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2012]

Martin Luther King, Jr. Lecture

OCCUPYING AMERICA:
DR. MARTIN LUTHER KING, JR., THE AMERICAN DREAM, AND
THE CHALLENGE OF SOCIO-ECONOMIC INEQUALITY

TRINA JONES*

ON January 31, 1968, the city of Memphis sent home twenty-two black sewer workers without compensation while their white counterparts continued to work for pay.¹ The next day, two black workers, Echol Cole and Robert Walker, were crushed to death when a compactor mechanism on their garbage truck malfunctioned during a rainstorm.² Later that month, over 1,300 sanitation workers, members of Local 1733 of the American Federation of State, County and Municipal Employees' union (AFSCME), commenced a strike for better wages and benefits, for job safety, and for union recognition.³ In reflecting on that time, James Douglas, one of the striking workers, observed:

[We wanted] the city [to] know that [even though] we were sanitation workers, we were human beings; the signs that we were carrying said that I am a man and we were going to demand to

* Professor of Law, Duke University School of Law. For their kind invitation to deliver this lecture, I would like to thank Professor Ruth Gordon and Dean John Gotanda. I am also indebted to J.J. Williamson, Brian Boyle, and members of the *Villanova Law Review* for their hospitality and for their excellent work on this piece. Finally, I am grateful to my dear friends Mario Barnes, Charles Becton, Tamala Boyd, Angela Onwuachi-Willig, Grace Tonner, and Henry Weinstein for their helpful and supportive feedback. Parts of this talk were drawn from my previous work. See Mario Barnes, Erwin Chemerinsky, & Trina Jones, *A Post-Race Equal Protection?*, 98 GEO. L.J. 967 (2010); Trina Jones, *Foreword, Race and Socioeconomic Class: Examining an Increasingly Complex Tapestry*, 72 LAW & CONTEMP. PROBS. i (2009); Trina Jones, *Race, Economic Class, and Employment Opportunity*, 72 LAW & CONTEMP. PROBS. 57 (2009).

1. SANFORD WEXLER, *THE CIVIL RIGHTS MOVEMENT: AN EYEWITNESS HISTORY* 248 (1993).

2. TAYLOR BRANCH, *AT CANAAN'S EDGE: AMERICA IN THE KING YEARS, 1965-68*, 683-85 (2006).

3. For information on the Memphis Sanitation Workers' Strike, see *1968 AFSCME Memphis Sanitation Workers' Strike Chronology*, AFSCME, <http://www.afscme.org/union/history/mlk/1968-afscme-memphis-sanitation-workers-strike-chronology> (last visited Apr. 12, 2012); see also *Memphis Sanitation Workers Strike (1968)*, MARTIN LUTHER KING, JR. RES. & EDUC. INST., http://mlk-kpp01.stanford.edu/index.php/encyclopedia/encyclopedia/enc_memphis_sanitation_workers_strike_1968/ (last visited Apr. 12, 2012).

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have the same dignity and the same courtesy any other citizen of Memphis had.⁴

Notwithstanding the workers' efforts, Memphis' Mayor, Henry Loeb, refused to recognize the union and its demands. As the strike lengthened, Reverend James Lawson called upon Dr. Martin Luther King, Jr. to assist the workers in their efforts to organize a citywide boycott.⁵

Dr. King was quite busy at the time. Not only was he heading the Southern Christian Leadership Conference (SCLC), but he was also traveling throughout the United States developing a plan to tackle economic inequality head-on. This effort was known as the Poor People's Campaign. Dr. King's vision was to have a multiracial coalition of poor people, from ten U.S. cities and five rural areas, march on Washington in the spring of 1968 to petition the U.S. government to address their grievances.⁶ In announcing the Poor People's Campaign in December 1967, Dr. King said:

We will go there, we will demand to be heard, and we will stay until America responds. If this means forcible repression of our movement we will confront it, for we have done this before. If this means scorn or ridicule we embrace it, for that is what America's poor now receive. If it means jail we accept it willingly, for the millions of poor already are imprisoned by exploitation and discrimination. But we hope with growing confidence that our campaign in Washington will receive at first a sympathetic understanding across our nation followed by dramatic expansion of nonviolent demonstrations in Washington and simultaneous protests elsewhere. In short, we will be petitioning our government for specific reforms and we intend to build militant nonviolent actions until that government moves against poverty.⁷

Because the sanitation workers' strike in Memphis occurred as Dr. King and the SCLC were in the middle of planning the Poor People's March to—and occupancy of—Washington, it could not have been a good time to fly to Tennessee; but Dr. King heard the workers' appeals. He went to Memphis in late March of 1968 and again in early April. In com-

4. AFSCME, *I Am a Man: Dr. King & the Memphis Sanitation Strike*, YouTube (Apr. 4, 2008), <http://www.youtube.com/watch?v=HBDgH435oaU>.

5. See Branch, *supra* note 2, at 718-19. Reverend Lawson was a local pastor and Dr. King's longtime friend. *Id.*

6. For additional analysis of the Poor People's Campaign, see MARTIN LUTHER KING, JR., *THE AUTOBIOGRAPHY OF MARTIN LUTHER KING, JR.* 346-55 (Clayborne Carson ed. 1998); Gordon Keith Mantler, *Black, Brown and Poor: Martin Luther King Jr., the Poor People's Campaign, and Its Legacies* (2008) (unpublished Ph.D. dissertation, Duke University), available at http://dukespace.lib.duke.edu/dspace/bitstream/handle/10161/587/D_Mantler_Gordon_a_200805.pdf?sequence=1.

