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Book Review: Review of Privilege Revealed, by Stephanie M. Wildman with Contributions by Margalynne Armstrong, Adrienne D. Davis and Trina Grillo

Judith Greenberg
New England School of Law

Robert Ward
New England School of Law

BOOK REVIEW: REVIEW OF *PRIVILEGE REVEALED*, BY STEPHANIE M. WILDMAN WITH CONTRIBUTIONS BY MARGALYNNE ARMSTRONG, ADRIENNE D. DAVIS AND TRINA GRILLO

JUDITH GREENBERG[1]
ROBERT WARD[2]

At the turn of the century, legal segregation was the rule of law in America.[3] Because of the color of their skin, African Americans were legally precluded from sharing in the American dream. The campaign to outlaw segregation began in the 1940's under the direction of visionaries like Charles Hamilton Houston.[4] In 1954, the Supreme Court in *Brown v. Board of Educ.*[5] unequivocally repudiated *Plessy's*[6] "separate but equal" doctrine. While *Brown* ended legal segregation, additional measures were needed to secure the rights recognized in *Brown*. Affirmative action is one of the most important of the mechanisms used by courts to address the effects of decades of discrimination. Since the Supreme Court's multi-opinion decision in *Bakke*,[7] courts have used affirmative action programs to remedy local governments' discriminatory practices in the areas of education, employment and housing.[8] Following suit, many private sector employers and schools created their own affirmative action programs.[9] Between 1954 and 1978, it appeared that those who had previously been

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[1]Professor of Law, New England School of Law; B A., Cornell University, 1969; J.D., University of Wisconsin Law School, 1972; LL.M. Harvard 1979.

[2]Professor of Law, New England School of Law; B.S., Northeastern University, 1974; J.D., Suffolk University School of Law, 1978.

[3]Plessy v. Ferguson, 163 U.S. 537 (1896).

[4]*See generally* JACK GREENBERG, CRUSADERS IN THE COURTS: HOW A DEDICATED BAND OF LAWYERS FOUGHT FOR THE CIVIL RIGHTS REVOLUTION (1994); RICHARD KLUGER, SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY (1976); GENNA R. MCNEIL, GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS (1983).

[5]Brown v. Board of Educ. of Topeka, 347 U.S. 483 (1954).

[6]Plessy v. Ferguson, 163 U.S. 537 (1896).

[7]Regents of the Univ. of Calif. v. Bakke, 438 U.S. 912 (1978).

[8]*See generally* David Benjamin Oppenheimer, *Understanding Affirmative Action*, 23 HASTINGS CONST. L.Q. 921 (1996)(discussing affirmative action in employment, housing, health care, and other arenas).

[9]*See, e.g.*, United Steelworkers of America v. Weber, 443 U.S. 209 (1979) (upholding a voluntary plan which reserved half of the slots in a training program for Black employees).

disenfranchised might actually have the opportunity to share in America's bounty.[10]

Soon, opposition to affirmative action began to develop.[11] Those who opposed affirmative action began to assert that affirmative action programs discriminated against them.[12] Initially the Courts were not responsive.[13] However, the Supreme Court's decisions in *Croson*,[14] *Adarand*,[15] and the Fifth Circuit's recent decision in *Hopwood*,[16] have thrown considerable doubt on the continuing viability of affirmative action as a remedy for addressing the effects of discrimination. The result today is that as America stands on the brink of a new century, progress towards greater inclusiveness may come to a halt.

Ironically, the tools formerly used by the oppressed to fight subordination are now successfully being used by the oppressors. Words like "equality," "discrimination," and "racial animus," are now terms used against those who have historically been the victims of subordination. *Privilege Revealed*,[17] by Stephanie M. Wildman, displays a new way of thinking about the continuing problem of racial subordination in this country. It focuses on the racial privilege of whites rather than on the meaning of words like "prejudice," "discrimination," or "racial animus."

