lawyers, in spite of the rhetoric of “merit-based prestige”); George Critchlow, Beyond Elitism: Legal Education for the Public Good, U. TOL. L. REV. (forthcoming 2014).
partnership.\textsuperscript{86}

These more complete portraits of Fay and Marlene remind us of the significance of class and the fact that the ability or willingness to assimilate is greatly influenced by one’s family of origin. In short, much of the work of assimilating was done by Marlene’s parents, maybe even her grandparents, and the process was no doubt aided—any “rough edges” further polished—by her years at Yale and Harvard. Fay, on the other hand, came to the law firm still a few steps removed from the institutional norms with which she is now expected to comply. Fay must therefore work at assimilation—if, that is, she wishes to assimilate.

Carbado and Gulati do acknowledge the role of class and class migration near the end of this discussion of Marlene and Fay, albeit in a veiled way.

To choose Marlene’s case is to construct a discrimination theory around the most-privileged members of Outsider groups—those with the most economic and cultural capital, and those who have the resources and the capacity to be the same as, or fit within, the Insider group. In this way, the assimilationist model performs a kind of racial skimming. If we assume that anti-discrimination is meant to be progressive, protecting those most in need, this outcome is anomalous.\textsuperscript{87}

By referring to the resources and capacity to assimilate—specifically economic and cultural capital—Carbado and Gulati gesture toward the reality that succeeding in these institutions requires more than the willingness to behave like an Insider. The “right” educational credentials are critical, as is the money necessary to purchase the “right” clothes and other trappings associated with such highbrow settings.

The authors assert that the Assimilationist Model of discrimination performs a kind of racial skimming, but it seems to me to perform a type of skimming that also excludes those who are Outsiders on bases other than race.\textsuperscript{88} I agree that courts should be attuned to intra-racial discrimination, but I would extend that sensitivity to intra-racial discrimination among whites.\textsuperscript{89} Indeed, whites who are Outsiders on the basis of class appear highly vulnerable given evidence that elite institutions seem unable to see their potential and therefore to value them.\textsuperscript{90}

\textsuperscript{86} Carbado & Gulati, supra note 1, at 137.

\textsuperscript{87} Id. at 146 (emphasis added).

\textsuperscript{88} Id.

\textsuperscript{89} Intra-racial discrimination among whites occurs on bases other than class, of course. See, e.g., Luke A. Bos, Policing Masculinity in Small-Town America, 23 TEMP. POL. & CIV. RTS. REV. (forthcoming 2014) (discussing how white men police other white men’s masculinity, making Outsiders of nonconforming men).

D. Oralea: A White Class Migrant as Partnership Candidate

A third scenario might clarify the extent to which Fay’s experiences are distinctly about her blackness, or more about the intersection of her blackness with her class (migration). I invite your consideration of my own fictional law firm associate, Oralea, who grew up in a small town in Eastern Kentucky where her father was a coal miner and her mother a bookkeeper. Neither of Oralea’s parents attended college, but Oralea’s high school counselor encouraged her to apply to Berea College, where students work at campus jobs in lieu of paying tuition. Oralea was a student there in business administration, and upon graduation she worked for a few years at a utility company in Lexington. Oralea later attended the University of Alabama School of Law, where she graduated first in her class and was Editor-in-Chief of the law review. Oralea was one of only three students in her law school class to secure a job with an elite global law firm.

Oralea is based in the Washington, D.C. office of her firm. The Am Law Top 100 firm values Oralea’s exceptional analytical and writing skills. True to her working class upbringing, Oralea’s work ethic is unparalleled. She bills on average 2,800 hours a year, well above the firm average of 2,300.

Oralea has never married. She grew up in an evangelical Christian household, and her only community involvement is in her church in exurban northern Virginia. For religious reasons, Oralea has never cut her hair, but she wears it braided, wrapping the braid into a bun at the back of her head or in dual braids encircling her head. Reflecting the ethos of thrift with which she was raised (and because of student loan debt) Oralea does not spend much money on her wardrobe, wearing the same three or four tatty suits day in and day out. Oralea is marginally overweight, and her table manners are a bit lacking. She occasionally attends firm social events but does not drink alcohol. The firm tends to limit Oralea’s client exposure with the exception of a Big Coal client whose general counsel is a native of West Virginia and a graduate of that state’s College of Law. Oralea connects well with this client.

