

The “Racing” of American Society: Race Functioning as a Verb Before Signifying as a Noun

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Introduction

In *Racial Identity and the State: The Dilemmas of Classification*, Michael Omi identifies several problems that frustrate efforts to identify and understand race in a consistent and disciplined manner.¹ Omi references scientists' difficulties in confronting the issue of race as they attempt to use their ostensibly objective analytical framework to understand a concept which has no scientific reality, but which at the same time has a powerful social reality and is very instrumental in shaping our individual and collective identities.² Although perplexing at first blush, these difficulties in understanding race are not as problematic as they seem when one considers the multiplicity of truth: the reality that in one sphere—the social—race does not necessarily carry the same meaning as in another sphere—the scientific or biological. In fact, even within particular frameworks of analysis there are different paradigms of understanding.³ Once these premises are recognized, they provide meaningful insight into attempts to understand and address race and racism in our society.

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1. Michael Omi, *Racial Identity and the State: The Dilemmas of Classification*, 15 LAW & INEQ. J. 7, 14-21 (1997).

2. *Id.* at 21.

3. Comparing Newtonian and Einsteinian physics provides a notable example of coexisting paradigms of understanding. See generally THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* 6 (1962) (“Each [revolution in scientific thought] produced a consequent shift in the problems available for scientific scrutiny and in the standards by which the profession determined what would count as an admissible problem or as a legitimate problem-solution.”).

Recognizing that race is not a single, unitary concept, but rather one that mutates and adapts across socio-historical contexts and different life-spheres, aids efforts to address racism and racial hierarchy in our society. Although Omi focuses largely on describing race, the larger underlying objective is to understand and address racism. If we assert that race is problematic despite its varying manifestations, then it is clear we must focus not on race *per se* (indeed, there is no "race *per se*"), but rather on what is problematic about the ways in which race functions within these different contexts. The problem is that race is often used to create and maintain domination and hierarchy, yet how race is used to dominate and create hierarchy varies just as race itself varies. Recognizing the multiplicitous nature of race leads to the understanding that remedial efforts cannot adopt a one-dimensional framework, but instead must be adapted to the many contexts and manners in which race functions to dominate.

In part a reaction to Omi's comments and in part an expansion upon some of his assertions, this Essay will elucidate the notion of race as a social construct and address some of the implications this realization has for understanding and addressing issues of racism. Part I discusses the multiplicity of truth and argues that the attempt to understand race through so-called objective scientific analysis is a categorical error. Part II presents the distinction between race as a noun and race as a verb and describes the socially constructed nature of race in United States society. Part III discusses how the recognition that race is a social construct affects and informs efforts to address racism in our society. Ultimately, this essay concludes that understanding race as a social truth is useful for current efforts to eradicate racial inequality in spite of the fact that it raises important questions regarding the function of race in a just society.

I. The Multiplicity of Truth

The scientists' dilemma referenced by Omi is not surprising when we contrast prevailing notions of race with the role race plays in our everyday lives. Recent Supreme Court jurisprudence, for example, has adopted a color-blind imperative for evaluating race-based legislation and actions.⁴ The Court attempts to justify

4. See, e.g., *Bush v. Vera*, 116 S. Ct. 1891, 1899 (1996) (striking down racially motivated gerrymandering in Texas as unconstitutional); *Shaw v. Hunt*, 116 S. Ct. 1894, 1951 (1996) (holding that the creation of two North Carolina congressional districts based predominantly on racial classifications violates the Equal Protection Clause); *City of Richmond v. Croson*, 488 U.S. 469, 511 (1989) (invalidating a

this legal analysis with the conventional wisdom that race is reducible to physical characteristics,⁵ characteristics which ought to have no bearing upon official decisions. Regardless of how we feel about race as a physical reality, race plays an undeniably central role in our everyday understanding of and interaction with one another. The organization and structure of our social world make it clear that race orders and affects our real-life experiences, and to this extent race is far from reducible to mere physical features.

This seemingly self-contradictory nature of race disappears when we recognize the difference between scientific truth and experiential truth.⁶ As David Abram has pointed out, the Western liberal tradition's attempt to understand and order the world through objective criteria and classifications fails to grasp the multiplicity of truth:

[T]hese sciences consistently overlook our ordinary, everyday experience of the world around us. . . . The everyday world . . . is hardly the mathematically determined "object" toward which the sciences direct themselves. Despite all the mechanical artifacts that now surround us, the world in which we find ourselves before we set out to calculate and measure it is not an inert or mechanical object but a living field, an open and dynamic landscape subject to its own moods and metamorphoses.⁷

plan encouraging the use of minority businesses as an unconstitutional race-based classification).

This color-blind imperative is based on the flawed assumption that race and racial categories are the major problem. Therefore, the apparent effort is to make color irrelevant and to consider all racial recognitions suspect regardless of their intent or effect. But color-blind theory as it is practiced in our society is a form of racing that helps maintain and reinforce racial hierarchy. See *infra* notes 16-22 (discussing racing). Far from race neutral, color-blind theory further naturalizes the norm of Whiteness and White privilege without reference to race. See RUTH FRANKENBERG, *WHITE WOMEN, RACE MATTERS: THE SOCIAL CONSTRUCTION OF WHITENESS* 142-49 (1993); Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1346 (1988); john a. powell, *An Agenda for the Post-Civil Rights Era*, 29 U.S.F. L. REV. 889, 892 (1995).

5. See, e.g., *Croson*, 488 U.S. at 520 (Scalia, J., concurring) ("The difficulty of overcoming the effects of past discrimination is as nothing compared with the difficulty of eradicating from our society the source of those effects, which is the tendency—fatal to a Nation such as ours—to classify and judge men and women on the basis of their country of origin or *the color of their skin*.") (emphasis added). By equating the protected class of "race" with "the color of one's skin," Justice Scalia ignores the social aspects of race and has reduced race to a physical characteristic, skin color.

6. There are differences in truth not only between science and experience, but also within various paradigms of ordering science and experience. See generally KUHN, *supra* note 3 (discussing how individuals see different things in the same set of facts based on their relative paradigms).

7. DAVID ABRAM, *THE SPELL OF THE SENSUOUS: PERCEPTION AND LANGUAGE IN A MORE-THAN-HUMAN WORLD* 32 (1996).

It is this metamorphic realm of everyday experience in which race primarily operates. Thus, attempts to establish and define the total reality or unreality of race via quantitative scientific analysis will necessarily fail—race is an experiential truth and it is a categorical error to attempt to reduce the meanings and functions of race to scientifically verifiable measurements. Although not susceptible to quantified measurement, race nevertheless shapes our social world in the same real way that experience shapes our perceptions of self and reality.⁸ Once we understand the multiplicitous nature of truth, it becomes clear that the assertion that race is irrelevant because of its weak scientific basis is false.

Moreover, not only is truth multiplicitous, it is also relative. Because we perceive through a lens that is shaped by our individual and collective experiences, the science of humans is necessarily subjective; we can only understand "objects" to the extent that they are the "subjects" of our perception. Abram notes:

[T]he scientist never completely succeeds in making himself into a pure spectator of the world, for he cannot cease to live in the world as a human among other humans, . . . and his scientific concepts and theories necessarily borrow aspects of their character and texture from his untheorized, spontaneously lived experience.⁹

While one may argue that the role of subjective experience may be minimized in the context of measuring and understanding physical phenomena (e.g., the weight of an atom or the relationships between force, mass and acceleration), its role looms large in our attempts to understand those things, such as race, which are inextricably entwined with experience and which defy efforts at quantification. Increasingly, scientists recognize both this perception problem, which lies inside as well as outside of science, and post-modernism's assertion that reality is subjective.¹⁰ With respect to race, however, much of popular discourse has failed to apprehend this shift in scientific reasoning, and notions of scientific certainty continue to be used to draw inappropriate conclusions

8. The claim that there is no objective scientific basis for race can also be made regarding the self. Yet, as Katherine Ewing notes, the concept of a unitary self remains an important fiction. Katherine P. Ewing, *The Illusion of Wholeness: Culture, Self, and the Experience of Inconsistency*, 18 *ETHOS* 251, 258 (1990); see also THOMAS H. OGDEN, *THE SUBJECTS OF ANALYSIS* 25 (1994) (describing the "self as a theoretical construct" that is "indispensable in the description of aspects of the phenomenology of subjectivity").

