

Success, Merit, and Capital in America

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SUCCESS, MERIT, AND CAPITAL IN AMERICA

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* Charles W. Delaney Jr. Professor of Law, University of Denver Sturm College of Law. This Article is dedicated with gratitude to my late colleague and friend Fred Cheever for numerous conversations about *Stoner*, John Williams, and Sinclair Lewis. I thank Arthur Best, Tal Holz, Russ Pearce, Joyce Sterling and David Wilkins for their comments and Diane Burkhardt, Faculty Services Liaison at the Westminster Law Library at the University of Denver Sturm College of Law, Charles Mendez and Jane Michalakes for their outstanding research assistance.

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I. INTRODUCTION

President Trump’s rallying cry during his 2016 campaign, “Make America great again!” evoked nostalgia to an unspecified past, one in which jobs were plentiful and the future was bright with hope. Importantly, Mr. Trump did not offer handouts or quick fixes. Instead, he promised jobs, hard work, and upward socioeconomic mobility. Mr. Trump’s opponents tried ineffectively to suggest that America was already great, but they misunderstood his point. “Make America Great Again!” was not an invitation to debate the state of affairs in America. Rather, it drove home the point that for many the American Dream—the ability to pursue one’s goals and get ahead in life based on hard work and individual effort—has gotten out of hand. Mr. Trump well understood that lost jobs and growing inequality caused many Americans deep anxieties. Americans wanted change, a chance to once again pursue the Dream, and Mr. Trump’s rugged individualism and macho personality was the right message at the right time.

As attractive as the message is, it is a misleading one. Hard work and individual effort are essential components, but they were never in the past, and are not now, enough to secure success in America. Rather, relationships, knowhow, status, and economic resources have always played a role in attaining success.¹ Understanding the relationship between success, merit and

1. Ironically, Mr. Trump’s own surprising ascendancy to the presidency demonstrates this very point. Mr. Trump’s hard work, individual effort, and shrewd campaign tactics explain his success. Yet, his many relationships, astute knowhow, for example, in understanding how to play a savvy political game in the TV reality show era, status as a celebrity and businessman, and significant personal wealth all played key roles in his triumph.

capital in America, however, is important not merely as means of explaining Mr. Trump's rise to the presidency. Rather, it holds the key to fulfilling his campaign promise, making the Dream viable for all.

This Article shows that succeeding in America is a function of hard work, individual effort, and merit, but also a product of possessing and using different forms of capital—economic capital, social capital, cultural capital, and identity capital. Capital affects merit in two ways: it enhances performance and is misrecognized as merit. Because those well-endowed with capital assets are more likely to perform better and be perceived as doing better than the less-endowed, capital leads to and explains success, whereas lack of capital breeds failure.

Making merit, as opposed to capital, the foundation of success, calls for *capital analysis*. This Article advances a capital analysis of success and failure, which consists of three steps: practicing capital transparency acknowledging the role of capital in explaining success and failure; attempting to avoid the misrecognition of capital as merit; and building capital infrastructure and endowments for all, so that everybody can compete for success in America on equal footing.

Yet, purporting to explore, let alone criticize hard work, individual effort, and the traditional conception of merit—the cornerstones of the American Dream—is in the eyes of some, un-American. Questioning hard work may be misunderstood as legitimizing laziness, and second-guessing individual effort risks being characterized as encouraging dependency. Moreover, in the American context, deconstructing so-called objective merit standards to show how they privilege affluent male Caucasians tends to quickly collapse into all-too-familiar racial and gender fault lines and stereotypes and results in preconceived entrenched opinions and a stalled discourse.

To avoid these pitfalls, this Article explores success, merit, and capital using as a case study a well-known work of fiction, the acclaimed bestseller novel *Stoner* by American author John Williams.² The traditional reading of *Stoner* celebrates the novel's protagonist, William Stoner, as an all-American success story, who attains socioeconomic mobility through hard work, individual effort, and merit.³ Yet, as the article shows, *Stoner* can also be read

2. JOHN WILLIAMS, *STONER* (N.Y. Review of Books 2006) (1965) [hereinafter *STONER*].

3. *Decades Later and Across an Ocean, A Novel Gets Its Due*, NPR (May 19, 2013, 4:09 PM), <http://www.npr.org/2013/05/19/184770657/decade-later-and-across-an-ocean-a-novel-gets-its-due> [<https://perma.cc/62QY-GNCV>].

to expose the very limitations of the American Dream and of what one can achieve as an island onto his own endowed with little capital assets. Notably, because William Stoner lived and worked in the late 19th to mid-20th centuries, he did not compete with women or minorities, allowing the case study to bracket and avoid examining merit in the usual gendered and racialized terms.⁴ The result is an in-depth analysis of success and its limitations in America, identifying alongside the familiar and celebrated hard work, individual effort, and merit, the role of economic, social, and cultural capital as essential conditions for pursuing the American Dream.⁵

This Article is organized as follows. Part II introduces *Stoner* as a case study of success and merit. First, it offers a synopsis of the novel. Next, it features a traditional account of the novel as the embodiment of the American Dream, explaining William Stoner and his achievements in terms of his hard work, individual effort, and meritocracy. Finally, it develops a counter-reading, examining Stoner as a victim of his limited knowhow, relationships, and financial resources, that is, of his limited endowments of cultural, social, and economic capital. Part III explores the case study's insights, arguing that our traditional understanding of success and merit, alluring as it may be, is limited and misleading and ought to be informed by capital analysis. It calls for practicing capital transparency, suggests means of avoiding misrecognizing capital as merit, makes the case for building capital infrastructure and

4. Legal scholars have long resorted to creative means in order to shake up a hopelessly entrenched discourse. Law and literature scholars, from the left and the right, have mined our literary corpus to avoid complex and polarized realities and introduce new ideas in the more calming terrain of the fictional and allegorical. It is impossible to credit all, or even the foundational contributions, to the vast body of law and literature scholarship, which include MILNER S. BALL, *THE WORD AND THE LAW* (1993); JAMES BOYD WHITE, *THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT AND EXPRESSION* (Little, Brown & Co. 1973); Robert M. Cover, *Nomos and Narrative*, 97 HARV. L. REV. 4 (1983); Richard Weisberg, *Coming of Age Some More: "Law and Literature" Beyond The Cradle*, 13 NOVA L. REV. 107 (1988); Richard H. Weisberg, *20 Years (or 2000?) of Story-Telling on the Law: Is Justice Detectable?*, 26 CARDOZO L. REV. 2223 (2005). Outstanding examples of law and literature analyses, which span the political and ideological spectrum include: RICHARD A. POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATION* (1988) and MARTHA C. NUSSBAUM, *LOVE'S KNOWLEDGE: ESSAYS ON PHILOSOPHY AND LITERATURE* (1990). A personal favorite is RICHARD D. PARKER, "HERE, THE PEOPLE RULE": A CONSTITUTIONAL POPULIST MANIFESTO (1994) (advocating for civic engagement through *Mario and the Magician*, one of the stories in THOMAS MANN, *DEATH IN VENICE AND SEVEN OTHER STORIES* (H.T. Lowe-Porter, trans., Vintage Books 1954)).

5. The novel's homogenous landscape precludes a meaningful examination of the impact of William Stoner's identity capital on his successes and failures.

endowments for all as part of restoring the American Dream, and anticipates and dismisses challenges to capital analysis.

II. SUCCESS AND MERIT IN AMERICA: A CASE STUDY

Stoner is a once forgotten literary gem that has recently been rediscovered and celebrated as a classic American work of fiction.⁶ *Stoner* is revealing as a case study of success in America because on a quick read it appears to be a straightforward tale reinforcing and venerating the American Dream of upward socioeconomic mobility based only on individual effort and merit. It is also, however, on a closer read, a sobering and illuminating account of the important influence of cultural, social, and economic capital on success and failure.

A. *Stoner: A Synopsis*

The story of William Stoner chronicles the life story of an English Professor.⁷ Born in 1891 on a small Missouri farm forty miles from Columbia, William Stoner's childhood is as bleak and barren as the farm his world centers upon.⁸ His parents are uneducated laborers who rarely speak and teach Stoner only the virtue of physical labor.⁹ Beyond the farm, Stoner understands little of his existence.¹⁰ After graduating high school, he expects to remain at home and work the land.¹¹ Stoner's father, however, unexpectedly encourages him to go to college because he learns that an education will allow Stoner to increase production and improve the value of the farm.¹² Stoner enrolls at Columbia University.¹³ He lives with relatives near campus, trading work on their farm for a room in their attic.¹⁴ He is mechanical and hard working in both his duties on the farm and his studies.¹⁵

6. Morris Dickstein, *The Inner Lives of Men*, N.Y. TIMES BOOK REV. (June 17, 2007); Tim Kreider, *The Greatest American Novel You've Never Heard Of*, NEW YORKER (Oct. 20, 2013), <http://www.newyorker.com/books/page-turner/the-greatest-american-novel-youve-never-heard-of> [perma.cc/HM2U-294S]; *Decades Later and Across an Ocean, A Novel Gets Its Due*, *supra* note 3.

7. STONER, *supra* note 2, at 3.

8. *Id.* at 4.

9. *See id.*

10. *See id.* at 4–6.

11. *Id.* at 5.

12. *Id.* at 5–6.

13. *Id.* at 6.

14. *Id.* at 7–9.

15. *Id.* at 9.

During Stoner's sophomore year, he takes a required survey of English literature.¹⁶ The challenging class intrigues him in a disquieting way, and soon thereafter he trades his science courses for philosophy and English.¹⁷ After college, at the prodding of an ostensible mentor, Stoner enrolls in graduate school.¹⁸ He no longer returns home during the summers to work on the farm, as his view of life is slowly but dramatically changing.¹⁹ He reflects upon his limited former perspective on life, the blissful ignorance his parents comfortably embrace, and he feels both love and pity toward them: love for their innocence and pity for the insights of which his parents have never, nor will ever, become aware.²⁰

Growing up, Stoner never had a friend, but in graduate school he is befriended by David Masters and Gordon Finch.²¹ Masters is intellectual, articulate, outspoken, and over-confident.²² Finch is apathetic toward his studies, well connected, and friendly.²³ When the United States declares war on Germany in 1917, many feel compelled to enlist, including Masters and Finch, the former due to a sense of resigned duty, the latter because everybody is doing it and one is expected to.²⁴ Masters is killed in France soon after enlisting.²⁵ Finch, though, joins an officer training school and spends his time away from the frontlines completing his doctorate degree at (the other) Columbia University in New York City.²⁶ Stoner, in contrast, stays on campus and is offered a full time teaching position at the University a week before receiving his doctorate degree due to the war efforts' devastation of the faculty's ranks.²⁷ Finch returns to the University with the rest of the World War

16. *Id.* at 10.

17. *Id.* at 14.

18. *Id.* at 19–20.

19. *See id.* at 26.

20. *Id.* at 16–17 (“Sometimes he thought of himself as he had been a few years before and was astonished by the memory of that strange figure, brown and passive as the earth from which it had emerged. He thought of his parents, and they were nearly as strange as the child they had borne; he felt a mixed pity for them and distant love.”); *id.* at 22 (“He grieved for his own loss and for that of his parents, and even in his grief felt himself drawing away from them.”).

21. *Id.* at 28.

22. *Id.*

23. *Id.*

24. *Id.* at 32, 34–35.

25. *Id.* at 39.

26. *Id.*

27. *Id.* at 40.

I veterans, promptly assumes a non-teaching administrative position, and begins to climb through the ranks until he is ultimately appointed Dean of Arts and Sciences at the University.²⁸

At a faculty reception, Stoner meets Edith Bostwick, the woman who will become his wife.²⁹ Edith is twenty years old, plays the piano, appears artistic, and comes from a well-to-do family.³⁰ Stoner, who has never dated before, enters a three-week courtship with Edith, falls in love (or so he believes), and proposes marriage.³¹ Very quickly after marrying, it becomes painfully clear to Stoner that the marriage is a disaster, characterized by a sense of foreignness.³² The couple is emotionally separated by Stoner and Edith's different upbringings.³³ Stoner realizes that he married someone with whom he cannot have a conversation.³⁴ Edith treats him coldly and indifferently, becoming warm only when hosting parties or surrounded by guests.³⁵

Stoner's career is undistinguished.³⁶ He is, true to his upbringing, hardworking and dedicated.³⁷ But for most of his tenure, Stoner is an uninspiring teacher and scholar; his only notable publication is a book based on his Ph.D. dissertation.³⁸ He is not admired by his peers, neither at his home institution nor outside of it.³⁹ While he is given tenure, he is never promoted to the rank of full professor, is passed over for Chair of the Department, his

28. *See id.* at 44–45, 151.

29. *Id.* at 45, 48, 61–62.

30. *Id.* at 48–49.

31. *See id.* at 49–56.

32. *Id.* at 74. Stoner's transformation from a blue-collar farm worker to a white-collar university professor and corresponding intellectual and cultural growth are gradual. The old Stoner follows custom, uncritically courting and marrying a woman he hardly knows. The new Stoner might not have done so had he met Edith a few years later, and the changing Stoner knows enough to realize the marriage is a mistake, but never contemplates a divorce. *See id.*

33. *See id.* at 78–80.

34. *Id.* at 74–75.

35. *Id.* at 74–76.

36. *Id.* at 3.

37. *Id.* at 43 (“So Stoner began where he had started, a tall, thin, stooped man in the same room in which he had sat as a tall, thin, stooped boy listening to the words that had led him to where he had come.”); *see also id.* at 9–10.

38. *See id.* at 82, 93.

39. *See id.* at 3.

seniority notwithstanding, and never becomes an influential powerbroker within his institution.⁴⁰

The English Department soon recruits the brilliant Hollis Lomax, a Harvard-trained scholar, who is handsome, speaks with condescending confidence, and has a disability.⁴¹ Lomax keeps a cold distance from his colleagues and makes no efforts to become friendly with them, accepting only one invitation to any social gathering, a party at Stoner's house.⁴² At the party Stoner and Lomax have a long personal conversation that suggests the possibility of a future friendship, but instead the two become bitter rivals.⁴³

A dispute over a graduate student named Walker sparks the bad blood between Lomax and Stoner.⁴⁴ Walker is Lomax's research assistant and protégé.⁴⁵ He is disabled, arrogant, and full of potential but lazy with an elitist attitude.⁴⁶ At Lomax's suggestion, Walker seeks admission into Stoner's upper level seminar.⁴⁷ From the first day, Walker's presence in the class is disruptive.⁴⁸ He interrupts the lecture with meaningless, condescending, pseudo-intellectual questions, rarely completes the readings, and his final presentation is an improvised denunciation of another student's work.⁴⁹ Stoner

40. *See id.* at 3, 90. One might wonder whether Stoner's success as an academic, from acing all his literature coursework following the required class, to obtaining his doctorate degree and publishing his dissertation as a book, to his subsequent research, is credible given his background and performance as a freshman, considering "his grade average was slightly below a B." *Id.* at 9. Might William Stoner's character be tainted by Sprezzatura or illustrative of Protestant calling? Sprezzatura is the ability to "conceal all art and make whatever is done or said appear to be without effort and almost without any thought about it." BALDESAR CASTIGLIONE, *THE BOOK OF THE COURTIER* 32 (Daniel Javitch ed., Charles S. Singleton trans., W.W. Norton & Co. 2002). John Williams, in contrast, has taken great care to detail Stoner's hard work, dedication, and conscientious effort in pursuing his achievements. *See generally* STONER, *supra* note 2. Similarly, while Protestant calling entails discovering God's plan before one can easily pursue his calling, *see* MAX WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* 79–80 (Talcott Parsons trans., 6th ed. 1962), Williams's Stoner is explicitly secular and more importantly does not experience his academic craft as an easy endeavor. *See* STONER, *supra* note 2. It thus appears that Williams intended Stoner's story to be believable.

41. *Id.* at 90–91.

42. *Id.* at 92, 95.

43. *Id.* at 97–100.

44. *Id.* at 163.

45. *Id.* at 131, 162.

46. *See id.* at 131, 134–37, 147.

47. *Id.* at 131.

48. *Id.* at 134–35.

49. *Id.* at 134–37, 144–46, 150.

fails Walker at the close of the semester amid mounting controversy with Lomax.⁵⁰

Because he was one of Walker's professors, Stoner is assigned to sit on the board for Walker's oral examination.⁵¹ Walker is thoroughly unprepared and unequipped to continue his Ph.D. studies.⁵² As Lomax fights for Walker to be allowed to remain in the program, Stoner is oblivious to Lomax's personal stake in Walker's success.⁵³ In the battle that ensues, Stoner insists on failing Walker; Lomax threatens to denounce Stoner as prejudiced against Walker because of the latter's disability; and Walker stays in the department, allowed to retake his orals over Stoner's futile objection.⁵⁴

In retaliation, Lomax, for years, does everything in his power to make Stoner's life miserable.⁵⁵ As Chair of the Department, he gives Stoner an awful schedule of all entry-level courses and significant time gaps.⁵⁶ Stoner initially accepts Lomax's torment but retaliates by using in his introductory classes the same materials he would have used for upper-level seminars.⁵⁷ Lomax, powerless to impede Stoner's academic freedom, has no choice but to give Stoner the schedule he desires.⁵⁸ While Stoner wins this battle, he loses the war: word of the feud spreads around the department, and Stoner is ostracized by colleagues and graduate students who dare not antagonize the powerful and vindictive Lomax.⁵⁹ Stoner spends the rest of his career in seclusion, increasingly bitter, and unmotivated.⁶⁰

Nearing the age of retirement, Stoner fights one last round with Lomax.⁶¹ Lomax wants Stoner to retire as soon as he becomes eligible, but Stoner prefers to extend his career for the customary two years.⁶² As the fight begins to gear up, it appears as if Stoner might prevail, but major health problems arise that

50. *Id.* at 149.

51. *Id.* at 152.

52. *Id.* at 157–62.

53. *Id.* at 162–63.

54. *Id.* at 163–64, 168–172, 175.

55. *Id.* at 166, 172–73.

56. *Id.* at 172–73.

57. *Id.* at 222–23.

58. *Id.* at 228.

59. *Id.* at 177.

60. *Id.* at 177–78.

61. *Id.* at 251–52.

62. *Id.* at 253.

ultimately end his life.⁶³ In a moment as anticlimactic as his entire life, the mediocre professor passes away, leaving behind an unhappy marriage, estranged daughter, a few shallow friendships, an average book, and a professorship that is quickly forgotten.⁶⁴

B. Take I: William Stoner as the Embodiment of the American Dream

Notwithstanding his mediocre academic career, William Stoner appears to be the poster child for the successful pursuit of the American Dream. He is the first in the family to graduate high school and go to college.⁶⁵ He earns a graduate degree and becomes an English professor, a comfortable white-collar position.⁶⁶ He works hard throughout his life, first on the farm and then on campus, without resentment.⁶⁷ Professionally, he achieves everything he has through his own individual hard work, dedication, and effort.⁶⁸

Stoner's hard work as an academic enables his move up the social stratosphere. By all accounts, he marries well and up, given his low socioeconomic background, Edith being the daughter of an upper-middle class banker from St. Louis. It is both Stoner's hard work and his newfound academic status that allow him to meet and marry his future wife.⁶⁹ As Edith's father makes abundantly clear when they meet, Stoner's earning capacity as a professor barely satisfies Mr. Bostwick's criteria for his daughter's husband, but his professional status as a university professor makes up for it.⁷⁰ But for his elevated status, attained via his individual effort, Stoner would never have met Edith, and even if he had, her father would not have consented to the marriage because Stoner would have been an inappropriate match.⁷¹ Thus, Stoner's hard work and status as a professor allow him to support and enhance his upward socioeconomic mobility by virtue of a successful marriage.⁷²

63. *Id.* at 254–57.

64. *Id.* at 274–78.

65. *See id.* at 6, 22.

66. *See id.* at 3, 40.

67. *See id.* at 9.

68. *See id.* at 40.

69. *Id.* at 48–50.

70. *Id.* at 58–60.

71. *See id.* at 59–60.

72. *See id.*

Stoner's marriage, in turn, secures real financial benefits.⁷³ When his parents pass away, Stoner sells the family farm for the appropriate sum of \$2,000, the net economic value of his late parents' lifelong labor and sweat.⁷⁴ In contrast, Stoner and Edith's second home is a handsome house on campus worth over \$6,000, three times the value of the farm.⁷⁵ In addition to a mortgage, Stoner borrows from his father-in-law to pay for the house, but he and Edith are expected to, and ultimately do, pay back both loans.⁷⁶ The contrast between working on his uncle's farm in college and the comfortable home he lives in with his wife is an example of the upward gains Stoner makes based on his hard work throughout his career.⁷⁷ Indeed, Stoner's home symbolizes his successful pursuit of socioeconomic mobility and the American Dream: "As William had feared, the house soon proved to be an almost destructive financial burden. . . . Nevertheless he began to feel a joy in property and to know a comfort that he had not anticipated."⁷⁸

Thus, Stoner's life story, while on the one hand ordinary from an academic perspective, is at the same time a tremendous success story of living the American Dream. His life and accomplishments demonstrate that through individual hard work, one can climb up the socioeconomic ladder, a key aspect of the American Dream. Importantly, Stoner's achievements embody the Dream because he succeeds while being endowed with precious little economic, cultural, social, and identity capital, instead relying only on individual effort. His ascent therefore implies that capital endowments are unnecessary for success in America.

Economic capital consists of resources such as money, savings, and property.⁷⁹ Cultural capital is the accumulation or acquisition of "competence in society's high-status culture."⁸⁰ A person possessing cultural capital benefits

73. *See id.* at 94.

74. *Id.* at 108.

75. *Id.* at 94, 108.

76. *See id.* at 94, 109.

77. *See id.* at 5, 95.

78. *Id.* at 100.

79. *See* Pierre Bourdieu, *The Forms of Capital*, in HANDBOOK OF THEORY AND RESEARCH FOR THE SOCIOLOGY OF EDUCATION 241, 241–58 (John G. Richardson ed., 1986). Elsewhere, I offer similar definitions of the four forms of capital. To improve the readability of this Article I do not cite to my previous work in every sentence of these brief definitions. *See* Eli Wald, *BigLaw Identity Capital: Pink and Blue, Black and White*, 83 FORDHAM L. REV. 2509, 2514, 2519–20 (2015).

80. David Throsby, *Cultural Capital*, 23 J. CULTURAL ECON. 3, 4 (1999).

from the skills and knowledge that she has accumulated throughout her life.⁸¹ Cultural capital assets include communication skills, cultural awareness or sensitivity, knowledge of institutions, and the necessary credentials providing access to socioeconomic mobility.⁸² An individual endowed with cultural capital can navigate with ease the culture in which she operates.⁸³ “[C]ultural capital is a tool enabling a person to maneuver through social structures, gaining advantages and ultimately settling in a [mostly] freely chosen place.”⁸⁴ Social capital exists in the relations between people.⁸⁵ Its value is the resource that relationships and connections can provide in the short and long term.⁸⁶ A person with social capital is a member of durable networks that extend to each of its members a benefit to which they are entitled by virtue of their membership.⁸⁷ A person with a large amount of social capital is a member of groups that have money, influence, prestige, and power, and the person may call on any of these things when desired.⁸⁸ Identity capital is the value individuals and institutions derive from their identities.⁸⁹

Stoner grows up poor and works throughout college to support himself.⁹⁰ His nonexistent economic capital endowment is matched by possessing no meaningful cultural capital assets. Growing up, Stoner spoke neither to his parents, nor to anyone outside of or at school, and therefore had poor communication and people skills.⁹¹ Before going to college, he had never been

81. *Id.* at 4–5.

82. Lucille A. Jewel, *Merit and Mobility: A Progressive View of Class, Culture, and the Law*, 43 U. MEM. L. REV. 239, 253 (2012) (citing DAVID SWARTZ, *CULTURE AND POWER: THE SOCIOLOGY OF PIERRE BOURDIEU* 198 (1997)); Throsby, *supra* note 80, at 6.

83. Throsby, *supra* note 80, at 4–6.

84. Wald, *supra* note 79, at 2520.

85. See James S. Coleman, *Social Capital in the Creation of Human Capital*, 94 AM. J. SOC. 95, 98, 100–01 (Supp. 1988); Throsby, *supra* note 80, at 4.

86. See Coleman, *supra* note 85, at 102, 109.

87. Bourdieu, *supra* note 79, at 248–49.

88. See *id.*; see also Paul S. Adler & Seok-Woo Kwon, *Social Capital: Prospects for a New Concept*, 27 ACAD. MGMT. REV. 17, 29 (2002).

89. See Wald, *supra* note 79, at 2522 (discussing identity capital); Eli Wald, *Lawyers' Identity Capital*, 23 INT'L J. LEGAL PROF. 109, 111 (2016) (same). But see Nancy Leong, *Racial Capitalism*, 126 HARV. L. REV. 2151, 2190–91, 2213, 2219 (2013) (arguing that minorities' identities are manipulated and abused by powerful institutions and are not a form of capital for the individuals who possess them, a position subsequently revised in Nancy Leong, *Identity Entrepreneurs*, 104 CAL. L. REV. 1333, 1336–37 (2016)).

