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Exploring Michael Omi's "Messy" Real World of Race: An Essay for "Naked People Longing to Swim Free"

John O. Calmore*

The real world is messy with no clear answers. Nothing demonstrates this convolution better than the social construction of racial and ethnic categories.

—Michael Omi¹

What strikes me here is that you are an American talking about American society, and I am an American talking about American society—both of us very concerned with it—and yet your version of American society is really very difficult for me to recognize. My experience in it has simply not been yours.

—James Baldwin²

* Professor of Law and W. Joseph Ford Fellow, Loyola Law School, Los Angeles. In writing this Essay I am grateful for the generous support I have received through the Loyola Law School program for Dean's Fellows, my fellowship being granted in the name of Loyola Law School's first Dean, W. Joseph Ford. Earlier versions of this Essay were presented at the Race and Law Symposium at Vanderbilt Law School in November 1995, sponsored by the Black American Law Students Association, and at a session of the Western Law Teachers of Color Conference in Santa Cruz in March 1996. As I step outside of the strict boundaries of doctrinal analysis, I increasingly appreciate my connections to people working for social justice. In this regard, this Essay has been facilitated by my work on the boards of directors for the New World Foundation (NWF) and the National Asian-Pacific American Legal Consortium (NAPALC). From NWF's grants in the areas of resistance to repression and support for grass-roots social justice projects, to NAPALC's advocacy on behalf of Asians and Pacific Islanders, I, the professor, have learned much more than I have taught.

1. Michael Omi, *Racial Identity and the State: The Dilemmas of Classification*, 15 *LAW & INEQ. J.* 7, 23 (1997).

2. STEPHEN STEINBERG, *TURNING BACK: THE RETREAT FROM RACIAL JUSTICE IN AMERICAN THOUGHT AND POLICY* 112 (1995) (quoting James Baldwin, in *Liberalism and the Negro: A Round-Table Discussion*, *COMMENTARY*, Mar. 1964, at 25, 31).

group racial identities in the popular consciousness.⁹ Gaps are caused by the difficulty of classifying mixed race people,¹⁰ classifying whites in a way that collapses their ethnicity¹¹ and attempts by Asian groups to transcend their separate ethnic classifications to operate on the basis of "panethnicity."¹² Additionally, Omi believes that self-identity is not static, but ever-changing, as "[n]ew labels come into vogue, old groups dissolve through assimilation and new groups emerge as a result of changes in civil status or patterns of immigration."¹³ Thus, racial and ethnic identification shift in meaning and vary enormously among specific groups and individuals.

Against this backdrop, I respond directly to two points Omi raises. The first point is his emphasis on the politics of this messy situation. Omi observes that "racial and ethnic categories are often the effects of political interpretation and struggle *and* . . . those categories in turn have political effects."¹⁴ In spite of all the current talk about colorblindness, most people intuitively recognize the politics at play, but we seldom have a serious analytical conversation about it. This is what I hope to stimulate. The second point I want to address is Omi's observation that sociological research tends to treat race as an independent variable whose own variability and historically contingent character is discounted.¹⁵ Race often is correlated with such matters as residential patterns, job qualifications, culture, academic achievement, criminal behavior, welfare dependency and intelligence.¹⁶ But this can be done, according to Omi, "without *problematizing* the concept of race itself":¹⁷

There is no discussion among scholars about the constantly shifting parameters through which race is considered—how group interests are conceived, status is ascribed, agency is attained and roles performed. Although abstractly acknowledged to be a socio-historical construct, race in practice is often treated as an objective fact: one simply *is* one's race.¹⁸

9. *Id.* at 11.

10. *Id.* at 11-12.

11. *Id.* at 11.

12. *Id.* at 15-17.

13. *Id.* at 16.

14. *Id.* at 23 (emphasis added).

15. *Id.* at 121.

16. *Id.* at 21-22.

17. *Id.* at 21 (emphasis added).

18. *Id.*

Omi, here, and in his work with Howard Winant,¹⁹ demonstrates that race is not that simple and not that neat. His essay opens our eyes to that fact.

Conspicuously missing from Omi's essay, however, is any significant discussion of racism. Therefore, his discussion of the politics of race appears to be more benign than the messy reality he finds. In David Goldberg's view, "If race is a conception, then racism is a condition; or more precisely, where race is a set of conceptions, racisms are sets of conditions."²⁰ I think to discuss race without relating it to the oppressive conditions of racism often decontextualizes the discussion and gives undue credibility to the argument that racism is nothing more than the aberrational, irrational expression of racial prejudice—something that for the most part died long ago.²¹ This argument detracts from the oppressive and exclusionary expressions of racism that are institutional and cultural, structured and systemic, and harmful.²²

Today's racism is state-of-the-art. "Its picaresque genius lay in developing so brilliantly . . . that it [has] disappeared except as it [is] 'imagined' by its subordinated subjects who [continue] to 'suffer' in an unbelievable world—a color blind world of white in-

19. MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1990S* (2d ed. 1994).

20. DAVID THEO GOLDBERG, *RACIST CULTURE: PHILOSOPHY AND THE POLITICS OF MEANING* 98 (1993). On this same point, one commentator states:

Racism inscribes culture with generalized preferences and routinized notions of propriety. It is aspiration as much as condemnation; it is an aesthetic. It empowers the familiarity and comfort of the status quo by labeling that status quo "natural." If we are to reach the deep roots of this legacy, antidiscrimination must be a commitment not merely to undo the words of forced division, but also to undo the consequences of oppressive acts.

PATRICIA J. WILLIAMS, *THE ROOSTER'S EGG* 107 (1995).

21. See Kenneth B. Nunn, *Decoding Rodney King: The Significance of Race in the Struggle Over Meaning—or, Why We All Can't Get Along*, 1 *UMOJA* L.J. 5, 6-9 (1996) (examining racially based conceptions of justice in the context of the Rodney King incident and finding that blacks and whites have different needs because of the racial hierarchy in American society).

22. In his testimony before the Civil Rights Commission in May 1992, sociologist Joseph Feagin discussed how "racism" is a scary term and that the term "race" is more easily incorporated into discourse and news of the day. Joe R. Feagin, *White Racism: The Foundation of Racial Tensions and Conflict*, 1 *UMOJA* L.J. 1, 1 (1996). After the Los Angeles disorder, he noted that there were various headlines such as, "Rethinking Race and Crime in America" and "Why Race Still Divides America and Its People." *Id.* (citations omitted). These headlines focus on race as some vague agent, rather than acknowledging the role of racism in perpetuating the black-white division. *Id.* at 1-2. Moreover, when the word "racism" is used by the media, it usually refers to black racism against whites and other non-whites that justifies an aggressive anti-black backlash. Nunn, *supra* note 21, at 15-16.

nocence."²³ Race divorced from considerations of racism furthers this illusion. This is my biggest problem with Omi's discussion. Racism is like an eclipse. But unlike a solar eclipse that may blind us, it is more like a lunar eclipse that may cause us to trip in the dark. This Essay moves beyond Omi's conceptual messiness of race to examine the difficult, obscuring conditions of racism.

Relatedly, racism is a "lived experience."²⁴ As Baldwin's epigraphic comment suggests,²⁵ this explains a great deal about why blacks and whites are talking past each other²⁶ and why other people of color nevertheless want to join the conversation.²⁷ For legal scholars, ultimately the subject of conversation is the interrelation among power, privilege and law. One of the textbooks I use, *Power, Privilege and Law: A Civil Rights Reader*,²⁸ introduces students to these very issues by quoting Alice Walker's poem, *Silver Writes*.²⁹ Walker laments that the term "Civil Rights" does not adequately capture "our longings and our dreams or those of the

23. John O. Calmore, *The Case of the Speluncean Explorers: Contemporary Proceedings*, 61 GEO. WASH. L. REV. 1764, 1776 (1993).

24. JOE R. FEAGIN & MELVIN P. SIKES, LIVING WITH RACISM: THE BLACK MIDDLE-CLASS EXPERIENCE 15 (1994) ("When our respondents talk about being black in a country dominated by whites, they do not speak in abstract concepts of discrimination or racism learned only from books, but tell of mistreatment encountered as they traverse traditionally white places."). Social science studies reveal that blacks tend to "see racism as an ongoing and pervasive condition of American life, while whites tend to think of racism as individual actions or attitudes of bigotry that are the exception, not the rule." Lynne Duke, *Blacks and Whites Define "Racism" Differently*, WASH. POST, June 8, 1992, at A1. According to Judith Lichtenberg, these respective differences can be characterized as "racism-in-the-world" and "racism-in-the-head." *Id.* Lichtenberg explains:

In general, white people today use the word 'racism' to refer to the explicit, conscious belief in racial superiority. . . . For the most part black people mean something different by racism: they mean a set of practices and institutions that result in the oppression of black people. Racism, on this view, is not a matter of what's in people's heads but what happens in the world.

Id. For a discussion of how "nativistic racism" and "border racism" are experienced by other people of color, see *infra* notes 255-267 and accompanying text.

25. See *supra* text accompanying note 2.

26. Bob Blauner, *Talking Past Each Other: Black and White Languages of Race*, in RACE AND ETHNIC CONFLICT: CONTENDING VIEWS ON PREJUDICE DISCRIMINATION, AND ETHNOVIOLENCE 20 (Fred L. Pincus & Howard J. Ehrlich eds., 1994) (stating that blacks and whites often talk past each other because of differences in both language and world view) [hereinafter RACE AND ETHNIC CONFLICT].

27. See, e.g., Elizabeth Martinez, *Beyond Black/White: The Racisms of Our Time*, SOC. JUST., Spring-Summer 1993, at 22, 23 (urging a "fresh and fearless thinking about racism" that should begin with a critical examination of the national tendency to frame racial issues in strict terms of black and white).

28. BENDER & BRAVEMAN, *supra* note 3.

29. See *id.* text accompanying note 3.

non-black people who stood among us.”³⁰ In her words, the term lacks both color and poetry:³¹

“Civil Rights” is a term that did not evolve out of black culture, but, rather, out of American law. As such, it is a term of limitation. It speaks only to physical possibilities—necessary and treasured, of course—but not of the spirit. Even as it promises assurances of greater freedoms it narrows the area in which people might expect to find them When one reads the poems of the period, this limitation becomes very clear. The poems, like the songs of the time, reveal an entirely different *quality of imagination and spirit* than the term “Civil Rights” describes. The poems are full of protest and “civil disobedience,” yes, but they are also full of playfulness and whimsicality, an attraction to world families and the cosmic sea—full of naked people longing to swim free.³²

I am deeply concerned that the law, propelled by reactionary forces, no longer promises greater freedom for those who are subordinated. Instead, the law not only narrows and hides the areas where that freedom ought to be found, but it increasingly erases such areas off the national map. As my subtitle suggests, the imaginatively spirited words of Alice Walker and the experiential perspective of James Baldwin direct this Essay.

I first came across Omi’s work in the early 1980s in *The Insurgent Sociologist*.³³ Later, in thinking about the themes of critical race theory, I placed the joint work of Omi and Winant at the legal scholarship’s foundation.³⁴ Paraphrasing them, I stated, “Critical race theory begins with a recognition that ‘race’ is not a fixed term. Instead, ‘race’ is a fluctuating, decentered complex of social meanings that are formed and transformed under the constant pressures of political struggle.”³⁵ As many readers recognize, this refers to the theory of racial formation.³⁶ As I wrote about

30. BENDER & BRAVEMAN, *supra* note 3, at 1.

31. *Id.*

32. *Id.* Here, I write for the free swimmers who recently swam away, Haywood Burns, Alan Freeman, Shanara Gilbert, Trina Grillo and Louis Westerfield: As you did here, please keep a light on. By your examples, we know that no one swims free alone or merely for oneself.

33. See John O. Calmore, *Exploring the Significance of Race and Class in Representing the Black Poor*, 61 OR. L. REV. 201, 207 (1982) (arguing that racism was linked to the concept of “meritocracy”) (citing Michael Omi, *William Julius Wilson, The Declining Significance of Race*, 10 INSURGENT SOCIOLOGIST 118, 121 (1980) (book review)).

34. See OMI & WINANT, *supra* note 19.

35. John O. Calmore, *Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World*, 65 S. CAL. L. REV. 2129, 2160 (1992) (citing MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1980S* 68-69 (1986)).

36. See OMI & WINANT, *supra* note 19, at 55. Racial formation refers to “the

critical race theory's reliance on this notion, I noted that the "challenge thus presented is to examine how individual and group identities, under broadly disparate circumstances, as well as the racial institutions and social practices that are linked to those identities, are formed and transformed historically by actors who politically contest the social meanings of race."³⁷

Clearly, this is a persistent challenge and I will address certain issues related to it. Part I of this Essay briefly reflects on Omi's important contributions to an insurgent sociology that add to an important paradigm shift in thinking about race. Omi and other scholars have examined how concepts of race are created and changed, how they become the focus of political conflict and how they have come to permeate our society. In response to the pervasive nature of race, I focus particularly on the contested racial projects developed by Omi and Winant.³⁸

Part II provides a closer examination of the operational linkages and complementary aspects of the right-wing racial projects. Here, I find racism in the dominant political agenda of our time, which is conservative egalitarianism. This agenda serves the politics of the neoconservative right-wing racial project.³⁹ According to Thomas Edsall, conservative egalitarianism drives Republican Party politics and "[t]he power of conservative egalitarianism—based on an idealized concept of 'equal opportunity' and reinforced by free-market economic theory—is that it affirms basic principles

sociohistorical process by which racial categories are created, inhabited, transformed, and destroyed." *Id.* Racial formation is situated within both the political spectrum and "everyday experience." *Id.* at 58-59. Omi illustrates an analysis built on the theory of racial formation. For that reason, I will often refer to his work with Winant in responding to his current essay. In looking at racial controversies and conflicts, they acknowledge the need to discount biological explanations. Yet, they argue that the views of the social construction of race "simply recognize the fact that these conflicts and controversies are now more properly framed on the terrain of politics." *Id.* at 65.

37. Calmore, *supra* note 35, at 2160.

38. OMI & WINANT, *supra* note 19, at 57-58 (discussing "five racial projects": neoconservative, liberal, far right, new right and radical democratic). Racial projects are

simultaneously an interpretation, representation, or explanation of racial dynamics, and an effort to reorganize and redistribute resources along particular racial lines. Racial projects connect what *race means* in a particular discursive practice and the ways in which both social structures and everyday experiences are racially *organized*, based upon that meaning.

Id. These racial projects have both discursive and political aspects with respective implications for cultural representations and programmatic agendas.

39. *Id.*

of equality while protecting, and in some cases reinforcing, the very unequal distribution of racial and economic benefits. . . ."⁴⁰

Part III discusses the controversy of right-wing racial projects and the attempt of these projects to reduce race to ethnicity and the implications for those working toward a critical, insurgent multiculturalism.⁴¹ Omi's essay looks at the fluid nature of eth-

40. THOMAS BYRNE EDSALL with MARY D. EDSALL, CHAIN REACTION: THE IMPACT OF RACE, RIGHTS, AND TAXES ON AMERICAN POLITICS 147 (1992). In some contexts, right-wing linkages and developments constitute a fused, super right-wing racial project. The covert (lunar-eclipsing) character of this super right-wing project often hides both racist intents and effects. The United States Supreme Court, abandoning even the pretense of a counter-majoritarian mission, is deeply implicated in the workings of this super right-wing racial project. The omnibus racial project of the right—sort of a stealth bomber of racism directed by the far right but piloted by others—represents a retreat from racial justice so startling that it would shake even the ghosts of Dred Scott and Homer Plessy. See Jamie B. Raskin, *Affirmative Action and Racial Reaction*, 38 HOW. L.J. 521, 522 (1995) ("The best analogy for comprehending the racial reaction sweeping the United States today is the post-Civil War undoing of Reconstruction."); Richard Delgado & Jean Stefancic, *The Social Construction of Brown v. Board of Education: Law Reform and the Reconstructive Paradox*, 36 WM. & MARY L. REV. 547, 564 (1995) ("We believe, then, that dispassionate examination of today's dominant narratives shows that the themes of *Plessy* and the *Civil Rights Cases* are in ascension Unless there is concerted action or a sharp change in national circumstances, one final step will be taken. Just as the clock of time seems to be rolling backward, a final narrative may soon regain prominence: that of *Dred Scott v. Sanford*.").

I claim that a majority of the Supreme Court—Chief Justice Rehnquist and Associate Justices Kennedy, O'Connor, Scalia and Thomas—is now consciously and deliberately assuming the character and supporting the aims of this racial project. This notion is tied somewhat to the indeterminacy thesis of critical legal studies. See MARK KELMAN, A GUIDE TO CRITICAL LEGAL STUDIES 12-14 (1987). In distinguishing a critical legal studies (CLS) approach from the legal realist focus on language indeterminacy, Mark Kelman argues:

This stronger CLS claim is that the legal system is invariably simultaneously *philosophically committed* to mirror-image contradictory norms, each of which dictates the opposite result in a case (no matter how 'easy' the case first appears). While settled *practice* is not unattainable, the CLS claim is that settled *justificatory schemes* are in fact unattainable.

Id. at 13. Hence, attaining norm legitimization is problematical—"radically indeterminate not because the source of authority *cannot* speak clearly . . . but because if pressed, she would not want to." *Id.* at 12-13.