Oralea is white. When Oralea is denied partnership in her elite law firm, does she have any legal redress? To track Carbado and Gulati’s analysis regarding Fay, we would probably agree that Oralea has not assimilated. Further, the firm appears to have sub-categorized whites into those who are

(finding, from comprehensive study of elite college admissions, that high school involvement in activities that might be associated with working class applicants, e.g., ROTC, 4-H, Future Farmers of America, and working part-time while in high school, all hurt an applicant’s prospects for admissions). Cf. Nancy Leong, Racial Capitalism, 126 HARV. L. REV. 2151, 2190 (2013) (asserting that institutions and organizations attempt to derive “economic and social value” from an individual’s identity as a racial minority).

91 See Debra Cassens Weiss, Do Elite Law Grads Disdain Longtime BigLaw Work? Stats Suggest Lower-Tier ‘Strivers’ Stick Around, A.B.A. J. (Mar. 12, 2012, 10:30 AM) (reporting on William Henderson’s study of partners at large Chicago Law firms, which found that the graduates of lower-ranked schools were more likely to remain at the firms and achieve partnership than were their elite law school counterparts).
willing to work their identities and those who are not. Recall that Carbado and Gulati call Marlene “unconventionally, and thus only phenotypically, black[,]” but it seems Oralea is unconventionally, and thus only phenotypically, white. Oralea is not “white” in the way Carbado and Gulati implicitly define that term. Has the firm thus made assimilation a racial term or condition of employment? Does the sub-categorization of whites reflect racial stereotypes? A respectable argument could be made that the answer to both of these questions is “yes” based on the culturally potent intersection of whiteness and class disadvantage captured in concepts such as “white trash” and redneck. 93

Like Carbado and Gulati, I have taken the liberty of constructing an exaggerated hypothetical to make my point. If the image of Oralea made you smile or even laugh out loud, it may be because you think Oraleas no longer exist94—except, of course, on “Saturday Night Live” or in reality TV. 95 More likely, you scoffed at the example because you know that the chances of an elite firm hiring an “Oralea” are far lower than the chances they will hire a “Fay.” Indeed, a disadvantaged white—even a talented striver like Oralea—will probably have to “clean up” better than Oralea has done just to get in the door of such a firm, let alone make partner there.

E. Bringing Carbado and Gulati’s Analysis to the Oralea Hypothetical

Contemplating Oralea’s struggles in an elite workplace provides an opportunity to revisit how some of Carbado and Gulati’s assertions regarding “Talking White” (Chapter Two) play out for white Outsiders.96 In their discussion of the imperative to “talk white,” Carbado and Gulati acknowledge

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92 Carbado & Gulati, supra note 1, at 141.

93 See, e.g., Matt Wray, Not Quite White: White Trash and the Boundaries of Whiteness (2006); Jill M. Fraley, Invisible Histories & the Failure of Protected Classes, 29 Harv. J. on Racial & Ethnic Just. 95 (2013); John Hartigan, Unpopular Culture: The Case of White Trash, 11 CULTURAL STUD. 316 (1997). To be clear, I am not suggesting that Oralea is “white trash,” a term which I use advisedly. I am suggesting that upper class whites—particularly highly educated ones—hold working class and poor whites in disdain, a disposition that may be captured and expressed with terms such as “white trash,” “redneck,” and “hillbilly.” See Pruitt, The Geography of Class Culture Wars, supra note 45.

94 In fact, the kernel for Oralea came from Professor Anne Marie Lofaso, West Virginia University College of Law, who described a woman like Oralea whom Lofaso, as a Harvard alumnus, vetted for admission to Harvard University. Harvard rejected the woman’s application, but that same year admitted another West Virginian whom Lofaso also vetted. The successful applicant was the son of a partner in a large Charleston law firm.


96 Carbado & Gulati, supra note 1, at ch. 2.
that everyone is in some way an Outsider, “everyone has to, well, talk white in the sense of engaging in speech that the institution favors and avoiding speech that the institution disfavors.”

