



Dædalus

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Winter 2005

on race

Kenneth Prewitt	Racial classification in America 5
David A. Hollinger	One drop & one hate 18
Louis H. Pollak	From <i>Dred Scott</i> to <i>Grutter v. Bollinger</i> 29
Ian Haney López	Hispanics & the shrinking white majority 42
Kim M. Williams	Multiracialism & the future of civil rights 53
Victoria Hattam	Ethnicity & the American boundaries of race 61
Jennifer L. Hochschild	Looking ahead: racial trends in the U.S. 70
Melissa Nobles	The myth of Latin American multiracialism 82
George M. Fredrickson	Diverse republics: racial pluralism in France & the U.S. 88
Ian Hacking	Why race still matters 102

poetry

Rachel Hadas	Inspissation 117
--------------	------------------

fiction

Sigrid Nunez	The naked juror 118
--------------	---------------------

dialogue

Michel Foucault & Baqir Parham	on Marx, Islam, Christianity & revolution 126
-----------------------------------	-----------------------------------------------

notes

Shelley E. Taylor	on the psychology of healthy illusions 133
Philip L. Quinn	on religious diversity & tolerance 136





Saira Asim, 10
Pakistani/African-American



Katja Frazier, 13
Finnish/African-American



Amber Malia Smoot, 12
Japanese/African-American



Daniel Cohen-Cruz, 11
Russian-Polish Jewish/
Puerto Rican



Liza Garcia, 11
Colombian/Scottish/Irish



Laura Toyofuku-Aki, 10
Hawaiian/Chinese/Japanese



Gabriel Acosta-Cohen, 13
Dominican/Russian-Jewish



Lauren Otis, 11
African-American/
Pennsylvania Dutch



Carlos Barrera Jr., 11
Salvadoran/Guatemalan



Michi Osato, 9
Hungarian/Japanese



Ella Saunders-Crivello, 5
French Canadian/
Jamaican/Irish/Italian



Alicia Kaplan, 10
Dutch/Jamaican/Irish/African-
American/Russian-Jewish



Michael Daclan, 13
Filipino/Mexican



Paloma Hagedorn-Woo, 12
Chinese/American Indian/
Filipino/Scottish



Jamie MacLeish, 6
Chinese/Scottish



Amanda R. Swan, 10
African-American/
American Indian/Mexican

Inside front cover: Children identified by their ancestry, from a montage created by photographer Eve Fowler for *The New York Times Magazine*, September 29, 1996, to illustrate a story on multiracialism in America. See Kim M. Williams on *Multiracialism & the civil rights future*, pages 53 – 60: “It would seem that color blindness in theory bears little resemblance to multiracialism on the ground. . . . The challenge amidst growing racial diversity is to register the reach and durability of the racial divide, while at the same time, to accept that the meanings attached to race itself are changing.” Photographs reprinted with the permission of Eve Fowler.

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Dædalus

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The labyrinth designed by Daedalus for King Minos of Crete, on a silver tetradrachma from Cnossos, Crete, c. 350 – 300 B.C. (35 mm, Cabinet des Médailles, Bibliothèque National, Paris). “Such was the work, so intricate the place, / That scarce the workman all its turns cou’d trace; / And Daedalus was puzzled how to find / The secret ways of what himself design’d.” – Ovid, *Metamorphoses*, Book 8

Dædalus was founded in 1955 and established as a quarterly in 1958. The journal’s namesake was renowned in ancient Greece as an inventor, scientist, and unriddler of riddles. Its emblem, a maze seen from above, symbolizes the aspiration of its founders to “lift each of us above his cell in the labyrinth of learning in order that he may see the entire structure as if from above, where each separate part loses its comfortable separateness.”

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*Diverse republics: French & American responses to
racial pluralism*

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*Marx, Islam, Christianity & revolution: dialogue
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Kenneth Prewitt

Racial classification in America: where do we go from here?

In its first national census, the young American republic not only counted its population; it racially classified it.¹ From 1790 to 1990, the nation's demographic base changed from one decennial census to the next, and so too did the racial categories on offer. Always, however, the government held fast to two premises: First, it makes policy sense to put every American into one and only one of a limited number of discrete race groups, with the decennial census being the primary vehicle by which the counting and classifying should take place. Second, when policy treats Americans differently depending on what race they belong to,

it should make use of this government classification.

The second premise depends on the first. Without a limited number of bounded groups, it is difficult to fashion policy with race as a criterion. This is easily seen in comparison. Since 1790 there have been policies based on age – who can vote, own property, be drafted, buy alcohol, and claim social security. These policies use a small number of age groupings with fixed and knowable boundaries. Though policy can draw the age boundaries differently as conditions change (eligible to vote at eighteen rather than twenty-one) there is no dispute about who is in a given age group. Using race as a criterion to define groups was never this straightforward, a fact implic-

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¹ This essay has been prepared with support from the John D. and Catherine T. MacArthur Foundation, which provided a grant for a working group on issues of racial measurement and classification. The group includes six of the authors represented in this issue of *Dædalus* – Ian Haney López, Victoria Hattam, Jennifer Hochschild, David Hollinger, Melissa Nobles, and Kim Williams – all of whom critiqued this paper and, more generally, substantially shaped my thinking on the issues here discussed. Katherine Wallman and Susan Schechter, both of the Office of Management and Budget, commented on earlier versions of this essay, but have no responsibility for the recommendations advanced here.

itly acknowledged by the government as its census added and subtracted categories from one decennial to the next and as different federal agencies used different taxonomies.

Not until 1977 did the government bring order to the country's racial categories. Acting under the influence of civil rights legislation, the Office of Management and Budget (OMB) directed all federal agencies to follow uniform standards in collecting racial data.² This achievement was impressive but short-lived. Changing political considerations led to major revisions only two decades later, when the logic of identity politics, with its stress on diversity, began to destabilize the older and more deeply entrenched American division between white and nonwhite.

What do these developments mean for racial and ethnic divisions in America, both today and in the future?

In the context of census 2000, I witnessed the demographic changes and the associated political pressures that make it difficult to define and refine categories focused solely on redressing past injustices rooted in race – the policy purpose that emerged after the Civil Rights Act of 1964. In response to newer political pressures, the 2000 U.S. census was the first to permit respondents to record multiple racial origins. The 1997 revision of the OMB standards for racial classification allowed for “mark[ing] one or more” of the primary racial categories, leading to a census with sixty-three possible racial responses.³

2 Office of Management and Budget, Statistical Policy Directive No. 15, “Race and Ethnic Standards for Federal Statistics and Administrative Reporting,” May 12, 1977.

3 “Mark one or more” appeared on the census form and I use it here, but statisticians normally refer to “select one or more” to encompass phone and personal interviewing. As discussed

In substantial ways the “mark one or more” option was an improvement over previous census formats, especially in forcefully rejecting the hypodescent presumption.⁴ At issue in this essay is whether, this improvement notwithstanding, the country has the statistical tools it needs to detect – and enable the government to redress – discrimination.

So where should we go from here? To address that question, it will be useful to recall how the United States ended up with such a complicated set of racial and ethnic categories in the first place.

The public face of America's official racial classification is its census, and has been so since the first decennial enumeration in 1790. The initial classification was implicit in two civil status distinctions: free or slave, taxed or untaxed. Applying these distinctions in the census generated a count of three ancestry groups (European, African, and [untaxed] Native American), which set the foundation for all racial classifications to come. From that starting point, the division of the population by race has been repeated in every decennial census, down to the most recent in 2000.

Across two centuries, particular categories have come and gone in response to an ever-shifting mix of political, scientific, and demographic considerations. In 1820, the category “free colored persons” was added to the census. In 1850,

below, in “Revised Standards for Maintaining, Collecting and Presenting Federal Data on Race and Ethnicity” (October 30, 1997), the OMB designated five primary races: “American Indian/Alaskan Native,” “Asian,” “Black/African-American,” “Native Hawaiian / Pacific Islander,” and “White.” The Revised Standards also allow the decennial census form to include a “Some Other” option, which does not appear in other federal statistical surveys.

4 See David Hollinger in this issue.

influenced by a pseudo race-science, the census separately counted mulattoes, a category it retained until 1930. In 1870 Chinese were first counted, and in 1890, Japanese. In 1920 Filipinos, Koreans, and Hindus appeared on the census form. Following Hawaii's statehood, in 1960 Hawaiians were added, though Alaskan statehood did not result in an effort to specifically identify Aleuts and Eskimos for another twenty years. Subcontinent Indians were counted as Hindu in three censuses (1920 – 1940), but as white in the next three censuses. In 1980 they were counted as Asian, a status they retain today. Until 1930 when they got their own census category, Mexicans were counted as white. The government of Mexico contested that change, and Mexicans went back to being counted as white until 1970, when Hispanic origin became a separate category – this time defined in terms of language and ethnicity rather than race.⁵

In the OMB standards first issued in 1977, there were four primary racial groups: Asian or Pacific Islander, American Indian or Alaskan Native, Black, and White. These standards held that all federal statistics on race should, at minimum, include those four groups as well as one ethnic group, Hispanic, whose members would also belong to one of the four racial groups.⁶

What political and policy purposes lie behind this continual shifting of the race categories?

In 1790, slaves were included in the census count (the three-fifths clause) because slaveholding states had made

5 For an instructive overview of racial categories in the U.S. census, see Melissa Nobles, *Shades of Citizenship: Race and the Census in Modern Politics* (Stanford, Calif.: Stanford University Press, 2000).

6 For more detail, see Victoria Hattam and Ian Haney López in this issue.

this a nonnegotiable condition for joining the Union. The result was a power bonus for Southern states in the new Congress and in the Electoral College. This bonus, as John Quincy Adams put it, led to “the triumph of the South over the North – of the slave representation over the purely free.”⁷ The nation's first decision about how to classify the population racially had immense policy consequences that lasted well into the twentieth century.

Without discarding the three-fifths clause, a new era of racial classification began in 1820 when the “free colored” were counted separately from slaves and free whites. This modification allowed citizenship and related civil rights to hinge on color rather than on condition of servitude, a policy that heralded nearly a century and a half of race-based policies focused on making it difficult, if not impossible, for nonwhites to vote, own property, marry across racial lines, enter various professions, seek advanced education, or do much else.

Meanwhile, imperialism and immigration were radically transforming the nation's demographic base.⁸ Wars and the purchase of territory added Mexicans, Native Alaskans, Caribbean Islanders, and Hawaiians to the U.S. population. Permissive immigration policies supplied factory, farm, and mine workers from China, Japan, and eastern and southern Europe. The newcomers were grudgingly tolerated, and policies were

7 Cited in Gary Wills, “The Negro President,” *The New York Review of Books*, November 6, 2003, 45. This essay is drawn from Wills's “*Negro President*”: *Jefferson and the Slave Power* (New York: Houghton Mifflin, 2003), a book that develops the “slave power” argument in impressive detail.

8 Aristide Zolberg, *A Nation by Design* (Cambridge, Mass.: Harvard University Press, forthcoming).

designed to keep them in their place. The low point came in the 1920s, when the eugenics movement convinced the government to stop immigration of the racially undesirable. Census data were used to design the restrictive immigration laws.⁹

The long practice of applying racial and ethnic categories to policies of civic exclusion began to crumble with World War II, when members of every racial and ethnic group in America fought side by side to defend democracy. Remarkably, however, this monumental policy shift from exclusion to inclusion did not alter the two premises noted at the outset of this essay. Sorting the population into discrete racial groups to make policy still made sense – the trick was to turn the classification to the advantage of those minorities who previously had suffered from its imposition.

A key early step came in a 1947 report from President Truman's Committee on Civil Rights, which used statistics to compare health access and educational opportunities for whites and blacks, giving statistical underpinnings to the committee's broad argument that civil rights were being denied to blacks.

Across every sector of American life two political questions began to push forward: Which racial groups are underrepresented? Does underrepresentation point to discriminatory barriers targeted at racial, ethnic, or national origin groups?

When statistical proportionality came of age in the 1960s, a new policy era was born. Social justice policies formulated in response to statistical findings were widely accepted by the end of the 1960s, as the ideal of equal opportunity fueled a demand for more equal outcomes, and

as the negative goal of nondiscrimination turned into the proactive policy of redress that came to be called affirmative action.

Civil rights court cases were argued on the basis of racial differences in employment patterns, wage rates, college enrollments, and electoral outcomes. In a pivotal employment discrimination case, *Griggs v. Duke Power Co.* (1971), the Supreme Court reasoned that Title VII of the Civil Rights Act required the "removal of artificial, arbitrary, and unnecessary barriers to employment," and proscribed "practices that are fair in form, but discriminatory in operation." This reasoning shifted the emphasis in enforcement from individual motivation to statistically demonstrated consequences, from prejudice to institutional racism.¹⁰ Statistical disparity worked its way into policy and law.