9. ABRAM, *supra* note 7, at 33.

10. See generally KUHN *supra* note 3 (presenting and discussing the concept of a reality which is defined by and through different paradigms).

about race in the social and political sphere.¹¹ This is particularly problematic because the experiential and subjective realities of race have deep implications for efforts to understand race and racism in our society. Conversely, failing to recognize that race is a function, that "racing" is something we do to one another,¹² empowers uninformed, popular racial discourses by causing them to seem natural, or at least accurate.¹³

It must be emphasized that once we accept that race is a subjective reality, it does not follow that its significance exists solely on an individual and attitudinal level. Race is an example of what Abram describes as "*intersubjective* phenomena—phenomena experienced by a multiplicity of sensing subjects."¹⁴ Although we all have somewhat unique understandings of race, its collective significance causes race to function in ways that have profound structural significance for our society. Our understanding of race is influenced by our subjective perception of it, but we do not have the ability to de-signify race by our own volition. The reality and meaning of race are "buttressed by many involvements besides [our] own."¹⁵ Unlike a daydream, for example, which consists entirely of individual experiencing, race functions in collective ways that are not alterable solely through individual will.

II. Race as a Social Construct: The Verb "To Race"

Realizing that race is not simply an objective scientific truth, we must define race in a manner that accounts for its socially constructed, mutable nature. Michael Omi and Howard Winant have

11. Through the lens of scientific analysis, race constitutes nothing more than skin color and perhaps a few other physical characteristics. See generally RICHARD J. HERNSTEIN & CHARLES MURRAY, *THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE* (1994) (providing a stark example of the use of race and genetics to draw conclusions about intelligence and capability).

This scientific reality of race is commonly used to assert the irrelevance of race and the injustice of race remediation programs. See, e.g., Greg Lucas and Edward W. Lempinen, *State GOP Pulls King Ad But Not Blitz: Party Still Will Spend Millions to Push Prop.* 209, S.F. CHRON. Oct. 25, 1996, at A21 (describing the colorblind theorist practice of using Martin Luther King, Jr.'s *I Have a Dream* speech as a way of equating with its quantifiable aspects, i.e., skin color, and using that as the basis for asserting the unfairness of racial preferences).

12. For a more complete explanation of racing, see *infra* notes 16-22 and accompanying text.

13. See Martha R. Mahoney, *Segregation, Whiteness, and Transformation*, 143 U. PA. L. REV. 1659, 1661 (1995) ("Race derives much of its power from seeming to be a natural or biological phenomenon, or at the very least, a coherent social category.").

14. ABRAM, *supra* note 7, at 38.

15. *Id.*

referred to race as "a concept which signifies and symbolizes social conflicts and interests by referring to different types of human bodies."¹⁶ Similarly, David Theo Goldberg defines race as "the various designations of group differentiation invoked in the name of race throughout modernity."¹⁷

Both of these definitions provide key insights into the nature of race. These insights can be captured by understanding that race operates as a verb before it assumes significance as a noun.¹⁸ Before someone can be said to possess a racial characteristic or identity, there must first be a process of "racing" in which the attributes that differentiate racial classifications are designated and signified. Goldberg notes that "the concept of race enters European social consciousness more or less explicitly in the fifteenth century" despite the fact that Europeans had already had repeated contact with many of the groups that were to later be "racialized."¹⁹

Racing is largely a top-down process where the more powerful group first denudes the racial Other of its self-definition. This is often done by denying the racial Other its language and culture and then assigning a set of characteristics to this group that are beneath those of the more powerful group.²⁰ The dominant group

16. MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1990S*, 55 (2d ed. 1994) (emphasis omitted).

17. DAVID THEO GOLDBERG, *RACIST CULTURE: POLITICS AND THE POLITICS OF MEANING* 2 (1993).

18. Kendall Thomas has also made this insight in his work in critical race theory. See, e.g., Kendall Thomas, *The Eclipse of Reason: A Rhetorical Reading of Bowers v. Hardwick*, 79 VA. L. REV. 1805, 1806-07 (1993) ("[W]e are 'raced' through a constellation of practices that construct and control racial subjectivities.").

19. *Id.* at 21 (emphasis omitted).

20. See THEODORE W. ALLEN, *THE INVENTION OF THE WHITE RACE, VOLUME ONE: RACIAL OPPRESSION AND SOCIAL CONTROL* 31-38 (1994); DAVID ROEDIGER, *TOWARDS THE ABOLITION OF WHITENESS* 13 (1994). The dominant group is never completely dominant. The racial Other will try to resist the negation of its own self-definition and redefine some of the assigned traits and characteristics in a more favorable manner. There is ongoing contestation in the racing process. As Allen observes, "[t]he social death of the subjugated people is followed by social resurrection in new forms from which they take up the task of overthrowing racial oppression." ALLEN, *supra*, at 35. This social death is not always complete, and different groups are raced to different degrees depending upon such dynamics as power and the resolve of the racing group.

Because power is always fractured, there will be efforts (sometimes successful) to race the more dominant group. This work may be carried out by "race traitors," those interested in identifying and destabilizing the invisible privilege of the dominant group. See BELL HOOKS, *FEMINIST THEORY FROM MARGIN TO CENTER* 46 (1984); Peggy McIntosh, *White Privilege and Male Privilege: A Personal Account of Coming to See Correspondences Through Work in Women's Studies*, in *RACE*,

becomes the invisible norm by which all others are unfavorably measured. Omi and Winant refer to this racialization process as "racial formation," the "sociohistorical process by which racial categories are created, inhabited, transformed and destroyed."²¹ Because of its socially-constructed nature, the meaning attributed to a racially identified group or characteristic is contingent upon the socio-historical context in which the racing process occurs. Thus racial meaning varies across time and space: who is White, for example, and the implications of this signification differ across and within societies and historical periods.²²

Racialization in the United States

The shifting concepts of race in the history of the United States demonstrate the socially constructed nature of race and its socio-historical contingency. Despite its varying manifestations, however, the role or function of race in the United States has remained relatively constant. Groups of people have been "raced" as a mechanism for implementing and justifying domination and subjugation. The defining of racial categories in our society has concurred with the distribution of the right to participate in the body politic and access opportunity structures. Racial minorities have simultaneously been defined as the racial Other and denied the benefits of membership in American society. This concurrent racing and excluding has caused the adverse effects of exclusion to manifest along racial lines so that the White majority is then able to use these effects to justify the original definition and exclusion.²³ Thus, the history of America is replete with what Omi and

CLASS, AND GENDER: AN ANTHOLOGY 70, 81 (Margaret L. Andersen & Patricia Hill Collins eds., 1992); TONI MORRISON, *PLAYING IN THE DARK: WHITENESS AND THE LITERARY IMAGINATION* 6-9 (1992); David W. Stowe, *Uncolored People*, *LINGUA FRANCA*, Sept.-Oct. 1996, at 68, 74-75.

21. OMI & WINANT, *supra* note 16, at 55.

22. This insight applies not only to race, but also to gender, the self and even God. The way that we perceive all of these concepts is specific to the social and historical contexts in which we are situated. Late modern and postmodern thinkers usually argue that everything is socially constructed. See, e.g., McIntosh, *supra* note 20, at 77 (discussing the role of social creation in White and male privilege); see also *infra* note 84 and accompanying text. The problem with race, then, is not that it is socially constructed, but rather how and why it has been socially constructed.