They then elaborate:

People who are vulnerable to stereotypes have a heavier burden proving that they belong than people who are not so burdened. Consequently, people who are burdened with stereotypes are likely to hold their tongue to a greater extent than others. The cumulative effect of doing so—day in and day out—can be significant over the course of a person’s career.

One group frequently stereotyped is Southerners, especially those who have retained Southern accents or other perceptible markers of Southern identity, especially if they no longer live in the South. Whites who might be thought of as hicks or hillbillies—like Oralea—will similarly struggle to fit in and be derided for their self-expression—at least in highbrow settings. For some purposes, these disfavored groups of whites would be seen as quintessential whites—as being the whitest whites in the sense of perhaps having explicit or nontransparent white identities. But the negative stereotypes associated with these groups would presumably deter their speech because of their inability to “talk white” in the specific way that Carbado and Gulati observe is expected in elite institutions. There are many ways to be white, just as there are many ways to be black, Latina/o, Asian, female, or gay. Not all of those ways of being white will be valued in any given employment setting. Oralea’s self-expression will play differently, for example, in the Lexington, Kentucky public utility office where she worked before law school than it will in her global law firm.

V. STILL ROOM FOR DISCUSSION ABOUT THE INTERSECTION OF CLASS AND RACE

Just as Carbado and Gulati forego a more explicit discussion of the intersection of class and race regarding Marlene and Fay (never mind contemplating the likes of a white Oralea), they similarly do not take up the intersection of race and class in their discussion of higher education admissions,
Chapter Six on “Acting Diverse.” The authors briefly note germinal Supreme Court decisions on race-based affirmative action in admissions, e.g., Bakke, Grutter, and Gratz, before offering hypotheticals to illustrate the challenge admissions officers face in light of vagaries of these cases. Carbado and Gulati describe the prospective students as having “a range of diversity attributes, including racial diversity, geography, academic background and interests, work experience, and extracurricular activities.” The omission of disadvantage from this list of “diversity attributes” is especially striking in light of current popular and scholarly attention to the perceived tension between affirmative action based on race, on the one hand, and affirmative action based on socioeconomic disadvantage on the other.

This omission might suggest that Carbado and Gulati do not see socioeconomic disadvantage as a diversity attribute, but that seems unlikely. The authors do mention class later in Chapter Six where they might be read to imply that “acting white” is tantamount to acting rich. This comes in a description of Johnny, a black who graduated from Andover Academy and (or more precisely, “but,” since this is not a natural progression) did his

103 Carbado & Gulati, supra note 1, at ch. 6.
104 Id. at 126–30.
105 Id. at 121.
106 I call the tension “perceived” because I believe we need both types of affirmative action and that, contrary to most media and policymaker discussions, the two bases for affirmative action need not be mutually exclusive. The two bases for affirmative action could well operate side by side and in fact do so at some institutions. See Lisa R. Pruitt, The Strange and Erratic Career of Socioeconomic Disadvantage as “Diversity” in Higher Education (forthcoming Buff. L. Rev. 2015).
108 The authors do acknowledge, for example, the issue of whether descendants of slaves are disadvantaged in comparison to other blacks in admissions processes. Carbado & Gulati, supra note 1, at 118. An aspect of this disadvantage could be attributed to or labeled “class.”
undergraduate work at “State.” Now vying for a spot at an elite business school, Johnny is up against applicants who attended more prestigious institutions. In his admissions interview, Johnny mentions his knowledge of European food and wine and his interest in the Tour de France, all stemming from a semester abroad. The opportunity to demonstrate his cosmopolitan bona fides is important because, as Carbado and Gulati explain, the business school rarely admits students from State, in part because State is insufficiently elite and most of the students at State are from working-class backgrounds. The admissions office has determined that the students from State are likely to have difficulty fitting into the milieu at an elite business school. Given this concern, whether Johnny is selected will be a function of whether he can differentiate himself from the category within which he is situated—the category of State students.110