7. Martin Luther King, Jr., Press Conference Announcing the Poor People's Campaign (Dec. 4, 1967), available at http://mlk-kpp01.stanford.edu/kingweb/publications/papers/unpub/671204-003_Announcing_Poor_Peoples_campaign.htm.

menting on Dr. King's second visit to Memphis, Andrew Young, a civil rights activist and later Mayor of Atlanta, said

We had come back to Memphis only because Martin wanted us to, since our previous march—which had begun peacefully—had been disrupted by rowdy young people paid to promote a violent confrontation with police. We were accustomed to provocateurs within, and attempts at distortion and misinformation from U.S. government sources, but this was a simple garbage workers' strike. Union recognition and a wage that would at least reach the poverty level were the simple goals of the demonstration. Who could reasonably be threatened by such minimal objectives in this day and age?

We were not aware, however, of how seriously threatened the Congress and the White House were [by the Poor People's Campaign and] the thought of three thousand disciplined, organized, nonviolent protesters coming to Washington to wage a campaign for the rights of the poor.⁸

Andrew Young went on to say that “Memphis did not seem as dangerous as Philadelphia, Mississippi, in 1964 or Chicago in 1967 The fears, [however,] were greater than we imagined.”⁹ Dr. King never led the second march in Memphis. On April 4, 1968, he was killed by an assassin's bullet as he emerged from his room at the Lorraine Motel.

Each January, during our national commemorations of Dr. Martin Luther King, Jr., we are reminded of the Montgomery Bus Boycott, the freedom rides, the Birmingham campaign, the 1963 March on Washington, and the events in Selma. Little emphasis, however, is placed on Dr. King's commitment, expressed most explicitly at the end of his life, to securing human and economic rights for all people—African Americans, Asian Americans, Latinos, and poor Whites. Perhaps we omit the latter because we prefer to embrace the mythical, symbolic Dr. King we have created, the “gentle, nonviolent martyr for civil rights,” as opposed to the fierce freedom fighter that he was. Yet it bears remembering that Dr. King was a courageous man who was arrested dozens of times, who was stabbed by a mentally ill person, who was spied on by the FBI, and whose home was bombed.¹⁰ Despite these risks, he was outspoken and steadfast in his efforts to dismantle the racial hierarchy created by Jim Crow racism and the hierarchy of economic privilege created by an exploitative capitalist system. Perhaps we neglect the fullness and revolutionary nature of Dr.

8. Andrew Young, *Introduction to Martin Luther King, Jr., I've Been to the Mountaintop*, in *A CALL TO CONSCIENCE* 201, 203 (Clayborne Carson & Kris Shepard eds., 2001).

9. *Id.* at 202.

10. For an excellent overview of King's life and work, see generally DAVID J. GARROW, *BEARING THE CROSS: MARTIN LUTHER KING, JR., AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE* (1999).

King's legacy during our celebrations because in our "feel good" society we prefer to focus on past success and progress as opposed to the hard work that remains to be done.

Yet, as Senator Ted Kennedy once observed, if we forget that Dr. King was a champion for economic equality—that he refused to distinguish between moral, racial, and economic justice—then we not only do a disservice to Dr. King's memory and the power of his message, but we also miss an opportunity to understand the relevancy of his work and his words to today's social problems.¹¹ Indeed, Dr. King would no doubt be alarmed at the economic plight of many Americans in 2012.

I. ECONOMIC INEQUALITY

Over the course of U.S. history, each successive generation of Americans has done better than the previous generation;¹² the rising economic tide has tended to lift all boats. Income inequality, however, has risen since the late 1960s.¹³ There is more space between those at the top and those at the bottom, and people at the higher end of the economic hierarchy tend to improve their economic positions at a faster rate, and with greater success, than those at the lower end.¹⁴ In other words, the tide has not lifted all boats equally. In 1973, for example, the median wage was \$12.53 an hour.¹⁵ In 2003, the median wage was \$13.62.¹⁶ That is a difference of \$1.09. Thus, in 2003, half of all full-time workers earned only a little more than the same cohort was making thirty years ago. While wages at the bottom were frozen, the salaries of CEOs at large companies rose at staggering rates. By one report, CEO salaries increased from 42 times the rate of entry-level workers in 1982 to approximately 411 times that rate in 2004.¹⁷ One consequence of all of this is that today, income distribution

11. See Edward M. Kennedy, *Introduction to Martin Luther King, Jr., Where Do We Go From Here?*, in *A CALL TO CONSCIENCE* 165, 165-66 (Clayborne Carson & Kris Shepard eds., 2001).

12. See JULIA B. ISAACS, ISABEL V. SAWHILL & RON HASKIN, *GETTING AHEAD OR LOSING GROUND: ECONOMIC MOBILITY IN AMERICA* 27-32 (2008), available at http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Economic_Mobility/Economic_Mobility_in_America_Full.pdf.

13. See *id.*

14. See *id.* at 27-29, 47-57; see also Jeanne Sahadi, *Wealth Gap Widens*, CNN (Aug. 29, 2006), http://money.cnn.com/2006/08/29/news/economy/wealth_gap/ (analyzing Economic Policy Institute data which found that over forty year period beginning in 1960s, top 1% of households increased their wealth from 125 times median wealth in United States to 190 times median wealth, and top 20% of households increased their wealth from fifteen times to twenty-three times median wealth).

15. Peter Edelman, *Where Race Meets Class: The 21st Century Civil Rights Agenda*, 12 *GEO. J. ON POVERTY L. & POL'Y* 1, 4 (2005).