23. Goldberg recognizes the insidious use of this inverted logic in popular explanations of racialized space in metropolitan America: "The poverty of the inner city infrastructure provides a racial sign of complex social disorders, of their manifestation when in fact it is their cause. . . . [I]dealized racial typifications [are] tied to notions of slumline, physical and ideological pollution of the body politic, sanitation and health syndromes, lawlessness, addiction, and prostitution." GOLDBERG, *supra* note 17, at 197-98; see also DERRICK BELL, *RACE, RACISM AND*

Winant refer to as "racial projects": "simultaneously an interpretation, representation, or explanation of racial dynamics, and an effort to reorganize and redistribute resources along particular racial lines."²⁴

An examination of the evolution of racial categories in the United States, and the significance attributed to these categories, demonstrates that race has primarily been a tool for maintaining White, European privilege. As Neil Gotanda points out, racial categories in colonial America prior to the establishment of the United States were largely derived from one's labor status.²⁵ Whereas status was originally categorized as free and unfree, or as English and un-English,²⁶ "[a]s slavery became entrenched as the primary source of agricultural labor, slaveholders developed a complementary ideological structure of racial categories that served to legitimate slavery."²⁷

Racial categories that seem natural and immutable today have actually evolved historically as various groups vied for inclusion in American society. A statement made by Benjamin Franklin while advocating for the continued racial purity of America exemplifies this seeming immutability:

[T]he Number of purely white People in the World is proportionally very small. All Africa is black or tawny. Asia chiefly tawny. America (exclusive of the new Comers) wholly so. And in Europe, the Spaniards, Italians, French, Russians and Swedes, are generally of what we call a swarthy Complexion; as are the Germans also, the Saxons only excepted, who with the English, make the principle Body of White People on the Face of the Earth.²⁸

AMERICAN LAW 806 (1992) ("If proponents of black rights point to the pressing need for more job opportunities for minority workers, the response is often that 'your people have no skills, no educational background, no experience.'"); John O. Calmore, *Racialized Space and the Culture of Segregation: "Hewing a Stone of Hope from a Mountain of Despair,"* 143 U. PA. L. REV. 1233, 1246-50 (1995) (discussing the racialization of the "undeserving poor," that is, those persons society views as somehow responsible for their poverty); Alex M. Johnson, Jr., *How Race and Poverty Intersect to Prevent Integration: Destabilizing Race as a Vehicle to Integrate Neighborhoods*, 143 U. PA. L. REV. 1595, 1601-02, 1602 n.19 (1995) (discussing how exclusion-driven poverty among Blacks perpetuates negative stereotypes); Mahoney, *supra* note 13, at 1661 ("[T]he construction of race in America today allows whiteness to remain a dominant background norm, associated with positive qualities, for white people and it allows unemployment and underemployment to seem like natural features of black communities.").

24. OMI & WINANT, *supra* note 16, at 56 (emphasis omitted).

25. Neil Gotanda, *A Critique of "Our Constitution is Color-Blind,"* 44 STAN. L. REV. 1, 32 (1991).

26. *Id.* at 33.

27. *Id.*

28. BELL, *supra* note 23, at 29 (citing Staughton Lynd, *Slavery and the Found-*

This statement is shocking, not only because Franklin was known as an ardent abolitionist,²⁹ but because it shows that many people who seem self-evidently White today have not always been viewed as such.

The metamorphic development of racial categories is more than just a curious historical footnote because who is considered White in America has always signified who is entitled to privilege. In this sense, the phrase "White privilege" is a redundancy—as David Roediger and others have pointed out, Whiteness has always signified worthiness, inclusion and acceptance.³⁰ The Supreme Court exemplified this principle in 1923 when it construed the Naturalization Act of 1790 in *United States v. Bhagat Singh Thind*.³¹ The Naturalization Act specified that only "free white persons" were eligible for citizenship and the benefits that accrued with it.³² Thind, an Asian Indian who was categorized as White (Caucasian) by contemporary ethnology, applied for citizenship and was declared ineligible by the Court.³³

In order to deny the privileges of citizenship to Thind, the Court construed Whiteness as encompassing the understanding of the "common man" who knew that Asian Indians were not *really* White; i.e., they were not functionally White, even though they may have been formally White.³⁴ The Court went on to reconcile its reliance on common understandings with the fact that prevailing notions of Whiteness had changed between 1790 and 1923 to include Eastern and Southern Europeans.³⁵ According to the

ing *Fathers*, in BLACK HISTORY 130 (M. Drimmer ed., 1968)).

29. See *id.* (noting that Franklin was at one time the president of the Pennsylvania Abolition Society).

30. See ROEDIGER, *supra* note 20, at 181-94. This assertion is verified by the law's treatment of Whiteness as an actual property right from which benefits accrued: "[I]n any mixed community, the reputation of belonging to the dominant race, in this instance the white race, is *property*, in the same sense that a right of action, or of inheritance, is property." *Plessy v. Ferguson*, 163 U.S. 537, 549 (1896), *overruled by* *Brown v. Board of Educ.*, 347 U.S. 483 (1954). See also Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709, 1758-59 (1993) (discussing the "material signific[n]ce" of Whiteness).

31. 261 U.S. 204 (1923).

32. *Id.* at 207. This Act was passed only a few months after the ratification of the Constitution, and every naturalization act from 1790 until 1952 included similar language restricting citizenship to Whites. IAN F. HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 42-43 (1996).

33. *Thind*, 261 U.S. at 215.

34. *Id.* at 209; see also ROEDIGER, *supra* note 20, at 182 ("[*Thind*] marked the culmination of a process by which the legal system . . . 'rejected science, history, legal precedent and logic to put the Constitution at the disposal of a legal fiction called 'the common man'—an invented figure who knew that Asian Indians were not white").

35. *Thind*, 261 U.S. at 213-14.

Court, these groups came to be considered White because, despite their "dark-eyed, swarthy" complexions, they "were received as unquestionably akin to those already here and readily amalgamated with them."³⁶ In other words, the Court conceded that common understandings of Whiteness are predicated upon common acceptance, or rejection, of demographic groups. Ironically, in the years following this decision, sixty-five Asian Indians had their citizenship revoked as their imposed racial identity shifted from White to non-White, and thus from American to non-American.³⁷

Another stark example of the manner in which racing is an ongoing process that changes racial categorization in order to ensure the proper distribution of privilege is the rule of hypodescent, whereby any fraction of "Black blood" renders an individual Black.³⁸ This method of classification was "the law's legitimation of the use of Blackwomen's bodies as a means of increasing property."³⁹ In other words, this rule was adopted because it allowed White slaveholders to increase the number of slaves they owned regardless of the patrilineage of newborn slaves. The fact that formerly the common law presumption was that a child's status was determined by the status of the father demonstrates that racial categories have constantly shifted in American society in order to maintain domination and enhance privilege.⁴⁰

The rule of the hypodescent led to the almost absurd case of Susie Guillory Phipps, referenced by Michael Omi, in which a forty-three-year-old functionally White woman sued the state of Louisiana when she discovered that she was formally Black.⁴¹ Comparing the cases of *Thind* and *Phipps*, we find an emphasis on domination that alternatively uses formal (hypodescent) or functional (the "common man's" understanding) classifications for distributing Whiteness.

36. *Id.* at 213.

37. ROEDIGER, *supra* note 20, at 182. Irish Catholics also found themselves, for a while, to occupy a position of ambiguous racial status. *Id.* at 184. During the period of rapid immigration in the mid-nineteenth century, the Irish were portrayed as "simian" and "savage," and there was speculation of Black ancestry in Irish blood. *Id.* What has distinguished the experience of Blacks from the Irish and Asian Indian (as well as Jews and Southern and Eastern Europeans), however, has been the persistence of their Other status, and the persistence of their exclusion from full societal participation. As Roediger notes, "[t]he duration of 'not-yet-whiteness' [for these groups], as measured against that of racial oppression in the U.S., was quite short." *Id.* at 185.

38. Omi, *supra* note 1, at 8.

39. Harris, *supra* note 30, at 1719 (footnote omitted).

40. *Id.*

41. Omi, *supra* note 1, at 7-10.

Just as the ways in which groups have been raced have mutated in order to enforce the White dominance imperative, so have the justifications supporting these identifications shifted in order to reconcile continued White domination with democratic egalitarianism. Initial efforts to justify slavery focused on religion and biology. The domination and exploitation of Blacks were justified on the ground that Blacks were heathens and less than human.⁴² As the sciences of eugenics and craniology have become discredited, however, the continued reconciliation of White privilege with democracy has taken different forms.