Privilege Revealed is an excellent tool for alerting well-meaning whites to their own race privilege. Over the past three years, we have co-taught several courses on Race and the Law. In each course, our goal has been to get our overwhelmingly white students to focus on the power relations among the races in this country. Generally, this has proven to be a hard task for the white students in the class, primarily because they have difficulty recognizing the advantages of their own racial position. Like many well-meaning whites, our students tend to think of discrimination as an intentional action engaged in

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[10]For example, in California the public work force at higher salary levels decreased from ninety percent white in 1975 to less than seventy percent in 1993. ELISABETH KERSTEN, CALIFORNIA SENATE OFFICE OF RESEARCH 35 (Mar. 1995). This level began to rise for people of color soon after the official affirmative action program was initiated in 1975. *Id.*

[11]Fullilove v. Klutznick, 448 U.S. 448 (1980) (contractors' association sought a preliminary injunction to prevent the enforcement of a provision which reserved opportunities for minority businesses).

[12]Thomas Ross, *Innocence and Affirmative Action*, 43 VAN. L. REV. 297 (1990)(describing the "rhetoric of innocence" used by whites who claim to be innocent victims of the affirmative action plan).

[13]Metro Broad., Inc. v. FCC, 497 U.S. 547 (1990), *overruled by* Adarand v. Pena, 115 S. Ct. 2097 (1995).

[14]City of Richmond v. Croson, 488 U.S. 469 (1989).

[15]*Adarand*, 115 S. Ct. at 2097.

[16]Texas v. Hopwood, 78 F.3d 932 (5th Cir. 1996), *cert. denied*, 116 S. Ct. 2581 (1996).

[17]STEPHANIE WILDMAN, PRIVILEGE REVEALED (1996) (with contributions by Margalynne Armstrong, Adrienne D. Davis and Trina Grillo).

only by "red-necks." They, on the other hand, believe they are free of discriminatory impulses. Reading *Privilege Revealed* should help to convince them otherwise.

Wildman's book forces one to think about race privilege by focusing on three interrelated themes of the privileging system. First, it argues that we do not have the necessary language to deal with a discussion of privilege.[18] We do not talk about privilege. Instead, we talk about racism. Those who practice racism are racists. The trouble with using this language is that calling someone a racist carries with it two ideas. First, we understand it to mean the individual has a problem.[19] Second, we think of racists as people on the margin of society, the "lunatic fringe."[20] In this way, our discourse about race implies that the hierarchy of white over color (whether African American, Asian or Latino) is not part of the structure of our society. Instead, it is an idiosyncrasy of just a few, isolated characters. Given this view, it is not a social problem to which we all contribute, but rather one of which the rest of us are innocent.

Wildman's point is to emphasize the ways in which racial privileging creeps unconsciously into our lives. Two examples may help to illustrate this point. Like many teachers, we start our seminars by asking students to introduce themselves. While students of color almost always identify themselves in racial terms, white students do not. White students tend to identify themselves by sex, marital status, parenthood, previous work experience, sexual orientation or economic class. Their ability to assume that whiteness is a background norm is *part* of race privilege. They do not see themselves as white, specifically, because white is the norm.

Our second example comes from Professor Ward's childhood. He is a grandchild in the James family. Everyone in his neighborhood knew instantly when they were dealing with one of the ten James children. These young black people were polite almost to a fault. "Please" and "thank you" were words which helped to identify who was and who was not a member of the James clan. For years he assumed his grandmother simply wanted her children and grandchildren to be polite. Recently, as the result of an incident in a restaurant, it occurred to him that perhaps she had other reasons. As he tells it, this insight came to him one recent evening.

> My wife and I were having supper at a place frequented by the locals in New Hampshire. Perhaps because of a shift-change - or because someone was out sick - the wait staff service was poor. We had planned to go see a movie that evening. I was a little nervous that we wouldn't make it on time. At about the same time a group of white patrons were also seated. They too were in a hurry. They were going to the movies as well. In spite of my anxiety about being late for the show, I was polite

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[18] *See generally id.*

[19] WILDMAN, *supra* note 17, at 11.