41. According to Henry Giroux, "insurgent multiculturalism" broadens the focus from merely identity construction and diversity tolerance to the "terrain in which relations of power and racialized identities become paramount as part of a language of critique and possibility." Henry A. Giroux, *Insurgent Multiculturalism and the Promise of Pedagogy*, in MULTICULTURALISM: A CRITICAL READER 325, 326 (David Theo Goldberg ed., 1994) [hereinafter MULTICULTURALISM]. Giroux explains:

As part of a project of possibility, an insurgent multiculturalism is about developing a notion of radical democracy around differences that are not exclusionary and fixed, but that designate sites of struggle that are open, fluid, and that will provide the conditions for expanding the heterogeneity of public spaces and the possibility for critical dialogues across different political communities and constituencies.

nicity and it is his position that the bipolar, black-white racial paradigm is both empirically flawed and analytically unsound.⁴² Others, however, argue that the black-white paradigm not only persists, but that other people of color are themselves defined by it.⁴³ Thus, for instance, some claim that “[m]uch of the controversy over the status of ‘new immigrants’ from Asia and what is called Latin America consists of efforts to determine who will be ‘white’ in the twenty-first century.”⁴⁴

Finally, in a way that relates to this multicultural future, Part IV looks prescriptively at white privilege, calling upon “whites of good will” to acknowledge that this largely invisible skin-color privilege is not “neutral, normal, and universally available to everybody.”⁴⁵ With this recognition, a growing number of whites may themselves become critical race theorists who seek to delegitimatize and overthrow their own privileged “whiteness.”⁴⁶ Perhaps then we can more positively answer Rodney King’s question: “Can’t we all get along?”⁴⁷

Id. at 326-27.

42. See OMI & WINANT, *supra* note 19, at 152-55.

43. See *infra* notes 177-83 and accompanying text.

44. *Letters (to the Editors)*, in RACE TRAITOR 269, 275 (Noel Ignatiev & John Garvey eds., 1996) [hereinafter RACE TRAITOR].

45. Peggy McIntosh, *White Privilege and Male Privilege: A Personal Account of Coming to See Correspondences Through Work in Women's Studies*, WELLESLEY COLLEGE CENTER FOR RESEARCH ON WOMEN WORKING PAPER NO. 189 (1988), reprinted in BENDER & BRAVEMAN, *supra* note 3, at 22, 28.

46. See Derrick A. Bell, *Who's Afraid of Critical Race Theory?*, 1995 U. ILL. L. REV. 893, 898 (1995) (“Those critical race theorists who are white are usually cognizant of and committed to the overthrow of their own racial privilege.”).

47. Against a backdrop of fire in the streets and unprecedented civil discord, Rodney King’s question was displayed on the cover of *Time*, May 11, 1992, after Los Angeles Police Officers were acquitted of criminally beating him. One commentator remarked:

As smoke darkened the skies of Los Angeles, the issue of race took center stage. The city’s civil unrest of 1992 brought forth new thinking and new questions about race relations in America. Myths and theories of the melting pot, of assimilation and of the plural society were shattered as racial violence vividly exposed the inadequacy of our prior assumptions. What is race? What is ethnicity? What does it mean to live in a multi-ethnic society? Can we truly live together in such a society?

Edward T. Chang, *Introduction: From Chicago to Los Angeles—Changing the Site of Race Relations*, in LOS ANGELES—STRUGGLES TOWARD MULTIETHNIC COMMUNITY: ASIAN AMERICAN, AFRICAN AMERICAN, AND LATINO PERSPECTIVES 1, 1 (Edward T. Chang & Russell C. Leong eds., 1994). This Essay is written with Chang’s and King’s questions in mind.

I. The Insurgent Sociology of Michael Omi

A. *Omi Pushes the Envelope Beyond the Traditional Sociology of Race and Ethnicity*

Omi recognizes the persistent temptation among scholars to think about race as an *essence*, which is objective and concretely fixed.⁴⁸ An opposite temptation is to view race as merely an *illusion*, "a purely ideological construct which masks some other more fundamental division, such as class."⁴⁹ Omi seeks to introduce a new paradigm by developing the concept of race beyond these polar notions of essence and illusion.⁵⁰ According to Thomas Kuhn, "scientific revolutions are inaugurated by a growing sense . . . often restricted to a narrow subdivision of the scientific community, that an existing paradigm has ceased to function adequately in the exploration of an aspect of nature to which that paradigm itself had previously led the way."⁵¹ Kuhn's observation would also describe developments in sociology and legal scholarship as they relate to race.⁵²

Although the historical notion of race has always carried social significance, it has been firmly fixed in biology and primarily associated with the essence of blood and nature: This invited the first paradigm shift.⁵³ Today's dominant racial paradigm in the United States, viewing race as ethnicity, has displaced the historical conception of race as an issue of biology.⁵⁴ The ethnicity para-

48. See Omi, *supra* note 1, at 21.

49. *Id.*

50. *Id.*

51. THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* 92 (1985).

52. *Id.* See also CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT at xiii (Kimberlé Crenshaw et al. eds., 1995) [hereinafter CRITICAL RACE THEORY] (viewing critical race theory as embracing "a movement of left scholars, most of them scholars of color, situated in law schools, whose work challenges the ways in which race and racial power are constructed and represented in American legal culture and, more generally, in American society as a whole").

53. For an excellent discussion of the biology of race, see F. JAMES DAVIS, *WHO IS BLACK?* (1991). Davis notes: "Much of the rhetoric advanced in the 1950s and 1960s against desegregating the public schools and other public facilities in the American South featured the assertion that racial integration would destroy the purity of the races." *Id.* at 17. According to Thomas Brady, a Yale-educated federal judge in Mississippi, the decision in *Brown v. Board of Educ.*, 347 U.S. 483 (1954), would lead to "the tragedy of miscegenation" that would conflict with the "God-given right" of whites to keep their "blood white and pure." DAVIS, *supra* at 17.

54. For good summary accounts of theoretical concepts pertaining to ethnicity, see YASUKO I. TAKEZAWA, *BREAKING THE SILENCE: REDRESS AND JAPANESE AMERICAN ETHNICITY* 12-21 (1995), and RICHARD D. ALBA, *ETHNIC IDENTITY: THE TRANSFORMATION OF WHITE AMERICA* 27-30 (1990).

digm of race initially arose in the 1920s and 1930s as an explicit challenge to the social Darwinism reflected in the scientific theory of race as biological essence.⁵⁵ From the 1930s to the mid-1960s, ethnicity theory was dominant, serving to establish the liberal "common sense" of the day and exploring the implications of assimilation and cultural pluralism.⁵⁶ Presently, with the swirling controversy over race-conscious remedies and groups' rights, it is easy to forget that the prevailing racial theory of the civil rights movement was an ethnicity theory of race.⁵⁷

By 1965, Black Nationalists challenged the viability of the ethnicity paradigm and its assimilationist conceptualization of integration.⁵⁸ Meanwhile, Watts burned and blacks demanded group rights, including something more than legal equality.⁵⁹ White backlash increased, and the prevalent white liberal response was escape or retreat.⁶⁰ Against this backdrop, the civil rights movement could no longer confidently proceed on the operational as-

55. See OMI & WINANT, *supra* note 19, at 14-15 ("[T]he ethnic paradigm definitively dislodged the biologicistic view in what appeared to be a triumph of liberalism.").

56. *Id.*

57. *Id.* at 207-08 n.59 (describing the emergence of neoconservatism as "an attempt to confine racially based demands to an ethnicity-oriented model of politics"). Moreover, from its beginning, the civil rights movement "was fundamentally and unrelentingly 'assimilationist'." *Id.* at 208 (citing Lewis M. Killian, *Black Power and White Reactions: The Revitalization of Race-thinking in the United States*, ANNALS AM. ACAD. POL. & SOC. SCI., Mar. 1981, at 42). Gary Peller declares:

Today the story of the civil rights struggle commonly is told in linear fashion, as if progress in race relations followed a teleological evolution—from an ignorant time when racial status was taken to signify real and meaningful differences between people, to the present, enlightened time, when race properly is understood in mainstream culture not to make a difference except as vestiges of unfortunate historical oppression or in terms of a vague and largely privatized "ethnic heritage."

Gary Peller, *Race Consciousness*, 1990 DUKE L.J. 758, 764 (1990).

Comparatively, Roy Brooks observes that the primary legal precept emerging from the civil rights movement is formal equality of opportunity. ROY L. BROOKS, *RETHINKING THE AMERICAN RACE PROBLEM* 25-33 (1990). Formal equality of opportunity has two primary operating tenets: racial omission (a race-neutral equality approach to the law), and its "sibling tenet," racial integration. *Id.* at 29-30. Finally, although faced with group inequality and exclusion, the civil rights movement was predicated on individualism and opportunity. *Id.*

58. See STOKELY CARMICHAEL & CHARLES V. HAMILTON, *BLACK POWER: THE POLITICS OF LIBERATION IN AMERICA* 53-56 (1967) (critiquing integration as "a totally unrealistic position" for focusing on individuals who have nonetheless suffered as members of a group, trying to mainstream "'acceptable' black people"—Negroes who "are not and should not be preoccupied with race"). (Stokely Carmichael is now known as Kwamé Touré.)

59. See Peller, *supra* note 57, at 783-811.

60. See STEINBERG, *supra* note 2, at 112-13.

sumption that "the protection of the law, the heritage of national values, and the aspirations of the black community formed a functionally cohesive triad."⁶¹ It is the loss of confidence in this functionally cohesive triad and the absence of any alternative to replace it that perpetuates much of America's bewilderment over race.

The ethnicity theory of race has revived significance in the post-civil rights era primarily for two reasons. First, this theory presents a racial theory that pertains to the significant influx of Asian, Pacific Islander and Latino immigrants who have arrived since immigration restrictions were relaxed in 1965,⁶² and second, as Omi and Winant point out, the theory is used to defend a "conservative (or 'neoconservative') egalitarianism against the perceived radical assault of 'group rights.'"⁶³

During the 1970s a few social scientists argued that race—or "minority" legal status—should not be equated with ethnicity, but most social scientists focused on ethnicity and largely ignored race and racism.⁶⁴ In 1972, however, sociologist Robert Blauner developed a power-conflict theory that characterized racial oppression in terms of "internal colonialism."⁶⁵ Rather than critically examining his framework, I simply want to draw attention to his critique of the prevailing theory of ethnic assimilation.⁶⁶ According to Blauner, four fallacies plagued the traditional sociology of race as ethnicity:

1. The view that racial and ethnic groups are neither central nor persistent elements of modern societies.

....

2. The idea that race and racial oppression are not independent dynamic forces but are ultimately reducible to other causal determinants, usually economic or psychological.

....

3. The position that the most important aspects of racism are the attitudes and prejudices of white Americans.

....

61. Robert L. Zangrando & Joanna Schneider Zangrando, *Law, the American Value System, and the Black Community*, 3 RUT.-CAM. L.J. 32, 32 (1971).

62. See Rachel F. Moran, *Foreword—Demography and Distrust: The Latino Challenge to Civil Rights and Immigration Policy in the 1990s and Beyond*, 8 LA RAZA L.J. 1 (1995).

63. OMI & WINANT, *supra* note 19, at 14.

64. See Roger Sanjek, *The Enduring Inequalities of Race*, in RACE, 1, 3, 9 (Steven Gregory & Roger Sanjek eds., 1994).

65. ROBERT BLAUNER, RACIAL OPPRESSION IN AMERICA 82-104 (1972).

66. For a review of Blauner's theory and the response of Nathan Glazer, see STEINBERG, *supra* note 2, at 83-93.

4. The so-called *immigrant analogy*, the assumption, critical in contemporary thought, that there are no essential long-term differences—in relation to the larger society—between the *third world* or racial minorities and the European ethnic groups.⁶⁷

Noting the political and ideological nature of these “sociological” assumptions, Omi and Winant argue that “[t]hey neglect both the institutional and ideological nature of race in America and the systemic presence of racial dynamics in such social spheres as education, art, social policy, law, religion and science. Instead they focus attention on racial dynamics as the irrational products of individual pathologies.”⁶⁸ Such assumptions prevent an understanding of racism and the related racial conflict in America.⁶⁹

In spite of such critiques and false assumptions, however, ethnicity theory continues to be the dominant theory of race. As such, it “provides society with ‘common sense’ about race, and with categories for the identification of individuals and groups in racial terms.”⁷⁰ Moreover, for the present Essay, it is important to reiterate that the right-wing—particularly the neoconservatives—expressly politicized and incorporated the ethnicity theory of race. The Supreme Court’s race jurisprudence has also incorporated the ethnicity theory.⁷¹ Omi and Winant observe, “Perhaps worst of all from the ethnicity theory point of view, blacks and other racial minorities questioned the legitimacy of reforms based on the principle of equality of *individuals*, seeking instead a radical *collective* equality (‘group rights’) which ethnicity theory viewed as anathema to a democracy.”⁷²

B. *The Analytical Significance of Racial Projects*

Omi and Winant demonstrate that the racial formation theory is based on the idea that concepts of race have always been politically contested and that the state is the preeminent site of this controversy over race.⁷³ Although I rely on concepts of racial for-

67. *Id.* at 85-86 (footnotes omitted).

68. OMI & WINANT, *supra* note 19, at 10 (footnote omitted).

69. *Id.*

70. *Id.* at 11.

71. See generally Alan Freeman, *Antidiscrimination Law: The View from 1989*, 64 TUL. L. REV. 1407, 1412 (1990) (noting that the Supreme Court’s ahistorical analysis gives rise to a “startling claim of ‘ethnic fungibility’—the notion that each of us bears an ‘ethnicity’ with an equivalent legal significance and with an identical claim to protection”).

72. OMI & WINANT, *supra* note 19, at 128.

73. *Id.* at 65.

mation and racial projects, as developed by Omi and Winant, I qualify that reliance by incorporating David Goldberg's criticism of the Omi-Winant thesis.⁷⁴

Goldberg substitutes for racial formation his notion of "racial constitution" in order to place greater significance on the subjective dimension involved in the dynamics or dialectical process of racial formation.⁷⁵ Goldberg notes that Omi's and Winant's view of racial formation "is *structural* in determination and so retains a form of the abstract social scientific reductionism it is trying to evade."⁷⁶ In light of this, Goldberg argues that racial formation appears "to emerge seemingly magically out of political struggles, and somehow . . . a different set of contesting relations will produce a new set of racial categories."⁷⁷ What is missing from the analysis, he argues, is the "(self-)constitution of the (racialized) subject."⁷⁸

Therefore, Goldberg refers to racial constitution as "what gives one racial identity, what makes one (up as) a racial member, what inscribes one racially in society and in the law and identifiably gives substance to one's social being."⁷⁹ Under this analysis racial constitution "locates one as a social subject."⁸⁰ Evidence of this is found in racial debates and struggles "about the meaning and nature of political constitution and community: Who counts as in and who out, who is central to the body politic and who peripheral, who is autonomous and who dependent?"⁸¹

74. See GOLDBERG, *supra* note 20, at 82.

75. *Id.* at 83.

76. *Id.*

77. *Id.* at 82-83.

78. *Id.* at 83.

79. *Id.*

80. *Id.*

81. *Id.* See also Robert S. Chang, *The End of Innocence or Politics After the Fall of the Essential Subject*, 45 AM. U. L. REV. 687, 690 (1996) (urging that "radical democrats" move from identities to subject positions as an organizing principle for politics). Chang proposes restricting the reference term "people of color" to a pan-minority designation that denotes political commitments based on solidarity, and emphasizes a "chain of democratic equivalences." *Id.* at 691-92 (quoting Chantal Mouffe, *Hegemony and New Political Subjects: Toward a New Concept of Democracy*, in MARXISM AND THE INTERPRETATION OF CULTURE 89-90 (Cary Nelson & Lawrence Grossberg eds., 1988)). It is through this relational chain that agency, as subject positions, might be generated to direct colored acts of solidarity and political commitment.

Although Chang's view is somewhat romantic, I do endorse the discursive points. Moreover, I am willing to follow Chang's lead if, in racial project terms, there is a connection between culture and structure, between discourse and programmatic agenda. Although Chang points the way, we must really make some progress to address the interests of those beyond the "article-writing class." An-

These concerns about the racialized subject's place, and questions surrounding racial constitution, appropriately broaden the Omi-Winant conceptual scheme I employ to examine right-wing racial projects. With this in mind, I turn our attention to Table 1⁸²—a schematic map of the racial projects that emerged from the 1980s. Winant explains that each racial project seeks to advance its own "particular articulation of the culture and structure of race, of racial discourse and racial politics."⁸³ Together, this range of racial projects constitutes what Winant characterizes as "racial hegemony."⁸⁴

Table 1. Racial Hegemony in the United States (c. 1990)
CULTURE ← ARTICULATION → STRUCTURE

Project	Racial discourse: concept of identity "difference" and the meaning of race.	Political/programmatic agenda: orientation to the state, (in)equality, etc.
Far right	Represents race in terms of inherent, natural characteristics; rights and privileges assigned accordingly; traditional far right operates through terror; renovated far right organizes whites politically.	Open racial conflict; equality seen as a subversion of the "natural order"; the state is in the hands of the "race mixers." Whites need to form their own organizations, pressure the state for "white rights."

thony D. Taibi, *Racial Justice in the Age of the Global Economy: Community Empowerment and Global Strategy*, 44 *DUKE L.J.* 928, 963 (1995) (defining the article-writing class as upper-middle-class professionals and academics).

82. HOWARD WINANT, *Where Culture Meets Structure: Race in the 1990s*, in *RACIAL CONDITIONS: POLITICS, THEORY, COMPARISONS* 22, 31 (1994) (reprinted by permission of the University of Minnesota Press).

83. *Id.* at 30.

84. According to Winant, "In the contemporary United States, racial formation proceeds, and racial hegemony is organized, through the interplay of these projects. Hegemony operates through the adoption by the state, the media, large corporations, and other key societal institutions of political initiatives and cultural narratives drawn from competing racial projects." *Id.* He adds:

Furthermore, the racial dimensions of political conflict and cultural representation are becoming ever more central as we approach the end of the twentieth century. Racial hegemony is converging in important respects with overall societal hegemony. In this situation the political and cultural currents that most effectively establish the link between racial "difference" and social inequality will win the contest for hegemony in the United States.

Id. at 32.

