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Unfinished Equality: The Case of Black Boys

Nancy E. Dowd*

INTRODUCTION

What is the most viable, powerful way to achieve social justice? Vulnerabilities analysis offers a theoretical perspective to achieve social justice that crosses conventional categories and embraces collaboration among subordinated groups.¹ It moves us away from a hierarchy of disadvantage to the commonality of subordination, and requires the state to explain and correct structural inequalities. Identity theory moves toward specificity, toward identifying and unraveling the specific manifestations of particular inequalities, such as race, gender, and class.² It reminds us that these are powerful constructs that must be confronted, challenged, and transformed to achieve justice and equality. I see these theoretical perspectives working in tandem, not in opposition. That is, it is not an either-or approach, but rather a both-and approach to seeing and thinking about goals and strategies for equality. I make no claim that these are the only pathways, but merely two powerful ones.

I consider the theoretical question within the specific context of black boys.³ I conclude that race and gender cannot be divorced from an inquiry to end

* Professor and David Levin Chair in Family Law, and Director, Center on Children and Families at the University of Florida Fredric G. Levin College of Law. This Article was presented at the annual symposium held by the *Indiana Journal of Law and Social Equality* on April 5, 2013. I am grateful to the students who organized the symposium for a magnificent program and their wonderful support in preparing this essay for publication. I was assisted in this work by the outstanding research assistance of Lauren Januzzi, class of 2013, and Michael Moore, reference librarian and adjunct professor at the University of Florida Fredric G. Levin College of Law.

1. See *infra* Part I.A., notes 6–12 and accompanying text.
2. See *infra* Part I.B., notes 13–24 and accompanying text.
3. This Article is part of a larger project exploring the life course of black boys and the systemic, cultural, and social factors that impact their lives in a way that currently results in

the subordination of black boys. Vulnerabilities analysis may contribute to the analysis by underscoring developmental norms, systemic inadequacies versus systemic expectations, and comparative perspectives, but it is insufficient by itself. Therefore, I imagine a symbiotic, interdependent relationship between these theoretical perspectives.

The Article proceeds in four parts. In Part I, I briefly present the approaches of vulnerabilities theory and identities theories to issues of social justice. In Part II, I set out the situation of black boys, beginning from birth and moving through childhood and adolescence until age eighteen. This includes their interaction with various institutional structures—most importantly school, but also child welfare, anti-poverty structures, health, mental health, and juvenile justice. This context is a depressing and outrageous one because it predictably funnels a significant proportion of black boys into an adulthood without opportunity. The surest thing is their potential for incarceration.

I do not intend nor want this focus on black boys to pull attention away from others,⁴ but the very concern that it might do so indicates the challenges associated with paying attention to gender and race. Focusing on black boys may be used by some to divide subordination or may suggest a hierarchy of subordination. It is justified then to question this approach, and suggest that the same or even a better outcome can come from beginning from a different perspective, such as the vulnerabilities perspective. I conclude, however, that identity matters and is

harsh and devastating impacts on their life opportunities. These patterns evidence systems that are dysfunctional and subordinating. In an earlier article, I explored the context of the lives of black boys in greater detail, challenging the view of boys' and men's universal privilege, in a symposium critically evaluating Hanna Rosin's book, *The End of Men: And the Rise of Women* (2012). Nancy E. Dowd, *What Men?: The Essentialist Error of the "End of Men,"* 93 B.U. L. REV. 1205 (2013). In this Article I focus on two other pieces: the theoretical question of how to approach this, which was triggered by a workshop held at Emory Law School in September 2012 that focused on vulnerabilities and identities theories, as well as the impact of stereotypes, both systemically and individually, in identity formation.

4. The danger of focusing on black boys and men is the exclusion of black girls and women. See the critiques of Menah Pratt Clarke and Devon Carbado on this very issue. MENAH A.E. PRATT-CLARKE, *CRITICAL RACE, FEMINISM, AND EDUCATION: A SOCIAL JUSTICE MODEL* (2010); DEVON W. CARBADO, *Men in Black*, 3 J. GENDER RACE & JUST. 427, 429, 434 (2000). This, of course, is not the only potential exclusion, as the focus on African American boys presents race as an issue of black or white racial identity, excluding other children and youth of color. See generally Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 CALIF. L. REV. 1213 (1997). Moreover, any identity category carries with it both the risk of over- and under-inclusion and, as these scholars point out, the potential for blame or implicit critique that is unwarranted. It is essential to keep these risk factors in mind, but in my view it is not a basis to readjust the lens, since as I argue in this Article, it is the combination of race and gender identity that triggers systemic and cultural subordination that is profound, even if not exclusive.

explanatory of the problem, as well as essential to the solution.⁵

In Part III, I add to the institutional and systemic context by focusing on the functioning of stereotypes and the process of identity formation for black boys. My account is provisional and general, as this is a complex process that requires inquiry into the developmental literature. This focus is critical, however, to understanding the challenges black boys face and to transform their opportunities.

Finally, in Part IV, I return to the theoretical question posed at the outset, applied in the context of black boys. I suggest what inequalities intersect in the subordination of black boys, including institutional or systemic pieces, challenges to the development of identity, and the pervasive presence of stereotypes. I argue that the unraveling of black boys' subordination requires attention both to identity formation and to structural change, which would include dealing with bias of actors in the system, as well as institutional reform. I conclude that this suggests identity analysis cannot be abandoned; instead, it is critical to black boys. Vulnerabilities analysis enormously enriches that analysis. Identities and vulnerabilities as theoretical models here are not in opposition, but interact and are supportive of each other. My approach would be to connect the two.

I also conclude that essential to the identities piece is the intersection of race and masculinities. We have tended to see the situation of black boys exclusively as a matter of race, or dominantly so, but the intersection of the gender and masculinities piece is crucial. This insight is the benefit of identity analysis, and this analysis persists in requiring us to look at race and masculinity, as well as to challenge why they continue to operate as if they are natural hierarchies. What vulnerabilities analysis can bring to this is a way to challenge the structure more on its own terms by using a neutral terminology or concept that might be more acceptable or strategic and that might allow for persuasiveness based on similarities and fairness.

I. THEORIES: VULNERABILITIES AND IDENTITIES

A. *Vulnerabilities*

Vulnerabilities analysis is a fresh approach to issues of social justice that focuses on commonalities in the human condition. Professor Martha Fineman has led the development and application of this theoretical framework in legal scholarship, arguing for the power of this framework to reach beyond the limitations of other approaches as reflected in existing constitutional and statutory law frameworks to achieve social justice.⁶

5. In addition, race and gender may not be enough—class also matters. See Tamar R. Birkhead, *Delinquent by Reason of Poverty*, 38 WASH. U. J.L. & POL'Y 53, 59 (2012); James Forman, Jr., *Racial Critiques of Mass Incarceration: Beyond the New Jim Crow*, 87 N.Y.U. L. Rev. 21, 31–34 (2012).

6. See, e.g., Martha Albertson Fineman, *Grappling with Equality: One Feminist Journey*,

Vulnerabilities analysis begins with the observation that all of us are vulnerable because we are human. Although the naming of this with the term “vulnerabilities” might trigger an association with needs, dependencies, and weaknesses, Fineman explicitly argues for vulnerability as a positive condition.⁷ The work of other scholars, such as Brené Brown, reinforces the value of vulnerability as a precondition for human relationships and well-being.⁸

Vulnerabilities are not static nor are they identical. They are affected by physical, human, and social assets.⁹ Physical assets include wealth and material goods, human assets are those linked to our innate or developed human capital, and social assets are those benefits gained from family, friends, and group identities (race, class, gender, etc.).¹⁰ So assets critically affect how vulnerabilities play out for individuals and their networks of family, friends, and community. The state affects assets by fostering, supporting, and distributing assistance or nurture in ways that facilitate individual growth, opportunity, and well-being. Or, conversely, the state may inhibit or subordinate individual growth, or foster hierarchy through unequal distribution or support, or fail to address factors that negatively affect individual vulnerabilities.¹¹

For example, vulnerabilities include dependency, which is characteristic of all children, some elders, and also some adults. Dependency can include both economic and developmental needs, and may be different for children than it is for adults or elders. Evaluating the actions of the state from a vulnerabilities perspective

in TRANSCENDING THE BOUNDARIES OF LAW: GENERATIONS OF FEMINISM AND LEGAL THEORY 47, 54–60 (Martha Albertson Fineman ed., 2011); Martha Albertson Fineman, *Beyond Identities: The Limits of an Antidiscrimination Approach to Equality*, 92 B.U. L. REV. 1713 (2012); Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 YALE J.L. & FEMINISM 1, 8–10 (2008) [hereinafter Fineman, *Anchoring Equality*]; Martha Albertson Fineman, *The Vulnerable Subject and the Responsive State*, 60 EMORY L.J. 251 (2010) [hereinafter Fineman, *Responsive State*]. For an overview of vulnerability work, see Emory Univ., *Resources, VULNERABILITY & HUM. CONDITION*, <http://web.gs.emory.edu/vulnerability/resources/index.html> (Dec. 15, 2013).

7. Fineman, *Responsive State*, *supra* note 6, at 269–73.

8. See, e.g., BRENE BROWN, *DARING GREATLY: HOW THE COURAGE TO BE VULNERABLE TRANSFORMS THE WAY WE LIVE, LOVE, PARENT, AND LEAD* (2012); BRENE BROWN, *I THOUGHT IT WAS JUST ME (BUT IT ISN'T): TELLING THE TRUTH ABOUT PERFECTIONISM, INADEQUACY, AND POWER* (2007); Brené Brown, *The Power of Vulnerability*, TED (June 2010), http://www.ted.com/talks/brene_brown_on_vulnerability.html. See also Nancy E. Dowd, *Fatherhood and Equality: Reconfiguring Masculinities*, 45 SUFFOLK U. L. REV. 1047 (2012) (discussion of vulnerability theory).

