

4-2020

## Erasing Race

Llezzlie L. Green

*American University Washington College of Law*

Follow this and additional works at: <https://scholar.smu.edu/smulrforum>



Part of the [Civil Rights and Discrimination Commons](#), [Labor and Employment Law Commons](#), [Law and Race Commons](#), and the [Social Welfare Law Commons](#)

---

### Recommended Citation

Llezzlie L. Green, *Erasing Race*, 73 SMU L. REV. F. 63 (2020)

<https://doi.org/10.25172/slrf.73.1.8>

This Collection: Foundational Voices in 2020 and Beyond is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in SMU Law Review Forum by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

# SMU Law Review Forum

Volume 73

April 2020

63–72

## ERASING RACE

Lleżlie L. Green\*

### ABSTRACT

*Low-wage workers frequently experience exploitation, including wage theft, at the intersection of their racial identities and their economic vulnerabilities. Scholars, however, rarely consider the role of wage and hour exploitation in broader racial subordination frameworks. This Essay considers the narratives that have informed the detachment of racial justice from the worker exploitation narrative and the distancing of economic justice from the civil rights narrative. It then contends that social movements, like the Fight for \$15, can disrupt narrow understandings of low-wage worker exploitation and proffer more nuanced narratives that connect race, economic justice, and civil rights to a broader anti-subordination campaign that can more effectively protect the most vulnerable workers.*

“[B]ut racial justice and economic justice are really just two sides of the same coin . . . .”

– Gabrielle Hatcher (Fight for \$15 Protester)<sup>1</sup>

### INTRODUCTION

Much of the legal scholarship concerning race and employment law centers on traditional understandings of employment discrimination—that is, statutory violations that occur when an employer treats an employee differently in her compensation, promotion, hiring, or termination because of the employee’s racial identity. Scholars and advocates typically do not consider the relationship between race and wage theft—the statutory violations associated with the failure to compensate a worker properly for their hours worked. Indeed, in my earlier work, I pointed out that the Department of Labor (DOL) does not seek or maintain racial demographic information of its complainants.<sup>2</sup> As a result, the

---

\* Professor of Law, American University Washington College of Law; J.D., Columbia Law School; B.A., Dartmouth College.

1. Willa Frej, *These Are the Faces of the Fight for 15 Movement*, HUFFINGTON POST (Nov. 10, 2015, 5:04 PM), [https://www.huffpost.com/entry/faces-of-fight-for-15-movement\\_n\\_56424398e4b0411d3072cc3e](https://www.huffpost.com/entry/faces-of-fight-for-15-movement_n_56424398e4b0411d3072cc3e) [https://perma.cc/VKK3-ENWH].

2. See Lleżlie Green Coleman, *Disrupting the Discrimination Narrative: An Argument for Wage and Hour Laws’ Inclusion in Antisubordination Advocacy*, 14 STAN. J. C.R. & C.L. 49, 51 (2018). The DOL indicated it does not request demographic information from workers to avoid discouraging vulnerable immigrant workers from engaging with the agency. *Id.* at 51–52. While the concerns

federal agency tasked with enforcing the Fair Labor Standards Act (FLSA) cannot assess the extent to which workers' race correlates with their exploitation because it does not track the race of workers who file complaints. Yet, more than 60% of African-American workers and nearly 50% of Latinx workers earn less than \$15 per hour and are thus engaged in low-wage work and are susceptible to wage theft.<sup>3</sup> While the FLSA and its state law corollaries do not explicitly contemplate the race of the workers whose compensation they regulate, the rampant subordination of low-wage workers suggests we should consider the role racial identity plays in the proliferation of wage theft and the implications for successfully challenging these practices.