16. *Id.*

17. See *id.* (comparing CEO salaries to salaries of entry-level workers in CEOs' companies); see also James D. Cox, *Fair Pay for Chief Executive Officers*, in *LAW AND CLASS IN AMERICA: TRENDS SINCE THE COLD WAR* 99, 99-101 (Paul D. Carrington & Trina Jones eds., 2006) (detailing exorbitant pay increases among CEOs).

in the United States is highly concentrated at the top, with the top 1% of the population earning more than 20% of all income and the top 10% earning almost half of all income.¹⁸ The disparities are even greater when it comes to wealth, which includes not only income, but home equity, stocks and bonds, and the value of jewelry, furniture, and other possessions.¹⁹

Moreover, notwithstanding the rags-to-riches fairy tales that have captured the imaginations of so many Americans, the likelihood of moving from the bottom of the economic hierarchy to the top is small. Researchers recently found that “42[%] of children born to parents in the bottom fifth of the income distribution remain in the bottom, while 39[%] born to parents in the top fifth remain at the top.”²⁰ These figures are “twice as high as would be expected by chance.”²¹ In addition, “[o]nly 6[%] of children born to parents with family income at the very bottom move to the very top.”²² Thus, it seems the tale of economic prosperity that is so emblematic of the American Dream is for many just that—a dream. In the immortal words of Ray Charles, “them that’s got are them that gets.”²³

Despite this alarming evidence of growing economic inequality in the United States, there has been little sustained advocacy of note around this issue since the 1960s. President Johnson declared a war on poverty, but it was eclipsed and drained of resources by the Vietnam War.²⁴ For a brief moment, Hurricane Katrina caused some academics and members of the press to pause and examine issues of class, but that too has seemingly fizzled.²⁵ And many will recall John Edwards’ eight-state poverty tour as part

18. David Cay Johnston, *Income Gap is Widening, Data Shows*, N.Y. TIMES, Mar. 29, 2007, at C1 (reporting statistics based on 2005 data); see also Isaacs, Sawhill & Haskin, *supra* note 12, at 27-29, 47-50 (reporting that income and wealth inequality have been increasing since 1970s and noting that concentration of assets at top of income distribution has been growing since at least 1989); Dave Gilson & Carolyn Perot, *It's the Inequality, Stupid*, MOTHER JONES, (Apr. 2011), <http://motherjones.com/politics/2011/02/income-inequality-in-america-chart-graph> (overviewing economic inequality in United States).

19. See generally RAKESH KOCHHAR, RICHARD FRY & PAUL TAYLOR, PEW RESEARCH CENTER, WEALTH GAPS RISE TO RECORD HIGHS BETWEEN WHITES, BLACKS AND HISPANICS (2011), available at http://www.pewsocialtrends.org/files/2011/07/SDT-Wealth-Report_7-26-11_FINAL.pdf.

20. Isaacs, Sawhill & Haskin, *supra* note 12, at 4.

21. *Id.*

22. *Id.* at 7.

23. RAY CHARLES, THEM THAT GOT (ABC-Paramount Records 1960).

24. For an overview of Johnson’s war on poverty, see Guian A. McKee, *Lyndon B. Johnson and the War on Poverty: Introduction to the Digital Edition*, PRESIDENTIAL RECORDINGS LYNDON B. JOHNSON, <http://presidentialrecordings.rotunda.upress.virginia.edu/essays?series=WarOnPoverty> (last visited Apr. 12, 2012).

25. See, e.g., Kristi L. Bowman, *Rebuilding Schools, Rebuilding Communities: The Civic Role of Mississippi’s Public Schools After Hurricane Katrina*, 77 MISS. L.J. 711 (2008); Kevin R. Johnson, *Hurricane Katrina: Lessons About Immigrants in the Administrative State*, 45 HOUS. L. REV. 11 (2008); Michael A. Olivas, *Immigrants in the Administrative State and the Polity Following Hurricane Katrina*, 45 HOUS. L. REV. 1 (2008).

of his 2008 bid for the Presidency,²⁶ an undertaking which proved unsuccessful. Importantly, none of these efforts sparked a nationwide debate or stirred up the American consciousness the way that a small band of citizens did in September 2011 when they took up residence in Zuccotti Park and claimed to Occupy Wall Street (“OWS”).²⁷

II. OCCUPY WALL STREET

In some ways, the Occupy Wall Street protestors resemble the civil rights activists of the 1950s and 1960s. Like them, the OWS protestors are mostly young—though some are older.²⁸ They are also optimistic and are able to imagine this country as it ought to be, as opposed to as it is. Unfortunately, like the protesters of the 1960s, they have also been subject to crackdowns by law enforcement personnel and other governmental officials who are perhaps overly fearful and intolerant of civil unrest and disobedience.²⁹

But while there may be similarities, in many ways, the OWS movement is different—and if not different, then curious—in at least two ways that merit greater reflection. First, the protestors have asserted that “they are the 99%.”³⁰ Of course, no one takes this proclamation literally. No one expects 99% of Americans to be present in New York, Oakland, Los Angeles, Boston, Philadelphia, and the myriad other OWS sites. But, in a country of approximately 313 million, one might expect substantially more participants in terms of sheer numbers than we have seen in the various Occupy protests. If the top 1% of the country earns 20% of all income, if the top 10% earns more than half of all income,³¹ and if there are 46 million people now living in poverty—the highest recorded number in the fifty-two years that the Census Bureau has been tracking this statistic³²—then why are not more people in the streets?

26. See *John Edwards Set to Embark on Poverty Tour*, NPR (July 13, 2007), <http://www.npr.org/templates/story/story.php?storyId=11924709>; see also Matt Bai, *The Poverty Platform*, N.Y. TIMES, June 10, 2007, at 6 (overviewing Edwards’s focus on poverty).

27. For an early report on the movement, see Tina Susman, *All-Encompassing or Aimless?*, CHI. TRIB., Sept. 30, 2011, at C3.

28. See Steven Greenhouse & Cara Buckley, *Seeking Energy, Unions Join Wall Street Protest*, N.Y. TIMES, Oct. 6, 2011, at A1; N.R. Kleinfield & Cara Buckley, *Wall Street Occupiers, Protesting Till Whenever*, N.Y. TIMES, Oct. 1, 2011, at A1.

