Race or Class: New Directions for Critical Theory

Richard Delgado

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RACE OR CLASS: NEW DIRECTIONS FOR CRITICAL THEORY

Richard Delgado†

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INTRODUCTION: IN WHICH RODRIGO RECOUNTS A HARRI NG TALE OF URBAN POVERTY AT HIS SCHOOL

Sitting at my desk with the office door half-shut, I was trying to balance my checkbook while wondering, for the tenth time, if my dear

†  Distinguished Professor of Law, Seattle University. Thanks to Jean Stefancic for ideas and inspiration.
wife and I had put enough aside to retire someday. Footsteps in the hallway outside followed by a polite knock caused me to jump and push the checkbook aside a little guiltily. In truth, I hoped it was not a colleague or the Dean seeing me perform a personal task on company time.

“Rodrigo,”¹ I exclaimed, relieved to see the smiling figure of my young friend standing expectantly in my doorway. “I was just thinking about you. What brings you around?”

“It does seem like just the other day we were talking about the Dobbs decision,” he replied.² “Well, would you believe, Giannina is back again, this time for a meeting of women lawyers on urban homelessness.³ I came too because I was hoping to talk with you about something that’s been on my mind. Do you have a minute?”

“For you, always,” I said. “Was it about that same issue—homelessness?”

“It started out that way. In fact, one of the clinics at our school held a big teach-in about it last week and the dean asked us for a report. We had just learned that several first-year law students were sleeping in their cars because they couldn’t afford an apartment. This came to

1. See Richard Delgado, Rodrigo’s Chronicle, 101 Yale L.J. 1357, 1359–1375 (1992) (introducing my friend and alter ego, Rodrigo Crenshaw). Born in the United States, Rodrigo and his family moved to Italy when his father, an African American serviceman, was assigned to an outpost there. Rodrigo attended grade and high school on the base, then graduated with honors from an Italian university (“the oldest in the world, Professor”) and law school. Id. at 1363–64. When the reader meets him, he has returned to the States to investigate LL.M. programs in hopes of preparing for a career in teaching law. In the Professor’s office, the two discuss the young man’s plans and ideas on topics including affirmative action, standardized testing, and the decline of the West. Id. at 1367–68. Later chronicles discuss his adventures in law school and on the job market and his and his mentor’s thoughts on love, law and economics, black crime, and many other topics. One of my purposes in creating this series as I have done is to give readers a glimpse at what intellectuals of color talk about. Both Rodrigo and his narrator and straight man, “the Professor,” are fictional characters, composites of many people I have known and not to be identified with any one in particular.


light when the registrar asked everyone for their mailing address, and they didn’t have one.”

“Well, well,” I said. “Something similar happened at my school. A minority student dropped out because his financial aid package was too low to cover his rent. The student bar association accused the school of reducing the amount of aid set aside for students from poor families in order to put more into the merit-based kind. They said that this was a socially irresponsible solution to the school’s desire to keep its U.S. News & World Report ranking high and a crass abdication of its responsibilities toward the poor.”

“Come on in,” I said. “I just finished unpacking. Can I offer you a cup of coffee?”

“Love one,” he said, finding a seat on my office couch. “By the way, your new office looks nice. Not as spacious as the one you had before, but the view outside looks great. Is that your coffee maker?”

“Yes,” I said. “The one I had before got damaged in the move. I bought this one just the other day.”

“Someone told me that even good moving companies manage to lose or damage at least one thing every time. A metaphor for our times, I guess. But at least the four of us have checkbooks,” he said, gesturing toward the one lying half-hidden on the corner of my desk where I had shoved it moments ago. “Mine’s a mess, too. Last month, Giannina and I went over ours a dozen times but ended up having to write off $109.99, exactly. I have no idea where it went.”

I muttered something about automatic withdrawals and deposits making it hard to keep track of your balance these days. While I spooned out coffee grounds—“French Roast, the kind you still like, I assume?”—he nodded enthusiastically and began:

I. IN WHICH RODRIGO AND THE PROFESSOR DISCUSS POVERTY AND THE LAW

“I’d like to hear your thoughts, Professor, not just about homelessness, but about poverty in general. Giannina and I were struck by how the U.S. system seems relatively insensitive to wealth disparities


and poverty. Unlike other highly developed countries, we provide little in the way of a social welfare net, including parental leave, childcare, and state-subsidized housing, much less free college education. And our health-care system consistently ranks lower than most wealthy nations, unless you are very rich, in which case it is near the top. Not to mention homelessness in big cities.”