9. See Fineman, *Anchoring Equality*, *supra* note 6, at 13–14; Fineman, *Responsive State*, *supra* note 6, at 269–71.

10. See Fineman, *Anchoring Equality*, *supra* note 6, at 14–15; Fineman, *Responsive State*, *supra* note 6, at 270–71.

11. See, e.g., Fineman, *Anchoring Equality*, *supra* note 6; Fineman, *Responsive State*, *supra* note 6.

challenges state responsiveness. This perspective, according to Fineman, may be a better way to achieve social justice than to focus on differences based on identities: “[T]he goal of confronting discrimination against certain groups has largely eclipsed, even become a substitute for, the goal of eliminating material, social, and political inequalities that exist across groups. In this regard, identity categories are both over- and under-inclusive.”¹²

Vulnerabilities analysis is strongly systemically focused, and looks to outcomes to question and challenge state policies. The appeal to common human conditions suggests the potential for collaboration to demand fairness, dignity, opportunity, and support on common principles.

B. Identities Theories

Identities theories encompass a broad range of work that focuses on the lines of inequality based on race, gender, class, sexual orientation, and other identity characteristics that translate into hierarchy and inequality.¹³ Challenging

12. Fineman, *Anchoring Equality*, *supra* note 6, at 4.

13. The literature on identities theory is rich and diverse, including race, gender, sexual orientation, and multiple identities or intersectionalities, with significant internal critique and debate that enriches the categories themselves and the limits and reasons for their continuing usefulness as theoretical and analytical tools. The following is a sampling only.

For feminist theory, see generally PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* (1990); *CRITICAL RACE FEMINISM: A READER* (Adrien Katherine Wing ed., 1997); MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES* (1995); CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT* (1982); LINDA K. KERBER, *NO CONSTITUTIONAL RIGHT TO BE LADIES: WOMEN AND THE OBLIGATIONS OF CITIZENSHIP* (1999); GERDA LENER, *THE CREATION OF PATRIARCHY* (1986); CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* (1987); DOROTHY E. ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* (1997); SUSAN DELLER ROSS, ANN FREEDMAN, RHONDA COPELON, DEBORAH L. RHODE, NADINE TAUB, BARBARA ALLEN BABCOCK & WENDY WEBSTER WILLIAMS, *SEX DISCRIMINATION AND THE LAW: HISTORY, PRACTICE, AND THEORY* (2d ed. 1996); CAROL SMART, *FEMINISM AND THE POWER OF LAW* (1989); *UNEQUAL SISTERS: A MULTICULTURAL READER IN U.S. WOMEN’S HISTORY* (Vicki L. Ruiz & Ellen Carol DuBois eds., 2d ed. 1994); JOAN WILLIAMS, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT* (1999); PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991).

For scholarship grounded in anti-essentialist or multiple identities perspectives, see generally Mario L. Barnes, *Black Women’s Stories and the Criminal Law: Restating the Power of Narrative*, 39 U.C. DAVIS L. REV. 941 (2006); Sarah M. Buel, *Effective Assistance of Counsel for Battered Women Defendants: A Normative Construct*, 26 HARV. WOMEN’S L.J. 217 (2003); Cheryl I. Harris, *Finding Sojourner’s Truth: Race, Gender, and the Institution of Property*, 18

CARDOZO L. REV. 309 (1996); Tanya Katerí Hernández, *A Critical Race Feminism Empirical Research Project: Sexual Harassment & the Internal Complaints Black Box*, 39 U.C. DAVIS L. REV. 1235 (2006); Berta E. Hernández-Truyol, Angela Harris & Francisco Valdés, *Beyond the First Decade: A Forward-Looking History of LatCrit Theory, Community and Praxis*, 17 BERKELEY LA RAZA L.J. 169 (2006); Emily M.S. Houh, *Toward Praxis*, 39 U.C. DAVIS L. REV. 905 (2006); Lisa C. Ikemoto, *In the Shadow of Race: Women of Color in Health Disparities Policy*, 39 U.C. DAVIS L. REV. 1023 (2006); Martha R. Mahoney, *Whiteness and Women, in Practice and Theory: A Reply to Catharine MacKinnon*, 5 YALE J.L. & FEMINISM 217 (1993); Adele M. Morrison, *Changing the Domestic Violence (Dis)Course: Moving from White Victim to Multi-Cultural Survivor*, 39 U.C. DAVIS L. REV. 1061 (2006); Jennifer C. Nash, *From Lavender to Purple: Privacy, Black Women, and Feminist Legal Theory*, 11 CARDOZO WOMEN'S L.J. 303 (2005); Reginald Oh, *Interracial Marriage in the Shadows of Jim Crow: Racial Segregation as a System of Racial and Gender Subordination*, 39 U.C. DAVIS L. REV. 1321 (2006); Angela Onwuachi-Willig, *The Return of the Ring: Welfare Reform's Marriage Cure as the Revival of Post-Bellum Control*, 93 CALIF. L. REV. 1647 (2005); Leti Volpp, *Divesting Citizenship: On Asian American History and the Loss of Citizenship Through Marriage*, 53 UCLA L. REV. 405 (2005).

Masculinities theory is a recent addition to feminist legal theory. *See generally* NANCY E. DOWD, *THE MAN QUESTION: MALE SUBORDINATION AND PRIVILEGE* (2010); Richard Collier, *Masculinities, Law, and Personal Life: Towards a New Framework for Understanding Men, Law, and Gender*, 33 HARV. J.L. & GENDER 431 (2010); Frank Rudy Cooper, *Against Bipolar Black Masculinity: Intersectionality, Assimilation, Identity Performance, and Hierarchy*, 39 U.C. DAVIS L. REV. 853 (2006); Anna Gavanas, *Domesticating Masculinity and Masculinizing Domesticity in Contemporary U.S. Fatherhood Politics*, 11 SOC. POL. 247 (2004); Olga Giller, *Patriarchy on Lockdown: Deliberate Indifference and Male Prison Rape*, 10 CARDOZO WOMEN'S L.J. 659 (2004); Michael Kimmel, *Integrating Men into the Curriculum*, 4 DUKE J. GENDER L. & POL'Y 181 (1997); Nancy Levit, *Feminism for Men: Legal Ideology and the Construction of Maleness*, 43 UCLA L. REV. 1037 (1996); Ann C. McGinley, *Babes and Beefcake: Exclusive Hiring Arrangements and Sexy Dress Codes*, 14 DUKE J. GENDER L. & POL'Y 257 (2007); Ann C. McGinley, *Masculinities at Work*, 83 OR. L. REV. 359 (2004); Rachel L. Toker, *Multiple Masculinities: A New Vision for Same-Sex Harassment Law*, 34 HARV. C.R.-C.L. L. REV. 577 (1999); Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society*, 83 CALIF. L. REV. 1 (1995); Valorie K. Vojdik, *Gender Outlaws: Challenging Masculinity in Traditionally Male Institutions*, 17 BERKELEY WOMEN'S L.J. 68 (2002).

For critical race theory, see generally Devon Carbado, *Critical What What?*, 43 CONN. L. REV. 1593 (2011); Kevin R. Johnson, *Roll Over Beethoven: "A Critical Examination of Recent Writing About Race,"* 82 TEX. L. REV. 717 (2004); Rachel F. Moran, *Whatever Happened to Racism?*, 79 ST. JOHN'S L. REV. 899 (2005); Sylvia R. Lazos Vargas, *"Kulturkampf[s]" or "Fit[s] of Spite"?: Taking the Academic Culture Wars Seriously*, 35 SETON HALL L. REV. 1309 (2005); Richard Delgado, *Rodrigo and Revisionism: Relearning the Lessons of History*, 99 NW. U. L. REV. 805 (2005) (reviewing IAN F. HANEY LÓPEZ, *RACISM ON TRIAL: THE CHICANO FIGHT FOR JUSTICE* (2003)). For anthologies, see generally *CRITICAL RACE THEORY: AN INTRODUCTION* (Richard Delgado & Jean Stefancic eds., 2001); *CRITICAL RACE THEORY: THE CUTTING EDGE* (Richard Delgado ed., 1995); *CRITICAL RACE THEORY: THE KEY WRITINGS THAT*

FORMED THE MOVEMENT (Kimberlé Crenshaw, Neil Gotanda, Gary Peller & Kendall Thomas eds., 1995); CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY (Francisco Valdes, Jerome McCristal Culp & Angela P. Harris eds., 2002). For classic pieces, see generally IAN F. HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (2006); MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1990S* (2d ed. 1994); Jerome McCristal Culp, Jr., *Toward a Black Legal Scholarship: Race and Original Understandings*, 39 DUKE L.J. 39 (1991), Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987). For essentialism critiques, see generally Carbado, *supra* note 4; Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CALIF. L. REV. 1241, 1314 (1993); Perea, *supra* note 4; Jayne Chong-Soon Lee, *Navigating the Topology of Race*, 46 STAN. L. REV. 747 (1994) (reviewing KWAME ANTHONY APPIAH, *IN MY FATHER'S HOUSE: AFRICA IN THE PHILOSOPHY OF CULTURE* (1993)); Frank Wu, *From Black to White and Back Again*, 3 ASIAN L.J. 185 (1996) (reviewing IAN F. HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF WHITENESS* (1996)).