90. STONER, *supra* note 2, at 4–5, 8–9.

91. See *id.* at 4, 27–28.

away from home and had no exposure to, nor knowledge of, other places or institutions.⁹² He had no hobbies, was poorly read, and had cultivated no cultural capital.⁹³ While overtime Stoner accumulates some cultural capital assets becoming proficient in Greek and Latin and well-read in his discipline,⁹⁴ he still possesses relatively little cultural capital. For example, his only three trips were traveling to St. Louis to seek Edith's father's permission to marry her, a disastrous honeymoon with Edith, and a trip with Katherine, his lover, much later in life.⁹⁵ More importantly, Stoner appears to have developed little appreciation of the inner workings of his department and the University, and a poor understanding of academic politics as well as the culture of the institution.⁹⁶ Arriving on campus, Stoner's sole cultural capital asset is his strong work ethic, yet cultural capital is "competence in society's high-status culture,"⁹⁷ not competence in general terms.⁹⁸ In the academic context, Stoner's drive and dedication are thus better understood as qualities conducive to the development of cultural capital rather than cultural capital itself.

If Stoner lacks cultural capital, he is endowed with even less social capital. He is introverted and quiet.⁹⁹ His parents, hardworking farmers who did not finish high school, have no relationships from which Stoner could benefit.¹⁰⁰ He has no friends, knows no one who has gone to college, has no mentors, no meaningful contacts, and no relationships whatsoever, but for remote relations with those who put a roof over his head in exchange for physical labor.¹⁰¹

Finally, Stoner possesses no meaningful identity capital assets. As a Caucasian male, Stoner possesses aspects of personal identity, namely, his race and gender, that would confer value on him in contemporary America.¹⁰² When

92. *See id.* at 5–6.

93. *Id.* at 4–11.

94. *Id.* at 16, 41.

95. *Id.* at 57–61, 66–73, 204–06.

96. *Id.* at 25 ("He saw the future in the institution to which he had committed himself and which he so imperfectly understood . . .").

97. Throsby, *supra* note 80, at 4.

98. *See id.* at 4–5; *see also* Bourdieu, *supra* note 79, at 243–48.

99. *See* STONER, *supra* note 2, at 16 (recounting Stoner's lack of friends); *see also id.* at 27–28 (noting that Stoner "seldom spoke in class").

100. *See id.* at 6.

101. *See id.* at 8–16.

102. *See* Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993); Stephanie M. Wildman, *The Persistence of White Privilege*, 18 WASH. U. J.L. & POL'Y 245 (2005); *see also* Peggy McIntosh, *White Privilege and Male Privilege: A Personal Account of Coming to See*

Stoner enters Columbia University, however, the institution is male and white, meaning that not only is the vast majority of the student body, faculty, and staff white and male, but so is the institution's culture.¹⁰³ Stoner's limited benefit from his race and gender identity is that he is not at a disadvantage compared with his peers, but his identity confers on him no visible advantages.¹⁰⁴

Worse, Stoner's experiences on campus are further hampered by the interplay among the various forms of capital, of which he possesses so little. For example, he does not have the skills (cultural capital) with which to acquire relationships or even to understand their importance for being successful on campus (social capital).¹⁰⁵ He has not been anywhere, seen anything, nor acquired any experiences that could provide him perspective with which to connect with other students.¹⁰⁶ He has no experience socializing, but even if he wanted to, he has no time to do so because he works on his relatives' farm in

Correspondences Through Work in Women's Studies (Wellesley C. Ctr. for Res. on Women, Working Paper No. 189, 1988), in LESLIE BENDER & DAAN BRAVEMAN, *POWER, PRIVILEGE AND LAW: A CIVIL RIGHTS READER* 23 (1995).

103. See STONER, *supra* note 2, at 21 ("In the first week of June, in the year 1914, William Stoner, with sixty other young men and a few young ladies, received his Bachelor of Arts degree from the University of Missouri."). The university's masculine cultural identity was described by Dave Masters, Stoner's fellow graduate student:

Have you gentlemen ever considered the question of the true nature of the University? Mr. Stoner? . . . I'll bet you haven't. Stoner, here, I imagine, sees it as a great repository, like a library or a whorehouse, where *men* come of their free will and select that which will complete them.

Id. at 29 (emphasis added); see also *id.* at 46–47 (describing the Arts and Sciences faculty as mostly men).

104. If at all, Stoner's identity as a working-class Caucasian as opposed to the WASP elite constitutes a disadvantage. See E. DIGBY BALTZELL, *THE PROTESTANT ESTABLISHMENT: ARISTOCRACY & CASTE IN AMERICA* 341 (1964); RICHARD BROOKHISER, *THE WAY OF THE WASP: HOW IT MADE AMERICA, AND HOW IT CAN SAVE IT, SO TO SPEAK* 4–7 (1991); see also Lisa R. Pruitt, *Acting White? Or Acting Affluent? A Book Review of Carbadó & Gulati's Acting White? Rethinking Race in 'Post-Racial' America*, 18 J. GENDER RACE & JUST. 159, 178–80 (2015) (challenging the characterization of whiteness as a homogenous category).

105. Contrast Stoner's experiences on campus with Walker's, who is keenly aware of and explicitly takes advantage of his relationship with Lomax to secure benefits such as, for example, a spot in Stoner's over-subscribed seminar: "I'm Charles Walker. I'm a second-year Ph.D. candidate; I assist Dr. Lomax. . . . I know your seminar is filled, but I want very much to get in it. . . . Dr. Lomax suggested that I talk to you." STONER, *supra* note 2, at 131. Reluctantly, Stoner acquiesces: "'Dr. Lomax said he thought I would surely be able to do the work in the seminar.' Stoner sighed. 'Very well,' he said." *Id.* at 132.

106. See *id.* at 5–6.

exchange for lodging.¹⁰⁷ His demeanor is off-putting, and his clothes reveal his “outsider” status (economic capital).¹⁰⁸ Unsurprisingly, during his undergraduate studies, he does not form a single relationship with a peer.¹⁰⁹

Stoner, then, is the poster child for the proposition that in America one can succeed based only on individual hard work and effort, without possessing any meaningful economic, social, or cultural capital assets, and irrespective of identity capital. Stoner enters college, falls in love with literature, works hard to develop the skills to enjoy the richness of the written word, and is admitted to graduate school later becoming a professor.¹¹⁰ Along the way, he transforms from a hardworking blue-collar farmer to an intellectual white-collar academic.¹¹¹ William Stoner is a success story embodying the American Dream of individualistic merit paying dividends, and his socioeconomic ascent suggests that all can be accomplished with little endowment of capital.¹¹² In this sense, *Stoner* captures the very essence of President Trump’s “Make America Great Again!”: William Stoner lived in a great America, a place in which his hard work, individual effort and merit allowed him to succeed. And succeed he did.

Several literary critics question Stoner’s success, characterizing his life as unremarkable, or even a failure, given his mediocre academic career, his unhappiness, and his poor relationships with his wife and daughter.¹¹³

107. *Id.* at 26 (“He began to resent the time he had to spend at work on the Foote farm.”).

108. *Id.* at 6–7.

109. *Id.* at 16. Stoner’s mindfulness of being lonely, *id.*, reflects his emotional and intellectual growth, in stark contrast to his parents’ and his own previous passive state of being, in which they were unaware of and had no words with which to express their loneliness. *See id.* at 4. “It was a lonely household, of which he was an only child, and it was bound together by the necessity of its toil.” *Id.*

110. *Id.* at 3–20, 40.

111. *Id.* at 3, 5.

112. *See* LAWRENCE R. SAMUEL, *THE AMERICAN DREAM: A CULTURAL HISTORY* 13 (2012).

113. While many critics are amazed at the character, morality, and integrity of William Stoner, they conclude, overall, that Stoner’s life represents a failure. *See* Daniel Aaron, *Stoner and the “College Novel”*, 20 *DENV. Q.*, Winter 1986, at 107, 110–13 (noting how Stoner makes a series of decisions which guarantee his unsuccessful life); Irving Howe, *The Virtues of Failure*, *NEW REPUBLIC*, Feb. 12, 1966, at 19, 19 (discussing how Stoner’s personal integrity is admirable in the face of a failed life); Diana Martin, *Stoner*, 167 *AM. J. PSYCHIATRY* 1537, 1537 (2010) (writing that Stoner had a disappointing marriage, “no record of particular accomplishments,” and “never rises above the rank of assistant professor”); *Notes on Current Books*, 41 *VA. Q. REV.* cxx, cxx (1965) (stating that Stoner’s life “brought only disillusionment, despair, and an overwhelming sense of failure”); Rexford Stamper, *An Introduction to the Major Novels of John Williams*, 3 *MISS. REV.*, no. 1, 1974, at 89, 93–94 (1974) (“Stoner’s life, at least on the surface, is rather dull and pointless.”); Dan Wakefield, *John Williams*,

Fundamentally, however, these criticisms do not undermine Stoner's life as an exemplary American success story.

To begin with, to deem Stoner's professional accomplishments unremarkable or a failure is to misunderstand his life, ambitions, and dreams. Moreover, such assessments reveal a misunderstanding of the American Dream itself: the American Dream is not about meeting some abstract or objective standard of excellence.¹¹⁴ Rather, it is, as Thomas Wolfe observed:

[T]o every man his chance—to every man, regardless of his birth, his shining, golden opportunity—to every man the right to live, to work, to be himself, and to become whatever thing his manhood and his vision can combine to make him—this, seeker, is the promise of America.¹¹⁵

Stoner's American Dream was about researching English literature and becoming the kind of teacher who can share with students his love and passion for literature: "He hoped in time to make a reputation for himself as both a scholar and a teacher."¹¹⁶ However, Stoner did not seek to become the world's leading scholar or the best teacher, did not dream of lateral moves to higher ranked English departments at other universities, and did not aspire to become a public intellectual.¹¹⁷ Consider Stoner's decision not to become Chair of the Department.¹¹⁸ Others might have regarded promotion to Chair as a desirable mark of success, but Stoner is truly disinterested. All Stoner wants to do is teach and research the classics.¹¹⁹ To suggest that Stoner fails because he does not become Chair or a leading national scholar is to misunderstand his goals and to misjudge his, and the American, Dream.

If Stoner fails and his American Dream is limited and constrained, it is not because of the so-called mediocre results of his hard work judged by someone else's measure of academic success. If Stoner fails, it is because he does not become the solid researcher and scholar he wanted to be, does not attain the recognition of his peers, and is not recognized as a true lover of literature that he was. In the words of Wolfe, if Stoner's life is a disappointment, it is because

Plain Writer, PLOUGHSHARES, Fall/Winter 1981, at 9, 10 (writing that Stoner faced "worldly defeat and private frustration").

114. SAMUEL, *supra* note 112, at 1.

115. THOMAS WOLFE, YOU CAN'T GO HOME AGAIN 508 (1940).

116. STONER, *supra* note 2, at 101–02.

117. *Id.* at 101–02, 151–52.

118. *Id.* at 151.

119. *See id.* at 151–52.

he does not “become whatever thing his manhood and his vision can combine to make him,”¹²⁰ that is, because Stoner loves literature and works hard to be a decent scholar and teacher but ends up becoming neither.¹²¹ That, in the context of Stoner’s humble beginning and background¹²² could hardly be deemed a failure. At most, his disappointments reveal inherent obstacles and limitations imposed by his minimal capital assets, a topic explored in the next section.

Next, consider Stoner’s troubled marriage. The American Dream has often been measured by material success, not marital bliss.¹²³ While the American Dream is certainly rooted in the Declaration of Independence and the right to pursue happiness, one does not have the right to obtain it.¹²⁴ “Happiness,” in these terms, has traditionally been understood to mean freedom and prosperity, not joy in one’s marriage.¹²⁵ Indeed, even those who argue that the American Dream ought to focus less on financial gain and more on living a simple, fulfilling life do not understand happiness as marital bliss.¹²⁶

Instead, a contextual analysis can explain both Stoner’s disappointing marriage and his estranged relationship with his daughter. Edith is a product of the era, groomed to be her husband’s shallow, beautiful wife.¹²⁷ She is taught to play the piano well enough to entertain, but not well enough to love or

120. WOLFE, *supra* note 115, at 508.

121. STONER, *supra* note 2, at 274–75.

122. *Id.* at 4–5.

123. See RALPH RICHARD BANKS, IS MARRIAGE FOR WHITE PEOPLE? HOW THE AFRICAN AMERICAN MARRIAGE DECLINE AFFECTS EVERYONE 25–26 (2011).

124. See THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

125. Notably, the pursuit of happiness has generally been deemed consistent with a high-rate of divorce. *But see* BANKS, *supra* note 123, at 25–26 (summarizing recent research about “[t]he [n]ew [m]eaning of [m]arriage” in which a majority of Americans now believe that “the ‘mutual happiness and fulfilment’ of the couple” is “the main purpose of marriage”).

126. For example, Miller’s characters in *Death of a Salesman*, embody varying conceptions of the American Dream, yet none encompasses marital bliss. See ARTHUR MILLER, DEATH OF A SALESMAN (1949). Similarly, the ongoing struggle for a more effective work-life balance in the workplace is centered on gender equality, not happiness. See, e.g., BETTY FRIEDAN, THE FEMININE MYSTIQUE (1963); CECILIA L. RIDGEWAY, FRAMED BY GENDER: HOW GENDER INEQUALITY PERSISTS IN THE MODERN WORLD (2011); HANNA ROSIN, THE END OF MEN AND THE RISE OF WOMEN (2012); JOAN C. WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE: WHY MEN AND CLASS MATTER (2010) [hereinafter WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE]; JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT (2000); ALISON WOLF, THE XX FACTOR: HOW THE RISE OF WORKING WOMEN HAS CREATED A FAR LESS EQUAL WORLD (2013).

127. STONER, *supra* note 2, at 54.

appreciate music.¹²⁸ She is taught to chat meaninglessly, but is not expected to converse with any depth.¹²⁹ She is sent to college to finish her education and find a husband, but not to actually graduate or take real interest in her classes.¹³⁰ She is taught that perfection as a wife is performative rather than substantive.¹³¹ For her part, if Edith is a poor communicator and a lousy wife, she is just as much a victim as she is a perpetrator. Stoner, growing up in a silent household in which his loving parents were often too exhausted to talk to their son or to each other, is certainly not the model of a communicative husband.¹³² Edith and Stoner hardly know each other.¹³³ They meet, get engaged after a short courtship, and marry.¹³⁴ It is thus hardly surprising that their marriage is a disaster.¹³⁵

Of course, not all marriages of the era failed, yet the failure of the Stoners' marriage, while related to his socioeconomic ascent and cultural evolution, does not undermine William Stoner's successful pursuit of the American Dream. Stoner's growth and transformation led to evolving expectations of his life, his career, his wife, and his daughter, which increasingly differed and contradicted Edith's expectations.¹³⁶ If at all, the couple's struggles, far from disproving the case for Stoner as a poster child for the American Dream, end up lending support to it, showing the class and cultural struggles of those who do succeed in climbing up the socioeconomic and cultural ladder.¹³⁷

Similarly, Stoner's poor relationship with his daughter has a lot to do with his evolving perspectives and values and his growing sense of discomfort with the traditional role of a hardworking absent father,¹³⁸ all in the context of his inability to communicate and explain his feelings to his wife and subsequently his daughter. Grace and Stoner have a close relationship in her early childhood

128. *Id.*

129. *See id.* at 52–53.

130. *See id.* at 48, 54.

131. *Id.* at 54.

132. *Id.* at 4.

133. *Id.* at 56.

134. *Id.* at 50–66.

135. *Id.* at 74.

136. *See id.* at 113–15.

137. *See* JENNIFER L. HOCHSCHILD, *FACING UP TO THE AMERICAN DREAM: RACE, CLASS, AND THE SOUL OF THE NATION* 91–94 (1995); ALFRED LUBRANO, *LIMBO: BLUE-COLLAR ROOTS, WHITE-COLLAR DREAMS* 76–77, 225–26 (2004).

138. *See* STONER, *supra* note 2, at 124.

that abruptly ends when Edith intervenes, dominating Grace's upbringing.¹³⁹ It is perhaps too easy to blame Edith for Grace and Stoner's poor relationship and for Grace's desperate attempt to escape her parents' home. Edith unsurprisingly limits Grace's studies to what she perceives, based on her own upbringing, as necessary for her proper education.¹⁴⁰ Edith loves her daughter, in her own way.¹⁴¹ Stoner too loves his daughter and is supportive to the best of his limited abilities.¹⁴² However, he cannot teach his daughter social skills he does not possess and would have likely turned her into a mini version of his introverted self.¹⁴³ Her mother is awful in a way, but at the same time, contributions from both her parents would have been helpful for Grace. In any event, Grace is more a product of a bad match and poor interaction between parents than a per se victim of the American Dream.¹⁴⁴

In sum, William Stoner is a success story, a poster child for a successful pursuit of the American Dream. Through his hard work and individual effort, and without the benefit of capital endowments, he rises up the socioeconomic ladder securing for himself a comfortable position as an English professor. Take I views Stoner's setbacks—his shortcomings as an academic, a husband, and a father—not as grand failures but rather as developments that can be explained by the circumstances of his professional and personal life. Stoner took a grand stand for merit and integrity and was punished by a corrupt institutional machinery personified by Lomax. He challenged the marital status quo overstepping his role as a traditional absent father and was punished by his wife, and later by his daughter. Far from questioning the attainability of the American Dream, this Take views Stoner's disappointments as the natural consequences that follow from a successful pursuit of the Dream. Elevated status as a professor entails experiencing the muddiness of the academic swamp (odorous, but still superior to hard physical existence as a farm laborer). And enhanced socioeconomic status encompasses strife as one learns to navigate

139. *Id.* at 120, 122, 124.

140. *See id.* at 200 (showing that Grace, like Edith, was taught piano).

141. *See id.* at 125 (recounting a conversation between Stoner and Edith about caring for their daughter).

142. *See id.*

143. *See supra* note 99 and accompanying text.

144. Grace, for example, contrary to Edith's public statements, does *not* have an absent father who is so busy pursuing the Dream at work that he neglects his personal life as a consequence, notwithstanding Edith's mean observation to the contrary. STONER, *supra* note 2, at 124 ("Once, when there was a lull in the noise, he heard Edith say, 'Poor Grace. She's so fond of her father, but he has so little time to devote to her. His work, you know'").

newfound leisure time and the opportunity to spend more time at home with one's children (challenging as Stoner learned, but clearly preferable to having no such leisure).

C. *Take II: Stoner as a Victim of Limited Social and Cultural Capital*

Stoner's colleagues, who held him in no particular esteem when he was alive, speak of him rarely now; to the older ones, his name is a reminder of the end that awaits them all, and to the younger ones it is merely a sound which evokes no sense of the past and no identity with which they can associate themselves or their careers.¹⁴⁵

Why does Stoner fail to achieve his goal of becoming a solid and moderately respected scholar? Why is Stoner innately incapable of becoming a world-class scholar, had that been his goal? The answers to both questions have to do with economic, social, and cultural capital and their relationship with the American Dream: because Stoner lacks sufficient capital, he is unable to achieve more than limited success.¹⁴⁶ The novel offers three detailed examples of how social and cultural capital influence and help determine both success and failure.

1. Are you my mentor? Are you my mentor?¹⁴⁷

Mentors (a form of social capital) are essential for success at the workplace from business¹⁴⁸ to law practice,¹⁴⁹ and academia.¹⁵⁰ Mentors provide key

145. *Id.* at 3–4.

146. See Bourdieu, *supra* note 79, at 241–42; Jewel, *supra* note 82, at 251–52.

147. SHERYL SANDBERG, *LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD* 64–76 (2013) (criticizing an understanding of mentorship in which a mentee seeks a mentor only to then passively benefit from mentorship by an active mentor who herself derives little from the relationship and advocating instead for a two-way mentorship in which both mentee and mentor actively participate and generate value for each other).

148. See *id.* at 66; see also David A. Thomas, *The Truth About Mentoring Minorities: Race Matters*, HARV. BUS. REV., Apr. 2011, at 98, 99–100, 106.

149. Susan Saab Fortney, *Soul for Sale: An Empirical Study of Associate Satisfaction, Law Firm Culture, and the Effects of Billable Hour Requirements*, 69 UMKC L. REV. 239, 282–83 (2000); Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705, 720–22 (1998) (discussing the significance and decline of mentoring in large law firms). See generally IDA O. ABBOTT, *THE LAWYER'S GUIDE TO MENTORING* (2000).

150. Carlo A. Pedrioli, *A New Image in the Looking Glass: Faculty Mentoring, Invitational Rhetoric, and the Second-Class Status of Women in U.S. Academia*, 15 HASTINGS WOMEN'S L.J. 185, 198–203 (2004).

insights (a form of cultural capital) about workplace culture and expectations, the “dos” and “don’ts,” informal policies, politics, and effective strategies for success and advancement.¹⁵¹ Consider the role of mentors in large law firm. Trying to succeed at a large law firm—make partner—without the assistance and backing of mentors would be naïve and imprudent, not because the goal would be out of reach but because it would be harder to achieve. An associate might mistakenly think that she ought to concentrate her efforts on billing as many hours as possible, even at the expense of cultivating relationships with powerful partners.¹⁵² Or she might believe that her record with the firm might speak for itself when she seeks promotion, failing to appreciate the importance and value of having mentors who would advocate on her behalf and tout her record.¹⁵³ Such mistakes, however, of playing by the formal rules of the tournament of lawyers’ game¹⁵⁴ instead of following the real informal rules, could be avoided if one benefits from the guidance of mentors who provide insight about the inner-workings of the law firm’s promotion decision-making processes. The result is that those endowed with social capital such as mentors are more likely to make partner compared to those who lack such capital assets.¹⁵⁵

The importance of possessing capital assets for attaining success at the workplace, specifically, the knowledge to seek out a mentor¹⁵⁶ and the ability to appreciate and reap the long-term benefits of a mentorship,¹⁵⁷ are demonstrated through Stoner’s interactions with Archer Sloane, the old Chair of the Department. While Stoner considers Sloane a mentor of sorts, one would be hard-pressed to call their early interactions a relationship, let alone a

151. LAURENT A. DALOZ, MENTOR: GUIDING THE JOURNEY OF ADULT LEARNERS 20–21 (1999); KATHY E. KRAM, MENTORING AT WORK: DEVELOPMENTAL RELATIONSHIPS IN ORGANIZATIONAL LIFE 36 (1985); MARGO MURRAY, BEYOND THE MYTHS AND MAGIC OF MENTORING: HOW TO FACILITATE AN EFFECTIVE MENTORING PROGRAM 8–9, 13 (1991).

152. See David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581, 1592–1604 (1998).

153. See *id.* at 1604–27; see also ABBOTT, *supra* note 149, at 20–21.

154. See MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM 100–01 (1991).

155. David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CAL. L. REV. 493, 565–68 (1996).

156. SANDBERG, *supra* note 147, at 66.

157. *Id.* at 67, 69.

mentorship.¹⁵⁸ Throughout the book, the two interact only a few times.¹⁵⁹ Sloane cold calls on Stoner in his required class igniting in Stoner an interest in the subject matter.¹⁶⁰ Later, discharging his duties as Chair, meeting with all department seniors, Sloane informs Stoner that Stoner is in love with English literature and that it is his destiny to study and teach it.¹⁶¹

Sloane and Stoner interact for a third time in the late spring of 1917, soon after the United States enters World War I.¹⁶² Confronted by his friends' decision to enlist, Stoner seeks Sloane's advice.¹⁶³ At this point, Stoner sees Sloane as a mentor and a guide, and this is the first and only time that Sloane truly mentors Stoner.¹⁶⁴ He does not tell Stoner what to do but sets out the consequences of each choice.¹⁶⁵ Stoner struggles for two days and decides to stay on campus.¹⁶⁶

A "Take I" read would insist that Stoner and Sloane's interactions are consistent with the traditional understanding of the Dream: Stoner falls in love with literature notwithstanding the fact that he supposedly does not have the necessary cultural background and skills to do so.¹⁶⁷ As a senior, he attracts Sloane's attention through his individual hard work and good grades, without realizing the importance of seeking other mentors or forming relationships with professors.¹⁶⁸ Stoner's undergraduate career appears to be a success based on hard work and merit alone, rendering social and cultural capital endowments unnecessary. If at all, Sloane's mentorship in 1917 arguably shows that

158. See *STONER*, *supra* note 2, at 35.

159. See, e.g., *id.* at 10–13, 17–20, 35–37.

160. *Id.* at 12–13 ("Sloane was speaking again. 'What does he say to you, Mr. Stoner? What does his sonnet mean?' Stoner's eyes lifted slowly and reluctantly. 'It means,' he said . . . 'It means,' he said again, and could not finish what he had begun to say.')

161. *Id.* at 20.

162. *Id.* at 32–37.

163. *Id.* at 35.

