

9-26-2021

## Against Discourse: Why Eliminating Racial Disparities Requires Radical Politics, Not More Discussion

Robert Weber  
*Georgia State University*, [rweber@gsu.edu](mailto:rweber@gsu.edu)

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>



Part of the [Civil Rights and Discrimination Commons](#), [Law and Race Commons](#), and the [Law and Society Commons](#)

---

### Recommended Citation

Robert Weber, *Against Discourse: Why Eliminating Racial Disparities Requires Radical Politics, Not More Discussion*, 37 GA. ST. U. L. REV. 1177 (2021).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol37/iss4/7>

This Article is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact [gfowke@gsu.edu](mailto:gfowke@gsu.edu).

## AGAINST DISCOURSE: WHY ELIMINATING RACIAL DISPARITIES REQUIRES RADICAL POLITICS, NOT MORE DISCUSSION

Robert F. Weber\*

### ABSTRACT

*Racial disparity discourse is one of the main modalities through which we discuss and experience race and racism in the United States today—in discussions with colleagues and friends, in scholarly work, on cable news, on social media, and in lecture halls. Despite its ubiquity, racial disparity discourse is under-theorized: what, exactly, is its intended purpose? This Essay argues that most discussion about racial disparities is predicated on the faulty premise—grounded in the Habermasian concepts of discourse and communicative rationality—that antiracists will convince their interlocutors by engaging in a practice of rationalistic discourse among participants who share the objective and expectation of consensus. Drawing on the work of political philosopher Charles Mills and sociologists Pierre Bourdieu and Moon-Kie Jung, the Essay explains why the pragmatic conditions of possibility for discourse of this sort concerning matters related to race in the United States are frequently absent.*

*Specifically, Mills theorizes that a “racial contract,” saturated with racialized hierarchies and subordinating logics, has always underwritten the American social contract, leaving in its wake an “epistemology of ignorance” that is today responsible for localized and global cognitive dysfunctions. Jung develops Bourdieu’s concept of doxa to explain how, when it comes to the politics of race in the*

---

\* Associate Professor of Law, Georgia State University College of Law. Special thanks go to my wife Samantha and my sister Zabe for the many hours spent struggling with the outrages that breathed life into this project. Their contribution here is testament to the force of discourse, where conditions allow it. My gratitude also goes to the editorial staff of the *Georgia State University Law Review*, for undertaking and executing this Symposium in difficult conditions, as well as editing this contribution.

*United States, individual agency and actions are always mediated by a classificatory, schematic, and hierarchical social structure in which race frequently plays a decisive organizing role. This Essay concludes by recommending that those committed to redressing vulnerability, precarity, and disposability along racialized lines should not focus their efforts on cobbling together a transracial coalition of the discursively convinced. Instead, it is argued that attentional and financial resources are better directed to develop and reinvigorate a radical, oppositional politics dedicated to eradicating racialized hierarchies and those elements of the political economy that reciprocally nurture and feed off them. Political theorist Chantal Mouffe’s model of “agonistic pluralism,” which centers the irreducibly conflictual nature of modern politics and proposes a politics that aims to confront and convert rather than to convince, is offered as a fruitful theoretical model to underwrite this non-discursive, radical politics.*

**CONTENTS**

INTRODUCTION .....	1180
I. THE MUDDLED POLITICS OF THE MOMENT IN THREE EPISODES .....	1186
II. MAINSTREAM RACIAL DISPARITY DISCOURSE AS A HABERMASIAN PROJECT .....	1191
III. A PHILOSOPHICAL EXPLANATION AND A SOCIOLOGICAL EXPLANATION FOR THE PRESENT IMPRACTICALITY OF AN EFFECTIVE ANTI-DISPARITARIAN POLITICS GROUNDED IN DISCOURSE .....	1200
IV. SO, WHAT <i>SHOULD</i> WE DO WITH DISPARITY DISCOURSE? .....	1215
V. CHANTAL MOUFFE’S “AGONISTIC PLURALISM” AS AN ALTERNATIVE TO DISCOURSE THEORY .....	1221
VI. ON THE “REAL UTOPIA” OF A REINVIGORATED, RADICAL, AND AGONISTIC BLACK POLITICS .....	1226

Two considerations . . . broke in upon my work and eventually disrupted it: first, one could not be a calm, cool, and detached scientist while Negroes were lynched, murdered and starved; and secondly, there was no such definite demand for scientific work of the sort that I was doing, as I had confidently assumed would be easily forthcoming. I regarded it as axiomatic that the world wanted to learn the truth and if the truth was sought with even approximate accuracy and painstaking devotion, the world would gladly support the effort. This was, of course, but a young man's idealism, not by any means false, but also never universally true.<sup>1</sup>

I began to realize that I had overworked a theory—that the cause of the problems was the ignorance of people; that *the cure wasn't simply telling people the truth, it was inducing them to act on the truth. . . .* It wasn't enough, in other words, simply to study the Negro problem and put the truth before people. . . . *[Y]ou've got to do something about it.*<sup>2</sup>

W.E.B. Du Bois

## INTRODUCTION

The organizing theme of the *Georgia State University Law Review's* 2021 Symposium asked, "What's Next for Social Justice

---

1. W.E.B. DU BOIS, *DUSK OF DAWN: AN ESSAY TOWARD AN AUTOBIOGRAPHY OF A RACE CONCEPT* 34–35 (Oxford Univ. Press 2007) (1940).

2. COLUM. U. ORAL HISTORY PROJECT, *REMINISCENCES OF W.E.B. DU BOIS* 146–47 (1960) (on file with the Georgia State University Law Review) (emphasis added). In both of these epigraph remarks, Du Bois is reminiscing on the jarring experience of having prepared an objective and contextual summary of a violent episode involving a Black man named Sam Hose accused of rape and murder for the city's most important newspaper, only to discover, while walking his manuscript to the newspaper headquarters, that Hose had already been lynched and that his knuckles were on display in a butcher shop on the very street Du Bois was walking. *See id.* at 147–49; DU BOIS, *supra* note 1, at 34.

and Racial Equality?”<sup>3</sup> This question has an august pedigree when it comes to America and race; it was on the forefront of Dr. Martin Luther King Jr.’s mind in 1967, the year before his assassination: *Where Do We Go from Here?*, read the title of his final book.<sup>4</sup> Following the convulsive protests in the Summer of 2020, the importance of the question requires no further elaboration. What does require some reflection, though, is what the terms of the discussion should be. For instance, social justice and racial equality refer to distinct political objectives that are intrinsically interrelated, but in complicated ways. Further, the concept of racial justice straddles both social justice and racial equality, but is also easily distinguishable from both.

Projecting the future trajectories of these concepts, as well as the future experiences of the real people whose material conditions will answer the Symposium’s question, requires us to wrestle with the categories of race, class, justice, equality, and political strategy. For progressive legal scholars, the need to settle some of these interpretive questions is especially pressing. Law can be a problematic category in the context of race and class,<sup>5</sup> and it might distract us from being able to provide real assistance to those engaged in organizing and other political work. We need to conceive of the role of law and legal reform in responding to racial and economic injustice as downstream of politics. In other words, lawyers who are committed to antiracist politics need to specify a racial politics before making the case for legal reform. Still, lawyers

---

3. *Symposium*, GA. ST. U. L. REV, <https://gsulawreview.org/pages/143-symposium> [<https://perma.cc/R6YX-C39H>].

4. *See generally* MARTIN LUTHER KING, JR., *WHERE DO WE GO FROM HERE: CHAOS OR COMMUNITY?* (1967).

5. *See, e.g.*, Cheryl I. Harris, *Whiteness As Property*, 106 HARV. L. REV. 1707, 1714 (1993) (“After legalized segregation was overturned, whiteness as property evolved into a more modern form through the law’s ratification of the settled expectations of relative white privilege as a legitimate and natural baseline.”); Robert W. Gordon, *Some Critical Theories of Law and Their Critics*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 641, 652 (David Kairys ed., 3d ed. 1998) (“Legal ideology provides false legitimation when it conceals the violent, coercive, arbitrary, and ugly faces of existing institutions. It reinforces false necessity by suppressing the alternative arrangements, the more democratic, egalitarian, cooperative, liberating alternatives, that our legal norms and practices also make available . . .”).

and legal theory play a pivotal role in constructing and navigating the institutions within which any such politics takes shape—in fostering the development of what Roberto Unger calls the “institutional imagination” of society, the sense for what practical institutional alternatives are possible.<sup>6</sup> Lawyers objecting to the continued salience of race in the distribution of social resources, chances, and vulnerabilities should pick our partners judiciously.

One task that will help us begin to understand the sociopolitical significance of the present moment is to parse and map the deployment of racial disparities data in political discourse. The experience of Black Americans has often been articulated in the language of disparity, reflecting the reality that one of the bedrock features of American history has been the absolute and relative immiseration of the subset of the population ascriptively denoted as Black.<sup>7</sup> For instance, W.E.B. Du Bois wrote in 1903 that “[t]o be a poor man is hard, but to be a poor race in a land of dollars is the very bottom of hardships.”<sup>8</sup> A half-century later, Dr. King echoed the same sentiment: “Poverty is a glaring, notorious reality . . . . [I]t is poverty amid plenty. It is poverty in the midst of an affluent society, and I think this is what makes for great frustration and great despair in the black community and the poor community of our nation generally.”<sup>9</sup> And the sentiment is hardly limited to the economic realm of income and wealth in Du Bois’s “land of dollars.”<sup>10</sup> In a

---

6. See ROBERTO MANGABEIRA UNGER, *THE CRITICAL LEGAL STUDIES MOVEMENT: ANOTHER TIME, A GREATER TASK* 29–31 (2015); cf. Jack Balkin, *Critical Legal Theory Today*, in *ON PHILOSOPHY IN AMERICAN LAW* 64, 67 (Francis J. Mootz III ed., 2009) (arguing that even though law can “disguise, mystify, and legitimate great injustices,” it can also help us to create new “discursive and institutional tools to talk back to power” and to imagine “finer, better visions of human association”).

7. Throughout this Essay, I adopt the convention to capitalize the terms “White” and “Black” to refer to people ascriptively assigned to those categories, as well as to the cultures and histories developed around those categories to which those terms also descriptively refer. I do so with ambivalence, both appreciative of the recognition many believe the convention provides and wary of contributing to the further reification and persistence of the problem categories themselves.

8. W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* 8 (5th ed. 1904).

9. *The Promised Land*, in *THE EYES ON THE PRIZE CIVIL RIGHTS READER: DOCUMENTS, SPEECHES, AND FIRSTHAND ACCOUNTS FROM THE BLACK FREEDOM STRUGGLE* 383, 402 (Clayborne Carson et al. eds., 1991) (quoting Dr. Martin Luther King, Jr.).

10. DU BOIS, *supra* note 8, at 12.

remark frequently invoked today by public health practitioners, Dr. King also emphasized the moral outrage attending health disparities: “Of all the forms of inequality, injustice in health is the most shocking and the most inhuman because it often results in physical death.”<sup>11</sup>

The political and rhetorical currency of disparity discourse and disparity data in modern societies, committed in principle to equality, is apparent on its face. With increasing regularity over the course of the past two decades, commentary on racial disparities has become ubiquitous in political and academic debate. Social scientists, journalists, public health practitioners, legal scholars, and the political commentariat routinely use race as an independent variable to track and discuss disparate outcomes with respect to police violence, criminal sentencing, health (including COVID-19), housing, employment, wealth, and income, just to name a few contexts. Disparity discourse is one of the truth-telling modes of our era; it is the primary language through which we analyze the concepts of race and racism today. The ubiquity of disparity discourse is one of the basic premises of this intervention, and I am interested in exploring the consequences and potential trajectories of that phenomenon rather than demonstrating the accuracy of any particular empirical or descriptive disparity claims.

For present purposes, it suffices to quote the pithy and tragic distillation of affairs from political scientists Rogers Smith and Desmond King: “The familiar, painful litany of the United States’ continuing and severe racial gaps in material well-being encompasses virtually every dimension of life, from economic well-being to health to housing to education to the criminal justice system.”<sup>12</sup> As such, disparity discourse arises out of real material depredations, and to that extent, it is hardly surprising to see its proliferation in overtly

---

11. See Charlene Galarneau, *Getting King’s Words Right*, 29 J. HEALTH CARE POOR & UNDERSERVED 5, 5 (2018) (quoting Dr. Martin Luther King, Jr.).

12. Rogers M. Smith & Desmond S. King, *Barack Obama and the Future of American Racial Politics*, 6 DU BOIS REV. 25, 26 (2009); see also MICHAEL C. DAWSON, NOT IN OUR LIFETIMES: THE FUTURE OF BLACK POLITICS 116 (2011).



political contexts as well as in ostensibly nonpolitical contexts like public health research centers. It recalls Theodor Adorno's maxim: "Woe speaks: 'Go.'"<sup>13</sup> Disparity data calls to mind physical and psychological pain, which "tells our knowledge that suffering ought not to be, that things should be different."<sup>14</sup> But if woe speaks go, *where*, exactly, are we supposed to go? This is another formulation of the Symposium theme: after we acknowledge the woe, *what's next?* What is the political vector on which racial disparity data sets our course?

This Essay aims to clarify these questions by exploring some of the largely unmapped theoretical terrain underlying much disparity discourse. Part I introduces three recent political episodes that demonstrate how the rhetoric of racial disparity can be mobilized for an astonishingly wide range of political uses, impliedly underscoring the need to clarify some concepts and terms. The next two Parts undertake that project by situating racial disparity discourse in a theoretical context. First, Part II explains how most racial disparity discourse in the United States is predicated on a model of rationalistic discourse undertaken by coequal interlocutors with the shared expectation of reaching a consensus once the cognitive gap between the interlocutors is bridged through strategic rhetorical use of disparity data. Then, Part III draws from philosopher Charles Mills and sociologists Moon-Kie Jung and Pierre Bourdieu to argue that the basic discursive conditions for a dialogue of the sort envisioned by the discourse theorists are not present, owing to cognitive pathologies and epistemological shortcomings, handicapping the abilities of many Americans to engage in rationalistic discourse on matters related to race.

Following that, in Parts IV, V, and VI, this Essay argues that antiracists interested in eliminating racial disparities should focus their efforts on using disparity data within a reinvigorated radical

---

13. THEODOR W. ADORNO, NEGATIVE DIALECTICS 203 (E.B. Ashton trans., Continuum Publ'g 1973) (1966).

14. *Id.*

Black politics, conceived along the lines of what political theorist Chantal Mouffe has called “agonistic pluralism.” Mouffe’s agonistic pluralism foregrounds conflict and conversation over conversations and convincing, and seeks to articulate an alternative political project dedicated to coalition building based on egalitarian principles.<sup>15</sup> Such a radical Black politics is not meant as a passive, receptacle category collecting together the activities of all Black people engaged in radical politics at a given point in time. Instead, the category is meant to refer to an insurgent politics dedicated to organizing programs, associations, alliances, and legal reform efforts aiming to eradicate racialized hierarchies and disparities throughout the social formation, as well as challenging those parts of the political economy that reciprocally nurture and feed off those arbitrary hierarchies and differences.