For sexual orientation or queer theory, see generally WILLIAM N. ESKRIDGE, JR., *GAYLAW: CHALLENGING THE APARTHEID OF THE CLOSET* (1999); WILLIAM N. ESKRIDGE, JR. & NAN D. HUNTER, *SEXUALITY, GENDER AND THE LAW* 584 (2d ed. 2003); WILLIAM N. ESKRIDGE, JR., *THE CASE FOR SAME-SEX MARRIAGE: FROM SEXUAL LIBERTY TO CIVILIZED COMMITMENT* 162 (1996); JANET HALLEY, *SPLIT DECISIONS: HOW AND WHY TO TAKE A BREAK FROM FEMINISM* (2008); NANCY D. POLIKOFF, *BEYOND (STRAIGHT AND GAY) MARRIAGE: VALUING ALL FAMILIES UNDER THE LAW* (2008); Patricia A. Cain, *Litigating for Lesbian and Gay Rights: A Legal History*, 79 VA. L. REV. 1551 (1993); Mary Anne C. Case, *Disaggregating Gender from Sex and Sexual Orientation: The Effeminate Man in the Law and Feminist Jurisprudence*, 105 YALE L.J. 1 (1995); Katherine M. Franke, *The Politics of Same-Sex Marriage Politics*, 15 COLUM. J. GENDER & L. 236, 239 (2006); Elizabeth M. Glazer, *Sexual Reorientation*, 100 GEO. L.J. 997 (2012); Janet E. Halley, *Reasoning About Sodomy: Act and Identity in and After Bowers v. Hardwick*, 79 VA. L. REV. 1721 (1993); Andrew Koppelman, *Defending the Sex Discrimination Argument for Lesbian and Gay Rights: A Reply to Edward Stein*, 49 UCLA L. REV. 519 (2001); Nancy D. Polikoff, *We Will Get What We Ask for: Why Legalizing Gay and Lesbian Marriage Will Not "Dismantle the Legal Structure of Gender in Every Marriage,"* 79 VA. L. REV. 1535 (1993); Marc Spindelman, *Homosexuality's Horizon*, 54 EMORY L.J. 1361 (2005); Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society*, 83 CALIF. L. REV. 1 (1995); Kenji Yoshino, *The Epistemic Contract of Bisexual Erasure*, 52 STAN. L. REV. 353 (2000).

For queer theory, see generally *FEMINIST AND QUEER LEGAL THEORY: INTIMATE ENCOUNTERS, UNCOMFORTABLE CONVERSATIONS* (Martha Albertson Fineman, Jack E. Jackson & Adam P. Romero eds., 2009); LESLIE J. MORAN, *THE HOMOSEXUAL(ITY) OF LAW* (1996); CARL FRANKLIN STYCHIN, *LAW'S DESIRE: SEXUALITY AND THE LIMITS OF JUSTICE* 140–56 (1995); Lisa J. Bower, *Queer Problems/Straight Solutions: The Limits of a Politics of "Official Recognition,"* in *PLAYING WITH FIRE: QUEER POLITICS, QUEER THEORIES* 267 (Shane Phelan ed., 1997); Paisley Currah, *Politics, Practices, Publics: Identity and Queer Rights,* in *PLAYING WITH FIRE: QUEER POLITICS, QUEER THEORIES* 231 (Shane Phelan ed., 1997); Pierre de Vos, *The Constitution Made Us Queer: The Sexual Orientation Clause in the South African Constitution and the Emergence of Gay and Lesbian Identity,* in *LAW AND SEXUALITY: THE GLOBAL ARENA* 194 (Carl Franklin

the core claim of fairness, neutrality, and opportunity that resonates in concepts like color blindness and gender neutrality, identity theories ask how groups historically and persistently unequal, silenced, or invisible are doing, and why particular groups persist in facing challenges because of their identities. They explore and uncover the very nature of identity, including the affirmative meanings of race, gender, class, and other identities for those individuals who reflect identities other than the dominant or hegemonic norm.¹⁴ They also continue to focus us on the negative, undermining, inequalitarian functioning of social and systemic responses to identities. Identities theorists have exposed the complex nature of hegemony—most notably its ability to justify inequalities and to engage the oppressed in the perpetuation of subordination.¹⁵ They have also exposed how identities function intersectionally and multiply—that is, how this is a complex pattern sometimes of exacerbated subordination; or of the trumping of privilege by another identity characteristic; or of the creation of a new, interactive, and different pattern that is not merely the sum of its parts.¹⁶

One of the most powerful and hopeful aspects of identities is that they are constructed, not inherent or timeless. “[I]dentities are socially constructed but materially consequential.”¹⁷ They change over time and are responsive to resistance and reconfiguration from below, as well as to societal and cultural shifts.¹⁸ At the

Stychin & Didi Herman eds., 2001); Laurie Rose Kepros, *Queer Theory: Weed or Seed in the Garden of Legal Theory?*, 9 L. & SEXUALITY 279 (2000); Wayne Morgan, *Queering International Human Rights Law*, in LAW AND SEXUALITY: THE GLOBAL ARENA 208 (Carl Franklin Stychin & Didi Herman eds., 2001); Sanja Zgonjanin, *Ruthann Robson, An Annotated Bibliography 1979-2005*, 8 N.Y. CITY L. REV. 681 (2005).

14. See generally *id.*

15. See Gary Blasi & John T. Jost, *System Justification Theory and Research: Implications for Law, Legal Advocacy, and Social Justice*, 94 CALF. L. REV. 1119, 1119–20 (2006) (explaining the functioning of hegemony). System justification works for both those who benefit and those who do not, thus acting as a double benefit for the privileged. *Id.* In this article, Blasi and Jost detail how an unjust system can survive and the challenge of creating change. *Id.* They identify what causes us to justify the existing system, including the motive to defend and justify the social status quo even among those who are seemingly the most disadvantaged by it. *Id.*

16. See generally MASCULINITIES AND THE LAW: A MULTIDIMENSIONAL APPROACH (Frank Rudy Cooper & Ann C. McGinley eds., 2012). See also FEMINIST LEGAL THEORY: AN ANTI-ESSENTIALIST READER (Nancy E. Dowd & Michelle S. Jacobs eds., 2003); Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 14 WOMEN’S RTS. L. REP. 297 (1992).

17. Frank Rudy Cooper, *Experiencing Equality as Oppression: Why Vulnerabilities Cannot Replace Identities* 12 (Aug. 28, 2012) (draft paper presented at Vulnerabilities and Identities: An Uncomfortable Conversation at Emory University School of Law) (on file with the *Indiana Journal of Law and Social Equality*).

18. For example, the construction of masculinities has changed over time, and the multiple

same time, identities feel like something born, not made, difficult to shift, challenging to reorient. The ability of identity to confer privilege, and justify discrimination, while reinforcing a false sense of egalitarian merit, has been captured by Peggy McIntosh's concept of the "invisible knapsack of white privilege"; the everyday, micro-level persistence of inequality that remains invisible in plain sight.¹⁹

Identities analyses expose how identities pervade culture and institutions, how they are systemic and pervasive, making hierarchy appear natural. For example, Ian Haney López explores the manifestation of racism in structures that create a racial stratification system. "[There are] two foundational insights: first, racism assists in the misallocation of wealth, power, and prestige; and, second, racial stratification in turn both requires and contributes to the construction of races."²⁰ This is evidenced by multiple and intersecting disparities, with the highest disparity in incarceration, which is truly a literal form of control and subordination. "[R]acial disparities in unemployment and infant mortality stand at roughly two to one, and the disparity in unwed childbearing is three to one, [but] the differential with respect to imprisonment is eight to one."²¹ The state is not aloof but rather is immersed: "[T]he state does not stand above the racial fray, but is itself thoroughly immersed in racial contests."²²

The focus of identities analysis on the persistence of inequality tied to identity is its greatest strength. A second critical contribution is to keep asking the question of subordination. Finally, identities analysis envisions a positive diversity that celebrates, values, includes, and gains from identities as both distinctive and interactive aspects of humanity, within a framework of equality and justice.²³

This brief overview of these two theoretical approaches suggests they differ significantly in focus and perhaps in strategy. But they need not be at odds. Rather, they can work in tandem to achieve social justice. While it has been suggested that vulnerabilities theory is a superior theoretical approach that incorporates identities insights,²⁴ I would argue that each distinct approach has its value, and the relative contribution of each depends on the particular issue to be addressed. I reach this conclusion based on an analysis of the equality and social justice issues involved in

expressions of masculinities reflect resistance, as well as individual and group constructions of identity, that affect the social and cultural norms. One example of this, with respect to masculinities, is the construction of fatherhood. *See generally* DOWD, *supra* note 13.

19. Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, PEACE & FREEDOM, July/Aug. 1989, reprinted in 49 INDEP. SCH. 2, 31–35 (1990).

20. Ian F. Haney López, *Post-Racial Racism: Racial Stratification and Mass Incarceration in the Age of Obama*, 98 CALIF. L. REV. 1023, 1028 (2010).

21. *Id.* at 1025 (citing DOUGLAS S. MASSEY, CATEGORICALLY UNEQUAL: THE AMERICAN STRATIFICATION SYSTEM 99 (2007)).

22. Ian F. Haney López, *Freedom, Mass Incarceration, and Racism in the Age of Obama*, 62 ALA. L. REV. 1005, 1015 (2011).

23. *See generally supra* note 13.

24. *See, e.g.,* Fineman, *Anchoring Equality*, *supra* note 6, at 1; Fineman, *Responsive State*, *supra* note 6, at 252, 254 n.11.

the lives of black boys. In the sections that follow, I sketch the context of black boys' lives, the operation of stereotypes, and the consequences of this context for identity. I then return to the value of these two theoretical frameworks for addressing the ongoing inequality of black boys as a group.