Drawing on the categories employed in a 1950 government form, the Equal Employment Opportunity Commission (EEOC) in 1964 identified four minority groups: Negro, Spanish-American, American-Indian, and Asian.¹¹ The EEOC's record-keeping institutionalized the Civil Rights Act and in the process fixed in administrative practice a racial classification based on the four groups that had been most prominent in fighting racial discrimination for more than a century.

The 1970 census modified the EEOC classification by changing Spanish-American/Hispanic from a racial to an

10 Alan Freeman, "Antidiscrimination Law From 1954 to 1989: Uncertainty, Contradiction, Rationalization, Denial," reprinted in David Kairys, ed., *The Politics of Law: A Progressive Critique*, 3rd ed. (New York: Basic Books, 1989), 296.

11 John D. Skrentny, *The Minority Rights Revolution* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2002), 101–110.

9 Margo J. Anderson, *The American Census: A Social History* (New Haven, Conn.: Yale University Press, 1988), chap. 6.

ethnicity designation. This was formalized by OMB when, in the 1977 Standards, it directed that Hispanic be considered an ethnicity. Hispanics were also instructed to identify on the census with one of the primary race groups, now American Indian/Native Alaskan, Asian, black/Negro, and white. Other racial, ethnic, linguistic, descent, and national origin groups (for example, Korean, Haitian, Arab) would appear in official statistics only as subcategories of the primary races (in this example, Asian, black, and white, respectively).¹²

The classification adopted in 1977 and used in the 1980 and 1990 censuses seemed secure and capable of discharging its purposes in policy arenas. But by the middle of the 1990s, the political landscape was transformed by demographic changes, by the rise of multiculturalism, and by the multiracial movement. New political demands called into question the existing racial and ethnic categories – and also the public purposes they were thought to serve.

As noted above, the earlier OMB Standards linked Hawaiians and Pacific Islanders with the more general Asian race. The persistent Senator Daniel Akaka from Hawaii and the constituency he led saw matters otherwise. They felt the census should recognize Hawaiian and Pacific Islanders as a separate racial category. After the OMB held public hearings and examined research showing that Hawaiian and Pacific Islanders did differ from Asians more generally, it agreed to the separate category. This decision was in keeping with the rationale that classification should facilitate racially just policies. And so in the mid-1990s the official primary race groups went from four to five.

12 Congress has not involved itself in specifying America's race groups, preferring instead language such as "minorities historically dis-

The ease with which this change took place was consistent with the government's position that "classifications should not be interpreted as being scientific or anthropological in nature . . . They have been developed in response to needs expressed by both the executive branch and the Congress."¹³ In the absence of science, classification decisions respond to strong voices expressing themselves in the political process. Native Hawaiians, a population group that had suffered discrimination and had the (statistical) scars to prove it, became the latest of the nation's official races.

That being so, how can we decide on the 'proper' number of races? Is five the right number? Why not six or seven? And what is the right number of ethnic groups? Why only one?

Leading up to the 2000 census there was pressure to reclassify persons of Middle Eastern origin from white to their own primary race category. This effort was unsuccessful in part because the advocacy groups that engaged the issue could not agree on whether the category should be Middle Eastern, a geographic designation, or Arab American, an ethnoracial designation. (The post-9/11 treatment of Arab Americans has since led many to doubt the political

criminated against." The exception to this occurred in 1976, when Congress mandated that information on Hispanics, who were defined as an ethnic and not a racial group, be collected by government agencies in order to "assist state and federal governments, and private organizations in the accurate determination of the urgent and special needs of Americans of Spanish origin or descent" (Public Law 94-311).

13 From the 1977 Statistical Policy Directive No. 15, cited in the *Federal Register* 59 (110) (June 9, 1994): 29834. See also Katherine K. Wallman, "Data on Race and Ethnicity: Revising the Federal Standard," *The American Statistician* 52 (1) (February 1998): 31–33.

wisdom of a separate identification for this population group.)

Other advocates urged a different disaggregation of the white category, pointing out, for example, that Greek Americans and Anglo-Saxons did not belong in the same general category. The failure of various efforts (other than the Native Hawaiians / Pacific Islanders) to add to the primary racial classification can be traced to incoherent arguments, insufficient political muscle, and failure to statistically sustain claims of significant past and continuing discrimination.

In the future, however, if the advocates of such efforts make more compelling arguments and apply more muscle and more convincing data, on what grounds will the federal statistical system declare that enough is enough – that four was wrong, but five is right?

There is no science to turn to, and in its absence it is difficult to arrive at a public consensus on how many racial and ethnic groups there are in America. The edifice of racial and ethnic measurement that emerged from the civil rights period was, as social scientists like to say, undertheorized.

The increase in the number of primary racial groups in the United States by 20 percent in the 1990s went largely unnoticed because there was a noisier battle underway. The politics of affirmation marched into the middle of census taking, waving the multiracial banner. Those tidy discrete census categories, whatever their number, missed a huge sociological truth: sex occurs across as well as within racial groups. The census had recognized this 150 years ago when it first counted ‘mulattoes,’ and then, in 1890, when ‘quadroon’ and ‘octoroon’ briefly entered the measurement system in service of the policy argument that racial mixing diluted the mental and

moral fiber of the nation. Later the census put the “other” category into the race question in an effort to accommodate multiracialism. But by the 1990s, multiracial rhetoric was prominent in public life, and its advocates were pressing for an explicit recognition of multiracialism in federal statistics.¹⁴

It is telling that the advocates of multiracialism barely made reference to civil rights. Instead, they brought to the fore demands for affirmation, recognition, choice, and identity. In congressional testimony, Project Race held that “not all Americans fit neatly into one little box” and that it is only right that “multiracial children who wish to embrace all of their heritage should be allowed to do so.” The Association of MultiEthnic Americans, though recognizing that the multiple-race option would make it harder to enforce civil rights law, nevertheless insisted on “choice in the matter of who we are, just like any other community.” This testimony found it ironic that “our people are being asked to correct by virtue of how we define ourselves all of the past injustices of other groups of people.”

Of course, correcting past injustices was what the traditional civil rights organizations were all about: their mission was thus threatened by talk of choice and identity. Self-expression, they insisted, was not a good reason to revise the government’s scheme of racial and ethnic categories. In its testimony, the NAACP pointed out that the current racial classification was fashioned “to enhance the enforcement of anti-discrimination and civil rights law,” and the NAACP worried that “the creation of a multiracial classification might disaggregate the apparent numbers of members of discrete minority groups, diluting benefits to which they are entitled as a protected class under civil rights laws

14 See Kim Williams in this issue.

and under the Constitution itself.” The National Council of La Raza, the powerful Hispanic organization, weighed in. It acknowledged that though concerns about self-expression were understandable, the purpose of racial classification is “to enforce and implement the law, and to inform lawmakers about the distinct needs of special historically disadvantaged populations.”¹⁵

The issue was joined. What is the policy purpose of racial and ethnic classification – to express identity or to enforce antidiscrimination law? Perhaps reflecting the fading power of the civil rights arguments so compelling forty years earlier, “mark one or more” was introduced under the OMB’s revised standards to the racial classification system in time for the 2000 census.¹⁶

This 1997 decision put to rest the view that race is a bounded and durable trait. It challenged the basic premises of racial classification that had held sway in the United States for two centuries. And it explicitly introduced claims for expressive affirmation into ethnoracial classification.¹⁷ Though using the census to express identity was itself not new, officially accepting this as a rationale was.

15 “Federal Measures of Race and Ethnicity and the Implications for the 2000 Census: Hearings Before the Subcommittee on Government Management, Information, and Technology,” April 23, May 22, and July 25, 1997. Serial No. 105-57 (Washington, D.C.: U.S. Government Printing Office, 1998), 309, 324, 382, 286.

16 The multiple-race option was to have been in place across the federal agencies by January of 2003, but as of this writing many agencies, including the Department of Education and the EEOC, have yet to adopt the 1997 revised standards in their compliance reporting programs. In August of 2004, the government announced a further six-month delay before it could produce reporting guidelines for how agencies were to implement the 1997 standards.

17 For a broad review of the census and identity creation, see Naomi Mezey, “Erasure and

At the same time, “mark one or more” created a new – and not entirely stable – statistical reality. In census data, it allowed for fifty-seven multiple-race combinations that, when added to the six single-race answers (white, the four minority races, and other), generated sixty-three possible racial identifications. Because for most purposes this classification is cross-tabulated by Hispanic/non-Hispanic, there are 126 ethnoracial groups in the 2000 decennial census data.¹⁸

The number of categories could be expanded still further. If a future census were to allow for mixed Hispanic/non-Hispanic descent (if in the census you can have a black mother and an Asian father, why not a Hispanic mother and a non-Hispanic father?) the number of ethnoracial groupings would jump from 126 to 189.

Even at the more modest 2000 level of 126 ethnoracial groups, we now know the “mark one or more” census statistics have a reliability problem; often the same individual will give different answers at different times. This problem was demonstrated when answers to the race question in the 2000 census were matched by household with answers in a follow-up quality survey a year later. Although the overall proportion giving a multiple-race answer was reasonably constant, the internal shifting was unexpectedly high. Forty percent of those who gave multiple-race responses changed their minds by the time of the follow-up survey. And many who gave

Recognition: The Census, Race, and the National Imagination,” *Northwestern University Law Review* 97 (4) (2003): 1701–1768.

18 Only the census is large enough to accommodate all these categories. Other government surveys – even the Current Population Survey, the largest among them – cannot provide detailed racial breakdowns.

single-race answers in the census declared a multiple-race identification in the follow-up survey. For example, nearly half (45 percent) of the single-race Hawaiian/Pacific Islanders in the census reported in the survey that they were really more than one race after all.¹⁹

From the perspective of self-expression, such shifting around is reasonable. The proponent of a "Bill of Rights for Racially Mixed People" wants "the right to change my identity over my lifetime – and more than once."²⁰ Popular culture daily reminds us that the blending and changing of identities has become fashionable among the young (the under-eighteen marked more than one race in the census at twice the rate of the over-eighteen). The race question in official statistics is thus being treated less as a demographic fact than as something closer to an attitude toward oneself.

Of course race has always had a subjective dimension but, as Melissa Nobles notes, "in the past, race appeared more fixed because there was a range of constraints – political, intellectual, and social. Undoubtedly, some unknown number of Americans questioned race and color as concepts and as identities, but there was not much public space for such questioning." Race in census taking was until 1960 assigned by enumerators, whose judgment in such matters was constrained by instructions as well as by social and political realities. But today

19 Claudette Bennett, "Exploring the Consistency of Race Reporting in Census 2000 and the Census Quality Survey," paper presented at the joint meetings of the American Statistical Association, San Francisco, Calif., August 3–7, 2003. The author is an analyst in the racial statistics branch of the population division of the U.S. Census Bureau.

20 Maria P. P. Root, ed., *The Multiracial Experience: Racial Borders at the New Frontier* (Thousand Oaks, Calif.: Sage Publications, 1992), 7.

we ask individuals themselves for their views and, Nobles continues, "there are no laws, social mores, intellectual agreements, or general consensus about what constitutes a racial identity."²¹

Self-classification poses potential problems within the policy arena – especially to litigation-prone race policy. Because only 6.8 million Americans (2.4 percent) gave multiple-race responses in the 2000 census, the agencies that enforce nondiscrimination law could devise collapsing rules that prevented disruptions to existing policy. Data reliability is not yet a major problem, but it will become one as the size of the multiple-race population grows. This growth will occur as rates of out-marriage among children of recent immigrants from Asia and Latin America approach those reached by Italians and Poles in the mid-twentieth century, and as multiracial identification, especially among the young, is increasingly accepted.

It is not far-fetched to expect opponents of race-sensitive policies to seize upon the low reliability of racial statistics and other data problems as a way to discredit the information that is meant to document continuing racial and ethnic discrimination.

Beyond the radical changes to measurement introduced in the 2000 census, a changing demography challenges the current classification. How will new groups of immigrants arriving in large numbers find their way into a classification system designed for a different demographic and policy moment?

Hispanic immigrants pose this question sharply. They have never found a comfortable home in the federal government's scheme of racial and ethnic clas-

21 Melissa Nobles, personal communication, August 30, 2004.

sification. Labeling them an ethnic group does not work well, particularly for Mexican Americans who blend European with Native Indian descent. Many have tried to finesse the resulting awkwardness by taking advantage of the residual “other” line on the census form. Nearly half of the Hispanics did so in 2000, most of them Mexican Americans who were claiming their nationality as a race, a race not recognized in the official statistics.²²

Immigrant groups that cannot retreat to an ethnic category on the census form can be even more hard-pressed to locate themselves in the standard classification system. The recently arrived Islamic Ethiopian differs in culture, language, religion, and even skin color and facial features from those Americans who trace their origin to slaves brought from Africa’s Gold Coast. Many of today’s African immigrants have no wish to be counted as blacks, and some African American leaders do not welcome them in any case.²³

The Census Bureau currently has five Race and Ethnic Advisory Committees

representing the minority groups recognized in official statistics. If new immigrant groups want a say in matters of racial classification, they must either find their way into this preexisting structure or argue for their own advisory committee. To deny them their own advisory committee underlines the inconsistency between saying, as the Census Bureau does, that self-identification determines racial choice but that one’s choice has to fit into predetermined categories. New immigrants add a complexity and uncertainty to ethno-racial classification and to the policies that flow from it.