One further terminological clarification is in order here: throughout this Essay, I consider the pragmatic possibilities of discourse between *Black* and *White* Americans,<sup>16</sup> and I will discuss certain potentials in radical *Black* politics. In doing so, I do not mean to ignore the multiple other racialized categories that have played, and continue to play, constitutive roles in U.S. politics and society. Instead, the predominant, but not exclusive, focus on the history, politics, and lived disparities of Black Americans is attributable to the special role that Black politics has played in U.S. history and the concomitant special power Black politics has to galvanize challenges to the established racial order.<sup>17</sup> That said, I suspect that the

---

15. See *infra* Parts IV, V, VI.

16. This focus of this Essay is on race discourse in the United States, where race has played a constitutive role in developing notions of the polity, culture, and the broader social formation. As David Roediger puts it, whereas “[t]he world got along without race for the overwhelming majority of its history, the U.S. has never been without it.” DAVID R. ROEDIGER, *HOW RACE SURVIVED U.S. HISTORY: FROM SETTLEMENT AND SLAVERY TO THE ECLIPSE OF POST-RACIALISM*, at xii (2008) (cleaned up). Nevertheless, it is of course likely that, given the persistence of race thinking and racism in many regions of the world, some of the concepts and arguments presented in this Essay will apply in those other contexts as well.

17. Nikhil Singh’s observation that the ample Black radical tradition operates an immanent critique of American claims to universality is relevant here. See NIKHIL PAL SINGH, *BLACK IS A COUNTRY* 219 (2005).

theoretical framework explored here will have ready application in the context of other racialized groups as well.

I. THE MUDDLED POLITICS OF THE MOMENT IN THREE EPISODES

The problem is that disparity politics are, at present, hopelessly muddled. And muddled, disorganized politics complicate efforts to marshal information about racial disparities in service of focused efforts to achieve meaningful changes in material social conditions. Indeed, sometimes the people bringing up racial disparities are ideologically committed to maintaining those disparities. For an even larger group, the oceanic disparities themselves, provided they are deracialized, are not even cognizable as problems in and of themselves. Worse still, this latter group might make honest efforts to change the material conditions of oppressed people susceptible to co-optation by forces dedicated to preserving those same conditions. Stuart Hall evocatively described this process as the “stitching” of otherwise volatile and oppositional cultural practices and social movements into the dominant social formation.<sup>18</sup> Amidst these muddled disparity politics, we need to focus our attention on the multiple trajectories on which concrete, material interests can project otherwise neutral social scientific information like racial disparity data.<sup>19</sup>

In recent years, the multiple trajectories of the Black Lives Matter movement illustrate the flexible and protean discursive environment where disparity discourse thrives. In August of 2016, the Movement for Black Lives (M4BL), a coalition of over fifty organizations formed in response to outcry over racially disparate treatment by the police, published an ambitious policy platform entitled *A Vision for Black Lives: Policy Demands for Black Power, Freedom, and*

---

18. STUART HALL, CULTURAL STUDIES 1983: A THEORETICAL HISTORY 189 (Jennifer Daryl Slack & Lawrence Grossberg eds., 2016).

19. See Adolph Reed Jr., *The Post-1965 Trajectory of Race, Class, and Urban Politics in the United States Reconsidered*, 41 LAB. STUD. J. 260, 278 (2016).

*Justice*.<sup>20</sup> That document sets forth aspirational goals relating to six arenas: (1) ending forms of state-sponsored racial violence against Black people; (2) reparations from state and nonstate institutions for racial subjugation; (3) divestment from institutions responsible for “criminalizing, caging, and harming” Black people, along with other exploitative forces such as prisons, fossil fuels, police, and surveillance; (4) “economic justice for all and a reconstruction of the economy”; (5) direct democratic “control [of] the laws, institutions, and policies that are meant to serve us—from our schools to our local budgets, economies, police departments, and our land”; and (6) a “remaking of the current U.S. political system in order to create a real democracy where Black people and all marginalized people can effectively exercise full political power.”<sup>21</sup> Just to highlight a few of the more concrete proposals, the document calls for community control over institutions like the police and schools; participatory budgeting at the local, state, and federal levels; decommodification of housing; abolishment of capital punishment; permanent cessation of deportation; reworking the tax code to effectuate a “radical and sustainable redistribution of wealth”; institution of a universal basic income; breaking up large financial institutions; and public financing of elections.<sup>22</sup> Robin Kelley might even understate matters when he describes the document as a “remarkable blueprint for social transformation.”<sup>23</sup> It also echoes the Black Panther Party’s famous “Ten-Point Program.”<sup>24</sup> It is a plan not just to end structural racism

---

20. See generally MOVEMENT FOR BLACK LIVES, A VISION FOR BLACK LIVES: POLICY DEMANDS FOR BLACK POWER, FREEDOM, AND JUSTICE (2016), <https://cjc.net/wp-content/uploads/2017/04/A-Vision-For-Black-Lives-Policy-Demands-For-Black-Power-Freedom-and-Justice.pdf> [<https://perma.cc/5K8A-BDPB>].

21. *Id.* at 6–15.

22. See *id.*

23. Robin D.G. Kelley, *What Does Black Lives Matter Want?*, BOS. REV. (Aug. 17, 2016), <http://bostonreview.net/books-ideas/robin-d-g-kelley-movement-black-lives-vision> [<https://perma.cc/3SJK-CHKS>].

24. For a description of the Ten-Point Program, see MICHAEL C. DAWSON, BLACKS IN AND OUT OF THE LEFT 137–40 (2013).

but also to save the planet and transform the entire nation along the way.<sup>25</sup>

This past year, in the immediate aftermath of the convulsive street protests following the videotaped state lynching of George Floyd, Jamie Dimon (the head of JPMorgan Chase & Co., the nation's largest bank) "took a knee" in a staged photograph with corporate staff.<sup>26</sup> A few months later, the bank announced a \$30 billion "Advancing Black Pathways" program that, the bank promised, would fund tens of thousands of home mortgage and small business loans for "Black, Latinx and minority" borrowers, finance 100,000 affordable housing units, and mentor "thousands of Black students."<sup>27</sup> Never mind that the bank had recently settled a civil enforcement action in which the government alleged that the bank had discriminated against Black and Hispanic homeowners by charging them higher interest rates and loan fees than similarly situated White borrowers. Even more fundamentally, no one with even a glancing familiarity with JPMorgan and banks like it thinks that the net effect of the company's real estate lending practices, over any time horizon, will amount to anything other than rent-intensifying redevelopment that displaces economically disadvantaged minority communities.<sup>28</sup> And yet, all that

---

25. See Kelley, *supra* note 23.

26. Lananh Nguyen et al., *Banks Snared in Race Conversation, Confronted by Bleak Legacy*, BLOOMBERG BUSINESSWEEK (June 16, 2020, 11:28 AM), <https://www.bloomberg.com/news/articles/2020-06-16/banks-snared-in-race-conversation-confronted-by-bleak-legacy> [https://perma.cc/6MFG-N5RK].

27. See Isabel Togoh, *JP Morgan Pledges \$30 Billion to Help Remedy Racial Wealth Gap*, FORBES (Oct. 8, 2020, 5:53 AM), <https://www.forbes.com/sites/isabeltogoh/2020/10/08/jp-morgan-pledges-30-billion-to-help-remedy-racial-wealth-gap/?sh=5eb34105594d> [https://perma.cc/CKJ7-AF5U]; *Advancing Black Pathways*, JPMORGAN CHASE & CO., <https://www.jpmorganchase.com/impact/people/advancing-black-pathways> [https://perma.cc/AN2X-QMFF].

28. See, e.g., CAL. REINVESTMENT COALITION, *ANTI-DISPLACEMENT CODE OF CONDUCT: HOW BANKS, PRIVATE EQUITY AND WALL STREET CAN STOP CONTRIBUTING TO DISPLACEMENT* (2018), <https://cceda.com/wp-content/uploads/Anti-displacement-best-practices-10.16.18.pdf> [https://perma.cc/7AMP-VQV2] (linking the role of bank finance to eviction, displacement, and homelessness); THE GREENLINING INST., *ECONOMIC EQUITY: THE STATE OF GENTRIFICATION: HOME-LENDING TO COMMUNITIES OF COLOR IN CALIFORNIA 3* (2017), <http://greenlining.org/wp-content/uploads/2017/12/State-of-Gentrification-Home-Lending-to-Communities-of-Color-in-California.pdf> [https://perma.cc/QXZ9-VXW7] (documenting how large banks originate home loans in

notwithstanding, the bank was compelled to issue the following ceremonial proclamation to accompany the announcement: “Systemic racism is a tragic part of America’s history. We can do more and do better to break down systems that have propagated racism and widespread economic inequality, especially for Black and Latinx people. It’s long past time that society addresses racial inequities in a more tangible, meaningful way.”<sup>29</sup>

Three days after Dimon took a knee, prominent members of the Democratic Party like Nancy Pelosi, Chuck Schumer, and Steny Hoyer did the same—while wearing Kente cloth!—in an attempt to demonstrate their solidarity with the Black Lives Matter protests.<sup>30</sup> Juxtaposed with the Dimon performance, the staged photo op can only be described as a “hold my beer” moment—one that was equal parts disorienting, comical, and offensive. These same politicians had established track records that flagrantly contradicted every item in the M4BL vision—track records that were not merely historical artifacts, but present realities on which they had recently doubled down.<sup>31</sup>

So how are we to interpret these seemingly incongruent moments? In reality, the incongruities are much more pervasive than even these episodes suggest. Nevertheless, at a minimum, they highlight the flexibility of both the basic Black Lives Matter message and the perception of racially disparate treatment that gives it life.

The same could be said about racial disparity discourse; its capaciousness provides it with its potential power, but also its susceptibility to co-optation and rudderless ineffectuality. Obviously,

---

low- to moderate-income census tracts at rates that vastly exceed the rates at which they lend to low- to moderate-income borrowers).

29. *Our Path Forward*, JPMORGAN CHASE & CO., <https://www.jpmorganchase.com/impact/path-forward> [<https://perma.cc/2BHK-FYDM>] (quoting JPMorgan Chase & Co. Chairman and CEO, Jamie Dimon).

30. Doreen St. Félix, *The Embarrassment of Democrats Wearing Kente-Cloth Stoles*, THE NEW YORKER (June 9, 2020), <https://www.newyorker.com/culture/on-and-off-the-avenue/the-embarrassment-of-democrats-wearing-kente-cloth-stoles> [<https://perma.cc/8MLA-QZAF>].

31. See David Dayen, *Nancy Pelosi Rams Austerity Provision into House Rules Package over Objections of Progressives*, THE INTERCEPT (Jan. 2, 2019, 10:43 AM), <https://theintercept.com/2019/01/02/nancy-pelosi-pay-go-rule/> [<https://perma.cc/M6AP-U8FC>].

we must acknowledge as a first principle that no effective political movement can include people committed to decommodified housing alongside JPMorgan commercial real estate lenders, or people committed to prison abolition and forcible break-ups of financial institutions alongside the politicians that have shepherded the Democratic leadership through its neoliberal transmogrification,<sup>32</sup> during which the party has replaced its commitment to social provision with marketization principles and hyper-incarceration.<sup>33</sup> If we are going to have honest conversations about racial disparities in the United States, we need to know what we are talking about and why we are doing so, and these juxtaposed images demonstrate that we all too frequently fail both these tests. It will not suffice to scratch our heads in bewilderment; these episodes are significant signposts on the terrain on which politics is being conducted today.

To some extent, this confusion and mixed messaging is unsurprising. After all, only one-half of one branch of our national government has ever apologized for slavery.<sup>34</sup> And no branch of our government has ever apologized for the genocide of indigenous Americans. No reparations have been paid to descendants of either group; no truth and reconciliation commissions have been established to reckon with the legacies of either historical reality. A full quarter of the country's landmass is littered with statues and memorials glorifying political and military leaders that would not be there were

---

32. See generally Adolph Reed Jr., *Nothing Left: The Long, Slow Surrender of American Liberals*, HARPER'S MAG. (Mar. 2014), <https://harpers.org/archive/2014/03/nothing-left-2/> [<https://perma.cc/W494-KUEL>].

33. "Hyper-incarceration" is a term introduced by sociologist Loïc Wacquant to refer to the carceral state, unprecedented in human history, that has emerged in the United States over the past several decades, often with explicit cooperation from the Kente-robed legislators demonstrating solidarity with anti-police violence protesters. See Loïc Wacquant, *Class, Race and Hyperincarceration in Revanchist America*, 139 DÆDALUS 74, 78 (2010); LOÏC WACQUANT, PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY 99–100, 304 (Duke Univ. Press 2009) (2004) [hereinafter WACQUANT, PUNISHING THE POOR]; Loïc Wacquant, *Deadly Symbiosis: When Ghetto and Prison Meet and Match*, 3 PUNISHMENT & SOC'Y 95, 118 (2001) [hereinafter Wacquant, *Deadly Symbiosis*] ("[T]he penal tutelage of African Americans has escalated to heights experienced by no other group in history, even under the most repressive authoritarian regimes and in Soviet-style societies.").

34. *Congress Apologizes for Slavery, Jim Crow*, NPR (July 30, 2008, 12:00 PM), <https://www.npr.org/templates/story/story.php?storyId=93059465> [<https://perma.cc/67JM-T4FF>].

it not for the fact that they were defending the institution of slavery. Antiracist politics are, as always, facing headwinds in the United States; the only question is whether those headwinds buffet so strongly that the only sensible course of action is to redirect around them and re-strategize the way we think about this problem altogether.

The discussion that follows below surveys some of the theoretical terrain underlying the episodes highlighted here, along with countless other similar episodes. Social theory provides a roadmap for our social environment, and the aim here is to use theory to elucidate some of the very real practical consequences of disparity discourse on contemporary social and political life.

## II. MAINSTREAM RACIAL DISPARITY DISCOURSE AS A HABERMASIAN PROJECT

Imagine a hypothetical colloquy in which an antiracist approaches an acquaintance otherwise disinclined to antiracist politics, burnishing disparity data amply demonstrating the gulf between the material and psychic experiences of White Americans and Black Americans. Let us assume that the antiracist's interlocutor is open in principle to being convinced about the need to remedy the disparate and inferior experiences and realities of nonwhite fellow citizens. The antiracist hopes to open the interlocutor's eyes to the history and enduring legacy of racism in the United States and to thereby catalyze a new commitment on their part to an antiracist politics seeking to enfold Black Americans into the social formation as full social equals.<sup>35</sup> The problem, we will see, is that the pragmatic conditions of possibility for a colloquy of this sort are far more complicated than many antiracists acknowledge.

---

35. Note that the more frequent formulation of this idea—refracted through the ideologically inflected terms “equality of outcome” and “equality of opportunity”—is deliberately avoided in this Essay.



The basic discursive conditions of a colloquy like this are premised on the notion that the problem is one of knowledge<sup>36</sup>—that if our fellow citizen-listeners only learn more, they will agree with us. The colloquy is predicated, then, on a cognitive gap between the antiracist and the interlocutor. This cognitive gap can consist of both moral arguments concerning, for example, what a just society requires, as well as factual–historical arguments concerning, for example, the extent or cause of the empirical disparity.<sup>37</sup> Good liberals and deliberative democrats will hope that a thorough ventilation of the arguments on, say, the increased mortality risk that pregnant Black women face, will eventually produce a rough agreement as to the real qualities of the phenomenon—its statistical manifestation, the causal environment out of which it arises, its arbitrariness and unfairness, and so forth. They might even hope to reach an agreement on how this health disparity problem might be solved.