164. See *id.* at 35–37.

165. *Id.* at 35–37. During their conversation, Sloane also offered Stoner rare, if indirect, insight about the role and meaning of being a scholar. *Id.* at 35–36. "A war," Sloane explained, "kills off something in a people that can never be brought back. And if a people goes through enough wars, pretty soon all that's left is the brute The scholar should not be asked to destroy what he has aimed his life to build," and added, "You must remember what you are and what you have chosen to become" *Id.* at 36–37.

166. *Id.*

167. *SAMUEL*, *supra* note 112, at 5.

168. *STONER*, *supra* note 2, at 17–19.

relationships, a form of social capital,¹⁶⁹ can be built based on merit (Stoner's academic achievements) and cultivated even absent preexisting capital endowments (which Stoner did not have).

But underestimating the importance and impact of social and cultural capital endowments on determining success and failure would be a serious mistake. First, consider Sloane's impact on Stoner's successes. A mere show of interest by a professor in the form of cold calling in a required class unnerved Stoner.¹⁷⁰ Starved for human interaction, passively learning by attending classes and reading his books, Stoner was motivated by his poor performance to invest in the class and try harder to better understand and enjoy literature.¹⁷¹ His curiosity was peaked.¹⁷² He felt challenged.¹⁷³ Having invested all this time and effort, he became intrigued and decided to take another class, and then another, ending up changing his major.¹⁷⁴ Beholden to his father, Stoner was destined to study agriculture.¹⁷⁵ But for the interaction with Sloane, he would have never changed his major.¹⁷⁶ This is the power of relationships, mentorship, and of social capital.¹⁷⁷

Note that social capital does not operate in a vacuum and is not inconsistent with individual hard work and effort.¹⁷⁸ All the class interaction did was trigger a curiosity and open a door.¹⁷⁹ It was Stoner's hard work and effort that allowed him to excel in his newfound major, but even he would not have enrolled in graduate school if he had not benefitted, for the second time, from an interaction with Sloane.¹⁸⁰ Hardly a mentor at that point in time, Sloane, as Chair of the Department, meets briefly with Stoner and causally observes that Stoner is destined to study literature at a graduate level.¹⁸¹ Sloane, of course, hardly

169. See Coleman, *supra* note 85, at 100–01.

170. STONER, *supra* note 2, at 12–14.

171. *Id.* at 11–17.

172. *Id.* at 15.

173. See *id.* at 16.

174. *Id.* at 18.

175. *Id.* at 6.

176. See *id.* at 16–20.

177. DALOZ, *supra* note 151, at 21; MURRAY, *supra* note 151, at 8–9.

178. See Jewel, *supra* note 82, at 254; Coleman, *supra* note 85, at 98.

179. STONER, *supra* note 2, at 14.

180. *Id.* at 17–20.

181. *Id.*

knows Stoner.¹⁸² His observation is based on years of experience and intuition as a professor.¹⁸³ Yet that insight, as impersonal as it is, once again changes the course of Stoner's future career and life.¹⁸⁴

Finally, the impact of Sloane's sole act of true mentorship, helping Stoner think through the consequences of whether to enlist, cannot be understated. But for Sloane's advice, peer pressure (by the likes of Finch and Masters) would have likely led Stoner to enlist and possibly get himself killed.¹⁸⁵ Importantly, social capital alone, here mentorship, does not alone determine success or failure.¹⁸⁶ Indeed, Sloane did not even advise Stoner not to enlist.¹⁸⁷ But mentorship led Stoner to debate and question what otherwise would have been a foregone conclusion to enlist, in turn led him to stay on campus and pursue graduate studies, and eventually opened the door to an appointment in the department.¹⁸⁸

If these limited interactions reveal the profound impact of social capital on one's success, consider now the explanatory power the lack of social capital endowments has on Stoner's failures. Because he arrives on campus with virtually no cultural capital, Stoner does not know the importance and value of having mentors in academia and does not pursue a stronger relationship with Sloane and possibly additional members of the department while an undergraduate student and later a graduate student.¹⁸⁹ Because Sloane never becomes Stoner's mentor, Sloane never tells Stoner what it is like to be a professor, how to become an effective teacher, or how to be a scholar.¹⁹⁰ Stoner

182. *See id.*

183. *See id.* at 20.

184. *Id.* at 20–23.

185. *See id.* at 34–35.

186. *See infra* Section II.D.

187. STONER, *supra* note 2, at 36–37.

188. *Id.* at 37–40.

189. *See id.* at 6–7.

190. *See id.* at 10–20, 25–27, 35–44. In Sloane's defense, professors at both English departments and law schools often face strong institutional incentives to publish and few pressures to mentor their colleagues. *See* Daniel Gordon, *Does Law Teaching Have Meaning? Teaching Effectiveness, Gauging Alumni Competence, and the MacCrate Report*, 25 FORDHAM URB. L.J. 43, 73–74 (1997) (discussing the poor prevailing state of collegial mentorship at law schools); *id.* ("Certainly, particularly ineffective teachers could be identified in addition to particularly effective teachers. The prospect of such [alumni] feedback facing the new law teacher should encourage immediate attention and sensitivity to effective teaching. New teachers might want to demand more teaching and pedagogical mentoring and support from senior professors who, in turn, would be challenged to think more clearly concerning their own teaching effectiveness."); Judith M. Stinson, *Generating Interest, Enthusiasm, and Opportunity for*

is left with his own innocent love of literature and never benefits from deeper immersion in the meaning of academic life, research, or teaching.¹⁹¹ As a result, Stoner does not develop a thick identity as an academic,¹⁹² and when his professional identity is undermined by Lomax at the office and by Edith at home, it collapses and he fails.¹⁹³

It is important not to misunderstand and exaggerate the impact of social capital. The point is not that social and cultural capital would have guaranteed a different outcome. Even a savvy academic, one benefitting from ample mentorships, could have succumbed to the antics of Lomax, and many professional mentors would not purport to give Stoner personal advice about his relationship with Edith. Rather, the point is that one well-endowed with social and cultural capital, here academic guidance and mentorship, would have been better positioned to develop a thicker professional identity and consequently better positioned to deal with professional challenges from Lomax and the personal assault launched by Edith.¹⁹⁴ As a result, Stoner would have been more likely to succeed professionally, publishing a second and a third book and gaining promotion to full professor. Such achievements, in turn, would have built up Stoner's professional identity such that Edith's personal attacks would be less likely to destroy it.

Relatedly, Stoner could have succeeded even in the absence of social capital. One might think that after eight years on campus as a student, Stoner might have learned, if only passively, how to teach and write. Of course, some professors are just poor teachers, but this would be too harsh and at the same

Scholarship: How Law Schools and Law Firms Can Create a Community and Culture Supportive of Scholarship, 9 LEGAL COMM. & RHETORIC: JALWD 315, 324 (2012) (“Individual mentoring by good scholars is also tremendously helpful, although more time-consuming.”); *id.* at 324 n.33 (“At most law schools, the Associate Dean for Faculty Research and Development formally fulfills this role, although having others to assist, especially with overlapping areas of interest, can be helpful.”); see also Eli Wald & Russell G. Pearce, *Making Good Lawyers*, 9 U. ST. THOMAS L.J. 403, 425, 438, 440–42 (2011) (calling on law professors to forego pursuing an atomistic individualist professional identity that discourages mentoring colleagues and students in favor of a more relational identity that encourages it).

191. See *supra* Section II.B.

192. See generally Norman W. Spaulding, *Reinterpreting Professional Identity*, 74 U. COLO. L. REV. 1, 8–18 (2003) (providing an excellent analysis of thin and thick professional identity); Sanford Levinson, *Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity*, 14 CARDOZO L. REV. 1577, 1577–94 (1993) (exploring the interplay of thin and thick professional and personal religious identities); Martha Minow, *On Being a Religious Professional: The Religious Turn in Professional Ethics*, 150 U. PA. L. REV. 661, 661–64 (2001) (same).

193. STONER, *supra* note 2, at 126–28, 176–77.

194. See *id.*; see also Bourdieu, *supra* note 79, at 241.

time too simple a description of Stoner. Having grown up without communications skills, self-esteem, or the ability to articulate ideas and emotions, Stoner simply has fewer tools and a limited capacity to do better, compared with colleagues who grew up acquiring cultural capital skills and benefited from mentorship.¹⁹⁵ Stoner does improve, though, as a teacher and a scholar.¹⁹⁶ Coming into his own, even blooming professionally, he turns his dissertation into a solid book,¹⁹⁷ earns tenure,¹⁹⁸ and begins researching for a second manuscript.¹⁹⁹ He learns how to teach and eventually earns a modest student following.²⁰⁰ But it all collapses when Edith edges him out of the house and he can no longer entertain students, when his feud with Lomax becomes well known and students and faculty keep their distance, and when Lomax assigns him an exhausting schedule that makes students less likely to enroll in his classes, rendering Stoner a less effective teacher.²⁰¹

Stoner comes home late one night and discovers that Edith has taken over his study.²⁰² Edith forces him to the porch in the back, crowding his professional space, and rain damages some of his books and notes.²⁰³ Then,

195. See STONER, *supra* note 2, at 4–5; DALOZ, *supra* note 151, at 21; see also Throsby, *supra* note 80, at 4.

196. STONER, *supra* note 2, at 112–13.

197. *Id.* at 82, 93.

198. *Id.* at 93.

199. *Id.* at 121 (“He was in the stage of planning his study, and it was that stage which gave him the most pleasure—the selection among alternative approaches . . . the consequences of choice. . . . The possibilities he could see so exhilarated him that he could not keep still.”) (second alteration in original).

200. *Id.* at 101, 112, 119. Stoner “began to understand that it might be possible for him to become a good teacher. . . . Now and then he became so caught by his enthusiasm that he . . . ignored the lecture notes that usually guided his talks. . . . [H]e was encouraged to do what he had never been taught to do.” *Id.* at 112–13. Stoner was gradually overcoming the lack of social capital and developing cultural capital as a teacher. See *id.*

201. See *supra* Section II.A. As it pertains to the interplay of professional and personal identities, there is a risk of one dominating the other. See Gerald J. Postema, *Moral Responsibility in Professional Ethics*, 55 N.Y.U. L. REV. 63, 75 (1980) (“[A]s the moral distance between private and professional moralities increases, the temptation to adopt one or the other extreme strategy of identification also increases; one either increasingly identifies with the role or seeks resolutely to detach oneself from it.”); Eli Wald, *Resizing the Rules of Professional Conduct*, 27 GEO. J. LEGAL ETHICS 227, 251–52, 275–78 (2014); David B. Wilkins, *Beyond “Bleached Out” Professionalism: Defining Professional Responsibility for Real Professionals*, in ETHICS IN PRACTICE: LAWYERS’ ROLES, RESPONSIBILITIES, AND REGULATION 207, 218–25, 230–34 (Deborah L. Rhode ed., 2000);

202. STONER, *supra* note 2, at 126.

203. *Id.* at 127.

with Edith's permission to play on the porch, kids ruin the first few pages of his new manuscript.²⁰⁴ Without a doubt, the conduct is both annoying and destructive. Edith engages in open warfare with Stoner and does not support his professional endeavors.²⁰⁵ Stoner surrenders.²⁰⁶ He moves back into his university office, defeated, and loses interest in his book.²⁰⁷ But why does Stoner give up on literature when he considers it his haven? The answer has to do with the long-term consequences of low endowment of social and cultural capital and the resulting thin professional identity Stoner develops.

Stoner's commitment to life as an academic, genuine as it is, is not deep. To be sure, his professional identity as an academic is as profound as it can possibly be given his lack of capital endowments: having grown up knowing no academics, having benefited from no mentorship from academics, and having begun the lifelong process of forming his professional identity as an academic all on his own.²⁰⁸ All constituted inherent limitations on Stoner's ability to grow and succeed as an academic. His relatively thin professional identity could not overcome the challenges that Edith (and his feud with Lomax) posed. Ironically, Edith liked his professional success, at least in the sense that she could tell her friends that Stoner is working on a new book.²⁰⁹ Her war on Stoner is a significant, but not a professional, attack. She distracts him, undermines his work, and destroys some of his research notes.²¹⁰ Importantly, however, Edith's goal is not to derail the substance of his scholarship, about which she knows and cares little.²¹¹ Her war with Stoner is only for control of the house and Grace, not because she wants him to stop

204. *Id.*

205. *Id.* at 115 ("Edith was trying to announce to him a new declaration of war.").

206. *Id.* at 127.

207. *Id.* at 127–28.

208. See generally Neil Hamilton & Jerome M. Organ, *Thirty Reflection Questions to Help Each Student Find Meaningful Employment and Develop an Integrated Professional Identity (Professional Formation)* (discussing the formation of professional identity as a lifelong journey and role of mentors in forming identity); 83 TENN. L. REV. 843 (2016); Neil Hamilton, *Law Firm Competency Models & Student Professional Success: Building on a Foundation of Professional Formation/Professionalism*, 11 U. ST. THOMAS L.J. 6 (2013) (same).

209. STONER, *supra* note 2, at 124.

210. *Id.* at 121–28.

211. See *id.* at 126–28.

writing.²¹² Yet the personal warfare destroys Stoner's thin professional identity and halts any further scholarly achievements.²¹³

Stoner's lack of social capital compounds the problem and contributes to his professional demise. Why, when Edith takes over his home workspace, does Stoner give up so quickly? Some academics, no doubt, would prefer to work from home, especially in Stoner's situation of having to share his office space with other colleagues.²¹⁴ Yet, Stoner could have asked his longtime friend Finch for a better workspace. Finch, by then, is Dean of Arts and Sciences, Stoner's friend, and a well-connected problem-solver.²¹⁵ Finding Stoner a quiet office somewhere on campus is exactly the kind of request Finch would likely enjoy fulfilling, validating his own image as the person to know on campus. The point is, Stoner does not think to ask because knowing to ask for a beneficial favor—cultural capital—and having someone to ask—social capital—are the very assets Stoner does not possess and does not use well.

Instead, Stoner fades. He cannot bring himself to fight, to express himself, to reason, to communicate.²¹⁶ While Stoner faces significant obstacles, they are not the kind of challenges that should have inevitably led to his utter abandonment of the scholarly life. A scholarly life consists of deep passion and intellectual curiosity combined with grit and good work habits in a mutually enhancing cycle. Stoner has deep passion, but it is raw, innocent, and fragile. Sloane, and possibly other mentors, could have helped fuel it by nurturing it. Yet, Stoner's meager capital assets result in no such nourishment. His professional identity is thin, and once Lomax and Edith crush it, Stoner is never able to rekindle it.²¹⁷

Once again, the point is not that deep, robust relationships with Sloane or others would have guaranteed Stoner's success as a scholar. It is possible that even with mentorships, he would have failed. Importantly, however, those endowed with the awareness to seek and cultivate relationships, who truly understand and appreciate the inner workings of academic life, are better able to develop thick professional identities leading more easily to success, obstacles notwithstanding.²¹⁸ Stoner would have stood a better chance to prevail in his

212. *See id.*

213. *Id.* at 128.

214. *Id.* at 127.

215. *See id.* at 151.

216. *See id.* at 128.

217. *See id.* at 274–75.

218. *See* Wald, *supra* note 79, at 2533 (exploring the impact of possessing capital assets on the prospects of success and failure of large law firms' lawyers).

battles with Edith and Lomax had he been endowed with additional capital assets. Their absence helps explain his failures.

2. Navigating the academic swamp: Stoner and Lomax

The Stoner-Walker conflict constitutes another compelling illustration of the operation and interplay of social and cultural capital with merit and the impact of insufficient capital and willingness to use it in terms of explaining success and failure. Attempting to explain the Stoner-Lomax affair merely in terms of hard work, individual effort, and merit is relevant, but incomplete. Such a perspective would correctly identify Lomax's graduate student Walker as lacking in merit and deserving to fail, and would portray Stoner as a staunch advocate for objective meritorious standards of excellence. At the same time, this perspective would miss altogether the insights of capital, ignoring Stoner's blindness to the likely consequences of his choices and conduct. Moreover, without the insights of capital analysis, Stoner comes across as a helpless bystander, caught up in an evil storm outside of his control, an idealistic crusader who stands for merit and integrity and is destroyed by a cruel and unjust academic machinery controlled by the likes of Lomax. Yet such a simplistic understanding sells Stoner, and the American Dream, short.

Stoner begins his academic career at a political disadvantage, in part because Sloane's sole act of mentorship is to usher Stoner into academia.²¹⁹ Therefore, when Lomax first begins the war with Stoner, Stoner is blindsided, a novice doing battle with a master politician.²²⁰ Stoner never imagines the potential consequences of battling Lomax because no one has ever clued him in. All Stoner has as a guide are the few idealistic words of his fellow graduate student Masters,²²¹ not nearly enough to confront Lomax. To be sure, just as Stoner could have become a good teacher by observing as a student better and worse teachers,²²² he could have become a savvy academic player by observing as a graduate student faculty politics and the interactions among his professors. Yet knowing to observe his professors and appreciating the meaning of their exchanges are the very cultural capital assets Stoner lacks.²²³

219. STONER, *supra* note 2, at 17–20.

220. *See id.* at 171–73.

221. *Id.* at 29–32.

222. *See supra* note 190 and accompanying text.

223. While faculty interactions and politics may be hard to directly observe as a student, one could learn about the politics of the academic swamp from publically available sources. An English major, in particular, might gain relevant knowledge from works of fiction about academic politics. A contemporary newcomer to academia, for example, might learn quite a bit from reading RICHARD

Stoner's understanding of and expectations for his relationship with Lomax are naïve and detached from reality. Early on, Lomax's attendance at Stoner's party is a surprise to everyone on the faculty.²²⁴ Lomax had been drinking, and is therefore less guarded, talking openly of his lonely childhood, the isolation of his disability, and how literature provided escape and freedom.²²⁵ Stoner immediately feels a connection with Lomax because he had experienced the same revelation and freedom in literature:

And when he told of . . . reading to escape the limitations that his twisted body imposed upon him and finding gradually a sense of freedom . . . William Stoner felt a kinship that he had not suspected . . . in the way that was finally most important, the two men were alike, though neither of them might wish to admit it to the other, or even to himself.²²⁶

The following Monday, when Stoner speaks to Lomax with great warmth, Lomax, regaining his usual guarded demeanor, replies with irony and cold anger, and never again speaks of the party.²²⁷ What the two men have in common is literature as a liberating force, but it is not enough to bring them together as friends, nor enough to prevent their decades-long feud, as their mismatched social and cultural capital make each of them incomprehensible to the other.

Enters Mr. Walker. Walker introduces himself to Stoner and asks, on recommendation from Lomax, to enroll in Stoner's graduate seminar.²²⁸ Walker, using his own social capital, namedrops Lomax in order to gain admission to the class, but he couches the recommendation in terms that suggest Lomax's belief in his intellectual superiority over Stoner.²²⁹ This is further implied when in a subsequent conversation Lomax does not remember the name of Stoner's seminar.²³⁰ Lomax's disregard for Stoner's seminar suggests subtle possibilities that Stoner does not consider: Lomax likely did not care much

RUSSO, *STRAIGHT MAN* (1998), JULIE SCHUMACHER, *DEAR COMMITTEE MEMBERS* (2015), and JANE SMILEY, *MOO* (1995). Yet, one is more likely to learn about and benefit from the insights of such sources if a mentor suggests them, highlighting the interplay between cultural and social capital and the relative disadvantage of those who lack both.

224. STONER, *supra* note 2, at 95.

225. *Id.* at 97–98.

226. *Id.* at 98.

227. *Id.* at 99–100.

228. *Id.* at 131.

229. *Id.* at 131–32.

230. *Id.* at 136.

about which seminar Walker takes and likely hoped that Stoner would understand that Walker was Lomax's protégé and admit Walker to the seminar as a favor to Lomax. These nuances are lost on Stoner, who, after Walker's rude behavior in the first session, confronts Lomax not understanding that Lomax is personally invested in this student's success.²³¹

Stoner asks about Walker.²³² Lomax gently replies that Walker is brilliant but concedes that Walker's dissertation, although imaginative, is not as well researched and substantiated as it could be.²³³ Lomax asks why Stoner wants to know, and Stoner replies—obtusely—that Walker had acted foolishly in class.²³⁴ Lomax's demeanor changes in an instant.²³⁵ Once again the shield comes up and Lomax brings up Walker's disability.²³⁶ Lomax becomes tense, shaking with rage. "I assure you, you will find him to be an *excellent* student."²³⁷ Stoner stares at Lomax with bewilderment, nods and leaves.²³⁸ Stoner's bewilderment reveals his poor capital endowments. He misreads the situation both because he does not have an appreciation of the inner workings of faculty politics and because he does not understand the significance of professional relationships. Lomax begins by being friendly and honest, but Stoner's inability to understand Lomax's stake in Walker's career seems like a personal insult, and Lomax, himself endowed with ample social and cultural capital, cannot believe that Stoner is so ill-equipped to understand social and professional nuance. A savvier, more culturally endowed academic would have noticed and made note of Lomax's reaction, at least as an indicator of Lomax's motivations.²³⁹

In Stoner's subsequent class sessions, Walker's poor behavior continues and Stoner takes no action.²⁴⁰ Walker's laziness and ignorance are partially to blame for the bad situation in class, but Stoner, as the professor in charge of the class, is also responsible.²⁴¹ A professor endowed with more cultural and social

231. *Id.* at 136–37.

232. *Id.* at 136.

233. *Id.* at 137.

234. *Id.*

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. *See id.* at 161–64.

240. *Id.* at 137–43.

241. *Id.* at 142.

capital might have known to discuss the experience with mentors or colleagues and would have known how to defuse the situation. The tension comes to a head when the seminar students must present their work.²⁴² Walker postpones his presentation as long as he can, eventually delivering a poorly researched project that attacks another student's work and questions the validity of the seminar.²⁴³ Consistent with Lomax's earlier assessment of Walker as potentially brilliant but lazy, which Stoner did not pay enough attention to, Walker's presentation could have been superb, but instead it is a caricature, little more than speculative improvisation with scant support.²⁴⁴ Stoner angrily confronts Walker, demanding to know how, if Walker completed the work two weeks ago as he said he had, his presentation could have been a response to the previous week's presentation.²⁴⁵ After arguing back and forth, Stoner insists on a failing grade.²⁴⁶

This interaction can certainly be described in terms of a hardworking professor confronting a pompous graduate student. Stoner admits Walker against his better judgment as a courtesy to Lomax.²⁴⁷ Walker does not care at all about the seminar, the topic, nor the professor, but holding Walker solely responsible for the ordeal is too simplistic.²⁴⁸ Stoner has every right to expect graduate students in an advanced seminar to do the assigned work. He is entitled to neither entertain nor tolerate Walker's tardiness and poor preparation. At the same time, as the professor in a hierarchal relationship, Stoner bears some responsibility for the unfortunate turn of events and its fall out. Early on, he could have called Walker in for a conversation. A professor committed to the learning and success of his students has a responsibility to instruct all students, including the difficult ones, even in spite of their refusal to listen and learn, and Stoner could have talked with Walker about his expectations and his disappointment. Stoner fails to reach Walker, fails to induce him to work, and fails to get him to learn.²⁴⁹ Alternatively, Stoner could have at least subtly communicated to Walker that he was seeing through Walker's antics and that Walker would have to work harder to pass the seminar.

242. *Id.* at 138–43.

243. *Id.* at 139–46.

244. *Id.*

245. *Id.* at 146.

246. *Id.* at 147.

247. *See id.* at 132.

248. *See id.* at 131–32.

249. *Id.* at 137–47.

A more experienced professor endowed with more social and cultural capital would have been more likely to seek counsel from colleagues and address the behavior before it became a serious problem. The consequences of Stoner's failure to do so ripple out for decades.²⁵⁰

Importantly, Stoner fails to realize that the episode and its fallout are never between Stoner and Walker. They are always between Stoner and Lomax, with Walker as a pawn. Walker may be an arrogant, lazy pseudo-intellectual, but he is under Lomax's tutelage.²⁵¹ This should have been immediately obvious to Stoner, as Walker came to take the seminar at Lomax's advice, and given Lomax's unreasonably angry reaction to Stoner's displeasure at Walker's behavior. Yet, understanding that Walker is only a pawn requires a nuanced understanding of the political culture of academic institutions,²⁵² the very cultural capital Stoner lacks.

By the time Stoner is asked to sit on Walker's oral examination board, the battle lines are drawn.²⁵³ Lomax's behavior at the examination demonstrates his personal investment in its outcome.²⁵⁴ Of course, Stoner's desire to fail an unprepared and ignorant student is perfectly legitimate. Yet, for Stoner to think that he is still battling Walker alone is a total failure of judgment (cultural capital) and even a worse one of relationships (social capital). Notably, the episode demonstrates the subtle relationship between merit and capital in that Walker lacks merit but succeeds instead because of his possession of social and cultural capital. The point is that sometimes taking a stance and attempting to enforce meritorious standards may result in significant loss of capital, such as Stoner's irreparably damaged relationship with Lomax and his stalled career. The lesson is not that one should forego merit in such circumstances but that enforcing standards, at times, can and should be navigated politically to minimize loss of capital.