29. See, e.g., Ginia Bellafante, *Every Action Produces Overreaction*, N.Y. TIMES, Oct. 2, 2011, at MB1; Maria L. La Ganga, Larry Gordon & Geraldine Baum, *Occupy Protests Put Police Tactics in Spotlight*, L.A. TIMES, Nov. 24, 2011, at A1; Malia Wollan, J. David Goodman & Sarah Maslin Nir, *Police Fire Tear Gas at Occupy Protesters in Oakland*, N.Y. TIMES BLOG (Oct. 26, 2011, 12:22 AM), <http://thelede.blogs.nytimes.com/2011/10/26/police-said-to-fire-tear-gas-at-protesters-in-oakland-calif/>.

30. See OCCUPY WALL STREET, <http://occupywallst.org/> (last visited Apr. 12, 2012).

31. See Johnston, *supra* note 18 (discussing widening of income gap).

32. Press Release, U.S. Census Bureau, *Income, Poverty, and Health Insurance Coverage in the United States: 2010* (Sept. 13, 2011), available at <http://www.census.gov/hhes/income/poverty/2010.html>.

One response to this question is that the most desperately poor among us are busy looking for jobs or trying to juggle the three jobs that they have; they are too tired and worn down to sit-in or to march. Others, perhaps with more resources and time, may be loath to join the Occupiers because they do not really know and cannot quite figure out what OWS is about. They ask in newspapers, blogs, television interviews, and water cooler conversations: Who are these Occupiers? What are their tangible objectives? And how do they plan to obtain them? Many seem to find it hard to commit to something that appears “‘inchoate,’ unfocused and lacking in direction and leadership.”³³ In addition, with some members of the press portraying the Occupiers as an unruly band of hooligans,³⁴ some people seem to be sympathetic to the cause of economic justice, but not to the protestors themselves.³⁵

In addition to the above, there is also the issue of whether the Occupiers represent “the 99%” or just “the 70-99% of the 99%.” Some have asked if the Occupiers are merely upper-middle-class Americans who are temporarily down on their luck either because they are baby boomers who are forced to continue working because their pensions and retirement savings were wiped out by Wall Street fraud, or students who were promised lucra-

census.gov/newsroom/releases/archives/income_wealth/cb11-157.html. The 46 million people living in poverty constitutes roughly 15.1% of the U.S. population. *Id.* Importantly, the poverty line for a family of four in 2010 was \$22,314. See U.S. DEP’T OF HEALTH & HUMAN SERVS., COMPUTATIONS FOR THE 2012 ANNUAL UPDATE OF THE HHS POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA (2012), available at <http://aspe.hhs.gov/poverty/12computations.shtml>.

33. See Marilyn Katz, *The Seeds of a Movement: From the ‘60s to Occupy Wall Street*, CHI. TRIB., Oct. 26, 2011, at 25.

34. See Meg Miller, *While Whites Occupy Wall Street, African-Americans Occupy Harlem*, POLICYMIC, <http://www.policymic.com/articles/2518/while-whites-occupy-wall-street-african-americans-occupy-harlem> (last visited Apr. 12, 2012).

35. See Cara Buckley, *When Occupying Becomes Irritating*, N.Y. TIMES, Oct. 8, 2011, at A15. A friend, who lives in New York City, shared her skepticism about the NYC protesters in an email shortly before I was to deliver this lecture. She noted:

[The NYC protestors are] a bunch of Starbuck’s baristas who probably could, if they so desired, come out of the cold. Most of them are idiots who shouldn’t be allowed to talk to a camera. Every interview I ever saw with them involved some young white guy in a skully who couldn’t say for sure exactly what the hell they all wanted. They made an enormous mess of a beautiful park and why? You talk about what they accomplished—what did they substantively accomplish? Yes, they got press, most of it bad. I don’t see how they’re any better than the tea party-ers or birthers, except at least the TPer[s] and Bers knew what they were mad about. To be sure, they are insane, but they knew what they wanted. I resent the comparison to civil rights workers, who were focused, diligent and truly suffering; who got a beat down for their efforts, consistently, but still came back. Where are the friggin’ OWSers now? I thought the movements in the other cities were purer, and certainly, the people involved seemed to have more intellect.

E-mail from Tamala Boyd to Trina Jones, Professor of Law, Duke Univ. Sch. of Law (Jan. 17, 2012) (on file with author).

tive returns on their educational investments only to find themselves riddled with debt and few, if any, job prospects.³⁶ If these are the predominant faces and concerns of OWS, they may not resonate with the chronic poor, who have long been aware of economic disparities and limited opportunities for economic mobility and who have been protesting in their daily struggles for survival. In other words, the middle-class' dawning realization that the American Dream is a myth may fail to stir those who stopped believing in this dream a long time ago.

Even if this is all true, one might still expect to see more mass mobilization and more unrest in the streets, which causes me to ask, "Is there something about the nature of economic class itself, and the way Americans view it, that makes class-based solidarity and mobilization particularly difficult?" Professor Angela Harris has made the important observation that unlike race and gender, Americans tend to view class as more of a status than as an essential component of their identities. She notes:

Although Americans are no strangers to class struggle, and at various points in our history have participated in lively debates over economic rights and social citizenship (not to mention bloody labor struggles), most people in the United States at present do not understand "class" as a crucial category either for personal identity or for political struggle.³⁷

This insight is significant, because if class is not a core aspect of the way in which Americans define themselves and their relationships to others, then activism around class will be challenging.

In addition, rallying around class may be difficult because class is largely undefined. 99% percent is a large number covering a mass of people with divergent experiences. It ranges from the chronically poor, to those who are temporarily unemployed, to rather well-paid law professors.³⁸ Unlike racial or gender classifications, where Americans seem to believe group boundaries are somewhat defined, it is hard to know just who is economically rich or poor in this country. It appears that most Americans want to identify as middle-class, whether they are a single mother of four earning \$22,000 or a multi-millionaire. Indeed, as Profes-

36. See, e.g., Amanda M. Fairbanks, *Occupy Wall Street: A Generation of 20-Somethings Airs Its Grievances, Its Frustrations*, HUFFINGTON POST (Dec. 7, 2011), http://www.huffingtonpost.com/2011/12/07/occupy-wall-street-college-students_n_1132427.html.