II. CONTEXT

Imagine some man you know well—a father, brother, uncle, cousin, or friend. Whoever comes to mind, imagine that individual at birth, as a baby. What are the expectations, hopes, and dreams that we have at that moment of his coming into being? How do we think he will grow and develop? What would be the expected challenges and the arc of development? Because this is a baby boy, does that make a difference?

Now, take note of whom you visualized by race. Imagine, if you have not done so already, that the baby boy you are thinking of is African American. Does race by itself, or in combination with gender, affect your expectations, your sense of the life course, and what is possible? It is the first day of this child's life. What will happen by the time he begins kindergarten? What will happen by the end of high school?²⁵

Three critical pieces of data will have an enormous impact on this child's life. First, he has a one in three chance of being born into poverty.²⁶ Second, he has only a 52% chance of finishing high school.²⁷ Third, he has a one in three chance of being incarcerated in his lifetime, and that risk doubles if he is born into a family of low socioeconomic status.²⁸ Of those three statistics, the third is the most horrendous—a one in three *or worse* risk of incarceration, triggering lifelong collateral consequences. This risk begins early, in the juvenile justice system—a system disproportionately populated by young men of color who are disproportionately at the deepest, harshest end of the system.²⁹ Disproportionality exists at every stage of the juvenile justice system, from contacts with police to arrests, referral to court instead of diversion, rates of incarceration, and severity of consequences.³⁰

25. See Dowd, *supra* note 3, at 1210–22, for an extended and more detailed discussion of the context of black boys' lives.

26. See *Birckhead*, *supra* note 5, at 59.

27. SCHOTT FOUND. FOR PUB. EDUC., THE URGENCY OF NOW: THE SCHOTT 50 STATE REPORT ON PUBLIC EDUCATION AND BLACK MALES 13 (2012), available at www.blackboysreport.org/urgency-of-now.pdf (“In 2009–10 the national graduation rate for Black male students was 52%.”).

28. See Michael E. Roettger & Raymond R. Swisher, *Associations of Fathers' History of Incarceration with Sons' Delinquency and Arrest Among Black, White, and Hispanic Males in the United States*, 49 CRIMINOLOGY 1100, 1110 (2011).

29. See Nancy E. Dowd, *Introduction: Justice for Kids*, in JUSTICE FOR KIDS: KEEPING KIDS OUT OF THE JUVENILE JUSTICE SYSTEM 1, 3–4 (Nancy E. Dowd ed., 2011).

30. See Kenneth B. Nunn, *The Black Nationalist Cure to Disproportionate Minority Contact*, in JUSTICE FOR KIDS: KEEPING KIDS OUT OF THE JUVENILE JUSTICE SYSTEM, *supra* note 29,

Looking forward, juvenile justice system involvement predicts adult criminal justice system involvement, as well as negative education and employment status and the inability to create strong families.³¹ The juvenile justice system is one that harms more than it helps, and the harm is racialized. As one judge puts it, we have a two-tier system of justice for adolescents—one for whites and one for blacks.³² Looking backward, however, the context is no better. In fact, one can argue that those systems in place to support and assist children and young people instead actively funnel black children, and especially black boys, into the juvenile justice system, which is known for its racialized negative consequences.

Our African American baby boy, as noted above, has at least a one in three chance of being born into poverty. Poverty has known risks to life opportunities, with a high correlation to negative outcomes in health, education, and well-being.³³ One scholar describes a study finding that the impact of poverty was more serious and life threatening than early drug exposure.³⁴ Poverty is not distinctive based on gender, and the one in three statistic applies to all black children. However, distinctive to boys is the possibility that they may not reach adulthood at all—they are the only demographic group that has a declining life expectancy.³⁵

The two primary systems in place to help families in poverty are the income support system and the child welfare system designed to deal with abuse and neglect.³⁶ Despite the known risks of poverty, neither system provides sufficient support to undermine or significantly reduce those risks, and arguably the child welfare system makes things worse for children. The income support system fails to provide enough economic support to lift children out of poverty.³⁷ This is in stark comparison to the

at 135, 136.

31. See Dowd, *supra* note 29, at 1–3.

32. See Stephen J. Fortunato, Jr., *Judges, Racism, and the Problem of Actual Innocence*, 57 ME. L. REV. 481, 489 (2005) (citing Samuel R. Gross, Kristen Jacoby, Daniel J. Matheson, Nicholas Montgomery & Sujata Patil, *Exonerations in the United States: 1989 Through 2003*, 95 J. CRIM. L. & CRIMINOLOGY 523 (2005)).

33. See Douglas D. Ready, *Socioeconomic Disadvantage, School Attendance, and Early Cognitive Development: The Differential Effects of School Exposure*, 83 SOC. EDUC. 271, 271–72 (2010).

34. See PEDRO A. NOGUERA, *THE TROUBLE WITH BLACK BOYS: AND OTHER REFLECTIONS ON RACE, EQUITY, AND THE FUTURE OF PUBLIC EDUCATION* 21 (2008).

35. *Id.* at xv.

36. Temporary Assistance for Needy Families (TANF), created under the Personal Responsibility Act and Work Opportunity Reconciliation Act of 1996, governs the provision of welfare assistance to families with dependent children. See CTR. ON BUDGET & POLICY PRIORITIES, *Policy Basics: An Introduction to TANF* (2012), available at <http://www.cbpp.org/files/7-22-10tanf2.pdf>. Child welfare is governed by federal statutes and state law. See Admin. for Children & Families, U.S Dep't. of Health & Human Servs., *Federal Laws, CHILD WELFARE INFORMATION GATEWAY*, https://www.childwelfare.gov/systemwide/laws_policies/federal/.

37. See Jasmin Sethi, *Lessons for Social Scientists and Politicians: An Analysis of Welfare Reform*, 17 GEO. J. ON POVERTY L. & POL'Y 5, 6 (2010).

benefits paid under the Social Security system to children who lose parental support due to the death of a parent, and to elders after retirement.³⁸ As scholars have demonstrated, the amount of and conditions for income support through the welfare system have changed drastically and negatively as the racial configuration of the system opened to include formerly excluded black mothers and their children.³⁹

Similarly, the child welfare system is a racialized system and frequently results in negative outcomes. Black families are disproportionately system involved, black children are more frequently separated from their families, and the end result of system involvement often does not help children.⁴⁰ Children who end up in foster care frequently have poor outcomes economically, educationally, and psychologically.⁴¹ Neglect is strongly correlated to poverty, and 61% of child welfare cases are neglect cases.⁴² Comprehensive interventions to deal with the known risks of poverty are rare, and the helping systems that do exist are inadequate to say the least.

One might think that once children enter the educational system that the racialized disadvantage and negative outcomes of these prior systems, or the lack of intervention or support, might be counterbalanced by educational opportunity, but that is not the case. Racial disadvantage becomes compounded as racial *and* gender disadvantage in the educational system. The racial achievement gap is measurable by age three, and upon entry into school it gets worse—not better.⁴³ But the disadvantage in achievement, discipline, and opportunity is especially harsh for black boys. Black boys achieve less, are disciplined more, are identified as having

38. In 2010, children under the age of eighteen who received survivor benefits from Social Security received an average of \$747 per month. SOC. SEC. ADMIN., PUB. NO. 13–11700, ANNUAL STATISTICAL SUPPLEMENT TO THE SOCIAL SECURITY BULLETIN 2011, at 5.53 tbl.5.F6 (2012), <http://www.ssa.gov/policy/docs/statcomps/supplement/2011/supplement11.pdf>.

39. See generally Lisa A. Crooms, *The Mythical, Magical “Underclass”: Constructing Poverty in Race and Gender, Making the Public Private and the Private Public*, 5 J. GENDER RACE & JUST. 87, 93–96 (2001); Angela Onwuachi-Willig, *The Return of the Ring: Welfare Reform’s Marriage Cure as the Revival of Post-Bellum Control*, 93 CALIF. L. REV. 1647, 1665–73 (2005); Dorothy E. Roberts, *The Value of Black Mothers’ Work*, 26 CONN. L. REV. 871, 874 (1994).

40. See Joseph P. Ryan, Denise Herz, Pedro M. Hernandez & Jane Marie Marshall, *Maltreatment and Delinquency: Investigating Child Welfare Bias in Juvenile Justice Processing*, 29 CHILD. & YOUTH SERVS. REV. 1035, 1046–47 (2007).

41. Clare Huntington, *Rights Myopia in Child Welfare*, 53 UCLA L. REV. 637, 661 (2006); see also Birckhead, *supra* note 5.

42. See ANDREA J. SEDLAK, JANE METTENBURG, MONICA BASENA, IAN PETTA, KARLA MCPHERSON, ANGELA GREENE & SPENCER LI, U.S. DEP’T HEALTH & HUMAN SERVS., FOURTH NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT (NIS–4): REPORT TO CONGRESS 5, 12 (2010).