What Carbado and Gulati do not expressly acknowledge is that, like Johnny, white working class graduates of State are also up against candidates with the “right” social and educational pedigrees if they apply to elite graduate programs. Further, would-be class migrants who are white will have a much more difficult time differentiating themselves from State’s hoi polloi than will Johnny, with his Andover diploma and his black skin.111

VI. WHY NOT TALK ABOUT CLASS?

Various reasons might explain Carbado and Gulati’s decision not to pay more explicit attention to class. First, an individual’s class is not easily pinned down.112 Nor is class reflected in the relatively tidy binaries and taxonomies often associated with race.113 Further, many have argued that class—specifically, being “lower class”—is not a marker of identity because people do not feel pride in or attachment to that status and do not necessarily want to remain in that class.114 But some evidence suggests that people do take pride in


110 Carbado & Gulati, supra note 1, at 128.

111 See supra note 90 and accompanying text (discussing the differences between how low-income whites and low-income applicants of color fare in the college admissions process).

112 Typical metrics associated with class include income, education level, and occupation. Robert W. Hodge and Donald J. Treiman, Class Identification in the United States, 73 AM. SOC. 535, 535 (1968).

113 But see Fraley, supra note 93, at 115 (arguing that race and ethnicity have proved difficult to define, which has undermined the protected classes concept of equal protection law) (citing john a. powell, The “Racing” of American Society: Race Functioning as a Verb Before Signifying as a Noun, 15 LAW & INEQ. 99, 106 (1997)); Ian Haney Lopez, White By Law: The Legal Construction of Race (1996).

114 See Angela P. Harris, Theorizing Class, Gender, and the Law: Three Approaches, 72 LAW & CONTEMP. PROBS. 37, 44 n. 28 (2009) (quoting John Guillory, Cultural Capital: The
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their status as working class. Further, even if being poor or working class is not a component of identity in the way that race or sexuality is, I hope that my Oralea hypothetical illustrates the way in which the class of one’s family of origin leaves powerful, even indelible marks on ways of behaving and views of self. These are powerful influences upon how one functions in all sorts of settings—certainly including employment contexts—throughout one’s life.

It may also be that Carbado and Gulati forego a more robust discussion of socioeconomic disadvantage when it does not overlap with race-based disadvantage because legal remedies appear out of reach for the former when standing alone. Yet the authors are elsewhere sensitive to the fact that law may not be “the answer” to the problems they identify regarding the pressure blacks face to work their identities and “act white.” In other words, the lack of legal remedy is not necessarily a reason not to discuss a problem. In Chapter Two (“Talking White”), for example, Carbado and Gulati acknowledge that not all will see the Working Identity costs borne by Outsiders as a problem, and even among those who did see the problem, more still will not see law as the solution. Nevertheless, Carbado and Gulati astutely suggest that if we think “Outsiders should be encouraged to ‘talk white’”—or by extension, to act white—we should “be transparent about it [and] say so explicitly.”

In Chapter Seven, Carbado and Gulati further analyze the policy question whether law should respond to the Working Identity burden on Outsiders.


115 Pruitt, The Geography of the Class Culture Wars, supra note 45.

116 See Annette Lareau, Unequal Childhoods: Class, Race and Family Life (2d. ed. 2011); Elizabeth Aries & Maynard Seider, The Interactive Relationship Between Class Identity and the College Experience: The Case of Lower Income Students, 28 QUALITATIVE SOC. 419 (2005) (discussing how class influences the experiences of college students and contrasting the experiences of working class students at state universities with those of working class students at more elite institutions).


119 Id. at 67.

120 Id. at ch. 7. See supra notes 3–9, 32–44 and accompanying text (explaining “Working Identity”).
Assuming, arguendo, that it is not law’s place to alleviate that burden, the book’s final chapter, “Acting White to Help Other Blacks,” evaluates the likely success of approaches such as the oft-touted “lift as you climb” strategy. Here, Carbado and Gulati seem to play devil’s advocate by articulating the reasons such approaches are unlikely to yield widespread success in achieving upward black mobility, even as they insist they are not pessimists on this point.