37. Angela P. Harris, *Theorizing Class, Gender, and the Law: Three Approaches*, 72 LAW & CONTEMP. PROBS. 37, 37 (2009) (footnote omitted).

38. See Shaila Dewan & Robert Gebeloff, *One Percent, Many Variations*, N.Y. TIMES, Jan. 15, 2012, at A1 (noting range of individuals falling within top 1% and locating minimal income for entry at around \$380,000 per year); Tami Luhby, *Who Are the 1 Percent?*, CNN MONEY (Oct. 29, 2011), http://money.cnn.com/2011/10/20/news/economy/occupy_wall_street_income/index.htm (noting that while top 1% collectively had adjusted gross income of \$1.3 trillion, to be within that group one needed to only have AGI of \$343,927).

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sor Deborah Malamud has observed, until recently, most Americans viewed the United States as a classless society. She notes:

[Class] is a fleeting image, a rarely detected underlayer to the complex texture of race, ethnicity, and gender that captures our society's attention. For many, America stands as the model of the classless society, one in which most people think of themselves as middle class (or at least as potentially so, with hard work and a little luck) and in which middle-classness is the socio-economic face of "American-ness." The recognized exception, the chronic poor, is seen as an aberration rather than evidence of a general system of class in the United States.³⁹

Finally, some Americans may be unwilling to join the Wall Street protestors because subconsciously they feel that the poor are responsible for their plights. One suspects that lingering in the minds of some is the belief that socioeconomic class is a factor over which individuals have control. Indeed, this idea reflects the essence of the American Dream—the notion that all Americans control their own destiny and that with hard work, discipline, and skill, economic prosperity lies just around the corner. Although the dream is becoming increasingly unobtainable for many people, Americans are socialized to think that if they work hard, good things will come their way. Consequently, many people seem to believe that if poor people fail to pull themselves up by their bootstraps in this land of plenty, they are to blame. This way of thinking has of course been reinforced by people like Herman Cain who said in commenting on the OWS demonstrations "Don't blame Wall Street, don't blame the big banks, if you don't have a job and you're not rich, blame yourself."⁴⁰ Moreover, Mitt Romney said in early January 2012 that Americans should be "lifted up by our desire to succeed, not dragged down by resentment of success"⁴¹ or "the bitter politics of envy."⁴²

If one notable dimension of the OWS Movement is its relatively low number of participants, a second interesting aspect is the seemingly small number of African American and Latino protestors.⁴³ When visiting Zuc-

39. Deborah C. Malamud, "Who They Are—Or Were": *Middle-Class Welfare in the Early New Deal*, 151 U. PA. L. REV. 2019, 2019 (2003) (footnote omitted).

40. Interview by Alan Murray with Herman Cain, Presidential Candidate (Oct. 5, 2011) available at <http://youtu.be/euw7aW1CAaw>.

41. Andrew Ryan, *Reports and Reaction on N.H. Primary*, BOS. GLOBE (Jan. 10, 2012), <http://www.boston.com/Boston/politicalintelligence/2012/01/reports-and-reaction-primary/tTbs0YjIpZcdkdrmMZJ2qJ/index.html>.

42. Kim Geiger, *Victorious Mitt Romney Warns Against "Bitter Politics of Envy"*, L.A. TIMES, Jan. 10, 2012, <http://articles.latimes.com/2012/jan/10/news/la-pn-victorious-romney-warns-against-bitter-politics-of-envy-20120110>.

43. For thoughtful analysis of this issue, see Stacey Patton, *Occupy Isn't Black America's Fight*, WASH. POST, Nov. 27, 2011, at B01; Janell Ross, *Occupy Wall Street Doesn't Adequately Represent Struggling Black Population, Experts Say*, HUFFINGTON POST (Dec. 6, 2011), http://www.huffingtonpost.com/2011/10/06/occupy-wall-street-black-population_n_998722.html.

cotti Park in October, Rodrigo Venegas, a political activist from the Bronx, observed “Nobody looked like us. . . . It was white, liberal, young people who for the first time in their life are feeling a small percentage of what black and brown communities have been feeling for hundreds of years.”⁴⁴ Although there have been occasional appearances by high-profile individuals like Cornel West,⁴⁵ Russell Simmons,⁴⁶ Kanye West,⁴⁷ and Representative John Lewis,⁴⁸ for the most part, the Occupiers do not appear to be racially diverse. Indeed, one survey conducted in October found that although African Americans make up 12.6% of the U.S. population, they are only 1.6% of OWS protestors.⁴⁹ A Fordham University study identified a larger percentage of people of color in the New York City protests, but their numbers were substantially less than their percentages in the New York City population.⁵⁰

The question is what accounts for these figures? It is not that large numbers of African Americans and Latinos are not poor or suffering economically. Despite measurable progress within some subgroups, people of color still tend to earn significantly less than their white counterparts;⁵¹ they tend to be segregated into lower-paying and lower-status occupations;⁵² they tend to be unemployed at a substantially higher rate than

44. Alice Speri, *Occupy Wall Street Struggles to Make “the 99%” Look Like Everybody*, N.Y. TIMES BLOG (Oct. 28, 2011), <http://cityroom.blogs.nytimes.com/2011/10/28/occupy-wall-street-struggles-to-make-the-99-look-like-everybody/>.

45. See *Cornel West Arrested: Activist Allegedly Arrested Taking Part in Occupy Wall Street Protest in New York*, HUFFINGTON POST (Oct. 21, 2011), http://www.huffingtonpost.com/2011/10/21/occupy-wall-street-cornel_n_1024554.html.

46. See Lucas Shaw, *Kanye West Crashes Occupy Wall Street With Russell Simmons*, REUTERS, Oct. 10, 2011, available at <http://www.reuters.com/article/2011/10/10/idUS27732152932011101>.