43. Margaret Burchinal, Kathleen McCartney, Laurence Steinberg, Robert Crosnoe, Sarah L. Friedman, Vonnice McLoyd, Robert Pianta, & NICHD Early Child Care Research Network, *Examining the Black-White Achievement Gap Among Low-Income Children Using the NICHD Study of Early Child Care and Youth Development*, 82 CHILD DEV. 1404, 1404 (2011).

learning disabilities and mental health issues that are used to segregate them, and not only fail to thrive and succeed, but also begin the link to the criminal justice system.⁴⁴ Black boys' utter failure is so common that it has become normative.⁴⁵

This educational pattern feeds into a high dropout rate and a failure to complete high school, which leads to black males, particularly young black males, being the least likely to be hired and the most likely to be unemployed.⁴⁶ This outcome is a result of educational failure and the lack of entry-level jobs available to teenagers.⁴⁷

The educational system is also a component piece that funnels black boys into the juvenile justice system. High discipline rates for black boys feed them into the "school-to-prison pipeline," that is, the use of the juvenile justice system to discipline kids for offenses that formerly were dealt with in schools.⁴⁸ Whether referred by schools or picked up on the streets, black boys are represented disproportionately in the system, and receive disproportionately more serious consequences. The vast majority of offenses for which juveniles are arrested are property offenses, and the more serious consequences are frequently tied to probation violations or failure to appear in court—not to recidivism.⁴⁹ System involvement is not designed generally to rehabilitate and achieve positive adulthood. Rather, the collateral consequences of juvenile justice involvement negatively impact education, employment, and future life opportunities.⁵⁰

So what has happened to the baby boy that we began with? He began with the risk of limited life chances and the risk of failure linked to poverty. We do little to change that despite the high correlation with negative life outcomes. When he goes to school, he will have an uphill battle to achieve and succeed. He is more likely to be treated as if he is dumb or a problem, more likely to be disciplined more than his peers beginning in elementary school, and more likely to be suspended or expelled in high school. He will be expected to get into trouble, in school or on the street, and if he does the juvenile justice system will not give him a chance, but rather will be more likely to mark him in a way that will foster a life without opportunity or dignity. If he has managed to thread his way past these obstacles, the likelihood that he can get a job as a teenager is low. As he reaches adulthood, he will be aware of all this. The baby boy becoming a child and then a young man is dependent on adults and systems beyond his family. He

44. See NOGUERA, *supra* note 34, at xvii.

45. See *id.*

46. See Dana L. Haynie, Harald E. Weiss & Alex Piquero, *Race, the Economic Maturity Gap, and Criminal Offending in Young Adulthood*, 25 JUST. Q. 595, 599 (2008).

47. See *id.* at 617.

48. CATHERINE Y. KIM, DANIEL J. LOSEN & DAMON T. HEWITT, *THE SCHOOL-TO-PRISON PIPELINE: STRUCTURING LEGAL REFORM* 131 (2010).

49. *Id.* at 128.

50. See generally Jeremy Travis, *Invisible Punishment: An Instrument of Social Exclusion*, in *INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT* 15 (Marc Mauer & Meda Chesney-Lind eds., 2002).

cannot count on support or help. Rather, he faces a context that seems to have a particular focus on subordinating him and insuring his subordination as a black man.

As one pair of scholars has noted, existing systems justify and perpetuate these outcomes by a nearly exclusive view of black boys as deviant.⁵¹ For example, Daniel Patrick Moynihan, the voice of the 1960s critique of black families, saw the problem with black boys as a lack of access to masculine norms, and recommended taking them from their homes and teaching them how to become men in institutions like the military.⁵² In the 1990s, black boys were identified as an “endangered species,”⁵³ in other words, as predominantly headed for death or incarceration. Our narrative continues to be that systems are fair, equal, and colorblind, that the problems are individual and solvable, and the failures are individual, familial, or community based.⁵⁴ “The notion that young Black males are culturally and psychologically damaged is one of the oldest and most common approaches used to craft social policy and elicit public action . . . This deficit view of African American males [constructs them] as acutely susceptible to engaging in self-destructive behavior”⁵⁵

The historical context of the treatment of African American men suggests otherwise; this is a context of brutal violence.⁵⁶ The evidence of persisting structural racism is strong and deep, suggesting the perpetuation of racial hierarchy by other means.⁵⁷ This structure benefits those at the top of the hierarchy: “The strategic production of Whiteness as security, innocence, and merit teeters dangerously and precariously upon the exclusion and containment of Black and Brown bodies, taxing communities and taxpayers, yielding an equally massive profit to elites.”⁵⁸ Colorblindness, insisted upon and claimed as the key

51. See Anthony L. Brown & Jamel K. Donnor, *Toward a New Narrative on Black Males, Education, and Public Policy*, 14 RACE ETHNICITY & EDUC. 17, 17–18 (2011).

52. *Id.* at 19.

A community that allows large numbers of young men to grow up in broken families, dominated by women, never acquiring any stable relationships to male authority, never acquiring any set of rational expectations about the future—that community asks for and gets chaos. Crime, violence, unrest, disorder, are not only to be expected, but they are very near to inevitable. And they are richly deserved.

Haney López, *supra* note 20, at 1035 (citation omitted).

53. Brown & Donnor, *supra* note 51, at 20.

54. *See id.* at 21.

55. *Id.* See generally Nunn, *supra* note 30, for information on the history of African American adolescence and the impact of discriminatory treatment on those youths.

56. See Anthony E. O. King, *Understanding Violence Among Young African American Males: An Afrocentric Perspective*, 28 J. BLACK STUD. 79, 80 (1997).

57. See Haney López, *supra* note 20, at 1025. I would argue black boys are funneled early and often to the system of structural racism, affecting structure and identity formation. This leads to incarceration, which serves racial stratification, but it is not limited to incarceration.

58. Michelle Fine & Jessica Ruglis, *Circuits and Consequences of Dispossession: The*

to racial equality, instead erases race as it functions in the lives of black boys.⁵⁹

Before returning to vulnerabilities theory and identities theory as ways to attack this continuing subordination, it is critical to consider how this subordination functions not just structurally, but also personally and individually in the lives of black boys. I turn to this in the next Part, considering the functioning of stereotypes, as well as how to see the developmental arc of black boys as it is affected by race and gender.

III. STEREOTYPES AND IDENTITIES

In the context of the life course of black boys, stereotypes infuse structures and also affect the construction of identity and the developmental tasks of childhood and adolescence. Identity, I would argue, requires our focus and attention, in addition to structural or institutional change, to achieve justice and equality.

A. Stereotypes

One driving force in systemic and individual subordination is stereotyping and its impact on system structures and outcomes, individual bias, and the development of black boys. The depth and negativity of the stereotypes attached to black boys cannot be overstated. One of the most powerful beliefs about black males is that they are dangerous.⁶⁰ This drives the effort to control them. “Most often, Black men have been regarded as individuals who should be feared because of their uncontrolled and unrefined masculinity. And their very presence . . . has been regarded as a menace . . . and a potential danger to the social order. They are a threat that must be policed, controlled, and contained.”⁶¹

The critical age is nine or ten, when black boys begin physically to look like young men. This is when their decline in school and adverse treatment intensifies, which Pedro Noguera calls the “fourth-grade syndrome.”⁶² They *Racialized Realignment of the Public Sphere for U.S. Youth*, 17 *TRANSFORMING ANTHROPOLOGY* 20, 21 (2009); see also Jerry Kang & Mahzarin R. Banaji, *Fair Measures: A Behavioral Realist Revision of “Affirmative Action,”* 94 *CALIF. L. REV.* 1063, 1064 (2006) [hereinafter *Fair Measures*] (attempting to use racial mechanics to reframe our concept of affirmative action); Jerry Kang, *Trojan Horses of Race*, 118 *HARV. L. REV.* 1489, 1493 (2005) [hereinafter *Trojan Horse*] (identifying “racial mechanics” as how race affects “intrapersonal, interpersonal, and intergroup interactions”).

59. See Sheri Lynn Johnson, *Respectability, Race Neutrality, and Truth*, 107 *YALE L.J.* 2619, 2648 (1998) (reviewing RANDALL KENNEDY, *RACE, CRIME AND THE LAW* (1997)). “[Our] dogged insistence on colorblindness often obscures unjust outcomes and degrading proceedings, thus impeding the pursuit of racial justice and human dignity.” *Id.*

60. See NOGUERA, *supra* note 34, at xi.

61. *Id.* See also Kenneth B. Nunn, *The Child as Other: Race and Differential Treatment in the Juvenile Justice System*, 51 *DEPAUL L. REV.* 679, 708–09 (2002).

62. NOGUERA, *supra* note 34, at 42.

are regarded as dangerous, as well as incapable. Black males are regarded as “a problem, pathologize[d] . . . and den[ied] . . . the opportunity to learn.”⁶³ Not only are expectations low, but the probability of channeling toward a dead-end future is also high.

[T]hey are too aggressive, too loud, too violent, too dumb, too hard to control, too streetwise, and too focused on sports. . . . [M]ost never have a chance to be thought of as potentially smart and talented or to demonstrate talents in science, music, or literature. . . . [T]hey are placed in schools where their needs for nurturing, support, and loving discipline are not met. Instead, they are labeled, shunned, and treated in ways that create and reinforce an inevitable cycle of failure.⁶⁴

There is a wealth of research on the power of stereotypes and their ubiquity.⁶⁵ Stereotypes pervade and justify structural, systemic incorporation of racial hierarchy that normalizes raced and gendered outcomes.⁶⁶ According to one study focusing on education, negative racial stereotypes translate into daily microaggressions, including “low teacher expectations . . . suspicion or surprise about their academic success, common acceptance of their underachievement, lack of positive re-enforcement for their accomplishments, differential forms of punishment, demeaning comments, failure to place them in leadership positions and reluctance to refer them for advanced classes.”⁶⁷

Evidence of the pervasive operation of stereotypes is strongly seen in school discipline, where the risk of suspension is nearly 18% for black males, as opposed to 7% for white males.⁶⁸ “[I]n many cities it is not uncommon for over half the African American males to have been suspended at least once in a given year.”⁶⁹ Suspensions do not yield better academics or behavior—instead they are a predictor for failure and dropout.⁷⁰ Suspensions are an example of the incorporation of stereotypes to achieve a hierarchical end that accomplishes potentially lifelong collateral consequences, particularly regarding employment. At the same time,

63. *Id.* at xxi.