This Essay begins this important conversation and proceeds from the assumption that efforts to distance worker exploitation from race and identity often do little to further justice and, in fact, simply kick the proverbial can down the road—that is, we cannot escape the role that identity in general, and race specifically, plays in the subordination and exploitation of workers. Attempts to discard the racialized aspects of subordination are unlikely to lead to significant improvements in low-wage workers' lives. At the same time, low-wage workers often find it both complicated and difficult to pursue their substantive legal workplace rights.<sup>4</sup> While the law and its institutions may have difficulty grappling with the need to consider the intersectional character of low-wage worker subordination, recent social movements are addressing this dynamic and forging successful campaigns that explicitly connect racial (and other identity-based) subordination with workplace subordination. Recent social movements' successes in changing the conversations about social justice and race, as well as improving legal protections, provide critical examples of their important roles in addressing subordination. In particular, the Fight for \$15 has succeeded in achieving at the local levels what is likely implausible at the federal level: a minimum wage increase for millions of workers.<sup>5</sup>

This Essay proceeds in three parts. Part I considers the societal and legal ideologies that attempt to detach race from worker exploitation and subordination. Part II explores the role of narratives in the relationship between economic justice and civil rights and the detachment of racial justice from the economic-justice narrative. Part III considers the growing presence of social movements like the Fight for \$15 and argues that movements' intersectional approach to advocacy has the power to shift the narrative about low-wage workers' exploitation and reposition it as a question of racial subordination that our civil

---

evident in this explanation are legitimate, the DOL's failure to seek this information also reinforces the perception that wage theft is a race-neutral phenomenon.

3. IRENE TUNG ET AL., NAT'L EMP'T LAW PROJECT, *THE GROWING MOVEMENT FOR \$15*, at 4 (Nov. 2015), <https://s27147.pcdn.co/wp-content/uploads/Growing-Movement-for-15-Dollars.pdf> [<https://perma.cc/Z2U2-54LJ>].

4. See generally Llezlie Green Coleman, *Procedural Hurdles and Thwarted Efficiency: Immigration Relief in Wage and Hour Collective Actions*, 16 HARV. LATINO L. REV. 1 (2013) (discussing vulnerable immigrant workers' difficulty litigating workplace law cases); Llezlie L. Green, *Wage Theft in Lawless Courts*, 107 CALIF. L. REV. 1303 (2019) (discussing the legal and procedural difficulties workers often experience when pursuing their wage and hour rights in small claims courts).

5. Kimberly M. Sánchez Ocasio & Leo Gertner, *Fighting for the Common Good: How Low-Wage Workers' Identities Are Shaping Law*, 126 YALE L.J. F. 503, 503–04 (2017).

rights and employment laws should contest.

## I. IDEOLOGIES ADRIFT

The tendency to ignore the racialized aspects of workplace exploitation occurs within a broader context of ideologies and narratives that diminish the role of race in society. The following section contextualizes worker exploitation within the post-racial and color-blind ideologies that have influenced the prevalent narratives about workplace experiences.

### A. POST-RACIALISM AND COLORBLINDNESS

In recent years, proponents of post-racialism<sup>6</sup> and color-blind analysis<sup>7</sup> have urged scholars and advocates to accept that the United States has largely overcome the issue of race: that is, that race only plays a minor role in most persons' lives and an increasingly limited role in the lives of the most vulnerable. While scholars often discuss post-racialism and colorblindness as a political trend, social fact, or ideology,<sup>8</sup> these concepts are perhaps best understood as influential narratives about societal progress that frame how some perceive the role of race.

The post-racial narrative, first surfacing with the election of President Barack Obama,<sup>9</sup> proceeds as follows: Since the end of slavery, the United States has diligently worked towards creating a society that neither penalizes nor promotes individuals based upon their racial identities. While progress occurred more slowly for the first 100 years, the end of Jim Crow, the courageous work of advocates during the Civil Rights Movement, and the passage of several civil rights statutes in the 1960s catapulted us toward an egalitarian society. These efforts culminated in the election of Barack Obama as President in 2008, which evidenced that race no longer hinders personal advancement.<sup>10</sup>

Advocates for colorblindness, a theoretical corollary of post-racialism, likewise minimize the importance of race and contend that the only way to achieve post-racial nirvana is to reject the idea that any racial differences exist and to reject consideration of race in any decision-making.<sup>11</sup> Colorblindness, thus, assumes it is possible to navigate relationships with both people and institutions without

6. See Coleman, *Disrupting the Discrimination Narrative*, *supra* note 2, at 62–65 (discussing the various components of post-racialism).

7. *Id.* at 63–64 (discussing the genesis of color-blind constitutionalism).