Walker arrives at the exam completely unprepared, but with Lomax's softball questions, he is able to impress the other examiners.²⁵⁵ Lomax's initial questions allow Walker to deliver a brilliant performance, surprising both

250. *Id.* at 177.

251. *Id.* at 131.

252. *See, e.g.,* Devon W. Carbado & Mitu Gulati, *Tenure*, 53 J. LEGAL EDUC. 157 (2003) (examining the politics of tenure); *Report of the AALS Special Committee on Tenure and the Tenuring Process*, 42 J. LEGAL EDUC. 477 (1992).

253. *See* STONER, *supra* note 2, at 152.

254. *Id.* at 153–61.

255. *Id.* at 153–57, 161.

Stoner and Finch.²⁵⁶ Lomax dominates the examiners' questions, restating and changing them so that Walker can talk about his limited field of knowledge.²⁵⁷ Stoner takes over, asking Walker basic questions and rebuffing Lomax's attempts to interject.²⁵⁸ Stoner demands answers to his inquiries, which Walker cannot provide.²⁵⁹ By the end of this display, the rest of the committee is ready to fail Walker,²⁶⁰ but Lomax, notwithstanding Walker's ineptitude, suggests a passing grade.²⁶¹ A conflict between the committee members ensues, and Stoner, true to form, is oblivious to the political consequences of his hard-liner attitude as to Walker's passing grade.²⁶²

Lomax tries to broker a compromise in the form of a conditional pass, to which the third committee member, aware of the political consequences of the exchange, is eager to agree.²⁶³ Stoner stubbornly objects and insists on failing Walker.²⁶⁴ Lomax becomes cold and accuses Stoner of bias against Walker, which Stoner should have realized would happen based on Lomax's reaction to their previous discussion about Walker.²⁶⁵

Given Lomax's personal investment in Walker's success, the relevant questions facing Stoner should have been what to do and how to react when an arrogant and powerful colleague attempts to have his graduate student pass undeservingly. There should have come a point when Stoner realized that insisting on a failing grade stopped being about Walker and became about exposing Lomax, but Stoner's lack of capital renders him incapable of seeing beyond the academic injustice in front of him.²⁶⁶ It would have been one kind of a stance if Stoner had realized that the fight was with Lomax and chose to engage anyway. It is an altogether different situation when Stoner fails to correctly identify his opponent and acts on what he believes is principle and merit but is actually as much about anger and impulse. It is Stoner's lack of cultural capital—here, his failure to understand the inner-workings of academic

256. *Id.* at 154–55.

257. *Id.*

258. *Id.* at 157–61.

259. *Id.*

260. *Id.* at 161.

261. *Id.*

262. *Id.* at 161–62.

263. *Id.* at 163.

264. *Id.*

265. *See id.* at 163.

266. *See id.* at 161–64.

culture—that helps illuminate and explain his conduct and, subsequently, his downfall.²⁶⁷

A battle between two angry social misfits follows. Lomax assumes that he can force the committee to pass Walker if he pushes hard enough, by making it too difficult, too personal, and too uncomfortable for the committee to fail Walker.²⁶⁸ He does not stop to second-guess himself and never realizes that he is engaged in a high-stakes game with the one colleague who neither knows how to play nor realizes that they are playing.²⁶⁹ Stoner is oblivious to the situation.²⁷⁰ He simply does not apprehend that questioning Walker's abilities and future at the department goes beyond Walker and his performance in Stoner's seminar and at the oral examination.²⁷¹ Questioning Walker's abilities *is* questioning Lomax's judgment. Stoner does not understand this interplay, which is precisely the point about his lack of cultural capital. No doubt, Walker is a fraud.²⁷² But in the real academic world, calling Walker a fraud is also calling Lomax a fraud, or at least accusing Lomax of covering up for Walker.

After conceding his defeat regarding Walker,²⁷³ Stoner, still not comprehending the consequences of his actions, tries to patch things up with Lomax.²⁷⁴ "We've had a disagreement, but that isn't unusual. We've been friends before, and I see no reason—," begins Stoner.²⁷⁵ "We have never been friends," retorts Lomax.²⁷⁶ Walker is "[a] brilliant student, whose only crimes were his imagination, an enthusiasm and integrity . . . and, yes, I might as well

267. Recall that upon joining the faculty Lomax established himself as a lone wolf, a reclusive individual who failed to attend any faculty events, except for one party, Stoner's. *Id.* at 95. At the party, Stoner and Lomax briefly connected. *Id.* at 97–98. In a sense, both Lomax's attendance and the connection with Stoner were unsurprising: Lomax, an outcast, found Stoner, the social outcast, unthreatening. *See id.* That is not to say, of course, that Stoner was to blame for the relationship's failure to launch. In fact, it is Stoner who, somewhat out of character, attempted to follow up on it. *Id.* at 99. But at the least, the early interaction suggests an empathy between Stoner and Lomax. *See id.* at 97–98. There was no early animosity between the two men, quite the contrary. *See id.* There was no inevitable reason, therefore, for things to fall apart the way that they did. Rather, Stoner's lack of capital assets helps explain the battle and its aftermath.

268. *Id.* at 171–72.

269. *See id.*

270. *See id.* at 170.

271. *See id.* at 162.

272. *See id.* 157–61.

273. *Id.* at 175.

274. *Id.* at 176.

275. *Id.*

276. *Id.*

say it—an unfortunate physical affliction that would have called forth sympathy in a normal human being. . . . for that, I cannot forgive you.”²⁷⁷ Finally, Stoner begins to appreciate the depth of the dispute. “[A]lmost with horror, Stoner realized that Lomax was dreadfully and irrevocably sincere.”²⁷⁸ Lomax continues:

I don’t think you’re fit to be a teacher; no man is, whose prejudices override his talents and his learning. I should probably fire you if I had the power [Y]ou are protected by the tenure system. . . . I want to have nothing to do with you. Nothing at all. And I will not pretend otherwise.²⁷⁹

It is likely that Lomax’s biases supersede his judgment, but he has a valid point about Stoner’s fitness as a teacher, albeit not for the reasons Lomax articulates. Stoner’s lack of social and cultural capital in part explains his failure as a teacher to deal with a difficult student and partially accounts for his failure as a professor to deal with a difficult colleague. This deficiency does not render Stoner unfit to be a professor, but it does help explain his subsequent failures: Stoner and Lomax do not speak a word to each other for twenty years.²⁸⁰ News travels, and Stoner becomes ostracized and marginalized in the department.²⁸¹ He becomes a loner.²⁸² He spends more time at home, but it only makes Edith increasingly hostile.²⁸³ For the first time, he wonders if his life is worth living.²⁸⁴

Nasty feuds are not uncommon in the academic swamp. Perhaps the Lomax-Stoner battle could not have been avoided. Perhaps a savvier academic would have still decided to take a stand against Walker and Lomax. Perhaps taking such a stance would have been warranted in the circumstances. Yet, one endowed with ample social and cultural capital would have stood a better chance to altogether avoid or fare better in the battle, and thus a better chance of finding success as an academic in Lomax’s department.

277. *Id.*

278. *Id.*

279. *Id.* at 176–77.

280. *Id.* at 177.

281. *Id.*

282. *Id.* at 178.

283. *Id.*

284. *Id.* at 179.

3. The king of capital

In the case of William Stoner, the lack of social and cultural capital helps explain his relative failures, both professional and personal.²⁸⁵ Success in America requires not only individual hard work and effort, but also capital.²⁸⁶ Stoner possesses virtually no capital endowments, and while he is able to achieve a lot by virtue of his hard work and determination, the utter lack of capital constitutes a significant limitation he does not see and therefore cannot overcome.²⁸⁷ In a stark contrast, Gordon Finch is the ultimate master of deploying cultural and social capital, and his successes are in part explained by his cultivation and use of his capital assets.²⁸⁸

Finch always says and does what would be perceived by everybody to be the right thing.²⁸⁹ He enlists in the war because there is a patriotic wind blowing, not because he is truly patriotic.²⁹⁰ He expresses disappointment with Stoner's decision not to enlist,²⁹¹ but he is not really angry or displeased with Stoner.²⁹² As Dave Masters accurately predicts early on, Finch belongs in the university because he possesses ample cultural capital: he understands the nuances of the inner workings of academia and can therefore position himself strategically for success within it.²⁹³ Finch makes the most of his military service, spending his time in officer training and completing his Ph.D. at the prestigious Columbia University in New York City.²⁹⁴ He returns to Columbia, Missouri, wearing a uniform and referring to "my men" without having actually been to the battlefield.²⁹⁵ Arriving on campus just before the beginning of the semester, Finch is too late for a teaching position, but he quickly identifies an opening as an assistant to the elderly Dean and assumes the job.²⁹⁶ Seizing his

285. See *supra* Sections II.C.1, II.C.2.

286. See *infra* Section II.D.1.

287. See *infra* Section II.D.1.

288. See, e.g., STONER, *supra* note 2, at 44–45 (recounting Finch's return to campus and immediate involvement in campus affairs).

289. See *id.* at 35.

290. See *id.* at 34–35.

291. *Id.* at 38.

292. See *id.*

293. *Id.* at 30–31.

294. *Id.* at 39.

295. *Id.* at 39, 44.

296. *Id.* at 44.

opportunity, he hosts a reception at the old Dean's home, signaling to all that he is the person to know on campus and the heir apparent to the Dean.²⁹⁷

There are ample examples of Finch's command and control of the academic life on campus.²⁹⁸ He manipulates Stoner to reject the opportunity to become Chair of the Department, so that he can avoid the awkwardness of denying Stoner his due.²⁹⁹ He privately expresses his reservations to Stoner while publically endorsing Lomax for Chair of the Department, knowing that Lomax has the ear of the University's president.³⁰⁰ Finch masterfully navigates the Walker-Stoner-Lomax debacle, first suggesting that the two hot heads cool off following Walker's orals examination,³⁰¹ then brokering a compromise that lets Stoner not participate in passing Walker, allows Lomax to save face, and lets Walker continue his studies.³⁰²

Next, Finch intervenes when Lomax threatens to denounce Stoner as harboring prejudice against the disabled.³⁰³ Finch acts not on principle or loyalty to his old friend, but rather out of a sense of what is best for the University and therefore for himself as Dean.³⁰⁴ He knows that Stoner is innocent of the charges of prejudice that Lomax levels against him, but Finch does not defend Stoner on that basis.³⁰⁵ Instead, he springs into action because accusations of bias by Lomax against Stoner will reflect poorly not only on the university but also on Finch as a Dean.³⁰⁶ In this instance, Finch's astute cultural capital is not inconsistent with merit in that Finch does the right thing by supporting Stoner, but his motivations demonstrate the complex relationship between merit and capital.³⁰⁷ While deploying capital may be consistent with

297. *Id.* at 44–46.

298. *See, e.g., id.* at 151–52, 165–66.

299. *Id.* at 151–52.

300. *Id.* at 165–66.

301. *Id.* at 164.

302. *Id.* at 172, 175.

303. *Id.* at 171–72.

304. *Id.* at 165 (“[T]he timing is awkward as hell. A split in the department right now—” Finch shook his head.”). The timing was awkward for Finch who was about to become, after many years in the waiting, permanent Dean of Arts and Sciences. *Id.* at 151; *see also id.* at 172 (“There will be no charges. . . . I’m not going to have the department or the college dragged into a mess.”).

305. *Id.* at 172.

306. *Id.*

307. *See id.* at 166–67. Finch tells Stoner, “I know you’re right,” but immediately continues, “[b]ut let’s be practical.” *Id.* at 166. “What does it matter about Walker?” *Id.* at 167.

meritorious outcomes, the two are not inherently aligned.³⁰⁸ One suspects that if siding with Stoner rejecting false accusations of prejudice was not in the university's and Finch's own best interests, Finch might not have done the right thing and would have instead deployed his cultural capital siding with Lomax.

Stoner is adamant about failing Walker, which would have disastrous effects for Walker, as unanimous passing is required, but Finch interjects and recommends postponing the decision by forty-eight hours.³⁰⁹ The next day, Finch asks Stoner to his office before Lomax arrives, where Stoner once again reveals his complete misunderstanding of the academic political landscape.³¹⁰ Oblivious to Lomax's hard feelings, Stoner tells Finch that he believes that Lomax is the best scholar in the department (likely an accurate observation) and that Lomax acts without malice (a grave mistake).³¹¹ Finch, keenly grasping Stoner's naïve state of mind, cautions against a split in the department, and before Stoner can reply, shares that Lomax has been selected as the next Chair of the Department.³¹² Finch delivers a performance worthy of a seasoned politician: he tells Stoner that he had no choice in the matter, adds a meaningless statement regarding Stoner's just claim to the position based on seniority, and concludes by saying that yesterday's events could have changed his mind but now it is too late, as Lomax's appointment is set in stone.³¹³

Stoner, true to form, misses the coded messages that Finch is trying to convey, specifically that Lomax is now endowed with significant power over Stoner, and that Stoner had better capitulate, or suffer the consequences.³¹⁴ Such naïve ignorance of faculty politics and cultural capital is too much for Finch to bear.³¹⁵ Finch explodes:

God damn it, Bill You've got to understand. I don't give a damn about Walker, or Lomax, or—but you're an old friend. Look. I think you're right in this. Damn it, I know you're right. But let's be practical. Lomax is taking this very seriously Lomax can be vindictive And to a certain extent I'll have to go along with him. . . . Hell, to a *large* extent

308. See *infra* Section III.C.

309. STONER, *supra* note 2, at 164.

310. *Id.* at 165–69.

311. *Id.* at 165.

312. *Id.* at 165–66.

313. *Id.*

314. See *id.* at 166.

315. *Id.*

I'll have to go along with him. . . . Do you see what I'm trying to say?³¹⁶

Finch implores Stoner to reconsider, and even suggests that Stoner tell everyone that Finch made him change his mind.³¹⁷ “It isn’t a matter of my saving face, Gordon,” replies Stoner.³¹⁸ “I know that,” says Finch, “I said it wrong . . . What does it matter about Walker? Sure, I know; it’s the principle of the thing . . .”³¹⁹ “It’s not the principle,” says Stoner, “It’s Walker. It would be a disaster to let him loose in a classroom.”³²⁰ Finch disagrees.³²¹ “If he doesn’t make it here, he can go somewhere else and get his degree; and despite everything he might even make it here. You could lose this, you know, no matter what you do. We can’t keep the Walkers out.”³²² “Maybe not,” says Stoner, “But we can try.”³²³ Stoner naively mentions Masters, reminding Finch that Masters opined that the likes of Walker were the world, and if they and the world they populate were allowed to invade academia, the university would become as meaningless as the outside world.³²⁴ Stoner’s argument reveals his integrity, even his idealism. Yet, at the same time, it constitutes idealistic naiveté, grounded in Stoner’s lack of cultural capital and failure to understand the workings of the department. The academic world is no different than the world outside of it, and the Walkers and Lomaxes of the world already control it.

Note that Stoner is in a position to reap the benefits of his only social capital asset—his relationship with Dean Finch.³²⁵ Perhaps Stoner is a person of unusual integrity who ought to be celebrated as an academic Atticus Finch.³²⁶ More likely, it is Stoner’s lack of cultural capital that makes him act foolishly and ignore Finch’s advice, only to have his conduct misrecognized as stubborn meritocracy. To be sure, Stoner does not reject Finch’s advice based on his

316. *Id.*

317. *Id.* at 167.

318. *Id.*

319. *Id.*

320. *Id.*

321. *Id.*

322. *Id.*

323. *Id.*

324. *Id.*

325. *See id.* at 165–66.

326. Or at least an early Atticus Finch in HARPER LEE, *TO KILL A MOCKINGBIRD* (1960), as opposed to the author’s later Finch in HARPER LEE, *GO SET A WATCHMAN* (2015).

convictions and ideals. Rather, he does not take Finch's advice because he does not understand it and the consequences of ignoring it.

Too late, Stoner considers his options as Lomax's revenge begins to take shape. Lomax becomes Chair of the Department and gives Stoner an impossible teaching schedule.³²⁷ Stoner mentions moving away to Edith, but Edith is scared and then angry.³²⁸ She has heard about his ordeal with Lomax.³²⁹ "What are you thinking of? . . . I mean, *Grace* and I are involved in this. . . . You should have thought of this before, of what it might lead to," she compellingly points out.³³⁰ Edith is right. Only *after* the schedule comes out, Stoner considers, for the first time, the possibility of leaving Columbia University.³³¹ Moreover, Edith's admonishments seem to indicate that she saw this coming, given Stoner's refusal to compromise, and could have helped him to avoid it, if they had a better relationship. Finch, too, foresaw the retaliation and had alerted Stoner that Lomax would most likely react.³³² Stoner does not fully comprehend the consequences of his actions, nor the advice that Finch tries to convey. Such lack of sophistication is the very demonstration of Stoner's poor social and cultural capital assets.

D. Stoner's Insights: Merit and Capital Explain Success and Failure

Take I—the traditional read—celebrates William Stoner as a poster child of the American Dream, one who attains success solely as a result of individual hard work. Take II—the counter read—suggests that the Dream is a myth. Success and failure are not a function of individual effort and merit but of capital: relationships, connections, and manipulation of knowledge. Stoner is a victim of inherent limitations imposed by his lack of social and cultural capital endowments. Combined, the two perspectives offer a complex, revealing portrait of success and failure in America, as well as a cautionary tale about buying into the Dream while ignoring the impact of capital in America.

327. STONER, *supra* note 2, at 172–73.

328. *Id.* at 173.

329. *Id.*

330. *Id.* at 173–74.

331. *Id.* at 173.

332. *Id.* at 166.

1. Success and failure in America: the interplay of merit and capital

Individual hard work and effort are necessary conditions for attaining success. Yet, those endowed with ample capital assets are better positioned and more likely to succeed, whereas those endowed with little capital are more likely to fail.³³³ This fundamental insight is apparent in all of the novel's key characters.

William Stoner attains great success by working hard.³³⁴ Climbing up the socioeconomic ladder, he overcomes his poor background to become a white-collared English professor.³³⁵ His success is meritorious in that it is the result of his individual hard effort and sheer determination, benefitting from no shortcuts or handouts along the way. If Stoner is lucky, in the sense of being in the right place at the right time, for example, by completing his dissertation during World War I as the faculty ranks dwindle, he exemplifies making one's own luck. He decides not to enlist, instead working hard and completing his Ph.D., without which he would not have secured the academic position.³³⁶

At the same time, however, Stoner's relative failures, namely his inability to become the scholar and teacher he wanted to be, are not the result of insufficient individual effort. Rather, these are better explained in terms of his poor social and cultural capital endowments.³³⁷ Stoner does not understand the academic milieu and has no mentors to help inform or educate him.³³⁸ Indeed, he does not even understand the need to cultivate mentors or become a political actor on campus.³³⁹ As a result, he ignores the advice he gets from Finch and finds himself on the losing end of a political battle he did not know he was fighting.³⁴⁰ The professional fallout converges with personal turmoil with Edith at the home front to puncture his thin professional identity and he ends up as an obscure and soon forgotten professor.³⁴¹

John Williams's careful and insightful novel captures the complex nature of success and failure as a product of the interplay between merit and capital. Without his impeccable work ethic and tireless individual effort, William

333. See generally Jewel, *supra* note 82; Bourdieu, *supra* note 79.

334. See *supra* Section II.B.

335. STONER, *supra* note 2, at 3.

336. *Id.* at 38–40.

337. See *supra* Section II.C.

338. See *supra* Sections II.C.1, II.C.2.

339. See STONER, *supra* note 2, at 152–53.

340. *Id.* at 162–74.

341. *Id.* at 125–28.

Stoner would not have attained all of his significant successes, yet all the capital in the world would not have necessarily prevented his failures.³⁴² Rather, had Stoner been endowed with more social and cultural capital, he would have been better positioned and more likely to attain his dreams.³⁴³ Without capital, he was doomed for failure.³⁴⁴ The novel's other main characters all consistently reveal the same interplay.

Finch and Lomax, while endowed with ample capital, are far from a caricature of the American Dream and their success cannot be attributed simply to capital. Rather, both work tirelessly to achieve their goals.³⁴⁵ Finch completes his dissertation and graduates from an elite institution, hardly an easy academic feat, likely compensating for a relative lack of ingenuity and creativity with hard work.³⁴⁶ He returns to campus, identifies an opportunity, and pursues it with unparalleled zeal, making himself indispensable to the institution and converting a temporary administrative post into a decanal appointment, all while handling with sophistication and insight the likes of Stoner and Lomax.³⁴⁷ While Gordon Finch is a shrewd capital player, his effort and skills should not be underestimated. At the hands of a less-skilled academic, for example, the Lomax-Stoner-Walker affair would have exploded publically, complete with allegations of disability discrimination, causing an embarrassment to the university and likely ending the tenure of the presiding Dean.³⁴⁸ Yet Finch maneuvers smoothly and the potential debacle is averted.³⁴⁹ Finch's hard work, alongside his masterful use of capital, is rewarded and he achieves the very success he seeks.³⁵⁰

Similarly, Hollis Lomax personifies the marriage of merit and capital. Far from an ideal academic or even a decent human being, he nonetheless is the complete merit-capital package: he graduates from an elite institution and

342. *See id.*

343. *See Bourdieu, supra* note 79 (adopting the theory that societal outcomes that individuals achieve depends on the amount of capital they possess); *Coleman, supra* note 85, at 109–13 (discussing how social capital affects the creation of human capital from one generation to the next); *Jewel, supra* note 82, at 317 (discussing how cultural capital is integral for an individual's social mobility and solely focusing on an individual's merit “tends to obscure the role culture plays”).

344. *See supra* Section II.C.

345. *See supra* Section II.C.2, II.C.3.

346. *STONER, supra* note 2, at 39.

347. *Id.* at 44–45.

348. *See supra* Section II.C.3.

349. *STONER, supra* note 2, at 172.

350. *See id.* at 151.

becomes a hard working brilliant scholar.³⁵¹ Overcoming a disability and related prejudices he gets an academic job and deservedly rises to the rank of full professor and Chair of the Department.³⁵² At the same time, he knows to get the ear of the university's president, stay on good terms with Finch, and develop a student following, complete with the Walkers of the academic world.³⁵³ While far from perfect (his hard work, brilliance, and capital do not help him avoid an unnecessary fight with Stoner),³⁵⁴ he earns by hard work, sheer determination, and effective use of capital all of his accomplishments and success.

Even the novel's more minor characters can be understood to demonstrate the complex conditions for success and failure and reveal the interplay between merit and capital. At first glance, Masters's and Walker's characters may come across as a cruel irony, suggesting that the hard-working idealists who act on their convictions—Masters enlists in the war effort in defense of his country—will only get themselves killed, while the undeserving frauds—the likes of Walker who lack any merit—live to graduate with a Ph.D.³⁵⁵

Yet Masters's character sends a subtler message. Merit alone (Masters's brilliance) does not guarantee success.³⁵⁶ Sometimes even the meritorious fail, and, in Masters's case, die tragically.³⁵⁷ Masters did not die because he did the right thing. He died to remind us that hard work and merit do not guarantee success, they just make one more likely to attain it. Similarly, Walker's so-called triumph over Stoner should not be taken to mean that those endowed with social capital (Walker's relationship with the powerful Lomax) end up succeeding even when lacking in merit (Walker's poor performance in Stoner's seminar and orals).³⁵⁸ If Walker's dream is to obtain a graduate degree while doing as little work as possible, then his capital assets get him there undeservingly. But Walker, according to Lomax, has great, wasted potential.³⁵⁹ If Walker's dream is to follow in the footsteps of his mentor, Lomax, and become a brilliant scholar, then he fails miserably, proving once again that

351. *See id.* at 90.

352. *Id.* at 91, 165–66.

353. *Id.* at 131, 166.

354. *Id.* at 163–73.

355. *Id.* at 39, 175.

356. *See id.* at 39.

357. *Id.*

358. *See supra* Section II.C.2.

359. STONER, *supra* note 2, at 137.

success is not merely a function of ample capital. Notwithstanding his significant capital assets, Walker fails to achieve his own dream exactly because he is a lazy intellectual who does not put in the necessary individual effort and hard work to attain success.

