

## Connecting Critical Race Theory with Second Generation Legal Consciousness Work in Obasogie's *Blinded by Sight*

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*Sociologist and legal scholar Osagie Obasogie's study of how blind people "see" race reveals the usually invisible, taken-for-granted mechanisms that reproduce racism. In Blinded by Sight, he distinguishes racial consciousness from legal consciousness, though he notes their common emphases on studying how cumulative social practices and interactions produce commonsense understandings. I argue that there is much to be gained from connecting these two fields, one emanating primarily out of critical race theory and the other out of law and society scholarship. Legal consciousness offers an important avenue for bridging macro studies of race making with micro studies such as Obasogie's, which focus on individuals' experiences and practices of constructing race and learning racism.*

Osagie Obasogie's *Blinded by Sight: Seeing Race Through the Eyes of the Blind* deserves to be taken seriously by multiple scholarly audiences—including those who study law and society, race and racism, and critical race theory—no matter what their disciplinary background. The book is beautifully written in jargon-free English, making it accessible to nonspecialist readers also. Obasogie begins with a preface that uses autobiographical narrative to situate his project, drawing, among other things, on his family's immersion in the African American church tradition. This is a book about the social construction of race and racism that is deliberately multiracial in its framing; by that, I mean that, throughout, Obasogie draws on examples (both contemporary and historical) that span racial categories, giving us an expansive view of American racial dynamics as multiracial rather than merely a matter of white-over-Black subordination.<sup>1</sup>

Obasogie begins with two intriguing questions that he untangles over the course of the book: How do blind people understand race? Given that race is assumed to be visually obvious (in other words, we know it when we see it), how is race understood when it cannot be seen—for example, by those who have never seen people of various races because they have been blind from birth? Obasogie proceeds to explain how blind people understand race and navigate a host of racial rules in their daily lives. His paradoxical conclusion is that, even though they

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1. For example, racism against Asian Americans in the context of World War II (11–18).

cannot see, race becomes *visual* for blind people because of intense socialization by sighted people in their lives. Obasogie elaborates:

By detailing the ways in which blind people have a visual understanding of race that is as robust as sighted people's, this research is able to leverage blind and sighted people's shared social experience as an influence giving rise to visual understandings of race. The social aspect of the visual salience of race is transparent to sighted individuals since the primacy given to visual perception leads racial difference to seem like a natural division of humankind. But since blind people cannot be seduced by the immediacy of visual perception, their visual understanding of race is inculcated in a more deliberate fashion that is part of the very same social forces that produced the visual salience of race for those who are sighted. Thus, blind people are uniquely capable of discussing the social practices that at once produce the visually self-evident character of race and hide themselves so that race is experienced at an individual level as mere observation of a fact-in-the-world. (36–37)

In this way, race and racism are reproduced. The value of this study is in making these processes visible, essentially unmasking the social reproduction of racism that sighted people take for granted.

Obasogie conducted 106 semi-structured interviews with respondents who were blind since birth, along with a companion set of interviews with sighted people (and some people with limited vision or who became blind later in life) for comparative purposes. He used phone interviews for two reasons: to maximize his interviewee's convenience and so that they would not easily guess his race (or try to feel his hair, as we learn blind people often do to discern African American status), perhaps thus making their responses more authentic.<sup>2</sup> *Blinded by Sight* is a great example of qualitative research that is both well executed and nicely fits the research question. Considering those two initial questions, Obasogie could not have gotten "answers" with quantitative data generated from surveys, regardless of how many thousands of randomly sampled blind people he had found for the study. Put simply, it would have been impossible to gather this kind of rich data using quantitative methods.<sup>3</sup>

Obasogie is a leader in an effort to increase the profile of critical race theory among law and society scholars—and, by the same token, to increase the profile of social science research among critical race scholars.<sup>4</sup> Obasogie's book also has substantial implications for the wide-ranging legal consciousness literature in sociolegal

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2. There were, as well, other motivations: phone interviews were a low cost avenue for drawing a national sample. Obasogie conducted these interviews as part of his doctoral studies in sociology at the University of California, Berkeley. Obasogie grew up in Ohio and has a voice that, to my ear, is typically Midwestern, likely making it hard for his interview subjects to discern his racial identity based on voice alone.

3. On the other hand, Obasogie's findings suggest to me that a variety of other qualitative methods would have been conducive to these research questions, including participant observation in a blind school or other ongoing institutional setting, ethnography, and focus group interviews.