8. See, e.g., Sumi Cho, *Post-Racialism*, 94 IOWA L. REV. 1589, 1594 (2009) (“Rather than speak of post-racialism as merely a political trend or phenomenon or social fact, I argue that post-racialism in its current iteration is a twenty-first-century ideology that reflects a belief that due to the significant racial progress that has been made, the state need not engage in race-based decision-making or adopt race-based remedies, and that civil society should eschew race as a central organizing principle of social action.”).

9. John A. Powell, *Post-Racialism or Targeted Universalism?*, 86 DENV. U. L. REV. 785, 788–89 (2009).

10. *Id.*

11. See Randall Kennedy, *Colorblind Constitutionalism*, 82 FORDHAM L. REV. 1, 2 (2013) (“Colorblindness is a key idea in American life. It stands for the proposition that race ought to play no role in assessing individuals.”). Ibram Kendi likens colorblindness to “racist passivity”; that is, a failure to recognize race leads to a failure to recognize racism. IBRAM X. KENDI, *HOW TO BE AN ANTIRACIST* 10 (2019).

acknowledging racial, ethnic, or color differences exist or have any impact on those relationships.<sup>12</sup>

The post-racial and color-blind narratives may make it increasingly difficult to prevail on racialized claims in courts.<sup>13</sup> Katie Eyer's 2012 article surveying the success rates of employment discrimination cases in federal courts found that demonstrating discriminatory intent in federal court was incredibly difficult, based at least in part on fact-finders' perception that discrimination is rare.<sup>14</sup> It appears, therefore, that the post-racial and color-blind ideologies may become paradigmatic understandings of how the world works. If the fact-finders have adopted this worldview, they will likely be reluctant to find that race played a role in any workplace decision.

#### B. UNIVERSALISM – LAW'S RESPONSE

These challenges have led scholars to consider alternative methods for addressing subordination. Some have advocated for the use of "universalistic strategies" in civil rights and advised lawyers to focus on enforcing statutes that do not implicate the racial, ethnic, or gender identity of the aggrieved party.<sup>15</sup> They have argued for a universalist approach to protecting voting rights,<sup>16</sup> higher-education admissions,<sup>17</sup> interpretations of the Fourteenth Amendment,<sup>18</sup> and employment rights.<sup>19</sup> Given that federal courts jurisprudence has created hurdles to vindicating substantive legal rights grounded in discriminatory treatment and fact-finders' reluctance to recognize identity-based wrongs, the push for an alternative strategy may seem attractive. Other scholars, however, have rejected the call for a universalist approach to workplace justice. For example, Charlotte Alexander, Zev Eigen, and Camille Gear Rich argue that a preference for

12. See IBRAM X. KENDI, *STAMPED FROM THE BEGINNING: THE DEFINITIVE HISTORY OF RACIST IDEAS IN AMERICA* 467 (2016) (describing "color-blindness" rhetoric as "the idea of solving the race problem by ignoring it"); Kennedy, *supra* note 11, at 1-5.

13. Recent developments in the criminal-law space, particularly with regard to questions of race and policing, may call into question popular culture's adherence to the post-racial or color-blind narratives. It is less clear, however, that this same questioning is occurring in civil legal spaces involving employment discrimination and/or workplace exploitation.

14. Katie R. Eyer, *That's Not Discrimination: American Beliefs and the Limits of Anti-Discrimination Law*, 96 MINN. L. REV. 1275, 1320-21 (2012). Eyer attributes the difficulty in convincing a fact-finder that racial discrimination occurred to societal belief in meritocracy and narrow cognitive frameworks. *See id.*

15. See Samuel R. Bagenstos, *Universalism and Civil Rights (with Notes on Voting Rights After Shelby)*, 123 YALE L.J. 2838, 2842 (2014) ("For purposes of this essay, I define a universalist approach to civil rights law as one that either guarantees a uniform floor of rights or benefits for all persons or, at least, guarantees a set of rights or benefits to a broad group of people not defined according to the identity axes (e.g., race, sex) highlighted by our antidiscrimination laws.").