My cursory survey of American history suggests that there have been three loosely construed policy regimes facilitated by the nation’s changing schemes of racial classification.

The first used census counts to give slave-owning states extra seats in Congress and extra votes in the Electoral College, shaping power and policy for decades. The second used the data to exclude from civic life various racially defined groups. The third policy regime, fully instituted only in the 1960s, has used census data to reverse the policies of the second regime by extending civil rights to all equally, regardless of race.

Are we perhaps on the threshold of a new policy regime? The advent of the “mark one or more” option on the 2000 census suggests that the United States may well be at another historic juncture – and so does the trend of recent Supreme Court decisions.

By the mid-1980s, the Supreme Court was limiting the impact of the reasoning advanced in its 1971 decision in *Griggs v. Duke Power Co.* In 1987, Justice Antonin Scalia argued that statistical disparities indicating discrimination are at most evidence of “societal discrimination,” and are not remedial under antidiscrimi-

22 See Ian Haney López in this issue.

23 In a front-page story on August 30, 2004, *The New York Times* noted that Alan Keyes, a black Republican running for the Illinois Senate seat, questioned whether his opponent Barack Obama, the son of a Kenyan father and a white American mother, was really an African American: “Barack Obama claims an African-American heritage. Barack Obama and I have the same race – that is, physical characteristics. We are not from the same heritage. My ancestors toiled in slavery in this country.” Mr. Obama retorted that living under white colonialism, as his father had, was not all that different from the experience of Keyes’s ancestors, and was actually more recent. In the meantime, the wife of the Democratic presidential candidate, Teresa Heinz Kerry, who is white, on occasion referred to herself as an African American, citing the fact that she was born to Portuguese parents in Mozambique.

nation law.²⁴ Although in the minority in that case, Scalia was soon to express similar views for the majority. Writing for the majority in a 1995 ruling, he asserted that “government can never have a ‘compelling interest’ in discriminating on the basis of race in order to make up for past racial discrimination.”²⁵ And in 2003, in a case involving the University of Michigan, the Court upheld the right of universities to consider race in admissions only by ignoring remedial racial justice arguments in favor of a diversity rationale – and only after the University of Michigan had defended its policies on qualitative, rather than quantitative, grounds. In an exchange with the Court, university officers said that though critical mass advanced the educational goal of diversity, critical mass was not something that should be reduced to numbers. This ‘you know it when you see it’ claim is a long way from the ‘you know it when you’ve measured it’ argument embraced in the 1970s.

So where do we go from here?

Despite the efforts of conservatives like Ward Connerly, who in 2003 funded a California proposition to prevent that state from collecting any racial or ethnic data,²⁶ I do not think we are headed toward a policy regime that is ‘color-blind’ and that will prevent the government from collecting data about race, ethnicity, or national origin. Powerful constituencies, notably in the public health and education fields, join with

civil rights groups to contest such policy changes. They will prevail because the politics behind the color-blind movement are viewed, fairly or not, as a throwback to the policies of exclusion that the majority of Americans have firmly rejected.

At the same time, it is increasingly doubtful that policies aimed at making America more inclusive will center, as they did in the 1970s, on numerical remedies using statistical disparities as evidence of discrimination or on affirmative action. Where, then, on the continuum from no numbers to only numbers will race-sensitive policy be fashioned? Two factors feature in an answer to this question.

First, the demand for recognition, choice, and identity expression as heralded by the multiple-race advocates will continue to reverberate in statistical policy making, especially as new immigrant groups find political voice. This will lead less to claims for strict statistical proportionality than to demands for visibility and representation. For example, if Vietnamese children comprise a quarter of a local school’s student body, parents will expect there to be at least a few Vietnamese teachers. New African immigrants will point to their growing population numbers and ask why they are not better represented in political office. And so forth.

Second, there remains a key question that reliable statistics alone can answer rigorously: How well are different groups doing? Here the focus increasingly will turn from large to smaller groups. If Hawaiians can break free from the Asian category, why can’t the new African immigrants break free from the black category, or indigenous Central Americans from the Hispanic category?

These groups are not large on the national scene, but they cluster in ways

24 Discussed in Freeman, “Antidiscrimination Law,” 302.

25 *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995), 239.

26 This proposition, known as the Racial Privacy Initiative, was defeated in California’s special election in the fall of 2003.

that make them noticeable in many towns and cities across the country. It is in these local jurisdictions that questions arise regarding health care, performance in the classroom, and access to the ballot box.

Whether for purposes of self-expression or to detect barriers based on race, ancestry, ethnicity, or color, the United States will continue to have a racial and ethnic classification system. But is the one now in place the right one? In my view, not exactly – though of course there is no one ‘right’ classification.

There are sound reasons to hesitate before recommending measurement changes. Disrupting statistical series, especially in an area that has just had a disruption, is no small matter. Neither is the methodological challenge of assessing the consequences for data quality of even small changes, such as how a question is worded or where it is placed on a form. Few questions are more difficult to ‘get right’ than those inquiring of race or ethnicity. There are also political consequences that at the margins could increase or decrease a group’s numbers as recorded in previous statistics. I know that it is late in the day to expect a major change for the 2010 census.

Yet neither racial measurement nor policy that relies on it is in a settled state – and this provides a historical opportunity for fresh thinking, starting with the term ‘race’ itself.

There is a strong moral case for jettisoning the term ‘race’ altogether. Relevant data can be collected without ever using the term that echoes a discredited eighteenth-century science that took physiological markers as indicative of moral worth and intellectual ability. The government doesn’t have to ask what racial group we belong to; it could simply ask what population group we be-

long to.²⁷ This change, too long postponed, would break with hierarchical assumptions historically attached to fixed racial categories.

If this is considered too radical a change, the government should acknowledge that the term ‘race’ is anachronistic by using it interchangeably with ‘ethnicity.’²⁸ The census should replace the current question on race and ethnicity with one that is subtly but significantly different:

*What is this person’s race or ethnic group?
Mark one or more:*

American Indian or Alaskan Native
Asian
Black/African American
Native Hawaiian/Pacific Islander
Spanish/Hispanic/Latino
White.²⁹

Such a revised question would minimally disrupt statistical series. It would retain “mark one or more” and the victory for choice that option represents. It would allow the government to enforce the Voting Rights Act and other civil

27 The Hispanic ethnic question in the census is constructed without the term ‘ethnicity.’ It reads: “Is this person of Spanish, Hispanic or Latino origin?”

28 In its discussion of the Standards for the Classification of Federal Data on Race and Ethnicity, the OMB notes that “There are no clear, unambiguous, objective, generally agreed upon definitions of the terms ‘race’ and ‘ethnicity.’ Cognitive research shows that respondents are not always clear on the differences between race and ethnicity. There are differences in terminology, group boundaries, attributes, and dimensions of race and ethnicity,” *Federal Register* 60 (166) (August 28, 1995): 44680.

29 This essay is not the place for technical discussion, and the exact wording of this reformed question would have to be field-tested. Alphabetizing the list would move away from current practice that lists “White” as the first

rights laws that center on the 1977 classification. It would improve data quality by not forcing many millions of the nation's Hispanics to make the kind of racial choice that has driven them to the "other" category. Commenting on the question format used in the 2000 census, the Census Bureau itself recognizes that "many Hispanics do not relate to the categories in the race question."³⁰

Although the Census Bureau is presently field-testing five new formats for collecting race and ethnicity data in 2010, the revision I am suggesting is not among them. I do not find the reasons given for this omission persuasive, and I strongly believe there are statistical as well as moral justifications for testing a question format that, optimally, discards the term 'race' altogether, or that at least does not hold to the statistically meaningless distinction between the terms 'race' and 'ethnicity.'³¹ The OMB and the Census Bureau have a historic opportunity to back away from the presumptively immutable color-coded categories inherited from Linnaeus and his stu-

option. The format also discards the many subcategories that appeared on the census form in 2000. It leaves out the residual "some other race" option, though, by congressional action in 2004, that is now a required category. This requirement was made in response to the concerns of Hispanic advocacy organizations speaking for a constituency that resists being forced to select among the other five options. However, incorporating "Hispanic" into a merged ethnicity and race question would obviate the need for "some other race."

30 Phyllis Singer and Sharon Ennis, "Census 2000 Content Reinterview Survey: Accuracy of Data for Selected Population and Housing Characteristics as Measured by Reinterview," U.S. Census Bureau, Census 2000 Evaluation B.5, September 24, 2003, xxiii.

31 Such a question was tested by the Census Bureau in 1996 and it performed well. The large

dents writing in the middle of the eighteenth century.

The revised question could be paired with a second, open-ended question³²:

*What is this person's ancestry, nationality, ethnic origin, tribal affiliation?*³³

In the long run, this question or one similar to it should replace the race and

Racial and Ethnic Targeted Test used an experimental design to test the effects of eight questionnaire formats on race and ethnicity. One of these formats combined the race and the ethnicity categories. As measured by nonresponse, a key indicator of data quality, the combined format outperformed all alternatives, and for many groups by a substantial margin. See Charles Hirshman, Richard Alba, and Reynolds Farley, "The Meaning and Measurement of Race in the U.S. Census: Glimpses into the Future," *Demography* 37 (3) (August 2000): 381–393.

32 This question should only be included in the American Community Survey, which is a continuous sample survey administered to about 15 million households over a five-year period and designed to replace the census long form. In my view, the question should not appear on the 2010 census short form, which will go to all of America's households. Short-form data provide block level counts used to redraw congressional and other electoral districts after each census and to enforce the Voting Rights Act pursuant to whether redistricting reduces electoral opportunities for minority candidates. Only data required for these purposes should be made available at the block level. This does not include ancestry or national origin information. Having such data available at the block level can lead to mischief, perhaps serious mischief if the government feels compelled in the war on terrorism to repeat some version of the Japanese American internment during World War II, which made use of census information from small geographic areas.

33 This question is presently being field-tested by the Census Bureau. It is designed to accommodate as many as nineteen illustrative categories, a slight increase over the sixteen used in the 2000 census ancestry question.

ethnicity question altogether. That change would truly reflect that these are matters of self-identification, and that self-identification is inconsistent with forcing people into prescribed categories. But from the perspective of racial justice, it is premature to discard the official categories now used to administer antidiscrimination laws.

The open-ended question nevertheless points us to the policy frontiers of the twenty-first century.³⁴ Details of the sort provided by the open-ended question would show whether specific groups, especially recent immigrant groups, are experiencing discriminatory barriers to jobs, schooling, or home ownership – barriers that a nation committed to a policy of inclusiveness is obligated to remove. There remain strong reasons for official statistics that can detect patterns of discrimination, and our classification scheme needs to catch up with the ways in which discrimination occurs across a very diverse population.

Many thoughtful Americans, myself included, wish that antidiscrimination law were not necessary. We want a society that is truly color-blind. But if we are ever to create such a society, we need to know what is actually happening to various population groups across the country. Accepting inclusiveness as a central policy narrative for the nation requires statistics robust enough both to keep track of whether groups historically excluded are overcoming the legacy of official discrimination and to indicate whether more recently arrived groups are being unfairly held back. More than

two centuries after the Constitution started the nation down the road of racially classifying its population, there remain, unfortunately, compelling reasons to design the most policy-relevant classification scheme possible. On moral and methodological grounds, the classification used in census 2000 can and should be improved.

³⁴ Current data-capture technology can reliably record responses to such a question. Optical scanning and intelligent character recognition were very successfully used in the 2000 census, recording open-ended written responses at exceptionally high levels of accuracy.

David A. Hollinger

The one drop rule & the one hate rule

Two portentous practices within the public discussion of 'race' in the United States since the late 1960s are rarely analyzed together. One is the method by which we decide which individuals are 'black.' The other is our habit of conflating the mistreatment of blacks with that of nonblack minorities. Both practices compress a great range of phenomena into ostensibly manageable containers. Both function to keep the concept of race current amid mounting pressures that threaten to render it anachronistic. Both invite reassessment at the start of the twenty-first century.