In our current era of de facto segregation and discrimination where White domination survives without the need for overt racial discrimination, Blacks' inferior social, economic and political status is justified by their supposed "culture of poverty."⁴³ Under this rubric, individual minorities congregate at the bottom of the social ladder not because of group-based discrimination or structural racism, but because they have each internalized cultural tenets which conflict with the societal norms of hard work and lawfulness that enable individuals to succeed in our society.⁴⁴ This dialogical shift away from overt racism demonstrates how the White dominance imperative "assumes transforming specificity and legitimacy by taking on as its own the connotations of prevailing scientific and social discourses."⁴⁵ In other words, as explicitly racist discourse has been discredited, a new discourse consistent with conventional understandings of race has emerged to maintain White supremacy. Many of the race-neutral terms that are popular in today's discourse have overtly racist historical underpinnings and practical racial implications. For example, terms like "individualism," "working class" and "equal opportunity" all harken back to explicitly racist exclusionary practices.⁴⁶

42. See Harris, *supra* note 30. at 1716-21. "[A]s the system of chattel slavery came under fire, it was rationalized by an ideology of race that [by regarding Blacks as heathen and savage] further differentiated between white and Black." *Id.* at 1717 n.25.

43. Calmore, *supra* note 23, at 1243-44.

44. As Calmore notes, this explanation is appealing to conservatives because it adopts their emphasis on individual autonomy. *Id.* at 1248-50. This focus absolves those who have "succeeded" in society of responsibility for those who have "failed" by severing any causal connection between successful Whites and unsuccessful Blacks.

45. GOLDBERG, *supra* note 17, at 4.

46. For a discussion of how the working class was racialized from the beginning to mean White, see DAVID ROEDIGER, *THE WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS* 19-21 (1991); see also GOLDBERG, *supra* note 17, at 16-20, 44, 113-14 (discussing the racist origins of the concepts of "individualism" and "equal opportunity").

The European definition and exaltation of the individual were adopted in part to distinguish White Europeans from African, Indian and other non-White peoples that organized their society around non-individualistic norms.⁴⁷ The construction of the individual, then, was neither natural nor race neutral, but was part of the racing process. Similarly, the concept of equal opportunity was used early in the Enlightenment project to mean that people had an equal opportunity (i.e., freedom) to become Christian—to adhere to the divine law of Christianity—and in doing so, gain inclusion into the polity.⁴⁸ Those who chose to reject Christianity—Muslims, pagans, and so on—violated this universal morality and were not deserving of inclusion. Again, we find an unquestioned, seemingly universal norm grounded in culturally specific norms that further the racializing process.

Today, instead of referring to minorities as inherently inferior and undeserving, we now define the undeserving poor (i.e., the underclass), by characteristics that are race-neutral in theory, but heavily racialized in practice.⁴⁹ As John Calmore notes, the traits that separate the deserving from the undeserving—criminal propensity, welfare dependency, employment status, etc.—are traits that are heavily racialized in our popular discourse.⁵⁰ Thus, when Ronald Reagan condemns the “Chicago welfare queen” as a societal pariah and George Bush uses Willie Horton to represent the depraved criminal,⁵¹ it is no coincidence that the images evoked are simultaneously abhorrent and Black.⁵²

47. GOLDBERG, *supra* note 17, at 44.

48. *Id.* at 16-17.

49. Conservative Charles Murray makes this deserving/undeserving dichotomy explicit:

I am referring symptomatically to the fellow who is not just temporarily unemployed, but can't manage to hold a job for more than a few days at a time, no matter what. I'm not referring to the woman who is without a husband and trying to raise a child on her own, but to the woman who is chronically dependent on welfare and also doesn't really pay a lot of attention to her child and doesn't pay a lot of attention to the people around her as neighbours.

Michael Keith & Malcolm Cross, *Racism and the Postmodern City*, in *RACISM, THE CITY AND THE STATE* 1, 12 (Malcolm Cross & Michael Keith eds., 1993) (quoting radio broadcasts in the summer of 1990 by Charles Murray).

50. Calmore, *supra* note 23, at 1247.

51. KENNETH O'REILLY, *NIXON'S PIANO: PRESIDENTS AND RACIAL POLITICS FROM WASHINGTON TO CLINTON* 360, 381-88 (1995)

52. As is the case with explicitly racist discourses, our current implicit racist discourse persists despite its failure to accurately describe reality. Thus Blacks, as well as other minority groups, are largely perceived as poor, criminal, unemployed, etc., despite the fact that, for example, in 1991 67.3% of Blacks did not live in poverty. Calmore, *supra* note 23, at 1247. To a certain extent, our implicit racist dis-

Segregation's racialization of space is a primary vehicle in maintaining the viability of this contemporary racial discourse. Martha Mahoney refers to segregation as "the product of notions of black inferiority and white superiority, manifested geographically through the exclusion of blacks from more privileged white neighborhoods and the concentration of blacks into subordinated neighborhoods stigmatized by both race and poverty."⁵³ The intersection of racial, social and economic isolation that segregation creates in America's central cities legitimizes culture of poverty theories by creating a location simultaneously identified by concentrations of minorities; social ills such as crime and welfare dependency; and economic deprivation as manifested by poverty, joblessness and structural deterioration.⁵⁴

What is ignored in this cultural analysis of the inner city, however, is the explicit role that the White majority and the government itself have played in creating and maintaining this racialized space, in creating a society where good neighborhoods are defined as White neighborhoods and in defining positive individual characteristics as White characteristics. White flight, the process whereby Whites abandoned central cities for the suburbs (and whereby metropolitan space became racially defined along the suburb-central city line), has been fueled by racist fears and facilitated by a host of government policies ranging from home mortgage financing⁵⁵ to highway and infrastructure construction.⁵⁶

course has mutated to accommodate such inconsistencies. Thus, popular discourse draws a distinction between Blacks in general and "middle class Blacks," and between Whites in general and "poor White trash." Middle class Blacks are perceived as somehow transcending Blackness by virtue of their socio-economic advances, and poor Whites are perceived as somehow less than White because of their failure to live up to the economic and cultural norms for Whiteness.

53. Mahoney, *supra* note 13, at 1659.

54. See *infra* notes 100-06 and accompanying text (highlighting the interrelated nature of racial subordination and "opportunity-enhancing indices"). This confluence of forces has led to a situation where, as of 1980, the ghetto poor was 65% Black, 22% Hispanic and only 13% Non-Hispanic White and other races. Paul A. Jargowsky & Mary Jo Bane, *Ghetto Poverty in the United States, 1970-1980*, in *THE URBAN UNDERCLASS* 235, 252 (Christopher Jencks & Paul E. Peterson eds., 1991).

55. The federal government established the Home Owners Loan Corporation (HOLC) in 1933 to refinance mortgages and provide low-interest loans to home owners victimized by the Great Depression. Michael H. Schill & Susan M. Wachter, *The Spatial Bias of Federal Housing Law and Policy: Concentrated Poverty in Urban America*, 143 U. PA. L. REV. 1285, 1308 (1995). The Federal Housing Administration (FHA) was established in 1934 with the aim of guaranteeing home loan mortgages. As of 1972, the FHA had insured 11 million home mortgage purchase loans and 22 million home improvement loans. *Id.* at 1309.

56. As of 1994, the federal government alone had spent \$123 billion on highway construction and billions more for infrastructure expansion and maintenance for suburban areas. DENNIS JUDD & TODD SWANSTROM, *CITY POLITICS: PRIVATE*

Furthermore, the Whiteness of this flight has been maintained by an endless array of tactics ranging from brutally violent responses to integrative efforts⁵⁷ to government-led redlining⁵⁸ and exclusionary zoning.⁵⁹ Thus our current racial discourse is preserved through the maintenance of racialized space as poor Blacks are concentrated in easily identifiable central locations, whereas poor Whites are dispersed among economically integrated White neighborhoods.⁶⁰

III. Addressing Racism in Light of Race as a Social Construct

As noted earlier, recognizing that race has no inherent meaning or validity does not deprive it of relevance in our society.⁶¹ Recognizing race as a social construct does, however, provide some insight into how to address racial issues. Because objects gain racial significance through social and historical processes, it is clear that the significance of racial classifications is neither given nor immutable. Racism necessarily carries with it a negative implication about the racial Other. Race need not and often does not carry such a connotation. Although race and racism are closely tied to each other historically, they are not coterminous.