16. See generally Samuel Issacharoff, *Beyond the Discrimination Model on Voting*, 127 HARV. L. REV. 95 (2013) (arguing for approaches to protect voting rights that are not centered on race).

17. Richard D. Kahlenberg, *Class-Based Affirmative Action*, 84 CALIF. L. REV. 1037, 1097 (1996).

18. Kenji Yoshino, *The New Equal Protection*, 124 HARV. L. REV. 747, 792-94 (2011).

19. See, e.g., Samuel R. Bagenstos, *Employment Law and Social Equality*, 112 MICH. L. REV. 225, 228 (2013) (arguing that universalist approaches to employment law may better accomplish equality goals); Eyer, *supra* note 14, at 1341 (arguing for the use of what she terms "[e]xtra-discrimination remedies" that "in some way address questions of discrimination (or allow a putative victim of discrimination to challenge a discriminatory job action), but that do not ask the liability question of 'discrimination'").

“universalist” wage and hour claims over racial discrimination claims: (1) leads to the ossification of Title VII that inhibits its ability to shift as necessary to regulate discrimination that adapts and manifests differently over time; (2) reinforces the concept that race discrimination is rare, thus further complicating the enforcement of racial discrimination statutes; (3) decreases workers’ access to justice by ultimately reducing the number of lawyers who handle discrimination claims; and (4) restricts clients’ agency by encouraging them to pursue wage and hour claims instead of valid racial discrimination claims.<sup>20</sup>

Universalist strategies, while deceptively attractive when navigating presumptions of a post-racial or color-blind workplace, fail to capture the racialized exploitation of workers. Instead of ceding ground to those who attempt to discredit the role of race in low-wage worker subordination, advocates and scholars should remain steadfast in efforts to address injustice as it actually manifests. In order to do this, we must shift the narrative to recognize both the role of race in workplace exploitation and the importance of combating wage theft as part of the broader civil rights strategy.

## II. NARRATIVES ADRIFT

### A. WHY NARRATIVE? WHAT NARRATIVE?

To understand the significance of narratives and their role in the development of legal protections, it is important to understand the power of narrative discourse. It is nearly axiomatic that lawyers are storytellers tasked with crafting stories that convince fact-finders that their version of the facts and the application of the law to the facts is preferable to that of their opponents.<sup>21</sup> Fact-finders, however, are not blank slates; rather, they filter those stories through their own narrative understandings of how the world works.<sup>22</sup> Credibility, therefore, is not necessarily an objective determination.<sup>23</sup> Richard Delgado’s work on narrative and storytelling is instructive. He explains that “[s]tories, parables, chronicles, and narratives are powerful means for destroying mindset[s]—the bundle of presuppositions, received wisdoms, and shared understandings against a background of which legal and political discourse takes place.”<sup>24</sup> Narratives can change mindsets, but they are also the source of mindsets.

Indeed, brain science reveals that we more effectively retain information

---

20. See Charlotte S. Alexander et al., *Post-Racial Hydraulics: The Hidden Dangers of the Universal Turn*, 91 N.Y.U. L. REV. 1, 41–53 (2016).

21. See Nancy Levit, *Reshaping the Narrative Debate*, 34 SEATTLE U. L. REV. 751, 755–59 (2011) (discussing the explosion of narrative theory and practice in the legal profession).

22. See, e.g., Kenneth D. Chestek, *The Life of the Law Has Not Been Logic: It Has Been Story*, 1 SAVANNAH L. REV. 21, 41 (2014) (“The fact-finders compare the stories presented by the parties to see if they ring true with the stories they know to be true in their own lives. The audience thus engages in narrative reasoning.”).

23. See, e.g., Sheri Lynn Johnson, *The Color of Truth: Race and the Assessment of Credibility*, 1 MICH. J. RACE & L. 261, 263–304 (1996) (discussing the lack of objectivity and a color-blind truth where fact-finders engaged in race-based assessments of credibility).

24. Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2413 (1988).

communicated through narrative.<sup>25</sup> Both cognitive psychologists and cognitive neuroscientists have found that people process, follow, and recall a storyline much more effectively than a set of facts or ideas.<sup>26</sup> In fact, “[p]eople retain about one-fifth of what they read, but will remember about four-fifths of the images they form in their mind.”<sup>27</sup> Stories or narratives typically evoke images in people’s minds that aid in their retention of the information.