“Or even law schools,” I added. “We do provide free legal representation for the poor who are accused of crime. I guess our society wants to look good in at least that respect. But when Thurgood Marshall proposed extending similar relief in other settings, including education and welfare, the idea went nowhere.”

I poured in distilled water from a pitcher and added, “It seems that Gideon v. Wainwright was the high-water mark for poverty as a suspect class. I assume you have some ideas on why this is so?”


12. See United States v. Carolene Prods. Co., 304 U.S. 144, 152 n.4 (1938) (positing that a searching standard of review might be in order in cases where the government has afforded unequal treatment to discrete and insular minority groups); see also JOHN HART ELY, DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW 4–5, 7 (1980) (identifying problems with prevailing theories of judicial review including interpretivism and noninterpretivism).
“I do,” he said. “Other wealthy countries seem ahead of us in that respect.13 Even in our own society, law suffers by comparison to fields like literature. As early as Charles Dickens, novelists wrote about the plight of poor families unable to put food on their children’s tables.14 In our times, novelists like F. Scott Fitzgerald (The Great Gatsby)15 and John Steinbeck (The Grapes of Wrath),16 as well as nonfiction writers such as Upton Sinclair (The Jungle)17 and Ralph Nader (Unsafe at Any Speed)18 address some of the same problems.”

“You could go back to Biblical times,” I said, “when followers of Jesus wrote about how he taught kindness and mercy for the poor, the halt, the blind, and the lame.19 And the Framers of the Constitution were careful to provide equal representation for poor and rich states.”20

“Even if they conveniently left the slaves out,” he added.

“True,” I conceded. “Including some of my own ancestors. Society relented, of course, with the Reconstruction Amendments21 and again

13. E.g., Partanen & Corson, supra note 6.
15. See generally F. SCOTT FITZGERALD, THE GREAT GATSBY (1925) (describing a man’s attempt to fake a wealthy life).
17. See generally UPTON SINCLAIR, THE JUNGLE (1905) (describing the abhorrent working conditions in the meat-packing industry).
18. See generally RALPH NADER, UNSAFE AT ANY SPEED (1965) (explaining that the Ford Pinto, a poorly designed, inexpensive car, was favored by many blue-collar people); see also BARBARA EHRENREICH, NICKEL AND DIMED: ON (NOT) GETTING BY IN AMERICA (2001) (describing the miseries of American life when making minimum wage).
19. E.g., Luke 14:21 (urging that his followers go forth to aid the poor, the crippled, the blind, and the lame).
20. E.g., About the Senate and the Constitution, U.S. Senate, https://www.senate.gov/about/origins-foundations/senate-and-constitution.htm [https://perma.cc/B6CT-ULEA] (noting that the Constitution provides for an equal number of senators from each state, large or small); see also DERRICK BELL, RACE, RACISM, AND AMERICAN LAW 41–43 (6th ed. 2008) (noting how the Framers provided for representation of southern states in the form of several “slavery compromises”).
21. See U.S. CONST. amends. XIII, XIV, and XV (abolishing slavery and guaranteeing equal protection and the right to vote).
in the sixties. And presidents like Franklin Roosevelt and Lyndon Johnson enacted broad anti-poverty measures. But since then, the government has done comparatively little to ease the plight of those born into the underclass.”

“Especially for African Americans and Latinx farmworkers and domestics, who were neatly left out of many of the New Deal programs,” he added.

B. Rodrigo and the Professor Discuss Why Legal Remedies for Poverty Lag Behind Those for Race

“Maybe part of the reason,” I said, “is that in the back of our minds we think that poverty is the legislature’s concern, not the judiciary’s, or that in a system such as ours with its horrific history, racial discrimination is the prime candidate for redress, not the kind based on destitution or social class. Socialism may work for Europe and Scandinavia, we seem to think, but the U.S. is based on capitalism, which has its winners and losers.”