VII. CONCLUDING THOUGHTS

From their 2009 survey of recent empirical studies, sociologists Claude Fischer and Greggor Mattson identified a “trend of decreasing racial divisions among the middle class.” Other empirical studies suggest that class is now a better predictor than race of a child’s life chances. One way to view this trend is to say that money tends to “whiten.” That is, cultural differences associated

121 CARBADO & GULATI, supra note 1, at 150–56, 164–65.
122 Id. at 165–66.
123 Claude S. Fischer & Greggor Mattson, Is America Fragmenting?, 35 ANN. REV. SOC. 435, 442 (2009). They observe that differences among middle class blacks and middle class whites are diminishing, while economic disparities are widening across races, writing: “Gaps by social class and educational attainment are widening among Americans by almost any measure. Ironically, perhaps, the fragmentation of Americans into like-minded educational groups provides evidence against fragmentation by race or ethnicity.” Id. at 437. See also Chris L. Jenkins et al., Class, Not Race, a Divider for Many in DC, WASH. POST (June 19, 2011), http://www.washingtonpost.com/local/dc-residents-see-class-not-race-as-citys-great-divider/2011/06/17/AGZdU9bH_story.html (reporting on a poll of District of Columbia residents which found that most residents, whether black or white, believed that socioeconomic class, not race, was “the primary source of a stark divide in the city.”). Of course, William Julius Wilson controversially made this argument in his 1978 book, The Declining Significance of Race: Blacks and Changing American Institutions, and Sheryll Cashin makes it in her 2014 volume, Place, Not Race: A New Vision of Opportunity in America.

124 See Sean F. Reardon, The Widening Academic Achievement Gap Between the Rich and the Poor: New Evidence and Possible Explanations, in WHITHER OPPORTUNITY? RISING INEQUALITY, SCHOOLS, AND CHILDREN’S LIFE CHANCES 91 (Greg J. Duncan and Richard J. Murnane, eds. 2011) (finding that, for children born in 2001, the income achievement gap, defined as the income difference between a child from a family at the 90th percentile of the family income distribution and a child from a family at the 10th percentile, is now nearly twice as large as the black–white achievement gap); this is discussed in Sean F. Reardon, No Rich Child Left Behind, N.Y.TIMES, THE OPINIONATOR BLOGS (April 27, 2013), http://opinionator.blogs.nytimes.com/2013/04/27/no-rich-child-left-behind/?ref=general; Martha J. Bailey & Susan M. Dynarski, Gains and Gaps: Changing Inequality in U.S. College Entry and Completion, National Bureau of Economic Research, Working Paper 17633, December 2011 (finding growing gaps between children from high- and low-income families in college entry, persistence, and graduation); Sarah Garland, When Class Became More Important to a Child’s Education than Race, THE ATLANTIC (Aug. 28, 2013), http://www.theatlantic.com/national/archive/2013/08/when-class-became-more-important-to-a-childs-education-than-race/279064/ (reporting that in 2013 children in the bottom 10% of income lagged four years behind children in the top 10%, whereas the gap between these demographic sectors was just one year in 1963).

125 The reference here is to an expression associated with race in Brazil, that money whitens. See, e.g., Luisa Farah Schwartzman, Does Money Whiten? Intergenerational Changes in Racial Classification in Brazil, 72 AM. SOC. REV. 940 (2007) (calling the “idea that ‘money whitens’” a “classic topic in the sociological literature on race in Brazil.”). Critical race scholars might be more
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with race fade, and culture becomes more homogeneous the higher one climbs up the socioeconomic ladder and certainly within professional/managerial employment settings.126 While pointing out the shortcomings of this designation, I nevertheless acknowledge the reasons Carbado and Gulati label that culture “white”—in particular the dominance of whites in those institutions. We should acknowledge, however, that the authors are describing a certain strand of whiteness—the one that dominates in elite milieus.127 While that strand is the one most familiar to law professors and the wider public interest, we must acknowledge that this is in fact, a very narrow band that excludes the vast majority of whites.