The narratives that drive much of our country’s historical consideration of the civil rights movement tend to focus on political rights, with little attention devoted to struggles for economic rights. The narrowing of Martin Luther King’s narrative aptly demonstrates this phenomenon. Much of King’s advocacy frequently focused on economic justice for the African-American poor. Indeed, King delivered his “I Have a Dream” speech at the March on Washington for Jobs and Freedom.<sup>28</sup> Yet, stories about the march rarely include “for Jobs and Freedom” in the title.<sup>29</sup> Moreover, the prevalent narrative surrounding his work rarely invokes his calls for policies that addressed poverty generally, and African-American poverty specifically.<sup>30</sup> Indeed, historians contend that Dr. King’s efforts to frame the civil rights movement within an economic-justice lens made him more susceptible to government persecution and ultimately contributed to his death.<sup>31</sup> These aspects of the story rarely make their way into the prevalent civil rights narrative and thus reinforce the detachment of economic justice from racial justice goals. Reconnecting economic justice to the civil rights narrative creates space to consider the complexities of race in the pursuit of economic justice, including worker exploitation.

The next section of this Essay considers a strategy for reclaiming a racial justice narrative that embraces economic rights.

### III. SOCIAL MOVEMENTS: RECLAIMING THE ECONOMIC JUSTICE

25. See Levit, *supra* note 21, at 758 (discussing cognitive psychologists’ work demonstrating that “[c]reating a storyline is fundamental to how humans comprehend and remember events”).

26. See *id.* at 758–59.

27. *Id.* (citing Michael Berman, *A Few Words on Story-Telling*, HUMANIZING LANGUAGE TEACHING MAG. (May 2003), <http://www.hltmag.co.uk/may03/pubs4.htm> [<https://perma.cc/CQ8W-UHYY>]).

28. Tomiko Brown-Nagin, *The Civil Rights Canon: Above and Below*, 123 YALE L.J. 2698, 2718–22 (2014).

29. As Tomiko Brown-Nagin points out, “In public memory . . . , the reference to jobs often falls away.” *Id.* at 2722.

30. DeNeen L. Brown, ‘I Am a Man’: The Ugly Memphis Sanitation Workers’ Strike that Led to MLK’s Assassination, WASH. POST (Feb. 12, 2018, 10:03 AM), <https://www.washingtonpost.com/news/retropolis/wp/2018/02/12/i-am-a-man-the-1968-memphis-sanitation-workers-strike-that-led-to-mlks-assassination/> [<https://perma.cc/CCY2-YTWJ>] (“The Memphis sanitation workers’ strike would win the support of civil rights leader Martin Luther King Jr.—and lead to his assassination less than two months later.”).

31. See KENDI, STAMPED FROM THE BEGINNING, *supra* note 12, at 404–05. They likewise contend that other organizations from the civil rights era, like the Black Panther Party, received significant critique from the federal government due at least in part to their focus on economic justice and equality. See Gary Chartier, *Civil Rights and Economic Democracy*, 40 WASHBURN L.J. 267, 274–75 (2001).

## NARRATIVE

## A. LEGAL INSTITUTIONS' NARRATIVE LIMITATIONS

While lawyers are storytellers, their ability to change mindsets through individual—or even class or collective—litigation may be limited.<sup>32</sup> Few examples exist of court cases that have single-handedly shifted the prevalent stock stories, or what Delgado terms “mindset.”<sup>33</sup> Indeed, critical legal scholars have long questioned the legal system and its institutional ability to create societal change. In the 1980s, for example, Derrick Bell levied various critiques of the *Brown v. Board of Education* school-desegregation case. While the legal academy, and perhaps broader society, lauds *Brown* as the seminal civil rights case that demonstrates this country's shift away from Jim Crow and the various institutions that created a legally validated system of racial subordination, Professor Bell contended that the remedies sought in *Brown* ran afoul of the black community's articulated interests.<sup>34</sup> Moreover, he contended that concerns about America's ability to promote democracy abroad successfully and maintain peace domestically while openly subordinating its citizens motivated the decision, rather than an altruistic or pure legal commitment to desegregation.<sup>35</sup> Other scholars have critiqued the narrative of *Brown v. Board of Education's* success<sup>36</sup> and pointed out that the decision did not lead to the immediate desegregation of public schools.<sup>37</sup> Indeed, today many school systems are as segregated or more segregated than they were at the time of the decision.<sup>38</sup>