POWER AND PUBLIC POLICY 180-81, 207-09, 392 (1994).

57. DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 30 (1993) (describing communal riots in northern cities between 1900-1920 in the wake of massive black migration).

58. Both the FHA and HOLC adopted the practice of redlining in the administration of their loans, whereby uniform appraisal standards were adopted that deemed integrated and predominately minority areas too risky for investment. *Id.* at 51. These governmental practices in turn influenced and legitimated redlining in the private lending industry and government officials were known to circulate their redlined maps to private lenders. *Id.* at 52.

59. State governments have delegated their zoning power to individual municipalities. In turn, these municipalities have exercised this zoning power to exclude poor minorities from their suburbs by zoning in ways that preclude the development of low- and moderate-income housing. Florence Wagman Roisman & Philip Tegeler, *Improving and Expanding Housing Opportunities for Poor People of Color: Recent Developments in Federal and State Courts*, 24 *CLEARINGHOUSE REV.* 312, 343 (1990).

60. As of 1980, 36% of poor Blacks lived in census tracts where 40% or more of the population was in poverty and an additional 27% of poor Blacks lived in tracts where 30-39% of the residents were in poverty. DAVID ELLWOOD, *POOR SUPPORT* 202 (1988). Conversely, only 8% of poor Whites lived in tracts where 40% or more of the residents were in poverty and another 9% lived in tracts of 30-39% poverty. *Id.*

61. One can question the importance of inherent meaning. For example, although many believe that the self lacks inherent meaning because its meaning is generated by reference to, and interaction with, external phenomena, none would suggest doing away with it.

Even though the racing project defines race, the raced group may appropriate and redefine terms as positive. For example, during the 1960s African Americans took the label "Black" and tried to recast it as a positive attribute. While the effort may not have been completely successful, it did change the way African Americans relate to the term.⁶² Thus, race can be a positive way in which people organize their identity.

Although race continues to operate in complicated and multiplicitous ways in society, it is racism and not race that is the heart of the problem. Efforts to address racism should therefore focus on the manner in which racialization processes create and maintain hierarchy, while seeking to destabilize and reverse them. In other words, we need to focus on the processes by which White is defined as good, hard-working and human, and by which Black is defined as lazy, unemployed, criminal and less-than-human. Thus, our efforts should be focused upon racing situations and mechanisms such as those policies and practices which racialize metropolitan space and distribute privilege accordingly.

Although focusing on racing and racial hierarchy rather than on racial categories per se is a necessary approach, its consequences are uncertain. The uncertainty of this process is only made worse by the movement toward "e-racing" society.⁶³ Indeed, as mentioned earlier, e-racing, as practiced by most color-blind advocates, is another form of racing. It is not necessarily problematic that groups identify and define themselves with racial categories.⁶⁴ Racing is problematic when it is imposed by others so that the raced group is stripped of its self-identity, and re-defined by the racer, but race itself does not entail subjugation. For example, when a group uses race to challenge racial hierarchy and subjugation, racial evasion or color-blindness then becomes a tool by the dominant to deny the challenging group an identity that might destabilize racism. In this sense, racing involves both assigning and depriving groups of racial identity.

62. OMI & WINANT, *supra* note 16, at 99-103.

63. Frankenberg refers to this color-blind impulse as "color evasiveness" or "power evasiveness," that is, the tendency of Whites, even when discussing race, to avoid power and hierarchy. FRANKENBERG, *supra* note 4, at 52.

64. Race, unlike culture, always entails a relationship to others, but this is not necessarily a dominant/dominated relationship. In the context of American race relations, this relational necessity of race is evidenced by the fact that "White/European self-constitution is . . . fundamentally tied to the process of discursive production of others, rather than preexisting that process." Ruth Frankenberg, *Whiteness and Americanness: Examining Constructions of Race, Culture, and Nation in White Women's Life Narratives*, in RACE 62, 63 (Steven Gregory & Roger Sanjek eds., 1994).

Furthermore, much of what is considered racially neutral from a color-blind perspective is merely Whiteness hiding behind the transparency that its power gives it.⁶⁵ What is called for then is not the e-racing of society, but instead the elucidation and destabilization of Whiteness. Thus, it is imperative that anti-racist efforts focus on those aspects of race that are most problematic and most abhorrent to our egalitarian ideals, namely racial domination and privilege.

The Uncertainty of Abolishing Racial Categories

A logical response to the notion that race has been socially constructed to create, maintain and justify White privilege is to say that we can and ought to do away with racial categories altogether. But, as suggested above, this response misunderstands the relationship between racism and race on one hand and the meaning of social construction on the other. While race undoubtedly continues to have meanings in our society, the relevant inquiries address how these meanings are obtained and what their relationships are to racism. At any given moment race has a number of different meanings, and these meanings often interact with each other in complex ways.⁶⁶

This interconnected relationship only touches upon the complexity of race. Race is not only an external trait that allows us to categorize each other, it is also an internal process that implicates our internal and external worlds. Even in our internal world race is multiplicitous, unstable and subject to change.⁶⁷ This is true largely because the self, organized around concepts such as race, gender and religion, is itself multiplicitous, dynamic and unstable.⁶⁸ In addition, race is relational. How one experiences one's racial self will vary depending on one's basis for comparison. Zora Neale Hurston captures this idea by describing the day she "became colored" the day she left her all-Black society for school: "It seemed that I had suffered a sea of change. I was not Zora of Orange County any more [sic], I was now a little colored girl."⁶⁹

65. See *id.* (articulating a relationship between power and the social constructions of race).

66. Neil Gotanda has identified some of the ways that race works across different categories. See Gotanda, *supra* note 25, at 3-5 (identifying four distinct uses of race in color-blind jurisprudence).

67. This insight was conveyed to me by Jonathan Levy, a former Jurisprudence student of mine who spoke of the tensions he experienced as an avowed anti-racist permeated by the racism of our society.

68. See Ewing, *supra* note 8, at 258-59.

69. ZORA NEALE HURSTON, *How It Feels to Be Colored Like Me*, in *I LOVE*

Even if we could eradicate racism in our society, it is not clear that race would cease to have meaning. The historical persistence of racism makes it difficult to envision a United States in which race has no meaning.⁷⁰ Racial definitions are so inextricably woven into the structure of our society that any efforts to eradicate them require fundamental shifts in social conception and organization. Goldberg notes that "[t]o change a discourse obviously requires much more fundamental shifts, shifts in whole ways of world making."⁷¹ Such a monumental reorientation is problematic because it necessarily entails the reformulation of "widely held beliefs, beliefs which moreover are central to everyone's identity and understanding of the social world."⁷²

Regardless of the origins of racial classification in the United States, racial definitions have taken various and changing, but central, roles in individual and group conceptions of identity. By its nature, identity needs to develop around things; there is no identity *qua* identity. Although racialization has operated as a mechanism of domination, notions of race as a social reality have developed in manners and directions not conceived or encouraged by the White majority. Thus, racial identification, although often thrust upon racial minorities, has developed in numerous positive directions. Gotanda refers to these positive aspects of racial identity as culture-race: the "broadly shared beliefs and social practices" that result from the common socio-historical experiences of a racially defined group.⁷³ Any efforts to de-racialize society run the risk of de-legitimizing culture-race and the identity of racialized minorities.⁷⁴

MYSELF WHEN I AM LAUGHING . . . AND THEN AGAIN WHEN I AM LOOKING MEAN AND IMPRESSIVE 152 (Alice Walker ed., 1979).