When he shot me a searching look, I explained that though we fought a war over race, aside from a few skirmishes and shoot-outs over unionism and strikes, economic grievances have not grabbed our


24. See Perea, supra note 23, at 589 (discussing the exclusion of farmworkers, household service workers, and other low-paid categories of workers); Bazelon, supra note 23. See also BELLI, supra note 20, at 40–43 (discussing the slavery compromises which had an even more deleterious effect on the Black population).

25. See ELY, supra note 12, at 7–8 (offering a defense of counter-majoritarian judicial review).


28. See e.g., 1892 Homestead Strike, AM. FED’N OF LAB. & CONG. OF INDUST. ORGS., https://aflcio.org/about/history/labor-history-events/1892
attention in the way Indian massacres, wars with nations of brown-skinned people such as the one with Mexico, and demonstrations over police killings of Black men have done.

After a pause I added: “Some are urging that minorities, with their growing numbers, can now fend for themselves and elect leaders of their own.29 For them, the counter-majoritarian basis for judicial protection of minorities has run its course.30 It may be time for the rights of the poor to move up and for racial minorities to take a back seat for a while. Most days, I actually believe that.”

C. The Professor Announces a Surprising Turn in His Thinking

Rodrigo sat bolt upright. “I’m surprised to hear you say that, Professor, coming from someone who has devoted his life to critical race theory and the rights of minorities. But just the other day I was reading about another well-known writer who advocates doing away with race-based affirmative action in favor of a version based on family income and social class.”

“I assume you mean Richard Kahlenberg,”31 I said. “Many of the amici in the Harvard suit urge much the same thing.32 The Supreme Court is probably going to rule in their favor.”33

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30. *See supra* notes 12 and 19 and accompanying text (explaining how discrimination against weak and insular minorities may call for strict judicial review).


“And I gather you think it’s not a bad idea?”

“I do. By the way, your coffee is ready. You see, many minorities are poor, so programs that target poverty would help them. By the same token, increasing numbers of poor people are minorities. So programs based on class would encourage admissions officers to focus on which minorities really need the help. The proverbial son or daughter of a Black neurosurgeon would actually have to work hard and get good grades to get into Harvard. Your son Gus might have to, too.”³⁴

He looked a little shell-shocked, so I added, “Actually, I think we ought to offer a helping hand to both groups, but social class might be the harder sell. As you know, Thurgood Marshall first raised the idea in San Antonio Independent School District v. Rodriguez,⁵ a school funding case where he pointed out that the poor are, in many respects, weak and insular minorities, just like African Americans and Latinos. Stigmatized, too.”

“I’m sure you agree with that.”

“I do, even though the Supreme Court majority didn’t, at least back then. I think they may have been hung up on the idea that class is not permanent, like skin color. But it is intractable, as writers like Thomas Piketty (Capital in the Twenty-First Century)³⁶ have been pointing out. Countries like the United States, which protect labor rights only weakly and disdain socialized medicine, universal childcare, and free university education, find it easy to blame the poor and attribute their condition to poor work habits and a culture of dependency.”

“Easy to do,” he conceded. “For everyone has heard about the rare genius who rises from the lower ranks to a life of fame and fortune. But most poor people do not.”³⁷

Indeed, shortly after our conversation concluded, the Supreme Court ruled much as predicted. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 143 S. Ct. 2141 (2023).


“Somebody we know wrote about that,”38 I said. “Upward mobility remains relatively rare. The poor, as they say, are always with us, and the class of poor people remains very similar in size, and even in composition, generation after generation.”39 A courageous judge could easily announce one day, ‘That’s what I mean by immutable,’ cite Thurgood Marshall, and use strict scrutiny to lift some of the burden from the poor, as the Court did in Gideon v. Wainwright,40 but in one area—criminal procedure—alone.”

II. IN WHICH RODRIGO AND THE PROFESSOR DISCUSS
INTEREST CONVERGENCE AND THE POOR

Rodrigo paused for a second to drain his coffee cup and stole a quick look at my coffee maker. I asked if he would like a refill.