The prevailing criterion for deciding who is black is of course the principle of hypodescent. This 'one drop rule' has meant that anyone with a visually discernable trace of African, or what used to be called 'Negro,' ancestry is, simply,

black. Comparativists have long noted the peculiar ordinance this mixture-denying principle has exercised over the history of the United States. Although it no longer has the legal status it held in many states during the Jim Crow era, this principle was reinforced in the civil rights era as a basis for antidiscrimination remedies. Today it remains in place as a formidable convention in many settings and dominates debates about the categories appropriate for the federal census. The movement for recognition of 'mixed race' identity has made some headway, including for people with a fraction of African ancestry, but most governments, private agencies, educational institutions, and advocacy organizations that classify and count people by ethnoracial categories at all continue to perpetuate hypodescent racialization when they talk about African Americans.¹

This practice makes the most sense when antidiscrimination remedies are in view. If discrimination has proceeded on

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1 For a more extensive account of the historic role of the principle of hypodescent, see my "Amalgamation and Hypodescent: The Question of Ethnoracial Mixture in the History of the United States," *American Historical Review* 108 (5) (December 2003): 1363–1390, from which several paragraphs in this essay are drawn.

the basis of the one drop rule, so too should antidiscrimination remedies. But even when antidiscrimination remedies are not at issue, most Americans of all colors think about African American identity in either/or terms: you are black, or you are not. It is common for people to say, "I'm half Irish and half Jewish" without one's listener translating the declaration into terms other than the speaker's. One can even boast, "I'm one-eighth Cherokee" without causing the listener to quarrel with that fraction or to doubt that the speaker is basically a white person. But those who say things like "I'm half Irish and half black" are generally understood *really* to be black, and "I'm one-eighth African American" is not part of the genealogical boasting that infuses American popular culture.

The second portentous practice is the treating of all victims of white racism alike, regardless of how differently this racism has affected African Americans, Latinos, Indians, and Asian Americans, to say nothing of the subdivisions within each of these communities of descent. When federal agencies developed affirmative action programs in the late 1960s, they identified Asian Americans, Hispanics, and Indians along with African Americans as eligible groups. As John Skrentny has shown, entitlements for nonblack groups were predicated on the assumption that such groups were like blacks in their social experience.² Other disadvantaged groups, including women, impoverished Anglo whites,

impoverished European ethnics, and gays and lesbians, were less successful in gaining entitlements during the so-called minority rights revolution because they were not perceived as victims of white racism. Yet the officials who designed entitlement programs for the purposes of remedying white racism often homogenized those descent groups colloquially coded as black, brown, red, and yellow. There was a good reason for this. White racism was real, had expressed itself against every one of these color-coded groups, and was a problem in American life that demanded correction.

The notion that all descent groups whose ancestry could be located outside Europe were like blacks, however, had not been prominent previously in the proclaimed self-conception of these nonblack minority groups, nor in much of what public discussion there was of their history and circumstances. The histories of each of these communities were almost always presented to their own members as well as to the society at large in terms that took their differences into account, including the specific ways in which whites had abused them. These histories, moreover, were usually about particular descent groups, such as Chinese Americans or Mexican Americans, rather than about what came to be called 'panethnic' groups, such as Asian Americans and Latinos.³ Japanese Americans

2 John D. Skrentny, *The Minority Rights Revolution* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2002). For a vigorous critique of this book, see Victoria Hattam, "The 1964 Civil Rights Act: Narrating the Past, Authorizing the Future," *Studies in American Political Development* 18 (Spring 2004): 60–69, followed by a generally convincing response by Skrentny, "Policy Making is Decision Making: A Response to Hattam," 70–80.

3 For two overviews of the development of 'panethnicity,' see Jose Itzigsohn, "The Formation of Latino and Latina Panethnic Identities," and Yen Le Espiritu, "Asian American Panethnicity: Contemporary National and Transnational Possibilities," in Nancy Foner and George Fredrickson, eds., *Not Just Black and White: Historical and Contemporary Perspectives on Immigration, Race, and Ethnicity in the United States* (New York: Russell Sage Foundation, 2004), 197–216, 217–234.

had been subject to property-owning restrictions and had been incarcerated without due process during World War II, and all but a few immigrants from Asia had been denied naturalization until 1952. Immigrants from Mexico had always been able to achieve citizenship and were not included in the miscegenation laws that prevented nonwhites from marrying whites, but these immigrants and their descendants had been subject to other abuses, including school segregation and exclusion from juries in many jurisdictions until courts eliminated these practices in the decade after World War II. Mexican Americans, moreover, despite their overwhelmingly immigrant origins, did come from a country that had lost territory to the United States, and sometimes defined themselves as a conquered people, like the Indians. The Indians themselves had their own story, featuring deaths on a horrendous scale through disease and genocide. But beyond emphasizing these and many other differences, spokespersons for these nonblack groups sometimes partook of the antiblack racism of the white majority. As late as the early 1960s, for example, spokespersons for Mexican Americans in Los Angeles made a point of saying that their community wanted little to do with blacks in the same city.

Utterances of this latter kind diminished rapidly in the late 1960s as political alliances were forged between black advocacy organizations and organizations speaking for other descent groups. The idea that Asian Americans, Latinos, and Indians were indeed like blacks gained ground and was marked vividly with a designation especially popular in the 1980s: 'people of color.' The downplaying of the differences between nonblack minorities and blacks was practiced first by officials and then by activists who came to understand that by applying 'the

black model' to their own group they had a better chance of getting the sympathetic attention of officials and courts. White racism thus ironically came to be assigned the same capacity traditionally assigned to one drop of black blood: *the capacity to define equally whatever it touched*, no matter how the affected entity was constituted and what its life circumstances might have been. We have been living by a principle of white racist hypovictimization: we can call it the one hate rule, with the understanding that the colloquial use of 'hate' follows the language conventions of recent years, when we speak of 'hate speech' and 'hate crimes.'

Both the one hate rule and the one drop rule have recently come under increasing pressure. But before I take up these pressures and suggest some of the potentially deep changes in American race discourse they might produce, I want to clarify the historical circumstances that have endowed these rules with such force.

The property interests of slaveholders and the social priorities of Jim Crow racism are central to the principle of hypodescent. Keeping the color line sharp facilitated the enslavement of children begotten upon slave women by white men. The offspring of these couplings would grow up as slaves in a race-specific slave system. The principle was sharpened under Jim Crow, when opposition to social equality for blacks was well served by a monolithic notion of blackness accompanied by legislation that outlawed as miscegenation black-white marriages but that left less strictly regulated any nonmarital sex in which white males might engage with black females. Some slave-era and Jim Crow governments did employ fractional classifications, providing distinctive rights

and privileges for ‘octoroons,’ ‘quadroons,’ and ‘mulattoes,’ but this fractional approach was hard to administer, invited litigation, and blurred lines that many whites preferred to keep clear. ‘Mulatto’ was dropped from the federal census after 1920, and more and more state governments went the way of Virginia, whose miscegenation statute as revised in 1924 classified as white only a person “who has no trace whatsoever of blood other than Caucasian.”

The combination of these miscegenation laws with the principle of hypodescent consolidated and perpetuated the low-class positions of African Americans in much of the United States. By marking all offspring of white-black couplings as bastards, governments in many jurisdictions prevented these offspring from inheriting the property of a white father. Although the legendary Virginia statute, along with all other racial restrictions on marriage, was invalidated in 1967 by the U.S. Supreme Court in the case of *Loving v. Virginia*, the one drop rule classically formulated in the Virginia statute was not affected in its capacity as a convention operating throughout American society. Traditional white racism perpetuated this convention, but so, too, did the social solidarity of an African American community whose borders had been shaped by that racism. It is no wonder that the officials, courts, and advocacy organizations that designed and defended affirmative action measures showed no interest in mixture. Even if ‘light-skinned blacks’ had sometimes experienced a less consistently brutal style of discrimination than that experienced by the darkest of African Americans, there was no doubt that any person perceived as having any black ancestry whatsoever was rightly included in the antidiscrimination remedies being developed in the late 1960s and early 1970s.

But what about nonblack victims of white racism? Awareness of the reality of discrimination against nonblacks led to the conclusion that all ethnoracially defined victims of white racism might as well be made the beneficiaries of the same new set of entitlements being developed in the civil rights era, even in the absence of anyone’s having lobbied for that result. (Indians, to be sure, were always subject to an additional, separate set of programs following from the distinctive constitutional status of Indian tribes.) When the Equal Employment Opportunity Commission (EEOC) designed its precedent-setting employer reporting form (EEO-1) in 1965, the EEOC included Indians, Asian Americans, and Latinos along with African Americans as the groups to be counted in relation to its mission. In fact, the EEOC was almost entirely concerned with African Americans: what percentage of those employable were actually employed in a given labor market? At the public hearing designed to collect reactions to this reporting form, no voice mentioned even in passing the situation of the nonblack minorities.⁴

Virtually everyone in power at the time assumed the nonblack minorities to be so tiny a part of the picture as to require no discussion and to entail no policy dilemmas for the future. Support for the Civil Rights Act of 1964 and for the specific mission and methods of the EEOC established under its terms was deeply informed by a popular understanding of the history of the victimization of African Americans in particular, and not by any comparably deep understanding of the acknowledged mistreatment of Latinos and Asian Americans. To call attention to this truth about the civil rights era is not to downplay the reality of white racism against nonblacks

4 I owe this information to John D. Skrentny.

in American history right up to the time officials and courts acted. Rather, the point is that remedying the abuse of nonblacks was almost an afterthought to remedying antiblack racism.

Nothing illustrates this fact more dramatically than the lack of sustained public debate on the eligibility of immigrants and their offspring for affirmative action. This silence resulted partly because the Latino and Asian American populations were still small (about 4.5 percent and 1 percent, respectively, in the census of 1970), and because the Immigration and Nationality Act of 1965 that eventually transformed the ethnoracial demography of the United States, and revolutionized the meaning of ethnoracially defined entitlements, was not expected to significantly increase immigration from Latin America and Asia.

Yet the numbers of Latin American and Asian immigrants mounted in the 1970s, yielding more and more nonblack Americans who were not the descendants of those Chinese American, Japanese American, and Mexican American families that had been abused in the United States, and who were thus less analogous than were nonimmigrant Latinos and Asian Americans to the descendants of enslaved Americans. Indeed, the number of new immigrants between 1970 and 2000 who were eligible for at least some affirmative action benefits came to about 26 million, the same number of eligible African Americans as measured by the census of 1980. More strikingly yet, many of the new immigrants and their children proved able, especially in the Asian American case, to make their way around racist barriers in education, business, and the workforce that continued to inhibit the progress of African Americans.

This emerging social reality might have triggered a rethinking of the one

hate rule and stimulated a genuine effort to confront the distinctive history and needs of the several nonblack groups on each group's own terms. But the system then in place created a huge disincentive for such a rethinking: the black model was working quite well. It helped get the attention of officials and courts, enabling them to recognize and understand the victimization of nonblack minorities. As early as 1968, the Chicano youth activists in Los Angeles were declaring "Brown and Black" to be one and the same. As the most careful scholar of that episode has observed, writers in the Chicano movement's magazine *La Raza*, even while surrounded by older Mexican Americans whose group advocacy had been based on the affirmation of white identity, "asserted that Mexican identity, when measured in terms of history, geography, oppressions, and dreams, was functionally black."⁵ Hence the one hate rule was quietly enacted by a variety of nonblack advocacy groups as well as by officials and courts.

Neither the EEOC nor anyone else designing and approving affirmative action programs predicated on the ideal of proportional representation seems to have anticipated what could have happened if one or another of the designated groups came to be overrepresented instead of underrepresented. In the late 1960s and very early 1970s, there were very few Asian Americans, Latinos, and Indians in most of the same employment and educational spaces in which African Americans were underrepresented in relation to their percentage in the total population. Instead of inquiring into the specific causes of the underrepresentation of the various groups, one could assume with some justice that behind all cases was white racism of one degree or

5 Ian Haney López, *Racism on Trial: The Chicano Fight for Justice* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2003), 167.

another. The one hate rule was good enough. At least for a while.

But as the numbers of Asian Americans increased dramatically through chain migrations in the 1970s and 1980s, and began to affect the public face of American society especially in California, a striking challenge to the one hate rule appeared. It became hard to overlook that Asian Americans, even if subject to discrimination as ‘foreign’ and thus ‘not really American,’ were over-represented rather than underrepresented in many universities and professions and among high-income householders. Well before the end of the 1980s, the Census Bureau reported that average family income for Asian Americans, even when the income for recently arrived immigrants from Southeast Asia was included, was higher than that for non-Hispanic whites. Asian Americans were quietly dropped from some private affirmative action programs (not from those operated by the federal government), but what public discussion there was of the success of Asian Americans was clouded by the problematic concept of ‘the model minority.’ The idea that African Americans, Latinos, and Indians had something wrong with them structurally – some genetic inferiority or deeply embedded cultural deficiency from which the wonderful Asians were free – was sometimes implied, and was of course vigorously contested.