4. I am by no means agnostic on these questions (see Gómez, 2004; Gómez, 2010; Gómez 2012). Obasogie has led and sustained a series of workshops and symposia in Empirical Critical Race Theory (eCRT) over the past decade.

studies. In this essay, I argue that his focus on process—specifically, on how ideas about race become commonsense in the aggregate—has important lessons for that subfield, which finds itself at somewhat of a crossroads (on how legal consciousness is at a turning point, see Silbey 2005; McCann 2006; Young 2014).

## THE FRUITS OF RACIAL CONSCIOUSNESS

Obasogie understands his project as an analysis of “racial consciousness by way of examining how race becomes visually salient and its significance for law and society” (50). He starts with the critical race theory tenet that sees “racial subordination as being central” to how law and society in the United States are organized and which see law as playing a fundamental role “in creating and solidifying racial meanings that attach to racialized bodies in a manner that reproduces a racial common sense that sustains racial hierarchies” (45). In this way, we cannot talk about the social construction of race without talking about laws, legal practices, and legal concepts that have shaped how race has been understood in American society and racism itself (Gómez 2010).

The power of *Blinded by Sight* emanates from its sharp focus on specific social processes that reproduce racial consciousness among Obasogie’s blind respondents. Using the raw material drawn from interviews and analyzing them, he is able to reveal the process of race making: “How we come to know what race is, the assumptions made about this process, and how the iterative relationship between these lay assumptions and legal developments can produce [racism],” which Obasogie denotes as “outcomes that systematically disfavor racial minorities in legal processes by obscuring how race operates and becomes visible in society” (50).

Obasogie shows that blind people learn to understand and experience race “primarily through visual cues” and that this learning occurs through sighted intimates—family and friends, sometimes school teachers and other officials—in childhood and adolescence (81). The blind respondents told many stories about learning how to differently value people according to their race; for example, learning from a neighbor who could be yelled at and who couldn’t for making a mistake (83), learning that race was important because non-white people were pointed out to them (84), or learning from a parent that having a Black surgeon was frightening (85). Those instances show how blind people recalled learning about racial difference, but note that they also show blind people learning that whites are superior to non-whites; in other words, it was not just neutral racial difference that was being taught, but racism.

Other social practices included explicit lessons from sighted friends and family about the residential segregation of the neighborhood or city, with the assumption being that these kinds of things had to be expressly conveyed to blind people since they could not see for themselves (90–92). For other blind respondents, their early schooling at racially segregated, state-run schools for the blind played a key role in their socialization about race and racial difference (93). Obasogie points out that this applied only to a subset of those interviewed—those who were old enough to have gone to school before widespread desegregation in the 1960s and 1970s and

those who attended school in the South (93). At the same time, other respondents, who attended schools for the blind that were ostensibly integrated in that later period, experienced the schools' policing of inter-racial dating (95).

Obasogie finds that some of the most important racial boundary work occurred around romance and dating, noting that "several blind respondents recalled intense experiences when friends and family members went through extraordinary measures to ensure that they understood that certain types of relationships were off-limits due in large part to a racial difference that is visually striking" (87). More striking still, these lessons from sighted relatives were conveyed at an early age, with different respondents recalling such incidents at ages 7, 8, and 12 years old (87–88). Other respondents spoke about how race shaped their dating preferences as adults; for instance, Madge recalled, "I remember meeting this guy at a program for the blind at the university. And most of the guys there I wasn't really impressed with. But this one guy, he really stood out. And I liked him and I enjoyed talking to him and stuff. And when I found out that he was Black, I knew it wasn't going to work for me" (101). Obasogie's analysis is perceptive: "race is not simply a passive characteristic that blind people happen to find out and store away in their mental rolodexes as they meet people, but rather is information that is often actively sought to determine the nature and terms of any ongoing interaction" (101).