A downside to Carbado and Gulati’s homogenizing rhetoric regarding whiteness is that it prevents us from seeing how “marginal whites,”128 like Oralee in my hypothetical, also struggle to fit in and are likely to suffer adverse employment consequences for failure to adequately assimilate.129 Saying that white class migrants are supposed to “act white” sounds nonsensical, and it seems to diminish (if not completely obscure) the effort they must expend to work their identities in highbrow settings. This rhetoric also conceals their exclusion from elite circles. Whites who are Outsiders based on sexuality, disability, socioeconomic status, geography, or any other basis are very rarely members of a ruling clique any more than people of color are, whether or not we label that clique “white.”

Institutions that Carbado and Gulati label “white” have surely been altered by the presence of blacks and other racial minorities. This has disrupted the meaning of whiteness,130 reflecting George Lipsitz’s observation that “[a]ll racial identities are relational; communities of color are mutually constitutive of

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126 On the other hand, as Carbado and Gulati illustrate in Chapter 5 on racial profiling, middle-class trappings do not necessarily take the biased edge off skin color in the law enforcement context. CARBADO & GULATI supra note 1, at ch. 5; see also supra note 29 and accompanying text (discussing police shooting in August 2014, of unarmed teenager Michael Brown).

127 Again, that brand of whiteness may place slightly different demands on blacks than on whites. See supra Part II. B.

128 I borrow this phrase from Camille Gear Rich, Marginal Whiteness, 98 CALIF. L. REV. 1497 (2010).

129 Indeed, in a sense it prevents us seeing that they are not white in the way the Irish, Italians and Jews were once not considered white. See KAREN BRODSKIN, HOW JEWS BECAME WHITE FOLKS & WHAT THAT SAYS ABOUT RACE IN AMERICA (1998); MATTHEW FRYE JACOBSON, WHITENESS OF A DIFFERENT COLOR: EUROPEAN IMMIGRANTS AND THE ALCHEMY OF RACE (1999). See generally RUTH FRANKENBERG, WHITE WOMEN, RACE MATTERS: THE SOCIAL CONSTRUCTION OF WHITENESS 1 (1993) (defining whiteness as the cumulative way that race shapes the lives of white people).

130 Carbado and Gulati acknowledge that the black-white binary oversimplifies. By way of example, they explain how Obama’s racial performance also has consequences in relation to Latino voters, who may be alienated if he appears either too black or too white. CARBADO & GULATI, supra note 1, at 168.
one another, not just competitive or cooperative.”\textsuperscript{131} Indeed, in calling Michelle Obama in evening gown and Marlene—the assimilated law firm associate—“but for” whites,\textsuperscript{132} Carbado and Gulati gesture to the fluidity of whiteness, hinting that it is what Ian Haney Lopez calls “contingent, changeable, partial, inconstant and ultimately social.”\textsuperscript{133} Remember Carbado and Gulati’s call for anti-discrimination law to respond to a changed racial and employment landscape in which at least some white institutions now desire to integrate blacks.\textsuperscript{134} But, Carbado and Gulati overlook other ramifications of that changed racial landscape, including its consequences for whites who are Outsiders on the basis of class.\textsuperscript{135} This is a huge oversight in a nation that is both increasingly stratified in terms of socioeconomic class and also at a time when awareness of that acute stratification is surely higher than it has been in decades.

Though its title might suggest otherwise, \textit{Acting White?} grapples with whiteness only to the extent that a certain monolithic whiteness is the foil for black identity work.\textsuperscript{136} Carbado and Gulati do not, for example, acknowledge the social, economic, and—yes—psychological struggles of lower class whites,\textsuperscript{137} including those like Oralea in my hypothetical, who are in the midst of


\textsuperscript{133} LOPEZ, supra note 113, at xiv; see also Omi, supra note 131, at 266 (challenging the notion of whiteness as “a fixed, objective and ahistorical category . . .”).

\textsuperscript{134} See supra notes 5–6 and accompanying text.

\textsuperscript{135} Indeed, elite education, a key factor perpetuating that stratification, is increasingly the coin of the realm. See SUZANNE METTLER, DEGREES OF INEQUALITY: HOW THE POLITICS OF HIGHER EDUCATION SABOTAGED THE AMERICAN DREAM (2014); Guinier, supra note 109, at 115 (observing the disproportionate influence that elite educational institutions enjoy in producing national leaders in all sectors). U.S. Supreme Court Justices are just one group who increasingly are exclusively products of elite education. Benjamin H. Barton, \textit{An Empirical Study of Supreme Court Justice Pre-Appointment Experience}, 64 FLA. L. REV. 1137, 1168–69 (2012) (finding that the educational credentials of Supreme Court Justices have grown increasingly elite and that the current Roberts Court Justices accumulated fifty-five total years of elite education, with elite defined as Ivy League or Stanford).