Given the prior assumption that all ethnoracial minorities were more or less equally the victims of white racism, how could one talk about the success of Asian Americans without appearing to deny the power of white racism or to engage, however subtly, in a racist discourse against African Americans, Latinos, and Indians? That this pitfall could indeed be avoided was proved by a growing academic literature exploring with increas-

ing rigor the different historical circumstances of the various American ethnoracial groups popularly called ‘minorities’ or ‘people of color.’ That literature recognized, for example, the unique legacy of slavery and Jim Crow for African Americans, and assessed the pre-immigration social position and commercial experience for many Asian Americans.⁶ Bengali engineers and Chihuahuan agricultural laborers really did bring different pre-immigration experiences and skills to the United States. Not innate ‘racial’ characteristics, but empirically warrantable social conditions could illuminate the contrasting destinies of different descent communities in the United States. Yet public policy discussions did not take much advantage of the invitation offered by Asian American success to rethink the one hate rule. Far from it.

A mark of the persistence of the one hate rule is its dominance of President Clinton’s Initiative on Race, as displayed in *One America in the 21st Century: Forging a New Future*, the 1998 report of the Initiative’s advisory board. Although the impeachment of Clinton distracted attention from this document at the time of its release, it is the only major president-sponsored assessment of race since the Kerner Commission’s report of thirty years before. The very banality of *One America in the 21st Century* renders that document all the more revealing a depository of publicly acceptable ‘race talk’ in the United States at the turn of the twenty-first century.

Central to that talk is the assertion that any differences between the particular varieties of ‘racial’ discrimination and

6 See, for example, Grace Kao, “Asian Americans as Model Minorities? A Look at Their Academic Performance,” *American Journal of Education* 103 (February 1995): 121 – 159.

abuse are incidental to what those varieties have in common, and the assumption that the same set of policies can deal with virtually all those varieties of disadvantage. The advisory board does point (with a series of “signposts of historical episodes,” which they distinguish from the “comprehensive” history they disclaim) to a handful of particular experiences: the conquest of the Indians, the enslavement and segregation of black people, “the conquest and legal oppression of Mexican American and other Hispanics,” the “forced labor of Chinese Americans,” and the “internment of Japanese Americans.” Even “new immigrants” from Southeast Asia “continue to feel the legacy of discriminatory laws against Asian Pacific Americans because they continue to be perceived and treated as foreigners.” In keeping with this last observation, which incorporates the most recent of voluntary immigrants into the same frame with the descendants of slaves and of the conquered and ruthlessly slaughtered indigenous population, the advisory board offers the following summary of the salient history: “Each of the minority groups discussed above share in common a history of legally mandated and socially and economically imposed subordination to white European Americans and their descendants.”⁷

This perspective informs the entire document, especially the advisory board’s recommendations. All but five of the more than fifty recommendations are general to all victims of racism. Four of the five exceptions deal with the special problems of Indians and Alaskan natives, and the fifth calls for better data-gathering on nonblack minority

groups. Not a single one of the advisory board’s recommendations speaks to the specific claims of African Americans on the national conscience. Yet blacks, and blacks alone, inherit a multi-century legacy of group-specific enslavement and hypodescent racialization long carried out under constitutional authority in the United States.

The contrast between the Asian American experience in recent years and the African American experience during the same period is systematically deemphasized by *One America in the 21st Century*. Only in a footnote and in one easily missed chart does the advisory board acknowledge that by the end of the 1980s Asian Americans had achieved an average annual family income higher even than that of non-Hispanic whites, and almost twice that of blacks and Hispanics. Repeatedly, the advisory board tries to shoehorn the Asian American experience into the space prescribed for it by the one hate rule. In a single sentence, the advisory board praises law enforcement agencies for investigating both the decapitation of a black man in Texas and the death threats to sixty Asian American students at a campus in California. A statement in the text to the effect that “criminal victimization rates are significantly greater for minorities and people of color than for whites, especially with regard to violent crime,” makes no distinctions between the groups. But if one turns to the footnote documenting this statement, one learns that while the homicide rate is 58 per 100,000 for African Americans and 25 per 100,000 for Hispanics, it is only 8 per 100,000 for Asian Americans, which is close to the 5 per 100,000 for whites. Thus the proximity of Asian Americans to non-Hispanic whites in one statistical sector after another is downplayed, ignored, or concealed. Many of the charts

7 Advisory Board to the President’s Initiative on Race, *One America in the 21st Century: Forging a New Future* (Washington, D.C.: Government Printing Office, 1998), 37–38.

in the report that show inequality by ethnoracial group omit Asian Americans altogether. This is true of charts showing rates of college enrollment, median weekly earnings of male workers, and employment – all of which contrast whites to blacks and Hispanics.

The advisory board is understandably determined to refute the myth that “the problem of racial intolerance in this country has been solved,” but in its reluctance to particularize and measure the dimensions of this problem and to deal directly with the reasons why some Americans mistakenly believe the problem to be solved, it ends up weakening its case.⁸ Asian American success in overcoming the worst consequences of white racism is the elephant in the advisory board’s room.

At stake is the more precise location of the barriers that inhibit Americans of various communities of descent from participating more fully in the life of the nation. The more confident we can be about the social location of those barriers, the more likely we are as a nation to develop policies that target remedy to wrong in the effort to achieve a more equal society. If economic and social conditions antecedent to immigration are significant factors in explaining the relative success many Asian American groups have achieved, that suggests that white racism does not always have the same effect on everything it touches, but rather affects those objects differently depending on how those objects are constituted.

Even *One America in the 21st Century* approaches this insight when it distinguishes between the different destinies of Asian American groups, noting in a footnote that while 88 percent of Japanese Americans between the ages of twenty-five and twenty-nine have a high

school diploma, only 31 percent of Hmong Americans do.⁹ How recent the immigration and how strong or weak the class position of the group prior to immigration clearly make an enormous difference. This is true not only for Asian Americans but also for Hispanics. For instance, sociologists have explained repeatedly that recent illegal immigrants from Mexico encounter the United States and its white racism differently than do Cuban Americans whose families have been in the country for several decades, or than do descendants of earlier generations of migrants from Mexico who have more opportunities to learn English and to take advantage of whatever educational opportunities are at hand.

So great is the variety of experience among Hispanics that the Census Bureau would do well to think carefully about the basis for continuing to treat Hispanics as a single category at all. The census might drop this quasi-racial category and count instead those inhabitants who identify with descent communities from Mexico, Cuba, Puerto Rico, the Dominican Republic, Haiti, and other such defining points of origin. Instead of counting ‘Asians,’ the census might count people who trace their descent to China, Japan, Korea, Vietnam, India, Iran, the Philippines, Pakistan, Lebanon, Turkey, etc. Any public or private agency that wished for any reason – including the design and implementation of antidiscrimination remedies – to treat all Hispanics or Asians as a single group could easily reaggregate the groups counted separately by the census. Or a given agency might conclude, on the basis of what it learns about the social and economic circumstances of particular descent communities, and on the basis of its analysis of where responsibility for

8 Ibid., 46, 48, 65, 71 – 72, 75, 81, 128, 131.

9 Ibid., 126.

a given case of disadvantage lies, that some groups need affirmative action and others do not. Breaking down Hispanic into the actual descent groups that exist in the United States would facilitate this. So, too, with Americans of Asian descent. Neither Hispanics nor Asian Americans have an experience as unified as that of African Americans, and the Census Bureau needs a better justification than it has offered until now for the use of these panethnic, 'racial' categories. By rejecting racial and quasi-racial categories, the census can liberate itself from de facto responsibility for deciding who is eligible for this or that program.¹⁰

Analysis of different segments of the black population, too, yields more precise information about the location of the barriers to full participation in American life. Black immigrants from the Caribbean and their descendants are more likely than the American-born heirs of the Jim Crow system to advance in education and employment and to marry outside their natal community. So too are black immigrants from Africa, as the public has recently been reminded by the remarkable career of Illinois politician Barack Obama, elected to the U.S. Senate in 2004.¹¹ Moreover, Dalton

10 This suggestion about the census is a variation on proposals made during the 1990s by a number of demographers and social scientists. See, for example, Margo Anderson and Stephen E. Feinberg, "Black, White, and Shades of Gray (and Brown and Yellow)," *Change* 8 (1) (1995): 15–18, esp. 18. The substitution of the racial categories with more specific demographic categories would provide individuals greater opportunity to declare their cultural identity while also enabling public and private agencies to pursue antidiscrimination remedies on more empirically warranted grounds.

11 Obama, the keynote speaker at the Democratic National Convention in July of 2004, is the son of a black immigrant from Kenya and a white mother from Kansas. His life story and

Conley has found that when blacks and whites with the same property holdings (as opposed merely to the same income, which is a less substantial indicator of economic position) are compared, the gap between black and white performance on Graduate Record Examinations and in several other arenas of achievement diminish to a point of statistical insignificance.¹² Class position, when accurately measured, makes a formidable difference. What our social science is telling us today is not that white racism has disappeared, nor even that it is unimportant, but that it interacts with a variety of other realities to create the patterns of inequality that social policy must address.

It is in the context of these social scientific findings that the status of 'under-represented minorities' invites reexamination with an eye toward better understanding those patterns of inequality. When the ideal of proportional representation entered affirmative action directives and jurisprudence in about 1970, a major objective was to get beyond 'intentional' discrimination in order to confront prior, structural conditions producing inequality. But by promoting the idea that the mere fact of underrepresentation constituted evidence of discrimination, however indirect, officials and courts deflected attention from any and all possible specific expla-

the questions that story raises about black identity and the dynamics of black progress in the United States today are explored in Scott Malcomson, "An Appeal Beyond Race," *The New York Times*, August 1, 2004, IV, 5, and William Finnegan, "The Candidate," *The New Yorker*, May 31, 2004, 32–38.

12 Dalton Conley, *Being Black, Living in the Red: Race, Wealth, and Social Policy in America* (Berkeley: University of California Press, 1999).

nations for why a particular descent group might be underrepresented in a particular employment or educational sector. What was lost in the process was an ability to deal forthrightly with the appearance of Asian Americans as an overrepresented minority.

Underrepresentation and overrepresentation constitute a logical syndrome. Should we not expect the same principles of causation to apply to both sides of the phenomenon? Might what we learn about the overrepresentation of particular descent groups – Korean Americans and Jewish Americans, for example – help us to understand the underrepresentation of others, and vice versa? This might seem obvious, but the analysis of overrepresentation, and of the historical processes by which ethnoracial groups that were once underrepresented have become overrepresented, usually stops with the white color line. The Irish, the Italians, the Poles, and the Jews, we say, became white. But invoking whiteness does not carry us very far. Appalachian whites are not overrepresented in the medical profession and in the nation's great universities, and some 'people of color' – Chinese Americans and South Asian Americans, for example – are.

Jewish experience since 1945 is the most dramatic single case in all American history of a stigmatized descent group that had been systematically discriminated against under the protection of the law suddenly becoming overrepresented many times over in social spaces where its progress had been previously inhibited. The experience since 1970 of several Asian American groups is a second such dramatic case. These cases of success invite emphasis and explanation in relation to explanations for the social destiny of other descent-defined groups. What explains the overrepresentation of

Jewish Americans, South Asian Americans, and Japanese Americans in the domains of American life where African Americans and Latinos are underrepresented? The failure to pursue this question implicitly strengthens largely unexpressed speculations that Jews and Asians are, after all, superior genetically to African Americans, Latinos, and American Indians – the groups whose underrepresentation is constantly at issue.

Yet the grounds for avoiding talk about the overrepresentation of Jewish Americans and some groups of Asian Americans diminish, if not disappear, once the relevant statistics are explained by taking full account of the conditions under which the various descent communities have been shaped.¹³ Avoiding the forthright historical and social-scientific study of the question perpetuates the mystification of descent communities and subtly fuels the idea that the question's answer is really biological, and if made public will serve to reinforce invidious distinctions between descent groups. The open discussion of overrepresentation will not be racist if it proceeds on nonracist assumptions. We will not understand patterns of inequality in the United States until overrepresentation and underrepresentation are studied together and with the same methods. The one hate rule is an obstacle to such inquiries. But if the overrepresentation of African American males in prisons can be explained, as it often is, with reference to slavery, Jim Crow, and the large-

13 For an exploration of this terrain, see my "Rich, Powerful, and Smart: Jewish Overrepresentation Should Be Explained Rather Than Mystified or Avoided," *Jewish Quarterly Review* 94 (Fall 2004): 596–602. The most ambitious and convincing study of Jewish success is Yuri Slezkine, *The Jewish Century* (Princeton: Princeton University Press, 2004).

er history of the institutionalized debasement of black people, so, too, can the overrepresentation of Jewish Americans and Korean Americans in other social spaces be explained by historical conditions.