2. Capital misrecognized as merit: a cautionary tale

Capital analysis is imperative to an accurate understanding of success and failure in America.³⁶⁰ Without it, the role of capital in attaining both success and failure may be misjudged: success may be erroneously attributed solely to the use of large capital assets, failing to recognize relevant hard work (Finch, Lomax); and failure may be mistakenly attributed to insufficient effort or fatalism rather than to poor capital endowments (Stoner).³⁶¹

Relatedly, capital analysis may assist in avoiding misrecognizing lack of capital as merit and integrity. Recall Stoner's stance against Walker and Lomax, attempting to uphold objective standards of academic merit and expose Walker as a fraud.³⁶² A conventional interpretation of this novel is that Stoner is a person of great integrity, standing up for his convictions, ideals, and meritorious standards of academic excellence, irrespective of the personal cost and consequences.³⁶³ Yet, is Stoner a man of integrity and merit?³⁶⁴

360. See *supra* Section II.D.1.

361. See *supra* Section II.D.1.

362. STONER, *supra* note 2, at 161–63, 167.

363. Despite his failures, Stoner is considered a hero because of his stubborn dignity, professional dedication, and commitment to personal values. See Dickstein, *supra* note 6 (writing that because of his monastic mindset and unshakeable integrity, Stoner's sad story is secretly triumphant); Howe, *supra* note 113, at 19 (explaining that his story is a victory in composing integrity); Martin, *supra* note 113, at 1537 (noting that due to his ideals, Stoner is "unaffected by the eyes of the world"); C.P. Snow, *Good Man and Foes*, 20 DENV. Q., Winter 1986, at 103 (noting that there is something honorable and triumphant about the way Stoner handles his disappointments and struggles); Stamper, *supra* note 113, at 94 (writing that Stoner's love for literature frees him from his limitations and failures); Alan Prendergast, *Sixteen Years After His Death, Not-so-famous Novelist John Williams is Finding His Audience*, WESTWORD (Nov. 3, 2010), <http://www.westword.com/2010-11-04/news/sixteen-years-after-his-death-not-so-famous-novelist-john-williams-is-finding-his-audience/> [<https://perma.cc/UEN5-V7NW>] (noting that Stoner had "more than most of us ever gain—his own identity"). Overall, Stoner is seen as a man with unrelenting, uncompromised high standards, a profound inner compass, and an admirable self-peace. See *Notes on Current Books*, *supra* note 113, at cxx.

364. Perhaps not. For example, in the one conversation Stoner and Edith have during their war over Grace, Stoner tells Edith he realized she hated him. STONER, *supra* note 2, at 125–26. "What?" Edith is genuinely astounded. *Id.* at 126. Calling him "Willy" (usually reserved to when they had company) she says laughing, "Don't be foolish. Of course not. You're my husband." *Id.* at 126.

Stoner's choice not to act on Finch's advice, oppose Lomax, and argue for failing Walker could mean at least one of two things. First, Stoner could be acting on principle, taking the moral high ground and standing for academic merit while appreciating the likely consequences of his actions. Such a course of conduct would certainly indicate integrity, even courage. Stoner's surprise, however, at Lomax's revenge undercuts this interpretation and suggests that he did not appreciate the likely fallout.³⁶⁵ Second, Stoner might not comprehend or internalize Finch's advice given his poor cultural capital endowment. If he acts without appreciating the likely consequences of his conduct, then Stoner deserves less moral credit. While he still takes a meritorious stance, his position is driven as much by anger at Walker and by instinct as it is by moral reflection.³⁶⁶ Importantly, if Stoner engages in moral reflection at all, he acts on incomplete information. Certainly, without contemplating the likely consequences of his stance, his conduct cannot be considered courageous.

Notably, the point of capital analysis is not to debate the wisdom of Stoner's conduct and actions, but to demonstrate the impact of social and cultural capital (and their absence) on one's choices, conduct, and outcomes.³⁶⁷ If Stoner apprehends and weighs the consequences of his stance, then his actions can be considered meritorious, if disastrous, and he deserves credit for them. But if, as is more likely, he does not understand the advice that Finch gives him and acts from an ill-informed perspective, then he deserves less moral credit. In this case, William Stoner benefits from commentators' misrecognition of his actions, explained by his poor capital assets, as integrity and merit.³⁶⁸

Stoner pleads with her not to use Grace, but is unable to effectively communicate his threat. *Id.* "You'll what?" Edith asks calmly. *Id.* "All you could do is leave me, and you'd never do that. We both know it." *Id.* Several questions follow: why would Stoner not leave Edith? Does his decision to stay married to an abusive wife reflect integrity? Will he, for example, not leave Edith out of a sense of commitment to Grace? Or a belief in the institution of marriage? Or simply because he takes life as it comes his way, without challenging it too much? Is that integrity? Stoner accepts his life. That is true. But if he does not leave Edith simply because he was brought up to accept life and not challenge it, because his bad marriage is like a drought on the farm, it is unclear whether his "decision" not to leave his awful wife is an act of integrity. Moreover, Stoner does end up cheating on his wife, casting a cloud over his integrity. Irrespective of his reasons for staying married to Edith, as a person of integrity, Stoner should have eschewed cheating.

365. *Id.* at 175–77.

366. *See id.* at 145–48, 167.

367. *See generally* Jewel, *supra* note 82; Wald, *supra* note 79.

368. *See generally supra* Section II.C.

Walker deserves to fail Stoner's graduate seminar and his orals because he is ill prepared for both.³⁶⁹ Stoner's insistence on failing him, however, demonstrates his own naiveté in that capitulating to Lomax's requests to conditionally pass Walker (as opposed to simply passing him) would have been a way to not only enforce meritorious standards in the university but also cultivate social capital and avoid alienating a colleague.³⁷⁰ Graduate students who perform poorly on the orals should and do fail, but often there is little surprise as to the outcome of the orals, and most candidates pass their exams.³⁷¹ This is not because standards of merit are ignored, but because those who do not deserve to pass their orals are informally discouraged from taking them.³⁷² Specifically, as a courtesy to the student and the student's supervisors, a genuine concern about the candidate's qualifications will often be discreetly addressed by dissuading the candidate from taking the orals to begin with, and informally suggesting that she takes more time to prepare for them.³⁷³ This allows adherence to meritorious standards, while treating candidates and colleagues with respect and avoids undermining the institutions' culture.³⁷⁴ Stoner's insistence on applying meritorious standards and demanding that Walker be prepared could have been achieved by a conditional pass or by allowing Walker to retake the orals at some point in the future. From this

369. STONER, *supra* note 2, at 145–48, 157–61.

370. *See id.* at 163–64.

371. Similarly, candidates for tenure and promotion at American law schools do not usually fail but are discouraged from applying if the decision is likely to be controversial. *See generally* Katherine Barnes & Elizabeth Mertz, *Is It Fair? Law Professors' Perceptions of Tenure*, 61 J. LEGAL EDUC. 511 (2012); Carbado & Gulati, *supra* note 252.

372. *See generally* Barnes & Mertz, *supra* note 371.

373. Large law firms' promotion to partnership decisions feature a similar pattern. During their golden era in the 1950s and 1960s, *see* GALANTER & PALAY, *supra* note 154, at 26–29, large law firms featured the “up-or-out” policy pursuant to which following a probation period the firm promoted a fraction of its associates to partnership. *See* Fern S. Sussman, *The Large Law Firm Structure—An Historic Opportunity*, 57 FORDHAM L. REV. 969, 969 (1989). Those not promoted to partner were expected to leave the firm, yet rather than being voted down, they were often quietly ushered out of the firm and placed elsewhere with the assistance of the firm. GALANTER & PALAY, *supra* note 154, at 29.

374. *See generally* Russell G. Pearce & Eli Wald, *The Relational Infrastructure of Law Firm Culture and Regulation: The Exaggerated Death of Big Law*, 42 HOFSTRA L. REV. 109 (2013) (advocating for the adoption of a relational ideology and relational policies at large law firms); Eli Wald & Russell G. Pearce, *Being Good Lawyers: A Relational Approach to Law Practice*, 29 GEO. J. LEGAL ETHICS 601 (2016); Wald & Pearce, *supra* note 190, at 438–42 (arguing that law schools ought to become relational institutions).

perspective, Stoner's insistence of failing Walker seems less like an act of integrity and more like an act driven by misunderstanding of the academy.

Importantly, capital analysis does not imply that Stoner had to compromise his standards. The point is that he was naïve.³⁷⁵ Stoner, to some commentators the knight of merit and integrity, is caught in a sham performance by Lomax and Walker making a mockery of universities and takes a stance that will prove near and dear to him personally, without actually succeeding in stopping the farce.³⁷⁶ Stoner could have avoided having to take this quixotic stance by reaching out to Lomax and quietly arranging for Walker to defer his orals, not because he had a duty to do so but because doing so would have allowed him to take a meaningful stand for academic merit while avoiding a costly battle. From this viewpoint, Stoner's conduct is simply foolish.

Stoner possesses so little cultural and social capital that he is unaware of likely consequences of his conduct, but critics misrecognize his simplistic actions as meritorious and honest.³⁷⁷ Yet, we (and Stoner himself) will never know whether Stoner would have acted with integrity had he realized the futility and likely consequences of his conduct for himself, Edith, Grace, Katherine, and even Walker because, given his lack of social and cultural capital, Stoner was never able to act from an informed position.

Stoner's affair with Katherine provides another example of conflating integrity and merit with social and cultural capital. Initially, Stoner and Katherine may come across as sympathetic lovers, facing an inevitable cruel future in a harsh world. Stoner is trapped in an unhappy marriage.³⁷⁸ Katherine, alone in realizing Stoner's potential greatness as an unappreciated scholar, ends up as a disgraced lover and is forced off campus.³⁷⁹ Together they glimpse happiness, only for Katherine to be chased out of town by Lomax seeking his endless vendetta against Stoner.³⁸⁰ Stoner and Katherine appear to be victims of Stoner's stand for integrity and merit, and hardworking Stoner's failure to achieve love and happiness may seem both unfair and inevitable, or, at least outside of his control.

375. STONER, *supra* note 2, at 170.

376. *Id.* at 162–73, 175.

377. *See supra* note 363 and accompanying text.

378. STONER, *supra* note 2, at 74.

379. *Id.* at 211–13, 216.

380. *Id.* at 194, 197, 199, 214 (demonstrating glimpses of hope); *id.* at 216 (stating that Katherine leaves Columbia).

Capital analysis suggests a different interpretation. Stoner is not literally trapped in his marriage.³⁸¹ He chooses to stay in it and chooses to cheat on his wife, hardly an act of integrity.³⁸² Worse, he takes advantage of Katherine who ends up facing harsh consequences.³⁸³ Lomax cannot fire Stoner who is protected by tenure, but he forces Kathrine, a graduate student, to leave campus.³⁸⁴ John Williams informs us that Katherine subsequently graduates elsewhere and becomes a professor,³⁸⁵ thus taking the sting out of Stoner's poor judgment and betrayal, but Stoner is still clueless as to Katherine and the price she pays because of his feud with Lomax.³⁸⁶

The point, once again, is not to debate what Stoner should have done with respect to having an affair, nor to analyze the moral implications of his conduct. Rather, capital analysis offers a more sophisticated and more accurate perspective from which to understand what happened to Stoner and why, as a result of his own conduct. If Stoner was endowed with more cultural capital, he would be more likely to anticipate Lomax's course of action and could alert Katherine to the likely consequences of the affair. Had he done so, Katherine would be empowered to act on an informed basis and face the consequences if she so chooses. Stoner's first time being in love might have clouded his judgment with respect to the outcome of the situation. But the point remains that the lack of cultural capital deprives Stoner of the opportunity to do something about the possible consequences as an empowered, informed individual. Someone endowed with cultural capital might have acted differently. Stoner could not, and it is his low capital endowments that disempowered him.

Moreover, just as capital analysis reveals that Stoner may not be praise worthy for taking a meritocratic stance and acting with integrity (his low capital endowments prevented him from appreciating Lomax's reaction and thus the likely consequences of his actions), it suggests that he may not be blame worthy for implicating Katherine in an affair and inflicting Lomax on her (Stoner's low capital endowment made him blind to the possibility that Lomax will retaliate against his lover).³⁸⁷ Capital analysis thus demonstrates that Stoner acts less

381. *Id.* at 126.

382. *Id.* at 194.

383. *Id.* at 211–13, 216.

384. *Id.*

385. *Id.* at 249.

386. *See id.*

387. *Id.* at 136–37, 211–12.

out of integrity with regard to Walker and Katherine, and more out of ignorance brought about by his lack of capital assets.³⁸⁸ In both instances capital assets and their absences were misrecognized as acts of merit and integrity, a mistake capital analysis corrects.

3. *Stoner* as a case study of success and failure in America

William Stoner works hard all of his life and is able to live the American Dream, leaving his parents' farm and a life of hard physical labor behind.³⁸⁹ He becomes a university professor and lives a comfortable middle-class life.³⁹⁰ He spends his professional life teaching and engaging with the subject he loves.³⁹¹ Stoner epitomizes the Dream in that his hard work and individual merit allow him to move up the socioeconomic ladder and secure a better life for himself, his wife, and their daughter.³⁹²

At the same time, Stoner's professional failures, his inability to become the researcher he wants to be, to pursue his love of literature, and to become a respected colleague, epitomize the dependence of the American Dream on economic, cultural, and social capital, and demonstrate the hidden, but real, limits imposed on the Dream by low capital endowments.

The lack of economic, cultural, and social capital does not doom Stoner to failure, just as a significant capital endowment would not have guaranteed his success. A high endowment makes it easier to succeed and a low endowment makes it easier to fail, all the while rendering it possible to pretend that hard work and merit are the sole factors determining success.³⁹³ Stoner is not promoted to full professor because he never publishes anything other than his dissertation and is a mediocre and monotonic teacher.³⁹⁴ That is failure explained in meritocratic terms. At the same time, Stoner does not publish exactly because, lacking cultural and social capital, he does not know to seek academic mentors as a graduate student, does not benefit from mentoring that would have allowed him to grow as a scholar and a teacher, and does not know to avoid costly political battles that derail his career.³⁹⁵ Instead, he develops

388. *See id.*

389. *See supra* Section II.A.

390. STONER, *supra* note 2, at 3.

391. *Id.*

392. *See generally* STONER, *supra* note 2.

393. *See Jewel, supra* note 82, at 252–56; *see also infra* Section III.B.

394. STONER, *supra* note 2, at 3, 128, 274–75.

395. *See supra* Section II.C.

only a thin professional identity that does not survive the debacle with Lomax and his failed marriage to Edith.³⁹⁶ To deny the impact of cultural and social capital on Stoner's career and to attribute his failures to lack of hard work and merit is to misunderstand Stoner and the American Dream. It is to deny the real and inherent limitations and constraints within the Dream.³⁹⁷

III. CAPITAL ANALYSIS, MERIT AND SUCCESS

The American Dream, our collective belief that success is a function of individual hard work, is not only a cultural and political, but also a legal cornerstone informing our approach to areas of law from criminal and welfare law to constitutional and antidiscrimination law.³⁹⁸ Our belief is so strong that it withstands both empirical evidence disproving socioeconomic mobility³⁹⁹ and criticisms that reveal that the Dream excludes many.⁴⁰⁰ Indeed, even conversations questioning the Dream⁴⁰¹ tend not to get very far, with critics labeled as unpatriotic, as taking a stand against objective standards of excellence or as advocating for laziness.

Using *Stoner* as a case study, this Article showed that individual hard work alone cannot explain success and failure in America. Rather, success and failure also depend on one's economic, social, cultural, and identity capital endowments, in the sense that those endowed with ample capital assets are more likely to succeed whereas those lacking in capital assets are more likely to fail.⁴⁰² Moreover, capital often gets misrecognized: conduct is assumed to be

396. STONER, *supra* note 2, at 274–75.

397. See SAMUEL, *supra* note 112, at 1, 5.

398. See generally ELLIS COSE, *THE RAGE OF A PRIVILEGED CLASS* (1993).

399. See, e.g., Raj Chetty, et al., *Where is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States*, 129 Q. J. ECON. 1553 (2014) (documenting patterns of surprisingly low upward income mobility in the United States); Raj Chetty, et al., *Is the United States Still a Land of Opportunity? Recent Trends in Intergenerational Mobility*, 104 AM. ECON. REV. 141, 141 (2014) (finding that economic mobility in the United States is consistently lower than in most developed countries). See generally THOMAS PIKETTY, *CAPITAL IN THE TWENTY-FIRST CENTURY 1* (Arthur Goldhammer trans., 2014) (arguing that rising economic inequality is inevitable when, as is often the case, the rate of return on capital exceeds the rate of economic growth).

400. See TA-NEHISI COATES, *BETWEEN THE WORLD AND ME* 101, 124–25 (2015) (arguing that the American Dream is built on the backs of and excludes blacks); ROBERT D. PUTNAM, *OUR KIDS: THE AMERICAN DREAM IN CRISIS* 207–10 (2015) (arguing that the Dream is out of reach for the underprivileged). See generally Eli Wald, *Serfdom Without Overlords: Lawyers and the Fight Against Class Inequality*, 54 U. LOUISVILLE L. REV. 269 (2016).

401. See SAMUEL, *supra* note 112, at 196–203.

402. See *supra* Sections II.C, II.D.

meritorious or lacks in merit where in fact it reflects varying endowments of capital.⁴⁰³ In other words, the article demonstrated that capital matters, and that capital analysis is necessary to better understand and more accurately explain success and failure in America.

This part moves past the case study to develop a framework for capital analysis. Section A offers a brief analysis of the traditional account of the American Dream. Section B explains how capital influences success and failure alongside individual hard work. Like hard work, capital affects performance and its perception.⁴⁰⁴ Like expended individual effort, expended capital may contribute to and result in a better performance.⁴⁰⁵ Yet, capital may also affect success in negative ways: capital assets may be misrecognized as merit, and lack of capital may be misrecognized as underperformance or poor judgment.⁴⁰⁶ Explaining the pervasive impact of capital on success and failure, Section B establishes the need for capital analysis, a systematic response to the relationship between capital and merit. Section C develops the contours of capital analysis: practicing capital transparency, avoiding misrecognizing capital and merit, and building capital infrastructure and capital assets for all. Section D introduces and rejects several challenges to capital analysis.

*A. The Stuff Dreams are Made of:
Mobility, Individualism, and Meritocracy*

The American Dream is built on socioeconomic mobility, individualism, and meritocracy.⁴⁰⁷ Upward mobility is often confused with getting rich, but accumulating wealth, even in America, is only one aspect of climbing up the socioeconomic ladder.⁴⁰⁸ As James Truslow Adams explains in *The Epic of America*, the American Dream is:

[T]hat dream of a land in which life should be better and richer and fuller for every man, with opportunity for each according to his ability or achievement. *It is not a dream of motor cars and high wages merely, but a dream of social order in which each man and each woman shall be able to attain to the fullest stature of which they are innately capable, and be recognized*

403. See *supra* Section II.D.2.

404. See *infra* Section III.B.

405. See *infra* Section III.B.1.

406. See *infra* Section III.B.2.

407. See SAMUEL, *supra* note 112, at 3.

408. JAMES TRUSLOW ADAMS, *THE EPIC OF AMERICA* 404 (1931).

by others for what they are, regardless of the fortuitous circumstances of birth or position.⁴⁰⁹

Adams's famous words concisely capture the idea that the Dream is about the ability to obtain, not actually obtaining, and about living up to one's "fullest stature," not necessarily becoming the richest person around. Put differently, one is free not to compete in the rat race, even if most people do. The American creed is about a social order in which one can, should she choose to, rise up the ladder.⁴¹⁰ The ethos is about living up to one's potential and aspirations, which may have little to do with money.⁴¹¹ The Dream is about the ability of the individual, on her own, to achieve the highest goals of which she is capable.⁴¹²

Individualism means that the constitutive unit of society is an atomistic individual who can attain great success and prosperity relying solely on her own hard work and ability. In this Dream, a core belief is that an individual can pursue fame, fortune, and high socioeconomic status independently of family, friends, and networks.⁴¹³ Of course, such relationships may help the pursuit of success but importantly, they are not a necessary condition for it. Rather, the individual, by herself, is able to achieve success.⁴¹⁴ It is not a coincidence that we recognize Henry Ford, Steve Jobs, the Warren Court, and Joe Flom rather

409. *Id.* (emphasis added).

410. SAMUEL, *supra* note 112, at 13.

411. *See id.*

412. *See id.* at 5.

413. When he visited America in 1831, Alexis de Tocqueville observed a "new inner-directed individual" that he had not seen in Europe. LAWRENCE FREDERICK KOHL, *THE POLITICS OF INDIVIDUALISM: PARTIES AND THE AMERICAN CHARACTER IN THE JACKSONIAN ERA* 10 (1989). He coined the word "individualism" to describe "a society in which people seemed to abandon the centuries-old notion of corporate life and to be seeking meaning instead in private spheres of their own creation." *Id.* at 11; *see also* HOCHSCHILD, *supra* note 137, at xi ("[T]he American Dream [is] . . . the promise that all Americans have a reasonable chance to achieve success as they define it—material or otherwise—through their own efforts, and to attain virtue and fulfillment through success."); SAMUEL, *supra* note 112, at 3 ("That our station in life is earned rather than inherited is one of the founding principles of the American Dream, . . . and that we are a meritocracy versus an aristocracy something in which we have taken special pride.").

414. *See* SAMUEL, *supra* note 112, at 5.

than Ford Motors, Apple, the Supreme Court, and Skadden Arps.⁴¹⁵ Our ethos, for better or worse, is an individualistic one.⁴¹⁶

Meritocracy promises that, objectively, only the hardest working and most qualified, and therefore most deserving, individuals will attain success.⁴¹⁷ It is a constitutive feature of the Dream's allure because it implies that personal background and circumstances such as one's race, gender, ethnicity, class, disability, and sexual orientation are irrelevant to its pursuit.⁴¹⁸ It is in this sense that Adams spoke of individuals being "recognized by others for what they are,"⁴¹⁹ and Wolfe emphasized the chance "to live, to work, to be himself."⁴²⁰ This conception recognizes that some may be innately more talented than others

415. See, e.g., ED CRAY, CHIEF JUSTICE: A BIOGRAPHY OF EARL WARREN (1997); MALCOLM GLADWELL, OUTLIERS: THE STORY OF SUCCESS (2008); WALTER ISAACSON, STEVE JOBS (2011); VICTORIA SAKER WOESTE, HENRY FORD'S WAR ON JEWS AND THE LEGAL BATTLE AGAINST HATE SPEECH (2012). Indeed, even in the case of the Kennedys, theirs, arguably, is the story of Joseph, the family's patriarch. See generally DAVID NASAW, THE PATRIARCH: THE REMARKABLE LIFE AND TURBULENT TIMES OF JOSEPH P. KENNEDY (2012).

416. While there have long been critiques of our individualistic ethos, there is no denying that a commitment to individualism has yielded many desirable outcomes, for example, individual rights.

417. Although the word "meritocracy" was first used in a satirical essay warning about what might happen if a new social class formed on the basis of merit hardened into a new social order, see MICHAEL YOUNG, THE RISE OF THE MERITOCRACY 1870–2033: AN ESSAY ON EDUCATION AND EQUALITY 161–62 (Penguin Books 1961), the term has acquired more favorable connotations. John E. Roemer, *Equality of Opportunity*, in MERITOCRACY AND ECONOMIC INEQUALITY 17, 17 (Kenneth Arrow et al. eds., 2000) ("[I]n the competition for positions in society, all individuals who possess the attributes relevant for the performance of the duties of the position in question should be included in the pool of eligible candidates, and . . . an individual's possible occupancy of the position should be judged only with respect to those relevant attributes."); see, e.g., SHAUN BEST, UNDERSTANDING SOCIAL DIVISIONS 32 (2005) ("'[M]eritocracy' stands for a society where achievement in the occupational class system depends exclusively on individuals' ability and motivation. . . . [T]he social class that an individual is born into will have no significant impact on that person's future achievements in life."). But see MICHAEL YOUNG, *Down with Meritocracy*, THE GUARDIAN (June 28, 2001, 9:59 PM) <https://www.theguardian.com/politics/2001/jun/29/comment> [<https://perma.cc/AW5T-3PWC>] ("Ability of a conventional kind, which used to be distributed between the classes more or less at random, has become much more highly concentrated by the engine of education. . . . With an amazing battery of certificates and degrees at its disposal, education has put its seal of approval on a minority, and its seal of disapproval on the many who fail to shine from the time they are relegated to the bottom streams at the age of seven or before. The new class has the means at hand, and largely under its control, by which it reproduces itself.").

418. But see COATES, *supra* note 400, at 124–25 (arguing that the Dream is very much dependent upon one's racial identity).

419. ADAMS, *supra* note 408, at 404.

420. WOLFE, *supra* note 115, at 508.

but insists that one will be judged and rewarded based on hard work, effort, and skill, using objective standards of excellence.

The secular trinity of mobility, individualism, and merit is not merely a dream. Its impact on American public and private lives, values, and even fabric of society, cannot be understated.⁴²¹ The Dream frames, informs, and shapes key components of our shared social life, as well as legal policies and doctrines.⁴²² For example, individualism and meritocracy inform our conception of equality. Equality means the ability to pursue the Dream just like everybody else and have outcomes judged solely on one's merit.⁴²³ It is in this context that Dr. Martin Luther King, Jr. famously said, "I still have a dream. It is a dream deeply rooted in the American dream. I have a dream that one day this nation will rise up, live out the true meaning of its creed: 'We hold these truths to be self-evident, that all men are created equal.'"⁴²⁴ It is not a coincidence that Dr. King inherently tied his dream of equality to the American Dream because equality means that all Americans will attain mobility based on individual merit, rather than, for example, their race, gender, or ethnicity.⁴²⁵ Making this link explicit Dr. King continued, "I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character."⁴²⁶ Because our commitment to mobility, individualism, and merit explains some of our core attitudes, policies, and legal doctrines, a lot is riding on our Dream. But what if, as *Stoner* suggests, individual hard work simply cannot explain in and of itself success and failure in America? Economic, social, cultural, and identity capital are the key to understanding a revised account of the American Dream, one that more accurately accounts for success and failure.