At bottom, conversations like the colloquy hypothesized here are grounded in a model of rationalist, agreement-seeking discourse according to which free and equal participants submit their facts and arguments to the test of shared validity criteria. In this sort of encounter, the predicate relations among the interlocutors are arranged, as Seyla Benhabib describes it, so that “what is considered in the common interest of all . . . results from processes of . . . deliberation conducted rationally and fairly among free and

---

36. The same could be said about coverage of racial disparities that have figured prominently in cable and print news media in recent years.

37. Moral argumentation in the context of racial disparities can take many forms. Philosopher Chris Lebron provides one example of moral argumentation in this context when he explains the cleavage between the “two realities” of Black Americans and many non-antiracist Americans—for instance, the deeply held belief by many in the latter category that the Civil Rights era established a permanent equality—not as “a matter of error, but of will.” Chris Lebron, *Race, Truth, and Our Two Realities*, N.Y. TIMES: THE STONE (July 11, 2016), <https://www.nytimes.com/2016/07/11/opinion/race-truth-and-our-two-realities.html> [<https://perma.cc/3AU6-MC5E>]. According to this line of argument, if White Americans only possessed greater moral fortitude, discursive agreement would (eventually) follow. Even though the emphasis is moral rather than empirical, this type of account is predicated on discursive rationality and diverges sharply from the account presented by Mills and Jung below. See WILLIAM OUTHWAITE, *HABERMAS: A CRITICAL INTRODUCTION* 44 (2009) (noting how Habermas believed that both empirical *and ethical* judgments could be validated by discursive practices rationally oriented to consensus).

equal individuals.”<sup>38</sup> The aim of this type of discourse is to generate a rationally motivated consensus on controversial claims through the “force of the better argument” alone.<sup>39</sup> In our hypothetical setting of a discussion on racial disparities, the endgame is achieving some sort of transracial coalition of the discursively convinced.

Jürgen Habermas, the primary theorist of this type of rational-discursive grounding of social action, posits four pragmatic presuppositions for discourse: publicity and inclusiveness, equal rights to engage in communication, exclusion of deception and illusion, and the absence of coercion.<sup>40</sup> Further, Habermas posits that this type of rational discourse is underwritten by a “lifeworld” that appears as a “reservoir of taken-for-granted, of unshaken convictions that participants in communication draw upon in cooperative processes of interpretation.”<sup>41</sup> The lifeworld is the “background horizon of unthematized assumptions, implicit expectations, and individual know-how within which communicative action unfolds.”<sup>42</sup> The lifeworld and communicative action are reciprocally constitutive; that is, the lifeworld enables communication, while the communication itself ensures continuation of the lifeworld.<sup>43</sup> In the public realm of politics, the possibility or expectation of discursive agreement on contentious matters of public concern then stabilizes the institutional arrangements of liberal-democratic societies.<sup>44</sup>

These concepts of discourse and lifeworld are crucial in Habermasian social theory. Modern societies, no longer able to

---

38. Seyla Benhabib, *Deliberative Democracy and Models of Democratic Legitimacy*, 1 *CONSTELLATIONS* 26, 30–31 (1994).

39. SEYLA BENHABIB, *CRITIQUE, NORM, AND UTOPIA: A STUDY OF THE FOUNDATIONS OF CRITICAL THEORY* 284, 286 (1986); *see also* THOMAS MCCARTHY, *THE CRITICAL THEORY OF JÜRGEN HABERMAS* 303 (1978).

40. *See* JÜRGEN HABERMAS, *BETWEEN NATURALISM AND RELIGION: PHILOSOPHICAL ESSAYS* 49–50 (Ciaran Cronin trans., 2008).

41. JÜRGEN HABERMAS, 2 *THE THEORY OF COMMUNICATIVE ACTION: SYSTEM AND LIFEWORLD AND SYSTEM: A CRITIQUE OF FUNCTIONALIST REASON* 124 (Thomas McCarthy trans., 1987).

42. BENHABIB, *supra* note 39, at 239.

43. *See id.* at 125; JÜRGEN HABERMAS, *BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND DEMOCRACY* 22 (William Rehg trans., 1996).

44. *See* CHANTAL MOUFFE, *THE DEMOCRATIC PARADOX* 94 (2000).

anchor social integration with religious and traditional lifeworld certainties, rely instead on this discursive, consensus-oriented communicative action to *integrate* social groups and *socialize* individuals.<sup>45</sup> A solidarity emerges not as the result of traditional lifeworld relationships stitching together an ethnocentrically and geographically isolated collectivity, but as a result of the “realization that each person must take responsibility for the other because as consociates all must have an interest in the integrity of their shared life context in the same way.”<sup>46</sup> In using the terms *integration* and *solidarity*, Habermas refers to the core problem of order, a preoccupation of all classical and contemporary social theory.<sup>47</sup> But in the context of American racism, history, and politics, the integration concept has an obvious double valence inasmuch as (1) social order has always been defined in racial terms and (2) actual integration of (and solidarity between) the races has always threatened established social order.

This dissonant chord played alongside two concepts otherwise denoting harmony clues us in to a real problem with reliance on discursive rationality to address race in the United States. Michael Dawson has documented the wide gulf separating Black and White public opinion in the United States, and he argues that the divide testifies to completely different normative and interpretive ways of seeing and experiencing the world.<sup>48</sup>

Writing two decades ago, well before the era of the Tea Party and Trump,<sup>49</sup> political scientists Donald Kinder and Lynn Sanders

---

45. See HABERMAS, *supra* note 41, at 63.

46. Jürgen Habermas, *Justice and Solidarity: On the Discussion Concerning “Stage 6,”* 21 PHIL. F. 32, 47 (1989); see also JÜRGEN HABERMAS, MORAL CONSCIOUSNESS AND COMMUNICATIVE ACTION 200 (Christian Lenhardt & Shierry Weber Nicholsen trans., 1990) (locating the source of morality in the mutually constitutive concepts of justice and solidarity, with the latter referring to “the well-being of associated members of a community who inter-subjectively share the same lifeworld”).

47. For two of the classics, see C. WRIGHT MILLS, THE SOCIOLOGICAL IMAGINATION 44 (2000); and TALCOTT PARSONS, THE STRUCTURE OF SOCIAL ACTION 377 (1937).

48. See generally DAWSON, *supra* note 12.

49. The two shorthand references here are intended to refer to a broad trend in U.S. public discourse over the past two decades that is characterized by, if anything, racialized concepts assuming a greater salience. See WENDY BROWN, IN THE RUINS OF NEOLIBERALISM: THE RISE OF ANTIDEMOCRATIC POLITICS IN THE WEST 5–7 (2019). Wendy Brown evocatively describes the “ferocious antidemocratic

warned that their research on public opinions suggested that communal dialogue and consensus-formation was unlikely to move the needle on matters related to race:

[T]he most striking feature of [American] public opinion on race is how emphatically black and white Americans disagree with each other. . . . Many contemporary theorists of democracy urge communal dialogues designed to uncover or create consensus among Americans on matters of public concern. Racial matters obviously qualify as pressing public concerns, but the evidence presented here of *a deep and perhaps widening racial divide makes the discovery of commonality and agreement between the races a dim prospect*. When it comes to questions of race policy in the United States, this particular vision of contemporary democratic theorists looks to be *more a distant aspiration than a realistic immediate goal*.<sup>50</sup>

Dawson himself wonders if this dynamic might mean that Black and White Americans, presently as always, lack a shared lifeworld that can serve as a basis for mutual understanding.<sup>51</sup> Without a lifeworld of shared background assumptions that the antiracist and the interlocutor from our earlier hypothetical can take for granted, how can they engage in the type of discussion we imagine them undertaking?

What if Dawson is correct? What if the cognitive gap when it comes to the empirics and ethics of racial disparity is not bridgeable, as the discourse theorists assume it is? More specifically, what if many White Americans only have recourse to an “epistemology of

---

forces in the second decade of the twenty-first century” as fueled by an “attack on equality, combined with mobilization of traditional values, . . . [which] turn[ed] up the heat on and legitimate[d] long-simmering racisms from colonial and slave legacies . . .” *Id.* at 7.

50. DONALD R. KINDER & LYNN M. SANDERS, *DIVIDED BY COLOR: RACIAL POLITICS AND DEMOCRATIC IDEALS* 33 (1996) (emphasis added).

51. See DAWSON, *supra* note 12, at 5.

ignorance”<sup>52</sup> that prevents them from transforming the disparity data into changed political and moral beliefs? What if these cognitive-epistemological shortcomings deprive them of shared lifeworld presuppositions requisite for discursive agreement, diminishing, or even eliminating, their ability to recognize “the force of the better argument”<sup>53</sup> when it comes to the enduring legacy of race thinking in the United States? What if, instead of interpreting disparity data in a manner that facilitates the formation of an enlightened transracial coalition of the discursively convinced, they interpret the disparities as empirical confirmation of their own preconceptions of naturalized racial hierarchies?<sup>54</sup>

Consider the harrowing statistic that one in three newborn Black boys in the United States today should expect to go to prison in his lifetime.<sup>55</sup> Of course, some will interpret that statistic as evidence that a hyperactive and hypertrophic carceral apparatus has become unmoored from human reason and as a call to rethink that system and much of the broader political economy root and branch.<sup>56</sup> Still, others might rationalize statistics like this as confirmation of their beliefs, whether conscious or unconscious, that Black American males are prone to criminality and violence, or are the unavoidable casualties of trenchant “underclass” pathologies traceable to federal welfare policy or poor decision-making by their forbears, or are more able to handle the physical and psychic toll of imprisonment, or are simply less able

---

52. See CHARLES W. MILLS, *BLACK RIGHTS/WHITE WRONGS: THE CRITIQUE OF RACIAL LIBERALISM* 71 (2018) [hereinafter MILLS, *BLACK RIGHTS/WHITE WRONGS*]; CHARLES W. MILLS, *THE RACIAL CONTRACT* 93 (1997) [hereinafter MILLS, *THE RACIAL CONTRACT*].

53. BENHABIB, *supra* note 39, at 286.

54. See Rebecca C. Hetey & Jennifer L. Eberhardt, *Racial Disparities in Incarceration Increase Acceptance of Punitive Policies*, 25 *PSYCH. SCI.* 1949, 1949 (2014) (presenting survey research demonstrating that “[e]xposure to extreme racial disparities . . . can lead people to support the very policies that produce those disparities, thus perpetuating a vicious cycle”).

55. THE SENT’G PROJECT, *REPORT OF THE SENTENCING PROJECT TO THE UNITED NATIONS SPECIAL RAPporteur ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA, AND RELATED INTOLERANCE: REGARDING RACIAL DISPARITIES IN THE UNITED STATES CRIMINAL JUSTICE SYSTEM* 1 (2018), <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/> [https://perma.cc/BF6G-65PW].

56. See *supra* note 33 and accompanying text (discussing the historically unprecedented vastness of the contemporary U.S. carceral system).

to elicit a sympathetic response when compared to their own relatives or the kids in their (still segregated)<sup>57</sup> neighborhoods. The disparity might also be rationalized by conscious or unconscious anxieties about the political demands that currently incarcerated people might be expected to make if they were liberated or not imprisoned in the first place, and the potential ramifications of those demands on their own investments in presently existing social institutions. Ultimately, the prevalence of these attitudes is an empirical question, albeit one that is difficult to assess. Still, the evident failure of existing institutions to redress the issue,<sup>58</sup> notwithstanding its flagrant contradiction of the professed political and moral commitments of the polity, suggests that we should, at least provisionally, lower our expectations of discovering a lifeworld consensus on matters of race in the United States.

If so, then we should also expect, as Kinder and Sanders have suggested, that most rationalist discourse aimed at transforming White racial beliefs will fall flat. The conditions of possibility for the hypothetical colloquy are far too distant from the idealized situations envisioned by the theorists of discursive, communicative rationality.<sup>59</sup> To be clear, the argument is not that conversations about race between friends, family, and colleagues might never budge the needle on racism at the individual level. Most of us have ample personal experience with that sort of dialogue, and we are much the better for it. Instead, the argument is that attempting to ground an

---

57. See Jenny Schuetz, *Metro Areas Are Still Racially Segregated*, BROOKINGS: THE AVE. (Dec. 8, 2017), <https://www.brookings.edu/blog/the-avenue/2017/12/08/metro-areas-are-still-racially-segregated/> [<https://perma.cc/AN6Y-ZPKN>].

58. As of July 2021, during a period of historically unprecedented attention on documented police brutality, the signature piece of national legislation offering a (modest) curtailment of the hyper-carceral state, the George Floyd Justice in Policing Act, is mired in gridlock. See Sarah D. Wire, *George Floyd's Death Sparked Calls for Police Reform. Why Hasn't Congress Acted?*, L.A. TIMES (Apr. 20, 2021), <https://www.latimes.com/politics/story/2021-04-20/whatever-happened-to-police-reform-legislation> [<https://perma.cc/L97B-9VRH>]. Meanwhile, large states with significant Black populations have legislated decisively to prevent even putting police budgets meaningfully in discussion. See, e.g., Mark Niesse, *Kemp Signs Ban on Defunding Police*, ATLANTA J.-CONST., May 10, 2021, at 1B.

59. See *supra* text accompanying note 40. In Habermasian terms, the “pragmatic presuppositions” of discourse are not present, especially the condition that there is no deception or illusion on the part of participants. See *supra* text accompanying note 40.

effective antiracist and anti-disparitarian politics on rational discourse with White Americans might very well be a fool's errand.

Worse still, if the deliberative and discursive model of politics is likely to stall out when it comes to matters of race in the United States, then insisting on that sort of politics, and therefore holding forth the *expectation* that some transracial consensus *should be achievable*, might undermine political programs seeking to eliminate racial disparities that are predicated on other foundations. The expectation of a possible agreement among interlocutors sharing the same lifeworld shifts blame for failure to agree onto the individual interlocutors' behavioral and attitudinal attributes, directing attention away from the structural features of the culture and the political economy, including their power dynamics and historical trajectories, that are responsible for having produced the disparities in the first place.<sup>60</sup> The humming presses churning out copies of the latest titles in the new cottage industry of how-to-talk-about-race guidebooks—*White Fragility: Why It's So Hard for White People to Talk About Racism*;<sup>61</sup> *How to Argue with a Racist*;<sup>62</sup> *Let's Talk Race: A Guide for White People*;<sup>63</sup> *So You Want to Talk About Race*;<sup>64</sup> *Why I'm No Longer Talking to White People About Race*<sup>65</sup>—testify to the contemporary salience of the discursive frame and the potential threat it poses. By continuing to invest in therapeutic interventions designed to combat individual prejudice for the sake of improved discursive understanding, we risk ignoring Frantz Fanon's sage counsel to

---

60. See WENDY BROWN, REGULATING AVERSION: TOLERANCE IN THE AGE OF IDENTITY AND EMPIRE 142–43 (2006).

61. See generally ROBIN DIANGELO, WHITE FRAGILITY: WHY IT'S SO HARD FOR WHITE PEOPLE TO TALK ABOUT RACISM (2018).

62. See generally ADAM RUTHERFORD, HOW TO ARGUE WITH A RACIST: WHAT OUR GENES DO (AND DON'T) SAY ABOUT HUMAN DIFFERENCE (2020).