New right	Understands racial mobilization as a threat to "traditional values"; perceives racial meanings and identities as operating "subtextually"; engages in racial "coding"; articulates class and gender interests as racial.	Racial conflict focuses on the state; racial (in)equality determined by access to state institutions and relative political power.
Neo-conservatism	Denies the salience of racial "difference," or argues that it is a vestige of the past, when invidious distinctions and practices had not yet been reformed; after the passage of civil rights laws, any collective articulation of racial "difference" amounts to "racism in reverse."	Conservative egalitarianism. Individualism, meritocracy, universalism. Rejection of any form of group rights; "color-blind" state.
Pragmatic liberalism	Racial identities serve to organize interests and channel political and cultural activities; as long as principles of pluralism and tolerance are upheld, a certain degree of group identity and racial mobilization can be accepted as the price of social peace.	Cultural and political pluralism; affirmative action as "goals, not quotas." State racial policy as moderating and eroding the legacy of discrimination.
Radical democracy	Racial difference accepted and celebrated; flexibility of racial identities; multiplicity and "decenteredness" of various forms of "difference," including race.	State racial policy as redistribution. Racial politics as part of "decentered" but interconnected pattern of "new social movements." Extension of democratic rights and of societal control over the state.

As Table 1 illustrates, there are three right-wing projects and two left-wing projects. This five-part typology is presented to sharpen respective divisions and antagonisms. Winant does not intend to present static, non-interactive projects. Indeed, as we move from the top to bottom on the table, we quickly observe that there is a lot of actual and potential overlapping and fusion, as well as contradiction. The project of critical race theorists, for example, incorporates an eclectic mix that includes the cultural and political aspects of both pragmatic liberalism and radical democracy. Yet, it will sometimes lodge harsh criticism against the liberal vision of civil rights.⁸⁵

85. See CRITICAL RACE THEORY, *supra* note 52, at xiv-xv.

Additionally, like pragmatic liberalism, critical race theory is explicitly race conscious in its belief that racial identities operate to facilitate the organization of interests and the channeling of political and cultural activities. However, unbounded by racialism, critical race theory is anti-essentialist in that it recognizes radical democracy's claim that racial identities are not immutably rooted in biology but are instead socially constructed and therefore malleable, multiple and decentered.⁸⁶

The conservative egalitarianism of the neoconservative racial project, as personified by Ronald Reagan, stands in contrast to critical race theory. Indeed, as demonstrated below, Reagan's vision incorporated aspects of all three right-wing projects. Although some may find the association of Reagan with the extreme far right problematic, the former president served its interests by implicitly encouraging and promoting tolerance for some of its programs. Reagan's focus on reverse racism created the perception that whites needed to organize and pressure the state for "white rights." The conservatives on the Supreme Court currently embody this theme.⁸⁷

Within the context of the racial formation process, Table 1 provides an inventory of competing and interacting racial projects that provide an analytical approach to the consideration of various interpretations of race and their implications for the proposal and defense of racial policy, the racialized social structure and the nation's racial order.⁸⁸ Additionally, this approach examines the evolution of such projects to consider how the forms of racial rule, or hegemony, are linked to the construction of racial identities.⁸⁹ Applying Winant's approach, Part II focuses on the dominant paradigm of conservative egalitarianism, how the paradigm is linked to other right-wing projects, and how it is tied to the Supreme Court's race jurisprudence.

86. See *id.* at xxxi; see also Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 CAL. L. REV. 741, 774 (1994) (explaining that in light of the multiple, fluid meanings of "race," the term can be used as either a tool of subordination or one of resistance: "The task of a discourse theory of race would be to chart this history.").

87. See, e.g., Linda S. Greene, *Race in the 21st Century: Equality Through Law?*, 64 TUL. L. REV. 1515, 1533-38 (1990) (discussing the concern for the "rights of whites" as a theme embodied in Supreme Court decisions).

88. See WINANT, *supra* note 82, at 5.

89. *Id.*

II. The Development of Conservative Egalitarianism

A. *The Social Context of Anxiety and the History of Backlash*

From its beginnings, the deep politicization of race has marked this nation's history. As Omi and Winant discuss, there has been an identifiable racial order since the colonial period which has linked political rule to the racial classification of individuals and groups.⁹⁰ They claim that the racial order of white supremacy has structured major institutions and social relationships.⁹¹ A dialectical trajectory has reflected an historical change in this racial order, i.e., a "pattern of conflict and accommodation which takes shape over time between racially based social movements and the policies and programs of the state."⁹²

The present environment offers an opportune time to consider the political conflict over race. The national political correspondents for the *Washington Post* and the *Los Angeles Times* have observed: "As the summer of 1995 turned toward fall, almost everything in American politics appeared up for grabs at once."⁹³ Indeed, in their assessment, "[t]urmoil is the defining characteristic of American politics in the 1990s."⁹⁴ This tumultuous period stems, in part, from "social and political upheaval that has alienated Americans from their political leadership."⁹⁵ Furthermore, there is now a political setting in which "rapid, unpredictable political change has become increasingly commonplace."⁹⁶

Americans' anxiety about the future of their country—perceived economic stagnation that prevents broad-scale upward mobility, and perceived cultural fragmentation that reinforces racial and ethnic division—exacerbates the political times. The American Dream, to which most aspire, requires an assurance that successive generations will fare better economically than their parents. Although most Americans today do have a higher stan-

90. See OMI & WINANT, *supra* note 19, at 79.

91. *Id.* (identifying "law, political organization, economic relationships, religion, cultural life, residential patterns, etc[.]" as examples of major institutions and social relationships).

92. *Id.* at 78.

93. DAN BALZ & RONALD BROWNSTEIN, *STORMING THE GATES: PROTEST POLITICS AND THE REPUBLICAN REVIVAL* 3 (1996) (discussing the impact of the 1994 election's "Republican Revolution" on divisive issues, such as welfare and Medicaid, and on preparations for the 1996 Presidential election).

94. *Id.* at 6.

95. *Id.*

96. *Id.*

dard of living than their parents, they increasingly doubt that their children will be able to live better than they did.⁹⁷ In many ways this anxiety is an ideal climate for the Republican Party to continue to advance its dominant racial projects. Hence, in this contextual setting, the political conflict over race is more significant now than it has been for years, largely because so much is at stake, and because the paradigm shift from left to right is profoundly in motion, ascending but not inevitably destined.⁹⁸

Relatedly, conservative egalitarianism represents a political and scholarly backlash in the context of social and race relations.⁹⁹ This backlash, however, is not new; it has been going on since the 1950s (although less salient at some times than others). For instance, prior to modern civil rights and antidiscrimination legislation, there was a period of persistent direct action protest and movement politics.¹⁰⁰ Today's backlash dates back to this pre-mid-1960s social movement: "The complexity and depth of American racism were reflected in the fact that, even while the *Brown* decision was opening the doors to the civil rights movement, the seeds of racial backlash were being sown."¹⁰¹ Indeed, in the spring of 1956, 101 congressmen from the Old Confederacy's eleven states issued their "Southern Manifesto," which declared that the *Brown* decision was "unwarranted" and "a clear abuse of judicial power"

97. *Id.* at 7.

98. *Id.* at 371 ("If the Republican Party acquires no broader mission than retrenching government for its own sake, it has little chance of resolving the full range of economic and cultural concerns that brought it to power—and thus little chance of maintaining sustained allegiance from the swing voters who decide national elections.").

99. See STEINBERG, *supra* note 2, at 97.

100. See generally DOUG MCADAM, *POLITICAL PROCESS AND THE DEVELOPMENT OF BLACK INSURGENCY, 1930-1970* (1985) (discussing an alternative "political process" model of social movements, in which McAdam posits that protest activity is the result of "a combination of expanding political opportunities and indigenous organization, as mediated through a crucial process of collective attribution"); FRANCES FOX PIVEN & RICHARD A. CLOWARD, *POOR PEOPLE'S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL* (1979) (examining protest movements of low income groups and "the features of the American political economy which explain why [protest movements] occurred when they did, why [they] took the forms they did, and why elites responded to [these movements] as they did"); Aldon Morris, *Centuries of Black Protest: Its Significance for America and the World*, in *RACE IN AMERICA* 19 (Herbert Hill & James E. Jones, Jr. eds., 1993) ("[T]rac[ing] and analyz[ing] key historic, social, and political contributions that the African American protest movement has made to the black community, the nation, and the world.").

101. Kenneth B. Clark, *Racial Progress and Retreat: A Personal Memoir*, in *RACE IN AMERICA*, *supra* note 100, at 3, 15 (discussing the impact of litigation and education on the civil rights movement and concluding that it is a "likely possibility that the United States will never rid itself of racism and reach true integration").

that reflected the substitution of the Justices' "personal political and social ideas for the established law of the land."¹⁰² After *Brown*, but prior to the Civil Rights Act of 1964, the Voting Rights Act of 1965 and the urban disorders from 1965 on, national seeds of backlash were planted.¹⁰³ "As early as 1963, political commentators began to speak presciently of 'thunder on the right' in American politics."¹⁰⁴

In terms of broadly politicizing racial backlash, the first significant manifestation was probably George Wallace's campaign in the 1968 presidential election. Shocking the nation, the Alabama governor—segregation now, segregation forever—won thirty-five percent of the vote in the Wisconsin Democratic primary.¹⁰⁵ Capitalizing on strong support among working-class white ethnic voters, Wallace went on to capture thirty percent of the vote in the Indiana primary and forty-three percent of the vote in the Maryland primary.¹⁰⁶ In the 1968 election, Richard Nixon's adoption of Wallace's appeal to white backlash became known as his "Southern strategy," although he directed and applied the strategy nationally on behalf of a so-called "silent majority."¹⁰⁷

102. RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN v. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* 752 (1977) (discussing the hostile reception that greeted desegregation in parts of the South). Richard Kluger adds, after *Brown*, and "[t]hroughout the balance of the Fifties, the South interpreted 'all deliberate speed' to mean 'any conceivable delay.'" *Id.* at 752-53.

103. MCADAM, *supra* note 100, at 192. Barry Goldwater's presidential campaign in 1964 cultivated these seeds of backlash. In 1966, conservative members of Congress were elected as a result of the backlash against Lyndon Johnson's "Great Society" programs. *Id.* at 193.

104. *Id.* at 192.

105. STEINBERG, *supra* note 2, at 97 (characterizing "backlash" as the appropriate metaphor for the period marking Wallace's ascendancy in 1964 and culminating in 1968 with Richard Nixon's election as president).

106. *Id.*

107. It is important to recall that Nixon's general appeal was rooted in southern-style camouflaged racism. Reagan resurrected and extended Nixon's appeal from the "silent majority" to the "Reagan Democrats":

Richard Nixon's calculated courting of Dixie and his homage to "the silent majority" were designed to make Southern voters and the North's blue-collar Catholics discard their class-based ties to the Democrats and forge instead a values-based allegiance with Republicans. Presidents Reagan and Bush advanced the campaign, using issues like crime, taxes, welfare and patriotism to paint Democratic candidates as big-government elitists and drive wedges in the Democratic base.

John Aloysius Farrell, *Party Draws Clout from Diversity*, BOSTON GLOBE, Aug. 12, 1996, at A1.

In almost every presidential campaign since at least 1968, the Republicans have been able to use the race issue against the Democrats. Whether it was Willie Horton in 1988 or Richard Nixon's silent majority in 1968, the Republican party has skillfully, if not cynically, driven a wedge between the Democratic Party and white voters. Whether it be af-

Although Reaganism represented the paradigm of conservative egalitarianism, I think is insightful to view conservative egalitarianism as a continuum that runs from Wallace to Nixon to Reagan to Bush to Newt Gingrich, who is "Reaganism at warp speed."¹⁰⁸ We must understand, then, that Ronald Reagan was not only an extension of Richard Nixon, but also George Wallace. Reagan looked back to them, more than forward: "In many respects, Ronald Reagan in his quest for the presidency consolidated, updated, and refined the right-populist, race-coded strategies of Wallace and Nixon."¹⁰⁹

Accordingly, Reagan opposed the desegregation of public schools through busing,¹¹⁰ opposed affirmative action programs to compensate for past discrimination against groups,¹¹¹ politicized the United States Civil Rights Commission by appointing as director a black man, Clarence Pendleton (whose role was similar to Clarence Thomas' role as head of the Federal Equal Employment Opportunity Commission (EEOC)),¹¹² vetoed the Civil Rights Res-

firmative action, crime, or welfare, the underlying Republican theme has been that the Democrats are going to favor blacks over whites. In fact, the one true political transformation that has taken place during the last 30 years has been the GOP's emergence as the South's dominant party. . . . [T]he swing vote that has gone to the Republicans has been that of white males.

James M. Klurfield, *Viewpoints*, *NEWSDAY*, Oct. 31, 1996, at A42.

In spite of President Clinton's 1996 reelection, he must continue to deal with a conservative Republican majority in the Senate and the House of Representatives. Thus, these historical observations have contemporary significance because "[s]outhern-style racism has become more, not less, blatant in the Republican Party in recent years, if only in coded form. . . . The new conservative obsession with eugenics and non-white immigration is to a large degree the result of the Southern electoral ascendancy in the GOP." Michael Lind, *The Southern Coup*, *NEW REPUBLIC*, June 19, 1995, at 20, 26.

108. BALZ & BROWNSTEIN, *supra* note 93, at 15.

109. EDSALL, *supra* note 40, at 10.

110. GARY ORFIELD, *MUST WE BUS?: SEGREGATED SCHOOLS AND NATIONAL POLICY* 353-54 (1978).

111. EDSALL, *supra* note 40, at 187 ("Opposition to race-based affirmative action became for the Reagan regime a matter not only of principle and of policy, but of partisan strategy. Republicans delineated two competing visions of America: one of individual initiative and equal opportunity (Republican), the other of welfare dependence and anti-egalitarian special preference (Democratic).").

112. *Id.* at 191. Clarence Pendleton was an outspoken critic of "quotas, proportional representation or the setting aside of government contracts for minority business." *Id.* (quoting an interview of Pendleton in *U.S. NEWS & WORLD REP.*, Aug. 23, 1982, at 25). To direct the EEOC, Reagan appointed Clarence Thomas, who declared that he was "unalterably opposed to programs that force or even cajole people to hire a certain percentage of minorities. I watched the operation of such affirmative action policies when I was in college and I watched the destruction of many kids as a result." *Id.*

toration Act¹¹³ and appointed William Bradford Reynolds Assistant Attorney General for Civil Rights. During his term, Reynolds abandoned the aggressive enforcement of civil rights.¹¹⁴ When asked to justify his civil rights record, Reagan "simply noted that his actions in civil rights were consistent with his general objective of reducing the scope and intrusiveness of government in all policy areas."¹¹⁵

To reiterate, we underestimate the hegemony of the right by simply focusing on the bad twelve years of the Reagan-Bush administrations. From 1964 through 1996, the right-wing continuum slowed down but did not derail. Jimmy Carter interrupted the continuum from 1976-1980 and Bill Clinton has interrupted it from 1992 to the present. Both Democratic administrations, however, represent(ed) only brief interruptions in the Republican movement, not reversals. The Watergate scandal largely ushered in Carter's election and Clinton represents a significant political move to the right of center, rather than one that is far left of the Reagan-Bush programs.¹¹⁶ The 1994 and 1996 congressional elections, which gave Republicans control of both the House of Representatives and the Senate, indicate that Republicans still represent not a "thousand points of light," but the train at the end of the tunnel, a train that began rolling with Governor Wallace¹¹⁷ (despite his Democratic affiliation) and became a run-away locomotive under Reagan and Bush.¹¹⁸

Under my analysis, the 1980s do not reflect political innovation by the Reagan-led Republicans so much as an attempt to adjust, renew and strengthen messages and programmatic agendas

113. See STEVEN A. SHULL, *A KINDER, GENTLER RACISM?: THE REAGAN-BUSH CIVIL RIGHTS LEGACY* 40 (1993) (calling the legislation a "federal power grab").

114. See generally RAYMOND WOLTERS, *RIGHT TURN: WILLIAM BRADFORD REYNOLDS, THE REAGAN ADMINISTRATION, AND BLACK CIVIL RIGHTS* 1-19 (1996); NORMAN C. AMAKER, *CIVIL RIGHTS AND THE REAGAN ADMINISTRATION* (1988); Drew S. Days III, *Turning Back the Clock: The Reagan Administration and Civil Rights*, 19 HARV. C.R.-C.L. L. REV. 309 (1984); Joel L. Selig, *The Reagan Justice Department and Civil Rights: What Went Wrong*, 1985 U. ILL. L. REV. 785.

115. SHULL, *supra* note 113, at 3. This theme has been picked up by conservative Republicans today: "All the intellectual energy in the Republican party is now focused on finding new ways to reduce the scope and reach of the federal government." BALZ & BROWNSTEIN, *supra* note 93, at 295.

116. See OMI & WINANT, *supra* note 19, at 155-57 (discussing President Clinton in light of his withdrawal of Lani Guinier as nominee for head of the Justice Department's Civil Rights Division).

117. For a discussion of Governor Wallace's politics, see *supra*, notes 105-09.

118. See SHULL, *supra*, note 113, at 3-5. For a more favorable assessment of the Reagan administration, see ROBERT R. DETLEFSEN, *CIVIL RIGHTS UNDER REAGAN* (1991).

whose roots were two decades old. This is why right-wing racial projects represent convergence more than antagonism. Also, more than any other politician who sought to establish a right-wing coalition, Wallace "provided a sense of moral legitimacy to those whites who felt themselves under siege in the civil rights revolution."¹¹⁹ Reagan, in a sense, received this baton from Wallace and Nixon and brought it home in 1980.

The most powerful elements of today's right-wing Republicans have, in turn, taken the baton from Reagan, not Bush. According to Balz and Brownstein, "Conservative Republicans routinely say they have reached for inspiration back beyond Bush to Ronald Reagan."¹²⁰ If that thought is not scary enough for the left, consider that "in fact, their ambitions now dwarf Reagan's."¹²¹

These ambitions are supported through an interlocking institutional arrangement that has been aptly described as the "conservative iron triangle."¹²² The three points of this triangle are (1) the Republican majority in Congress; (2) the increasing power in state politics, where Republicans control thirty one of the fifty governor seats and nineteen state legislatures; and (3) the United States Supreme Court's dominance by five Republican-appointed justices, including the Chief Justice.¹²³

B. The Continuing Significance of Reaganism for Analyzing Right-Wing Racial Projects

Ronald Reagan was very much the president of white people. More particularly, he was the president of white males, many of whom characterized themselves as "angry," "innocent" and "victimized" by reverse race and gender discrimination.¹²⁴ In the 1984 election, a formidable voting bloc of white males voted for Reagan in unprecedented numbers: seventy-four percent in the South, sixty-eight percent in the West and sixty-six percent in the

119. EDSALL, *supra*, note 40, at 10.

120. BALZ & BROWNSTEIN, *supra* note 93, at 247.

121. *Id.* at 246.