More recently, legal scholars have critiqued traditional legal institutions' ability to address the racially discriminatory outcomes in the criminal justice system.<sup>39</sup> They have argued that social movements like Black Lives Matter, the Fight for

32. I do not contend that laws and legal institutions cannot facilitate anti-subordination efforts. See, e.g., Christina A. Zawisza, “MLK 50: Where Do We Go From Here?: Teaching the Memphis Civil Rights Movement Through a Therapeutic Jurisprudence Lens,” 6 BELMONT L. REV. 175, 202 (2018) (“[I]t was the court system that delegitimized racial discrimination across broad societal institutions from schools and universities to public accommodations.”). Rather, I recognize that a symbiotic relationship between legal institutions and social movements in creating narrative shifts is necessary to create lasting societal change.

33. Delgado, *supra* note 24, at 2413.

34. Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 490–91 (1976).

35. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 524–25 (1980).

36. E.g., Dorothy E. Roberts, *Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 75 & n.445 (2019).

37. See, e.g., Justin Weinstein-Tull, *State Bureaucratic Undermining*, 85 U. CHI. L. REV. 1083, 1092 n.39 (2018).

38. See generally Erika K. Wilson, *The New School Segregation*, 102 CORNELL L. REV. 139 (2016); Nikole Hannah-Jones, *Segregation Now . . .*, ATLANTIC (May 2014), <http://www.theatlantic.com/magazine/archive/2014/05/segregation-now/359813/> [<https://perma.cc/PAE9-8KD9>] (tracing *Brown v. Board of Education's* legacy and the current challenges to school desegregation).

39. See, e.g., Amna A. Akbar, *Law's Exposure: The Movement and the Legal Academy*, 65 J. LEGAL EDUC. 352, 355 (2015) (arguing that the Movement for Black Lives “has created a public testament to the myriad ways beyond the courts that the law changes, the pressures to which it responds and through which it is constituted”).



\$15, the Green New Deal, and others are perhaps better positioned than legal institutions alone to address exploitation and subordination.<sup>40</sup>

#### B. SOCIAL MOVEMENTS SHAPING THE NARRATIVE?

Social movements can play a powerful role in restructuring the popular narratives that animate how fact-finders, lawmakers, and individuals interpret information.<sup>41</sup> As Amna Akbar aptly explains, the Movement for Black Lives “has succeeded in bringing the malcontent of outsider communities into mainstream discourse, disrupting law’s legitimacy in the larger public eye.”<sup>42</sup>

Social movements are not tethered to the law’s often-narrow conceptualization of anti-subordination principles; rather, these movements have the freedom to speak about and advocate for subordinated workers in ways that capture the intersectional<sup>43</sup> nature of their experiences. Their understanding of the intersectional nature of social justice has enabled them to draw broad demographic support to their movements. People understand vulnerabilities cut across their identities, and they are more likely to engage when they can see their efforts will likely decrease their subordination or exploitation in multiple ways.<sup>44</sup> In other words, people recognize that the outcome will be worth the sacrifice of time, energy, and emotional and mental resources necessary to engage in movement work.

#### C. INTERSECTIONAL MOVEMENT ADVOCACY

In 2012, 200 fast-food workers in New York City walked off the job to demand an increase in the minimum wage to \$15 and the right to unionize.<sup>45</sup> Since then, the movement has spread to 300 cities on six continents.<sup>46</sup> The movement has led a number of cities, including Washington, D.C., to either raise the minimum wage to \$15 or enact legislation providing for gradual increase over a number of

40. See Amna Akbar et al., *Movement Visions for a Renewed Left Politics*, LAW & POLITICAL ECON. (Mar. 4, 2019), <https://lpeblog.org/2019/03/04/movement-visions-for-a-renewed-left-politics/> [https://perma.cc/YQ3X-UKRM].