64. *Id.*

65. *See generally* REBECCA J. COOK & SIMONE CUSACK, *GENDER STEREOTYPING: TRANSNATIONAL LEGAL PERSPECTIVES* (2010); Gary Blasi, *Advocacy Against the Stereotype: Lessons from Cognitive Social Psychology*, 49 *UCLA L. REV.* 1241 (2002); *Fair Measures*, *supra* note 58; *Trojan Horse*, *supra* note 58.

66. *See generally* COOK & CUSACK, *supra* note 65; Rebecca J. Cook, *Structures of Discrimination*, 28 *MACALESTER INT’L* 33 (2011).

67. Tyrone C. Howard, *Who Really Cares? The Disenfranchisement of African American Males in PreK-12 Schools: A Critical Race Theory Perspective*, 110 *TCHRS. COLL. REC.* 954, 974 (2008).

68. KIM ET AL., *supra* note 48, at 2.

69. *Id.*

70. *Id.* at 3.

privilege and fear empower and justify those who exercise control and hierarchical position. Incorporating stereotypes reinforces their own power and position.

Stereotypes not only provide justification for actors—they have a powerful impact on their objects. The impact of stereotypes is profound.

Adolescence is typically a period when young people become more detached from their parents and attempt to establish independent identity. For racial minorities, adolescence is also a period when young people begin to solidify their understanding of their racial identities. . . . Adolescence is often a difficult and painful period for many young people. And for young people struggling to figure out the meaning and significance of their racial identities, the experience can be even more difficult.⁷¹

As a number of scholars have documented, the response to stereotyping is often resistance. One pair of researchers calls this the creation of “oppositional social identities.”⁷² Elijah Anderson identifies the values and persona generated by the “code of the street.”⁷³ Another reaction to stereotyping is underperformance, or the adoption or acceptance of the stereotype and its reflection in performance, as detailed in the classic work of Claude Steele on stereotype threat.⁷⁴ Or, the reaction to racial stereotypes may be a desire to reject one’s racial identity to escape its negative connotations.⁷⁵

Stereotypes inform individuals and institutions. They infuse the microsystems

71. NOGUERA, *supra* note 34, at 5. The depth of stereotypes and assumptions is reflected in the research literature, which has an overwhelmingly negative focus. See Theresa Glennon, *The Stuart Rome Lecture: Knocking Against the Rocks: Evaluating Institutional Practices and the African-American Boy*, 5 J. HEALTH CARE L. & POL’Y 10, 10 (2002). “Researchers have come to recognize that they have operated from a ‘deficit’ model concerning African American boys. The research literature generally ignores the many black boys who function well in high-risk environments, and they and their families are usually described in terms of pathology.” *Id.* at 28.

72. See Signithia Fordham & John U. Ogbu, *Black Students’ School Success: Coping with the “Burden of ‘Acting White,’”* 18 URB. REV. 176, 181 (1986).

73. ELIJAH ANDERSON, *CODE OF THE STREET: DECENCY, VIOLENCE, AND THE MORAL LIFE OF THE WINNER CITY* (2000). Street life is a place of resistance and resilience, “a means for economic survival, given most have experienced little access to quality economic and educational opportunity.” Yasser Arafat Payne & Tara M. Brown, *The Educational Experiences of Street-Life-Oriented Black Boys: How Black Boys Use Street Life as a Site of Resilience in High School*, 26 J. CONTEMP. CRIM. JUST. 316, 318 (2010).

74. See Claude M. Steele, *A Threat in the Air: How Stereotypes Shape Intellectual Identity and Performance*, 52 AM. PSYCHOLOGIST 613 (1997).

75. See NOGUERA, *supra* note 34, at 7. “As [minority children] start to realize that in this society to be Black or Brown means to be seen as ‘less than’ . . . they often express a desire to be associated with the dominant and more powerful group.” *Id.*

and macrosystems within which black boys develop. They generate a series of challenges for the process of identity formation. Collectively, we might think of them as what Patricia Williams called “spirit murdering.”⁷⁶ Instead of fostering individual development, systems and culture seemed designed to do precisely the opposite. Ironically (or intentionally?) they produce identities and behaviors that become the justification for control and subordination.

B. Identity

The arc of development from infancy through childhood to adolescence and adulthood is a process of growth that moves children from utter dependence to autonomy, or preparation for autonomy.⁷⁷ Alongside physical growth, including hormonal changes, there is critical psychological growth, including both intellectual and emotional development.⁷⁸ This is matched by a literal growth of the brain, as evidenced by neuroscience findings that substantiate the physical basis for the risk-taking, limited judgment, and immature decision-making characteristics of adolescence, and the evolution to a mature brain by age twenty-five.⁷⁹ We also know what constitutes risks in the developmental process, as well

76. Patricia Williams, *Spirit-Murdering the Messenger: The Discourse of Fingerprinting as the Law's Response to Racism*, 42 U. MIAMI L. REV. 127, 129 (1987).

77. See, e.g., BARBARA BENNETT WOODHOUSE, *HIDDEN IN PLAIN SIGHT: THE TRAGEDY OF CHILDREN'S RIGHTS FROM BEN FRANKLIN TO LIONEL TATE*, 15–28 (2008) [hereinafter *HIDDEN IN PLAIN SIGHT*]; Emily Buss, *Constitutional Fidelity Through Children's Rights*, 2004 SUP. CT. REV. 355 (2004); Anne C. Dailey, *Children's Constitutional Rights*, 95 MINN. L. REV. 2099 (2011). See generally Bruce C. Hafen, *Children's Liberation and the New Egalitarianism: Some Reservations About Abandoning Youth to Their "Rights,"* 1976 BYU L. REV. 605, 610–13; Martha Minow, *Rights for the Next Generation: A Feminist Approach to Children's Rights*, 9 HARV. WOMEN'S L.J. 1, 1–3 (1986); Martha Minow, *What Ever Happened to Children's Rights?*, 80 MINN. L. REV. 267, 268–78 (1995); Lee E. Teitelbaum, *Children's Rights and the Problem of Equal Respect*, 27 HOFSTRA L. REV. 799, 801–04 (1999); Lee E. Teitelbaum, *Foreword: The Meanings of Rights of Children*, 10 N.M. L. REV. 235, 242–52 (1980); Barbara Bennett Woodhouse, “*Out of Children's Needs, Children's Rights*”: *The Child's Voice in Defining the Family*, 8 BYU J. PUB. L. 321 (1994).

78. Dailey, *supra* note 77, at 2103. For an extended discussion of the complex factors involved in the process of development of autonomy, involving interplay between the child and their immediate and more extensive environments, see *id.* at 2144–61. Woodhouse emphasizes this interplay in her generist, environmental approach linking the child to immediate influences like family, school, and neighborhood all the way up to the macro, ideological environment. *HIDDEN IN PLAIN SIGHT*, *supra* note 77, at 21–23. See also Buss, *supra* note 77, at 358–62 (focusing on the development of identity and the capacity for critical thinking); Barbara Bennett Woodhouse, *Ecogenerism: An Environmentalist Approach to Protecting Endangered Children*, 12 VA. J. SOC. POL'Y & L. 409 (2005); Barbara Bennett Woodhouse, *Reframing the Debate about the Socialization of Children: An Environmentalist Paradigm*, 2004 U. CHI. LEGAL F. 85.

79. For discussion of the neuroscience, see ELIZABETH S. SCOTT & LAURENCE STEINBERG, *RETHINKING JUVENILE JUSTICE* 28–60 (2008); CHRISTOPHER SLOBOGIN & MARK R. FONDACARO, *JUVENILES AT RISK: A PLEA FOR PREVENTIVE JUSTICE* 37–61 (2011); Christopher Slobogin & Mark

as what fosters resilience.⁸⁰ Our goal for children and youth is for them to have a supportive environment to maximize their development into productive adults. This environment may perhaps be summarized as a positive identity formation process that translates into acts with respect to family, community, education, and employment that will serve them as adults.⁸¹

This description of the process of identity formation and development leaves identity characteristics out of the process. Viewed through the lens of race and gender, however, and the functioning of stereotypes in personal interactions and system functioning, such a whitewashing of the developmental process denies the impact of race and gender upon achieving developmental goals. Race and gender identity is both an internal, self-focused issue, as well as the negotiation of external assumptions and actions triggered by visible race and gender characteristics.⁸² Race and gender identity presents a paradox: positive, affirmative identity is critical to survival of race- and gender-specific challenges for black boys; at the same time, identity triggers responses that create significant challenges to successfully reaching adulthood.⁸³

Racism has profound impacts, and black boys take the brunt of its manifestations. All of these challenges intensify for black boys as they get older. “African American males are often exposed to some of the worst of society’s ills due to unresolved problems with institutional and interpersonal forms of racism and discrimination.”⁸⁴ This is a factor in the psychological well-being of every individual subordinated

R. Fondacaro, *Juvenile Justice: The Fourth Option*, 95 IOWA L. REV. 1, 31–40 (2009).

80. See Holning Lau, *Pluralism: A Principle for Children’s Rights*, 42 HARV. C.R.-C.L. L. REV. 317, 327–29 (2007) (discussing the development of coping skills to deal with risks and foster resilience). On risk and resilience factors, see DAVID P. FARRINGTON & BRANDON C. WELSH, *SAVING CHILDREN FROM A LIFE OF CRIME: EARLY RISK FACTORS AND EFFECTIVE INTERVENTIONS* (2007); U.S. DEP’T OF HEALTH & HUMAN SERVS., *YOUTH VIOLENCE: A REPORT OF THE SURGEON GENERAL* 57–77 (2001).