## THE NEXT FRONTIER FOR LEGAL CONSCIOUSNESS

The theoretical take-away from *Blinded by Sight* is hard won from Obasogie's intensive engagement with qualitative interviews that allow him to see racial consciousness as socially constituted, rather than as given and static:

The constitutive theory of race developed here is that race is not a visually obvious or objective engagement with, for example, variations in skin tone or body types. Rather, social practices produce the objectivity that we ascribe to racial boundaries while also masking their own existence. Social practices at once constitute the ability to see race while, at the same time, hiding themselves so that race is experienced at an individual level as visually obvious; race becomes simply what is seen. (50)

Obasogie distinguishes his focus on *racial consciousness* from that of scholars whose focus is *legal consciousness*, though he notes their common emphases on studying how cumulative social practices and interactions produce commonsense understandings. He quotes at length from sociologist Susan Silbey, one of the progenitors of legal consciousness scholarship, noting the similarities between the process of meaning making that undergirds both racial consciousness and legal consciousness. The best legal consciousness research has the power to connect

consciousness and cultural practice as communicating factors between individual agency and social structure . . . to describe how the taken-for-granted aspects of social relations, including the legal aspects, are produced, enacted, and reproduced . . . document situations in which local processes reproduce

macro social structures and institutions recursively, and at the same time provide openings for creativity in reshaping those structures. . . . In these analyses, researchers observe both the orchestration of the local contest and the systematic outcome, in this way mediating micro and macro perspectives. Within this framework, consciousness is understood to be part of a reciprocal process in which the meanings given by individuals to their world become patterned, stabilized and objectified. These meanings, once institutionalized, become part of the material and discursive systems that limit and constrain future meaning making. (Obasogie, 49, quoting Silbey 2001, 8627)

I contend there is even more to be gained from thinking about racial consciousness from the perspective of the legal consciousness scholarship in the field of law and society. Specifically, the legal consciousness literature may offer an important avenue for bridging macro studies of race making<sup>5</sup> with micro studies such as Obasogie's, which focus on individuals' experiences and practices of constructing race and learning racism.

Let us first start with Silbey's definition of legal consciousness as "the ways in which law is experienced and interpreted by specific individuals as they engage, avoid, or resist the law and legal meanings" (Silbey 2001, 8626; see also Nielsen 2004, 7). But just a few years later in a much longer piece in the *Annual Review of Law and Social Science*, Silbey criticizes much legal consciousness scholarship for focusing too much on the micro—on individual attitudes at the sacrifice draw our attention to institutions and structures: "Rather than explaining how the different experiences of law become synthesized into a set of circulating, often taken-for-granted understandings and habits, much of the [legal consciousness] literature tracks what particular individuals think and do" (Silbey 2005, 324). She instead urges a return to the roots of

consciousness as participation in this collective, social production of ideology and hegemony. . . . In this framing, consciousness is understood to be part of a reciprocal process in which the meanings given by individuals to their world become patterned, stabilized, and objectified. These meanings, once institutionalized, become part of the material and discursive systems that limit and constrain future meaning making. (333–34, citing Ewick and Silbey 1998)

It is precisely this imperative to study the linkage between consciousness at the level of ordinary persons and ideology at the societal level that I would like to leverage in linking the study of racial consciousness, as Obasogie has so powerfully demonstrated, with the broader findings and themes in the larger legal consciousness literature.

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5. For examples of macro approaches, see Omi and Winant 1994; Haney Lopez 1996; Gómez 2007. Obasogie refers to these and other studies as "first-generation social construction of race" studies that examined structural and ideological forces, often historical studies, whereas he characterizes his study as a "second generation effort" that concentrates on the micro construction of race (37).

Another important dimension of the legal consciousness literature that bears on the study of race and racial domination is its concern with consciousness about legal rights and legal institutions as a form of resistance to subordination. For example, sociologist Patricia Ewick has reviewed the legal consciousness literature that examines “the consciousness of legal subjects as a terrain of struggle, contestation, inventiveness and resistance, rather than as a repository of ideological representations received from above. Legal subjects are seen as being much more actively engaged in ideological processes of both reproduction and resistance” (Ewick 2004, 83; see also Munger 2004, 335). This emphasis on looking to “voices from the bottom” has a long history in critical race theory, as Obasogie notes (48, citing Matsuda 1987).