122. *Id.*

123. *Id.* at 246-47.

124. See Greene, *supra* note 87, at 1538 ("In light of our history, it is not surprising that such claims have been made. It is simply troubling that the claims have been judicially validated."); see also Frances Lee Ansley, *Stirring the Ashes: Race, Class and the Future of Civil Rights Scholarship*, 74 CORNELL L. REV. 993, 1010 (1989) (arguing that the "innocent white male" is an indispensable part of limiting the "genie of race": "Much civil rights jurisprudence has concerned itself largely with how to put credible limits on the genie of race remediation once it escaped its bottle and once the magnitude of the debt became manifest.").

nation overall.¹²⁵ In contrast, only twelve percent of black men and seven percent of black women voted for Reagan.¹²⁶ By 1986, fifty-six percent of blacks viewed him as a racist.¹²⁷ This trend continued in 1988 when sixty-three percent of white men and fifty-six percent of white women voted for George Bush.¹²⁸ Today, against a backdrop of growing racial division,¹²⁹ powerful right-wing politicians still consider Reagan their leader, eschewing the centrist rhetoric of a "kinder, gentler" America voiced by George Bush.¹³⁰

Although political commentators continue to place Reagan within the converged racial projects of the new right and the neo-conservatives,¹³¹ he is more properly associated with the far right as well. Although this association is facially tenuous, Reagan served the interests of the far right by implicitly encouraging and promoting a general tolerance for aspects of its racial project. Moreover, his administration legitimized the organization of whites against blacks and made claims of discrimination fungible enough that white rights and claims of discrimination were allowed to actually displace black rights and claims of discrimination.¹³² As Merle Black notes:

Reagan's . . . civilized the racial issue. He's taken what Wallace never could do and made it acceptable. It fits in with [white peoples'] sense of perceived injustice, with what they see as the status of being a white person not being as high as it was 15, 20 or 30 years ago.¹³³

125. OMI & WINANT, *supra* note 19, at 133. Cf. Seymour Martin Lipset, *The Elections, the Economy and Public Opinion: 1984*, 18 POL'Y STUD. 28, 35 (1985) ("The blacks, who gave Walter Mondale over 90 percent of their votes, were slightly more Democratic than in 1980. Their continued opposition to the Republicans was based on the perception that [President Reagan] and his party were against black interests with respect to civil rights legislation.").

126. OMI & WINANT, *supra* note 19, at 133.

127. See EDSALL, *supra* note 40, at 139.

128. *Id.*

129. See, e.g., Editorial, *America's Most Divisive Issue*, WASH. POST, May 17, 1991, at A2 ("[R]ace remains America's most divisive and troubling concern.").

130. Steven Shull points out, however, that much of Bush's kinder, gentler rhetoric masked repressive policies that were an integral part of his administration: "George Bush actually went beyond Ronald Reagan in his efforts to cut back the federal role in civil rights." SHULL, *supra* note 113, at 4.

131. See WINANT, *supra* note 82, at 6 (characterizing the retreat from civil rights by Reagan and Bush as neoconservative, but influenced by the new right).

132. See WOLTERS, *supra* note 114, at 8-9 (asserting that Reynolds, Reagan's assistant attorney general for the Civil Rights Division of the Department of Justice, stood for the whites' concern with reverse discrimination).

133. OMI & WINANT, *supra* note 19, at 135 (quoting interview of Merle Black by Haynes Johnson).

This view places Reagan's racial project in close association with the far right. The far right has explicitly attempted to re-establish and legitimate white identity and naked white supremacy which the civil rights movement successfully challenged.¹³⁴ As indicated in Table 1, that identity viewed race in strictly biological terms and associated racial purity and racial superiority as inherently the preserve of white people. In other words, the far right sought to revive white supremacist notions of race and adopted an explicitly racist project. According to the far right, the civil rights movement not only subverted the natural order of things, but it did so by eliminating the rights of white people: rights that the nation had legitimately accorded whites to undergird their proper positions of privilege and domination over people of color.¹³⁵

As Omi and Winant point out, the far right has many historical precedents that rely on a populist impulse to attract white support among those "who felt dislocated by the changes around them."¹³⁶ Such groups tend to see racial "justice" exclusively in terms of white supremacy and, in the far right's assessment, that supremacy "is perpetually threatened and the legitimate authorities are always too weak, naive, or corrupt to maintain America's 'true' identity."¹³⁷ This assessment has often stimulated vigilante action "as white supremacist groups sought to restore 'white honor' and a 'just' racial order."¹³⁸ Although Reagan did not overtly identify with the far right, he was responsive to it. He gave it aid and comfort.

In contrast to the blatant racism that characterizes the far right, Reagan turned to race neutrality—what Patricia Williams

134. See Howard Winant, *Difference and Inequality: Postmodern Racial Politics in the United States*, in *RACISM, THE CITY AND THE STATE* 108, 111-14 (Malcolm Cross & Michael Keith eds., 1993).

135. *Id.* at 112 ("For at least the 'modernized' sector of the far right, the response has been political mobilization on racial grounds: if blacks have their organizations and movements, why shouldn't whites?"). Outside of institutional politics, the agents of the far right include members of the Ku Klux Klan, Neo-Nazis, Aryan Nations, David Duke's National Association for the Advancement of White People, the Silent Brotherhood, skinheads and more benign-sounding groups such as survivalists and state militias. Thus, neither terror nor violence directed to people of color is foreign to their project. In electoral politics, they have been represented by Tom Metzger's candidacy for Congress in San Diego County and David Duke's campaign for the governorship of Louisiana. The far right generally, however, is anti-government, particularly at the federal level, where it places the blame for supporting the assault on white rights. Here, of course, "rights" is a cover for continued white privilege and domination.

136. OMI & WINANT, *supra* note 19, at 118-19.

137. *Id.* at 119.

138. *Id.*

aply describes as "racism in drag."¹³⁹ According to Edsall, on the one hand, the importance of the race factor in helping to establish "a working conservative political majority should not be underestimated. Race was embedded in conflicts surrounding tax, spending, education, welfare, regulatory, and industrial policy. . . . In the construction of a conservative ideological edifice, race served, in effect, to increase the bonding power of brick to mortar."¹⁴⁰ On the other hand, Reagan excised the significance of race from conservative discourse.¹⁴¹ Thus, Reagan built on Richard Nixon's successful implementation of a political strategy that attacked policies intended to benefit blacks and other people of color without any explicit reference to race.¹⁴² This move—which I have referred to as "racialized colorblindness"¹⁴³—polarized the electorate along lines of race and lessened traditional economic divisions between the Democratic and Republican parties.¹⁴⁴ Edsall concludes:

The importance of excising the *language* of race from American right-wing politics—a politics long burdened with a history of explicit racism and a politics that had often had, particularly in the South, a race conscious intent—cannot be overestimated. In facing an electorate with sharply divided commitments on race—theoretically in favor of egalitarian principle but hostile to many forms of implementation—the use of a race-free political language proved crucial to building a broad-based, center-right coalition.¹⁴⁵

139. PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 116 (1991) (arguing that the partial integration that replaced total segregation in the United States is still racist because in order to be "good," blacks must be "white").

140. See EDSALL, *supra* note 40, at 148.

141. *Id.* at 138.

142. *Id.*

143. Calmore, *supra* note 35, at 2160 n.105.

144. EDSALL *supra* note 40, at 138.

145. *Id.* (emphasis added). Omi and Winant characterize this as "rearticulation," i.e., "the process of redefinition of political interests and identities, through a process of recombination of familiar ideas and values in hitherto unrecognized ways." OMI & WINANT, *supra* note 19, at 163 n.8. The term "rearticulation" also refers to "a practice of discursive reorganization or reinterpretation of ideological themes and interests already present in the subjects' consciousness, such that these elements obtain new meanings or coherence." *Id.* at 195 n.11. Thus, rearticulation relates to both aspects of racial projects. Alternatively, Ronald Walters describes this as "concept appropriation":

Opponents of civil rights, in a language that has appropriated many traditional concepts, have redesigned civil rights remedies to promote the idea that blacks have the power to practice racism and whites are now the victims of the implementation of civil rights policies and programs by both private and public institutions.

Ronald Walters, *Affirmative Action and the Politics of Concept Appropriation*, 38 HOW. L.J. 587, 587-88 (1995). Through concept appropriation and rearticulation, civil rights norms and values that were marshalled to fight historic oppression and

Here we see the connection between discourse and program that translates into a racial project.

Reagan silently incorporated aspects of the far right's racial project in order to broaden his support base. He recognized that the far right's appeal extended to people who would normally disassociate themselves from its extremism. Naive whites, for instance, were inclined to view the far right as merely expressing "white interest group" politics.¹⁴⁶ Thus, one supporter of Ku Klux Klan member Tom Metzger's bid for Congress stated to a television interviewer:

It's nice to have someone that represents the white people. It seems like nobody cares what the white people say anymore and all the candidates seem to run around and go out to all the minorities and never even once ask the white people how they feel so I guess we're turned around: the whites are now the minority and the minorities are the majority.¹⁴⁷

To effectively broaden its own appeal, the far right had to legitimate its revived racial politics in a way that did not simply reassert white identity as inherent white supremacy in order to reestablish America as a white country.¹⁴⁸ Omi and Winant voice a common view that the far right remains mired in the racism marking the turn of the century, that which plagued Dred Scott and Homer Plessy, and its inability to transcend that dated racism has doomed the far right to political marginality.¹⁴⁹ As I have sug-

injustice are appropriated (taken without just compensation) and rearticulated (misrepresented) to reverse the legitimacy of the claimant and the perpetrator, the condition and the cure, as benign remedial race-conscious remedies for people of color are turned into reverse racism and discrimination against the principal power holders and historical beneficiaries of past discrimination and white privilege. The colorblindness envisioned in Martin Luther King's dream has been hijacked by David Duke, Ronald Reagan, and Newt Gingrich and re-deployed to mean that race should not structure remedial action, that structural group harms based on race must be dealt with by individuals, one at a time:

In America today, the concept of racism has been changed by members of both dominant and subordinate groups, oblivious to the context of any assessment of group or individual power to make possible the equalization of harm. Where racial discrimination was originally defined as the prohibition or exclusion of blacks and other disadvantaged groups from access to normal or equal participation in society, it has devolved to mean any racial distinction. A consequence of this devolution is that those who oppose affirmative action refer to the mechanisms by which it has been implemented as "reverse" racial discrimination and assert that as a racial distinction, positive or negative, it is immoral.

Id. at 600.

146. OMI & WINANT *supra* note 19, at 120.

147. *Id.*

148. *Id.* at 120-21.

149. Omi and Winant argue that because the far right continues to endorse biological views of race and racial purity, it is easily associated with turn-of-the-century racism. "Its inability to part with these basic racist assumptions dooms

gested, however, the far right has set the stage for the viable development of the new right and neoconservatives. The new right and neoconservatives can now play on the same fears and anxieties that attracted extremists to the far-right and persuaded others that at least some of what they have said does, indeed, represent "common sense." Omi and Winant have prematurely dismissed the far right to the margins. Indeed, Winant admits that in the 1986 edition of their book on racial formation they "erred in presenting the far right as incapable of re-articulating its previous racial discourse of explicit white supremacy."¹⁵⁰ The most dangerous aspect of the far-right is its use of terror and violence to supplement naked expressions of hate.¹⁵¹

At least in terms of national electoral politics, the racial project of the new right and that of the neoconservatives have now merged in significant ways. They also have adopted and camouflaged some aspects of the far right racial projects. The new right's appeal to white supremacy is an appeal to "traditional values," "individual responsibility" and the use of coding to hide negative references to people of color.¹⁵² It reduces issues of race to class.¹⁵³ The neoconservatives are more sophisticated, reducing race to ethnicity and characterizing racism as yesterday's news, except for individually articulated aberrations of racism as in Mark Furman's use of the word "nigger." The neoconservatives' concern about discrimination is precisely that of the far right. Therefore, constitu-

the far right to political marginality." *Id.* at 121.

150. WINANT, *supra* note 82, at 125 n.6.

151. See generally DAVID H. BENNETT, *THE PARTY OF FEAR: THE AMERICAN FAR RIGHT FROM NATIVISM TO THE MILITIA MOVEMENT* 446-75 (1995) (arguing that sometimes fear drives racism, but too often the driving force is hate); MANNING MARABLE, *HOW CAPITALISM UNDERDEVELOPED BLACK AMERICA: PROBLEMS IN RACE, POLITICAL ECONOMY AND SOCIETY* 241 (1983) ("The number of random racist incidents intensified to such an extent that it became a 'normal' part of daily life for blacks in the United States. Few black parents were not concerned about the safety of their children during the 1980s.").

152. See OMI & WINANT, *supra* note 19, at 121-28 (noting that the new right wing, fueled by resentment, tends to utilize controversial social issues to rally its constituency); ALPHONSO PINKEY, *THE MYTH OF BLACK PROGRESS* 32-36 (1984) (linking the new right with its "important ally," the religious right).

153. See generally Margret Weir, *From Equal Opportunity to The New Social Contract*, in *RACISM, THE CITY AND THE STATE*, *supra* note 134, at 93 (noting that since the equal opportunity policies of the 1960s have failed, the new right has simply decided to isolate blacks from its politics and to gain broad support by framing social programs in terms of class rather than race); see also John O. Calmore, *Racialized Space and the Culture of Segregation: "Hewing a Stone of Hope from a Mountain of Dispair"*, 143 U. PA. L. REV. 1233, 1248, and 1250 n.76 (contending that the popular colorblind term "underclass" has replaced explicit references to race: "people are poor primarily because of their own dysfunctional value orientation and behavior").

tional protections and civil rights initiatives are the most viable when they counter reverse discrimination and racism against whites. Relying on the norms of individualized opportunity and responsibility, meritocracy, and universalism—key tenets of an ethnicity theory of race—neoconservatives delegitimize group rights and race-consciousness.¹⁵⁴

C. *The Supreme Court's Racial Project*

As discussed above, the new right and neoconservative right-wing projects have succeeded where the far right project failed. They have effectively rearticulated the meaning and significance of race in a manner that supports a societal organization and culture that, in turn, silently reinforce white domination and privilege. It is in this context that we must evaluate the evolution of the Supreme Court's race jurisprudence. Indeed, a majority of the Supreme Court justices is taking its lead from these projects and is intentionally solidifying the projects' gains.¹⁵⁵ In light of the ebbing momentum and declining appeal of conservative egalitarianism in some quarters and its inability to hold voting majorities,¹⁵⁶ the Supreme Court, acting without accountability, is now the strongest point in the conservative iron triangle.¹⁵⁷

154. See NEWT GINGRICH, *TO RENEW AMERICA* (1995). According to Congressman Gingrich, "Group rights are about grievances, lawsuits, conflict, and the use of government coercion to impose a solution on an adversarial relationship." *Id.* at 154. Moreover, he finds that discrimination that has been hitherto characterized as "benign" is immoral, equating it with "invidious" discrimination. *Id.* at 151-55.

155. Here, I use the term "intention" in the tort sense of one acting with substantial certainty that a result will occur. RESTATEMENT (SECOND) OF TORTS, § 8A (1965). Intent is used "to denote that the actor desires to cause consequences of his act, or that he believes that the consequences are substantially certain to result from it." *Id.* Thus we see that even if one has no desire to harm another person, intent is deemed to be present if the actor knows that his act is substantially certain to do so. It is the latter form of "intent," as distinguished from purpose or desire, which attaches to racial harm most often, but it is the former that the Supreme Court endorses in constitutional law. See, e.g., *Washington v. Davis*, 426 U.S. 229 (1976) (holding that irrespective of effect, in an equal protection claim, a court must find discriminatory intent to invalidate a law). As Alan Freeman points out, "Instead of confronting social and historical reality, antidiscrimination law has thus been reduced to the status of just another intentional tort, albeit one with unusually strict intent and causation requirements." Freeman, *supra* note 71, at 1431.

156. EDSALL, *supra* note 40, at 260.

157. See generally SHULL, *supra* note 113, at 122-27 (observing that recent presidents, namely Bush and Reagan, have appointed Supreme Court justices who share their conservative civil rights policies); Jeffrey Rosen, *The Day Quotas Died*, *NEW REPUBLIC*, Apr. 22, 1996, at 21, 21 (noting that recent Supreme Court civil rights decisions, "like a boulder thrown into a placid pond . . . [have] been sending ripples through the lower courts in ways that are already transforming affirmative action as we know it").

Within this political context, recent Supreme Court decisions on race transparently affirm that "since precedents and reasoning can be distinguished, modified, or discarded, they do not require any particular result. . . . [T]he law merely provides a variety of bases for justifying choices made on other grounds."¹⁵⁸ In linking Supreme Court majority opinions on race to the right-wing racial projects, I provide a contextual understanding of these other grounds.

In one sense I am simply illustrating that the law is both political and indeterminate.¹⁵⁹ Unlike Richard Posner, however, I do not situate these decisions within the nation's legal tradition that "is now so rich, variegated, conflicted, and ambivalent that a strand of it can easily be found to support either side in *difficult* cases."¹⁶⁰ These are not "difficult" cases. The "rich, variegated, conflicted, and ambivalent" American traditional strands that explain these decisions are those of racial oppression and exclusion. It is only in that sense that these are difficult cases.

In discussing the recent voting rights cases of *Shaw v. Reno*¹⁶¹ and *Miller v. Johnson*,¹⁶² Patricia Karlan characterized

158. David Kairys, *Freedom of Speech*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 140, 160-61 (David Kairys ed., 1982).