“Thanks,” he said. “Maybe in a minute. It seems we agree that increased judicial solicitude for the poor is at least technically feasible. A new legal movement, the ClassCrits, has been pointing that out.41 But relief is unlikely to arrive without a strong outside motivation comparable to the combination of forces that led to the breakthrough for Black schoolchildren in Brown v. Board of Education in 1954.”42

“Do you mean a new international competitor similar to the Soviet Union that prompted decision-makers in the early fifties to enact a major breakthrough for American Blacks?”

He nodded. So on a hunch I added, “And I bet you think that the new competitor is China. But before we go on, how about that second cup of coffee?”

“Yes, on both counts,” he said.

As he walked over to my coffee maker, cup in hand, I said, “It’s certainly true that China has been making waves with its Belt and Road initiative.43 I’m sure countries in the developing world have been paying attention.”

38. Id.
39. Id. at 879.
40. See supra text accompanying notes 9, 11–12.
42. 347 U.S. 483, 492–94 (1954) (explaining the importance of education in “awakening the child to cultural values” and that separating children in school based on race “generates a feeling of inferiority . . . that may affect their hearts and minds in a way unlikely to ever be undone”).
43. See David E. Sanger & Mark Langler, Biden Tries to Rally G7 Nations to Counter China’s Influence, N.Y. Times, (June 12, 2021), https://
“They have been,” he said. “And our leaders in Washington have been noticing. Giannina and I were looking into this recently. Are you interested in what we found?”

“Very much so,” I said. “Although I can see obstacles that might lie in the way of legal protection for working-class people even in the face of foreign competition.44 Incidentally, you can ignore that blinking light on my new coffee maker. I have no idea what it does.”

III. IN WHICH RODRIGO AND THE PROFESSOR CONSIDER HOW INTEREST CONVERGENCE MAY BE PUTTING CLASS ON THE FRONT BURNER

A. China: The Reality and the Threat

He examined the machine, picked it up to take a closer look, and said, “I think it’s a warning light. Some of these new models have a sensor that tells you when it’s running low. That way, you don’t burn the bottom of the carafe.”

He emptied the pot into his cup and said, “See, it went off. Interest convergence.”

I thanked him for helping me, once again, cope with modern technology. He then whipped out a well-worn sheet of paper and began.

“It seems China claims that it has completely eliminated absolute poverty.45 Only a few years ago, many of its citizens were desperately poor.46 They accomplished much of this through massive infrastructural improvements that confer benefits on all its citizens, such as the one

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44. See infra Part V.


46. Bowley, supra note 45, at 132; Delgado & Stefancic, supra note 45, at 149–50.
you just mentioned. Uncommitted nations in Africa, Latin America, the Middle East, and elsewhere have taken note and begun pursuing trade, economic, and strategic relations with China."  

“This sounds interesting. Tell me about some of them.”

“Iran, for example, negotiated a broad coalition with it, covering trade, culture, politics, and mutual security. Brazil entered into a deal to sell iron ore and agricultural products that China needs to feed a growing population. According to the Council for Foreign Relations, it has been developing commercial ties with Oceania, Africa, and several countries in Asia and even begun purchasing farmland in Latin America, probably with a view to hiring local workers to tend the crops.”

47. See supra text accompanying note 43.


51. McBride et al., supra note 43 (noting China’s aggressive rise). Chinese business leaders are beginning to set up factories in northern Mexico to supply materials and parts to U.S. industries unwilling to incur the costs and disruptions of long supply chains. See Peter S. Goodman, Why Chinese Companies Are Investing Billions in Mexico, N.Y. TIMES, (June 20, 2023), https://www.nytimes.com/2023/02/03/business/china-mexico-trade.html [https://perma.cc/7VFG-D483].
“Kind of a reverse-Bracero program,” I said in wonder. “I’m sure you remember those wartime programs that enabled Mexican farmworkers to enter the country under short-term visas.”

“I do. And the Chinese are even looking to acquire farms in economically depressed parts of the United States and giving Latin American countries vaccines as a way of currying favor there.”

B. U.S. Power Brokers Taking Notice

“Impressive,” I conceded. “I imagine that little of this has escaped the attention of our foreign policy establishment.”