Laura Beth Nielsen’s study of harassment is interesting at multiple levels (2004). Based on interviews with people about their experiences of street harassment that is linked to sex and/or race, she finds that her respondents both recognize the harm in their experience of this harassment, but also that they do not support legal interventions to address it. What is interesting is that the reasons people give for opposing legal intervention vary a great deal and correlate with their status as female and/or a member of a racial minority group. People of color and white women oppose the legal regulation of such street harassment because they have little faith in the legal system and because they do not want to see themselves as victims, but white men oppose legal regulation because they profess allegiance to neutral free speech values. Nielsen is attentive in this study both to when law is invoked and when law is absent; this is an important parallel to studies of racial consciousness, where the absence of race talk may signal volumes. Nielsen explains,

legal consciousness also is how people do *not* think about the law. That is to say, it is the body of assumptions people have about the law that are simply taken for granted. These assumptions may be so much a part of an individual’s worldview that they are difficult to articulate. Thus, legal consciousness can be present even when law is seemingly absent from an understanding or construction of life events. (2004, 99)

In the contemporary context, the absence of talk about race—in favor of a color-blind approach—may be as important as actual discussions of race would be for researchers.

Qualitative methods including individual interviews, focus group interviews, ethnography, or participant observation may be better suited to exploring racial consciousness than random sample surveys, just as they have been in the legal consciousness scholarship. For example, anthropologist Sally Engle Merry has noted that the survey approach “flattens the ways people understand and use law,” and her landmark legal consciousness study relied on a diverse array of qualitative methods (1990, 5, 18). Similarly, political scientist Michael McCann has rejected causal analysis as reductionist: “The problem is that linear, instrumental conceptions of causality are inadequate tools for explaining the dynamic, indeterminate, contingent, interactive processes of judgment, choice, and reasoned intentionality of people in action” (1996, 460).

Let me return to Silbey's critique of the legal consciousness literature. She faults the tendency to focus on "what particular individuals do and think," rather than on how commonsense ideas come to exist and be reproduced. So, for example, a recent study of racial discrimination at work finds that, of 830 people surveyed, seven percent perceived themselves as having experienced work-based racial discrimination (Hirsch and Lyons 2010). Not surprisingly, this perception varied by race, with 20 percent of African American respondents having this perception, 11 percent of Hispanics, 10 percent of Asians, and three percent of whites (280; note that I have used the categories used in the study). This study illustrates the problem identified by Silbey: it uses legal consciousness in a reductionist way, as if it *only* refers to the idiosyncratic individual's perception (then aggregated by racial status in a way that does not seem particularly illuminating). A more appealing alternative would be to explore law in everyday life in such a way as to illuminate the process of meaning making. For example, Berrey and Nielsen encourage scholars interested in legal consciousness to explore "the ways in which those organizational processes translate into the mind of the individual and affect consciousness and rights activation" in institutional settings (2007). Likewise, Young has called for a new generation of research—what she calls "second-order legal consciousness" research—that would prioritize studying process rather than outcome:

I remain interested in individual-level beliefs, but propose that we can gain insight about consciousness by considering the individual relationally. A person's beliefs about, and attitude toward, a particular law or set of laws is influenced not only by his own experience, but by his understanding of others' experiences with, and beliefs about, the law.... These research agendas can be fused with a more dynamic account of legal consciousness that not only complicates the agendas themselves, but advances the discourse by foregrounding the social processes that create legal consciousness. (2014, 500–01)

Obasogie's intervention is precisely this kind of contribution because it foregrounds the *process* of how race becomes salient and how racism is reproduced among blind people, rather than simply revealing findings about blind people's attitudes about racism.

## CONCLUSION: GIVING THE LIE TO COLORBLINDNESS AS METAPHOR

The paradox that Obasogie unveils is that, even though they cannot actually see, blind people in fact learn to understand race as visual and therefore end up perpetuating racism in ways that are very similar to sighted people. As Obasogie notes, the power of colorblindness as a metaphor comes from the "assumption that blindness, or the inability to see such visually obvious distinctions [as skin color and other phenotypical variation], is empowering with regard to notions of formal equality" (124). The implication is that blind people are unable to discriminate on the basis of race due to their blindness, and Obasogie points to "the commonsensical

intuition that blind people live pure lives of racial innocence and perfect equality since they are unable to see or react to these otherwise self-evident lines of human difference” (125). But until Obasogie’s book we were unaware of the various ways in which race plays out in the lives of blind people. Quite simply, his data must lead us to the conclusion that

not only do blind people have the same visual understanding of race as their sighted peers, but this visual understanding of race also shapes their daily interactions as it does for sighted individuals. Visual understandings of race do not stem from their obviousness as much as they do from the social practices that shape the way we think about race. (127)

At a time when colorblind ideology has become the dominant frame for describing and combatting race-based discrimination in the law—although recent events have somewhat dislodged the colorblind frame’s hegemony in popular thinking—Obasogie’s work takes on even greater import.

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