159. See George A. Martinez, *Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980*, 27 U.C. DAVIS L. REV. 555 (1994) (exploring the impact of judicial decisions' indeterminacy on litigating Mexican-American rights); Joseph William Singer, *The Player and the Cards: Nihilism and Legal Theory*, 94 YALE L.J. 1, 11-12 (1984) (discussing traditional legal theory's incorporation of indeterminacy).

160. RICHARD A. POSNER, *THE PROBLEMS OF JURISPRUDENCE* 23 (1990) (emphasis added).

161. 509 U.S. 630 (1993) (applying strict scrutiny to state's redistricting of voting district with bizarre shape). Even in the absence of vote dilution, the Court permitted white plaintiffs to challenge the constitutionality of a majority black district in North Carolina that was bizarre in shape and contrary to the traditional districting principles of "compactness, contiguity, and respect for political subdivisions." *Id.* at 641. As intentional discrimination on the basis of race, the drawing of the district triggered strict scrutiny. *Id.* at 639-40. According to Morton Horwitz: "Justice O'Connor's opinion, which invoked the ideal of 'a multiracial democracy,' wished away existing realities with the same cruel formalism that was characteristic of the Court's post-Civil War decisions." Morton J. Horwitz, *The Supreme Court, 1992 Term—Foreword: The Constitution of Change: Legal Fundamentalism Without Fundamentalism*, 107 HARV. L. REV. 30, 106 (1993) (discussing *Shaw*, 509 U.S. at 642).

162. 115 S. Ct. 2475 (1995) (applying strict scrutiny to legislative districting, regardless of shape). Strict scrutiny is the standard of review if the plaintiff can show that "race was the predominant factor motivating the legislature's decision." *Id.* at 2488. In order to make this showing the plaintiff must prove "that the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, respect for political subdivisions or communities defined by actual shared interests, to racial considerations." *Id.*

them as reflecting "a jurisprudence that is both incoherent and doctrinally unstable."¹⁶³ Jamie Raskin claims that the "Supreme Court's ferocious assault [during the 1995 Term] on affirmative action, school desegregation, and majority-minority electoral districts requires, in an ideological sense, willing detachment from the nation's history."¹⁶⁴ Jeffrey Rosen argues that key race decisions of the 1995 term "reveal the conservative judicial project to be unprincipled at its core."¹⁶⁵ Finally, the former Assistant Attorney General in the Civil Rights Division, Deval Patrick, adds that "the courts are on the brink of rationalizing justice right out of the law."¹⁶⁶

I find these observations to represent an illegitimate set of truths about power, privilege and law. As I have shown, when recent Supreme Court decisions are properly situated within the larger scheme of right-wing racial discourse and politics, this set of truths reveals a disturbing response that provides false understandings and a false scheme that justifies maintaining, solidifying, and guaranteeing the oppressive future of a systematically operating national racial order of stratification, subordination, exploitation, violence and exclusion. In July 1995, Rosen reported:

163. Pamela S. Karlan, *Our Separatism? Voting Rights as an American Nationalities Policy*, 1995 U. CHI. LEGAL F. 83, 91. See also Lisa A. Kelly, *Race and Place: Geographic and Transcendent Community in the Post-Shaw Era*, 49 VAND. L. REV. 227 (1996). Kelly argued:

The choice of remedies is further complicated by the paradox in the Court's effort to move toward a color-blind society, free from racial balkanization, in an area of the law that requires race-conscious remedies because of the continuing reality of racially polarized voting.

When the Court fails to acknowledge the paradoxical coexistence of color-blindness and racially polarized voting, inconsistent and incoherent standards naturally result. The court's mere wish for a color-blind society will not result in its materializing any time soon. Either district line-drawing, which takes race into account, or some other solution must be employed to get us there. Without a strategy to move toward integrated empowerment, color-blindness becomes a mere code word for African-American in-visibility.

Id. at 307-08.

164. Raskin, *supra* note 40, at 521. Raskin is referring to *Adarand Constructors v. Peña*, 115 S. Ct. 2097 (1995) (requiring strict scrutiny for equal protection challenges to federal government affirmative action programs). See also *Missouri v. Jenkins*, 115 S. Ct. 2038 (1995) (overruling the district court's decision that ordered salary increases to improve Kansas City, Missouri, schools and advance desegregation by attracting white students from a neighboring district); *Miller*, 115 S. Ct. at 2475 (applying strict scrutiny to legislative redistricting when it appears that race is a "preponderant" or "overriding" factor in how the district lines were drawn).

165. Jeffrey Rosen, *The Color-Blind Court*, NEW REPUBLIC, July 31, 1995, at 19, 19-20.

166. Deval Patrick, *Have Americans Forgotten Who They Are?*, L.A. TIMES, Sept. 2, 1996, at B5.

The conservative justices are privately exuberant about the remarkable Supreme Court term that ended last week. Surprised and slightly dazed by the magnitude of their victory, they think they have finally exorcized the ghost of the Warren Court, fulfilled the goals of the conservative judicial revolution and vindicated the ideal of a color-blind Constitution for the first time since Reconstruction. . . . The lawyers will quibble, and the president will implore everyone to search for common ground, but for the justices themselves, the victory is sweeter than they dared hope.¹⁶⁷

In short, the Supreme Court's racial project is not simply coincidental to other right-wing racial projects but, rather, the Court's own racial project is deliberately and synergistically linked to them within the conservative iron triangle.

III. The Declining But Persistent Significance of the Bipolar, Black-White Paradigm of Race

A. *The Paradigm's Controversy*

America's color line is becoming more complex in character and ambiguous in significance. During the civil rights movement of the 1960s, the racial population of the nation was roughly about 90% white and 10% black.¹⁶⁸ Asians and Pacific Islanders were only 0.5% of the nation's population; Native American Indians, Eskimos, and Aleutians were 0.3%, and other-race peoples were 0.1%.¹⁶⁹ "Although Latinos constituted an estimated 3.9% of the population, the Bureau of the Census lacked the methodology to identify Latinos and Hispanics as such, contributing to the perception of America as 'black and white.'"¹⁷⁰ By 1990, however, 25% of the American population identified themselves of color.¹⁷¹ In 1990, the 199.7 million whites were 80.3% of the nation's population; the 30 million blacks were 12.1%; the 22.4 million Latinos were 9%; the 7.3 million Asians and Pacific Islanders were 2.9%; the 1.9 million Native American Indians, Eskimos and Aleutians were 0.8%; and the 9.8 million other-race peoples were 3.9%, the fourth largest grouping.¹⁷² Over 33% of the population growth during the 1980s—from 227 million to almost 248 million—is attributed to

167. Rosen, *supra* note 165, at 19.

168. Deborah Ramirez, *Multicultural Empowerment: It's Not Just Black and White Anymore*, 47 STAN. L. REV. 957, 958 (1995).

169. *Id.* at 958-59.

170. *Id.* at 959.

171. *Id.* at 960.

172. Barbara Vobejda, *Asian, Hispanic Numbers in U.S. Soared in 1980s, Census Reveals*, WASH. POST, Mar. 11, 1991, at A1.

immigration.¹⁷³ The most multicultural state, California, contains more than 33% of the Latino population and almost 40% of the Asian population.¹⁷⁴ I believe that this last reference explains why the subordinating use of state initiatives is so extensive in California where voters approved the anti-immigrant Proposition 187 in November 1994¹⁷⁵ and the anti-affirmative-action Proposition 209 in November 1996.¹⁷⁶

In spite of this shift in racial demography, John Powell claims that there is still significance attached to the historic black-white paradigm:¹⁷⁷

I am aware that America is and always has been more than black and white. This black-white paradigm is not descriptive of people who make up this country, but of the racial order that is still largely defined in terms of black and white. While a refined paradigm may be in order, the black-white paradigm persists.¹⁷⁸

Omi and Winant strenuously critique the bipolar conception of race, which under their characterization focuses analysis and discussions of race strictly in terms of black and white relationships.¹⁷⁹ Perhaps because I am in Los Angeles, the Omi-Winant critique resonates with me:¹⁸⁰ "The lessons of the Los Angeles riot are instructive as a starting point to criticize bipolar conceptions of race."¹⁸¹ Indeed, in the aftermath of this 1992 civil disorder, many extended the Omi-Winant observation to conclude that the rebuilding would move us to a new mosaic reflecting a spectrum of racialized constructions.¹⁸² I admit to having held this view, but I

173. *Id.*

174. *Id.*

175. For an overview of Proposition 187, see Linda S. Bosniak, *Opposing Prop. 187: Undocumented Immigrants and the National Imagination*, 28 *CONN. L. REV.* 555 (1996).

176. On November 5, 1996, California voters voted to prohibit state-sponsored affirmative action in education, employment and contracting. See Bill Stall & Dan Morain, *Prop. 209 Wins, Bars Affirmative Action*, *L.A. TIMES*, Nov. 6, 1996, at A1. Voting in favor 63% to 37%, white voters constituted the only racial or ethnic group supporting the proposition. See *State Propositions: A Snapshot of Voters (an exit poll)*, *L.A. TIMES*, Nov. 7, 1996, at A29. In opposition were blacks 74% to 26%, Latinos 76% to 24%, Asians 61% to 39%, and Jews 58% to 42%. *Id.*

177. John A. Powell, *Living and Learning: Linking Housing and Education*, 80 *MINN. L. REV.* 749, 793 n.152 (1996).

178. *Id.* See also Neil Gotanda, *Multiculturalism and Racial Stratification*, in *MAPPING MULTICULTURALISM* 238, 246 (Avery F. Gordon & Christopher Newfield eds., 1996)

179. See OMI & WINANT, *supra* note 19, at 153.

180. See Calmore, *Racialized Space*, *supra* note 153, at 1254-66 (discussing issues of multicultural conflict and collaboration in Los Angeles).

181. OMI & WINANT, *supra* note 19, at 152.

182. See Chang *supra* note 47.

am much more skeptical now. It is not clear what we should infer from the predicament in Los Angeles. Roger Sanjek may have effectively rebutted the Omi and Winant presentation of the new racial picture:

The picture is false, or at least distorted. The post-1400s global racial order has always extended beyond black and white in its ranked racial ordering, but these two terms have also always defined its poles. There is no decentered mosaic. Persons of African ancestry have consistently experienced extreme subjugation within the global racist order, even if its victims have never been solely black.¹⁸³

Omi and Winant associate various problems with black-white racial dichotomizing and I think their analysis is influential in spite of the above-mentioned rebuttal arguments. The first problem is that such dichotomizing oversimplifies the complexity of race relations in the post civil-rights era. Important emerging trends are thereby obscured. We are likely to miss such crucial developments as the antagonisms and alliances *among* people of color, the differentiation *within* groups of people of color and even the changing aspects of white identity.¹⁸⁴ Second, biracial theorizing does not adequately address many specific issues, such as access to education,¹⁸⁵ community relations,¹⁸⁶ political empowerment¹⁸⁷ and labor-market stratification¹⁸⁸ when the focus is narrowly fixed just on the relative positions or situations of blacks and whites.¹⁸⁹

183. Sanjek, *supra* note 64, at 10.

184. OMI & WINANT, *supra* note 19, at 153-54.

185. See generally Sonja Diaz-Granados, *How Can We Take Away a Right That We Have Never Protected: Public Education and Immigrant Children*, 9 GEO. IMMIGR. L.J. 827 (1995) (examining the failure to provide effective public education to immigrant children).

186. See generally Lisa C. Ikemoto, *Traces of the Master Narrative in the Story of African American/Korean American Conflict: How We Constructed Los Angeles*, 66 S. CAL. L. REV. 1581 (1993) (discussing how the "master narrative" of white supremacy maintains intra-colored, intergroup conflict).

187. See generally Su Sun Bai, *Affirmative Pursuit of Political Equality for Asian Pacific Americans: Reclaiming the Voting Rights Act*, 139 U. PA. L. REV. 731 (1991) (examining racial and language barriers that disenfranchise and exclude many Asian/Pacific Americans from the political process), and Yvonne Gonzalez Rogers, *Reapportionment and Latino Political Power in California in the Wake of the 1990 Census*, 5 LA RAZA L.J. 28 (1992) (discussing the issue of racial gerrymandering in the context of political representation for Latinos).

188. See generally Laura Ho et al., *(Dis)Assembling Rights of Women Workers Along the Global Assembly Line: Human Rights and the Garment Industry*, 31 HARV. C.R.-C.L. L. REV. 383 (1996) (discussing sweatshops and their different consequences upon different racial groups).

189. See OMI & WINANT, *supra* note 19, at 154.

Third, many social policies have varying consequences on different groups of people of color.¹⁹⁰ Such policies include those related to affirmative action,¹⁹¹ political power and influence,¹⁹² immigration and citizenship,¹⁹³ welfare,¹⁹⁴ education,¹⁹⁵ criminal justice,¹⁹⁶ housing¹⁹⁷ and community economic development and

190. *Id.*; see also Ramirez, *supra* note 168 (arguing that traditional race-based remedies fail to account multiracial ethnicity and serve to set various minority groups against each other in the struggle for benefits).

191. See generally Selena Dong, "Too Many Asians": *The Challenge of Fighting Discrimination Against Asian-Americans and Preserving Affirmative Action*, 47 STAN. L. REV. 1027 (1995) (arguing against "racial caps" in applying affirmative action programs).

192. See generally Angelo N. Ancheta & Katheryn K. Imahara, *Multi-Ethnic Voting Rights: Redefining Vote Dilution in Communities of Color*, 27 U.S.F. L. REV. 815 (1993) (examining the bipolar approach to the Voting Rights Act implementation and its detrimental effects on non-black minority political representation).

193. See generally Jonathan C. Drimmer, *The Nephews of Uncle Sam: The History, Evolution, and Application of Birthright Citizenship in the United States*, 9 GEO. IMMIGR. L.J. 667 (1995) (examining the unequal application of birthright citizenship rules concerning non-whites); Kevin R. Johnson, *Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century*, 8 LA RAZA L.J. 42 (1995) (emphasizing the political strategies most likely to benefit the Latino population dealing with immigration and assimilation).

194. See generally *Dethroning the Welfare Queen: The Rhetoric of Reform*, 107 HARV. L. REV. 2013, 2019 (1994) (addressing racial myths and welfare reform proposals); PATRICIA J. WILLIAMS, *supra* note 20, at 9-14 (1995) (examining the underlying historical racism in welfare proposals).

On August 22, 1996, President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, thus "ending welfare as we know it." Francis X. Clines, *Clinton Signs Bill Cutting Welfare; States in New Role*, N.Y. Times, Aug. 23, 1996, at A1. See also *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, W-MEMO (Am. Pub. Welfare Ass'n, Washington, D.C.), July-Aug. 1996, at 3. Among the restrictions, current and future *legal* immigrants are prohibited from receiving Supplemental Security Income (SSI) and food stamps until they are naturalized as citizens. *Id.* at 11. So-called illegal immigrants are barred from various federal public benefits, including (1) grants, contracts, loans, licenses; and (2) retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefits provided to an individual, household or family. *Id.* at 13.

195. See generally Gary Orfield, *Metropolitan School Desegregation: Impacts on Metropolitan Society*, 80 MINN. L. REV. 825, 826 (1996) (addressing failures in desegregation efforts because of the narrow framework of policy considerations); Pedro A. Noguera, *Educational Rights and Latinos: Tracking as a Form of Second Generation Discrimination*, 8 LA RAZA L.J. 25, 25 (1995) (examining the unique problems facing the educational integration of Latinos, and the detrimental effects of the current system).

196. See generally Daina C. Chiu, *The Cultural Defense: Beyond Exclusion, Assimilation, and Guilty Liberalism*, 82 CAL. L. REV. 1053, 1053-54 (1994) (considering the implications and shortcomings of the "cultural defense" in criminal trials of Asian Americans).

197. See generally Jason Dzubow, *HUD Shuts the Door: Restrictions on Housing Assistance to Noncitizens*, 9 GEO. IMMIGR. L.J. 801 (1995) (considering briefly how housing assistance restrictions might discriminate against "different" non-white aliens).

empowerment.¹⁹⁸ Omi and Winant indicate, "Policies and politics that are framed in black-white terms miss the ways in which specific initiatives structure the possibilities of conflict or accommodation among different racial minority groups."¹⁹⁹ Fourth, an exclusively black-white paradigm of race relations ignores many particularities of contemporary racial politics.²⁰⁰ Lastly, "bipolar racial discourse tends at best to marginalize and at worst to eliminate other positions and voices in the ongoing dialogue about race in the U.S."²⁰¹

198. See Anthony D. Taibi, *Banking, Finance, and Community Economic Empowerment: Structural Economic Theory, Procedural Civil Rights, and Substantive Racial Justice*, 107 HARV. L. REV. 1463, 1468 (1994).

199. OMI & WINANT, *supra* note 19, at 154. For additional background, see generally Bill Ong Hing, *Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Driven Multiracial Society*, 81 CAL. L. REV. 863 (1993) (decrying the immigration policies of assimilationists and encouraging a new approach to cultural pluralism respecting diversity), and Alexandra Natapoff, *Trouble in Paradise: Equal Protection and the Dilemma of Interminority Group Conflict*, 47 STAN. L. REV. 1059 (1995) (arguing that political remedies to racial problems are inadequate in a racially complex society).

200. OMI & WINANT, *supra* note 19, at 154; see also Charles H. Lawrence III, *Foreword: Race, Multiculturalism, and the Jurisprudence of Transformation*, 47 STAN. L. REV. 819, 825 (1995) (advocating a focus on group-level rather than individual injustice in combatting bigotry).