63. See generally FERN L. JOHNSON & MARLENE G. FINE, LET'S TALK RACE: A GUIDE FOR WHITE PEOPLE (2021).

64. See generally IJEOMA OLUO, SO YOU WANT TO TALK ABOUT RACE (2018).

65. See generally RENI EDDO-LODGE, WHY I'M NO LONGER TALKING TO WHITE PEOPLE ABOUT RACE (2017).

abandon “[t]he habit of considering racism as a mental quirk, as a psychological flaw.”<sup>66</sup>

Individualizing and psychologizing the problem in this manner operates as an ideological conceit.<sup>67</sup> It depoliticizes racial disparities and racism,<sup>68</sup> dissipating political energy into therapeutic endeavors to awaken (as in, make “woke”) individual people at the expense of developing radical politics up to the task of countervailing the political, economic, and cultural hierarchies responsible for reproducing the disparities.<sup>69</sup> Of course, racialized hierarchies manifest themselves in individual psyches, but the important point is that the discourse frame tends to reduce racialized hierarchies to an emergent, aggregate result of deviant, prejudicial psyches, rather than appreciating their antecedent influence on those individual psyches.

Thus, insistence on discourse, where the pragmatic preconditions for discourse are not present, impedes efforts to investigate the causes underlying problems while participants prattle past each other, more likely bandying ideological tropes rather than progressing to consensus. (Readers who use social media will appreciate this point immediately). In short, looking to discourse to dissolve racial divisions and disparities might not only be pointless, but pernicious too.

As discussed in greater detail below in Part V, looking to discourse to dissolve racial divisions and disparities undermines its putative

---

66. FRANTZ FANON, *TOWARD THE AFRICAN REVOLUTION* 38 (Haakon Chevalier trans., 1967).

67. See Lani Guinier, *From Racial Liberalism to Racial Literacy: Brown v. Board of Education and the Interest-Divergence Dilemma*, 91 J. AM. HIST. 92, 100 (2004). See generally LEAH N. GORDON, *FROM POWER TO PREJUDICE: THE RISE OF RACIAL INDIVIDUALISM IN MIDCENTURY AMERICA* (2015) (describing ideological thematization of racism as an individual psychological problem).

68. See BROWN, *supra* note 60, at 15–16 (discussing ideological and depoliticizing effects of treating social structures as personal psychological matters).

69. The discourse frame sheds light on a dialectical contradiction implicit in the predominant liberal conceptualization of racism: most liberal antiracists insist on the ubiquity of racism, on its status as a mass, *systemic* social phenomenon, all the while they urge the application of a remedy at the *individual* psychological, rather than the systemic (i.e., cultural and political-economic), level. The point is hardly that individuals lack agency to change their attitudes and even improve society. Nevertheless, a predominantly therapeutic, didactic, psychologizing approach neutralizes the political energy required to harness those agencies to reform or re-form the political culture and economy so that it stops reproducing racialized hierarchies and disparities in the first place.



objectives in two further ways. First, it distracts from other efforts to build solidaristic political constituencies capable of mounting a credible threat to the established racialized order.<sup>70</sup> Second, it arguably entrenches that same established order (and the disparities it reproduces) insofar as it offers opportunities for bank executives, tech tycoons, and politicians to co-opt otherwise oppositional energies by presenting the disparities as a social problem to be resolved within the established order.<sup>71</sup> In this way, otherwise radical and oppositional potentials within the citizenry are incorporated or “stitched into”<sup>72</sup> the dominant, established social formation.<sup>73</sup> In fact, thinking of co-optation in this manner helps clarify the otherwise confounding, head-scratching images of bankers and politicians “taking a knee.” Together, these factors produce the paradoxical result that reliance on discourse to redress racism ends up bolstering the legitimacy of the established order against which antiracists are struggling.

### III. A PHILOSOPHICAL EXPLANATION AND A SOCIOLOGICAL EXPLANATION FOR THE PRESENT IMPRACTICALITY OF AN EFFECTIVE ANTI-DISPARITARIAN POLITICS GROUNDED IN DISCOURSE

Despite the hopes of those who would like to use discourse and communicative rationality to achieve progressive consensus on racism in the United States, using disparity data as part of a project to eliminate those disparities and promote a more egalitarian society should not be conceptualized predominantly, or perhaps even at all, as an attempt to convince White Americans of anything. The argument here draws heavily from the philosopher Charles Mills and the sociologist Moon-Kie Jung to explain why Habermasian

---

70. See *infra* Part V.

71. See MOUFFE, *supra* note 44, at 120–21.

72. See *supra* text accompanying note 18 (discussing Stuart Hall’s similar “stitching” metaphor).

73. See RAYMOND WILLIAMS, *CULTURE AND MATERIALISM: SELECTED ESSAYS* 42–51 (1980) (theorizing hegemony as the “incorporation” of adversarial and oppositional practices into the effective dominant culture).

discourse is likely to fail in that project. Specifically, this Part argues that widespread epistemological shortcomings and cognitive pathologies will inhibit efforts by antiracists to change the dominant conceptions of race and racism prevalent among White Americans. Implicitly, Mills and Jung deconstruct the prospect of rationalistic consensus on these matters and also warn us of potential unintended negative consequences of continuing to pursue political projects premised on that model of interaction.

Mills uses the concept of what he calls the “racial contract” to resituate Rawlsian “social contract” theory from the realm of ideal theory (e.g., the famous “veil of ignorance”)<sup>74</sup> back to the historical conditions for its possibility—conditions that are saturated throughout with racial hierarchies. Because we live in a political world that is grounded, both historically and presently, in racial subordination and hierarchy, Mills argues:

Racism and racially structured discrimination have not been *deviations* from the norm; they have *been* the norm, not merely in the sense of de facto statistical distribution patterns, but . . . in the sense of being formally codified, written down and proclaimed *as such*. From this perspective, the Racial Contract has underwritten the social contract, so that duties, rights, and liberties have routinely been assigned on a racially differentiated basis. To understand the actual moral practice of past and present, one needs not merely the standard abstract discussions of, say, the conflicts in people’s consciences between self-interest and empathy with others but a frank appreciation of how *the Racial Contract creates a racialized moral psychology*. Whites will then act in racist ways *while* thinking of themselves as acting morally. In other words, *they will experience genuine cognitive difficulties* in recognizing certain behavior patterns *as*

---

74. See JOHN RAWLS, A THEORY OF JUSTICE 142–43 (1971).

racist, so that *quite apart from questions of motivation and bad faith they will be morally handicapped* simply from the conceptual point of view in seeing and doing the right thing.<sup>75</sup>

To open White interlocutors' eyes requires not only that they admit the ugly truth of the past and present but also that they "understand[] the ways in which these realities were made invisible, acceptable to the white population."<sup>76</sup> As a result:

[O]n matters related to race, the Racial Contract prescribes for its signatories *an inverted epistemology, an epistemology of ignorance, a particular pattern of localized and global cognitive dysfunctions* (which are psychologically and socially functional), producing the ironic outcome that whites will in general be unable to understand the world they themselves have made.<sup>77</sup>

Some other perceptive theorists of race describe racism in similar terms. Stuart Hall, for instance, links racism to the unconscious conditions for cognition, arguing that it begins as a "profound historical forgetfulness . . . the loss of historical memory, a kind of historical amnesia, a decisive mental repression."<sup>78</sup> Michael Rogin's concept of "political amnesia," by which he refers to a kind of "motivated disavowal" or "motivated forgetting" in which "that which is insistently represented becomes, by being normalized to invisibility, absent and disappeared," describes the same psychic, and thereby cognitive, phenomenon.<sup>79</sup> It disconnects current practices from historical roots and prepares political subjects (like our

---

75. MILLS, THE RACIAL CONTRACT, *supra* note 52 (emphasis added).

76. *Id.* at 92.

77. *Id.* at 18 (emphasis added).

78. STUART HALL, SELECTED POLITICAL WRITINGS: THE GREAT MOVING RIGHT SHOW AND OTHER ESSAYS 145 (2017).

79. Michael Rogin, "Make My Day!": *Spectacle As Amnesia in Imperial Politics*, 29 REPRESENTATIONS 99, 103–05 (1990).

hypothetical interlocutors) for integration within the established social formation. As with Mills's racial contract, political amnesia comprises a "cultural structure" that implicates everyone to some extent, "from those who want others to forget; to those who forgot; to those who, with varying degrees of willfulness, never allowed themselves to know."<sup>80</sup> In this text, Rogin explores the psychoanalytic dimensions of this phenomenon, noting how spectacle in particular facilitates political amnesia by replacing historical memory and enabling a harmless and passive release of the (only barely) repressed confrontation with racial domination and violence that has always pervaded American society.<sup>81</sup>

The farcical spectacles of the current neo-McCarthyite rush of governmental officials to sanitize the historical record of U.S. racism in schools and the public imagination,<sup>82</sup> or of municipal officials incanting about the important "heritage" that confederate monuments represent,<sup>83</sup> are noteworthy only for their clumsiness, not their aberrance, as examples of this widespread and entrenched American commitment to historical amnesia.

But our hypothetical consensus-oriented antiracist advocate might insist that the recovery of these historical memories is the entire point of the colloquy. After all, disparity data might have the potential to change the minds of the hypothetical interlocutors who, it is presumed, have full agency and capacity to do so. (Recall that we

---

80. *Id.* at 105.

81. *Id.* at 106–07.

82. *See, e.g.*, THE PRESIDENT'S ADVISORY 1776 COMM'N, THE 1776 REPORT 15, 31 (2021), <https://trumpwhitehouse.archives.gov/wp-content/uploads/2021/01/The-Presidents-Advisory-1776-Commission-Final-Report.pdf> (asserting that "America's nearly two-century effort to realize fully the principles of the Declaration [of Independence] had reached a culmination" in 1963 before the corrupting influence of "group rights" movements beginning in the late 1960s); Exec. Order No. 13,950, 85 Fed. Reg. 60,683 (Sept. 22, 2020) (decrying "destructive ideology . . . grounded in misrepresentations of our country's history," banning instruction of "divisive concepts" by federal agencies and contractors, and encouraging federal agencies to restrict research funding where funds will "promote divisive concepts"); H.B. 3979, 87th Leg., Reg. Sess. (Tex. 2021) (enacted legislation banning any state school instruction exploring that "slavery and racism are anything other than deviations from, betrayals of, or failures to live up to, the authentic founding principles of the United States").

83. *See, e.g.*, Donnell Suggs, *Heritage or Racism? Confederate Monument's Fate Divides Brunswick*, GPB NEWS, <https://www.gpb.org/news/2020/10/24/heritage-or-racism-confederate-monuments-fate-divides-brunswick> [<https://perma.cc/XNN7-U7XG>] (Oct. 25, 2020, 9:50 AM).

assumed earlier that they conceive of themselves as open in principle to being convinced about the need to remedy the gap between the ideal of equality and the disparate empirical realities). However, Mills invites us to consider the unconscious beliefs that operate at deeper cognitive levels.<sup>84</sup> He argues that the centrality of racial exploitation to the U.S. economy and the scale of the dimensions of the benefits accruing to White Americans render the topic of White racism “taboo, virtually undiscussed in the debates on justice of most white political theory.”<sup>85</sup> “If there is such a backlash against affirmative action,” he wonders, “what would the response be to the demand for the interest on the unpaid forty acres and a mule?”<sup>86</sup> The taboo conditioning disavowal of memory is reinforced ideologically through concepts such as “color-blindness” and “post-raciality.”<sup>87</sup>

The immediate object of his critique here is White-dominated political philosophy, but as noted earlier, the argument is also epistemological: “the concept is driving the perception, with whites aprioristically intent on denying what is before them.”<sup>88</sup> He writes further:

[W]hatever one’s larger meta-theoretical sympathies, whatever approach one thinks best for investigating these ideational matters, such concerns obviously need to be part of a social epistemology. . . . [I]n certain areas this conceptual apparatus is likely going to be negatively shaped and inflected in various ways by the biases of the ruling group(s). . . . Moreover, what cognitive psychology has revealed is that rather than continually challenging conceptual adequacy by the test of disconfirming empirical data, we tend to do the opposite—to interpret the data through the grid of the concepts in such a way that

---

84. See MILLS, *THE RACIAL CONTRACT*, *supra* note 52, at 93–95.

85. *Id.* at 39.

86. *Id.*

87. See MILLS, *BLACK RIGHTS/WHITE WRONGS*, *supra* note 52, at 63–64.

88. *Id.* at 63 (emphasis omitted).

seemingly disconfirming, or at least problematic, perceptions are filtered out or marginalized. In other words, one will tend to find the confirmation in the world whether it is there or not.<sup>89</sup>

Mills here draws our attention to research in cognitive psychology revealing the limited potential of disconfirming information to alter preconceptions,<sup>90</sup> but he also implicitly raises the more disturbing possibility that these hardwired cognitive limitations might crystallize into ontological facts—that is, they might become inscribed into the very social being for many Americans. Importantly, Mills is careful to specify that what he calls “white ignorance” is a tendential phenomenon, not a categorical one. He “locates white miscognition as a structural phenomenon rather than a matter of individual white myopias”; it is “the result (not unavoidably, but as a strong psychological tendency) of racial location” that causes “whites [to] *tend to* get certain kinds of things wrong.”<sup>91</sup> Furthermore, he clarifies that he is not suggesting that all White Americans operate in this epistemological fog, or for that matter that non-White Americans cannot also suffer from White ignorance.<sup>92</sup> As he uses it, the “White” descriptor captures the term’s hierarchical salience in racialized societies and does not purport to describe the cognitive or psychological attributes of any particular individuals within those societies.

Mills is an analytic political philosopher, and his critique of racial amnesia and White ignorance marshals concepts from that tradition, such as the social contract, epistemology, cognition, and ontology. In his 2015 book, *Beneath the Surface of White Supremacy: Denaturalizing U.S. Racisms Past and Present*, Moon-Kie Jung

---

89. *Id.* at 60–61.

90. *See, e.g.,* Lee Clarke, *The Disqualification Heuristic: When Do Organizations Misperceive Risk?*, 5 *RSCH. SOC. PROBS. & PUB. POL’Y* 289, 289 (1993).