So the one hate rule, however sensible it may have seemed when informally adopted in the 1960s and 1970s, is increasingly difficult to defend. And the less blinded we are by it the more able we are to see the unique invidiousness of the one drop rule, its ironic twin. The practice of hypodescent racialization has entailed an absolute denial of the reality of extensive white-black mixing. It has embodied a total rejection of blackness and it has implied a deep revulsion on the part of empowered whites. This variety of white racism was cast into bold relief in the 1980s and 1990s by the dramatic upsurge of immigration from Latin America and Asia. The first of these immigrations displayed from the start an acknowledged and often celebrated mixture of European and indigenous ancestry, and produced children who married Anglos at a rising rate and who were not subject to hypodescent racialization as Latinos. The new immigrants from Asia married Anglos at a considerably higher rate than Latinos did, and their offspring were not socially coerced to identify as 100 percent Asian.

Only a few years earlier, when affirmative action and the allied initiatives that eventually came to be called 'multiculturalism' got started, the assumption had been that all the standard minority groups were clearly bounded, durable entities, kept in place by the power of white racism and by the internal adhesives of their communities of descent. But the experience of nonblack minorities was sufficiently different from that of African Americans that the hypode-

scendent racialization of the latter came to be more widely recognized as an index of the unique severity of antiblack racism in the United States. No wonder some frustrated African American activists campaigned for group-specific reparations. Hence the weakening of the one hate rule and the development of a critical perspective on the one drop rule proceeded dialectically. The more fully we understand the unique invidiousness of the principle of hypodescent as applied to 'blacks,' the weaker the hold of the one hate rule; and the weaker the hold of the one hate rule, the more able we are to confront at long last the exceptionally racist character of the one drop rule.¹⁴

14 For critical suggestions based on an earlier draft, I am indebted to Victoria Hattam, Jennifer Hochschild, Joan Heifetz Hollinger, Ian Haney López, Rachel Moran, Robert Post, Kenneth Prewitt, John Skrentny, Werner Sollors, Eric Sundquist, and Kim Williams. For other assistance I want to thank Jennifer Burns.

*Race, law & history: the Supreme Court from
“Dred Scott” to “Grutter v. Bollinger”*

I start from two points of departure: The first I draw from the contrasting contentions of counsel in a redistricting case argued in the Supreme Court in 1976.¹ The case addressed the validity of a 1974 New York statute that redrew state senate and assembly districts in Brooklyn with a view to enlarging the number of districts with “substantial nonwhite majorities.” The attorney general of the United States, exercising a supervisory authority vested in him by the Voting Rights Act of 1965, had assented to the statute. In the Supreme Court, Nathan Lewin, the very able attorney for the white petitioners challenging the statute, argued that drawing district lines with race in mind was unconstitutional. In response to a question from the bench, Lewin acknowledged

that drawing district lines with an eye to voters’ political affiliations was permissible. But race was different, Lewin argued: “We think politics is part of the political process. Race is not part of the political process. Race is an impermissible standard.”²

The very able lawyer representing the United States, Solicitor General Robert Bork, responded: “I was astounded when Mr. Lewin said that race is not a part of our political process. Race has been *the* political issue in this nation since it was founded.”³

My second point of departure relates to W. E. H. Lecky, the Dublin-born scholar whose works ornamented British historiography in the second half of

Louis H. Pollak, a Fellow of the American Academy since 1972 and former dean of the Yale and University of Pennsylvania Law Schools, has been a federal judge in Philadelphia since 1978. He was one of the cohort of young lawyers who assisted Thurgood Marshall and his colleagues of the NAACP Legal Defense Fund in developing the legal strategy in “Brown v. Board of Education” and “Bolling v. Sharpe.”

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¹ This essay, delivered as the 2004 Robert P. Anderson Lecture at Yale Law School in April of 2004, was written in tribute to Charles Hamilton Houston, William Henry Hastie, and Thurgood Marshall. I am indebted to two good friends – Frank Goodman and Victor Brudney – who reviewed this essay in draft and offered valuable criticisms and suggestions that have measurably strengthened the final product.

² *United Jewish Organizations of Williamsburg, Inc. v. Carey*, No. 75-104 (U.S. Sup. Ct., October 6, 1976), transcript of argument, 33.

³ *Ibid.*, 62. I note, by way of full disclosure, that, representing the NAACP as an intervenor, I too participated in the argument.

the nineteenth century. Lecky, so we are told, was invited to one of those vast manorial weekends in which, even as late as the Gladstone and Salisbury eras, the great aristocratic houses were wont to spread themselves. Lecky was unacquainted with his hostess, the duchess of something-or-other, but at dinner he nevertheless found himself seated to her left. After Her Grace had exhausted conversation with the guest seated to her right, she turned to Lecky:

“Oh, Professor Lecky, you must remind me. What is it you do?”

“Well, Your Grace, I’m a historian.”

“Goodness, Professor Lecky, that is too bad.”

“I beg your pardon, Your Grace, but I’m not sure that I understand. Why is it too bad that I’m a historian?”

“Well, Professor Lecky, I do think that it’s so much better to let bygones be bygones.”

Perhaps some bygones can be left, like cuttings from the garden, to be raked into small heaps, gathered, and wheelbarrowed to the compost pile. But not the bygones of race. Not in America. Not yet.

Particularly, I suggest, this is of importance for those who labor in the vineyards of the law. From our nation’s beginnings, the ways in which we treat persons of color have been the knottiest – the hardest to unravel – of the long threads that make up the law’s fabric. Part of my submission in this essay is that the law’s most flagrant failures – those instances in which our highest court has most dismally misused its authority – have been characterized by flagrant judicial misreadings of our history. On some occasions these misreadings have been bolstered by the myopia of racial prejudice. Also, on occasion, the Su-

preme Court’s work has suffered because persons in positions of apparent or actual official authority have skewed the adversarial process, inappropriately urging the Court to decide what need not and should not have been decided, or supplying the Court with grievously incomplete, and hence slanted, information.

In its proper decisions about race, on the other hand, the Court appears to have been aware of the relevant history, has neither departed from nor embellished it, and has, on occasion, made it a building block in those decisions.

I begin, as one would expect, with *Dred Scott*.

In *Dred Scott*, it will be recalled, the Supreme Court, in the early months of 1857, was charged to determine the status of a slave taken by his army-surgeon master from the slave state of Missouri to military posts in the free state of Illinois and in federal territory where, under the Missouri Compromise of 1820, slavery was forbidden. Dred Scott had sued to gain freedom in the federal circuit court in Missouri, but that court had ruled against him. The circuit court’s adverse decision was based on two facts: the Missouri Supreme Court, applying Missouri law, had ruled against Scott in a nearly identical state court suit; and the United States Supreme Court had ruled some years before that in suits to gain freedom the law of the state in which suit was brought was dispositive.

Accordingly, it appeared that Scott’s appeal to the United States Supreme Court from the adverse decision of the federal circuit court would be fruitless, and, furthermore, that the Court would have no occasion to announce any new and significant legal principles.

But a funny thing happened on the way to the courthouse. In February of

1857, two months after the second argument (the case had been argued in April of 1856 and reargued in December), James Buchanan, the South-leaning Pennsylvania Democrat who had just been elected president and was to take office in less than a month, wrote to two of his friends on the Court – Justices Catron and Grier – intimating that it might be helpful if the Court were to resolve the most important issue on the national political agenda: the scope of congressional authority to regulate slavery in the territories.⁴ That political issue could be treated by the Court as a legal issue because counsel for Dred Scott's putative owner had argued that the Missouri Compromise was unconstitutional.

Buchanan's improvident intervention in the judicial process was the curtain-raiser for what were to be four of the worst years in the annals of the presidency. And it was also the curtain-raiser for the worst decision in the annals of the Court. For the justices obligingly changed course. Rather than disposing of Dred Scott's appeal with a brief reiteration of principles of no novelty, the Court, speaking through Chief Justice Taney on March 6, 1857, two days after Buchanan's inauguration, announced that Congress had no authority to regulate slavery in the territories – thereby discarding a regular pattern of national legislative action dating back to the Northwest Ordinance, enacted in the very summer and the very city in which the Constitution was written.

For good measure, Chief Justice Taney also ruled that Dred Scott had no right to bring a lawsuit in the federal court because he was not a "citizen" within the meaning of the Constitution. According

to Taney, not only slaves but also free blacks could never be a part of the American political community. They were forever to be outsiders because the thirteen states that agreed to the Constitution would never have "regarded . . . as fellow-citizens and members of the sovereignty, a class of beings whom they had thus stigmatized."⁵ In making his demonstration, Taney took particular note that Chief Justice David Daggett of Connecticut (who, it deserves mention, was one of the three founders of the Yale Law School) had ruled in 1834 that blacks were not part of the political community. "God forbid that I should add to the degradation of this race of men," Daggett had instructed a Connecticut jury, "but I am bound, by my duty . . . to say that they are not citizens."⁶

Justice Curtis, one of two dissenting justices, made patient demonstration that Taney was quite wrong in asserting that free blacks were without political rights when the Constitution was adopted. When the Articles of Confederation were ratified, Curtis noted, "all free native-born inhabitants of the States of New Hampshire, Massachusetts, New York, New Jersey, and North Carolina, though descended from African slaves, were not only citizens of those States, but such of them as had the other necessary qualifications possessed the franchise of electors, on equal terms with other citizens." Curtis quoted Article IV of the Articles of Confederation (the forerunner of the privileges and immunities clause in Article IV, § 2 of the Constitution): "The free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice, excepted, shall be

4 Don E. Fehrenbacher, *The "Dred Scott" Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978), 307, 309, 311–313.

5 *Dred Scott v. Sandford*, 60 U.S. (19 How.) 416 (1857).

6 *Crandall v. State of Connecticut*, 10 Conn. 340, 347 (1834).

entitled to all the privileges and immunities of free citizens in the several States.” Curtis then pointed out that when Article IV of the Articles of Confederation was being considered by Congress in 1778, a South Carolina motion to modify the opening words to read “The free white inhabitants” was defeated eight states to two, with one state’s delegation divided. Curtis then inquired, “Did the Constitution of the United States deprive them [the free inhabitants who were not white] or their descendants of citizenship?” And in lawyerly fashion he answered that question:

That Constitution was ordained and established by the people of the United States, through the action, in each State, of those persons who were qualified by its laws to act thereon, in behalf of themselves and all other citizens of that State. In some of the States, as we have seen, colored persons were among those qualified to act on this subject. These colored persons were not only included in the body of “the people of the United States,” by whom the Constitution was ordained and established, but in at least five of the States they had the power to act, and doubtless did act, by their suffrages, upon the question of its adoption. It would be strange, if we were to find in that instrument anything which deprived of their citizenship any part of the people of the United States who were among those by whom it was established.⁷

In December of 1856, after the argument but before the decision, Alexander H. Stephens, Georgia’s leader in Congress, termed *Dred Scott* a “great case,” hoping the Court would respond in the South’s favor. And so the Court did, undertaking to enshrine slavery in the territories beyond the reach of the political

process – forever. “Great cases,” Justice Holmes was to say some forty years later, “like hard cases make bad law.”⁸ *Dred Scott* made bad law. “And the war came.”⁹

After the Civil War, America moved swiftly to add three amendments to the Constitution: in 1865 the Thirteenth Amendment, abolishing slavery; in 1868 the Fourteenth Amendment, conferring citizenship on “[a]ll persons born or naturalized in the United States” (and thereby overruling the citizenship aspect of *Dred Scott*) and requiring every state to assure to “any person within its jurisdiction the equal protection of the laws”; and in 1870 the Fifteenth Amendment, guaranteeing to (male) blacks the right to vote.

At first the Supreme Court evinced a clear understanding of the genesis and weighty purposes of the amendments. In 1873, in the *Slaughter-House Cases*, Justice Samuel Miller spoke for the five justices of the majority:

We repeat, then, in the light of this recapitulation of events, almost too recent to be called history, but which are familiar to us all; and on the most casual examination of the language of these amendments, no one can fail to be impressed with the one pervading purpose found in them all, lying at the foundation of each, and without which none of them would have been even suggested; we mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freeman and citizen from the oppressions of those who had

8 From the dissenting opinion in *Northern Securities Co. v. United States*, 193 U.S. 197, 400 (1803).

9 Abraham Lincoln, *Second Inaugural Address*, March 4, 1865.

7 60 U.S. (19 How.) at 575–576.

formerly exercised unlimited dominion over him.

But within a few years the Court changed course: first in 1883, in the *Civil Rights Cases*, and next in 1896, in *Plessy v. Ferguson*, the Court contrived to marginalize the Thirteenth Amendment and to gut the equal protection clause.