81. Dailey, *supra* note 77. “Children are born into a state of physical and emotional dependence, and—if all goes well—slowly acquire the skills for leading an independent, autonomous life. Moreover, this developmental process has traditionally been understood as one of learning rather than innate psychological growth.” *Id.* at 2113. Woodhouse conceptualizes this as a combination of needs and rights that change over time as capacity increases. *HIDDEN IN PLAIN SIGHT*, *supra* note 77, at 18–28.

82. See Lau, *supra* note 80, at 327–32 (discussing the process of identity formation); Brenda Major, Richard Gramzow, Shannon K. McCoy, Shana Levin, Toni Schmader & Jim Sidanius, *Perceiving Personal Discrimination: The Role of Group Status and Legitimizing Ideology*, 82 J. PERSONALITY & SOC. PSYCHOL. 269 (2002) (discussing the interesting interaction between stigma and self-perception, and whether one adheres to the ideology of individualism).

83. See Lau, *supra* note 80, at 327–32; see also VICTOR M. RIOS, *PUNISHED: POLICING THE LIVES OF BLACK AND LATINO BOYS* 133–34 (2011) (describing how systemic subordination generates reactions that disserve youth).

84. Mia Smith Bynum, Candace Best, Sandra L. Barnes & E. Thomoseo Burton, *Private Regard, Identity Protection and Perceived Racism Among African American Males*, 12 J. AFR. AM. STUD. 142, 153 (2008).

because of race. The multiple stressors of race are significant for mental health.⁸⁵

Victor Rios's brilliant study on the criminalization and over policing of black and Latino boys vividly brings home how structure and identity interact. "Just as children were tracked into futures as doctors, scientists, engineers, word processors, and fast-food workers, there were also tracks for some children, predominantly African American and male, that led to prison."⁸⁶ The consequences of hypercriminalization are "oppositional culture, perilous masculinity, and other actions that attempt to compensate for punitive treatment," as well as politicization.⁸⁷ He suggests also that this constant scrutiny and negative feedback breeds hypermasculinity. He paints a vivid picture of how these young men are policed and viewed, and acting out of resistance, perversely trigger more system oversight in the criminal justice system.⁸⁸

Particularly for urban black males in disadvantaged communities, violence should be interpreted, according to one set of researchers, as self help when you are both a target of the system as well as unprotected by the system.⁸⁹ "[B]lack youth are especially vulnerable to police contact [They are the] most likely to be exposed to high-impact policing. . . . [They are] viewed as 'symbolic assailants,' that is, people whom police approach as dangerous/violent because of their gestures, language, [and] attire" ⁹⁰ In addition, both adolescents and minorities are less likely to obtain the assistance of police, so they may act out of self help.⁹¹ In their study of poor and violent New York City neighborhoods, researchers found youth were very skeptical of the system and police.⁹² "In these marginalized New York City social contexts, young disadvantaged black males believe that they are always under terror without protection from authorities. As such, self- or crew-protection . . . appears to be the best available alternative."⁹³

The interaction of negative environmental or social factors leads to "distorted developmental pathways."⁹⁴ Violence may be a way of obtaining respect

85. See Shelly P. Harrell, *A Multidimensional Conceptualization of Racism-Related Stress: Implications for the Well-Being of People of Color*, 70 AM. J. ORTHOPSYCHIATRY 42 (2000).

86. RIOS, *supra* note 83, at 3 (quoting ANN ARNETT FERGUSON, *BAD BOYS: PUBLIC SCHOOLS IN THE MAKING OF BLACK MASCULINITY* 2 (2000)).

87. *Id.* at 21.

88. *Id.* at 21, 124–34.

89. Deanna L. Wilkinson, Chauncey C. Beaty & Regina M. Lurry, *Youth Violence—Crime or Self-Help? Marginalized Urban Males' Perspectives on the Limited Efficacy of the Criminal Justice System to Stop Youth Violence*, 623 ANNALS AM. ACAD. POL. & SOC. SCI. 25 (2009).

90. *Id.* at 26.

91. *Id.* at 27.

92. *Id.* at 36.

93. *Id.*

94. Wesley W. Bryant, *Internalized Racism's Association with African American Male Youth's Propensity for Violence*, 42 J. BLACK STUD. 690, 693 (2011) (citing Cynthia García Coll, Gontran Lamberty, Renee Jenkins, Harriet Pipes McAdoo, Keith Crnic, Barbara Hanna Wasik & Heidi Vázquez García, *An Integrative Model for the Study of Developmental Competencies*

as a response to internalized racism.⁹⁵ Several studies show the link between racism and psychological disorders among black children and adolescents, including evidence of “frequent racist experiences predict[ing] more internalizing and externalizing behaviors in African American boys,” “negative effects of both direct experience with . . . and the prevalence of discrimination,” and “African American adolescents experienc[ing] steeper increases in discrimination by adults and peers as they [grow] older relative to their Asian and Latino American peers.”⁹⁶ These observations carry the risk of being misread as confirming that black boys are deviant or defective. But instead, it should cause us to question how any child or young person would respond to this treatment and context. This must be understood as normal adaptation and coping, not as illness; as the predictable response of children to extraordinary levels of stress directed at *who they are*. We might consider other scenarios where children are harmed by the context in which they develop, and ask if we would similarly blame the child or youth rather than the adults or systems that have fostered the negative outcome or failed to provide support.

The consequences of racism upon development are exacerbated for black boys because of the demands of masculinity, as well as the particular stereotypes and behaviors trigged by their masculinity.

For African American males, the challenges of confronting racism may be especially burdensome because coping with racism can create a unique set of psychological challenges. They must cope with racial microinsults, or *microaggressions*. . . . Even more challenging, the mere physical presence of African American males in interracial contexts can provoke fear in some European Americans Consequently, constant hypervigilance to such psychological assaults and the behavioral adjustments intended to reduce the chance of a racially aversive interaction are a normative part of daily life of many African American males. . . . [S]ocial ills such as racism have negative effects on African American males that can result in a variety of poor mental health outcomes, with externalizing problems being only one such outcome.⁹⁷

in Minority Children, 67 CHILD DEV. 1891, 1895 (1996)).

95. *Id.* at 694; see also Emily M. Moiduddin, *Understanding the Sources of Racial and Gender Disparities in Early Childhood Aggression* (April 2008) (unpublished Ph.D. dissertation, Princeton University) (*available at* <http://search.proquest.com/docview/304507062/fulltextPDF?accountid=11620>); Laura A. Rainville, *Fighting to Grow: A Developmental Approach to Aggression Among Inner City, African American Adolescent Boys* (2011) (unpublished Ph.D. dissertation, California Institute of Integral Studies) (*available at* <http://gradworks.umi.com/34/57/3457732.html>).

96. Bynum et al., *supra* note 84, at 145 (emphasis omitted).

97. *Id.*

As noted at the outset, our concepts and discussion of development and identity formation frequently are generic. To the extent that they are, we miss how the racial or ethnic identity of dominant groups is formed and imbued, so that they deny privilege and ignore race. More importantly, we ignore the challenges as well as the achievements of racial and ethnic identity for groups who are subordinated. The psychological literature exposes the equality cost to individual black boys of the structure and culture that creates such challenges for their identity. What I have sketched here deserves more extensive exploration. The critical point is to identify how race and gender function at an individual level.

The development of racial identity can also be protective and have a positive effect.⁹⁸ This is what makes the process of identity development so critical. Cynthia García Coll and others have identified the importance of considering a range of social effects in models of development, creating a multisystemic approach that includes the effects of racism, subordination, discrimination, and prejudice on minority children and their families.⁹⁹ Aerika Brittian, building on the work of Robert Sellers and his collaborators, has recently reviewed the literature on the adolescent development of African American boys, the critical time frame when identity emerges in an interactive process of self, and the ecology of one's context.¹⁰⁰ Brittian emphasizes the complexity of identity, the presence of both positive and negative aspects, and the critical nature of coping strategies. Those strategies are essential to develop a strong sense of self, but also provide means to adapt, confront, and remain resilient in the face of overwhelmingly negative messages from the social context.¹⁰¹ One of the places where the interaction

98. See *id.*; Robert M. Sellers, Nikeea Copeland-Linder, Pamela P. Martin, R. L'Heureux Lewis, *Racial Identity Matters: The Relationship Between Racial Discrimination and Psychological Functioning in African American Adolescents*, 16 J. RES. ON ADOLESCENCE 187 (2006) ("This study examines the interrelationships among racial discrimination, racial identity, and psychological functioning in a sample of 314 African American adolescents. Racial discrimination was associated with lower levels of psychological functioning as measured by perceived stress, depressive symptomatology, and psychological well-being. . . . More positive attitudes about African Americans were also associated with more positive psychological functioning.").

99. See Cynthia García Coll, Gontran Lamberty, Renee Jenkins, Harriet Pipes McAdoo, Keith Crnic, Barbara Hanna Wasik & Heidi Vázquez García, *An Integrative Model for the Study of Developmental Competencies in Minority Children*, 67 CHILD DEV. 1891 (1996).