91. MILLS, *BLACK RIGHTS/WHITE WRONGS*, *supra* note 52, at xvii (emphasis added).

92. *See id.* at 57 (“[T]he ‘white’ in ‘white ignorance’ does not mean that it has to be confined to white people. . . . Providing the causal route is appropriate, blacks can manifest white ignorance also.”).

makes a similarly significant contribution to the literature on the mnemonic effects of race ideology in the United States, but from the sociological rather than a philosophical perspective. In particular, Jung draws from the work of sociologists Pierre Bourdieu and William Sewell.<sup>93</sup>

Jung argues that race and racism in America should be thought of in terms of Sewell's notion of "social structures."<sup>94</sup> For Sewell, social structures refer to combinations of social *schema* and social *resources*. Schemas refer to the binary oppositions that make up a society's conceptual tools, along with the "various conventions, recipes, scenarios, principles of action, and habits of speech and gesture built up with these fundamental tools."<sup>95</sup> Resources, on the other hand, are the sources, material and immaterial, that "can be used to enhance or maintain power."<sup>96</sup> Though to widely varying degrees, structures tend to reproduce themselves because "resources are the effect of schemas, and schemas are the effects of resources. That is, schemas and resources are mutually sustaining."<sup>97</sup> In Sewell's formulation, social structures vary along two different dimensions: *depth* and *power*.<sup>98</sup> Most relevant for our purposes here is the notion of "deep structures,"<sup>99</sup> which refer to "schemas that can be shown to underlie ordinary or 'surface' structures, in the sense that the surface structures are a set of transformations of the deep

---

93. See generally MOON-KIE JUNG, BENEATH THE SURFACE OF WHITE SUPREMACY: DENATURALIZING U.S. RACISMS PAST AND PRESENT (2015).

94. *Id.* Of course, the concept of structure is one of the key concepts of modern social theory, from Marx to Bourdieu and Giddens. The point here is not that Sewell and Jung have invented a new metatheoretical concept but rather that their elaboration of the structure concept is especially illuminating in the study of American racism.

95. William H. Sewell, Jr., *A Theory of Structure: Duality, Agency, and Transformation*, 98 AM. J. SOCIO. 1, 7–8 (1992) (referring to schemas as the "semiotic" dimension of social life).

96. *Id.* at 9.

97. JUNG, *supra* note 93, at 26.

98. Sewell, *supra* note 95, at 22.

99. *Id.* Sewell's use of the term "power" is neither relevant for our purpose here, nor particularly illuminating because, on this latter score, the concept simply appears to refer to the degree of intensity of potential or actual recourse to resources, and because he also distractingly disregards the extensive Foucauldian elaboration of the relationship between power and knowledge (a category that itself overlaps with Sewell's "schemas"). *Id.*

structures.”<sup>100</sup> As such, these “deep structural schemas are also pervasive, in the sense that they are present in a relatively wide range of institutional spheres, practices, and discourses.”<sup>101</sup> Deep structural schemas also operate most forcefully on the unconscious, in the sense that they form part of the background, “taken-for-granted” presuppositions that actors apply in ordinary social life without taking account of them.<sup>102</sup> In Habermasian terms, they are the constituents of the lifeworld.<sup>103</sup>

Jung’s contribution to the analysis of American race amnesia begins with his contention that racism denominates deep Sewellian structures of domination based on the schema of race.<sup>104</sup> Racism, then, is the “vast web of unholy couplings,” practical articulations of these schemas and resource flows that instantiate racial domination, inequality, and hierarchy.<sup>105</sup> Jung specifies that the depth of this particular schematic technique—which, we will recall, refers to its durability and its susceptibility to naturalization, and the corresponding difficulty of “unthinking” it—is attributable to the protean capacity of its schemas of suitability/unsuitability and superiority/inferiority to reinvent themselves in historically specific contexts.<sup>106</sup> To study race in America, then, is to investigate the vast web of racialized schemas saturating the American experience across the entire range of social life, from healthcare to criminality and morbidity, from education to employment and then to unemployment, across family and church and sexuality and politics.

Jung contends that “most racist practices are enactments of tacit schemas: largely taken for granted, the operative schemas that are constitutive of utterances and other practices bypass, override, or

---

100. *Id.*

101. *Id.*

102. *See id.*

103. *See supra* text accompanying notes 41–44.

104. *See JUNG, supra* note 93, at 31–35. Jung defines “race” as the modern mode of differentiating categories of persons for political purposes, according to shifting conceptions of putative hereditary traits. *See id.* at 31.

105. *Id.* at 174.

106. *See id.* at 36.



influence, to varying degrees, conscious calculation and rationalization.”<sup>107</sup> Racism is enacted and inscribed in White ignorance, nourished more by these tacit schemas than by overt racist ideology or conscious practice: “What is continually underemphasized and misunderstood in the study of racism, and other forms of domination, is the dominant’s massive ignorance.”<sup>108</sup> But the ignorance Jung has in mind here is not the conscious refusal to learn or the naïve failure to have already learned, but an unconscious ignorance and acceptance of racially subordinating structures.

On this point, Jung relies on Pierre Bourdieu’s notion of *doxa*, which the latter uses to refer to the experience by which systems of classification and other beliefs, configurations, exclusions, practices, and conceptual frames secure tacit, unanimous, unconscious assent on the part of social actors—by which they, in a paradoxical formulation, “secur[e] the misrecognition, and hence the recognition, of the arbitrariness on which [those systems of classification] are based.”<sup>109</sup> This theme of disguised arbitrariness pervades Bourdieu’s work.

One of Bourdieu’s main themes was that tacit, taken-for-granted beliefs (the realm of the *doxa*) play a much bigger role than conscious decisions, much less inter-subjective discursive agreement, in explaining human behavior.<sup>110</sup> Of particular interest to both Bourdieu and this discussion is the “doxic submission which attaches us to the established order with all the ties of the unconscious,”<sup>111</sup> as

---

107. *Id.* at 40.

108. *Id.* at 41.

109. PIERRE BOURDIEU, *OUTLINE OF A THEORY OF PRACTICE* 164 (Richard Nice trans., 1977). Bourdieu’s use of *doxa* recalls Louis Althusser’s theorization of the *interpellative* function of ideology—that is, the phenomenon by which individuals are “always, already” called (or “interpellated”) into their subjectivity by rituals of ideological recognition. See LOUIS ALTHUSSER, *THE REPRODUCTION OF CAPITALISM: IDEOLOGY AND IDEOLOGICAL STATE APPARATUSES* 189 (G.M. Goshgarian trans., 2014).

110. See, e.g., PIERRE BOURDIEU & LOÏC J.D. WACQUANT, *AN INVITATION TO REFLEXIVE SOCIOLOGY* 25 (1992).

111. Pierre Bourdieu, *Rethinking the State: Genesis and Structure of the Bureaucratic Field*, 12 *SOC. THEORY* 1, 14 (1994).

well as the reproduction of hierarchical systems of domination that result, including those relating to race.<sup>112</sup> In terms that resonate with the earlier discussion of Hall, Rogin, and Mills,<sup>113</sup> Bourdieu describes how unconscious, doxic structures of thought impose a “genesis amnesia”—a “forgetting of history which history itself produces by incorporating the objective structures [of a society] in [our] second natures.”<sup>114</sup> Doxa describes how agents’ subjective aspirations tend to converge or become identical with the established order, naturalizing and disguising the ineradicable arbitrariness of the latter in the process.<sup>115</sup>

Wherever doxa operates, it exerts a *symbolic violence*, delimiting the range of possible actions, discourse, and outcomes for social actors, always in the context of a hierarchical dominant/dominated scheme.<sup>116</sup> Bourdieu illustrates the concept while analyzing some of James Baldwin’s reflections on the psychological experience of Black American youth apprehending, not yet consciously, the weight of American mid-twentieth century racism:

Symbolic violence is the coercion which is set up only through the consent that the dominated cannot fail to give to the dominator (and therefore to the domination) when their understanding of the situation and relation can only use instruments of knowledge that they have in common with the dominator, which, being merely the incorporated form of the structure of the relation of domination, make this relation appear as natural; or, in other words, when the schemes they implement in order to perceive and evaluate

---

112. BOURDIEU, *supra* note 109, at 183–97; *see also* TERRY EAGLETON, *IDEOLOGY: AN INTRODUCTION* 157 (new ed. 2007) (discussing importance of domination as a driving force in imposing doxic structures of belief).

113. *See supra* text accompanying notes 75–89.

114. BOURDIEU, *supra* note 109, at 78–79.

115. *See id.* at 164–68.

116. *See* Bourdieu, *supra* note 111, at 3–4 (noting how a social actor uses symbolic violence to “incarnate[] itself simultaneously in objectivity, in the form of specific organizational structures and mechanisms, and in subjectivity in the form of mental structures and categories of perception and thought”).

themselves or to perceive and evaluate the dominators (high/low, male/female, white/black, etc.) are the product of the incorporation of the (thus naturalized) classifications of which their social being is the product.<sup>117</sup>

On the other hand, those occupying privileged social positions internalize and reproduce the social structures (in the form of rationalizations, myths, and imagery) from which they benefit.<sup>118</sup> In the end, Bourdieu's social theory simply leaves comparatively little space for the sort of rationalistic, discursive resolution of disagreements, making the marshalling of disparity data to illuminate the radically disparate material experiences and opinions of Black people rather pointless.

Jung's important contribution is to apply the Bourdieusian concepts of doxa and symbolic violence to racism and white supremacy in the United States. He elaborates two complementary forms of symbolic violence in service of doxic ignorance, which he labels *symbolic coercion* and *symbolic perversity*.<sup>119</sup> Even if one can quibble with the somewhat opaque terminology, the concepts move beyond Bourdieu's basic schema in ways that advance analysis of race (and racial disparity) discourse. Importantly, the phenomena denoted by these concepts will handicap any efforts to use racial disparity data to achieve a rationalistic consensus on matters of race.

---

117. PIERRE BOURDIEU, PASCALIAN MEDITATIONS 170 (Richard Nice trans., Stanford Univ. Press 2000). Here, in 1997, Bourdieu is discussing Baldwin's famous 1962 essay, *The Fire Next Time*, which furnished the conceit (a letter to one's younger relative about the horrors of American racism) that Ta-Nehisi Coates more recently used in his acclaimed 2015 title *Between the World and Me*. Bourdieu published his first systematic formulation of the notions of symbolic power, doxa, habitus, and field in 1972 under the title *Outline of a Theory of Practice*. See generally BOURDIEU, *supra* note 109. In that book, he discussed social domination extensively, but without mentioning racial subordination, instead focusing on sex and class domination. *Id.* at 183. By the end of his career and life, he had obviously begun to appreciate how racial domination was a setting to which his concepts had direct application.

118. See ROGERS BRUBAKER, GROUNDS FOR DIFFERENCE 38 (2015) (discussing Bourdieu's concept of symbolic violence). This process, which involves members of dominant groups adjusting their expectations and aspirations to their opportunities and internalizing schemas of classification, perception, and evaluation that systematically valorize their own dominant positions, is a theoretical frame within which to situate much of the ubiquitous, but undertheorized, talk of "white privilege." *Id.*

119. See generally JUNG, *supra* note 93.

Symbolic coercion describes the phenomenon by which dominant actors are unable to consciously recognize arguments originating in dominated, subaltern classes and populations of society that seek to challenge deeply held, structural beliefs about hierarchy.<sup>120</sup> If symbolic violence generally designates the unconscious assent of both the dominant and the dominated to the established social order, symbolic *coercion*, according to Jung, denotes a specific context in which symbolic violence occurs: the “conscious disagreement of the dominated that goes unconsciously unrecognized by the dominant.”<sup>121</sup> The concept gives theoretical context to the frequent complaints of subordinated groups that they feel “voiceless” and “vulnerable” vis-à-vis dominant social strata distinguished by racial position or other possession of social or financial capital. Those populating subordinated social strata—which, in the United States, refers to poor Black and indigenous people more than anyone else—are not only subjected to arbitrary physical and economic violence, they are also subjected to the coercive symbolic violence that legitimates police brutality, social welfare retrenchment, public services divestment, discrimination in financial services, and unemployment—and everything else supported by ideological concepts ranging from “colorblindness” and “underclass culture”<sup>122</sup> to credit scoring and “broken windows” policing—by disregarding any critiques of those institutional forms.

Bourdieu anticipated Jung’s concept of symbolic coercion, albeit obliquely. He noted that if subaltern, heterodox groups seek to rupture matters of doxic consensus, they should expect that, in response to any success they have, the dominant relations will respond by converting one form of capital (financial, usually) into another form of capital (social, usually), through, for example,

---

120. *Id.*

121. *Id.* at 121.

122. On the underclass myth, see generally Adolph Reed, Jr., *The Underclass Myth*, in CLASS NOTES: POSING AS POLITICS AND OTHER THOUGHTS ON THE AMERICAN SCENE 93 (2000).

donations to foundations and research institutions.<sup>123</sup> Or they might determine, as Jamie Dimon did, that it is easier to just take a knee.<sup>124</sup>

Symbolic *perversity*, like symbolic coercion, refers to a type of ignorance on the part of dominant social actors, but here the discourse that is occluded is not that of the dominated, but that of the dominant themselves. Put in terms of race:

[T]he dominant, whether they be institutions or individuals, are typically well aware of many persistent racial inequalities, beyond those politicized and brought to their attention by subaltern discourses. The dominant possess discursive knowledge of the reality that certain racial [categories] of actors systematically fare worse than themselves and others. Much of this knowledge is produced by dominant institutions, like state agencies, research universities, and news media. Yet the dominant's consumption and circulation of this knowledge are censored and structured by an underlying racial logic that implicitly assumes radical difference between categories of people and renders the suffering of some incommensurable with and less worthy than the suffering of others. They can and do know about the suffering of their racial others, but this knowledge fails to register or matter . . . . *The effect of this knowing–unknowing is depraved indifference to racial inequalities—depraved for its knowingness but indifferent in usually unknowing, unreflective ways.*<sup>125</sup>

This *knowing–unknowing* echoes Bourdieu's description of the paradoxical nature of doxa: that it simultaneously secures the misrecognition, and hence the recognition, of the arbitrariness on which systems of classification, and therefore systems of domination,

---

123. See BOURDIEU, *supra* note 109, at 196–97.

124. See *supra* text accompanying note 26.

125. JUNG, *supra* note 93, at 143 (emphasis added).

rest.<sup>126</sup> Through the notions of symbolic coercion (with its focus on tacit nonrecognition of dominated discourse) and symbolic perversity (with its focus on tacit nonrecognition of discourse produced by dominant social actors), Jung explains how the established and dominant institutions of American society struggle to meaningfully redress racial disparity, even where those very same institutions are the sites of production for the evidence of disparity.<sup>127</sup> To be sure, Bourdieu and Jung are not making descriptive generalizations about the subjective intentions or cognitive capacities of individual people; instead, they are shedding light on the ways that individual agency and intentional action are unavoidably mediated by a classificatory, schematic social structure in which, as Jung documents, race plays an important organizing role.

These authors caution us against setting our expectations too high when it comes to using disparity discourse in conversations with dominant racial incumbents.<sup>128</sup> On the one hand, we might imagine that continuing to draw attention to historical and empirical data concerning racially disparate treatment and outcomes might change the doxa itself,<sup>129</sup> and thereby clear the way for transformed schema-resource combinations in matters related to race. In Mills's formulation, such a strategy naïvely ignores that White ignorance is *White* ignorance, a largely one-sided ignorance, the maintenance of which inures exclusively to the benefit of the dominant, ruling group.<sup>130</sup> Jung and Bourdieu are even more direct about the importance of dominant interests as creators of the established

---

126. *See id.*; *see also supra* text accompanying note 109.

127. JUNG, *supra* note 93, at 143.

128. *Id.*; MILLS, THE RACIAL CONTRACT, *supra* note 52, at 47.