“It hasn’t,” he said. “U.S. leaders seem as wary of China’s current threat to our hegemony as their counterparts in the Department of State and Justice were in the days of Cold War competition with the Soviets.”

“Can you give me an example or two?”

“Sure.” He fished out a second sheet of paper from his coat pocket and said, “The U.S. Trade Ambassador recently warned that without decisive action, including severe sanctions, China is apt to gain the lead


in technology, which will strengthen that country’s appeal to developing
nations. And a Chinese spokesman announced that his country stands
ready to fill some of Afghanistan’s needs in the wake of America’s
unceremonious withdrawal, while another warned a visiting U.S.
Deputy Secretary of State that his country’s rise is unstoppable. “Did
n’t President Xi say the same thing just the other day?” I asked.
“He did. On the hundredth anniversary of China’s communist
party. So all this comes straight from the top.”

C. Pressure Arising from Within the U.S.

“Sobering,” I said. “An early warning system, like that light on my
coffee maker. But with Brown v. Board of Education, you had not only
international competition fueling the breakthrough, but also internal
pressure as well. Black servicemen and women were returning home
from foreign wars, where they had risked their lives fighting monolithic,
atheistic communism. They were unlikely to settle back into former
lives of menial work and ‘yes sir, no sir.’ A spectacular breakthrough

56. Robert E. Lighthizer, America Shouldn’t Compete with China with One
ResultPosition=1; Edward Alden, Trump’s Trade Warrior Takes the Fight to Beijing, POLITICO (Feb. 13, 2019),
https://www.politico.com/magazine/story/2019/02/13/donald-trump-bob
-lighthizer-china-trade-225025/.

57. Zhou Bo, In Afghanistan, China Is Ready to Step into the Void, N.Y.
/china-afghanistan-taliban.html?sntyp=cur&smid=tw-nytopinion; see also Fareed Zakaria, GPS,
/fareed-zakaria-gps/episodes/8bf08aa7-3452-4f80-92a9-ad8c00f03b7; Lucia
Niewenhuis, China’s Rise Is ‘Unstoppable,’ Xi Declares in
Tiananmen Speech Marking 100th Anniversary of CCP, CHINA PROJ.
-united-states-cold-war.html; Chris Buckley & Keith Bradsher,
Marking Party’s Centennial, Xi Warns that China Will Not Be Bullied,
N.Y. TIMES (Sept. 21, 2023), https://www.nytimes.com/2021/07/01/world
/asia/xi-china-communist-party-anniversary.html.

58. See Chris Buckley & Steven Lee Myers, From ‘Respect’ to ‘Sick and
Twisted’: How Coronavirus Hit U.S.-China Ties, N.Y. TIMES (July 14,
-united-states-cold-war.html; Lucas Niewenhuis, China’s Rise Is ‘Unstoppable,’ Xi Declares in
Tiananmen Speech Marking 100th Anniversary of CCP, CHINA PROJ.
(Oct. 1, 2021), https://thechinaproject.com/2021/07/01/chinas-rise-is
-unstopable-xi-declares-in-tiananmen-speech-marking-100th-anniversary
-of-ccp/.
for Black civil rights would go far to ward off domestic unrest as well as position the United States favorably in competition for the loyalties of uncommitted nations.60 Is something similar going on today?”

“It is!” he practically shouted. “Professor, I love the way you push me. Blue-collar populism is just now starting to challenge the wealth gap and other manifestations of class bias61 and not just from the left-hand side of the compass or mere students.62 A number of conservative organizations, and even Trump in his last days in office, have charged that liberal programs, such as green energy, will only enrich causes and sectors dear to the left and urged that new ones start at the local level, incentivize people to work, and include members of blue-collar organizations like the National Guard.”63

I must have widened my eyes again, for I recalled that the New York Times had only recently urged that the United States increase spending on K–12 education, infrastructure, and other programs favored by blue-collar people and the middle class, precisely to counter China’s $1.2-trillion Belt and Road plan.64


62. See id.


Rodrigo jotted something down, looked up, and said, “And of course Biden’s administration is beginning to move in this direction, with measures aimed at improving infrastructure, and touting how they can create new jobs for working-class people without college degrees.”