201. OMI & WINANT, *supra* note 19, at 154. Omi and Winant suggest that "[t]he enormous task for racial theory is to begin to address these issues and developments in a way which would decisively break the bipolar model of race that has informed, indeed, structured, not only popular and academic discourse but also political initiatives in the area of race." *Id.* at 154-155. Recently, a number of legal scholars have attempted to meet this challenge. See generally Dennis J. Aigner, *The Economics of Legal Immigration in California*, 8 LA RAZA L.J. 90 (1995) (stressing the need for distinctions between classes of immigrants, and the relative benefits and burdens they would bring to the U.S.); Pat K. Chew, *Asian Americans: The "Reticent" Minority and Their Paradoxes*, 36 WM. & MARY L. REV. 1 (1994) (considering the unique circumstances of Asian Americans in racial politics); Cynthia Kwei Yung Lee, *Beyond Black and White: Racializing Asian-Americans in a Society Obsessed with O.J.*, 6 HASTINGS WOMEN'S L.J. 165 (1995) (encouraging a harder look at the racial representations of Asian-Americans and the prevalent attitude dismissing their importance); Gerald Lopez, *The Idea of a Constitution in the Chicano Tradition*, 37 J. LEGAL EDUC. 162 (1987) (reflecting upon the significance of the Chicano tradition in the United States); Ian F. Haney Lopez, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1 (1994) (challenging the conventional, rigid and outdated construction of race); Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329 (1991) (exploring linguistic prejudice and encouraging linguistic tolerance); Michael Olivas, *The Chronicles, My Grandfather's Stories, and Immigration Law: The Slave Traders Chronicle as Racial History*, 34 ST. LOUIS U. L.J. 425 (1990) (documenting the histories of oppression of Native Americans and Mexican Americans); Juan F. Perea, *Ethnicity and Prejudice: Re-evaluating National Origin Discrimination Under Title VII*, 35 WM. & MARY L. REV. 805 (1994) (analyzing the problems of a vague definition of "national origin" and

Moving beyond the black-white paradigm is imperative to establish the colored solidarity that is necessary to enable "non-European outside others [to] press for a reinterpretation of America's common ground, shared values, and rules of the game."²⁰² Blacks, however, should be cautious in operating within the extended paradigm(s) of race. The challenge *and* opportunity is to respond simultaneously to intra-community and inter-community development and liberation.²⁰³ Blacks have a justified apprehension that moving beyond the black-white paradigm will dilute or obscure our claims and interests causing us to suffer some displacement. Attention, concern and response to people of color who are not black may place blacks, in some contexts, at further risk.²⁰⁴

In spite of the demographic shifts that suggest a need to adopt a broader race paradigm—or perhaps set of paradigms—we should be cautious not to deemphasize the history of black-white conflict that has set the stage for many of the issues "other non-whites" must confront. The ahistorical decontextualization also diminishes the recognized need to redress the perpetuation of history that particularly plagues African Americans. Joe Feagin and Hernán Vera explain:

White racism and the black struggle against it have shaped the character not only of the founding documents such as the

proposing reforms that more effectively protect against ethnic trait discrimination); Robert A. Williams, Jr., *Linking Arms Together: Multicultural Constitutionalism in a North American Indigenous Vision of Law and Peace*, 82 CAL. L. REV. 981 (1994) (examining the seventeenth century Iriquois vision of law and peace and how it can be practical in helping resolve modern problems of human solidarity).

202. Calmore, *supra* note 35, at 2131.

203. See Calmore, *supra* note 153, at 1263.

204. In 1993, the *Wall Street Journal* reported that the 1990-1991 recession seriously eroded equal opportunity for black workers, as blacks were the only group that experienced a net job loss while whites, Latinos and Asians all gained thousands of jobs. Rochelle Sharpe, *Losing Ground*, WALL ST. J., Sept. 14, 1993, at A1. Analyzing EEOC reports filed by 35,242 companies with 40 million workers, the newspaper found: (1) blacks suffered a net loss of 59,479 jobs between July 1990 and March 1991 while Asians gained a net of 55,104 jobs, Latinos gained 60,040 jobs, and whites, who already outnumbered blacks eight to one at the companies reporting, gained 71,144 new jobs; (2) blacks were the only group to experience a net loss in sales jobs and service-worker jobs, losing 16,630 of the latter while businesses added 53,548 new service jobs; (3) blacks experienced a net gain only in the areas of managerial, professional and technical jobs, but because "they held such a small percentage of these jobs before the recession began . . . their actual gains were meager . . . just 5.2 percent of the total for all races." *Id.* As a former EEOC commissioner under President Lyndon Johnson noted: "Affirmative action has gotten so diluted that companies can trade one minority against another." *Id.* at A1. When companies aggregate all "minorities" together, including white women, they appear to be doing a good job at "managing work-force diversity" in a way that can mask black reversals. *Id.*

Declaration of Independence and the U.S. Constitution, but also of a huge body of law and much social practice over the intervening centuries. From the 1600s to the 1900s, a majority of white Americans have held antiblack prejudices, often webbed into a full-fledged racialized ideology, and have played an active or passive role in implementing an extensive and institutionally buttressed set of discriminatory practices. *It is within this racialized framework that certain other groups have been incorporated, constructed, and oppressed.*²⁰⁵

If other non-whites inappropriately step outside of or try to transcend this historically racialized framework, then they may likely assume the risk of being co-opted or converted into token, honorary white people and, as such, buy into an individualist and assimilationist worldview and orientation. This, in turn, will force their adoption of the neoconservative emphasis on ethnicity at the expense of race. It will constitute an endorsement of the assumptions that Blauner criticized above in Part I.A. As indicated in Table 1, they will be inclined to detour from the leftist projects and fall within the oppressive right-wing program of conservative egalitarianism. The best of times will be a series of rude awakenings, perhaps such as those blacks have experienced once our token entry into the mainstream opportunity structure has been achieved.²⁰⁶ Worse, like Clarence Thomas and Linda Chavez, they will be *used* to help explain and justify the continuing subordination of their own people of color, while reinforcing the edifice of white privilege, power and supremacy.²⁰⁷ A principal challenge for

205. JOE R. FEAGIN & HERNÁN VERA, *WHITE RACISM: THE BASICS* xii (1995) (emphasis added).

206. Elliot Cose has observed:

Despite its very evident prosperity, much of America's black middle class is in excruciating pain. And that distress—although most of the country does not see it—illuminates a serious American problem: the problem of the broken covenant, of the pact that if you work hard, get a good education, and play by the rules, you will be allowed to advance and achieve to the limits of your ability.

ELLIOT COSE, *THE RAGE OF THE PRIVILEGED CLASS* 1 (1993).

207. Racialist voices would support Clarence Thomas:

At the time of his nomination, Thomas had left little doubt about his political commitments. Despite a clearly manifested ideological agenda from which one could fully predict his role in consolidating the conservative wing of the Supreme Court, Thomas was nonetheless able to garner crucial support across the spectrum of African-American political formations. Narrow notions of racial solidarity led African-Americans to rally behind a figure who, though black, had been and would continue to be an eager participant in the evisceration of the post-civil rights coalition.

CRITICAL RACE THEORY, *supra* note 52, at xxxi. At the opposite of racialism, Linda Chavez advocates color blind assimilation. See generally LINDA CHAVEZ, *OUT OF THE BARRIO: TOWARD A NEW POLITICS OF HISPANIC ASSIMILATION* (1992). Rosemarie Pegueros argues in her review of Chavez' book:

Chavez has made a career of expressing opinions radically at odds with

progressive people of color is to resist using our socio-economic upward mobility as a justification to abandon the leftist racial projects of identity and program. Self-actualization should not be dependent on embracing the right-wing propositions of colorblind individualism, meritocracy and universalism.

Some may express concern or criticism that I have slipped into déjà vu nationalism or I am inappropriately ranking oppression, which creates division and precludes opportunities for solidarity.²⁰⁸ I do not mean to do that. Sometimes, however, the failure to describe stratification and exclusion, in disaggregated references to groups, will obscure oppression's operation and results. Although I endorse "strategic" essentialism,²⁰⁹ it is analytically and strategically wrong to exaggerate the degree of commonality among people of color.

What I am trying to do, however, is call attention to some problems—some nuanced and complex, others rather clear and simple—that stand in the way of genuine, viable multicultural collaboration among colored peoples and with whites. In spite of what might appear to be my qualified and reserved support, my bottom line is that moving beyond the black-white paradigm is imperative to establishing a viable multicultural future. I do believe, however, that dominant America will attempt to situate Asians, Pacific Islanders and Latinos squarely within its "efforts to determine who will be 'white' in the twenty-first century."²¹⁰ I believe that this is a dangerous proposition. It is a call to follow the European immigrant example of groups who, with each generation, have moved into a twilight ethnicity and "paid the price of linguistic extinction and cultural loss for the privilege of white racial

most of the leadership of the Latino community in the United States; that she bases her credibility on her ethnic background; and that her ideas, if taken seriously, could adversely affect the lives of millions of Latinos whose feet are firmly grounded in the rich loam of their culture.

Rosemarie Pegueros, Book Review, *NATION*, Mar. 30, 1992, at 424, 424.

208. See Regina Austin, *Sapphire Bound!*, 1989 *WIS. L. REV.* 539, 546 (discussing the running of the "oppression sweepstakes").

209. According to Lisa Lowe:

The concept of 'strategic essentialism' suggests that it is possible to utilize specific signifiers of ethnic identity, such as Asian American, for the purpose of contesting and disrupting the discourses that exclude Asian Americans, while simultaneously revealing the internal contradictions and slippages of Asian Americans so as to insure that such essentialism will not be reproduced and proliferated by the very apparatuses we seek to disempower.

Lisa Lowe, *Heterogeneity, Hybridity, Multiplicity: Marking Asian American Differences*, 1 *DIASPORA*, Spring 1991, at 39, 40-41.

210. *RACE TRAITOR*, *supra* note 44, at 275.

status."²¹¹ I fear that if people of color buy into this variation of the old ethnicity paradigm, it will simply replicate the earlier immigrant consolidation of white supremacist privilege and deflect proper attention from race and racism as they operate within a given matrix of domination and system of oppression.

B. Living Within the Tension of the Race-Ethnicity-Color Hybridity

In this section I want to raise two models of living within the tension of race and ethnicity, contrasting two platonic models that reflect the black experience and the white experience. Within these two models, somewhat but not completely polar, I will examine the dilemmas that other people of color are likely to face. My analysis presupposes that even as agents of change, other people of color must negotiate within the racialized framework of black and white to resolve issues of incorporation, construction and oppression.²¹²

Robert Blauner expresses a common view of ethnicity that characterizes an ethnic group as one "that shares a belief in a common past. Members of an ethnic group hold a set of common memories that make them feel that their customs, culture and outlook are distinctive."²¹³ In short, situating identity within the realms of ancestry, culture and memory, an ethnic group has a particular sense of peoplehood, "an interdependence of fate."²¹⁴ Through intermarriage, residential integration and various experiences of assimilation, the memory dims and the ethnic features of identity become less salient.²¹⁵

211. Sanjek, *supra* note 64, at 9.

212. See FEAGIN & VERA, *supra* note 205, at xii. The authors argue that while there are varying types of white-minority racisms that are very important and that need to be eradicated, "they cannot be adequately understood until we understand deeply the character and history of white racism as it has targeted African Americans." *Id.* Most of those who strongly advocate moving beyond the black-white paradigm would reject this claim. Indeed, this inquiry itself would be critiqued as marginalizing other non-whites, not leading to a better understanding of racism's multiplicity and mutating nature. I think it is sometimes appropriate simply to look at the black-white paradigm for its own sake, sometimes to look at it for what it tells us about racism's operation vis à vis other non-whites, and sometimes it is appropriate to look at racism in the context of multicultural experience and variety. No one way will always work: that's the point.

213. Blauner, *supra* note 26, at 25.

214. MILTON M. GORDON, ASSIMILATION IN AMERICAN LIFE: THE ROLE OF RACE, RELIGION, AND NATIONAL ORIGINS 53 (linking this concept to that of "historical identification").

215. See MARY C. WATERS, ETHNIC OPTIONS: CHOOSING IDENTITIES IN AMERICA 90-114 (1990).

In contrast to the experience of white people, for most colored people, the relationship between historical experience and ethnic identity is more complicated than this description suggests. The implications of race and ethnicity, both as matters of classification and identity, operate in a fused or tandem way that are ambiguous, yet significant rather than symbolic. People of color must simultaneously negotiate the meanings of race and ethnicity, balance the constraints imposed by race with the choice associated with ethnicity and reconcile our lives of separateness and difference with our aspirations for societal incorporation and access to the benefits that whites of whatever ethnic background take for granted.

The ethnicity paradigm's early articulation is found in the work of Robert E. Park.²¹⁶ Observing the patterns of European immigrants' adaptation to the host society of the United States, Park's theoretical model was characterized by a "race relation's cycle" that progressively and irreversibly developed in the stages of contacts, competition, accommodation and eventual assimilation.²¹⁷ According to Omi and Winant, "The problems and foci generated by this approach have continued to preoccupy the school: incorporation and separation of 'ethnic minorities,' the nature of ethnic identity, and the impact of ethnicity on politics."²¹⁸

Park viewed the final stage of assimilation to be "a process of interpenetration and fusion in which persons and groups acquire the memories, sentiments, and attitudes of other persons or groups, and by sharing their experience and history, are incorporated with them in a common cultural life."²¹⁹ Moreover, like Europeans, it was expected that racially subordinate groups would eventually assimilate.²²⁰ Relying on this European immigrant analogy, assimilation is now not merely a process, but also it is a dominant norm. As tied to the paradigm liberal orientation of individualism, assimilation is not merely a social objective, but a re-

216. Omi and Winant view Park and the Chicago School of sociologists who followed his lead as "the first modern analysts of the subject [race], and their thinking shaped the dominant theoretical and methodological assumptions about race relations for the greater part of this century." OMI & WINANT, *supra* note 19, at 10.

217. ROBERT E. PARK, *RACE AND CULTURE* 150 (1950).

218. OMI & WINANT, *supra* note 19, at 15.

219. Joe R. Feagin & Clairece Booher Feagin, *Theoretical Perspectives in Race and Ethnic Relations*, in *RACE AND ETHNIC CONFLICT*, *supra* note 26, at 29-30 (quoting ROBERT E. PARK & ERNEST W. BURGESS, *INTRODUCTION TO THE SCIENCE OF SOCIETY* 735 (1924)).

220. *Id.* (citing PARK & BURGESS, *supra* note 219, at 760).

quirement for accessing opportunity and realizing achievement.²²¹ Asians, for example, currently are characterized as a "model minority" and thereby "whitened," like Jews before them, because they have assimilated well.²²² These "changing notions of whiteness" are part of "America's larger system of institutional racism."²²³ At any rate, social scientists from the 1940s through the early 1960s generally advanced an ethnicity theory of individual mobility and assimilation that was based on the analogy of European immigrants.²²⁴

221. According to Stanford Lyman:

The principal reason that sociology has failed to deliver a theoretically sound approach that would contribute to the advancement of civil rights is that, to the present day, much of American sociological thought has been dominated by a commitment to the idea that assimilation is the one sure panacea for the race problem. Moreover, the process of assimilation is regarded in accordance with a progressively more complex view that things change only when that change occurs as slow, orderly, continuous, and teleological motion.

Stanford M. Lyman, *Race Relations as Social Process: Sociology's Resistance to a Civil Rights Orientation*, in RACE IN AMERICA, *supra* note 100, at 370, 396.

222. See Daniel A. Farber & Suzanna Sherry, *Is the Radical Critique of Merit Anti-Semitic?*, 83 CAL. L. REV. 853, 857 (1995) (arguing that "negative stereotypes about Jews and some Asian Americans, namely the Chinese and Japanese, are a logical concomitant of the rejection of the concept of merit").

223. Karen Brodtkin Sacks, *How Did Jews Become White Folks?*, in RACE, *supra* note 64, at 78, 79.

224. See generally GUNNER MYDRAL, 2 THE AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY 929 (1944) (urging that "it is to the advantage of American Negroes as individuals and as a group to become assimilated into American culture, to acquire the traits held in esteem by dominant Americans"); Feagin & Feagin, *supra* note 219, at 29, 33 ("Most assimilation theorists take as their examples of ethnic adaptation white European groups migrating more or less voluntarily to the United States."). The Feagins note the following criticisms of that assimilation theory:

Assimilation theories have been criticized as having an "establishment" bias, as not distinguishing carefully enough between what *has* happened to a given group and what the establishment at some point felt *should have* happened. For example, a number of Asian American scholars and leaders have reacted vigorously to the application of the concept of assimilation to Asian Americans, arguing that the very concept originated in a period (1870-1925) of intense attacks by white Americans on Asian Americans. The term was thus tainted from the beginning by its association with the dominant European American group's ideology that the only "good groups" were those that assimilated (or could assimilate) in Anglo-conformity fashion.

Unlike Park, who paid substantial attention to the historical and world-economy context of migration, many of today's assimilation theorists do not analyze sufficiently the historical background and development of a particular racial or ethnic group within a national or world context. In addition, assimilation analysts such as Gordon tend to neglect the power imbalance and inequality in racial and ethnic relations, which are seen most clearly in the cases of non-European Americans.

Id. at 34.

Omi points out that social scientists now recognize the non-descriptness and fluidity of ethnicity for whites.²²⁵ Richard Alba notes that ethnicity for white Americans "may be a subtle matter for many whites, sometimes present, but often not, and possibly quite variable in its form."²²⁶ In contrast to colored ethnicity, not only is individual ethnic identity less salient for whites, but also structural foundations of white ethnicity have eroded and social recognition of white ethnicity has correspondingly lessened.²²⁷ Moreover, white ethnicity is seldom linked to behavior and relationships that reflect an ethnic character or signal.²²⁸ For white ethnics, there is no "aggregation issue" to prompt a meaningful, operational collective identity.²²⁹ For people of color, aggregation issues are salient.

In Sanjek's review of social science literature during the 1970s, social scientists emphasized ethnicity over race and "stressed the expressive, internal cultural processes of group formation and the symbols of inclusion."²³⁰ In the 1980s, however, as social science began to reexamine the experience of race as lived by blacks, sharper distinctions between race and ethnicity developed. Along this line, Michael Banton saw race, in contrast to ethnicity, as linked to external processes that were repressive and exclusionary. Banton argued that blacks should be understood in hybrid terms of race's repressive exclusion *and* ethnicity's symbolic cultural identification.²³¹ For many years, the American reference to black culture reflected disadvantageous distinction and the dysfunctional failures to adapt to the mainstream.²³² This characterization still extends to the black poor.²³³ In the self-reference to Af-

225. OMI & WINANT *supra* note 19, at 12-13.

226. ALBA, *supra* note 54, at 25.

227. *Id.* at 26.