47. *Id.*

48. See Nina Mandell, *Occupy Atlanta Offshoot of Wall Street Protest Denies Rep. John Lewis Chance to Speak at Gathering*, N.Y. DAILY NEWS (Oct. 10, 2011), http://articles.nydailynews.com/2011-10-10/news/30284620_1_wall-street-protest-public-denial-civil-rights. Of course, shunning a revered hero of the civil rights movement would not endear OWS to African Americans.

49. Sean Captain, *Infographic: Who Is Occupy Wall Street?*, FAST COMPANY (Nov. 2, 2011), <http://www.fastcompany.com/1792056/occupy-wall-street-demographics-infographic>.

50. See Speri, *supra* note 44.

51. See U.S. CENSUS BUREAU, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2010 5, 8 (2011), available at <http://www.census.gov/prod/2011pubs/p60-239.pdf> (displaying amount of household income by race from previous fifty years, with current data specifying white households earning \$54,620 on average compared to Hispanic and Black households earning \$37,750 and \$32,069 respectively).

52. U.S. BUREAU OF LABOR STATISTICS, U.S. DEP’T OF LABOR, HOUSEHOLD DATA ANNUAL AVERAGES: CPS TABLE 11—EMPLOYED PERSONS BY DETAILED OCCUPATION, SEX, RACE, AND HISPANIC OR LATINO ETHNICITY 14 (2011), available at <http://www.bls.gov/cps/cpsaat11.pdf>; see also U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM’N, EEO-1 SURVEY ANALYSIS (2007), available at <http://archive.eeoc.gov/stats/jobpat/2007/introduction.html>.

Whites;⁵³ and they are twice as likely to be impoverished as Whites.⁵⁴ The wealth differentials are even larger; the median net worth of white households is more than twenty times that of black households and eighteen times that of Latino households.⁵⁵ And no one would be surprised to learn that African Americans and Latinos have suffered disproportionately in the recent economic recession and downturn: in December 2011, the unemployment rate for African Americans was 15.8%, for Latinos 11%, for Whites 7.5%, and for Asian Americans 6.8%.⁵⁶ From 2005 to 2009, black households lost just over half of their median net worth and Latino households lost 66%, compared with white families, who lost 16% of their net worth.⁵⁷ Moreover, African Americans, and particularly Latinos, have suffered the greatest declines in home ownership rates since the housing bust of 2007.⁵⁸

In addition to the fact that African Americans and Latinos are suffering from income inequality and job scarcity, the low numbers of African Americans and Latinos among OWS protesters is striking because these communities have historically used sit-ins and marches to seek redress and to bring attention to their issues. These are the very methods being used by OWS. If a sizable portion of the Black and Latino population is not doing well, and if the means of protest are not foreign, then *where are the people of color?* What explains their absence?

III. THE CHALLENGES OF COALITION BUILDING

Much has been written about the difficulties of coalition building and the lack of solidarity among workers across racial lines. As Professors Cheryl Harris and Martha Mahoney have explained, historically white laborers have been unwilling to collaborate with black workers because of feelings of racial superiority.⁵⁹ And Blacks often have been distrustful of

53. See Press Release, U.S. Bureau of Labor Statistics, Employment Situation News Release (Jan. 6, 2012), *available at* http://www.bls.gov/news.release/archives/empisit_01062012.htm (compiling data of unemployment rate by categories such as race, age, and education); Annalyn Censky, *Black Unemployment: Highest in 27 Years*, CNN MONEY (Sept. 2, 2011), http://money.cnn.com/2011/09/02/news/economy/black_unemployment_rate/index.htm (reporting August 2011 unemployment rate for Blacks to be at 16.7% compared to roughly 8% for whites).

54. U.S. CENSUS BUREAU, *supra* note 51, at 14-17.

55. These figures are based on data from 2009. See KOCHHAR ET AL., *supra* note 19, at 1.

56. Press Release, U.S. Bureau of Labor Statistics *supra* note 53.

57. *Id.* (stating typical Black and Latino households have just \$5,677 and \$6,325 in wealth, respectively, compared to white households which possess \$113,149).

58. See *id.* (citing 3% decline among Latinos); see also John Leland, *Homeownership Losses Are Greatest Among Minorities, Report Finds*, N.Y. TIMES, May 13, 2009, at A16.

59. See, Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709, 1759-61 (2003); Martha R. Mahoney, *Class and Status in American Law: Race, Interest, and the Anti-Transformation Cases*, 76 S. CAL. L. REV. 799, 804 (2003).

Whites because of white racism. These dynamics may explain some of the demographics of the OWS movement. Observers of the movement note that the Occupiers seem oblivious to their own racial privilege and appear to be naïve about the continuing salience of race in the United States. One person of color tells a story of Occupiers who wanted to begin a Declaration of the Occupation of New York City with the following sentence “As one people, formerly divided by the color of our skin . . . we acknowledge the reality: that there is only one race, the human race.”⁶⁰ If these protestors had ever read Justice Scalia’s concurrence in *Adarand Constructors, Inc. v. Peña*,⁶¹ where Scalia used similar language to denounce affirmative action,⁶² they would understand why this type of reasoning may not resonate with, and indeed may alienate, some people of color.