41. *Id.* (“[W]e see the power of movement participants to transform how we think and dream.”).

42. Akbar, *supra* note 39, at 355.

43. Kimberlé Crenshaw’s theory of intersectionality contends that individuals often experience subordination at the intersection of their identities, rather than on the basis of one identity or another. See 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, 140.

44. For example, in a 2017 article, Kimberly M. Sánchez Ocasio and Leo Gertner quote Jorel Ware, a Chicago member of the Fight for \$15, who stated:

What’s motivating me is there’s a lot of different issues going on in the United States with living wages, with Black Lives Matter issues, immigration reform, childcare. These issues are basically the same because everybody’s going through them, black and brown people are going through this. This is how it comes together and it gives me the drive and I’m finally willing to make a change.

Sánchez Ocasio & Gertner, *supra* note 5, at 504.

45. See *About Us*, FIGHT FOR \$15, <https://fightfor15.org/about-us/> [https://perma.cc/YW3Y-A4JJ] (last visited Nov. 7, 2019).

46. See *id.*

years until the minimum wage reaches \$15.<sup>47</sup> Indeed, “between 2012 and 2016, workers earning less than \$15 gained \$61.5 billion in wage increases.”<sup>48</sup>

While the fight for a living wage might seem like a classic example of a universalist approach to worker advocacy, the movement, in fact, has explicitly tied its low-wage worker advocacy to the myriad of critical issues workers face, including “systemic racism, sexism, and other forms of structural discrimination.”<sup>49</sup> Indeed, the Fight for \$15 website identifies a number of reasons workers should strike, including low rate of pay, unsafe working conditions, sexual harassment, wage theft, racism, and threats to call ICE on workers.<sup>50</sup> This inclusive list recognizes the intersecting challenges that create and reinforce subordination and assumes that the pursuit of workplace justice does not require that workers isolate the different aspects of their identities from one another. Indeed, recent low-wage worker groups and movements “recognize that poor workers are not defined by a simple lack of money, but by a collection of racial, ethnic, gender, geographic, and other identities with a corresponding variety of experiences of poverty that require more than traditional labor law to address.”<sup>51</sup> This ability to recognize the intersectional experiences of low-wage workers—to acknowledge that their subordination occurs at an axis of their identities and their precarity—positions social movements to shift the narrative about workplace exploitation that would make it easier for workers to challenge their subordination successfully.

## CONCLUSION

In her recent New York Times article, journalist Nikole Hannah-Jones traces African-Americans’ advocacy since slavery to support her contention that their efforts kept the Constitution true to its promise of democracy.<sup>52</sup> Hannah-Jones writes: “For the most part, black Americans fought back alone. Yet we never fought only for ourselves. The bloody freedom struggles of the civil rights movement laid the foundation for every other modern rights struggle.”<sup>53</sup> In this way, she reveals the role that racial advocacy has played in improving America’s laws and institutions in ways that benefited not only African-Americans but also the entire country. The erasure of economic justice from the civil rights narrative more broadly, and the workplace exploitation narrative specifically, risks separating workers’ rights advocacy from the types of movements that have created and sustained necessary change. This Essay begins a process of reconnecting these threads in order to create a narrative about worker exploitation that recognizes

---

47. See Sánchez Ocasio & Gertner, *supra* note 5, at 504 n.7.

48. *Id.* at 504.

49. *See id.* at 505.

50. *See For Workers*, FIGHT FOR \$15, <https://fightfor15.org/c-petition/for-workers/> [https://perma.cc/8LGU-DQL7] (last visited Nov. 7, 2019).

51. Sánchez Ocasio & Gertner, *supra* note 5, at 510–11.

52. See Nikole Hannah-Jones, *Our Democracy’s Founding Ideals Were False When They Were Written. Black Americans Have Fought to Make Them True.*, N.Y. TIMES MAG. (Aug. 14, 2019), <https://www.nytimes.com/interactive/2019/08/14/magazine/black-history-american-democracy.html> [https://perma.cc/EP66-YKNC].

53. *Id.*

the role of racial subordination in workplace exploitation. Social movements that connect and challenge economic justice, racial justice, and systems of subordination can facilitate this shift.