100. See Aerika S. Brittian, *Understanding African American Adolescents' Identity Development: A Relational Developmental Systems Perspective*, 38 J. BLACK PSYCHOL. 172 (2012) (citing Robert M. Sellers, Stephanie A.J. Rowley, Tabbye M. Chavous, J. Nicole Shelton & Mia A. Smith, *Multidimensional Inventory of Black Identity: A Preliminary Investigation of Reliability and Construct Validity*, 73 J. PERSONALITY & SOC. PSYCHOL. 805 (1997)).

101. See *id.*

There are numerous reasons why one might expect perceptions of discrimination to increase during adolescence. With the development of formal operational thought (Inhelder & Piaget, 1958), adolescents are increasingly able to discern

of structure and culture with individual identity is most striking is at school.¹⁰²

Making the experience of children of color central, instead of marginalized, is critical. Russell Robinson has written about the difference in perception of discrimination between whites and blacks, and between racial insiders and racial outsiders.¹⁰³ Our legal definition of discrimination, he argues, is framed from the perception of insiders and whites. Outsiders characterize discrimination as pervasive and implicit.¹⁰⁴ Robinson asks us to focus on the *targets* of discrimination as a means to understand how it is experienced and how it might be described.¹⁰⁵ His data focuses on differences in perception of discrimination by race and gender in the workplace.¹⁰⁶ I would suggest his approach could be transferred or is suggestive

and reflect upon how their ethnic and/or racial group is evaluated by the larger society and to anticipate future discrimination. In addition, as adolescents begin to explore their own identities, particularly their ethnic identities, they may become increasingly sensitive and attuned to how others treat them, particularly those who are not part of their social groups. Furthermore, as an adolescent's social world expands, and he or she has more contact with mainstream culture, his or her experiences with discrimination may increase as well (Phinney & Chavira, 1995). Finally, as ethnic minority adolescents move closer to adulthood, they are often perceived as increasingly threatening by adults from the majority culture (Tatum, 1997) and thus may experience more discrimination by adults. This latter experience may be particularly true for Black boys because of the pervasiveness of negative stereotypes regarding this group (Gibbs, 1998).

Melissa L. Greene, Niobe Way & Kerstin Pahl, *Trajectories of Perceived Adult and Peer Discrimination Among Black, Latino, and Asian American Adolescents: Patterns and Psychological Correlates*, 42 DEVELOPMENTAL PSYCHOL. 218, 219 (2006).

102. See Signithia Fordham & John U. Ogbu, *Black Students' School Success: Coping with the "Burden of 'Acting White,'"* 18 URB. REV. 176 (1986). In this classic article, the authors discuss the phenomenon of school achievement being perceived as "acting white," and therefore being discouraged by the black community. *Id.* at 177. As the authors explore this dynamic of "acting white," it is exposed as a defense mechanism to discrimination, one that is remarkably accurate in identifying privilege and asserting collective identity. *Id.* at 181–83. "Acting white" becomes a community message in defense to racist attitudes toward black children. *Id.* This elegant and powerful explanation of the impact of systemic discrimination and the generation of within-group dynamics protective of individual identity and collective, group identity illustrates the destructive impact of racism. *Id.* The more common response to this phenomenon, however, is blame of the black community for the failure of their children. *Id.* at 179. See also Ciara Smalls, Rhonda White, Tabbye Chavous & Robert Sellers, *Racial Ideological Beliefs and Racial Discrimination Experiences as Predictors of Academic Engagement Among African American Adolescents*, 33 J. BLACK PSYCHOL. 299 (2007) (discussing how beliefs about race and identity impact engagement with school and academic achievement, and how positive racial identity has an impact on achievement as a resilience factor).

103. See Russell K. Robinson, *Perceptual Segregation*, 108 COLUM. L. REV. 1093 (2008).

104. See *id.*

105. *Id.* at 1103.

106. See Robinson, *supra* note 102.

of the dynamic in schools and other social settings for children and youth. His approach suggests a link between identity, systems, and culture that is particularly useful when considering the nature of the context experienced by black boys and their interaction with institutional settings—settings that function to funnel them to perpetual subordination as the default outcome of all or many black boys and black men. Where this might lead is using Robinson’s approach to foster positive racial identity, as well as to provide affirmative supports to counteract known risks, to close gaps rather than simply continue to measure them, and to unmask and change embedded racism.¹⁰⁷

IV. ANSWERING THE THEORETICAL QUESTION

Identity formation highlights individual identity, how that is affected by racism, and therefore what happens developmentally for children and adults. This is an enormously important perspective and must be examined with great intensity. It is one of the keys to changing outcomes for black boys and other children of color. On the one hand, this might seem to lead us to vulnerabilities theory, because of common developmental needs, with the caveat that achieving those desired goals must take race and other identities into account. One other caution from the developmental perspective is to see identities as merely part of a more complex environment creating risk and resilience. It is critical to expose how risk and resiliency reflect structural, systemic inadequacies, and subordinating functions. When viewed from an identity perspective, the racialized nature of the structure becomes clear. An identity focus then points to a broader vulnerability focus, but not, I think, vice versa.

The identity focus, also by focusing on race and gender, gets us to focus on implicit bias, stereotypes, perceptual discrimination, and how all that interplays with structural discrimination. It is the combination of race and gender that serves a purpose, and exposing that purpose and how that works is important. From a theory perspective, looking at the situation of black boys, the interplay of identities and structure is critical, and therefore suggests the interplay of identity theory and vulnerabilities theory.

One can see in the situation of black boys inequality functioning on several levels that intersect to constitute a complex context of subordination and inequality. First, there is the individual or psychological response to the environment and structure, as filtered by identities of race, masculinity, and class. Both race and gender confound

107. For example, actual outcomes of racial equality could be a measure for funding instead of racial measurement that results in little action other than “adoration of the question.” See JAMES BELL & LAURA JOHN RIDOLFI, ADORATION OF THE QUESTION: REFLECTIONS ON THE FAILURE TO REDUCE RACIAL & ETHNIC DISPARITIES IN THE JUVENILE JUSTICE SYSTEM (Shadi Rahimi ed., 2008), available at www.burnsinstitute.org/article.php?id=83. When considering how to attack the pervasive racism and its gendered manifestation for black boys, we might also consider which other groups have shifted sociocultural perceptions. Several examples with records of change, albeit still displaying evidence of persistent discrimination, are the perception and treatment of Jews, girls and women, and gays and lesbians.

and complicate the generic picture of adolescent identity and are essential to take into account to consider self-identification as well as perception and identification by others.

Second, inequalities are structural, embedded in systems, such as the “helping” systems for children and families. Every single system that is supposed to help children either disproportionately hurts or fails children of color—and even more so, black boys. Vulnerabilities analysis helps here by identifying systems and challenging their inequalities. Third, inequality is embedded at the ideological level. If black boys are set up for failure, which offends fairness and basic needs, but their subordination is justified by beliefs and ideologies at the macro level, then that cultural justification for inequality must be challenged. If the macro level provides justification, it supports failing or harmful structures that reinforce privilege for some.

I would underscore that this is a masculinized system, as well as a racialized one. What vulnerabilities analysis can bring to this is a way to challenge the structure more on its own terms by using a neutral terminology or concept that might allow for persuasiveness based on similarities and fairness.¹⁰⁸ The vulnerabilities approach suggests a focus on developmental needs—what should be provided and supported as a matter of entitlement. But that it is not enough since it fails to capture the oppressiveness of the structural and cultural factors that create additional hurdles for black boys.

It is the hurdles of gendered race and racism that must be confronted. It is essential that race and gender for black boys be acknowledged as positive, valued, precious, and core to dignity and personhood. It is this aspect of identity that is most endangered, in my view, by efforts that aim to achieve universal benefits without acknowledging race or gender. It requires not only support for children to achieve a positive identity, but also critical work on adults in the immediate and greater sociocultural sphere. Affirmatively, it means embracing all children as our children, as a norm of action and outcomes. These are not ethereal possibilities that are hopelessly optimistic and untested. We have as models concrete programs that show success is achievable.¹⁰⁹

The systems implicated in the context of black boys do not work for anyone, in addition to most seriously and negatively affecting children on identifiable identity markers with the worst and most disadvantaged children being those marked by gender, race, and class. Vulnerabilities analysis reminds us to see those commonalities and demand more from what should be a responsive state—not a subordinating

108. For example, the most recent U.S. Supreme Court decision on juvenile justice, *Miller v. Alabama*, follows other recent cases that focus on the developmental vulnerabilities of all youth. 132 S. Ct. 2455 (2012). Such a pattern might be an argument for a vulnerabilities approach. It ignores, however, the identities of the two named plaintiffs. Given the evidence of profound bias in the juvenile justice system, it leaves in place a system that reinforces rather than helps with children’s vulnerabilities in a way that reproduces gender and race privilege.

109. See, e.g., BROTHERHOOD SISTER SOL, www.brotherhood-sistersol.org; HARLEM CHILD ZONE, www.hcz.org; PEACE FIRST, www.peacegames.org. These are three programs of positive, successful change.

state. In order to address the near extermination of opportunity for black boys, we not only need to eliminate disproportionality (in its manifestations, disproportionate presence, and disproportionate seriousness of outcomes), but we also need to demand positive outcomes from evidence-based programs that serve children's needs.

Changing the lives of black boys challenges us to really decide what we mean by equality. The goal of equality is not, I would argue, to flip who is the most powerful, but to empower all. Moreover, it is to engage all of us in eradicating the most difficult and persistent beliefs and cultural norms that justify hierarchies based on identities. Changing the lives of black boys requires attention to how we deal with the vulnerabilities of all children and youth. It also requires squarely facing our continued embrace of racial subordination, particularly of boys and men, as consistent with equality.