The *Civil Rights Cases* invalidated the 1875 Civil Rights Act in which Congress, seeking to enforce the newly liberating amendments, required “inns, public conveyances on land or water, theaters and other places of public accommodation” to serve all comers without regard to race. The Thirteenth Amendment did not support the requirement, the Court felt, because the racial discriminations the 1875 act prohibited were not aspects of slavery. Nor did the Fourteenth Amendment help: that amendment addressed discriminations imposed by state law, and the Court, speaking through Justice Joseph Bradley, perceived no discriminations that states had authorized. Quite the contrary, so Justice Bradley observed: “Innkeepers and public carriers, by the laws of all the states, so far as we are aware, are bound, to the extent of their facilities, to furnish proper accommodations to all unobjectionable persons who in good faith apply for them.”¹⁰

Justice Bradley’s recital of the general obligation of innkeepers and public conveyances in every state to serve all comers was unexceptionable – it traced back in the common law for centuries, perhaps to Falstaff’s time and before. But if Justice Bradley and his colleagues of the majority entertained the notion that in 1883, or in 1875, or in 1868 when the Fourteenth Amendment became part of the Constitution, a black person refused a room at an inn in New Jersey or Con-

necticut or North Carolina could secure some sort of redress in a state court, those justices were inhabiting a dream world. The law that Justice Bradley and his colleagues struck down was, at least as it related to inns and public conveyances, the very remedy that Congress had fashioned to secure for blacks the equal protection of the laws.

Justice Bradley offered a general preachment:

When a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws.

In this sonorous sentence, there are two arresting phrases. First: “the rank of a mere citizen.” That is the very rank that Taney and his colleagues of the *Dred Scott* majority had worked so hard to deny to black Americans. Second: “the special favorite of the laws.” What sense of his country’s history or of his contemporary society could have driven Justice Bradley to the notion that the ex-slave had in the eighteen years since bondage become the law’s special favorite? A private memorandum the justice appears to have written to focus his own thinking sheds some light:

The law in question was passed to prevent discrimination on account of race and color. So far it is right . . .

It may be said generally that those things which are essential to the enjoyment of citizenship may be guaranteed against discrimination on account of race and color.

But what are essentials to the enjoyment of citizenship? Is the white man’s theater such an essential, if the colored person is

The Supreme Court from “Dred Scott” to “Grutter v. Bollinger”

10 *Civil Rights Cases*, 109 U.S. 3 (1883) at 25.

free to have his own theater? Is the white man's carriage or railroad car such an essential, if the colored man has a suitable car provided for him? Is the white man's hotel an essential, if he can have his own hotel and public accommodations?

It never can be endured that the white shall be compelled to lodge and eat and sit with the negro. The latter can have his freedom and all legal and essential privileges without that. The antipathy of race cannot be crushed and annihilated by legal enactment. The constitutional amendments were never intended to aim at such an impossibility.¹¹

One justice – John Marshall Harlan of Kentucky, a former slave owner – dissented in the *Civil Rights Cases*. He read the word “slavery” in the Thirteenth Amendment more spaciouly than his colleagues. Likewise with “citizen” in the Fourteenth Amendment – a term that, broadly read, infused the equal protection clause, and also, of course, gave muscle to the privileges and immunities clause. (As to privileges and immunities, Harlan was evidently prepared to depart from the narrow orthodoxy of the *Slaughter-House* majority, which, speaking through Justice Miller, had given the concept of citizenship – i.e., the constitutionally enforceable rights attendant on being a citizen of the United States – the narrowest possible scope. If that involved the risk of Miller's posthumous disapprobation, Harlan had, nevertheless, the comforting prospect that Bruce Ackerman and the late Charles Black would ultimately come to his aid.¹²)

11 Quoted in Charles Fairman, *Reconstruction and Reunion, 1864–88*, vol. 2 (New York: Macmillan, 1971–1987), 564.

12 Bruce Ackerman, “Opinion,” in Jack M. Balkin, ed., *What “Brown v. Board of Education” Should Have Said: The Nation's Top Legal Experts Rewrite America's Landmark Civil Rights Decision*

Harlan's dissenting opinion is a lengthy, and frequently redundant, discourse – a veritable anthology of observations, some legal, some historical, some cultural. At its best, the opinion speaks with quiet force:

My brethren say, that when a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men's rights are protected. It is, I submit, scarcely just to say that the colored race has been the special favorite of the laws. The statute of 1875, now adjudged to be unconstitutional, is for the benefit of citizens of every race and color. What the nation, through Congress, has sought to accomplish in reference to that race, is – what had already been done in every State of the Union for the white race – to secure and protect rights belonging to them as freemen and citizens; nothing more. It was not deemed enough “to help the feeble up, but to support him after.” The one underlying purpose of congressional legislation has been to enable the black race to take the rank of mere citizens. The difficulty has been to compel a recognition of the legal right of the black race to take the rank of citizens, and to secure the enjoyment of privileges belonging, under the law, to them as a component part of the people for whose welfare and happiness government is ordained.¹³

(New York: New York University Press, 2001); Charles L. Black, Jr., “The Lawfulness of the Segregation Decisions,” *Yale Law Journal* 69 (1960): 421.

13 109 U.S. at 61.

Harlan wrote his dissent with the pen that Chief Justice Taney had employed in writing the Court's opinion in *Dred Scott*.¹⁴

In 1896, thirteen years after the *Civil Rights Cases*, came *Plessy v. Ferguson*, the debacle that, notwithstanding the Fourteenth Amendment, imposed humiliation-by-law on black Americans for half a century.

The question presented was the validity of Louisiana's 1890 statute – one of the Jim Crow laws that spread across the South in the 1880s and 1890s – requiring, with criminal penalties for violation, that black and white railroad passengers be seated in separate cars, with an exception for “nurses attending children of the other race.” Because the railroad travel in question occurred within Louisiana, the statute was not open to challenge as a burden on interstate commerce.¹⁵ So counsel for Homer Plessy, a pale-skinned man who declined to sit in the black car, based his case on the Thirteenth and Fourteenth Amendments.

Justice Henry Billings Brown wrote the Court's opinion. The heart of the opinion was the following memorable pronouncement:

We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but

solely because the colored race chooses to put that construction upon it.¹⁶

Justice Brown was in one respect unique – he is the only justice in the Court's history to have studied law at both Yale and Harvard, albeit not for long enough to have received a degree from either institution. But in a more important respect Justice Brown was a typical member of the white establishment: “Brown accepted . . . without reservation” the “late nineteenth century prevailing opinion . . . that the Negro and Caucasian races were distinctly separate, with the Caucasian race assumed to be superior.”¹⁷ And so it was easy for Brown to reason his way to the conclusion that “separate but equal” facilities satisfied the Fourteenth Amendment.

Justice Harlan, once again in dissent, had a different view of the provenance and impact of the Louisiana statute. He recognized that laws of that kind “proceed[ed] on the ground that colored citizens are so far inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens. That, as all will admit, is the real meaning of such legislation.”¹⁸ Thus, Harlan, a border-state lawyer, acknowledged the contemporary social realities – the orig-

The Supreme Court from “Dred Scott” to “Grutter v. Bollinger”

¹⁶ 163 U.S. at 551.

¹⁷ In the issue of the *Harvard Law Review* celebrating that journal's one hundredth birthday, the late Leon Higginbotham noted that “four of the seven Justices who joined in the majority opinion [in *Plessy*] attended either Harvard or Yale Law School.” A. Leon Higginbotham, Jr., “The Life of the Law: Values, Commitment and Craftsmanship,” *Harvard Law Review* 100 (1987): 795, 812. The three justices other than Brown were Chief Justice Melville Fuller and Justices Horace Gray and George Shiras, Jr. Harlan learned his law at Transylvania University in Lexington, Kentucky.

¹⁸ 163 U.S. at 560.

¹⁴ John V. Orth, “John Marshall Harlan,” in Kermit L. Hall, editor in chief, *The Oxford Companion to the Supreme Court of the United States* (New York: Oxford University Press, 1992), 361 – 362.

¹⁵ See *Hall v. DeCuir*, 95 U.S. 485 (1877); cf. *Morgan v. Virginia*, 328 U.S. 373 (1946).

inal intent, if you will, of Jim Crow – that his colleagues failed to confront. Harlan, with the insight of Cassandra, concluded:

Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. It is, therefore, to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a State to regulate the enjoyment by citizens of their civil rights solely upon the basis of race.

In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the *Dred Scott case*.¹⁹

Harlan was not a great judge (Holmes, who served with him during his last years, said that his senior colleague “had a powerful vise the jaws of which couldn’t be got nearer than two inches to each other”²⁰), but in these two unhappy cases Harlan’s vision, and his alone, was true.²¹

Next I turn to *Hirabayashi* and *Korematsu*.²² Here my purpose is not to enlarge

19 Ibid., 559.

20 Quoted in Paul A. Freund et al., *Constitutional Law*, 4th ed. (Boston: Little, Brown, 1977), x1.

21 Cf. Justice Harlan’s dissent in *Berea College v. Kentucky*, 211 U.S. 45, 58 (1908). But see *Cumming v. Richmond County Board of Education*, 175 U.S. 528 (1899).

22 *Hirabayashi v. United States*, 320 U.S. 1 (1943); *Korematsu v. United States*, 323 U.S. 14 (1944).

upon the grievous shortcomings of those two Supreme Court decisions upholding the government’s opprobrious World War II treatment of Japanese Americans residing on the West Coast – first the humiliating curfew, and then the long months of arduous detention of upwards of one hundred thousand American citizens. The constitutional bankruptcy of the two decisions was made plain in 1945, only a year after *Korematsu* was decided, by Eugene Rostow of Yale in his celebrated article, “The Japanese American Cases – A Disaster.”²³ I can add nothing to our late colleague’s searing judgment of the record as it was then known.

This postscript to Rostow addresses the fact – not uncovered until the 1980s – that the justifications for the curfew and detention regimes offered by the government and accepted by the courts were profoundly flawed. The justifications involved recitals of potential acts of sabotage by Japanese Americans in furtherance of a Japanese invasion, and of the infeasibility of distinguishing loyal from disloyal Japanese Americans. To validate these recitals, the government put principal reliance on a document entitled “Final Report, Japanese Evacuation from the West Coast,” whose stated author was Lieutenant General J. L. DeWitt, the commanding general on the West Coast who issued the regulations imposing curfews and requiring Japanese Americans to report to assembly points for transfer to inland detention camps. But the War Department did not tell the Justice Department, let alone the federal courts, that there was an original DeWitt report whose explanation of the military need for detention was so meager that it had to be editorially enhanced in Washington. Further, the Justice De-

23 *Yale Law Journal* 54 (1945): 489.

partment, in its *Korematsu* brief to the Supreme Court, refrained from advising the Court that some of the risks cited in the “Final Report” were contradicted by information assembled by the FCC and the FBI that the Justice Department in turn credited.²⁴

The belated disclosures that the War and Justice Departments had massaged history with a view to gulling the judicial branch led Gordon Hirabayashi and Fred Korematsu, late in their honorable lives, to seek to remove the stain of criminality imposed four decades earlier. Relying on the venerable writ of *coram nobis*, each petitioner succeeded in persuading the judicial branch to undo injustice by setting aside his conviction.²⁵ The government offered only token opposition, mainly trying to limit collateral damage. Indeed, in Hirabayashi’s case, the Ninth Circuit noted that “[t]he government agrees . . . that General DeWitt acted on the basis of his own racist views and not on the basis of any military judgment that time was of the essence.”²⁶

What emerges from this sorry episode was well summarized by Judge (now Chief Judge) Marilyn H. Patel of the Dis-

trict Court for the Northern District of California in the concluding paragraph of her opinion setting aside Korematsu’s conviction: “*Korematsu* . . . stands as a caution that in times of distress the shield of military necessity and national security must not be used to protect governmental actions from close scrutiny and accountability.”

Taken as a chapter in the Supreme Court’s treatment of race, the 1943 decision in *Hirabayashi* and the 1944 decision in *Korematsu* seem, in retrospect, not only profoundly wrong at the time they were decided, but also jarringly out of harmony with the way other aspects of the law of race were by then beginning to unfold. The Court’s actions in setting aside the capital convictions in the *Scottsboro Cases* – *Powell v. Alabama* in 1932 and *Norris v. Alabama* and *Patterson v. Alabama* in 1935 – signaled the justices’ dawning understanding that blacks caught in the toils of the criminal process in state courts (particularly, but by no means exclusively, in the South) often found due process to be in short supply. And thus there began to be Supreme Court recognition that sustained federal judicial scrutiny was called for.

Also initiated in the 1930s was the NAACP’s twenty-year campaign against *Plessy* – to challenge it frontally or to enforce “separate but equal” so stringently as to bankrupt its defenders. The architect of the campaign was Dean Charles Hamilton Houston of Howard Law School. Houston’s 1938 victory in *Missouri ex rel. Gaines v. Canada*, forcing open the doors of the Missouri Law School to a black applicant, suggested that, at least with respect to graduate education, some members of the Court might not be unreceptive to chipping away at the *Plessy* edifice. In 1944 just a few months prior to *Korematsu*, Houston’s young

24 The solicitor general’s brief dealt with this problem by not including the contradicted recitals among those it expressly asked the Court to take judicial notice of, and by adding in a footnote that “‘The Final Report of General DeWitt’ . . . is relied on in this brief for statistics and other details concerning the actual evacuation and the events that took place subsequent thereto. We have specifically recited in this brief the facts relating to the justification for the evacuation, of which we ask the Court to take judicial notice, and we rely upon the Final Report only to the extent that it relates to such facts.” Quoted in *Korematsu v. United States*, 584 F. Supp. 1406, 1418 (N.D. Cal. 1984).