\textsuperscript{136} Cf. Devon W. Carbado, \textit{Critical What What?}, 43 CONN. L. REV. 1593, 1614 n. 95 (2011) (“[W]hiteness is not a monolithic identity category. Class, sexual orientation, among other aspects of person, shape how whites experience their whiteness. Understood in this way, whites have differential access to the privileges of whiteness.”); David B. Wilkins & G. Mitu Gulati, \textit{Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms}, 84 VA. L. REV. 1581, 1677–78 (1998) (suggesting that the partnership contests at large law firms are not truly meritocracies because they are influenced by a candidate’s social class, among other factors, including looks and style).

\textsuperscript{137} In his 2011 article, Carbado focuses on different psychological consequences of whiteness, stating that “whites across differences can nevertheless trade on whiteness, if only psychologically.”
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class migration. This simplification is understandable in the sense that authors can never do everything in a single volume. Still, the racially homogenizing rhetoric of Acting White? is a reminder of important work that remains to be done. Critical race scholars Joe Kincheloe and Shirley Steinberg asserted in 1998 that “no one at this point really knows exactly what whiteness is.”\(^{138}\) It is highly doubtful that a single “white perspective” exists.\(^{139}\) Neither Barack Obama’s election nor anything else that has happened since has helped us to pin down whiteness. Indeed, it is surely a myth to assume that whiteness can be pinned down.\(^{140}\) Yet Carbado and Gulati imply that they know what whiteness is—or at least that they know it when they see it.

I submit that, contrary to Carbado and Gulati’s class-blind approach, “looking at the way that class and race intersect” is a necessary next step in this thread of anti-discrimination work because doing so permits us to “begin to see the way in which these dynamics hold each other in place.”\(^{141}\) That holding in place can apply not only to affluent whites and socioeconomically disadvantaged blacks, but also to many other race-and-class combinations. In Acting White?, Carbado and Gulati begin to look at the intersection of blackness with class, and they make some important observations about black class

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\(^{139}\) See LAREAU, *supra* note 116, at 10.

\(^{140}\) See Omi, *supra* note 131, at 266 (arguing that treating whiteness as ahistorical “enables white people to occupy a privileged location in anti-racist debate . . . of knowing that ‘their’ ‘racial’ identity might be reviled and lambasted but never actually made slippery, torn open, or indeed, abolished.”).

\(^{141}\) Aal, *supra* note 131, at 306.
migrants without labeling them as such. But scholars must now investigate the equally critical intersections of whiteness with class, moving beyond presumptively economically-privileged whiteness to the range of economically precarious whites, from the shaky and disintegrating middle class down to those historically thought of as white trash.

Attention to a fuller panoply of race-and-class intersections need not revive the old “race versus class” debate.\textsuperscript{142} As Martha Mahoney reminds us, talk about “doing race” versus “do[ing] class” is a paradox when, in fact, the two intersect.\textsuperscript{143} Consideration of these intersections should inform a recognition that both class and race remain potent factors that influence—even pre-determine—who the winners are in American society. And—as critical race scholars have been reminding us for decades—whites have race, too.\textsuperscript{144}

\begin{footnotes}


Critical race scholars have lately begun to see the notion of “white invisibility” as less compelling. As Ruth Frankenberg explains, “the current ‘conditions and practice of whiteness’ render ‘the notion that whiteness might be invisible . . . bizarre in the extreme.’” \textit{Frankenberg}, supra note 129, at 76; see also John Hartigan, Jun., \textit{Establishing the Fact of Whiteness}, 99 Am. Anthropologist 495, 498 (1997); Douglas Hartmann et al., \textit{An Empirical Assessment of Whiteness Theory: Hidden from How Many?}, 56 Soc. Probs. 403 (2009).
\end{footnotes}