228. *Id.*

229. *Id.*

230. Sanjek, *supra* note 64, at 8.

231. *Id.* (citing MICHAEL BANTON, *RACIAL AND ETHNIC COMPETITION* (1983)).

232. The most controversial argument is found in what became known as "The Moynihan Report." DANIEL P. MOYNIHAN, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* (1965) (arguing that the underlying problem for blacks was "family structure," citing out-of-wedlock births, single parent families and welfare dependence). According to Michael Katz, "The furor over Moynihan's report, in fact, drove black families off the agenda of social science for nearly two decades." Michael B. Katz, *The Urban "Underclass" as a Metaphor of Social Transformation*, in *THE UNDERCLASS DEBATE: VIEWS FROM HISTORY* 3, 13 (Michael B. Katz ed., 1993); see also LEE RAINWATER & WILLIAM YANCY, *THE MOYNIHAN REPORT AND THE POLITICS OF CONTROVERSY* at 39-125 (1967) (giving the full text of the report).

233. See HERBERT J. GANS, *THE WAR AGAINST THE POOR: THE UNDERCLASS AND ANTIPOVERTY POLICY* (1995); WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED* (1987).

rican Americans, blacks acknowledge a separate and distinct culture from that of whites (although of course, as with white ethnic groups, there are shared aspects of national culture). This move has called into question the future of assimilation, as blacks think more in terms of plural cultures within the national culture.²³⁴

Thus, as a racial social group, blacks must constantly resolve tensions between their emphasis on a unique self-identity and group reference and their desires to participate fully in the wider American society. Blacks resist, however, allowing ethnicity to override black political and cultural consciousness.²³⁵ I am not arguing that black consciousness means the same thing for all blacks. But across class lines, an overwhelming majority of blacks demonstrate a high degree of race consciousness.²³⁶ Ironically, as more blacks achieve within the mainstream opportunity structure, they also experience a substantial alienation from white society.²³⁷ The compounded features of race consciousness and alienation from white society complicate negotiating the tensions between race and ethnicity within the context of the mainstream opportunity structure.

Like race, ethnicity is also culturally and socially formed over time. For Europeans, ethnic identifications feature a remarkable freedom of choice. One can move easily within ethnic boundaries, beyond those boundaries, and back and forth. Herbert Gans has characterized a prevalent form of ethnicity as a "symbolic identification" with ancestry.²³⁸ It is more or less a "leisure-time activity," like identifying as Irish on St. Patrick's Day.²³⁹ In describing this subjective, at-will expression of identity, Mary Waters states that "for later-generation white ethnics, ethnicity is not something that influences their lives unless they *want* it to."²⁴⁰ For whites, ethnicity is unencumbered by racial constraint and whites therefore

TAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY (1987); Mark J. Stern, *Poverty and Family Composition since 1940*, in THE UNDERCLASS DEBATE, *supra* note 232, at 220.

234. See John O. Calmore, *Spatial Equality and the Kerner Commission Report: A Back-to-the-Future Essay*, 71 N.C. L. REV. 1487, 1505 n.88 (1993).

235. See A COMMON DESTINY: BLACKS AND AMERICAN SOCIETY 200 (Gerald David Jaynes & Robin M. Williams, Jr. eds., 1989).

236. *Id.* (citing a number of cultural patterns that indicate "a high degree of race consciousness among black Americans").

237. See RICHARD L. ZWEIGENHAFT & G. WILLIAM DOMHOFF, BLACKS IN THE WHITE ESTABLISHMENT?: A STUDY OF RACE AND CLASS IN AMERICA 151-53 (1991).

238. WATERS, *supra* note 215, at 7 (citing Herbert J. Gans, *Symbolic Ethnicity: The Future of Ethnic Groups and Cultures in America*, 2 ETHNIC & RACIAL STUD. 1-20 (1979)).

239. *Id.*

240. *Id.*

are free to avoid embracing the critical dimensions of ethnic identity that have been characterized as "commitment" and "salience."²⁴¹ Commitment represents the extent to which one's investment in relationships to others is based on a shared group reference of specific identity.²⁴² Salience is the "probability, for a given person, of a given identity being invoked in a variety of situations."²⁴³ Colorblindness presupposes a future society where we each can eschew this commitment and salience within the context of racial identity. It also presupposes that others will not impose such commitment and salience on any individual within the context of racial identity. It would reduce race to symbolic ethnicity.

In relating this discussion back to racial projects, I associate this form of symbolic ethnicity with the neoconservatives and their program of conservative egalitarianism. Recall at Table 1, that neoconservatives deny the salience of racial difference or see it as a relic. Moreover, the collective articulation of racial differences by people of color is characterized as reverse racism. For these reasons, its programmatic agenda of conservative egalitarianism supports individualism, meritocracy and universalism while it rejects the assertion of group rights. Therefore state policy should reflect the norms of colorblindness and equality before the law.

Symbolic ethnicity is a weak identity, an "ethnicity of last resort"²⁴⁴ that represents a withering away of ethnic identification as increased social mobility and intermarriage transport ethnicity to the periphery of life.²⁴⁵ Alba characterizes symbolic ethnicity as representing "a personalization of ethnicity [that] frequently amounts to little more than a token acknowledgment of ethnic background."²⁴⁶ In light of this feature of personalized, token acknowledgment, when race is reduced to this form of ethnicity the neoconservative racial project triumphs.

From this discussion we come to see that when the right-wing embraces the conservative egalitarianism program and speaks in terms of colorblindness, it is not suggesting that race should become as insignificant as eye or hair color,²⁴⁷ but rather, that it

241. ALBA, *supra* note 54, at 23 (quoting Sheldon Stryker, *Identity Salience and Role Performance: The Relevance of Symbolic Interaction Theory for Family Research*, 30 J. MARRIAGE & FAM. 558, 560 (1968)).

242. *Id.*

243. *Id.*

244. *Id.* at 29.

245. *Id.*

246. *Id.* at 30.

247. See Richard A. Wasserstrom, in *Racism and Sexism*, PHILOSOPHY AND

should become as insignificant as symbolic ethnicity. Arguments against colorblindness must challenge the policy and concept based on a recognition of its ethnic features that operate within the racial project of neoconservatism. It is therefore inadequate to simply see the merits and demerits of colorblindness strictly as they contrast to race consciousness. The assessment must, instead, be made in light of a hybrid of race, ethnicity and color. The fraud of colorblindness is the denial of the relevance of race and color as they are linked to ethnicity. Through this delinkage, colorblindness is a white paradigm, not really colorblind at all. It simply takes us back to the fallacious assumptions that Blauner critiqued almost twenty five years ago.²⁴⁸ His is the proper critique of colorblindness.

The models for Asians, Pacific Islanders and Latinos do not track either the black or white model. Indeed, they should not. But they do have to operate within the racialized framework of those models. The black model reflects the Banton characterization of a combined race, color and ethnic orientation, and resists adopting symbolic ethnicity. Its ethnic identification is thus more likely to be political: "In particular, ethnicity becomes important in the political sphere, as ethnic groups become interest groups, representing and reflecting the interests of many similarly situated individuals."²⁴⁹ The white model sees symbolic ethnicity as available to those who have escaped the ethnic features of a working or lower-class lifestyle. As one's status and material life change with upward mobility, the ethnicity of the disadvantaged erodes²⁵⁰ and one progresses to symbolic ethnicity.

It is these paradigms that influence the choices for other people of color and make their lives so ambiguously complex. The response of "panethnicity" is therefore positive.²⁵¹ But panethnicity represents a progressive politicization of ethnicity that many peo-

SOCIAL ISSUES 23 (1980), reprinted in MODERN CONSTITUTIONAL THEORY: A READER 376 (John H. Garvey & T. Alexander Aleinikoff eds., 2d ed. 1991) ("[In a] nonracist society [race] would be . . . the functional equivalent of the eye color of individuals in our society today.").

248. BLAUNER, *supra* note 65, at 82-104.

249. ALBA, *supra* note 54, at 28.

250. *Id.* at 27.

251. Omi, *supra* note 1, at 16-17 ("The rise of *panethnic* consciousness and organization is a dramatic political development in the post-Civil Rights era. Groups whose previous national or ethnic identities were quite distinct became consolidated into a single racial (or in the case of Latinos, ethnic) category.") (emphasis added); see also K. Connie Kang, *Asian Americans Rally for Unity*, L.A. TIMES, Sept. 11, 1996, at B1 ("Hundreds demonstrate at City Hall seeking to bring together Pacific rim groups for increased political muscle.").

ple of color have yet to embrace.²⁵² Advocacy groups for people of color tend to incorporate the black model's "racial minority" civil rights orientation. But many of these people will intermarry with whites, integrate within schools and neighborhoods and tie their future to conservative egalitarianism. For Asians, Pacific Islanders and Latinos, however, the fraud of colorblind individualism, meritocracy, and universalism is the denial of racism as these people of color live it. They become socially constructed as permanent foreigners.²⁵³ This situation is described by Neil Gotanda: "A Japanese-American citizen in 1942 was easily considered 'foreign,' thus making possible the judgment that likelihood of disloyalty was high enough to justify wholesale internment."²⁵⁴ This social construction of race sets the stage on which "nativistic racism" may operate.²⁵⁵

While the linkage of other people of color and foreigners has perhaps eroded since the end of World War II, there are signs of its revival in terms of restrictive immigration policies²⁵⁶ and anti-Asian violence.²⁵⁷ Anti-Asian violence is a significant rebuttal to colorblindness and a spur to pan-ethnic alliance among Asians and Pacific Islanders. For Asians, Pacific Islanders, Mexicans and Central Americans, their social construction as permanent foreigners was the primary fuel for the anti-immigrant sentiment that manifested itself in California's Proposition 187.²⁵⁸ Nativistic racism also combines with "border racism" as articulated through social construction of the "dirty Mexican."²⁵⁹ In discussing the

252. See Kang, *supra* note 251 ("Organizers called the rally historic because it brought together young and old, immigrant and native-born from the more than two dozen [Asian Pacific American] ethnic communities . . . including Burmese, Tibetans, Laotians and Samoans. Rarely has there been an attempt to unify these groups for political action.").

253. Whether native-born or immigrant, those who are neither white nor black—"other non-whites" as Neil Gotanda describes them—"retain a dimension of 'foreignness' [sic]—they are unassimilable strangers." Neil Gotanda, "Other Non-Whites" in *American Legal History: A Review of Justice at War*, 85 *COL. L. REV.* 1186, 1190 (1985) (book review).

254. *Id.* at 1191.

255. Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 *CAL. L. REV.* 1241, 1255 (1993) ("present-day nativism is grounded in racism").

256. See Jan C. Ting, "Other Than a Chinaman": *How U.S. Immigration Law Resulted from and Still Reflects a Policy of Excluding and Restricting Asian Immigration*, 4 *TEMPLE POL. CIV. RTS. L. REV.* 301 (1995) (maintaining that anti-Asian sentiment informs United States immigration policies—both past and present).

257. See Chang, *supra* note 255, at 1252-55.

258. See Bosniak, *supra* note 175, at 566.

259. Jane E. Larson, *Free Markets Deep in the Heart of Texas*, 84 *GEO. L.J.* 179, 224-25 (1995).

predicament of Mexican *colonia* residents in south Texas, Jane Larson traces border racism to the Anglos who emigrated to the region during the 1800s, transporting with them their long racist history of dealing with Native Americans and blacks.²⁶⁰ In the Texas Revolution of 1836 and later in the Mexican-American War, anti-Mexican sentiment intensified as Anglos fought so as not to be ruled by Mexicans, "who they saw as inferiors."²⁶¹ Indeed, the increased hostility toward Mexicans fostered a tendency among whites to associate Mexicans with the previous racial inferiors: Indians and blacks.²⁶² Finally, many Anglo-Texans refused to sign the Treaty of Guadalupe Hildago, in which United States expansionist interests were well served, because it provided citizenship to the large Mexican population from the ceded territory.²⁶³

From these historic roots of racial conflict grew a powerful social construction of the "dirty Mexican."²⁶⁴ As Larsen explains, "since the earliest days of Anglo presence in the Texas border region, images of personal filth and poverty and crude and disorderly housing have been offered as evidence of the innate inferiority of Mexicans."²⁶⁵ Therefore, when visitors come to the *colonias*, see the muddy streets and open cesspools and encounter dirty children with skin disease living in shacks, the belief that "this dirt and deprivation reflects Mexican racial inferiority" is affirmed.²⁶⁶ Similarly, this "dirty Mexican" image permits the justification for restricting Mexicans to laboring in the agricultural fields—in this context, "dirty" means "suited for labor in the fields."²⁶⁷

Racism in America mutates and impacts people of color in similar and different ways.²⁶⁸ Thus, it is not enough just to challenge white supremacy as if it were separate from the articulation of racism; it is not enough just to engage in the discourse of race without regard to the expressed racism of the racial project's program. However presumptuous, all people of color should adopt a constructive oppositional identity to white privilege that emphasizes race consciousness *and* the politicization of ethnicity *and* trans-communality or panethnicity. At present, symbolic ethnicity

260. *Id.* at 224.

261. *Id.*

262. *Id.*

263. *Id.* at 224-25.

264. *Id.* at 225.

265. *Id.*

266. *Id.*

267. *Id.* at 227.

268. GOLDBERG, *supra* note 20, at 213 ("[T]here is no single unified phenomenon of racism, only a range of racisms.").

should be left alone because, beyond token acceptance, it is really nothing more than an attractive nuisance hiding a trap door.²⁶⁹

As discussed in Part IV, the insurgent, critical multiculturalism I advocate need not threaten whites nor necessarily posit them in opposition to people of color. It would be a mistake to interpret what I have presented thus far as so oppositional to white supremacy, privilege and racism that I do not think there is any way to connect and work with whites on anti-racist, positive social justice projects. That is not my view and, more importantly, it is not how I live my life.

IV. Exploring a White Race-Traitor Racial Project

A. *Toward Responsibility Without Blame in Reconstructing and Rehistoricizing "Whiteness"*

In an extensive 1994 study examining how the black middle class experiences racism, Joe Feagin and Melvin Sikes suggest the need to bring white people back into constructive conversations and projects to resolve our nation's racial problem.²⁷⁰ That problem, they contend, "now and in its origin, is fundamentally a white problem, for whites have the greatest power to perpetuate or alter it."²⁷¹ My goal is to explore the potential for whites to exercise their power to alter the adverse impacts of racism on people of color and on themselves.

During the civil rights movement there were varied attempts to develop an empathetic orientation toward blacks, something I

269. For people of color, ethnicity is racialized, converting choice to constraint. Mary Waters points to how white ethnic options mask colored racial constraints:

For most people I spoke with, ethnicity is something everyone has to have, but why would people be particularly proud of their ethnic ancestry or ashamed of it? It is just something you have, not something that really influences your life. Most respondents would admit that there was something different about blacks, Hispanics, and Asians, that they had faced some societal discrimination, especially in the past, but in another sense the individualistic approach to ethnicity was a much stronger influence. Some people stressed that they thought all societal discrimination against blacks and Hispanics had lessened to the point where they should just start forgetting about it and act as individuals, not as groups. In short, if your own ethnicity is a voluntaristic personal matter, it is sometimes difficult to understand that race or ethnicity for others is influenced by societal and political components. . . . The process and content of a symbolic ethnicity then make it increasingly difficult for white ethnics to sympathize with or understand the experience of a non-symbolic ethnicity—the experience of racial minorities in the United States.

WATERS, *supra* note 215, at 163-64.

270. FEAGIN & SIKES, *supra* note 24, at 362.

271. *Id.*

no longer see either toward blacks or other people of color. In *Killers of the Dream*, Lillian Smith recounts her discussion with a white female about the period of legal segregation:

White [respondent]: I wonder how the Negroes felt. I've never thought about it. But the children, how did it make them feel? I guess it is strange that I've never tried to imagine how they felt.

Smith: I suppose there is no way you can feel it, truly, unless you live through it. We whites have a color glaze on our imaginations that makes it hard to feel with the people we have segregated ourselves from.²⁷²

I wonder if whites can remove such "a color glaze" and develop an empathetic connection with people of color. Feagin and Vera see this as a necessary first step in moving toward shared confrontations of racism.²⁷³ They suggest that whites must find practical solutions to various questions: "How does such an empathetic orientation develop, and how can it be spread? What makes cross-racial understandings possible on the part of whites? Are some whites more likely than others to develop this empathy and take action based on it?"²⁷⁴

These are important questions, but it is also important that whites reconstruct their own sense of "whiteness."²⁷⁵ As evidenced from the writings of whites who study and reflect on internalized senses of whiteness, we find that "whiteness" is deeply embedded within the psyche. In a study of white women, Ruth Frankenberg's interviews revealed that, for her subjects, the notion of "whiteness" was "difficult for white people to name. . . . Those who are securely housed within its borders usually do not examine it."²⁷⁶

In a similar vein, Peggy McIntosh observed:

I have come to see white privilege as an invisible package of unearned assets that I can count on cashing in each day, but about which I was 'meant' to remain oblivious. White privilege is like an *invisible weightless* knapsack of special provi-

272. FEAGIN & VERA, *supra* note 205, at 175 (quoting LILLIAN SMITH, *KILLERS OF THE DREAM* 68-69 (rev. ed. 1961)).

273. *Id.* at 174.

274. *Id.* at 175.

275. Martha R. Mahoney, *Segregation, Whiteness, and Transformation*, 143 U. PA. L. REV. 1659, 1660 (1995) ("Since race is a phenomenon always in formation, then whiteness—like other racial constructions—is subject to contest and change. 'Whiteness' is historically located, malleable, contingent, and capable of being transformed."); see also *id.* at 1663 n.11.