While historical elements of unconscious (or conscious) racism may be present in the OWS movement—without pointing any fingers or assigning blame—one wonders if something more is at work. Is there something about the organizational structure, or lack thereof, of OWS that has led to low African American and Latino participation rates? OWS appears to be a largely organic movement. It is seemingly anti-hierarchical and loosely organized with no obvious leaders. Its website says as much.⁶³ Information about the movement is circulated using modern technology—through tweets, texts, and e-mail. More importantly than all of this, perhaps, is the fact that OWS does not use or rely upon the sort of institutional mechanisms that historically have been used to mobilize African Americans and Latinos—the church, unions, and civil rights organizations like the NAACP, the Urban League, MALDEF, or La Raza.⁶⁴

To be sure, some historic civil rights organizations are losing their relevance, especially among young people, as they either succumb to greed or are compromised due to their close and sometimes dubious connections to corporate America.⁶⁵ And one can certainly understand why the Occupiers would not want to be co-opted by mainstream institutions with possibly less progressive agendas, less “in your face” styles of advocacy, and mixed records of success as of late. But to the extent that these institutions still exercise leverage within their communities and have power to mobilize people to meet, march, boycott, and sit-in, their involvement could serve a legitimating function for OWS vis-à-vis communities of color

60. See Speri, *supra* note 44; see also Habiba Alcindor, *How People of Color Occupy Wall Street*, NATION (Nov. 4, 2011), <http://www.thenation.com/article/164405/how-people-color-occupy-wall-street>.

61. 515 U.S. 200 (1995).

62. *Id.* at 239 (Scalia, J., concurring) (“In the eyes of government, we are just one race here. It is American.”).

63. See OCCUPY WALL STREET, *supra* note 30 (describing OWS as “a leaderless resistance movement”).

64. See Patton, *supra* note 43.

65. *Id.*

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and may assist people of color in overcoming their skepticism and distrust of the Occupiers.

In addition to the above, although many of the issues being raised by OWS are directly related to racial inequality, they are not couched explicitly in terms of race by the Occupiers. Though intersectionality theory teaches that identities are complex and are not one dimensional,⁶⁶ one wonders to what extent people of color tend to prioritize and to rally around racial injustice. As one commentator said recently in the *Village Voice*, “Simply put, capitalism is not the ‘ism’ whose evils tends to motivate most American [Blacks] to radical action, per se.”⁶⁷

Even if African Americans and Latinos are not prioritizing racial inequality, they may still be questioning whether OWS has anything meaningful to say about their realities and whether they should ally with whites, some of whom are just now experiencing the hardships that Blacks and Latinos have known for generations.⁶⁸ The *Village Voice* commentator added, “American black folk . . . have had more than 400 years to neurologically process the whole profits before people thing”⁶⁹ Echoing this sentiment, John Minus, a New Jersey comedian, says he refuses to participate in the Occupy protests because “black people are being besieged by so many social injustices, he can’t get behind targeting just the 1[%].”⁷⁰ Minus notes that the “[b]anks’ bad behavior ‘just gets lost in the sauce, so to speak,”⁷¹ and he points out that, “[Although] [h]igh joblessness and social disenfranchisement is new to most of the Wall Street protesters[,] [i]t’s been a fact of life for African Americans since the beginning.” Minus further says, “I actually think black people are better served by stay-

66. See, e.g., Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 139-40 (examining failure of anti-discrimination law to account for multiple influences of racism and sexism on lives of Black women); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990) (criticizing gender essentialism).

67. Greg Tate, *Top 10 Reasons Why So Few Black Folk Appear Down to Occupy Wall Street*, THE VILLAGE VOICE (Oct. 19, 2011), <http://www.villagevoice.com/2011-10-19/news/greg-tate-top-ten-reasons-why-so-few-blackfolk-appear-down-to-occupy-wall-street/>.

68. Indeed, immediately after delivering this lecture, I was approached by an African American professor who expressed skepticism over whether African Americans and Latinos should join the protestors. Citing the history of affirmative action, this professor questioned whether any positive gains from the OWS movement would “trickle down” to African Americans and Latinos and whether these groups would secure a proportionate return on their investment of time and energy. An even more skeptical commentator noted that the presence of large numbers of people of color might even hurt OWS. This commentator asserted that OWS had gained momentum initially because it had drawn the attention of liberal media outlets located in New York City. He questioned whether these entities would have been as enamored of OWS if it had more of a brown face.

69. Tate, *supra* note 67.

70. Patton, *supra* note 43.

71. *Id.*

ing out of the protests. Civil disobedience will only further the public perception that black people like to cause trouble.”⁷²

Leslie Wilson, a professor of African American history at Montclair State University, also believes that more African Americans will not join the protesters. In a *New York Times* interview, she noted:

Occupy Wall Street cannot produce enough change to encourage certain types of black participation. . . . The church cannot get enough blacks out on the streets. Some students will go, but not the masses. Black folks, particularly older ones, do not think that this is going to lead to change. .? .?. This generation has already been beaten down and is hurting. They are not willing to risk what little they have for change. Those who are wealthier are not willing to risk and lose.⁷³

IV. AND, AGAIN, “WHERE DO WE GO FROM HERE?”⁷⁴

These are only a few of the many issues confronting OWS, and no doubt any movement for broad-based economic and social change will have to address them. Countless other questions have also been raised. Can outdoor occupations survive in the cold of winter and under the force of pepper spray? Can OWS’s alliance with labor grow? Will it find common ground with women? If those occupying the streets are disillusioned with electoral politics, what strategy will they employ to effect change? And, as Marilyn Katz asks:

Will those in power (elected or not) accede to the underlying demand for investment in American companies and jobs? For the curtailment of the power of money that has subverted politics? For reform of a compensation system that pays corporate heads millions more than the rank and file earn? Are those in power capable of reversing the trend toward inequality and leading us toward a desirable—a sustainable—future?⁷⁵

These are legitimate questions, but I wonder if they reflect reasonable expectations? Do we expect these protestors to do too much—to achieve what politicians, organized labor, and progressive organizations have not accomplished? Is the cynicism directed at the protestors warranted? Are we unfairly projecting our failures, fears, and disappointments onto these individuals?

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Martin Luther King, Jr., *Where Do We Go From Here?: Address to Eleventh Annual Convention of the Southern Christian Leadership Conference* (Aug. 16, 1967), available at http://mlk-kpp01.stanford.edu/index.php/king/papers/article/where_do_we_go_from_here/.

⁷⁵ Katz, *supra* note 33.