[20] Gary Peller, *Race Consciousness*, 1990 DUKE L. J. 758, 761 (1990) (describing an "integrationist" position that equates race consciousness with white supremacy).

> - cordial. I thanked the wait person every time she did something for us. I never mentioned our plans for the evening. The white group on the other hand was quite put out by the poor service. They loudly expressed their displeasure.
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> After getting the check and paying the bill, it occurred to me that maybe, I too should have complained. But I didn't. Having never been accused of being bashful, did I remain silent because that was the polite thing to do? Or given the setting - New Hampshire - and I'm the only person of color around for miles, did I simply not feel comfortable or not privileged to voice my displeasure? Did grandmother James merely rear her children to be well-bred and polite or had it been her unspoken intent to teach her Black children and grandchildren how to survive safely in a hostile and predominantly white world?[21]

A second theme of this book is that whites in America see racism and discrimination as requiring discriminatory intent/racial animus.[22] According to this view, unless one acts differently to another because of the other's race *and* because of an animus toward that race, one is not a racist. The definitive element in this definition is the intent to harm. To believe someone intended to discriminate because of race is to think the worst of someone. Thus, it is not a position we easily adopt, either with reference to ourselves or others who are in some ways like us. Our students did not believe the Los Angeles Police Department officers who arrested Rodney King beat him because of his race. Instead, they were more than willing, particularly after viewing the videotape, to believe that the officers did not act from racist motives. With no other way of describing the role of race, the students were ready to conclude that race was not a factor in the beating.[23] The law reflects this position. The requirement that a plaintiff (or prosecutor) in a discrimination case prove intent makes the case hard to win.[24] It also reinforces the individualistic nature of these cases, making it even harder to see discrimination and white privilege as systemic.

Wildman argues that focusing on privilege instead of racism allows us to see the ways in which racial subordination is systemic.[25] Looking at the issue this way allows us to see that the church burnings we have witnessed in the last few years are societal problems. We should not focus on identifying individual perpetrators, but rather, focus on acts that can only occur in a community where subordination on the basis of race is tolerated.

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[21] Personal experience of Robert Ward, Professor of Law, New England School of Law.

[22] WILDMAN, *supra* note 17, at 5.

[23] Judith G. Greenberg & Robert V. Ward, *Teaching Race and the Law Through Narrative*, 30 WAKE FOREST L. REV. 323 (1995).

[24] Note, *The Price of Equal Opportunity: The Efficiency of Title VII After Hicks*, 45 CASE W. RES. L. REV. 507, 508 (1995).

[25] *See generally* WILDMAN, *supra* note 17.

Several chapters admirably illustrate the contrasting themes of privilege and racism. In *Privilege Revealed*, one commentator,[26] Margalynne Armstrong, discusses the role of privilege in structuring housing patterns. Today, people can live anywhere providing they have the means to do so. Thus, the privilege to choose where to live is not based on a constitutionally prohibited factor such as race but rather on economic class. But, everyone knows there is a strong connection in this country between class, race, and national origin.[27] Others have also made these points but Armstrong shows that the focus on economic class in housing has the result of silencing any discussion of race. If patterns develop simply as a result of individual choice, and if those choices are seen as economically motivated, then there is no way to discuss this in terms of race. Whites are more likely to be privileged to live where they want, but the racial basis of the system is obscured by a focus on economics.[28] Similarly, the intent to discriminate is clearly implicated, but that intent is economically based and not racially motivated.[29]

Armstrong's discussion of *City of Memphis v. Greene*[30] shows how the system can be used to support racial/economic housing patterns. White residents of the Hein Park area of Memphis wanted the city to sell them a small strip of land across a major artery that led from a neighboring black area into their part of town.[31] The sale of this small parcel of land to white landowners would result in the closure of the street, blocking its use as a thoroughfare for black drivers trying to get across Hein Park to other areas of Memphis.[32] The white residents claimed that closing the through-road would reduce traffic and increase neighborhood safety.[33] The closure would occur exactly at the point at which the black and white neighborhoods met and would limit contact between them.[34] The Supreme Court upheld the sale saying, "the city has conferred a benefit on certain white property owners but there is no reason to believe that it would refuse to confer a comparable benefit on black property owners."[35] While the closure was ostensibly based on the neutral principle of safety, Armstrong points out that it is unlikely that black owners would request such

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[26] WILDMAN, *supra* note 17, at 43.