129. Such a strategic orientation would resonate with Michael Hardt and Antonio Negri's theorization of the "multitude" that, by engaging in spontaneous micro-struggles, might catalyze new social subjectivities that can organize themselves effectively, create lasting institutions, and eventually transform social relations not predicated on dominance. *See* MICHAEL HARDT & ANTONIO NEGRI, ASSEMBLY 328 (2017) [hereinafter HARDT & NEGRI, ASSEMBLY]; MICHAEL HARDT & ANTONIO NEGRI, MULTITUDE: WAR AND DEMOCRACY IN THE AGE OF EMPIRE 66, 81 (2004) [hereinafter HARDT & NEGRI, MULTITUDE]. Hardt and Negri conceptualize mobilizations of the multitude as struggles against doxa, expressly invoking Bourdieu. *See* HARDT & NEGRI, ASSEMBLY, *supra*, at 258.

130. *See* MILLS, THE RACIAL CONTRACT, *supra* note 52, at 39–40.

common sense.<sup>131</sup> Doxa is not just a particular point of view; it is the point of view *of the dominant* that establishes itself as universal, legitimating the established social order.<sup>132</sup> Racial disparities are perceived by dominant racial groups to ratify the naturalized social order responsible for their creation and reproduction—hence Bourdieu’s concept of “genesis amnesia,” discussed above.<sup>133</sup>

On the other hand, we might imagine that shedding light on racial disparities will clear the way for rationalistic consensus among Black and White individuals. This second objective is, at first blush, more credible, and for that reason, its likely failure is more frustrating, even tragic. Even if the initial attempts to achieve rough consensus fall short because of Dawson’s point about the *present* lack of shared lifeworld consensus,<sup>134</sup> perhaps continued discursive engagement can forge lifeworld understandings on the basis of which future consensus might be achieved. The aim would be to disturb and expose the arbitrariness of the unconscious, doxic, amnesiac beliefs and schemas concerning superiority and inferiority that underwrite much of what passes for common sense on matters related to race, including the naturalization of disparate outcomes. Some antiracists hold out hope for such a mutual understanding in spite of the pervasive and deep dimensions of White collective forgetting.

For instance, Thomas McCarthy, a Habermasian critical theorist, has proposed a new “politics of memory” through a systematic dedication, including through reparations, to bridging the “peculiar gap” between historical scholarship and lay understanding of the significance of race in U.S. history as well as present reality.<sup>135</sup> However, Mills and Jung warn us not to underestimate the cognitive embeddedness of racial schemas reproduced by the doxa and its

---

131. See BOURDIEU, *supra* note 109, at 169.

132. See Bourdieu, *supra* note 111, at 15.

133. See *supra* text accompanying note 114.

134. See *supra* text accompanying note 51.

135. See Thomas McCarthy, *Vergangenheitsbewältigung in the USA: On the Politics of the Memory of Slavery*, 30 POL. THEORY 623, 624 (2002) (modeling his proposal on the German response to the Holocaust).

accompanying symbolic violence.<sup>136</sup> If they are even partially correct, many White Americans will (and do) struggle to understand the world their ancestors made and they themselves reproduce.<sup>137</sup> Perhaps, when it comes to matters of race, the real contribution of Habermas and the discourse theorists is not to provide us a practical roadmap for establishing a new, discursively grounded consensus on race and racism, but to implicitly demonstrate the wide, possibly unbridgeable gulf between extant psychological and imaginative capacities for many Americans and the real, solidaristic conditions of possibility for a political solution grounded in rational discourse.<sup>138</sup>

#### IV. SO, WHAT *SHOULD* WE DO WITH DISPARITY DISCOURSE?

If Mills and Jung are roughly correct in their diagnosis of the problem, then two things become clear. First, antiracist politics and practice, including discussion of racial disparities, should not be conceptualized predominantly, if at all, as a rationalistic project to convince White people of anything.<sup>139</sup> Devoting attentional and financial resources to organizing discursive spaces and exposing implicit biases will likely not be the most effective strategy for an emancipatory politics. Moreover, doing so risks cementing liberal ideological conceits that, for instance, conceptualize racism as an individual psychological demerit isolated from the dominant political economy and established social order.<sup>140</sup> Second, as a correlate, antiracists must search for a *new model* for oppositional politics, unanchored to rationalistic discourse theory. However, Mills and

---

136. See generally JUNG, *supra* note 93; MILLS, THE RACIAL CONTRACT, *supra* note 52.

137. See *supra* text accompanying note 77.

138. See *supra* text accompanying note 46 (discussing the importance of solidarity to discourse theory).

139. Of course, throughout history, some members of dominant groups have contributed to struggles of dominated groups. The point here is not about individual action as much as it is about the general orientation of political programs. See also text accompanying notes 91 and 92 (describing how Mills himself specifies that White ignorance is neither confined to White people nor meant to refer to all White people).

140. See *supra* text accompanying notes 60–66.



Jung only provide a few preliminary signposts for how to think about this project.

Mills and Jung (along with Bourdieu) are vulnerable to the critique that their theories suggest that racial domination has congealed into an ontological structure that deterministically forecloses any agency for those committed to extirpating race thinking.<sup>141</sup> To that extent, their perspectives might invite comparisons with Afropessimist accounts that see the dominant White society not so much as cognitively limited by its own self-imposed ideological apparatus as essentially and primally rooted in violence against and dehumanization of African-descended peoples.<sup>142</sup> Adolph Reed criticizes this position as an “idealist mystification that posits a primordial white racism or a transhistorical, reified White Supremacy capable of acting in the world.”<sup>143</sup> Ultimately, Jung and Mills might flirt with this sort of pessimism, but they distance themselves at the last instance.<sup>144</sup> Their important contribution to highlight the doxic (and toxic) structures of racism, as well as their cognitive and epistemological effects on White American, prompts a question they ultimately do not yet answer satisfactorily.

Since leveling his critique of the epistemology of White ignorance in *The Racial Contract*, Mills has more recently argued in *Black Rights/White Wrongs: The Critique of Racial Liberalism* that “[o]nly by starting to break these rules and meta-rules can we begin the long process that will lead back to the eventual overcoming of this white darkness and the achievement of an enlightenment that is genuinely

---

141. See generally JUNG, *supra* note 93; MILLS, *THE RACIAL CONTRACT*, *supra* note 52.

142. See FRANK B. WILDERSON III, *AFROPESSIMISM* 15 (2020) (“Blacks are not Human subjects, but are instead structurally inert props, implements for the execution of White and non-Black fantasies and sadomasochistic pleasures . . . .”); Frank Wilderson, III, *Gramsci’s Black Marx: Whither the Slave in Civil Society*, 9 *SOC. IDENTITIES* 225, 239 n.1 (2003) (arguing that the “constituent elements of civil society are . . . anti-black”).

143. Adolph Reed, Jr., *What Materialist Black Political History Actually Looks Like*, NONSITE.ORG (Jan. 8, 2019), <https://nonsite.org/what-materialist-black-political-history-actually-looks-like/> [<https://perma.cc/86BK-EQSE>]; see also Michael C. Dawson, *Hidden in Plain Sight: A Note on Legitimation Crises and the Racial Order*, 3 *CRITICAL HIST. STUD.* 143, 157–59 (2016) (criticizing Afropessimistic accounts that posit a reified white supremacy isolated from the evolving political economy).

144. See generally JUNG, *supra* note 93; MILLS, *THE RACIAL CONTRACT*, *supra* note 52.

multiracial.”<sup>145</sup> In that latter book, which in the main restates his “racial contract” thesis in the context of a broader critique of liberalism, he sketches out in the epilogue an undeveloped placeholder concept of *radical Black liberalism*.<sup>146</sup> This project, as he briefly describes it there, would synthesize Kant, Marx, and Du Bois in developing a notion of free development of individuals (Kant), unencumbered by capitalist exploitation (Marx), and emancipated from race thinking altogether (Du Bois).<sup>147</sup>

To be sure, he specifies that his radical Black liberalism is, as of now, just an outline, but in responding to a “Can this work?” query, he can only manage to say: “There are no guarantees, but then no other competing ideology can offer them either.”<sup>148</sup> All he can say, for now at least, is that radical Black liberalism is a materialist perspective that does not place its hopes for social transformation on moral suasion and rationalist discourse, but on the mobilization of group interests.<sup>149</sup> Mills, at least in this preliminary exposition of this new political concept, provides us little guidance about how to marshal disparity data and moral arguments to contribute to this broader materialist politics.<sup>150</sup> This is hardly surprising, given that so much of his argument concerns the ideological baggage obfuscating and conditioning the perception of interests, especially for White Americans. This political terrain—marrying a materialist, programmatic, and pragmatic commitment to movement building with an honest encounter with race thinking and racism—is a thorny nettle.<sup>151</sup>

Jung, for his part, is ultimately able to locate a historical subject in the struggle to achieve an emancipatory antiracism: people of color themselves. If racism is structural in the Bourdieusian/Sewellian

---

145. See MILLS, *BLACK RIGHTS/WHITE WRONGS*, *supra* note 52, at 71.

146. *See id.*

147. *See id.* at 203–04.

148. *Id.* at 206.

149. *See id.*

150. *See id.*

151. *See generally* KAREN E. FIELDS & BARBARA J. FIELDS, *RACECRAFT: THE SOUL OF INEQUALITY IN AMERICAN LIFE* (2014).

sense, then emancipatory politics must aim to disrupt that structure, and people of color are the only possible agent with the capacity to do so:

[A]ntiracism demands efforts to transform, more or less radically, the structure in question. At whatever scale, it is about disrupting racism's smooth reproduction, the routine articulation of its schemas and resources. Who is to perform such acts of subversion? If the distribution of critical knowledge is inversely related to hierarchies of power and the distribution of ignorance, as I contend, the struggle against white supremacy, as in the past, will be led by people of color. This is not to say that whites cannot and will not join the fight, but it is less likely. It is harder for them to access and accept critical knowledge that is, on the whole, foreign to or at odds with their habitus and even harder to put into practice . . . .<sup>152</sup>

In short, antiracists should not wait for an accumulation of epiphanic moments on the part of White Americans to disrupt the deep structure of racism in the United States. That much is, I think, inarguably true.

Still, his roadmap is no clearer than that of Mills, consisting of a few references to “disruptive, often unlawful, acts” and “acts of disobedience.”<sup>153</sup> He borrows from Asef Bayat's conceptualization of “social nonmovements” that, when met with repression, can turn into bona fide social movements.<sup>154</sup> The example from Bayat's book that he cites as an example of success in that arena—the 2006 “Gran Marcha” migrant protests—only underscores the need for a fuller

---

152. JUNG, *supra* note 93, at 177–78.

153. *Id.* at 178.

154. *See id.* at 179. On this point, Jung misses an opportunity to engage with Hardt and Negri's work on the emancipatory energy contained in the dispersed but coordinated networks of cooperative relationships that pervade contemporary social life. *See* HARDT & NEGRI, *ASSEMBLY*, *supra* note 129, at 21.

account of the agency of subordinated racial groups.<sup>155</sup> Although the protests were an impressive demonstration of solidarity and a call for action, at this conjuncture it seems an exaggeration to suggest that they contributed to a durable political movement up to the task of altering the structures that underwrite anti-immigrant racism in the United States.

In borrowing from Bourdieu, Jung makes himself susceptible to a frequent criticism of Bourdieu: that his contributions to social theory emphasize reproduction and continuity to such a degree that they fail to account for ruptures and creativity, and that his concepts of habitus, field, and doxa unduly constrict the space for political agency.<sup>156</sup> Although these criticisms of Bourdieu are contestable,<sup>157</sup> it is unsurprising that Jung, having leaned so heavily on Bourdieu, arguably finds himself in the same position.

Nevertheless, Jung's specification that people of color will lead the struggle against White supremacy is a helpful starting point to imagine a way forward. Dawson's survey research demonstrates a "substantial potential for mobilization to progressive causes within most black communities."<sup>158</sup> Much of his recent work documents how radical tendencies in Black politics became integrated into the existing social order, dissipating their once-powerful energies.<sup>159</sup> This story, as Dawson recounts it, is a complex one, involving the integration of many Black elites into the existing political and economic order, an uncritical and antidemocratic embrace of Maoism among radical contingents of 1960s and 1970s Black nationalists, consistent and pervasive anti-Black racism within putatively mass

---

155. See ASEF BAYAT, *LIFE AS POLITICS: HOW ORDINARY PEOPLE CHANGE THE MIDDLE EAST* 24–25 (2d ed. 2013).

156. See, e.g., David Swartz, *Pierre Bourdieu*, in *FIFTY KEY SOCIOLOGISTS: THE CONTEMPORARY THEORISTS* 39, 44–45 (John Scott ed., 2007); WILLIAM H. SEWELL, JR., *LOGICS OF HISTORY: SOCIAL THEORY AND SOCIAL TRANSFORMATION* 139 (2005).

157. See generally Johan Heilbron & George Steinmetz, *A Defense of Bourdieu*, 2 *CATALYST* 35 (2018); PIERRE BOURDIEU, *Social Scientists, Economic Science and the Social Movement*, in *ACTS OF RESISTANCE: AGAINST THE NEW MYTHS OF OUR TIME* 52 (Richard Nice trans., 1998) (demonstrating Bourdieu's firm political commitments and solidarity with social movements).

158. DAWSON, *supra* note 24, at 11.

159. *Id.*

leftist parties throughout the twentieth century, and the ravaging effects of deep poverty, unemployment, and precarity among large segments of the Black population during the neoliberal era.<sup>160</sup> The result is that today “blacks no longer have anywhere near the ideological resources they had during the last century for productive utopian thinking and debate.”<sup>161</sup>

However, Dawson also highlights the potential for disparity discourse to help galvanize a new radical, vanguard Black politics:

[T]he wide range of substantial racial and socioeconomic disparities still to be found in health care, crime and punishment, and a host of other areas of life . . . provide the foundation for the continuing radical edge to black public opinion. There is still a need for a militant wing of black politics to address these disadvantages, as it has become clear over the past three decades that those engaged in “mainstream” politics have proven insufficient to bring about the fundamental change needed to address these problems, and perhaps are uninterested in doing so.<sup>162</sup>

Nikhil Singh, in his 2004 book *Black Is a Country*, makes a similar call for redevelopment of the Black *subaltern counterpublic*.<sup>163</sup> Again, this project should not be primarily conceptualized as a rationalistic, discursive politics. To do so is to invite ineffectualness

---

160. See *id. passim*. See generally Michael Dawson, *3 of 10 Theses on Neoliberalism in the U.S. During the Early 21st Century*, 6 CARCERAL NOTEBOOKS 11 (2010).

161. DAWSON, *supra* note 24, at 186. Dawson described the Black political landscape in these terms in 2013, and it is fair to wonder if he would temper this assessment somewhat today, following the 2020 protests and the election of two Black socialists to Congress. See Maurice Isserman, *Congress Now Has More Socialists Than Ever Before in U.S. History*, IN THESE TIMES (Jan. 11, 2021), <https://inthesetimes.com/article/democratic-socialism-dsa-aoc-bernie-sanders-congress> [<https://perma.cc/6J4L-NN6H>] (reporting on the November 2020 elections of Congresspersons Cori Bush and Jamaal Bowman, both members of the Democratic Socialists of America); cf. FUTURES OF BLACK RADICALISM (Gaye Theresa Johnson & Alex Lubin eds., 2017) (collecting essays organized around the theme of renewed engagement with the history of Black radical movements and thought).