History will be the judge of OWS's legacy. In January 2012, to say that this movement is a failure is, I think, premature and short-sighted. I am reminded of Dr. King's statement "when you stand up for justice, you can never fail."⁷⁶ I am also reminded of his note to clergy from his jail cell in Birmingham, where he wrote:

Seldom do I pause to answer criticism of my work and ideas. If I sought to answer all the criticisms that cross my desk, my secretaries would have little time for anything other than such correspondence in the course of the day, and I would have no time for constructive work.⁷⁷

As we move forward, I choose to focus on some of OWS's successes—and they are many. The movement has energized progressives, providing the Democrats with a potential counter to Tea Party Republicans as the country enters a critical presidential election. OWS has highlighted the continuing need for organized labor.⁷⁸ By spotlighting the issue of educational financing, the Occupiers have underscored the important link between education and economic opportunity. They have questioned a government that bails out Wall Street without having a plan for Main Street and a legal system that privileges corporations over people. And the protestors have done all of this, not with lengthy speeches or academic treatises, but with plain language and simple images that resonate deeply within the hearts of hurting Americans.

But more than all of the above, OWS has raised our social consciousness and has drawn unprecedented media attention to the issue of economic inequality in the United States. Indeed, earlier this month, the Pew Research Center reported that approximately two thirds of the American public (66%) believes that there are strong conflicts between the rich and the poor.⁷⁹ This is an increase of nineteen percentage points since 2009.⁸⁰ The public now ranks conflicts between rich and poor ahead of tensions between immigrants and the native born; between Blacks and Whites; and between young and old.⁸¹ While these changes may reflect growing public awareness of the underlying shifts in the distribution of wealth in American society, the Pew researchers also note that "[t]hese

76. Martin Luther King, Jr., *Local 1199 Salute to Freedom: The Other America* (Mar. 10, 1968), *available at* www.thekingcenter.org/archive/document/other-america.

77. Martin Luther King, Jr., *Letter from a Birmingham Jail* (Apr. 16, 1963), *available at* http://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html.

78. See Mary Kay Henry, *Why Labor Backs "Occupy Wall Street"*, *WALL ST. J.*, Oct. 8, 2011, at A15. For a discussion of the challenges facing an OWS-Labor coalition, see Greenhouse & Buckley, *supra* note 28.

79. RICH MORIN, PEW RES. CTR., *RISE IN SHARE OF AMERICANS SEE CONFLICT BETWEEN RICH AND POOR 1* (2012), *available at* <http://www.pewsocialtrends.org/files/2012/01/Rich-vs-Poor.pdf>.

80. *Id.*

81. *Id.* at 2.

changes in attitudes over a relatively short period of time may reflect the income and wealth inequality message conveyed by OWS protesters . . . that led to a spike in media attention to the topic.”⁸²

There is, however, still much work to be done. The same Pew study found that increased perceptions of class conflict “do not necessarily signal an increase in grievances toward the wealthy” or high levels of support for government efforts to address income inequality.⁸³ Since 2008, American views have not changed about the sources of individual wealth: “[a] 46% plurality believes that most rich people ‘are wealthy mainly because they know the right people or were born into wealthy families.’”⁸⁴ But “43% say wealthy people became rich ‘mainly because of their own hard work, ambition or education.’”⁸⁵ These data have caused researchers to conclude that “[i]t is possible that individuals who see more conflict between the classes think that anger toward the rich is misdirected.”⁸⁶ This type of reasoning may reflect the continuing influence of the American Dream—or perhaps the existence of what Fanon called the “colonization of the mind.”⁸⁷

So, yes, there is still much work to be done, and who knows where OWS will go from here. But for now, I choose to applaud the Occupiers for their willingness to take to the streets, amid resistance and scorn, to tell the financial industry, to tell the government, and to tell the American public that the conditions in which we are living are NOT okay. In the words of Fannie Lou Hamer, the Occupiers have said they are “sick and tired of being sick and tired.”⁸⁸ They recognize “the fierce urgency of now,”⁸⁹ the need to act without waiting for a grand strategy and without hoping for change to emerge from thin air. There is much to be said for an organic movement of people, who through conversation and communication, open up the possibility of developing a bottom-up strategy over time instead of having one imposed from above. If Dr. King were alive today, even at the age of 82, I suspect he would be with the protestors—Occupying Wall Street, Occupying Congress, and Occupying the Courts. The question is: Where are we in this movement? What are our responsi-

82. *Id.*

83. *Id.* at 3.

84. *Id.*

85. *Id.*

86. *Id.*

87. See generally FRANTZ FANON, *BLACK SKIN, WHITE MASKS* (1952).

88. See Jerry DeMuth, *Fannie Lou Hamer: Tired of Being Sick and Tired*, NATION (Apr. 2, 2009), <http://www.thenation.com/article/fannie-lou-hamer-tired-being-sick-and-tired> (quoting Fannie Lou Hamer); Aric Mitchell, *Scott Ford Talks About Whirlpool, “Occupy Wall Street”*, THE CITY WIRE (Oct. 27, 2011), <http://www.thecitywire.com/node/18473> (quoting OWS protestor, Scott Ford).

89. MARTIN LUTHER KING, JR., *BEYOND VIETNAM SPEECH* (Apr. 4, 1967), in ANDREW YOUNG, *A CALL TO CONSCIENCE* 139, 162 (Clayborne Carson & Kris Shepard eds., 2001); MARTIN LUTHER KING, JR., *I HAVE A DREAM SPEECH* (Aug. 28, 1963), in ANDREW YOUNG, *A CALL TO CONSCIENCE* 81, 82 (Clayborne Carson & Kris Shepard eds., 2001).

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bilities? Are we content to rest comfortably in our ivory towers and suburban spaces, while our brothers and sisters are sleeping in, or rather being ejected from, encampments? Perhaps we cannot all take to the streets, but we have to do something. As Dr. King reminds us, “freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed.”⁹⁰

90. King, *supra* note 77.

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