421. Indeed, the Dream and the opportunities it affords have attracted generations of foreign immigrants to America.

422. See SAMUEL, *supra* note 112, at 196.

423. This equality of opportunity connotes the "right to seek success in one's chosen sphere regardless of social factors such as class, race, religion, and sex." *Equality of Opportunity*, OXFORD ENGLISH DICTIONARY (2d ed. 1989).

424. Martin Luther King, Jr., "I Have a Dream . . .", Speech at the March on Washington 4 (Aug. 28, 1963) (transcript available at the National Archives and Records Administration); see also ROBERT K. VISCHER, MARTIN LUTHER KING JR. AND THE MORALITY OF LEGAL PRACTICE: LESSONS IN LOVE AND JUSTICE (2013).

425. See generally King, *supra* note 424.

426. *Id.* at 5.

B. *How Capital Affects Success and Failure*

Individual hard work affects performance and leads to success or failure.⁴²⁷ Yet, various forms of capital also affect performance and its perception, in both positive and negative ways.

1. The positive effects of capital

Capital has a positive effect on merit and therefore success when its use results in improved performance. Consider the basic example of exam taking. Individual hard work intuitively affects performance: one who studies diligently, masters the materials being tested, and practices repeatedly to enhance exam-taking skills is more likely to succeed than one who does not adequately prepare for the exam. Capital, however, may also affect performance: one endowed with economic capital may purchase study aids or tutoring to assist in preparing for the exam. One endowed with social capital assets, for example, mentors, may benefit from talking to those who have taken the exam before and learn from their experience. One endowed with cultural capital may develop better exam taking skills or may better understand what she will be tested on.⁴²⁸ One endowed with identity capital, for example, being white in a culture that confers benefits on whiteness,⁴²⁹ may benefit from higher self-esteem and confidence building attitudes by others, which may lead to better performance.⁴³⁰

Such use of capital has positive consequences on performance in the sense that capital expenditure is making the exam taker better at the job at hand and thus more likely to succeed. Yet, notably, expending capital assets prior to taking an exam does not guarantee superior performance. For example, unused study aids or ignored advice are not likely to enhance one's performance. Moreover, one can have a bad day and underperform capital expenditure notwithstanding. At the same time, one can successfully take an exam without possessing or expanding capital assets. Importantly, however, one endowed

427. See SAMUEL, *supra* note 112, at 3, 5.

428. See generally *supra* Section II.C.

429. See sources cited *supra* note 102.

430. See Susan Sturm & Lani Guinier, *The Future of Affirmative Action: Reclaiming the Innovative Ideal*, 84 CAL. L. REV. 953, 992–97 (1996) (exploring the impact of gender and racial biases on exam takers and their performance).

with capital assets is more likely to succeed on the exam compared with one who possess no capital assets.⁴³¹

Now consider admission criteria to law schools.⁴³² These elite institutions use GPA, LSAT scores, and extracurricular activities as markers of merit.⁴³³ GPA and LSAT are understood as objective measures of merit and hard work at college, and elite extracurricular activities are often used as a tiebreaker among qualified applicants.⁴³⁴ In reality, these markers are also, at the same time, reflective of social and cultural capital. Law schools do not merely scrutinize a candidate's GPA but also look at where she went to college.⁴³⁵ Admission to an elite college, in turn, is in part a function of cultural capital (knowing to apply as well as developing the skills and interests that would be attractive to elite colleges), social capital (having mentors who will advise and counsel applying, educate about the application process and essay writing, and will open doors through the legacy effect when applicable), and economic capital (being able to afford attending).⁴³⁶ Similarly, attaining a high GPA while in college is in part a function of cultural capital (building on acquired skills and interests to outperform those endowed with less capital), social

431. See generally Jewel, *supra* note 82, at 261–63. In Stoner, Gordon Finch was a great Dean in part because he effectively used his capital assets, namely his many relationships and masterful understanding of the university, to perform his job. See *supra* Section II.C.3. William Stoner ended up a mediocre professor in part because he did not understand the institution and its politics and did not have mentors to instruct him about how to become a better academic.

432. More accurately, consider law schools' admission criteria before 2010 when law schools began to experience a prolonged decline in applications and became increasingly less selective. The literature on the "New Normal," the crisis in legal education brought about, in part, by a consistent and systematic decline in applications, is vast. See, e.g., Olufunmilayo B. Arewa et al., *Enduring Hierarchies in American Legal Education*, 89 IND. L.J. 941 (2014); Richard W. Bourne, *The Coming Crash in Legal Education: How We Got Here, and Where We Go Now*, 45 CREIGHTON L. REV. 651 (2012); Deborah Jones Merritt, *The Job Gap, the Money Gap, and the Responsibility of Legal Educators*, 41 WASH. U. J.L. & POL'Y 1 (2013); Mark Strasser, *Tenure, Financial Exigency, and the Future of American Law Schools*, 59 WAYNE L. REV. 269 (2013).

433. See Sturm & Guinier, *supra* note 430, at 961. A few law schools have recently begun to accept Graduate Record Exam (GRE) scores in lieu of LSAT scores partly in an attempt to boost applications by dipping into the pool of graduate students who did not take the LSAT. See Elizabeth Olson, *More Law Schools Begin Accepting GRE Test Results*, N.Y. TIMES (Aug. 10, 2017), <https://www.nytimes.com/2017/08/10/business/dealbook/law-school-gre.html?mcubz=1> [<https://perma.cc/59Q5-MX4C>].

434. See Sturm & Guinier, *supra* note 430, at 965; see also *id.* at 961 n.26 (citing *Hopwood v. Texas*, 78 F.3d 932, 935 (5th Cir. 1996)).

435. *Id.* at 990.

436. See *supra* Section II.D.1.

capital (benefiting from the advice and counsel of mentors), and economic capital (being able to focus on one's studies as opposed to working while in school).⁴³⁷ Performance on the LSAT is of course a function of one's hard work and effort, but also a function of capital expenditure.⁴³⁸ Finally, extracurricular activities measure to a large extent social and cultural capital endowments.⁴³⁹ Understanding the importance of developing an impressive list of extracurricular credentials, identifying and getting such exciting interests and experiences, and actually pursuing them are all, in fact, examples of using social and cultural capital assets.⁴⁴⁰

Finally, consider the performance of an associate at a large law firm. An associate endowed with cultural capital assets, for example, a nuanced understanding of senior associates' and partners' expectations regarding work product and deadlines, is more likely to succeed compared with one who lacks such knowledge. Similarly, one endowed with social capital assets such as mentors and relationships with lawyers within and outside of the firm is likely to perform better than one who does not.⁴⁴¹

Importantly, from the perspective of objective meritorious standards, the well-endowed exam taker, applicant, and associate are performing better than their poorly endowed counterparts.⁴⁴² This is because the use of capital can positively affect performance measured in terms of merit.

2. The negative effects of capital

While capital expenditure may be used to enhance performance, it may also have negative effects by confusing and obscuring merit-based assessments. An individual's accomplishments, argues French sociologist Pierre Bourdieu, are the result of hard work, merit and several cultural external factors, including cultural and social capital endowments.⁴⁴³ American thought, adds Bourdieu,

437. See *supra* Section II.D.1.

438. See *supra* note 430 and accompanying text.

439. See Wald, *supra* note 79, at 2520, 2529.

440. See *id.*

441. See *id.* at 2531–33.

442. In addition to the effects of capital, performance assessment is also a product of biases. See Russell G. Pearce et al., *Difference Blindness vs. Bias Awareness: Why Law Firms with the Best of Intentions Have Failed to Create Diverse Partnerships*, 83 *FORDHAM L. REV.* 2407, 2408 (2015).

443. Bourdieu, *supra* note 79, at 241–55; see also Alejandro Portes, *The Two Meanings of Social Capital*, 15 *SOC. F.* 1, 2 (2000) (explaining that according to Bourdieu, access to jobs, market tips, and other conferred benefits are in great part a function of cultural and social capital).

regularly and systematically misrecognizes capital by viewing success and achievements as the product of individual merit.⁴⁴⁴ Yet, the misrecognition of capital for merit is but one of four instances in which the interplay of capital and merit may lead to errors in performance assessment.

Type 1 mistake, the *misrecognition of capital for merit*, is perhaps the most intuitive of the capital-merit mistakes. Consider the likely performance of a legacy candidate endowed with capital assets at a college admission interview. Irrespective of merit, a legacy candidate may impress at an interview relying on her understating of the interview process, the expectations of the interviewer, and her visible assets (such as extensive travel and expensive hobbies) to come across as meritorious.

In *Stoner*, Walker used his cultural capital (understanding how to perform during the oral examination based on Lomax's coaching) and social capital (his relationship with Lomax and Lomax's relationships with the other committee members and powerful decision makers in the department and university) to mask his poor performance and ineligibility to continue his studies based on objective standards of merit.⁴⁴⁵ Recall that at the beginning of the examination Walker's use of capital assets was so effective that he was able to come across as meritorious and fool even Stoner, who had every reason to suspect that Walker was a fraud.⁴⁴⁶

Type 2 mistake is the *misrecognition of lack of capital for lack of merit*. Consider the interaction of associates with partners at a large law firm. Assume that a partner gives an associate an assignment and finds the work product poor: the associate fails to meet the deadline specified by the partner and fails to advise the partner in advance about her tardiness. Moreover, the assignment does not conform with the requested format and does not appear to reflect strong research and writing skills. The partner may quickly conclude that the associate lacks merit resulting in a harsh consequence—the partner may refrain from assigning the associate future work.

Yet, just as lawyers well-endowed with capital assets may mask relative poor performance, relying on relationships with knowledgeable mentors and their sophisticated understanding of the firm's culture and expectations to hide poor effort or weak skills (*Type 1* mistake), lawyers endowed with limited

444. See Portes, *supra* note 443; see also Jewel, *supra* note 82, at 254 (“In this way, Bourdieu’s cultural theory counters the ascendant American theory of economic individualism . . .”). See generally Bourdieu, *supra* note 79.

445. STONER, *supra* note 2, at 153–64, 175.

446. *Id.* at 154.

capital assets may be harmed by the perception of poor performance resulting from their failure to conform to the expectations of partners and the firm.⁴⁴⁷ These erroneous perceptions, notably, operate alongside and conceptually independent of actual performance.⁴⁴⁸

Specifically, an associate who is the first in her family to graduate from college and law school, who knows no lawyers and knows little about the operation of a large law firm and the expectations of its partners may not appreciate the importance of meeting a deadline and of communicating to the partner in advance if the deadline is going to be missed. This is not because the associate is lacking in merit but, for example, because she does not understand how the firm interacts with and charges its clients and does not realize that her tardiness may cause the partner to be late delivering the work product to the client. Moreover, the associate may not appreciate and may not understand the importance of asking the partner specific questions about the desired format of the work product, and may not understand the scope of the necessary research and the partner's expectations regarding the quality of the drafting, for example, the appropriateness of submitting a first draft as opposed to a final clean draft. As a result, the associate's lack of capital may be misrecognized by the partner as lack of merit.

Type 3 mistake is the *misrecognition of capital for lack of merit*. A fast runner, the defending champion, is about to compete in the finals of a high school championship race. She observes her most significant rival, noticing her subpar equipment. She contemplates the significance of the race to herself and her opponent: her rival has at stake a college scholarship if she wins the race, her only means of attending an elite expensive college; whereas the fastest runner is competing for fame and glory as she (and her parents) can easily afford to pay full college tuition. The runner decides to throw the race. She takes an early lead but allows her rival to overtake her at the finish line. The race officials declare the rival as the winner, perceiving the fast runner to lack the necessary merit to win the race. The officials, however, misrecognize the runner's use of capital assets—her nuanced understanding of the race and its consequences for all parties involved and her decision to act on her knowledge—for lack of merit.

Type 4 mistake is the *misrecognition of lack of capital for merit*, as demonstrated by William Stoner. Stoner's purported stance for high academic standards and integrity, trying to fail Walker and expose Lomax's role in

447. See Wald, *supra* note 79, at 2533–34.

448. Pearce et al., *supra* note 442, at 2408.

Walker's sham performance at the latter's oral examination, is commonly understood by commentators as a noble stand for meritocracy, a futile attempt for which Stoner ends up paying a heavy price. As we have seen, however, Stoner's conduct is best understood not as a meritorious stance but as one revealing his lack of capital assets. Stoner simply did not understand nor appreciate the likely consequence of his actions and his blindness was mistakenly taken by commentators to reveal his integrity and merit.⁴⁴⁹

The negative effects of capital are to be distinguished from a related phenomenon, negative capital assets.⁴⁵⁰ Whereas capital assets confer benefits on the well-endowed, negative capital assets confer harm on those who possess them. Negative social capital, for example, includes destructive relationships, which leads one to make poor choices.⁴⁵¹ Negative cultural capital consists of harmful hobbies and habits, like drug or alcohol dependency.⁴⁵² Negative identity capital consists of characteristics that confer costs, for example, being a women of color in a culture that attaches to her undesirable gender and racial stereotypes and bias.⁴⁵³ The negative effects of capital, in contrast, are erroneous assessments of the interplay of merit and capital, resulting in Type 1, Type 2, Type 3, and Type 4 mistakes. Notably, the use of capital may result in negative effects even when one is using (positive) capital assets. Indeed, both the misrecognition of capital for merit (Type 1 mistake) and the misrecognition of capital for lack of merit (Type 3 mistake) occur when the well-endowed use their capital assets in a manner that is misrecognized.

3. The qualities of capital

Five qualities of capital are noteworthy. First, sometimes the deployment of capital is hard to detect and distinguish from hard work, irrespective of whether the use results in positive or negative effects. When one aces an exam, it may be impossible to tell whether the performance was predominantly the result of hard work preparing for the test, of spending capital assets to improve

449. See *supra* II.D.2.

450. See Wald, *supra* note 79, at 2521.

451. *Id.*; see also Tracey L. Meares, *Place and Crime*, 73 CHI.-KENT L. REV. 669, 682–83 (1998); Tracey L. Meares & Dan M. Kahan, *Law and (Norms of) Order in the Inner City*, 32 LAW & SOC'Y REV. 805, 813 (1998).

452. See Wald, *supra* note 79, at 2521.

453. See *id.* at 2525; Wald, *supra* note 89; see also ABA COMM'N ON WOMEN IN THE PROFESSION, *VISIBLE INVISIBILITY: WOMEN OF COLOR IN LAW FIRMS* (2006); ABA COMM'N ON WOMEN IN THE PROFESSION, *FROM VISIBLE INVISIBILITY TO VISIBLY SUCCESSFUL: SUCCESS STRATEGIES FOR LAW FIRMS AND WOMEN OF COLOR IN LAW FIRMS* (2008).

exam taking skills, or of both. Moreover, it may be impossible to even know whether one used capital to enhance performance (by observing an exam taker during the exam one cannot tell whether she used study aids and mentors to prepare for the exam). Remember that Walker almost aced his oral exams before Stoner was able to expose his lack of merit and use of social and cultural capital to cover up his deficiencies.⁴⁵⁴

Second, and relatedly, because the use of capital is sometimes hard to detect, capital-merit misrecognition is inevitable. The pertinent question, therefore, is not *whether* Type 1 through Type 4 mistakes are going to happen but rather *how often* mistakes will happen.

Third, capital is not a binary asset across one's lifetime, in the sense that one either possesses it or does not. Instead, capital may be cultivated and accumulated over time, even in the absence of endowments.⁴⁵⁵ At the same time, capital assets may be depleted or lost. Stoner arrived on campus with no social capital assets at all and ended up benefitting from his interactions with Sloane and from befriending Finch.⁴⁵⁶ As a student Stoner had no cultural capital to speak of, but by the time he became a professor, he had some, if limited, cultural capital assets, such as proficiency in Greek and Latin.⁴⁵⁷ Sloane, in contrast, exemplifies the depletion of capital assets: while at the beginning of the novel he is portrayed as a powerful and well-respected Chair of the Department, World War I causes him to retreat into seclusion, undermining his professional relationships and networks (social capital) as well as his interest in and commitment to the scholarly life (cultural capital).⁴⁵⁸

Fourth, while the forms of capital are intertwined, they are not easily interchangeable. Over time, economic capital can be leveraged into social and cultural capital, and social and cultural capital can be used to acquire economic capital.⁴⁵⁹ Yet, because the process of translating and leveraging forms of capital takes time, effort, and is not guaranteed, the forms of capital cannot be reduced to economic capital. Revealingly, one can possess one form of capital

454. See STONER, *supra* note 2, at 153–63.

455. See generally Bourdieu, *supra* note 79, at 241–55.

456. STONER, *supra* note 2, at 17–20, 166.

457. *Id.* at 16, 41.

458. *Id.* at 36.

459. See Ronit Dinovitzer, *Social Capital and Constraints on Legal Careers*, 40 LAW & SOC'Y REV. 445, 446 (2006); see also Fiona M. Kay & John Hagan, *Building Trust: Social Capital, Distributive Justice, and Loyalty to the Firm*, 28 LAW & SOC. INQUIRY 483, 489–91 (2003). The commodification of identity capital deserves close attention. See generally Wald, *supra* note 89.

without possessing another (for example, the nouveau riche possess economic capital but not cultural capital). Moreover, the possession of economic capital does not guarantee the ability to cultivate other forms of capital.⁴⁶⁰

Finally, while capital assets are dynamic, meaning that they may be acquired and lost over time, capital has the “potential capacity to . . . reproduce itself in identical or expanded form” through inheritance or capital endowments.⁴⁶¹ Parents, for example, can bequeath money, introduce their kids to powerful and knowledgeable mentors, and help their children develop a savvy understanding of elite cultural institutions.⁴⁶² Senior partners can bequeath junior partners legacy clients, help them build a strong book of business, and introduce them to business development opportunities.⁴⁶³ Thus, those endowed with capital will tend not only to outperform their counterparts, but also to reproduce their advantages.⁴⁶⁴

C. A Capital Analysis of Merit

A successful pursuit of the American Dream, or at least attaining success in terms of upward socioeconomic mobility, is very much a function of hard, individualistic, and meritorious work. At the same time, it is also a product of possessing and deploying economic, social, cultural, and identity capital. Those well-endowed with capital are more likely to succeed, whereas those endowed with little capital are less likely to achieve the American Dream.⁴⁶⁵ Capital impacts the Dream in two interrelated ways. First, capital assets affect performance, helping those who use them to become better at what they do and thus more likely to succeed.⁴⁶⁶ Second, capital is often misrecognized as merit such that those who possess it are more likely to be perceived as more meritorious than those who lack it.⁴⁶⁷

Instead of pretending that capital does not profoundly impact merit, or hoping that it does not, what is needed is systematic acknowledgement of the role capital plays in the American Dream, effective means of avoiding the misrecognition of capital and merit, and building capital infrastructure for all.

460. See generally Bourdieu, *supra* note 79.

461. See *id.* at 241.

462. See Jewel, *supra* note 82, at 261–63.

463. See Wilkins & Gulati, *supra* note 155, at 566–67.

464. See *id.* at 565–67.

465. See Dinovitzer, *supra* note 459, at 446; see also *supra* Sections III.A, III.B.

466. See Wald, *supra* note 79, at 2533–34; see also *supra* Section III.B.1.

467. See Jewel, *supra* note 82, at 255–56; see also *supra* Section III.B.2.

1. Capital transparency

The double impact of capital on success—the positive enhancement of performance and the negative misrecognition as merit—must become an explicit and transparent part of our narrative and ethos of the American Dream itself. To continue holding on and selling the current simplistic Dream in terms of hard, individualistic, meritorious effort is to misrepresent America and mislead those who attempt to succeed in it. It is simply not true that hard, individualistic, meritorious work suffices to attain success, and such a statement sends the wrong message to those who might follow it about reality and priorities.

Transparency is important not only in its own right, but as means of informing decision-making and conduct at the workplace relating to the allocation of time between individual hard work and investment in cultivating capital assets. Individualist effort is important, valuable, and inherent to success in America, but sole focus on individualistic effort to the exclusion of all other commitments not only undermines our inherent relational nature but in fact misrepresents and diminishes one's chances of success. Capital plays an inherent role in both becoming meritorious and in being perceived as meritorious.⁴⁶⁸ Therefore, in addition to pursuing individual merit, one ought to cultivate and acquire relationships, networks, and knowledge about the inner-workings of the workplace. Put differently, capital is a constitutive ingredient of success and social capital is inherently relational, not individualistic. Naked individualism thus misrepresents merit and sends the wrong message about how to behave and how to reasonably expect to achieve success.

Consider the following three examples. Associate works long hours at the firm. On a late Friday afternoon, just as Associate prepares to head home to begin a much-anticipated weekend with her significant other, Partner walks into her office. "I can really use your help this weekend on this project," she says. The traditional account of the Dream suggests that Associate should change her plans and assist Partner if she is interested in succeeding at the firm because success requires individual hard work, here long billable hours on the weekend. Note that this insight is not inconsistent with acknowledging the strain long hours at the office put on Associate's personal relationship with her significant

468. See Jewel, *supra* note 82, at 255–56.

other,⁴⁶⁹ nor with the possibility that the long hours over the weekend may be the result of Partner's poor planning as opposed to unexpected client needs.

Now consider an alternative Friday afternoon. Just as Associate prepares to head home to begin a much-anticipated weekend with her significant other, Partner walks into her office. "Some of us are going to get a drink," she says, "Would you like to join us?" A revised account of the Dream, one cognizant of capital insights, suggests Associate should accept the invitation. While Partner is not asking for work-related assistance, Associate would be wrong to assume that she can decline the invitation without undermining her chances of succeeding at the firm. Associate should view the invitation as an opportunity to invest and cultivate her social capital—building a relationship with Partner—an important ingredient for being successful. Note that this insight is not inconsistent with acknowledging the strain long hours at the office put on Associate's personal relationship with her significant other,⁴⁷⁰ nor with the fact that Associate may not drink at all. Importantly, if the law firm fails to practice capital transparency, Associate endowed with little capital assets may reasonably yet erroneously believe that refusing Partner's offer may not impact her chances of success.

Finally, it is once again Friday afternoon. Just as Associate prepares to begin a long weekend at the office working on billable matters, Partner walks into her office. "Some of us are going to get a drink," she says, "Would you like to join us?" Here, capital transparency is key. Without it, Associate endowed with no capital assets might reasonably decline the offer, assuming erroneously that it is more important for her success to bill work than to schmooze with Partner. Indeed, such thinking would be consistent with the traditional account of the American Dream, celebrating individual hard work as the cornerstone of success. Transparency about the impact of capital on merit and attaining success, however, suggests a different answer. Associate should accept the invitation as means of cultivating her social capital assets and then

469. On the challenges of striking an effective work-life balance at the workplace, see WILLIAMS, *RESHAPING THE WORK-FAMILY DEBATE*, *supra* note 126. See generally SANDBERG, *supra* note 147; Anne-Marie Slaughter, *Why Women Still Can't Have It All*, ATLANTIC (June 13, 2012, 10:15 AM),

<http://www.theatlantic.com/magazine/archive/2012/07/why-women-still-cant-have-itall/309020> [<https://perma.cc/55KF-DGCT>]; Thu-Huong Ha, *How Can We All "Have it All"?: Anne-Marie Slaughter at TEDGlobal 2013*, TEDBLOG (June 11, 2013, 12:55 PM), <https://blog.ted.com/how-can-we-all-have-it-all-anne-marie-slaughter-at-tedglobal-2013/> [<https://perma.cc/W4M5-TJNT>].

470. See Slaughter, *supra* note 469.

return to the firm and complete the work late into Saturday morning even if she already planned to return to the office later that day.

Likewise, cultural capital plays an important role in achieving merit and being perceived by others as meritorious, with the important consequence that hard work alone does not cut it and one must invest in and acquire cultural capital alongside meritorious effort to have the best chance at success.⁴⁷¹ Hard working associates should, for example, read the vanity press book detailing the official or unofficial history of the firm (if such a book exists) and should volunteer to serve on firm committees, alongside meeting their billable targets. This is not to belittle, of course, the hardship of adding non-billable commitments to already long days at the office. Yet, learning about the past and present of the firm is an investment in cultural capital that is an important ingredient in achieving success.

A condition precedent for leveling the playing field in the sense of providing all players a fair shot of pursuing the Dream is to ensure that everybody is playing in the same game and observing the same transparent rules.⁴⁷² A disturbing problem afflicting the current version of the American Dream with its emphasis on hard work, individualism, and merit is that it misrepresents the game for many Americans.⁴⁷³ As a result, those who are in the know get ahead and those who are not, like William Stoner, get left behind and are told they have only themselves to blame. Transparency about the role of capital will allow individuals and institutions to adjust how they set their priorities, invest their resources, and assess success and failure.⁴⁷⁴

Ultimately, Associate may decide to go home in lieu of accepting a new assignment on a late Friday afternoon, and she may decline an invitation from Partner to socialize if her significant other eagerly expects her at home. Capital transparency, however, is not about what decisions associates and others make. Rather, transparency is about empowering those who wish to succeed such that they can make informed decisions about how much and how hard to work, how much to invest in building capital assets, and when to go home.