70. Genevieve Lloyd addresses the analogous problem of trying to imagine a world without sexism. See GENEVIEVE LLOYD, *MAN OF REASON: "MALE" AND "FEMALE" IN WESTERN PHILOSOPHY* 102-10 (1984) (discussing maleness as the historic and all-pervasive indicator of what is valued in Western society and its impact on femaleness).

71. GOLDBERG, *supra* note 17, at 10.

72. OMI & WINANT, *supra* note 16, at 55.

73. Gotanda, *supra* note 25, at 4.

74. This dilemma is an unavoidable result of the fact that, because race is a socially constructed multiplicitous concept, efforts to address racism are complicated by the myriad functions of race in our society. The manner in which race operates in cultural spheres, for example, is related but not identical to the manner in which race functions in spatial spheres. See, e.g., *infra* note 96 (discussing the spatial impact of race upon personal mobility); *infra* note 99 (likening the cultural role of the White perspective to that of a narrator invisibly guiding how the audience perceives the course of events); *infra* note 103 (pointing to the spatial impact of racial disparities in housing demographics); and *infra* notes 111-12 and accompanying text (discussing the direct cultural impact of race upon reputation and

Attempts to de-racialize American society are also problematic from a more pragmatic standpoint. Because racial projects continue to structure and organize society, denial of racial relevance without first addressing the structural centrality of race actually impedes efforts to address racial hierarchy. This dilemma is evidenced by the effects of the current vogue, the neoconservative theory of "color-blindness." Drawing upon race's lack of scientific truth, advocates of color-blindness assert that race is a morally irrelevant category which ought to play no role in decision making processes.⁷⁵ Instead, the color-blind theory asserts that the assignment of privileges and benefits ought to be based on individual merit as evidenced by indices such as education, performance on standardized tests and other indicators of capability.

The current political landscape provides ample evidence of how color-blind ideology is used to facilitate the continued subjugation of minorities and other traditionally excluded groups in the name of neutrality. In California for example, opponents of affirmative action employed color-blind theory to support the California Civil Rights Initiative (popularly known as "Proposition 209"), a constitutional amendment banning public-sector affirmative action programs.⁷⁶ Similar notions of neutrality have been employed in Colorado's use of "sexual orientation blindness" which is little more than a thinly veiled attack on remedial programs aimed at ending discrimination against homosexuals.⁷⁷ Indeed,

status).

75. GOLDBERG, *supra* note 17, at 7.

76. See Edward W. Lempinen, *Confusion on Affirmative Action Ban: Voters Seem Ambivalent Toward Ballot Initiative*, S.F. CHRON., Apr. 22, 1996, at A17 (asserting that for some, affirmative action has "evolved into a tangled web of preferences, a spoils system").

77. See Clarence Page, *Anti-gay Law Flies in the Face of the 14th Amendment*, CHI. TRIB., Oct. 11, 1995, at 19 (describing the statements of the executive director for the "Amendment 2" sponsoring group that claimed general support for "equal rights" but characterized equal rights for gays and lesbians as "special rights"); see also Jan Crawford Greenberg, *Court to Review Gay Rights Laws: Justices to Decide If Ballot Initiatives Deny Civil Liberties*, CHI. TRIB., Feb. 22, 1995, at 3 (discussing opponents' framing of the amendment as one "prohibiting new laws giving preferences on the basis of sexual orientation"). The amendment provided:

Neither the State of Colorado, through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities or school districts shall enact, adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of or entitle any person or class of persons to have or claim any minority status, quota preferences, protected status or claim or discrimination.

Romer v. Evans, 116 S. Ct. 1620, 1623 (1996) (discussing the origins and scope of the amendment before invalidating it as a violation of the Equal Protection Clause).

despite proponents of color-blindness' call for fairness and justice, one is hard pressed to find contemporary examples of color-blindness or neutrality being invoked for the benefit of the subjugated groups.

By fixating on the formal classifications of race rather than the functions of race, color-blind theorists fail to comprehend, or choose to ignore, the fact that access to opportunities in our society is very much conditioned on one's racial grouping.⁷⁸ Thus, this de-contextualized view of race portrays racial differences in the distribution of opportunities and benefits as either the aberrant result of irrational discriminatory individuals or as the result of individual failure on the part of minorities. In doing so, this mode of analysis actually serves the ends of racial domination because de facto racial segregation, our racial history and hierarchy are ignored, and race-based remedial efforts, such as affirmative action, are considered to be as irrationally tainted as programs and practices that maintain White privilege.⁷⁹

By construing formal recognitions of race as inherently suspect, color-blind theory also fails to consider positive aspects of racial identification. Shared socio-historical experience has led to the development of rich cultural traditions within racially identified groups. Color-blind theory, combined with majoritarian politics, fails to recognize that in a democratic society, all groups should have avenues for self-expression and all members of society should be exposed to one another's views and experiences. Thus, color-blind theory erroneously denounces the value of promoting diversity in educational environments⁸⁰ or giving minorities access to broadcast licenses.⁸¹

By fixating on race as scientifically invalid without questioning race as an experiential truth, color-blindness also exalts Whiteness to the level of a universal. It asserts that we live in a de-racialized society despite the fact that societal norms and concepts of Americanness have developed in almost exclusively White

78. See *infra* notes 100-06 and accompanying text

79. See, e.g., *Adarand Constructors v. Peña*, 115 S. Ct. 2097, 2117 (1995) (holding that all racial classifications by government actors must be reviewed under strict scrutiny, including affirmative action).

80. See, e.g., *Hopwood v. Texas*, 78 F.3d 932, 944-48 (5th Cir. 1996), *cert. denied*, 116 S. Ct. 2581 (1996) (striking down the University of Texas School of Law's affirmative action admissions program in spite of the school's assertion that it is pursuing diversity in education).

81. See, e.g., *Metro Broad. v. FCC*, 497 U.S. 547, 602 (1990) (O'Connor, J., dissenting) (arguing that equal protection mandates that our government treat citizens as individuals, not as components of classes).

political, social and cultural spheres.⁸² Thus when people are assessed according to so-called objective standards, they are in reality assessed by standards of Whiteness. In fact, the whole notion of addressing racism by de-racing or e-racing society, and instead focusing on people as individuals, is very much a White concept. It is the White Western liberal tradition which asserts that we are fundamentally atomistic and individual, and that we gain identity through ourselves.⁸³ This focus on the individual as the solution is then just another form of assimilation whereby we are assessed by the values of White culture, by our ability to achieve Whiteness.

Color-blind theory's failure to account for positive aspects of race results from its erroneous assumption that race is the same as racism. An equally flawed assumption of color-blind theory is that if something is socially constructed it can simply be willed away.⁸⁴ This fails to take seriously the postmodern claim that everything is socially constructed, that there is no "new" fact yet to be discovered.⁸⁵ While one may challenge the enormity of this claim, even the more modest assertion that much of what we take as fact derives its meaning from our language and social structure is sobering. If there is such a thing as scientific fact in opposition to social fact, it may be that the social fact is able to make at least as strong a claim on us because social truths have at least as much descriptive validity for the individual as scientific truths.⁸⁶ Although the way we think about race and the self will change as a result of psychological and cultural events, this change simply cannot be willed into existence.

82. See *infra* note 97-99 and accompanying text (discussing the definition of Americanness in terms of Whiteness).

83. See, e.g., JOHN RAWLS, A THEORY OF JUSTICE 3-6 (1971) (discussing how the concept of justice and the organization of society are developed through the interactions of "individuals" and "persons").

84. As several commentators have emphasized, "socially constructed" means "not individually constructed." See GOLDBERG, *supra* note 17, at 187-88; OMI & WINANT, *supra* note 16, at 55.

85. See RICHARD RORTY, CONTINGENCY, IRONY AND SOLIDARITY 86 (1989) (asserting that there is no context "that can do justice to all our opportunities of insight and association"); ROBERTO MANGABEIRA UNGER, PASSION: AN ESSAY ON PERSONALITY 7 (1984) (arguing that societies are bound together by common vocabularies and common hopes, not common philosophical principles).