[27] *See generally* June R. Carbone & Margaret F. Brining, *Rethinking Marriage: Feminist Ideology, Economic Change and Divorce Reform*, 65 TUL. L. REV. 953 (1991); Ann Laquer Estin, *Economics and the Problem of Divorce*, 2 U. CHI. L. SCH. ROUND TABLE 517 (1995).

[28] *See generally* WILDMAN, *supra* note 17.

[29] *Id.*

[30] City of Memphis v. Greene, 451 U.S. 100 (1981).

[31] *Id.* at 100.

[32] *Id.*

[33] *Id.* at 101.

[34] *Id.*

[35] 451 U.S. at 118. *See also* WILDMAN, *supra* note 17, at 60.

a closure through their neighborhoods.[36] Instead, they would be likely to appreciate the economic resources that might flow from white drivers passing through. We do not see this as a case involving racial discrimination because we do not see any intent to discriminate. Without intent, we have a hard time recognizing the exercise of racial power. Similarly, we do not even see this as a case involving race. We lack the language to discuss it in that way.

Wildman also has an excellent chapter on law school hiring practices.[37] She does this by creating a story about fictional faculty members and their discussions over the hiring process. In doing so, she shows how the typical discussions about merit and faculty politics deflect attention from nother subject - race. Once again, the participants in the discussion do not intend to discriminate on the basis of race, yet the effect is likely to be the candidate of color will not be hired. Like the Supreme Court in *Greene*, the "fictional" faculty believe they are acting based on neutral principle. Our inability to discuss the functioning of racial power structures in terms that do not rely on individual intent to discriminate and do not portray those who exercise racial power as racists.

The third theme of the book is the problem of analogizing among privileges.[38] Our social structure is built on a series of interlocking privileges: race, gender, economic, sexual preference, physical or mental ability, and nation of origin to name only a few. Wildman notes the imporance of society's comparison between the different privileging mechanisms and concludes that such comparisons are inappropriate.[39] She also notes that Title VII of the Civil Rights Act of 1964 has a "laundry list" of groups against whom an employer is prohibited from discriminating.[40] This "implies a similarity between them, as well as shared characteristics that distinguish them from other groups not mentioned."[41] To illustrate the way these comparisons sound, Wildman gives the example of a white woman who told a black man hired to run a public interest organization, that she was sorry he had gotten the job when there was a qualified woman available.[42] Wildman points out this comment assumes it would have meant the same thing for the group to hire a white woman as to hire a black man.[43] Hiring a white woman might have made a statement about

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[36] WILDMAN, *supra* note 17, at 59-60. This can be inferred from the fact that black residents challenged erection of the barrier).

[37] *Id.* at 103-37.

[38] *See generally id.*

[39] *Id.* at 25-41.

[40] *Id.*

[41] *Id.* at 34.

[42] WILDMAN, *supra* note 17, at 35.

[43] *Id.* at 35.

gender privilege, but would have done nothing to alter the white power structure.

Several chapters show how all three themes work together to make privilege invisible. These are especially useful for people like our students who cannot see they have privileges. Wildman and Grillo show how analogies between one's own subordinate status, whatever it may be, and the position of people of color work to marginalize issues of race, recentering the claims of white people.[44] For example, at one Association of American Law Schools (AALS) meeting, the plenary session was to focus on issues of racism, sexism and homophobia.[45] The authors recount how during the question and answer period, a white woman rose to the microphone and said she did not want to change the subject, but she wanted to discuss another form of oppression - law professors in the less elite law schools.[46] Wildman and Grillo point out that the result of such a comment is to turn the focus of the meeting from the issues of racism, sexism and homophobia, to the concerns of many of the whites in the audience. This question sounded legitimate to the well-meaning questioner because we are used to analogizing between all forms of oppression. Furthermore, neither the questioner nor the audience would find the question to be racially offensive because it does not stem from any animus or intent to harm.