471. See Wald, *supra* note 79, at 2533. See generally Wilkins & Gulati, *supra* note 155 (explaining that attaining success in large law firms requires, in addition to meeting billable hour expectations, close attention to cultivating powerful mentors and adhering to the culture of the firm).

472. See Wald, *supra* note 79, at 2527.

473. See HOCHSCHILD, *supra* note 137, at xi.

474. Wald, *supra* note 79, at 2544–47 (large law firms must practice capital transparency by explicitly revealing the role capital plays in their recruitment, assessment and promotion policies).

2. Avoiding capital misrecognition

Capital assets are a bit like Dr. Jekyll and Mr. Hyde.⁴⁷⁵ Like Dr. Jekyll, economic, social, cultural, and identity capital positively support and result in enhanced performance.⁴⁷⁶ Yet, like Mr. Hyde, when misrecognized, capital undermines merit and confuses decision-making regarding merit.⁴⁷⁷ An important aspect, therefore, of reimagining the Dream in light of the impact of the forms of capital on merit is embracing Dr. Jekyll while exposing Mr. Hyde. That is, celebrating and investing in social and cultural capital as building blocks of merit while putting in place policies and procedures meant to avoid the systematic misrecognition of economic, social, cultural, and identity capital as merit.

Understanding the complex impact of social and cultural capital on merit on the one hand and separating Jekylls from Hydes on the other, however, are not the same thing. Indeed, because the use of capital is sometimes hard to detect,⁴⁷⁸ misrecognition and Type 1 – Type 4 mistakes are to be expected.⁴⁷⁹ Still, some misrecognition may be relatively easy to avoid. In the admission context, a talented violinist who applies to law school has extracurricular merit, even if she benefitted from capital endowments.⁴⁸⁰ An admission officer may note the candidate's documented individual hard effort over a period of time, examine the file for indicia of capital endowments, and if those are present, note the positive effects of capital on merit. Another easy case would be an applicant whose only compelling feature is being an institutional legacy, an example of social capital purporting to pass as merit. An admission officer sensitive to the impact of capital on merit and success may easily avoid a Type 1 mistake, although it is a separate question whether academic institutions will be willing to stop favoring legacy candidates in their admission decisions.⁴⁸¹

Other less obvious cases may be spotted if admission officers were sensitive to and looking to avoid misrecognizing capital and merit. A system committed to avoiding and minimizing capital misrecognition may take three institutional steps. First, educating decision makers who assess merit about the impact of

475. *See generally* ROBERT LOUIS STEVENSON, *STRANGE CASE OF DR JEKYLL AND MR HYDE* (1886).

476. *See supra* Section III.B.1.

477. *See supra* Section III.B.2.

478. *See supra* Section III.B.3.

479. *See supra* Section III.B.3.

480. *See* Wald, *supra* note 79, at 2520.

481. *See* Sturm & Guinier, *supra* note 430, at 995.

capital on merit and training them to avoid and minimize mistakes. Given the qualities of capital, specifically, the inherent hardship in detecting its use and separating it from merit,⁴⁸² such an effort, to be clear, is going to be costly, take time, and is not likely to yield perfect results in the sense that even trained decision makers could likely not avoid mistakes but rather just minimize their frequency and impact. Yet evidence related to implicit bias and attempts to minimize its impact on decision-making in the workplace is encouraging: while implicit bias continues to taint decision makers, training does reduce the instances and impact of bias.⁴⁸³

Second and relatedly, institutions ought to systematically collect and record capital data to assist decision makers in assessing its impact on merit. For example, a candidate whose extracurricular activities consist of extensive travel overseas as a minor, or of elitist hobbies, may be one benefiting from large endowments of economic and cultural capital. Of course, one should not automatically draw negative inferences: one who lived overseas with a parent who served in our armed forces may be differently situated than one who took extended summer vacations with his wealthy parents. And one who has spent years working as a caddy to afford taking golf lessons is differently situated than one whose parents paid for the lessons. The point, to be sure, is not to disregard achievements and merit, but rather to more carefully scrutinize them to avoid misrecognizing capital as merit.⁴⁸⁴ Gathering capital data will allow decision makers to make more accurate assessments distinguishing merit which is the result of hard individual effort, from merit which results in part from the positive effects of capital, and minimize Type 1 – Type 4 mistakes. Moreover, capital data collection is not uncommon. Many law firms, for example, record and advertise their lawyers' cultural capital assets such as languages spoken and hobbies.⁴⁸⁵

Third, part of the response to the inherent and prevalent use of capital to become meritorious by the well-endowed must include efforts to recognize and value forms of merit that are not to the same degree a product of capital expenditure. When it comes to admission decisions, for example, elite law schools should intentionally and systematically expand the ranks of colleges from which they recruit, and indeed solicit, candidates from lesser ranked

482. *See supra* Section III.B.3.

483. Pearce et al., *supra* note 442, at 2441–46.

484. *See, e.g.*, Wald, *supra* note 79, at 2554–55 (suggesting steps large law firms should take to avoid misrecognizing capital for merit in their assessment and promotion policies).

485. *Id.* at 2534 n.109.

schools. A 4.0 GPA (or higher) from an elite college deserves its due, but at the same time, a 4.0 GPA from a lower-ranked college should not be ignored. While academic rigor at a lower-ranked school may be inferior compared to an elite college, a GPA from a lower ranked school is less likely to be inflated and more likely to be indicative of cultural capital assets such as personal drive, determination, and grit.⁴⁸⁶ These are, admittedly, different cultural capital assets than music talents or language proficiencies but they are cultural assets and indicative of merit nonetheless. Similarly, elite law schools can control for the impact of capital on the appearance of merit by delving into the circumstances around which a candidate took the LSAT or went to college.⁴⁸⁷

Indeed, such measures are already a (limited) reality. In the fight over *Fisher v. University of Texas at Austin*, one important aspect of the University's admission policy has been often overlooked: The University's automatic admission of the top 10%, and subsequently 7%, of all high school graduates into the state system.⁴⁸⁸ In *Fisher*, Justice Kennedy described the University of Texas's admission policy between 1996-2004,⁴⁸⁹ a policy that was not challenged and that the university subsequently revised following *Grutter v. Bollinger*⁴⁹⁰ and *Gratz v. Bollinger*:⁴⁹¹

The University stopped considering race in admissions and substituted instead a new holistic metric of a candidate's potential contribution to the University, to be used in conjunction with the Academic Index. This "Personal Achievement Index" (PAI) measure[d] a student's leadership and work experience, awards, extracurricular activities, community service, and other special circumstances that g[a]ve insight into a student's background. These included growing up in a single-parent home, speaking a language other than English at home, significant family responsibilities assumed by the applicant, and the general socioeconomic

486. On grit, see ANGELA DUCKWORTH, *GRIT: THE POWER OF PASSION AND PERSEVERANCE* (2016).

487. For example, elite law schools could ask candidates whether they had taken a prep class before sitting for the LSAT, and whether they were working full or part time while taking the class. Similarly, they can use these criteria to assess whether students worked during college and what their extracurricular activities were. See Sturm & Guinier, *supra* note 430, at 954–59.

488. 133 S. Ct. 2411, 2416 (2013).

489. *Id.* at 2415–16.

490. 539 U.S. 306 (2003).

491. 539 U.S. 244 (2003).

condition of the student's family. Seeking to address the decline in minority enrollment after *Hopwood*, the University also expanded its outreach programs.⁴⁹²

Notably, such an admission policy attempts to control for the misrecognition of capital as merit by admitting high school students who have demonstrated merit by graduating at the top of their class, regardless of other factors that could cloud the admission decision.⁴⁹³ Given the socioeconomic segregation common in America, and the racial and ethnic overlay of demographic reality, admitting the top percentage of high-school graduates from across cities and states may also result in a more diverse student body.⁴⁹⁴

Attempting to avoid the misrecognition of capital and merit and recognizing nontraditional forms of merit that are less susceptible to capital endowments are not going to be easy tasks. But these are tasks elite law schools, colleges, institutions of higher education, and indeed all American institutions and workplaces must undertake in order to recruit the best and most meritorious individuals, and, as importantly, to give all Americans a fair shot at pursuing their dreams of success.

3. Capital infrastructure for all

The profound impact of capital on merit and one's chances of being successful suggests that practicing transparency and attempting to avoid misrecognizing capital and merit may not suffice to ensure giving everybody a fair shot at the American Dream. Rather, an appropriate response to the influence of capital on merit must entail a systematic investment in the creation of capital infrastructure for all. To be clear, investing in capital infrastructure

492. *Fisher*, 133 S. Ct. at 2415–16. Shortly after the admission plan was implemented the Texas legislature adopted the Top Ten Percent Law. *Id.* at 2416. The “Top Ten Percent Law grant[ed] automatic admission to any public state college, including the University, to all students in the top 10% of their class at high schools in Texas that comply with certain standards.” *Id.*

493. *Id.*

494. Justice Kennedy noted that “The University’s revised admissions process, coupled with the operation of the Top Ten Percent Law, resulted in a more racially diverse environment at the University.” *Id.* Specifically,

Before the admissions program at issue in this case, in the last year under the [top Ten Percent Law] system that did not consider race, the entering class was 4.5% African-American and 16.9% Hispanic. This is in contrast with the 1996 pre- . . . Top Ten Percent regime, when race was explicitly considered, and the University’s entering freshman class was 4.1% African-American and 14.5% Hispanic.

Id.

for all does not mean that everybody should have the same capital assets. Capital assets can be cultivated over time,⁴⁹⁵ and those who work hard and invest in accumulating them ought to reap the rewards of their effort, including the ability to bequeath capital assets to their children. At the same time, given the impact of capital on merit and success, creating a capital floor such that everybody has at least a basic capital allocation and a foundation to build on is necessary to ensure equal opportunity. Just as investments in education are deemed necessary to equip our children with basic skills and knowledge to become productive and have a shot at pursuing the Dream,⁴⁹⁶ so are investments in capital infrastructure.

Both the public and the private sector can make investments in capital infrastructure. To begin with, investing in and providing all Americans with opportunities to develop social and cultural capital must become a public policy priority.⁴⁹⁷ Some have a strong negative reaction to any policy recommendations that sound in economic capital redistribution,⁴⁹⁸ and to the involvement of the government in such efforts.⁴⁹⁹ One important quality of social and cultural capital, however, is that these forms of capital, while intertwined with economic capital, are not one and the same,⁵⁰⁰ meaning that investments in social and cultural capital do not necessarily entail massive investments in, or redistribution of, economic capital.⁵⁰¹ Put differently, public

495. See *supra* Section III.B.3.

496. See PUTNAM, *supra* note 400, at 260–61.

497. See *generally id.* at 228, 242–44; Wald, *supra* note 400.

498. Not to mention reparations in the case of those whose low capital endowments are the result of past wrongdoing. See, e.g., Brian Gilmore et al., *The Nightmare on Main Street for African-Americans: A Call for a New National Policy Focus on Homeownership*, 10 BERKELEY J. AFR.-AM. L. & POL'Y 262, 279 (2008) (“Mere mention of reparations produces heated opposition from many Americans who defensively claim that they never owned slaves and they do not own slaves now.”). See *generally* RANDALL ROBINSON, *THE DEBT: WHAT AMERICA OWES TO BLACKS* (2000).

499. See BRUCE ACKERMAN & ANNE ALSTOTT, *THE STAKEHOLDER SOCIETY* 4–5 (1999). Consider the response to Bruce Ackerman and Anne Alstott’s argument in *The Stakeholder Society* in favor of endowing each adult American with economic capital, to be financed by a wealth tax. See, e.g., James K. Galbraith, *Raised on Robbery*, 18 YALE L. & POL'Y REV. 387, 404 (2000) (book review) (“Do I have nothing favorable to say about *The Stakeholder Society*? Virtually nothing.”). *But see* Jack Beatty, *Against Inequality*, THE ATLANTIC (Apr. 1999), <https://www.theatlantic.com/past/docs/issues/99apr/9904inequality.htm> [https://perma.cc/7MUR-Z3QG].

500. See Bourdieu, *supra* note 79, at 243; see also *supra* Section III.B.3.

501. See PUTNAM, *supra* note 400, at 259; see also Wald, *supra* note 400, at 271–72.

investment in social and cultural capital infrastructure need not entail spending economic capital.

Public investments in cultivating capital endowments for all may include, for example, introducing and matching mentors for children who are not endowed with this form of social capital;⁵⁰² systematically introducing role models to school age children; building pipeline programs in high schools and colleges meant to expose children to valuable opportunities and equipping them with the skills to pursue them; enhancing extracurricular activities such as leadership programs and debate teams; offering school sponsored cultural exchange trips; and renewing our commitment to meaningfully expose children to the arts and music.⁵⁰³

As importantly, public investment in capital infrastructure ought to include offering alternatives to the dominant, yet misleading, narrative of rugged individualism as the necessary and sufficient condition for achieving success in America.⁵⁰⁴ In addition to our explicit and implicit messages about the value of individual effort, our national curriculum ought to include relational accounts embracing interconnectivity and the pursuit of self-interest in a manner that is mindful of and even consistent with the interests of others.⁵⁰⁵ Such relational accounts, part and parcel of our national narrative embodied by the likes of Dr. Martin Luther King, Jr. and President John Fitzgerald Kennedy,⁵⁰⁶ open the door for and support the development of social capital.

Next, investment in capital infrastructure for all ought not be limited to the public sector or school age children. Contrary to the traditional account

502. See JAMES P. COMER & ALVIN F. POUSSAINT, RAISING BLACK CHILDREN: TWO LEADING PSYCHIATRISTS CONFRONT THE EDUCATIONAL, SOCIAL, AND EMOTIONAL PROBLEMS FACING BLACK CHILDREN 97 (1992); JAMES DOBSON, BRINGING UP BOYS 135–37 (Lisa A. Jackson ed. 2001); Moncrieff M. Cochran & Jane Anthony Brassard, *Child Development and Personal Social Networks*, 50 CHILD DEV. 601, 601, 603–04 (1979); see also Lynn M. Akre, *Struggling with Indeterminacy: A Call for Interdisciplinary Collaboration in Redefining the “Best Interest of the Child” Standard*, 75 MARQ. L. REV. 628, 644–45 (1992) (exploring the effects of divorce on children); Nancy E. Dowd, *Stigmatizing Single Parents*, 18 HARV. WOMEN’S L. J. 19, 24–25 (1995) (examining the characterization of a single parent family as a “problem family”).

503. See generally Wald, *supra* note 400.

504. See Wald & Pearce, *Being Good Lawyers*, *supra* note 374, at 605.

505. See *id.*; see also Wald & Pearce, *supra* note 190.

506. See Eli Wald & Russell G. Pearce, *What’s Love Got to do with Lawyers? Thoughts on Relationality, Love, and Lawyers’ Work*, 17 LEGAL ETHICS 334 (2014). In his inaugural address, President Kennedy famously said: “[A]sk not what your country can do for you — ask what you can do for your country. My fellow citizens of the world: ask not what America will do for you, but what together we can do for the freedom of man.” John F. Kennedy, President of the United States, Inaugural Address (Jan. 20, 1961).

regarding the formation of professional identity, namely, that children can be taught skills, knowledge, and values but adults are fully formed and cannot similarly learn, emerging insights reveal that the formation of professional identity is a life long journey.⁵⁰⁷ While schools certainly play a formative role in the development of children, professional schools and private institutions also inform and shape the professional development of adults.⁵⁰⁸

Accordingly, academic institutions can and should make investment in the capital assets of their less endowed students a priority by directing faculty members to meaningfully serve as mentors and share their capital with their students, alongside their duties as teachers and scholars.⁵⁰⁹ Such reimagining of the role and design of academic institutions is not going to be easy or free of resistance. Academic institutions are organized and structured based on the traditional understanding of merit and success: they promote individualism in their students and their professors and purport to assess merit objectively by mostly ignoring the impact of capital. Yet the impact of capital on merit demands that academic institutions become part of the solution by acknowledging the role of capital, attempting to minimize its misrecognition and helping their students develop their capital assets.⁵¹⁰

Other private institutions such as workplaces ought to invest in the capital infrastructure of their employees. Notably, such investment ought not be exclusively thought of in terms of corporate social responsibility or a benevolent investment in the public good. Instead, investment in employees' capital assets is very much in employers' best interest: workplaces committed to recruiting and retaining the best, most meritorious employees have every incentive to avoid misrecognizing capital and merit and help build the capital assets of employees such that they can be more productive, more meritorious, and more successful.⁵¹¹

Law firms, for example, can attempt to level the playing field by clearly communicating the culture and expectations of the institutions and providing all of their lawyers meaningful mentorship and opportunities to develop books

507. See Hamilton, *supra* note 208; Hamilton & Organ, *supra* note 208.

508. See Hamilton, *supra* note 208.

509. Wald & Pearce, *supra* note 190, at 438. See generally Wald & Pearce, *supra* note 374.

510. See generally Sturm & Guinier, *supra* note 430; Wald & Pearce, *supra* note 190.

511. See Wald, *supra* note 79, at 2533–34, 2539, 2543–44.

of business.⁵¹² This, in turn, will allow law firms to retain and promote the best, most meritorious lawyers, their primary asset.

Finally, whereas some modes of public and private investment in capital infrastructure for all are straightforward (which is, of course, not to say that they will be forthcoming!),⁵¹³ other programs may be less obvious and more controversial. Take affirmative action policies at academic institutions. Some opponents of affirmative action in higher education understand the doctrine as a tool to combat past discrimination against minorities.⁵¹⁴ Decades later, they argue that enough has been done to remedy the evils of discrimination, given that affirmative action doctrines appear to be inherently at odds with meritocracy and individualism.⁵¹⁵ Opponents argue that because affirmative action gives preference to certain individuals for reasons other than their hard work and merit, it directly violates a commitment to evaluate recipients based solely on performance and merit.⁵¹⁶ Moreover, opponents add that by giving preference to some for reasons other than merit, affirmative action violates a commitment to honor the individual efforts of non-recipients.⁵¹⁷ If acts of past discrimination alone constituted the justification for affirmative action, then the argument would be on stronger footing, especially when higher education institutions sometimes satisfy their diversity goals not by focusing on the descendants of those discriminated against, but by recruiting others with seemingly similar backgrounds (for example, admitting first generation Black immigrants as opposed to descendants of African-American slaves).⁵¹⁸

Some proponents have attempted to defend affirmative action policies on the ground that they promote diversity, arguing that diversity is a desirable value that ought to be pursued alongside merit.⁵¹⁹ Yet diversity advocates face

512. *Id.*; see also Eli Wald, *A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who is Responsible for Pursuing Diversity and Why*, 24 GEO. J. LEGAL ETHICS 1079, 1129, 1131, 1137–38, 1140–41 (2011).

513. Wald, *supra* note 79, at 2550–54.

514. See, e.g., *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411, 2417 (2013).

515. See *id.* at 2424–32 (Thomas, J., concurring).

516. See COSE, *supra* note 398, at 111.

517. See *id.* at 112–13.

518. See Devon W. Carbado, *Intraracial Diversity*, 60 UCLA L. REV. 1130, 1150–51 (2013); Patrick M. Garry, *A Half-Century Since Brown: The Legal Academy's Views of Racism*, 42 IDAHO L. REV. 209, 228 (2005); Angela Onwuachi-Willig, *The Admission of Legacy Blacks*, 60 VAND. L. REV. 1141, 1144–45 (2007).

519. *Grutter v. Bollinger*, 539 U.S. 306, 316 (2003) (“The policy does not restrict the types of diversity contributions eligible for ‘substantial weight’ in the admissions process, but instead

at least two challenges. First, they have the burden of establishing the value of diversity, which outside of the academic realm, for example, in the business sector, has proven difficult.⁵²⁰ Second, in situating diversity as a separate value, they seem to implicitly concede that diversity conflicts with merit.

If, however, affirmative action policies were grounded not in diversity or in past discrimination but rather on its legacy and consequences in terms of capital endowments, a different understanding of affirmative action policies may emerge. The legacy of slavery and systematic discrimination is socioeconomic and cultural disadvantage, and, in particular, fewer opportunities to cultivate cultural and social capital assets. Moreover, low endowments of social and cultural capital can take many generations to overcome, and are not self-correcting.⁵²¹ The passage of time alone will not remedy low capital endowments because part of possessing cultural capital is knowing and understanding how to cultivate and use it.⁵²² Therefore, many more years of proactive affirmative action may be needed before the legacy of discrimination on capital endowments is effectively addressed.⁵²³

Thus, a commitment to building capital infrastructure for all sheds a new light on affirmative action policies. Rather than understand affirmative action merely as a remedial measure for past wrongs or as justified by diversity assumed to be in possible conflict with merit, capital analysis views affirmative action policies as an investment in social and cultural capital of the lesser endowed, when the low endowment is the result of past discrimination. As David Wilkins has pointed out, for example, graduates of elite law schools

recognizes ‘many possible bases for diversity admissions.’ The policy does, however, reaffirm the Law School’s longstanding commitment to ‘one particular type of diversity,’ that is, ‘racial and ethnic diversity with special reference to the inclusion of students from groups which have been historically discriminated against, like African-Americans, Hispanics and Native Americans, who without this commitment might not be represented in our student body in meaningful numbers.’” (citation omitted).

520. See David B. Wilkins, *Do Clients Have Ethical Obligations to Lawyers? Some Lessons from the Diversity Wars*, 11 GEO. J. LEGAL ETHICS 855, 857 (1998); David B. Wilkins, *From “Separate Is Inherently Unequal” to “Diversity Is Good for Business”: The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 HARV. L. REV. 1548, 1571–72 (2004).

521. See generally NAN LIN, *SOCIAL CAPITAL: A THEORY OF SOCIAL STRUCTURE AND ACTION* (2001); ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (2000); Coleman, *supra* note 85; Paul Temple, *Social Capital and University Effectiveness*, in *SOCIAL CAPITAL 1* (Gregory Tripp et al. eds., 2009).

522. See *supra* Section III.B.

523. See generally Deborah C. Malamud, *Affirmative Action, Diversity, and the Black Middle Class*, 68 U. COLO. L. REV. 939, 988–97 (1997).

derive real social (networking) and cultural (credentials) capital from their degree, and graduates who are recipients of affirmative action are essentially receiving an injection of social and cultural capital by virtue of their admission to these elite institutions.⁵²⁴

Two insights follow from viewing affirmative action through the lens of capital investment. Recipients of affirmative action preferences should be individuals with low social and cultural capital if their low endowment is the result of the legacy of past discrimination, which is not the same thing as low economic capital.⁵²⁵ Furthermore, investments in capital infrastructure cannot start and end with admission policies. For example, to reap the social and cultural benefits of affirmative action, one needs to actually graduate from an elite law school, not just be matriculated. This means that elite law schools must support their students' acquisition of social and cultural capital not only by admitting them but also by supporting them during their law school experience.⁵²⁶

D. Six Potential Critiques of Capital Analysis

Capital insights are familiar to sociologists and legal scholars.⁵²⁷ Yet, while some acknowledge that cultural and social capital are intimately intertwined with merit and linked to success,⁵²⁸ capital analysis does not regularly inform

524. See David B. Wilkins, *Rollin' on the River: Race, Elite Schools, and the Equality Paradox*, 25 LAW & SOC. INQUIRY 527 (2000).

525. For an example of such policies, see *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411, 2415–16 (2013).

526. See Wald & Pearce, *supra* note 374, at 635–37.

527. Successful lawyers might think of themselves as winners, viewing their success as the result of hard work and meritorious effort, yet many also possessed significant social and cultural capital assets that help explain their success. See JOHN HAGAN & FIONA KAY, *GENDER IN PRACTICE: A STUDY OF LAWYERS' LIVES* 25, 29, 35, 61 (1995); James S. Coleman, *The Creation and Destruction of Social Capital: Implications for the Law*, 3 NOTRE DAME J.L. ETHICS & PUB. POL'Y 375, 382–84 (1988); Dinovitzer, *supra* note 459, at 445–47; John Hagan et al., *Cultural Capital, Gender, and the Structural Transformation of Legal Practice*, 25 LAW & SOC'Y REV. 239, 241 (1991); Kay & Hagan, *supra* note 459, at 488–91; Hilary Sommerlad, *Minorities, Merit, and Misrecognition in the Globalized Profession*, 80 FORDHAM L. REV. 2481, 2503 (2012). See generally Jewel, *supra* note 82, at 253–56, 269–70.

528. Jewel, *supra* note 82, at 291–92 (“Cultural capital is integral to social mobility, but an individualized focus on merit obscures the processes that govern its transfer from one generation to the next and masks barriers that obstruct both its accumulation and deployment.”). Elsewhere, Jewel has discussed how hierarchy can be explained by determining the type of capital a person has and how long the person has possessed that type of capital. Lucille A. Jewel, *Bourdieu and American Legal*

public legal discourse.⁵²⁹ At least six possible unpersuasive critiques explain the relative rejection of capital analysis by mainstream scholarship.