86. See ABRAM, *supra* note 7, at 33 ("Even the most detached scientist must begin and end her study in this indeterminate field of experience, where shifts of climate or mood may alter his [sic] experiment or her interpretation of 'the data.'"); ROBERTO MANGABEIRA UNGER, KNOWLEDGE AND POLITICS 31-32 (1984) (explaining that there are no facts without theories).

Problems with Retaining 'Positive' Aspects of Race

Although attempting to do away with race entirely is problematic and potentially counter-productive,⁸⁷ some also view as problematic the fact that attempts to address racial hierarchy must necessarily affect current racial definitions and the relevance they hold for individual and collective identities.⁸⁸ Because of the centrality of race in ordering individual and collective experience, destabilizing race must entail the destabilization of our entire system of belief, a very uncertain and daunting task. This task is nevertheless a necessary one given that racial identities are, to some extent, products of common, racialized experiences, and thus products of White racial projects.⁸⁹

The celebration of an identity that is significantly defined and shaped by racist oppression without adopting, to some extent, the terms of the oppressor is a difficult, if not impossible, enterprise.⁹⁰ Omi and Winant assert that contemporary America is a racial hegemony in which White privilege is maintained by a combination of coercion and consent⁹¹—a consent obtained when the subject of

87. It is worth noting that whether color-blind advocates are sincerely interested in doing away with racial domination is highly debatable. In fact, many of the staunch proponents of doing away with race have very weak anti-racist stances. On the Supreme Court, for example, it is Justices Scalia and Thomas who most forcefully assert the importance of color-blindness while continually electing to uphold the interests of White supremacy. See, e.g., *R.A.V. v. City of St. Paul*, 505 U.S. 377, 395-96 (1992) (reflecting Justice Scalia's invalidation of an ordinance proscribing racist hate speech on the grounds that regulations of speech must be content neutral and thus color-blind). See also *supra* note 4 and accompanying text (discussing the significance of the color-blind imperative in recent Supreme Court jurisprudence).

88. Gotanda presents this view when he asserts that, from a jurisprudential standpoint, "[o]nly by treating culture-race as analytically distinct from other usages of race can one begin to address the link between the cultural practices of Blacks and the subordination of Blacks, elements that are, in fact, inseparable in the lived experience of race." Gotanda, *supra* note 25, at 56.

89. See *supra* notes 23-24 and accompanying text.

90. Goldberg articulately addresses the tension implicit in deriving identity from socially constructed Otherness:

[R]acial identity, even when externally ascribed, implies unity—at least conceptually. When this identity is internalized it prompts identification, a social sense of belonging together. It is then that racial differentiation begins to define otherness, and discrimination against the racially defined other becomes at once exclusion of the different. Since the seventeenth century elaboration of racial differences and identities has served as a leading mode of promoting exclusions and inclusions.

GOLDBERG, *supra* note 17, at 51-52 (footnote omitted) (emphasis omitted). As discussed earlier, current racial discourse continues to define and characterize Blackness and Whiteness in terms of inferiority and superiority. See *supra* notes 43-56 and accompanying text.

91. See OMI & WINANT, *supra* note 16, at 67 (defining hegemony as "the condi-

racialization adopts and internalizes the terms of racialized identity.⁹² Although this adoption is never complete, and the terms of racial discourse are often appropriated and transformed by the racialized Other, a failure to challenge the discourse itself enables this hegemony to persist. To effectively address racial hierarchy and domination, we must address racing as a hierarchical process despite the implications this has for racial identities and cultures.

The task of racial transformation and its effects warrant less cause for concern when we consider that ideas of race and racialized culture have shifted in the past and will continually shift in the future.⁹³ To treat Black culture, for example, as a static concept is to ignore the fact that race and culture, as social constructs, are in states of constant flux. Because there is no inherent essence to these notions—that is, because the notions of race and racialized culture are inextricably linked to socio-historical context—their meanings will necessarily change as the myriad contingencies of their existence change. Our goal in addressing racism, therefore, must be racial transformation focused on the number of different ways that race is used within specific contexts to create and maintain White privilege. By addressing how race functions to dominate, we will transform racial meanings without necessarily destroying racial identity. The result of this effort is uncertain, but no more uncertain than the future in general.

Addressing Whiteness as Privilege

The hazard of obsolescing minority cultures in an attempt to create an egalitarian society is not one that merits serious attention. Racing is so pervasive in the construction of our society that it is difficult to conceive of a time when notions of race will cease to have meaning. Rather than paralyze ourselves by attempting to understand or predict that which is uncertain, we instead need to focus our efforts upon addressing what it is about racing and racial discourse that most violates the ideals to which we aspire—namely race's function to dominate. I contend that, because privilege and exclusion have been structured around racially identified groups, we need to focus our efforts on understanding and challenging Whiteness as privilege.

tions necessary, in a given society, for the achievement and consolidation of rule," and extending and applying the concept to racial rule).

92. See *id.*

93. See *supra* notes 16-22 and accompanying text (discussing the process of racing and its relation to the creation of racial meaning over time).

Addressing racial hierarchy by focusing on Whiteness is a peculiar proposition in our society.⁹⁴ Although the negative implication of minority exclusion is majority inclusion, most people speak of racism in terms of the burdens that it places upon minorities, without recognizing the benefit it confers on Whites.⁹⁵ In fact, conventional wisdom seems to ignore that Whites and minorities both occupy racial categories, instead assuming that only minorities have a racial identity. Whiteness takes on the property of invisibility in the everyday experiences of Whites.⁹⁶ This is understandable given that throughout American history minorities have been excluded from those political, social and cultural institutions that define what is American. Consequently, American identity is defined as White,⁹⁷ and Whiteness is "a dominant background norm"⁹⁸ used to examine without being examined itself.⁹⁹ This in-

94. It is an approach, however, that has become increasingly prominent in the recent past. See ALLEN, *supra* note 20, at 27-28; FRANKENBERG, *supra* note 4, at 138; HANEY LÓPEZ, *supra* note 32, at 22; JANE LAZARRE, *BEYOND THE WHITENESS OF WHITENESS* (1996). The projects of these writers suggest that Whiteness may be losing its invisibility. They also indicate that as the critical race-making eye is turned toward Whites, Whites themselves may be the object of some racing.

95. A frequent occurrence of this characterization of racism as minority exclusion rather than majority inclusion in the use of the phrase "blacks are less likely than whites" to receive a particular social or economic benefit, rather than "whites are more likely than blacks." See, e.g., *Blacks Found Less Likely Than Whites to Be Promoted in the Military*, N.Y. TIMES, Nov. 22, 1995, at A20 ("[B]lacks are less likely to be promoted than their white counterparts").

96. Peggy McIntosh has described White privilege as "an invisible weightless knapsack of special provisions, assurances, tools, maps, guides, codebooks, passports, visas, clothes, compass, emergency gear, and blank checks." McIntosh, *supra* note 20, at 71.

97. See OMI & WINANT, *supra* note 16, at 66.

98. Mahoney, *supra* note 13, at 1661.

99. The invisibility of Whiteness in a White-dominated culture is similar to the invisible presence of the narrator in a story told from the third person point of view. The ever present subject (i.e., racer or author) has the power to name and define the object without ever calling explicit attention to his or her presence or perspective. Thus, this perspective becomes the unexamined discourse or framework by which objects are described and defined. See JOHN BERGER, *WAYS OF SEEING* 10 (1972) (making a similar observation with respect to photography) "Every image embodies a way of seeing. Even a photograph. For photographs are not, as often assumed, a mechanical record. Every time we look at a photograph, we are aware, however slightly, of the photographer selecting that sight from an infinity of other possible sights." *Id.*

Trinh T. Minh-ha has noted that how the Other, in this case the female writer, is colonized, and thus defined, when forced to use language that has developed within her male-dominated society:

She-her has always conveyed the idea of a personal and gender-specific voice. In order to be taken more seriously, she is therefore bound to dye this voice universal, a tint that can only be obtained through words like *man*, *mankind*, *he-him*. . . . Such a convenient way to generalize and to transcend the sex line. One must practice to forget oneself, she said.

visibility enables Whites to simultaneously recognize that minorities have been denied opportunities and resources, and assert that Whites have achieved their own societal status through personal merit. By failing to critically examine their identity and their status, Whites fail to comprehend that the denial of opportunities for minorities has led to increased access to these opportunities for the majority.