276. RUTH FRANKENBERG, *WHITE WOMEN, RACE MATTERS: THE SOCIAL CONSTRUCTION OF WHITENESS* 228-29 (1993) (arguing that race is a primary shaping force in the lives of white women).

sions, assurances, tools, maps, guides, codebooks, passports, visas, clothes, compass, emergency gear and blank checks.²⁷⁷

In unpacking this knapsack, McIntosh enumerated various conditions of her daily experience that she once took for granted, assuming them to be "neutral, normal, and universally available to everybody."²⁷⁸ Her exercise is insightful in contrasting her experience of race to that of people of color, most of whom can never envision their skin color as invisible or weightless or privileged.²⁷⁹

277. BENDER & BRAVEMAN, *supra* note 3, at 22, 23 (excerpting McIntosh, *supra* note 45 (emphasis added)). According to McIntosh:

The word "privilege" carries the connotation of being something everyone must want. Yet some of the conditions I have described here work to systematically overpower certain groups. Such privilege simply *confers dominance*, gives permission to control, because of one's race or sex. The kind of privilege that gives license to some people to be, at best thoughtless and at worst, murderous should not continue to be referred to as a desirable attribute.

McIntosh, *supra* note 45, at 29.

278. *Id.* at 28. McIntosh lists 46 items in her invisible weightless knapsack, including:

3. If I should need to move, I can be pretty sure of renting or purchasing housing in an area which I can afford and in which I would want to live.

4. I can be reasonably sure that my neighbors in such a location will be neutral or pleasant to me.

....

6. I can turn on the television or open to the front page of the paper and see people of my race widely and positively represented.

....

12. I can go into a book shop and count on finding the writing of my race represented, into a supermarket and find the staple foods that fit with my cultural traditions, into a hairdresser's shop and find someone who can deal with my hair.

....

15. I did not have to educate our children to be aware of systemic racism for their own daily physical protection.

....

20. I can do well in a challenging situation without being called a credit to my race.

....

24. I can be reasonably sure that if I ask to talk to "the person in charge," I will be facing a person of my race.

....

40. I can choose public accommodation without fearing that people of my race cannot get in or will be mistreated in the places I have chosen.

Id. at 25-27.

279. I envy those for whom race is weightless. I recall that Arthur Ashe, the black tennis great and humanitarian, was a man whose achievement and financial success, I presumed, made it easier for him to identify with McIntosh's concept of white weightlessness. Yet, even when faced with the weight of impending AIDS-related death, Ashe stated: "Race has always been my biggest burden. . . . Having to live as a minority in America. Even now it continues to feel like an extra weight tied around me." R. Z. Sheppard, *Match Points*, *TIME*, June 21, 1993, at 69, 69

While whites may find this interesting, it may not be clear how this really relates to the heavier, anti-racist business at hand:

Key, here, is the task of rehistoricizing the categories of race and culture: insisting on antiessentialist conceptions of race, ethnicity, and culture, while at the same time emphasizing that these categories are made materially 'real' within matrices of power relations Rehistoricizing whiteness and Americanness as locations of cultural practice entails learning more about the multiple histories of assimilation, appropriation, and exclusion that shape the cultural field(s) that white Americans now inhabit. Rehistoricization also requires engagement with whiteness and Americanness as culturally specific spaces rather than cultureless, culturally neutral or culturally generic terrain. Finally, white subjects (and again I include myself) must continue to examine whiteness and Americanness as sites of dominance. But as we do this, we must note that not all white American people, and not all forms of whiteness, have the same access to power. It is critical to think clearly and carefully about the parts white people play in the maintenance of the racial order, and to ask how our locations in it—and our complicity with it—are marked by other dimensions of our privilege and oppression, including class, gender and sexuality. The point of work of this kind would not, however, be that of constructing hierarchies either of oppression or of blame. Rather, its purpose would be to sharpen our analysis of how systems of domination co-construct one another, and how we are 'enlisted,' materially and ideologically, in their continued operation.²⁸⁰

(quoting ARTHUR ASHE & ARNOLD RAMPERSAD, *DAYS OF GRACE: A MEMOIR* (1993)); see also Calmore, *supra* note 23:

When I think about how "race" matters, how matters are "raced," and how I experience racism, I too think about "race"/racism's weight: How it weighs on people; how it measures and apportsions; how it counts; how it merits consideration as important, as in the "weight of the evidence" or the "burden of proof"; how it overburdens and depresses; how it cracks, splinters, and breaks things; how it mashes vision and distorts discourse; how it crushes self-esteem, respect, and confidence, while providing a foundation for estrangement and anger; how it flattens spirits, buries dreams, and entombs lives; how it fatigues and overpowers; how it knocks hard on your door when you need peace and want quiet; how it fills your space, denting it and blocking you; how it is backed by the weight of society; how it harshly and cruelly governs—oppresses—with your hard-fought "democratic" vote against it wasted; how it weights public opinion against you; how it weighs/ways into/under class; and, yes, how it really is a heavy load and even when you can handle it—push it, pull it, carry it—the weight is weigh/way too heavy to bear no matter how you bear down or what you bear in mind.

Id. at 1777.

280. Ruth Frankenberg, *Whiteness and Americanness: Examining Constructions of Race, Culture, and Nation in White Women's Life Narratives*, in RACE, *supra* note 64, at 62, 74-75.

B. *The Project of White Race Traitors in Action*

Derrick Bell recently wrote that white critical race theorists appear to have assumed a responsibility to overthrow their own white privilege.²⁸¹ Since 1989, when I first became involved with critical race theory, I have held that whites could not effectively engage in this work, in large part, because whites held the wrong end of the experiential stick, so to speak. That is, they lacked the anti-subordination perspective that is derived from living under the weight of white supremacy. Moreover, I was skeptical that even well intentioned whites would direct anti-subordination efforts against their own complicit self-interest in maintaining their group position.²⁸² I am now rethinking my position.

Recently, the editors of *Race Traitor* reinforced Bell's observation by declaring that it "aims to serve as an intellectual center for those seeking to abolish the white race . . . and support practical measures, guided by the principle, *treason to whiteness is loyalty to humanity*."²⁸³ They are referring to "whiteness" as a political-social-cultural construction and, as they see matters:

The existence of the white race depends on the willingness of those assigned to it to place their racial interests above class, gender, or any other interests they hold. The defection of enough of its members to make it unreliable as a determinant of behavior will set off tremors that will lead to its collapse.²⁸⁴

The editors go on to explain that the publication is not trying to make converts, but is trying to connect with those people, commonly called "white," who are dissatisfied with the terms governing membership in the white club. Thus, the primarily intended audience is seen as those "who, in one way or another, understand 'whiteness' to be a problem that perpetuates injustice and prevents even the well-disposed among them from joining unequivocally in the struggle for human freedom."²⁸⁵

We see, then, that whites adhere to notions of white supremacy and domination not only because of the material advantages that they afford, but also because of the psychological benefits it

281. See Bell, *supra* note 46, at 898.

282. See Calmore, *supra* note 33, at 201, 208 (citing Herbert Blummer, *Race Prejudice as a Sense of Group Position*, 1 PAC. SOC. REV. 3 (1958)). Blummer discusses the attitudinal and institutional aspects of white racism, stating that the dominant group feels (1) superior to other groups, (2) that other groups are inherently "different and alien" (3) entitled to advantages and privileges, (4) that the subordinate group "harbors designs on the prerogatives of the dominant race. *Id.*

283. RACE TRAITOR, *supra* note 44, at 10.

284. *Id.*

285. *Id.* at 13-14.

provides. Intervention is required at both levels. At both levels there appears to be a tacit agreement among the majority of whites to keep receiving the benefits of white racism and not to consider it except in ways that render the existing racial hierarchy to be normal, fair and legitimate. In Christine Sleeter's view:

As we grow up, white people learn to talk about race-related issues in ways that render the status quo as 'natural,' remove ourselves from complicity, and secure approval from other whites. We learn to do this so well that it takes some effort to become aware of the strategies we use to deflect attention from white racism.²⁸⁶

One of these strategies equates racism with individual prejudice and ignorance.²⁸⁷ This enables whites to accept the proposition that every group is racist, obscuring a recognition of the differentials of power and privilege that exist between whites and people of color.²⁸⁸ A related strategy for evading racism is to equate ethnicity with race.²⁸⁹ Whites also evade racism by personifying racism in a way that removes white people from having any responsibility for it, by removing themselves from the discussion. Hence, using a form of semantic evasion, whites might say that "racism causes poor education in inner-city schools[.]"²⁹⁰ Sleeter asks, "Who is responsible? The sentence does not suggest that anyone holds responsibility."²⁹¹

Additionally, supplementing such evasive maneuvers and serving as a significant impediment to whites renouncing their own race privilege is what Sleeter refers to as "white racial bonding."²⁹² Here, she refers to whites interacting among themselves in ways that are intended to affirm a common position on issues of race. Through this bonding, whites legitimate particular oppressive interpretations of outsider groups and draw firm exclusionary we-they boundaries.²⁹³

I believe that white racial bonding is the lived experience that reveals the lies of individualism and colorblindness. "In general, whites stick together on common definitions of issues that involve race relations, and behave accordingly. We live largely with

286. Christine E. Sleeter, *White Silence, White Solidarity*, in RACE TRAITOR, *supra* note 44, at 257, 259.

287. GOLDBERG, *supra* note 20, at 92-94.

288. Sleeter, *supra* note 286, at 259.

289. *Id.* at 260. See also FRANKENBERG, *supra* note 276, at 74-75 (discussing color and power evasiveness as components of colorblind ideology).

290. Sleeter, *supra* note 286, at 260.

291. *Id.*

292. *Id.* at 261.

293. *Id.*

other whites, socialize mainly with whites, consume white media, vote for whites, and so forth."²⁹⁴ Sleeter's admission against interest is this: "Although today most whites profess colorblindness and support for equal opportunity, in fact we *behave* in a very race conscious manner, and use a number of processes to police other whites and maintain racial solidarity."²⁹⁵

Sleeter's observations are revealing. Whites behave in a manner to secure and maintain their group position over people of color, police other whites to support that position, and yet urge that colorblindness must apply whenever people of color, as people of color, seek to remedy their harm that occurs because of this white behavior and solidarity. In this way, Justice Harlan's *Plessy* dissent²⁹⁶ and Martin Luther King, Jr.'s dream are turned on their heads as the language of colorblindness comes to represent a "semantic infiltration," that is, "the appropriation of the language of one's political opponents for the purpose of blurring distinctions and molding it to one's own political position."²⁹⁷ This is oxymoronic social justice and civil rights as voiced in white neighborhoods, cultural and social gatherings, institutions, the halls of Congress, on the campaign trail, and from the Supreme Court bench. White people (and Justice Thomas) need to stop it.

In terms discussed above by Lillian Smith, Ruth Frankenberg, Peggy McIntosh and Christine Sleeter, it is "whiteness," as we know it, that must not simply be deconstructed, but abolished, reconstructed, reformed and reconstituted. Because culture is synthetic and fluid, this reconstructed identity will have to be a product of self-reflection and more engagement with people of color, in-

294. *Id.* at 260.

295. *Id.* at 260-61 (emphasis added). The most profound illustration of white racial bonding of we-they boundaries is the residential exclusion of blacks, euphemistically referred to as "racial segregation." See generally Margalynne Armstrong, *Protecting Privilege: Race, Residence and Rodney King*, 12 *LAW & INEQ. J.* 351 (1994) (arguing that courts protect white racial privilege by designating the tendencies of middle class whites to flee school and residential integration as *de facto*, i.e., irremediable, racial segregation).

296. *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting) ("Our Constitution is color-blind, and neither knows nor tolerates classes among citizens."). See generally Neil Gotanda, *A Critique of "Our Constitution is Color-Blind,"* 44 *STAN. L. REV.* 1 (1991) (examining how this statement in Justice Harlan's dissent has been used by the Supreme Court as an argument against race conscious affirmative action programs, analyzing its social implications and assumptions about race, concluding that colorblindness maintains social and economic inequalities along racial lines and suggesting that the anti-establishment and free-exercise jurisprudence with respect to religion be adopted for use with race).

297. STEINBERG, *supra* note 2, at 116 (discussing Daniel Patrick Moynihan's characterization and use of this method).

cluding involvement with their multicultural projects and struggles. Only in this way may we establish a new community based not only on valuing diversity, but also on restructuring our societal organization, institutions and negotiated culture to enable and empower the whole of America's humanity. According to Peter McLaren:

"Whiteness" does not exist outside of culture but constitutes the prevailing social texts in which social norms are made and remade. As part of the politics of signification that passes unobserved into the rhythms of daily life . . . "whiteness" has become the invisible norm for how the dominant culture measures its own worth and civility.²⁹⁸

Whites must do more than merely take a counter-stance to white supremacy. They must also engage in renegotiating the dominant culture in a way that "whiteness" becomes enough of a color so that a multicultural nation would include them *as people of color*, as another "border identity" that would "constitute a bold infringement on normalcy"²⁹⁹ and help to create a new consciousness of the borderlands—a *mestiza* consciousness³⁰⁰—that would help to create "a space of cultural articulation that results from the collision of multiple strands of referential codes and sign systems."³⁰¹ In short, in the name of an enlarged sense of humanity, these new colored whites would join with colored non-whites to make one glorious mess of race and ethnicity. It may be the only way to move us out of the mess we are in now.

Conclusion

Proponents of conservative egalitarianism rely on Martin Luther King, Jr.'s colorblind vision of a nation where the worth of an individual is a matter of the content of her character rather the color of her skin. They fail to heed a message contained in the same speech, where Dr. King warned, "The whirlwinds of revolt will continue to shake the foundations of our nation until the bright day of justice emerges."³⁰² Seeking to capture the quality of imagination and spirit of an earlier freedom movement, unrestricted by the limiting term of "civil rights," I have written this

298. Peter McLaren, *White Terror and Oppositional Agency: Towards a Critical Multiculturalism*, in *MULTICULTURALISM*, *supra* note 41, at 45, 59.

299. *Id.* at 67.

300. *Id.*

301. *Id.*

302. MARTIN LUTHER KING, JR., *I HAVE A DREAM: WRITINGS AND SPEECHES THAT CHANGED THE WORLD* 180 (James M. Washington ed., 1992).

Essay for those brighter days of justice when Alice Walker's free swimmers can take a holiday.

In writing this Essay I have benefited from and endorsed a great deal of Michael Omi's teaching. I have rolled up my intellectual sleeves to involve myself with the "messiness" of race that comes out of problematizing the concept beyond its representation as either essence or illusion. Because race and racism are tandem operators, moreover, I have sought to see the racist conditions that are implicated in the political contestation of the meanings of race. I have sought to explore the connection between racial representation and right-wing political agendas by raising a hue and cry over the operation of conservative egalitarianism as it reflects Reagan's most dangerous legacy and as it reflects the present Supreme Court majority's buy-in to that program. I have argued against the colorblind effort that attempts to reduce the significance of race, not to that of eye or hair color, but, rather, to no greater significance than symbolic ethnicity as experienced by European-Americans.

Omi's messy world of race opens us to both challenges and opportunities as we deal with the multicultural future of this nation that is moving beyond the black-white paradigm of race even as it carries the historic weight of it. The price of success cannot be the whitening of colored peoples. Our positive experiences of freedom and equality cannot be a function of individuated justice that trickles down only to one at a time. The multicultural future opens up the opportunity for whites to rehistoricize their racial identity away from the notion that they are inherently racially superior because of their biological makeup or culturally superior because they have monopolized meritorious achievement and progress, away from the notion that they need not take their own racialized humanity more into account and away from "white bonding" in ways that situate them and "enlist" them in supporting hierarchies of oppression and systems of domination that are racist, not colorblind.

During the sad period of time that my native California voted in favor of the state initiative to prohibit state-sponsored affirmative action,³⁰³ I read an insightful piece by John Maguire, President of the Claremont Graduate School and a life director of the Martin Luther King, Jr. Center for Social Change in Atlanta.³⁰⁴

303. See *supra* note 176.

304. See John D. Maguire, *Perspective on Proposition 209: Resist the Call of the Privileged Class*, L.A. TIMES, Oct. 24, 1996, at B9.

Maguire opined that the anti-affirmative action initiative was rooted in the nation's long history of fear and divisiveness:

Americans were scared first about the native inhabitants of this land, then of blacks and their having full and equal citizenship rights, and of women voting and being legally emancipated, afraid of Japanese Americans, of the agents of the communist menace, of European immigrants, of any immigration, legal or illegal.³⁰⁵

I do not believe that Martin Luther King, Jr. would endorse the current use of his colorblind dream by David Duke, Pete Wilson, Ward Connerly and others who play on fear and further divisiveness.³⁰⁶ Rather, he would endorse the concluding words of Maguire:

In the 1960s, Martin Luther King, Jr. urged women and men of all races to reject divisive politics. Together, he said, we can exert massive pressure on the government to ensure justice for all. Together we can form a grand alliance. Together we can merge all people for the good of all. None of us is finally healthy until all are healthy. None is safe until all is safe.

It's a new grand alliance that we so desperately need—not exclusion but inclusion; not division but togetherness; not fear and contempt for each other, but courage and respect.³⁰⁷

This describes the multicultural future I am working toward. This describes the multi culture that would enable us to give in to Alice Walker's "attraction to world families and the cosmic sea—full of a lot of naked people longing to swim free."³⁰⁸

305. *Id.*

306. Governor Wilson picked Ward Connerly, an African American, to head the campaign in support of the anti-affirmative action initiative. This provided a cover from those who would charge the Governor with racism. Yet, the misappropriation of King's dream was apparently troublesome to Connerly. After the election it was reported that:

Connerly became its most visible supporter, setting him apart from most other African Americans, who opposed the proposition. In all, backers raised \$3 million, with much of it coming from the Republican Party.

In the final weeks of the campaign, Connerly tried to distance himself from the party, particularly after the family of Martin Luther King Jr. protested that the GOP had produced television ads using the late civil rights leader's "I Have a Dream" speech. The firestorm prompted the party to cancel the ads.

Stall & Morain, *supra* note 176, at A1.

307. Maguire, *supra* note 304, at B6.

308. BENDER & BRAVEMAN, *supra* note 3, at 1.