D. The Judiciary Beginning to Take Notice

“What about courts and the judiciary?” I asked. “We talked recently about sixties-era innovations like implied warranty of habitability in housing law, unconscionability in consumer transactions, and no-fault divorce. Are courts weighing in today much as they were in the era of Cold War competition?”

“Just beginning to,” he said. “Beginning with relief from student debt, predatory mortgages, and noxious dumps and waste sites located in poor communities. Some are considering holding businesses responsible for climate change.”

“And you think this trend will continue?”

65. See id.

66. President Joseph R. Biden, State of the Union Address (Feb. 7, 2023) (transcript available at https://www.whitehouse.gov/state-of-the-union-2023/[https://perma.cc/CFQ6-7FDR]) (noting that his administration has created many such jobs and intends to create even more).


"It might," he said. "The law is conservative and slow to change." But the poor are beginning to realize that without concerted action, they are apt to remain stuck, unlikely to win a fortune in a lottery or game show, or be discovered by a talent scout for Hollywood or a record company. Even the Washington Post agrees that future prospects for the poor are little brighter than they were. Keeping up the pressure is the only way to create a second wave of reform.

E. Class Interest Rising

"It’s kind of sobering when you hear it all at once," I conceded. "Of course, that ClassCrit movement you referred to seems to be doing its best to get things rolling. We may not be Finland or another highly socialized society in which a smart child of working-class parents may go to a top state university, graduate, and open a business or lead a good life as a machinist in a safe, well-run factory making world-class cars.

But by putting pressure on during times of international competition, working-class people may, perhaps, win concessions from the ruling class, just as Black Americans did in the aftermath of Brown v. Board of Education. I think you’re right about that. Even conservative think tanks are beginning to add to the pitch."
1. The Wealth Gap

We paused for a moment while I shuffled some papers. “Speaking of think tanks, I was just reading . . . Oh, here it is,” I said, picking up a journal that lay half-open on my desk, “that the United States suffers a wealth gap that international observers and economists are beginning to find worrisome.” The Pew Research Center noted that the richest 5 percent of families in the United States nearly doubled their wealth in a recent period, while that of the rest of the population stagnated. The median net worth of the wealthiest 20 percent of Americans increased 13 percent to $1.2 million. By contrast, for families in the second quintile of wealth, it fell 39 percent to $19,500 in the same period. Between 1989 and 2016, the ratio of wealth between the richest 5 percent of families and families in the second quintile increased from 114 to 248.

2. Little Upward Mobility Among the Working Class

“I had no idea,” he said. “I’d like the citation to that report, if it’s not too much trouble.”

“Not at all,” I said. I scribbled it down on a sticky note and shook my hand vigorously when it refused to let go. “Here it is. It’s a gold mine. It seems that not only are low-wealth families losing ground compared to their richer counterparts, the same is true for earnings. Income inequality is now greater here than in any other highly developed society. With low salaries, as well as income, the poor in America can’t readily invest in the stock market, open a business other than the

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81. Id.

82. Id.

83. Id.

84. Id.

85. Id.
smallest kind, or enroll in a top college. A family in the lowest echelon has virtually no chance of ending up anywhere near the top.”

“So populism does not just arise from ressentiment or watching too many movies about the lives of the rich and famous,” he said. “The poor and the working class are stuck, with little realistic prospect of improving their position. Just like that sticky note of yours that wouldn’t let go.”

“I wonder if the government will intervene at some point,” I mused, “if only to stave off disruption.”

“Beginning around 1954 and lasting for two decades, it did,” he said. “But mainly for minorities. Today, with homeless people, single mothers, and a few of what it considers the deserving poor, the Biden administration is beginning to offer concessions, whether out of idealism, political self-interest, or both. Capitalism may soon find it to its advantage to produce breakthroughs, and not just to select groups, but broadly. Do you agree?”