The privilege of Whiteness, however, is plainly visible to the critical eye. Whites, historically and contemporarily, have had and continue to have access to resources and other opportunity-creating structures at levels unknown to most minority groups. Comparing Black and White demographics for opportunity-enhancing indices, such as wealth,¹⁰⁰ homeownership,¹⁰¹ income¹⁰² and residential location¹⁰³ reveals sharp disparities. Moreover, these disparities are the direct result of racial subordination and discrimination,¹⁰⁴ and have a mutually reinforcing and perpetuat-

TRINH T. MINH-HA, *WOMAN, NATIVE, OTHER: WRITING, POSTCOLONIALITY AND FEMINISM* 27 (1989). Similarly, Frantz Fanon has noted how the colonial and non-colonial powers define Blacks as the objective Other. FRANTZ FANON, *THE WRETCHED OF THE EARTH* 250 (1963) (referring to colonialism as the "systematic negation of the other person and a furious determination to deny the other person all attributes of humanity").

100. The net worth of Blacks, measured in terms of home equity and financial assets, is on average \$43,143 less than that of Whites. MELVIN L. OLIVER & THOMAS M. SHAPIRO, *BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY* 8 (1995).

101. In 1989, 69.4% of White households owned their own homes as opposed to 43% of Black households. Wilhemina A. Leigh, *Home Ownership and Access to Credit* 11 (Dec. 3, 1993) (unpublished manuscript, on file with Institute on Race and Poverty, University of Minnesota Law School).

102. In 1984, 31% of Black families lived in poverty compared to 11% of White families and per capita Black family real income was only 57% of that for Whites. Norman Krumholz, *The Kerner Commission Twenty Years Later* in *THE METROPOLIS IN BLACK AND WHITE: PLACE, POWER AND POLARIZATION* 31 (George C. Galster & Edward W. Hill, eds., 1992).

103. Seventy-eight percent of the U.S. population resides in metropolitan areas with 67.8% of African American metropolitan residents living in central cities as opposed to 33% of White metropolitan residents. BUREAU OF THE CENSUS, *CURRENT POPULATION REP. SERIES P-60, NO. 175, POVERTY IN THE UNITED STATES: 1990*, at 77 (1990).

104. For example, the federal government's mortgage lending programs (the Home Owners Loan Corporation and the Fair Housing Administration) systematically redlined minority and racially mixed neighborhoods and refused to guarantee home mortgage loans within them. See *supra* notes 53-60 and accompanying text (discussing redlining and other White majority practices creating racialized space). The effect of redlining was to direct opportunities for home ownership to Whites and to the suburbs. See *id.* Private lending discrimination is also prevalent as is demonstrated by the fact that Blacks and Latinos are two to three times as likely to be rejected for mortgage loans as Whites. ALICIA H. MUNNELL ET AL., *MORTGAGE LENDING IN BOSTON: INTERPRETING HMDA DATA 1* (Fed. Reserve Bank of Boston Working Paper No. 92-7, 1992).

ing nature.¹⁰⁵ Thus, in our era of *de facto* racism, the ends of White domination are achievable without the previously necessary means of overt, *de jure* discrimination.¹⁰⁶

Cheryl Harris, among others, has insightfully observed that White privilege is akin to a property interest.¹⁰⁷ She asserts that:

property is a legal construct by which selected private interests are protected and upheld. . . .

. . . . When the law recognizes, either implicitly or explicitly, the settled expectations of whites built on the privileges and benefits produced by white supremacy, it acknowledges and reinforces a property interest in whiteness that reproduces Black subordination.¹⁰⁸

The characteristic of Whiteness thereby becomes a sort of reputational interest by which individuals are deemed to be deserving of certain opportunities and benefits.¹⁰⁹ This reputational interest in turn shapes individual identity and an individual's sense of worth and entitlement.¹¹⁰ The societally accepted value of Whiteness is evidenced by the fact that, until the mid-twentieth century, calling a White person Black was considered defamation: depriving a person of their Whiteness was depriving them of a legally protected interest in their reputation and status.¹¹¹ Not surprisingly, the laws did not recognize any harm in calling a Black person White.¹¹²

105. One's location within a metropolitan area determines access to job opportunities (most of which occur in the suburbs), educational systems, loans (central city neighborhoods are devalued and considered risky for home and business loans), and so on. See John A. Powell, *How Government Tax and Housing Policies Have Racially Segregated America*, in *TAXING AMERICA* 80, 80 (Karen B. Brown & Mary Louise Fellows eds., 1996). Income and wealth, determined by job status and access to lending institutions largely determine one's ability to choose residential location within metropolitan areas as suburban municipalities engage in exclusionary zoning practices that prohibit the development of low- and moderate-income housing. *Id.*

106. It is this recognition that makes the intentions of color-blind theorists so suspect and the effects of color-blind ideology so insidious.

107. See Harris, *supra* note 30, at 1714-15. See also ROEDIGER, *supra* note 20, at 181-94 (describing how various immigrants came to be viewed as White and consequently gained the right to naturalize, participate in popular politics and join the mainstream workforce); ALLEN, *supra* note 20, at 185 (noting that, for immigrants, Whiteness in America meant that "however lowly their social status might otherwise be they were endowed with all the immunities, rights and privileges of 'American whites'").

108. Harris, *supra* note 30, at 1730-31.

109. See *id.* at 1734.

110. Cf. *id.* at 1735-36 (discussing the manifestations of "[p]rivate identity based on racial hierarchy").

111. *Id.*

112. *Id.* at 1736. Harris tells the story of her light-skinned grandmother who

Accepting Whiteness as the American norm without addressing the underlying privilege that has conferred this status upon it is particularly problematic given our tradition of Western liberal thought. This tradition is premised on the notion of nature and experience as orderable and objectively knowable. When we deny the fact that individual experience is necessarily filtered through the subjective lens of perception, the power to define "objective" truth resides with those whose perceptions are valued and validated. Thus, in our society, the subjectivity of White Europeans, shaped by their perceptions, culture, norms, ideology, etc., has been exalted as objective and they have been empowered to determine what is normal and natural. Attempting to address racial hierarchy without addressing this backdrop of Whiteness achieves the "assimilationist ideal" while devaluing the positive aspects of race.¹¹³ Minority groups gain a semblance of equality, but on conditions that are predetermined by White majority society, and without a critical evaluation of what aspects of Whiteness are shaped by historical and contemporary racism. Furthermore, failing to address the privilege that has shaped Whites' settled expectations creates a sense of meritocracy in which the congestion of Whites in the upper ranks of society is seen as the result of individual effort and just deserts.

One example of how to address Whiteness and destabilize current racial discourse is by addressing metropolitan segregation. Segregation's racialization of space races individuals by defining Blackness as inner city, unemployed, criminal, etc., and defining Whiteness as suburban, employed, law-abiding, educated, etc. Addressing this racial discourse requires, as Martha Mahoney notes, "changing widespread patterns of residence and economic development and changing the social meanings attached to these patterns."¹¹⁴

Conclusion

Michael Omi's revelations regarding the incongruity of racial classifications in America provide useful insight and raise some very critical issues for those committed to pursuing racial democracy. Recognizing that race is a social construct is instructive for efforts to address racism. At the same time it serves as a reminder

was able to "pass" as White, and in doing so gain employment at a department store that excluded Blacks. *Id.* at 1710-12. This story demonstrates that calling a Black person White was more a conveyance of a property interest than a removal of one.

113. Gotanda, *supra* note 25, at 56.

114. Mahoney, *supra* note 13, at 1663.

of the complex and entrenched nature of the problems that we are confronting. If we are to use this recognition to our benefit, it is clear that we must not only deconstruct what it means for minorities to be racialized, but also what it means for Whites to be racialized. The exclusion of minorities, contemporarily and historically, from access to opportunities necessarily implies the over-inclusion of Whites and until we begin to address this basic truism, racial hierarchy will persist.