162. DAWSON, *supra* note 24, at 16.

163. SINGH, *supra* note 17, at 224.

and co-optation and, ultimately, to further cement the established order, including its racialized dominance hierarchies.

To be clear, the argument is hardly that we should reject discourse theory, much less Habermasian social theory. Instead, the argument is that its model of discursive rationality among coequal participants sharing a lifeworld and solidaristic relations is not the best political vector to proceed along in this domain. However, it will not do to simply reject discourse; we need to come up with something else.

#### V. CHANTAL MOUFFE'S "AGONISTIC PLURALISM" AS AN ALTERNATIVE TO DISCOURSE THEORY

Chantal Mouffe's theorization of politics as "agonistic pluralism"<sup>164</sup> provides a more promising framework within which to think about the ongoing efforts to build this vanguard radical Black politics. Her concept foregrounds inter-group, pluralistic struggle, and defines itself in large part against the rationalistic discourse theory of Habermas (Mouffe prefers the term "agonistic" over "antagonistic" because the latter, she argues, denotes a relationship between enemies, whereas the former denotes a relationship of adversaries or rivals for power desiring to organize their shared "symbolic space" in different ways).<sup>165</sup>

For Mouffe, political theory during the post-war period largely settled on an aggregative model of liberal democracy that grew out of liberal commitments to individualism and a strict conceptual divide between a private life where preferences were forged (in neighborhoods, churches, trade unions, families, fraternal organizations, and the like) and a public life where those preferences were weighed in the market for votes and policy.<sup>166</sup> Aggregative pluralist democracy's solution to the problem of social order and integration was to view public life, then, solely as a place of

---

164. See MOUFFE, *supra* note 44, at 80–107.

165. *Id.* at 13.

166. *Id.* at 81–83.

compromise among interest groups, deprived of any normative content.<sup>167</sup> Power differentials, including those residing along the deep social fault lines attributable to racism, dropped out of this picture altogether, except insofar as they expressed themselves in the struggle for political and economic power—as the result of “simple competition among interests taking place in a neutral terrain.”<sup>168</sup>

Theories of a deliberative, rationalistic, discursive model of liberal democracy—the most important of which were those of Habermas and Rawls—arose in response to the perceived failures of this aggregative model to establish a credible normative underpinning and to stabilize the economy and broader society.<sup>169</sup> These theories sought to imagine the conditions of possibility for a consensus that depended not on aggregating, via markets and brokerage politics, preferences formed antecedently in a purely private realm, but on deliberative forms of association predicated on equality rather than exclusion and power.

Mouffe shares the rationalist discourse theorists’ concern that the aggregative model mystifies and obscures questions of power, exclusion, and inequality. But to her, rationalistic social theory performs a similar move, hiding the irreducible dimension of antagonism inherent in human relations in an idealized concept of “discourse.”<sup>170</sup> Her agonistic model of politics centers around conflicts over power, rather than discourse:

---

167. *Id.* at 82. Mouffe assigns pride of place to Joseph Schumpeter and Anthony Downs, but other important figures include political pluralists like Robert Dahl, David Truman, Earl Latham, and Ted Lowi, as well as the “neopluralist” economists who formalized and translated the political pluralists’ insights into the language of economics, such as Gary Becker. For an overview of political pluralism, see Steven P. Croley, *Theories of Regulation: Incorporating the Administrative Process*, 98 COLUM. L. REV. 1, 31–32 (1998); and Robert B. Reich, *Public Administration and Public Deliberation: An Interpretive Essay*, 94 YALE L.J. 1617 (1985).

168. ERNESTO LACLAU & CHANTAL MOUFFE, *HEGEMONY AND SOCIALIST STRATEGY: TOWARDS A RADICAL DEMOCRATIC POLITICS*, at xvi (2d ed. 2001).

169. This is especially true of Habermas. One of his signal contributions to social theory in the 1970s was to show how the welfare statism that superintended this aggregative politics during the postwar period had entered a legitimation crisis as “new Keynesian” fantasies of state management of the economy for the benefit of all social classes collapsed. See generally JÜRGEN HABERMAS, *LEGITIMATION CRISIS* (Thomas McCarthy trans., 1975).

170. MOUFFE, *supra* note 44, at 101. To be fair, Habermas and Benhabib recognize that the “ideal speech situation” underlying their discourse theory of communicative rationality is a counterfactually

[A] non-exclusive public sphere of rational argument is a conceptual impossibility. Conflict and division . . . are neither disturbances that unfortunately cannot be eliminated nor empirical impediments that render impossible the full realization of a harmony that we cannot attain because we will never be able to leave our particularities completely aside in order to act in accordance with our rational self . . . . Indeed, we maintain that without conflict and division, a pluralist democratic politics would be impossible.<sup>171</sup>

In fact, any temporary semblance of consensus is the result of a provisional hegemony functioning to stabilize power relations. Although the terminology is different,<sup>172</sup> Mouffe's concept of hegemony is a close conceptual cognate of Bourdieu's doxa and symbolic violence.<sup>173</sup> "Social division," far from being able to be reined in by rationalistic politics, "is inherent in the possibility of politics, and . . . in the very possibility of democratic politics."<sup>174</sup> In contemporary liberal societies, there is always an "ineradicable pluralism of value," a basal antagonism that cannot be rationalized away through discourse or anything else.<sup>175</sup> And, importantly, "[n]o amount of dialogue and moral preaching will ever convince the ruling class to give up its power."<sup>176</sup>

If we accept that pluralistic power struggle, rather than discourse, is the substance of politics, then the main question is not how to eliminate power relations and exclusion through realization of

---

posited and idealized thought experiment that, although possessing normative force, does not refer to concrete societies situated in space, time, and history. See HABERMAS, *supra* note 43, at 323–24; BENHABIB, *supra* note 39, at 285–86.

171. LACLAU & MOUFFE, *supra* note 168, at xvii.

172. MOUFFE, *supra* note 44, at 21. Mouffe grows out of a Marxian tradition from which Bourdieu sought to distance himself. See Mathieu Hikaru Desan, *Bourdieu, Marx, and Capital: A Critique of the Extension Model*, 31 SOCIO. THEORY 318, 318 (2013).

173. See EAGLETON, *supra* note 112, at 158.

174. LACLAU & MOUFFE, *supra* note 168, at xiv.

175. MOUFFE, *supra* note 44, at 102; see also ERNESTO LACLAU, ON POPULIST REASON 169 (2005).

176. MOUFFE, *supra* note 44, at 15.



rational consensus, but how to constitute new forms of power that are more consistent with democratic values in a pluralistic world divided by class, race, and so forth.<sup>177</sup> Ultimately, the goal of politics is to *confront* and *convert*, not to *convince*.<sup>178</sup> The goal is to usher in a new hegemonic articulation that looks neither to preference aggregation nor to rationalistic discourse, but to a democratic logic based on a “chain of equivalence” that links together struggles against all forms of subordination and domination.<sup>179</sup>

In Mouffe’s estimation, inequality—that perennial preoccupation of left politics<sup>180</sup>—must be the backbone of an attempt to articulate and establish a new hegemonic phase of liberal democracy; further, it must take account of the multiplicity of social relations in which inequality requires a forceful challenge.<sup>181</sup> There is no more powerful primary material for this agonistic politics than the experience of real, material exclusion and subordination within a dominant social formation, which brings us to the present conjuncture of American politics.

Mouffe’s agonistic pluralism offers a much better chance than discourse theory to potentially destabilize the doxic consensus of the range of possibilities for organizing social relations, including those thematized around race.<sup>182</sup> But such a project must be ambitious; if we even partially accept the force of the arguments of Bourdieu,

---

177. *See id.* at 100.

178. *See id.* at 102.

179. LACLAU & MOUFFE, *supra* note 168, at xviii; *see also* PHILIP PETTIT, REPUBLICANISM: A THEORY OF FREEDOM AND GOVERNMENT 67 (1997) (asking “[h]ow might we enable a person who is danger of being dominated to achieve non-domination?”). This concept of the “chain of equivalence” complements Martha Fineman’s “vulnerability” theory. *See generally* Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 YALE J.L. & FEMINISM 1 (2008) (theorizing a new “vulnerable subject” concept, defined in relation to the universal and constant experience of human vulnerability, on which to build a new approach to social policy and law). Fineman’s vulnerability thesis could be thought of as a micro-foundation for Mouffe’s macro-theory of agonistic pluralism. *See id.*

180. *See* NORBERTO BOBBIO, LEFT AND RIGHT: THE SIGNIFICANCE OF A POLITICAL DISTINCTION 71 (Allan Cameron trans., 1996).

181. *See* MOUFFE, *supra* note 44, at 123.

182. *See* LACLAU & MOUFFE, *supra* note 168, at xi; Fuyuki Kurasawa, *An Alternative Transnational Public Sphere? On Anarchist Cosmopolitanism in Post-Westphalian Times*, in TRANSNATIONALIZING THE PUBLIC SPHERE 79, 93 (Kate Nash ed., 2014).

Jung, and Mills, any effort to denaturalize and demystify the social and psychological consciousness of race in America today will require the affirmative articulation of a new hegemonic vision.

In this connection, Stuart Hall made two observations in the late 1980s that today's antiracists and progressives would do well to remember: first, politics does not reflect majorities—it constructs them; and second, modern electorates do not think in terms of policies, but in terms of images.<sup>183</sup> Politics constructs majorities in a very precise manner, by bringing together multiple and heterogenous—Mouffe would say “agonistically plural”—groups, with different social positions and different material interests, to form a social bloc.<sup>184</sup> The social bloc that goes on to express itself electorally as a political majority—and hopefully through even stabler institutional forms that sustain the always provisional and partial unity of the bloc—is forged ideologically through its participants' adherence to a type of political imagery about the concept of citizenship—the type of person who is valued, the type of activities that are valued, and the type of politics that demands representation.

How can racial disparity discourse contribute to an agonistic politics focused on forming and solidifying a new solidaristic social bloc committed to democratizing social relations and eliminating subordination and exploitation on grounds of race and otherwise—a politics unfocused on, if not entirely indifferent to, the prospect of consensus with White Americans? What use is disparity discourse in a world where one of the main enemies is White supremacy, but convincing White people is not really on the table in any meaningful way? The house is offering low odds for a White law professor being the one to light the way, and I hardly aim to do so here. Nevertheless, in the following material, I offer some impressionistic suggestions

---

183. HALL, *supra* note 78, at 238, 246.

184. *See supra* text accompanying notes 164–179.

and recommended reading for those interested in the case for a new radical and agonistic politics of race.<sup>185</sup>

VI. ON THE “REAL UTOPIA” OF A REINVIGORATED, RADICAL, AND  
AGONISTIC BLACK POLITICS

If Dawson is correct about the latent potential of a reinvigorated, radical, Black political vanguard, then implications follow for the deployment of disparity data. As an initial matter, our expectations for disparity discourse will require us to be mindful of the audience. The political use of disparity data today appears to be largely predicated on an effort to convince White people (and other people situated in dominant social strata) of a reality that is, and always has been, manifestly before their eyes. In a world where the goal is to convince a White audience, it might make sense to marshal the disparity data to shed light on the lived reality that Black and White Americans tend to have different relationships to the concepts of opportunity, on the one hand, and depredation and precarity, on the other. The problem is, as Mills and Jung point out, shedding light only works if we can credibly expect the other person to see.<sup>186</sup>

On the other hand, if we conceive of the relevant task as the deployment of disparity data before a predominantly non-White audience to catalyze the development of the new radical politics that Dawson advocates, the implications change dramatically.<sup>187</sup> Black Americans already possess sophisticated and nuanced understandings of the pervasive racial disparities in most domains of contemporary American social life.<sup>188</sup> Consequently, the case for deploying disparity data in the context of a reinvigorated oppositional Black politics requires further specification. It becomes at first more opaque, but in clarifying it, we sharpen its political usefulness significantly. The point is not to ignore the serious problems of racial

---

185. *See infra* Part VI.

186. *See* JUNG, *supra* note 93, at 176.

187. DAWSON, *supra* note 24, at 204–06.

188. *See* Smith & King, *supra* note 12.

disparities but to actualize a politics that starts from the assumption that such pervasive disparities exist—indeed, that they are the primary motivation for that politics. It is important to focus on three such implications.

The first implication is straightforward and uncontroversial. In this context, disparity data can serve as agenda-setting signposts, directing attentional and financial resources to concrete political programs. To adapt Adorno’s maxim discussed earlier, the disparities testifying to the greatest “woe” should be the first to which attentional and material resources should “go.”<sup>189</sup>

Second, a radical, oppositional political program confronting racial disparities will focus more on articulating forceful public demands for institutional reform—prison and death penalty abolition, cessation of surveillance, an end to imperialist wars, greater democratic control of state provisioning at all levels of government, infrastructure investments, demilitarization of police, universal healthcare, job guarantees, reparations, and the like. Different organized collectivities with different degrees of militancy and different priorities will advocate for different goals, but the crucial point is that an agonistic, radical politics opens with a demand and an expectation, not an argument. As Mouffe phrases it, the aim is to confront and convert, not to convince.<sup>190</sup> Or, if the reader prefers Du Bois, it is not enough to simply *tell* people the truth; what is required is to *act* on the truth.<sup>191</sup> Of course, compromises and explanations are to be expected, but are not the focus or emphasis of such a politics.

The third implication is arguably the most important. By dispensing with the need to convince anyone that racial disparities are real social facts that require redress, a radical approach to disparity data can move on to the more important task of investigating, publicizing, and organizing around the political—

---

189. See *supra* text accompanying note 13 (discussing Adorno’s “[w]oe speaks: ‘[g]o’” quip in the context of racial disparity).

190. See *supra* text accompanying note 178.

191. See *supra* text accompanying note 2.

economic factors responsible for reproducing the disparities.<sup>192</sup> The word “radical” does not only mean “extreme”; it also means, true to its etymological Latin source *radix*, “of, relating to, or proceeding from a root.”<sup>193</sup> A politics deserves the name *radical* when it commits itself to uncovering the root causes of social problems in the neoliberal political economy, deracinating those root causes and rooting new institutions in their place. Robin Kelley describes just this sort of project: “We must go to the root—the historical, social, cultural, ideological, material, economic root—of oppression in order to understand its negation, the prospect of our liberation.”<sup>194</sup> A disparity is always the result of some network of underlying causes, and a radical approach to politics will aim to situate disparity data in the context of the ongoing evolution of regimes of hierarchy, rather than with metaphysical, hypostatized placeholder concepts like “systemic racism.”<sup>195</sup>

To be sure, *systemic* racism exists, but the term just describes the condition obtaining when a social system is characterized by a dense constellation of material disadvantages distributed according to ascriptive racial categories. The roots of these disadvantages must be identified and understood before any progress can be made in addressing them individually, let alone depriving them of their systemic prevalence. Furthermore, the roots of racial disparities intertwine with the social structures of race, class, and gender in logarithmically complex ways, complicating logarithmically the political task of remediation.<sup>196</sup> As critical Black studies scholar

---

192. See Charisse Burden-Stelly, *Why Claudia Jones Will Always Be More Relevant than Ta-Nehisi Coates*, BLACK AGENDA REP. (Sept. 20, 2017), <https://www.blackagendareport.com/why-claudia-jones-will-always-be-more-relevant-ta-nehisi-coates> [https://perma.cc/A3MR-SDC9].