One critique assumes that social, cultural, and identity capital are interchangeable with economic capital and argues that capital analysis is therefore nothing more than a familiar dressed up lament regarding economic inequality.⁵³⁰ Yet since the assumption is incorrect,⁵³¹ the conclusion does not follow. Because the various forms of capital cannot be reduced to economic capital, the insights of capital analysis cannot be dismissed as complaints about economic capital and economic inequality. Arguing that capital analysis is an unimportant rehashing of economic capital inequality claims is wrong because social, cultural, and identity capital are not the same as economic capital and confer distinct advantages and disadvantages not subsumed in the effects of economic capital. Furthermore, while success may be attained without possessing capital endowments, and, in particular, without possessing economic capital endowments, capital assets do make one more likely to succeed and their impact cannot and should not be ignored.⁵³²

A second critique attempts to downplay the impact of capital on merit and success suggesting that the influence is negligible and can therefore be ignored. This critique asserts that individual hard work is still the cornerstone of merit and that capital assets are not a necessary condition for attaining success as demonstrated by the celebrated stories of the so-called “model minorities”—Jews and Asian-Americans.⁵³³ Supposedly, poor Eastern-European immigrant Jews’ drive, dedication, and hard work propelled them within a generation to professional success as lawyers and doctors, showcasing their merit to overcome discrimination.⁵³⁴ Similarly, poor Asian immigrants’ sacrifices and

Education: How Law Schools Reproduce Social Stratification and Class Hierarchy, 56 BUFF. L. REV. 1155, 1159–60, 1174 (2008).

529. See Jewel, *supra* note 82, at 245.

530. But see Bourdieu, *supra* note 79 (explaining that forms of capital are not interchangeable).

531. See *supra* Section III.B.3.

532. See *supra* Section III.B.

533. Daniel A. Farber & Suzanna Sherry, *Is the Radical Critique of Merit Anti-Semitic?*, 83 CAL. L. REV. 853, 857 (1995) (describing Jews and Asian-Americans as model minorities); Malamud, *supra* note 523, at 965 (“I think here of the classic American ‘model minorities’: Jews and, more recently, Asian Americans.”).

534. See, e.g., Eli Wald, *The Rise of the Jewish Law Firm or is the Jewish Law Firm Generic?*, 76 UMKC L. REV. 885 (2008).

parental drive, popularized by the term “tiger mother,”⁵³⁵ seem to suggest that hard work and determination can lead to success.⁵³⁶ It is no wonder that the model minorities are often invoked as great success stories of the American Dream.⁵³⁷

Capital analysis, however, does not stand for the proposition that capital is a necessary condition for success. Rather, its central claim is that capital affects performance and success, making the well-endowed more likely to succeed and the less endowed more likely to fail.⁵³⁸ Incidentally, far from disproving the impact of capital on merit, the model minority narratives validate it. While many Jewish immigrants modeled hard individual effort, drive, and dedication, they did not have low capital endowments. Lacking economic capital, they were nonetheless endowed with ample cultural and social capital assets. Importantly, they understood how to play the game in their new home country and what it took to succeed in it: they worked hard academically, sought admission to elite colleges and professional schools, pursued professional careers, and rose through the socioeconomic ranks. They utilized social capital to support their advancement, relying on community networks for information, knowledge, and support.⁵³⁹

Many Asian immigrants shared this key cultural capital asset, an astute understanding of what it takes to succeed in the U.S. and how the system works and rewards those who play according to its subtle and informal rules. Like their Jewish counterparts, first generation Asian immigrants lacked economic

535. See, e.g., AMY CHUA, *BATTLE HYMN OF THE TIGER MOTHER* (2011); Peter H. Huang, *From Tiger Mom to Panda Parent*, 17 *ASIAN PAC. AM. L.J.* 40 (2012). Of course, tiger mothering Amy Chua style, practiced by middle-upper class well-to-do Asian-Americans, is different from the more traditional investment in children’s futures made by first-generation poor Asian immigrants.

536. See SAMUEL, *supra* note 112, at 5, 13.

537. Invoking investments in social and cultural capital to help explain the success of model minorities debunks the provocative claim that a critique of merit is sometimes anti-Semitic and racist. To criticize merit on social and cultural capital grounds is not anti-Semitic or racist and need not lead to disparaging theories of success, rather, it simply points out that part of the success of model minorities was the result of their investment in social and cultural capital, which in turn both built merit and was unrecognized for it. Compare DANIEL A. FARBER & SUZANNA SHERRY, *BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW* (1997), with Beverly Horsburgh, *The Myth of a Model Minority: The Transformation of Knowledge into Power*, 10 *UCLA WOMEN’S L.J.* 165 (1999) (book review), and Deborah C. Malamud, *The Jew Taboo: Jewish Difference and the Affirmative Action Debate*, 59 *OHIO ST. L.J.* 915 (1998).

538. See *supra* Section III.B.

539. Eli Wald, *The Rise and Fall of the WASP and Jewish Law Firms*, 60 *STAN. L. REV.* 1803, 1843–1844 (2008).

capital but invested their meager hard-earned earnings in the social and cultural endowments of their children. The stereotypical tiger parents, pushing their kids to excel at school and in piano, were directing their children to acquire the very capital assets that led them to elite institutions and in turn opened the door to professional status and socioeconomic mobility.⁵⁴⁰

Incredibly enough, model minority stories are often used to belittle the importance of capital to success, to justify the success of the well-endowed and to fault the poorly endowed for their failures. Low endowments of cultural and social capital thus come to be understood as individual disadvantage rather than a systemic problem, one that a hard-working, dedicated individual could overcome if she were only meritorious enough.⁵⁴¹ However, the success stories of model minorities do not disprove the profound effects of capital on performance nor do they imply that other minorities fail because they do not work hard enough. Quite the contrary, these stories are very much consistent with capital analysis and demonstrate the profound effects of capital on the chances of attaining success in America.

A third related critique argues that while capital affects merit and capital analysis is necessary and important in theory, it is practically hard to measure the effects of capital on merit and hard to perform capital analysis. While it is true that the very qualities of capital establish it to be hard to distinguish from merit,⁵⁴² and that capital analysis is going to be time consuming and expensive to perform,⁵⁴³ the critique is unpersuasive. Admittedly, the positive impact of economic, social, cultural, and identity capital on performance can be at times hard to measure, and avoiding the misrecognition of capital and merit—separating Jekylls from Hydes—may be hard to do.⁵⁴⁴ There is often no need, however, to attempt to measure the precise positive impact of capital on performance and merit. Indeed, the exercise would be futile: breaking down success, for example, to 40% hard work, 30% skills, and 30% capital investment would be pointless exactly because capital investment can be used to improve skills.

Yet, *whether* capital has been deployed in the performance as measured by the extent of one's capital endowments is nevertheless important and relevant to assessment of the performance, irrespective of the precise impact of capital. One, for example, may assess the LSAT scores of two candidates somewhat

540. See *supra* note 528 and accompanying text.

541. See SAMUEL, *supra* note 112, at 13; Jewel, *supra* note 82, at 253–55.

542. See *supra* Section III.B.3.

543. See *supra* Section III.C.2.

544. See generally STEVENSON, *supra* note 475; Jewel, *supra* note 82.

differently if one knew that one expended ample capital assets in preparation for the exam (benefiting from study aids and tutoring) and the other did not (because she could not afford to). This, of course, does not mean that the performance by the well-endowed applicant ought to be taken for granted. As we have seen, capital does not guarantee performance, and a high LSAT score does tend to suggest individual hard work preparing for the exam. Nonetheless, an equal performance by a lesser endowed applicant should not be dismissed as meaningless. Recording and tracking capital endowments and their usage would allow for a more accurate assessment of merit.⁵⁴⁵ If nothing else, capital analysis may suggest that applicants ought to be assessed based on measures other than the LSAT, because LSAT scores are as much a measure of capital endowments as they are of some objective measure of merit.⁵⁴⁶

Next, separating Jekylls from Hydes, that is, avoiding misrecognizing capital and merit may well be worth the investment if the goal of institutions is to pursue, promote, and encourage excellence and merit.⁵⁴⁷ Here, the point, one that William Stoner never understood, would not be to identify Walker in order to fail him.⁵⁴⁸ A conditional pass would have sent a signal to Walker, Lomax, and others that Walker needs to work harder. Hopefully he would have, making good on his potential. Even if he did not, the institution as such would have done its duty, giving Walker a shot at success, irrespective of whether he graduated eventually. Moreover, the conditional pass would not be a meaningless gesture: as a signal, it would have likely prevented Walker from graduating with honors and chilled future recommendation letters from department members, affecting the prospects of future employment in academia.⁵⁴⁹ Avoiding misrecognizing capital for merit is worthwhile because it sustains merit, not because it allows exposing the frauds.

The same insight holds true in the real world. Large law firms would want to avoid misrecognizing capital for merit not so they can expose the frauds and fire weak associates (although this would be a positive side effect). As institutions committed to and dependent upon recruiting and retaining

545. See *supra* Section III.C.2.

546. See Leslie G. Espinoza, *The LSAT: Narratives and Bias*, 1 AM. U. J. GENDER & L. 121 (1993); Randall Kennedy, *Persuasion and Distrust: A Comment on the Affirmative Action Debate*, 99 HARV. L. REV. 1327, 1332 (1986); Gary Peller, *Race Consciousness*, 1990 DUKE L.J. 758, 778–79 (1990); Sturm & Guinier, *supra* note 430, at 991–97.

547. See Jewel, *supra* note 82, at 255–56; Wald, *supra* note 79, at 2534.

548. See *supra* II.C.2.

549. See STONER, *supra* note 2, at 175.

meritorious lawyers, law firms would benefit from identifying those, like Walker, who do not live up to their potential, and incentivizing them to excel.⁵⁵⁰ They would also want to avoid misrecognizing low capital endowments as poor judgment because they want to make decisions based on merit, not capital.⁵⁵¹

Thus, while it is indeed hard to measure the precise impact of capital on merit there is no need to attempt to do that. Rather, capital transparency demands acknowledgment that capital affects merit; efforts to minimize misrecognition require monitoring capital assets when assessing merit and measuring merit in ways that are less susceptible to capital expenditures; and investment in capital infrastructure ensures that all have a solid competitive basis from which to pursue the Dream. These efforts will be costly, but the expense is well worth it, resulting in more accurate merit-based assessments.

A fourth critique, a so-called “pro-capital” critique, opposes capital analysis on the ground that the use of capital is desirable and inevitable in a capitalist society and that capital analysis is in a sense a denouncement of the relationship between capital and merit and of the use of capital to affect merit. Capital analysis, however, is not a call to limit the use of economic capital to purchase, invest, and build social and cultural capital, which may indeed be unthinkable in a capitalist society,⁵⁵² nor a call to limit the use of any form of capital to achieve success. Quite the contrary, capital analysis recognizes that capital has

550. See Wald, *supra* note 79, at 2534.

551. *Id.*; see *supra* Section III.B.2.

552. The evolving U.S. Supreme Court’s anti-campaign finance jurisprudence, beginning with *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010), powerfully demonstrates the American love affair with economic capital and kneejerk rejections of attempts to restrict its use to purchase. A lot of ink has been spilled on *Citizens United* and its aftermath. See, e.g., Lucian A. Bebchuk & Robert J. Jackson, Jr., *Corporate Political Speech: Who Decides?*, 124 HARV. L. REV. 83 (2010); Richard A. Epstein, *Citizens United v. FEC: The Constitutional Right that Big Corporations Should Have But Do Not Want*, 34 HARV. J.L. & PUB. POL’Y 639 (2011); Richard L. Hasen, *Citizens United and the Illusion of Coherence*, 109 MICH. L. REV. 581 (2011). Here, suffice it to say that in its zeal to protect Americans’ ability to spend their money as they please, the Supreme Court followed a simplistic logic: people have a First Amendment commercial free speech right, corporations are people, thus corporations have a First Amendment commercial free speech right, and therefore restrictions on corporations’ campaign finance contributions violate their commercial free speech right. Nothing is wrong with the Court’s logic except the obvious: to say that corporations are people for purposes of allowing them to exist legally is not the same as holding that corporations are people for every purpose and should enjoy all the rights and privileges extended to living breathing people. Taking for granted that living breathing people have the near absolute right to spend their money as they please under the First Amendment may have led the Court, too quickly, to conclude that other types of “people,” including corporate people, have the same right. See Deborah Hellman, *Money Talks but It Isn’t Speech*, 95 MINN. L. REV. 953 (2011).

positive effects on merit and therefore success and failure in America. As importantly, capital analysis insists that a society and institutions committed to making accurate merit assessments and therefore concerned about the impact of economic, social, cultural, and identity capital on merit, could and should develop policies to prevent and detect the misrecognition of capital and merit and help build social and cultural capital for all, irrespective of its distributive stance on economic capital.⁵⁵³ Simply put, capital analysis is not a challenge to the use of capital. Instead, it demands that capital be used transparently, that it does not get misrecognized as merit, and that everybody has a solid capital infrastructure to ensure a more equal playing field. That the use of capital is desirable and inevitable in a capitalistic society does not mean that we ought not be concerned about understanding the ways in which forms of capital affect merit.

A fifth so-called “pro-merit” critique opposes capital analysis on the ground that the use of capital to affect merit dilutes merit. This critique evokes a return to the so-called golden days of merit, an era in which success was solely a function of hard, individual, meritorious effort, reflected in calls like “Make America great again!”⁵⁵⁴ As appealing as such a populist posture may seem, it ought to be resisted. Nostalgia aside,⁵⁵⁵ the American Dream has never experienced a golden-era and was never solely about hard, individualistic, meritorious effort. Rather, it was always a dream with deep White-Anglo-Saxon-Protestant male roots,⁵⁵⁶ readily available to WASP males and those who could pass and cover as WASP males,⁵⁵⁷ and much less accessible to those who could not.⁵⁵⁸ In other words, contrary to populist assertions about individual

553. See *supra* Section III.C.

554. See *supra* Part I.

555. Marc Galanter, *Lawyers in the Mist: The Golden Age of Legal Nostalgia*, 100 DICK. L. REV. 549, 551 (1996) (“[T]he lure of nostalgia is not peculiar to law. The sense of painful loss and disaffection with the new pervades much cultural criticism.”); see, e.g., Peter Margulies, *Progressive Lawyering and Lost Traditions*, 73 TEX. L. REV. 1139 (1995) (arguing that Anthony Kronman’s lament in *The Lost Lawyer* over the decline of practical wisdom and his embrace of traditional lawyering risks smacks of nostalgia, ignores past discriminatory realities, and risks suffocating innovation in the practice of law (discussing ANTHONY KRONMAN, *THE LOST LAWYER* (1993))).

556. See, e.g., JEROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* 30 (1976); ERWIN O. SMIGEL, *THE WALL STREET LAWYER: PROFESSIONAL ORGANIZATION MAN?* 37, 44–47 (1969).

557. Wald, *supra* note 539, at 1811–12. See generally Wald, *supra* note 534.

558. Wald, *supra* note 539, at 1811–12; Eli Wald, *Glass-Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes, and the Future of Women Lawyers at Large Law Firms*, 78 FORDHAM L. REV. 2245, 2246 (2010). See COATES, *supra* note 400, at 101, 124–25, and Nancy Leong, *The Open*

hard work and effort, the Dream has always been in part about economic, social, cultural, and identity capital.

Capital analysis is not a normative plea to allow the use of capital to positively affect or manipulate merit. Rather, capital analysis exposes the impact of capital on merit, minimizes Type 1 – Type 4 mistakes, aims to limit the negative effects of capital on merit assessments, and given the prevalent use of capital to achieve success calls for building a capital base from which all can pursue the Dream.

Moreover, even if the pro-merit critique was about eliminating or restricting the use of capital on merit, not in the name of a return to a nostalgic imaginary past but in the name of advancing a more pure, capital free concept of merit, the challenge would be unpersuasive. Trying to dismantle capital assets would constitute a Herculean effort. For many Americans, the cultivation of economic, social, and cultural capital and the transferring of these capital assets to the next generations is both intuitive and instinctive, and the notion that acquiring capital or bequeathing it might be restricted or regulated is unthinkable.⁵⁵⁹ Next, attempting to disrupt social, cultural, and identity capital would be undesirable. Capital can affect merit positively, enhancing performance.⁵⁶⁰ Attempting to restrict the use of capital to achieve some sort of pure merit free of the corrupting influence of capital is to misunderstand the very meaning of merit, which depends on capital.⁵⁶¹ Indeed, the fundamental insight of *Stoner* as a case study and the thesis of this Article is that merit and capital are inherently intertwined in explaining success and failure in America.

To be sure, attempts to avoid the misrecognition of capital and merit by developing conceptions of merit that are less susceptible to capital are certainly desirable.⁵⁶² Yet such efforts are very different than trying to deny the effects of capital or to restrict capital use. No doubt, over time as decision makers revise the definition of merit to include aspects that are less amenable to capital, the well-endowed are likely to come up with new ways to use their capital to become more meritorious. The solution is not to try to eliminate or restrict the

Road and the Traffic Stop: Narratives and Counter-Narratives of the American Dream, 64 FLA. L. REV. 305 (2012), for excellent analyses of the availability of the American Dream, and lack thereof.

559. John H. Langbein, *The Twentieth-Century Revolution in Family Wealth Transmission*, 86 MICH. L. REV. 722, 725 (1988); Stewart E. Sterk, *Restraints on Alienation of Human Capital*, 79 VA. L. REV. 383, 383 (1993).

560. See Jewel, *supra* note 82, at 261–62; see also *supra* Section III.B.1.

561. See *supra* Section III.B.1.

562. See *supra* Section III.C.2.

use of capital, it is to continuously reinvent merit and to closely monitor the effects of capital on merit.

Finally, a related so-called “anti-capital” critique shares with the “pro-merit” challenge opposition to capital analysis on the ground that capital dilutes merit and is undesirable, focusing not on a more “pure” conception of merit but on the evils of commodifying at least some forms of capital.⁵⁶³ The same arguments that discredit the “pro-merit” critique apply to the “anti-capital” challenge: capital analysis is in part a descriptive account exposing the impact of capital, not a purely normative one; the use of capital is inherent and inevitable in the U.S.; and capital has positive effects on merit.

Moreover, a growing body of scholarship spanning biology, anthropology, economics, sociology, psychology, philosophy, theology, and law establishes that notwithstanding our love affair with individualism and its great legacy, human beings are inherently relational beings.⁵⁶⁴ People want to be in

563. *See supra* note 89.

564. *See, e.g.*, BEING RELATIONAL: REFLECTIONS ON RELATIONAL THEORY AND HEALTH LAW (Jocelyn Downie & Jennifer J. Llewellyn eds., 2012) (law); YOCHAI BENKLER, THE PENGUIN AND THE LEVIATHAN: THE TRIUMPH OF COOPERATION OVER SELF-INTEREST (2011) (biology/law/philosophy); ROBERT C. ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES (1991) (law); CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT (1982) (feminism); VIRGINIA HELD, THE ETHICS OF CARE: PERSONAL, POLITICAL, AND GLOBAL (2006) (feminism); STEPHEN MACEDO, LIBERAL VIRTUES: CITIZENSHIP, VIRTUE, AND COMMUNITY IN LIBERAL CONSTITUTIONALISM (1990) (philosophy); ALASDAIR MACINTYRE, AFTER VIRTUE: A STUDY IN MORAL THEORY (2d ed. 1984) (philosophy); JENNIFER NEDELSKY, LAW’S RELATIONS: A RELATIONAL THEORY OF SELF, AUTONOMY, AND LAW (2011) (law); NEL NODDINGS, CARING: A FEMININE APPROACH TO ETHICS & MORAL EDUCATION (2d ed. 2003) (feminism); DONALD W. PFAFF, THE NEUROSCIENCE OF FAIR PLAY: WHY WE (USUALLY) FOLLOW THE GOLDEN RULE (2007) (neuroscience); ERIC A. POSNER, LAW AND SOCIAL NORMS (2000) (law); MICHAEL J. SANDEL, DEMOCRACY’S DISCONTENT: AMERICA IN SEARCH OF A PUBLIC PHILOSOPHY (1996) (philosophy); AMARTYA K. SEN, COLLECTIVE CHOICE AND SOCIAL WELFARE (1970) (economics); AMARTYA SEN, ON ETHICS AND ECONOMICS (1987) (economics); CHARLES TAYLOR, THE MALAISE OF MODERNITY (2d ed. 2003) (philosophy); MICHAEL TOMASELLO, WHY WE COOPERATE 4 (2009) (psychology); VISCHER, *supra* note 424 (theology); Luigino Bruni & Robert Sugden, *Fraternity: Why the Market Need Not Be a Morally Free Zone*, 24 ECON. & PHIL. 35 (2008) (economics); Deborah J. Cantrell, *What’s Love Got to Do With It?: Contemporary Lessons in Lawyerly Advocacy From the Preacher Martin Luther King, Jr.*, 22 ST. THOMAS L. REV. 296 (2010) (law); Alan Page Fiske, *The Cultural Relativity of Selfish Individualism: Anthropological Evidence That Humans Are Inherently Sociable*, in PROSOCIAL BEHAVIOR (Margaret S. Clark ed., 1991) (anthropology); Ian R. Macneil, *Contracting Worlds and Essential Contract Theory*, 9 SOC. & LEGAL STUD. 431 (2000) (law); Daniel Siegel & Debra Pearce McCall, *Mindsight at Work: An Interpersonal Neurobiology Lens on Leadership*, NEUROLEADERSHIP J., no. 2, 2009, at 1 (psychology); Robert Sugden, *Reciprocity: The Supply of Public Goods Through Voluntary Contributions*, 94 ECON. J. 772 (1984) (economics).

relationships, communities, and networks.⁵⁶⁵ To the extent that social capital captures the value of human relationships, it is a desirable concept especially in a day and age in which rampant individualism dominates our culture.⁵⁶⁶ Cultural capital assets, such as hobbies, languages, literature, music, and travel, not to mention self-esteem, are all conducive to human flourishing,⁵⁶⁷ and attempting to eliminate or limit the use of cultural capital in the name of pursuing the American Dream is throwing out the baby with the bathwater. Similarly, identity capital assets can enrich and improve decision-making, helping those who deploy them make better, empowered decisions.⁵⁶⁸ Bleaching out identity capital is thus inconsistent with pursuing merit.⁵⁶⁹ In sum, while capital analysis may be characterized by anti-capital advocates as streamlining the commodification of capital, such commodification may not only be inevitable, it is also desirable.

Questioning the secular trinity of mobility, individualism, and merit is nothing short of American blasphemy. As such, capital analysis is understandably likely to be resisted on these six and possibly other grounds. The impact of capital on merit and therefore on success and failure in America, however, cannot and should not be denied. Capital analysis with its three prongs of transparency, attention to misrecognition of capital and merit, and investment in capital infrastructure for all constitutes an important step in the direction of giving everybody a more equal opportunity to pursue the American Dream.

IV. CONCLUSION

Individualism, hard work, and meritocracy lead to success, but they do not tell the whole story of climbing the socioeconomic ladder. In most cases, economic, social, cultural, and identity capital play an important role in achieving the American Dream. Specifically, capital helps develop merit, but is often misrecognized for it. The result is that those well-endowed with capital are better positioned to pursue their dreams and those less-endowed face a tougher road to attaining success. Pretending that capital does not impact the American Dream, treating the impact as inconsequential because it is hard to

565. Siegel & McCall, *supra* note 564, at 2.

566. See Wald & Pearce, *supra* note 374.

567. See GARY S. BECKER, HUMAN CAPITAL: A THEORETICAL AND EMPIRICAL ANALYSIS, WITH SPECIAL REFERENCE TO EDUCATION 21 (3d ed. 1993).

568. See Levinson, *supra* note 192, at 1577–94; Minow, *supra* note 192; Wald, *supra* note 89, at 112.

569. See Wilkins, *supra* note 201, at 207, 218–25, 230–34.

measure, and continuing to tell the traditional story of individualism and merit is misleading and irresponsible. It is misleading because it causes people to over-invest in hard work, individualism, and merit and under-invest in cultivating social and cultural capital assets. It is irresponsible because it deprives those who buy into the American Dream of a fair opportunity to accomplish their own dreams. Worse, it then blames the “losers” for their own “failures.” If you only worked harder or had more talent, you too could have succeeded!

Meritocracy is and should be a cornerstone of American life. Capital can undermine and may be misrecognized for merit, but it is not inherently inconsistent with merit. Quite the contrary, capital may be used to enhance performance and merit. The possible capital abuse of merit does not suggest that we ought to abandon either merit or capital as tainted concepts. True commitment to merit requires addressing its relationship with capital at three complementary levels. First, it demands practicing capital transparency, telling the truth about the role all types of capital play in the American Dream and in particular their interplay with merit. Second, it necessitates developing effective means of avoiding the systematic misrecognition of capital and merit, including learning to recognize nontraditional forms of merit. Finally, it requires building capital infrastructure for all, to give all Americans a more equal opportunity to develop merit and pursue their dreams.