Use of analogies like these also work to make problems like racial oppression invisible. Once one is successful in refocusing attention on one's own problem, neither the actor nor the others in the group are required to pay any further attention to the problem of race. Grillo recounts her experience in a women's group in law school in which all the (white) women argued that sexism was "worse" than racism. "The women thought that they understood racism by virtue of their experiences with sexism . . . ."[47] Again, the process of analogizing, the absence of any intent to injure on the part of the actors, and the lack of an adequate vocabulary, work together to make it difficult to focus attention on whites' racist conduct.

In Chapter Six, Wildman discuses the process of hiring faculty in law schools, focusing on the unspoken rules that privilege "whiteness," "maleness," and "heterosexuality" among candidates.[48] Although the conversation may appear to be about the relative merits of various candidates, Wildman argues that each faculty member is really asking, "[i]f we hire this candidate who is different from me, 'Will I still be valued . . . ?'"[49] Since we have no language for discussing the unspoken rules of privilege, Wildman turns to fiction. She

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[44] *See generally id.*

[45] *Id.* at 92-93.

[46] *Id.*

[47] WILDMAN, *supra* note 17, at 98

[48] *Id.* at 108.

[49] *Id.* at 109.

describes a series of conversations that take place in a fictional law school that has an opening for a new faculty member. One current candidate in her story is a Black-Latina woman. These conversations will sound familiar to anyone who has spent any time talking with colleagues during the hiring season. Among others, her narrative is populated by the "I just want the best candidate" colleague, the "don't rock the boat, it's their turn" colleague, and the "let's not talk about affirmative action, it only causes bad feelings" Dean.[50] None of these characters would think of their positions as harmful to people of color, and the availability of apparently neutral positions makes it easy for them to see themselves as well-meaning and non-racist. It also makes it difficult to talk about racism. The chapter ends without resolving whether this Black-Latina woman will be hired. Wildman concludes, "[w]e in legal education can write the ending to this story . . . . If we do nothing, the status quo or institutional rules as they exist will operate, and most likely she will not be hired. But we can try to change that norm."[51] Wildman does not offer any easy solutions to this problem, but illustrates the most common formulae used, and reveals how they can cover the impulse to retain white supremacy.

Another way in which our unspoken rules privilege whiteness is through the policies that admit children of alumni to institutions of higher education as legacies. A recent article in the Boston Globe indicated that if you were not a legacy, you had only a nineteen percent chance of being admitted to Stanford University as an undergraduate.[52] A legacy had a forty percent chance.[53] More than seventy-five percent of Stanford's legacies are white.[54] One could think of this whole program as an affirmative action program for white students. And, at least for one group of white students, that would be an accurate way to portray it. But it is unlikely Stanford describes the program this way. Instead, it is undoubtedly described as a means of increasing alumni commitment to school. It would be improper to claim this program was created with the intent of discriminating against African Americans, yet, it is also impossible to deny one effect of the program has been to increase the privileges of whites.

This book explores the use of a new vocabulary about privilege. Thus, *Privilege Revealed* is an important contribution to the effort to rethink how the U.S. describes the role of race. If civil rights activists are credibly to reclaim the position that race matters in contemporary American society, we must search for a new language to shatter the individualistic intent-based paradigm of racism which currently rules. The idea of focusing on white privilege is one exciting new tool for race-conscious advocates to use.

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[50] *Id.* at 118.

[51] *Id.* at 136.

[52] Nick Thompson, *Sly Legacy of Prejudice at Colleges*, BOSTON GLOBE, Oct. 19, 1996 at C1.

[53] *Id.*

[54] *Id.*