193. *Radical*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/radical> [https://perma.cc/DXV7-BXXJ].

194. Robin D.G. Kelley, *Black Study, Black Struggle*, BOS. REV. (Mar. 7, 2016), <http://bostonreview.net/forum/robin-d-g-kelley-black-study-black-struggle> [https://perma.cc/76AR-4UPF].

195. See Reed, *supra* note 19, at 268.

196. CEDRIC JOHNSON, REVOLUTIONARIES TO RACE LEADERS: BLACK POWER AND THE MAKING OF AFRICAN AMERICAN POLITICS, at xxxix (2007); see also Lily Hu, *Race, Policing, and the Limits of Social Science*, BOS. REV. (May 6, 2021), <http://bostonreview.net/science-nature-race/lily-hu-race-policing-and-limits-social-science> (explaining how establishing causal inference in the context of social

Charisse Burden-Stelly puts it, in American history “antiblackness is inextricable from the suppression of labor, the deportation of ‘alien’ progressives, the incarceration of anti-capitalists, the indictment of communists and ‘fellow travelers,’ the censure of demands for fundamental redistribution, and the overall repression of the left.”<sup>197</sup>

In the face of this complexity, some political theorists, like Adolph Reed, would prefer to jettison racial disparity discourse altogether in an effort to foster cross-racial mass movement politics devoted to emancipatory political–economic transformation and organized around dinner table issues such as jobs, education, healthcare, and housing.<sup>198</sup> For Reed and his like-minded comrades,<sup>199</sup> the danger is that disparity discourse tends to elide the nuanced exploration of the historical and political–economic context of race and racism, focusing narrowly on the disparity itself. In the process, it frames social justice in terms of equal distributions of goods and bads in society, which in turn naturalizes the existing system of social relations and neutralizes the possibilities for radical political mobilization. Kelley recently captured this sentiment well, arguing that people do not want equality of opportunity in a burning house; they just want to build a new house.<sup>200</sup> They desire a liberatory egalitarianism, not a “brute egalitarianism” that “levels down.”<sup>201</sup>

So, for instance, a superficial political response to racial disparities in homeownership in the first decade of the 2000s channeled housing finance to Black households, a policy championed by the real estate finance complex that cashed in on fees before the crash caused a

---

science generally, and racial disparities in particular, is complicated by the reality that “empirical commitments are invariably entangled with normative ones, including commitments more typically thought of as ethical or political”).

197. Burden-Stelly, *supra* note 192.

198. See Adolph Reed, Jr. & Merlin Chowkwanyun, *Race, Class, Crisis: The Discourse of Racial Disparity and Its Analytical Discontents*, 48 *SOCIALIST REG.* 149, 167–69 (2012).

199. Here, I have Cedric Johnson, Barbara Fields, Karen Fields, Cornel West, and Lester Spence especially in mind, notwithstanding the important differences among their own perspectives.

200. See Kelley, *supra* note 194.

201. See MARIE GOTTSCHALK, *CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS* 6 (2015) (lamenting how punitive policies that initially targeted Black Americans are being applied to other subordinated groups in the United States, such as immigrants and poor Whites).

massive destruction of Black wealth.<sup>202</sup> A radical approach, focused on underlying causes and the broader political economy, would have been able to avoid the instrumentalization of the disparity data by the exploitative mortgage credit system and focus instead on the larger picture of income stagnation, welfare retrenchment, housing debt, and rampant financialization.<sup>203</sup> The remedy for exclusion should not be “predatory inclusion.”<sup>204</sup> Episodes like this reveal the dangers that attend superficial, potentially co-optative, uses of disparity discourse from which a radical approach, attuned to the political economy of race, needs to distinguish itself.<sup>205</sup>

Reed’s perspective is but one of many in a burgeoning “new literature on race and class”<sup>206</sup> that can breathe life into this new politics. Whether one agrees with him or whether one sees overt antiracist politics as mutually reinforcing with—and a necessary complement to—an agonistic class politics challenging the hegemonic neoliberal order,<sup>207</sup> all of the authors contributing to this burgeoning literature begin their analysis with a recognition of the reciprocal interpenetration of race and class, and invite us to shift the terms of the debates around racial disparities in a more radical direction.<sup>208</sup> They invite us to develop and disseminate what Angela Davis calls a new “public vocabulary” that explores the relationships between racial disparities and their historical and political-economic contexts.<sup>209</sup> The degree of diversity of perspectives on these issues

---

202. See MEHRSA BARADARAN, *THE COLOR OF MONEY: BLACK BANKS AND THE RACIAL WEALTH GAP* 257–61 (2017).

203. See Reed & Chowkwanyun, *supra* note 198.

204. See KEEANGA-YAMAHTTA TAYLOR, *RACE FOR PROFIT: HOW BANKS AND THE REAL ESTATE INDUSTRY UNDERMINED BLACK HOMEOWNERSHIP* 5 (2019).

205. See MILLS, *BLACK RIGHTS/WHITE WRONGS*, *supra* note 52, at 120.

206. DAVID ROEDIGER, *RACE, CLASS, AND MARXISM* 24 (2017).

207. Here, I have Michael Dawson, Keeanga-Yamahtta Taylor, Ruth Wilson Gilmore, Robin Kelley, Asad Haider, Charisse Burden-Stelly, David Roediger, and Nancy Fraser especially in mind, notwithstanding the important differences among their own perspectives.

208. See, e.g., NANCY FRASER & RAHEL JAEGGI, *CAPITALISM: A CONVERSATION IN CRITICAL THEORY* 210 (Brian Milstein ed., 2018) (distinguishing the posture of “progressive moralism” from a posture focused on the “fundamental structural bases of social oppression” that takes note of how racism is “deeply imbricated with class (and gender) domination”).

209. ANGELA Y. DAVIS, *THE MEANING OF FREEDOM AND OTHER DIFFICULT DIALOGUES* 173–74 (2018).

testifies to the importance of the theoretical terrain being disputed, as well as the potential political energy bursting at its seams. The Black Lives Matter movement in general,<sup>210</sup> and last summer's massive nationwide protests in particular, should prompt us to think about the connections between this theoretical work and what appears to be a palpable political rupture, or at least a potential opening for one.<sup>211</sup>

A final note is in order regarding the feasibility of a reinvigorated radical Black politics, as well as the concrete institutional payoff from engaging in it. One might sensibly object that such a politics will not, on its own, even come close to dislodging the doxic roots of racial hierarchies and White supremacy, much less establishing a new egalitarian hegemonic consensus against domination, subordination, and exploitation.<sup>212</sup> If this all sounds a little utopian, then it is striking the right chord. Dawson, for example, expressly frames his call for a new oppositional politics in terms of rediscovering the power of utopian thinking to motivate vanguard Black politics.<sup>213</sup>

Erik Olin Wright's notion of "real utopias" helps to concretize the practice of utopian thinking.<sup>214</sup> For Wright, real utopias are "utopian ideals that are grounded in the real potentials of humanity, utopian destinations that have accessible waystations, utopian designs of institutions that can inform our practical tasks of navigating a world of imperfect conditions for social change."<sup>215</sup> They are expressions of the belief that pragmatic possibility is fixed, at least in part, by the limits of our imagination. If nothing else, a reinvigorated Black radical politics could advance real utopian thinking and enlarge the horizon of the possible, a much-needed tonic to the resigned and

---

210. See *supra* text accompanying note 21.

211. See BOURDIEU, *supra* note 117, at 236 (discussing how transgressions of social frontiers, in enacting the unthinkable, have radical, liberatory power, especially during moments of uncertainty and crisis within the established order).

212. See KEEANGA-YAMAHTTA TAYLOR, FROM #BLACKLIVESMATTER TO BLACK LIBERATION 186 (2016).

213. See DAWSON *supra* note 24, at 175–210.

214. See ERIK OLIN WRIGHT, ENVISIONING REAL UTOPIAS 6 (2010).

215. *Id.* See generally RUTGER BREGMAN, UTOPIA FOR REALISTS (Elizabeth Manton trans., 2016) (discussing the importance of rediscovering utopian thinking); RUSSELL JACOBY, THE END OF UTOPIA: POLITICS AND CULTURE IN AN AGE OF APATHY (1999).



melancholic mood of a presentist left politics that struggles to imagine alternatives to the status quo.<sup>216</sup> Examples abound of vanguard movements shifting and shaping politics in moments of crisis, including radical Black politics during Reconstruction.<sup>217</sup> In any event, it taxes credulity to imagine that sticking with the status quo institutions and political arguments is *less* utopian and *more* realistic than a radicalized Black politics if we are measuring success against the end goal of reducing people's precarity, vulnerability, and disposability, particularly along racialized lines.<sup>218</sup>

Lastly, believing that disparity discourse is best deployed in an oppositional, agonistic Black politics does not mean that the politics takes place in a silo. Even if it does not primarily address itself to White Americans—even if it does not conceive of its primary task as one of convincing, eye-opening, implicit-debiasing, and the like—it still operates in an irreducibly pluralistic political universe. If we credit Mouffe's account of agonistic pluralism, then all politics becomes, at the most fundamental level, coalitional politics.<sup>219</sup> And to advance your group's contribution to an agonistic pluralist politics, your first task is to form your own coherent and focused group. The reference to a coherent and focused group is not meant to endorse the view that equates an ascriptive ethnic-racial identity with a natural political constituency;<sup>220</sup> to the contrary, the politics that is most

---

216. See Jon Bekken et al., *Democracy and the Left*, THE PLATYPUS AFFILIATED SOC'Y (Jun. 2019), <https://platypus1917.org/2019/06/01/democracy-and-the-left-4/> [https://perma.cc/R5B9-3PH2] (transcribing panel remarks discussing utopia and melancholy in left politics today).

217. See, e.g., Eric Foner, *Rights and the Constitution in Black Life During the Civil War and Reconstruction*, 74 J. AMER. HIST. 863, 868–69 (1987) (recounting how then-radical demands made by influential vanguard Black thought leaders for suffrage for freedmen, equality before the law, school desegregation, free public accommodation, and land reform influenced political discourse and achieved concrete reform during Reconstruction).

218. See Smith & King, *supra* note 12, at 32.

219. See Olúfémi O. Táíwò, *Being-in-the-Room Privilege: Elite Capture and Epistemic Deference*, THE PHILOSOPHER, <https://www.thephilosopher1923.org/essay-taiwo> [https://perma.cc/6RCE-DTZK]; Olúfémi O. Táíwò, *Identity Politics and Elite Capture*, BOS. REV. (May 7, 2020), <http://bostonreview.net/race/olufemi-o-taiwo-identity-politics-and-elite-capture> [https://perma.cc/GHZ4-7RMB].

220. Cedric Johnson, *The Panthers Can't Save Us Now*, CATALYST, <https://catalyst-journal.com/vol1/no1/panthers-cant-save-us-cedric-johnson> [https://perma.cc/7KMS-WVNS] (criticizing the “specious view that effective politics should be built on the grounds of ethnic affinity

interesting and promising draws on the ample Black radical tradition that has always operated, with intermittent fits and starts, as an “immanent critique of American claims to universality.”<sup>221</sup> In belying and demystifying the claims to universality of American institutions, it makes an overture to the other pluralistic groups—including immigrants, economically disadvantaged White Americans, and religious minorities—that occupy space on the “chain of equivalence” of subordinated social groups.<sup>222</sup> It also bears emphasis that the practice of exposing the arbitrariness of racialized hierarchies should facilitate the forging of solidaristic bonds across these marginalized groups. Indeed, it invites everyone to actively *achieve* the solidarity on which a new egalitarian hegemonic bloc could be built.<sup>223</sup> Paradoxically, building solidarity through primarily non-discursive political strategies in this manner might also build a firmer lifeworld consensus that could serve as the foundation for future discursive consensus concerning important political matters.<sup>224</sup>

The motif of a political vanguard coalescing around disadvantaged social strata has informed radical social and political theory for at least two generations,<sup>225</sup> in specific articulations such as “new social

---

rather than discrete political interests”).

221. SINGH, *supra* note 17.

222. See *supra* note 179 and accompanying text (discussing Mouffe and Laclau’s idea of the “chain of equivalence”).

223. See CHANDRA TALPADE MOHANTY, *FEMINISM WITHOUT BORDERS: DECOLONIZING THEORY, PRACTICING SOLIDARITY* 7 (2003).

224. See *supra* Parts II, III (explaining current ineffectualness of discursively-framed politics concerning racialized disparities in the United States).

225. Marcuse’s famous conclusion to *One-Dimensional Man* is one of the earliest expressions of this idea:

However, underneath the conservative popular base is the substratum of the outcasts and outsiders, the exploited and persecuted of other races and other colors, the unemployed and the unemployable. They exist outside the democratic process; their life is the most immediate and the most real need for ending intolerable conditions and institutions. Thus their opposition is revolutionary even if their consciousness is not. Their opposition hits the system from without and is therefore not deflected by the system; it is an elementary force which violates the rules of the game and, in doing so, reveals it as a rigged game. . . . The fact that they start refusing to play the game may be the fact which marks the beginning of the end of a period.

HERBERT MARCUSE, *ONE-DIMENSIONAL MAN* 260–61 (2d ed. 1991) (1965).

movements,”<sup>226</sup> “emergent cultural practices,”<sup>227</sup> and “the multitude,”<sup>228</sup> to name just a few. Perhaps the best illustration of the generative openness of the radical Black politics pertinent to this Essay is Richard Wright’s 1957 quip: “Isn’t it clear to you that the American Negro is the only group in our nation that consistently and passionately raises the question of freedom? The voice of the American Negro is rapidly becoming the most representative voice of America and of oppressed people anywhere in the world.”<sup>229</sup>

In closing, I want to return to Stuart Hall, who, as noted earlier, argued that modern politics is the art of developing a set of common, shared images that galvanize new hegemonic majorities, new social blocs of always changing interest groups.<sup>230</sup> The precise stock of images that a reinvigorated radical Black politics might summon is beyond the scope of this Essay, except that racial disparity data will probably have a moderate, but not a decisive, role to play in its development. I suspect that this new politics, conceiving of itself as an agonistic project making demands and largely eschewing attempts to change minds, offers a good, if not the best, chance to develop an ideological imaginary up to the task of undermining the arbitrary racialized disparities that pervade our present conjuncture.

---

226. CARL BOGGS, SOCIAL MOVEMENTS AND POLITICAL POWER: EMERGING FORMS OF RADICALISM IN THE WEST 11–12 (1986); LACLAU & MOUFFE, *supra* note 168, at 76–77.

227. WILLIAMS, *supra* note 73, at 46–51.

228. *See* HARDT & NEGRI, MULTITUDE, *supra* note 129, at 99–107, 217.

229. RICHARD WRIGHT, *The Literature of the Negro in the United States*, in *WHITE MAN, LISTEN!* (1964).

230. *See supra* text accompanying note 183.