IV. IN WHICH RODRIGO AND THE PROFESSOR DISCUSS CRITICAL ECONOMICS

“Possibly,” I said. “In one way of looking at it, capitalism is a kind of shell game. As Marx pointed out, it requires a constant stream of new markets—in his day, colonies—to sustain itself. Factory workers, for example, do not get to take home the full value of what they produce. The ‘surplus value’ theory of labor holds that a business owner, having invested money and undergone risk, takes a certain amount of the value produced by the worker’s labor for himself in the form of profit.”

“So the whole thing is unstable?”

86. See Delgado, supra note 37, at 879–80, 901–03, 907 (noting the small amount of upward mobility, particularly for those mired near the bottom).


88. See generally MARX, supra note 26.

89. Id.; see also RICHARD DELGADO, LETICIA M. SAUCEDO, MARC-TIZOC GONZÁLEZ, JEAN STEFANCIC & JUAN F. PEREA, LATINOS AND THE LAW: CASES AND MATERIALS 717 (2d ed. 2021) (suggesting that similar dynamics operate in connection with Latino farm labor).
“According to Marx and his followers, it is. I think we may have discussed this once. In some industries, such as manufacturing, the skimming is more overt and exploitive than in others. In the typical law firm, for example, the work is hierarchical, but the manner in which those at the top of the hierarchy, the partners, profit from the labor of the underlings, the associates, is somewhat hidden from view and generally accepted.”

“But now,” I said, “consciousness is rising in formerly colonized countries at the same time that a new power, China, is offering solidarity and attractive trading deals. At times like this, a mature nation like the United States will find it in its interest to create or discover new internal markets to buy the products and services that formerly supported an unstable pyramid.”

“And those new markets,” he added, “would logically have to be either the current U.S. poor or else new immigrants eager to buy products like refrigerators, used cars, and convenience food at neighborhood outlets. Is that what you are getting at?”

“It is,” I said. “Unless the system puts more money into the pockets of blue-collar people and the working class, the economy will suffer a crisis. It is only a matter of time before national leaders realize how


93. With new money in their pockets, that is, from new and better jobs or from a strengthened welfare safety net.


precarious the situation is and take steps to stabilize it. The foreign service establishment will press them as well.”

V. OBSTACLES IN THE WAY OF PROGRESS FOR THE POOR

“Earlier, you expressed doubt that this will happen any time soon,” he said. “Before I dash off to meet Giannina at the train station, could you run your reasons past me? That way, I can share them with her on the way back.”

A. Upstairs, Downstairs, and the Problem of Internalized Oppression

We both heard a slight shuffling from outside my office door. “It sounds like someone is waiting,” I said. “So let me run through them quickly. One is that many poor people may eschew class consciousness and identify with their masters, the rich.”

“Hoping for favors, I suppose,” he said. “Or as in the British television series, Upstairs Downstairs, the butler takes on upper-class mannerisms and loyalties, even though he is not much better off than the scullery maid. If the staff stage a small revolt over, say, too little time off for the holidays, the butler may side with the family of the household, even though he, too, would benefit from time off to spend with his family and kids.”

“What’s the next one?” He sneaked a quick look at his watch, so I resolved to sketch my final two reservations as succinctly as possible.

B. Red-Baiting and the Problem of the Fearful Judge or Bureaucrat

“A second problem,” I began, “comes up in connection with the members of the ‘upstairs’ contingent who are afraid of repercussions from those even higher up. They may shrink from enacting even modest reforms for fear that their peers and higher-ups will accuse them of being soft on communism or being closet socialists.”

C. Objections from Racial Minorities

Eager to Remain at the Center of Attention

“And the third?” he asked.

“It’s the reaction I heard from you earlier. You expressed surprise at the idea that I, a long-time race reformer, was prepared to put race on the back burner in favor of mitigating repressive social structures for the working class. If even small numbers of minorities side with white hegemons to oppose measures like cancellation of student debt, merely because they will redound to the benefit of some struggling whites, the path forward will indeed be long and difficult.”

Rodrigo pricked up his ears, as though hearing something outside. “I think that could easily happen, Professor, particularly with hard-core minority leaders and organizations—nationalists, in short. Programs like the ones you mentioned may well leave them cold.”

“Or strike them as less worthy than ones, like affirmative action, that target Black folks directly,” I added.

“I may have to be leaving pretty soon, Professor, and want to mention a possible ray of hope. Even if, as you say, some upward-striving minorities—white wannabes—side with whites and against their own struggling brothers and sisters, might we not end up with a surprising new set of allies?”

“And who might that be?”

“Poor whites. Remember the old-time radical you mentioned earlier? In his answer to a journalist’s question about the upcoming affirmative action case, Richard Kahlenberg pointed out that ending affirmative action may have an unintended benefit for minorities, namely improving solidarity between poor Blacks and the white working class. As he put it, ‘If you want working-class white people to vote their race, there’s no better way to do it than to give explicitly racial preferences in deciding who gets ahead in life.’ By the same token, ‘if you want working-class whites to vote their class, you would try to remind them that they have a lot in common with working-class Black and Hispanic people.’

CONCLUSION

Our conversation quickly concluded. We both heard the train whistle from the station two blocks away, and my visitor quickly gathered his things, thanked me, and departed, vowing to get together again soon. After he left, I went over what we had discussed.

I thought he and Giannina had a point in holding that it was time for thinkers to begin focusing on class, even though he seemed taken aback at some of the implications of his own thesis. In particular, he

97. *See supra* Part V(A) (discussing minorities who side with the oppressor in an effort to better their own personal circumstances).

98. *See generally* KAHLENBERG, supra note 31 and accompanying text.


100. *Id.*

101. *Id.*
seemed shocked to learn that I not only agreed but was prepared to put racial analysis aside for a time in favor of focusing on class.

I thought that competition from China for the loyalties of uncommitted nations, particularly those in need of rapid development, could easily spur concessions for struggling people in regions of intense poverty, such as Appalachia and certain inner cities, and wondered how our two law schools would handle the problem of their own students sleeping in cars.

Moments later, I started an email to the two of them raising a few questions for future analysis. I had just returned, for comic relief, to my checkbook, which still would just not balance no matter what I did. In the midst of my dithering, I was interrupted by a hesitant knock on my door. Standing there was a young-looking student whom I vaguely remembered from an earlier class.

“Hi, Professor,” he said. “You may not remember me, but I’m Jaime Gonzalez, and I got an A in your class last year. I’m one of those students who has been sleeping in his car, and I’d like to talk to you about it.”

“Well, well,” I said, motioning him to come in and resolving to take careful notes. “I gather you are not one of the ones who dropped out.”

He smiled and shook his head firmly.

“I’m very glad,” I said. “Please tell me about it.”

102. Specifically, I wanted their thoughts on whether a new movement of the kind we discussed might turn out to be more promising than might appear at first sight. Many critical race theorists might readily adapt their highly honed analytical skills to the new area, since race and class present a number of similar challenges. See e.g., supra Part II (discussing the challenge of locating and defining interest convergence). Some might readily agree to the transition, seeing it as a breather from withering attacks by white nationalist figures and legislatures. See Russell Contreras, A Critical Race Theory Founder Says He is Being Inundated with Threats, AXIOS (Dec. 3, 2021), https://www.axios.com/2021/12/03/critical-race-theory-founder-threatening-messages [https://perma.cc/AUN5-XSWQ]. Class analysis might also offer the opportunity for coalition with poor whites, as well as the promise of reforming a second central organizing principle for society, comparable in many ways to race.

103. Later, I was very glad I did. In a hunch, I located the campus newspaper article I had mentioned to Rodrigo when he had first arrived. Entitled “Les Miserables on (Under) Campus,” it described a small community of impoverished students and street people living in underground tunnels that had once served as heat conduits for the campus buildings. It also described the role of a law student named Jaime in organizing the residents into a union to demand better conditions from the authorities. See generally VICTOR HUGO, LES MISERABLES (1862). See Michael J. Mooney, Light at the End of the Tunnel, DESERET NEWS (Sept. 25, 2021, 12:00 AM), https://www.deseret.com/2021/9/24/22689821/light-at-the-end-of-the-tunnel-las-vegas-tunnel-system-shine-a-light-paul-vautrinot [https://perma.cc/3RK2-LKEA] (describing underground communities in contemporary Las Vegas that paralleled the Parisian communities that Victor Hugo described in his writing).