25 *Hirabayashi v. United States*, 828 F.2d. 591 (9th Cir. 1987); *Korematsu*, 584 F. Supp. 1406.

26 *Hirabayashi*, 828 F.2d. at 601.

surrogates, William Henry Hastie and Thurgood Marshall, won a victory of enormous importance in the political arena: in *Smith v. Allwright*, Hastie and Marshall persuaded the Court that the so-called white primary, under which the Democratic Party maintained whites-only hegemony throughout the one-party South, unconstitutionally excluded blacks from effective participation in the political process. The stage was then set for Marshall, Houston, and Hastie to attack racially restrictive covenants, and they triumphed in *Shelley v. Kraemer* and *Hurd v. Hodge*. Thereafter, Marshall and Robert Carter, now under the banner of the NAACP Legal Defense Fund, resumed the attack on segregation in graduate and professional schools in *Sweatt v. Painter* and *McLaurin v. Oklahoma State Regents*.

But *Plessy* remained a brooding doctrinal presence until, in *Brown v. Board of Education* (a consolidation of public school cases arising in Kansas, Virginia, South Carolina, and Delaware) and in the companion District of Columbia case, *Bolling v. Sharpe*, the Court, on May 17, 1954, ruled that “in the field of public education the doctrine of ‘separate but equal’ has no place.”²⁷ In the next several years, a series of *per curiam* decisions²⁸ in the wake of *Brown* were to establish that Jim Crow likewise had no place in the public beaches and golf courses and parks, in the municipal buses and airports and auditoria, and in the court-houses, that together make up the mosaic of community.²⁹

Like *Dred Scott*, *Brown* and *Bolling* were argued on the merits twice. The first

argument was in the fall of 1952. In June of 1953 the Court ordered reargument for the following term and directed counsel to address a series of questions. The first two questions sought guidance from counsel with respect to the meaning of the Fourteenth Amendment as understood by its framers and ratifiers. What evidence was there that the framers and ratifiers “contemplated or did not contemplate, understood or did not understand” that the amendment “would abolish segregation in public schools?” If there was no understanding that the amendment “would require the immediate abolition of segregation in public schools,” did the framers and ratifiers nonetheless contemplate that, pursuant to the amendment, a future Congress or the courts, “in light of future conditions,” might abolish public school segregation?

I do not recall any instance before or since when the Court expressly directed the parties to conduct a prescribed exploration of history. What lawyers and historians conducting that research in the summer of 1953 could not have known was that inside the marble walls a parallel inquiry was being conducted in-house – by Justice Frankfurter’s conspicuously able law clerk, Alexander Bickel.³⁰

Atlanta, 350 U.S. 879 (1955); *New Orleans City Parks Improvement Ass’n v. Detiege*, 358 U.S. 54 (1958); *Gayle v. Browder*, 352 U.S. 903 (1956); *Turner v. City of Memphis*, 369 U.S. 350 (1962); *Schiro v. Bynum*, 375 U.S. 395 (1964); *Johnson v. Virginia*, 373 U.S. 61 (1963).

³⁰ The Bickel memorandum, which Frankfurter circulated to his colleagues shortly before the December 1953 reargument, was the launching pad for Bickel’s celebrated article, “The Original Understanding and the Segregation Decision,” *Harvard Law Review* 69 (1) (1955). See Richard Kluger, *Simple Justice: The History of “Brown v. Board of Education”* and

²⁷ 347 U.S. at 495 (1954).

²⁸ See Ernest Brown, “Process of Law,” *Harvard Law Review* 72 (1958): 77.

²⁹ *Mayor and City Council of Baltimore City v. Dawson*, 350 U.S. 877 (1955); *Holmes v. City of*

In the event, the historical materials adduced by counsel put the Court's questions in somewhat sharper focus, but they did not answer those questions. As the Court, speaking through Chief Justice Warren, explained, the "discussion [by counsel on reargument] and our own investigation convince us that, although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best they are inconclusive."³¹ The Court therefore turned its attention to "the effect of segregation itself on public education"; but it recognized that "[i]n approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written."

And so the Court decided the issues before it on the basis of a factual finding of the three-judge district court that had tried the case brought on behalf of Linda Brown by her father Oliver Brown in Topeka, Kansas. That district court had decided the case against Linda because it felt bound by *Plessy*'s "separate but equal" formula. But the district court had, nonetheless, made the following finding on the basis of the testimony it had heard: "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group."³² The Supreme Court quoted and adopted that finding.

What the Court had done was cut the heart out of Justice Brown's *Plessy* pro-

nouncement that the "badge of inferiority" was prompted "not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it." What the Court in *Brown* did *not* do, and has been faulted for since, was to state flatly that racial segregation was imposed by whites on blacks in order to degrade them. We now know – what was not hard to conjecture in 1954 – that Chief Justice Warren understood that he could not rally a unanimous Court behind an opinion indicting white Southerners. The chief justice thought that unanimity – the unanimity that the Court had not achieved in *Dred Scott*, or in the *Civil Rights Cases*, or in *Plessy*, or in *Korematsu* – was worth a very great deal. It is hard to say persuasively that he was wrong.

Nonetheless, the feeling that a more powerful opinion could, and perhaps should, have been written has persisted. What may have been the first of those revisionist efforts was mine, in response to the expressed inability of the late Herbert Wechsler to locate a sound grounding for *Brown* – a critique that was a central ingredient of Wechsler's famous 1959 Holmes Lecture, "Toward Neutral Principles of Constitutional Law."³³

The centerpiece of my version of *Brown* was an extended quotation from

33 *Harvard Law Review* 73 (1) (1959). For those strongly committed to the rightness of *Brown*, the dubitante posture of Herbert Wechsler was a matter of serious concern. "Wechsler was, after all, a person of liberal persuasion who fully subscribed to the precepts of equality that undergirded *Brown*. More importantly, Wechsler was a lawyer and a scholar at the pinnacle of achievement and influence in our profession. As Judge [Richard] Posner, himself a figure of commanding professional status, put it in 1995 in *Overcoming Law*: '[T]here is no longer anyone in the legal profession who has the kind of stature that a Wechsler achieved.'" From Louis H. Pollak, "From Cardozo to Dworkin: Some Variations on Professor Nelson's Theme," *Saint Louis University Law Journal* 48 (2004): 860.

Black America's Struggle for Equality (New York: Knopf, 1975), 655.

31 *Brown v. Board of Education*, 347 U.S. at 489.

32 *Ibid.*, 494.

C. Vann Woodward's *The Strange Career of Jim Crow*. "[T]he Jim Crow laws," I quoted from Woodward,

applied to all Negroes – not merely to the rowdy, or drunken, or surly, or ignorant ones. The new laws did not countenance the old conservative tendency to distinguish between classes of the race, to encourage the "better" element, and to draw it into a white alliance. Those laws backed up the Alabamian who told the disfranchising convention of his state that no Negro in the world was the equal of "the least, poorest, lowest-down white man I ever knew." ... The Jim Crow laws put the authority of the state or city in the voice of the street-car conductor, the railway brakeman, the bus driver, the theater usher, and also into the voice of the hoodlum of the public parks and playgrounds. They gave free rein and the majesty of the law to mass aggressions that might otherwise have been curbed, blunted, or deflected.

The Jim Crow laws, unlike feudal laws, did not assign the subordinate group a fixed status in society. They were constantly pushing the Negro farther down.

And to the Woodward quote I added – for the Court that I had allowed myself to impersonate: "We see little room for doubt that it is the function of Jim Crow laws to make identification as a Negro a matter of stigma. Such governmental denigration is a form of injury the Constitution recognizes and will protect against."

Having written my revision of *Brown*, I summoned up the pretentious humility to add that a "draft opinion, prepared in hindsight by one who has no responsibility to decide, is only an academic exercise designed to prove a point. The fateful national consequences of *Brown v. Board of Education* stem from the opinion and judgment actually rendered."³⁴ I

34 Louis H. Pollak, "Racial Discrimination and Judicial Integrity: A Reply to Professor Wechs-

suspect that Jack Balkin and his colleagues, who have crafted such a remarkable group of alternative *Brown* opinions,³⁵ would not disagree. But I will add here what I went on to say:

Professor Wechsler, sympathetic to the result but skeptical of the rationale, is frankly uncertain of history's verdict: "Who will be bold enough to say whether the judgment in the segregation cases will be judged fifty years from now to have advanced the cause of brotherhood or to have illustrated Bagehot's dictum that the 'courage which strengthens an enemy and which so loses, not only the present battle, but many after battles, is a heavy curse to men and nations.'" But some are bold enough – or fool-hardy enough – to make the prophecy Professor Wechsler eschews: the judgment in the segregation cases will as the decades pass give ever deeper meaning to our national life. It will endure as long as our Constitution and our democratic faith endure.³⁶

Fifty years after *Brown* – and notwithstanding the gravity of the race issues that are still unresolved – I remain of that view.

Ten years later, in 1969, a remarkable thing happened: Herbert Wechsler changed his mind. The occasion was a speech to a Texas bar group on developments in the law relating to civil liberties and civil rights.³⁷ In the course of his remarks, Wechsler noted that he had "spoken elsewhere of my difficulties with the

sler," *University of Pennsylvania Law Review* 1 (1959): 108.

35 Balkin, *What "Brown v. Board of Education" Should Have Said*.

36 Pollak, "Racial Discrimination and Judicial Integrity," 30 – 31.

37 Herbert T. Wechsler, "The Nationalization of Civil Liberties and Civil Rights," *Texas Quarterly* 12 (1969): 10.

School opinion [*Brown*].” And then Wechsler said:

The decision is, however, more acceptable when its principle is seen to be that any racial line, implying an invidious assessment, may no longer be prescribed by law or by official action. That principle, it should be noted, means that race may still be made a factor in decision if the ground is not invidious in implication, as in striving for a racial balance to correct inequalities of opportunity that may be found.³⁸

In changing his mind, Wechsler explained himself in terms that support the Court’s most recent important decision on racial matters, *Grutter v. Bollinger*. In this 2003 case, the Court ruled that factoring race into the admissions decisions of the University of Michigan Law School was compatible with the Constitution. To be sure, Justice O’Connor’s opinion for the Court in *Grutter* was keyed to deference to the school’s perception of its compelling educational interest in assuring a diverse student body, rather than to “striving for a racial balance to correct inequalities of opportunity.”

But I suggest that in the years to come, *Grutter* may also be perceived as a conduit to the more widely applicable uses of affirmative action adumbrated in Wechsler’s sober second thought. Those are the uses that will be seen to be rooted in *Brown* – a *Brown* to be read not simply as an essay about public schools, but rather as a recognition of a fundamental fact of our nation’s history, namely, that, as Laurence Tribe has recently put it, “the social meaning” of racial segregation “was white supremacy.”³⁹ That is

38 *Ibid.*, 23. In fairness to Wechsler, I should note that he did not express any policy enthusiasm for remedial programs of this sort.

39 Remarks of Laurence Tribe at a panel entitled “Looking Forward,” concluding the *Har-*

what *Brown* stands for, but it is not what *Brown* forthrightly said.

The forthright judicial acknowledgment of the history that John Harlan and Vann Woodward understood only came in 1967 when the Court, in *Loving v. Virginia*, invalidated Virginia’s antimiscegenation law. That law, captioned as intended to “Preserve Racial Integrity,” criminalized marriage between a “white person” and anyone other than another “white person.” The law left all persons of color free to marry any person of their same or any other color.⁴⁰ The Court, speaking through Chief Justice Warren, the author of *Brown* and *Bolling*, ruled that “[t]here is patently no legitimate overriding purpose independent of invidious racial discrimination which justifies this classification. The fact that Virginia only prohibits interracial marriages involving white persons demonstrates that the racial classifications must stand on their own justification, as measures designed to maintain White Supremacy.”⁴¹

Race and law and history had, at long last, come together.

vard Celebration of the 50th Anniversary of Brown v. Board of Education, Harvard Law School, April 17, 2004.

40 The Virginia legislature that enacted the antimiscegenation law relaxed its rigor in one respect. A person with “one-sixteenth or less of the blood of the American Indian and . . . no other non-Caucasic blood” was statutorily deemed “white.” The Registrar of the State Bureau of Vital Statistics explained that the purpose of this accommodation was “to recognize as an integral part of the white race the descendants of John Rolfe and Pocahontas.” 388 U.S. at 5 n. 4.

41 *Loving v. Virginia*, 388 U.S. 1 (1967).

The Supreme Court from “Dred Scott” to “Grutter v. Bollinger”

Ian Haney López

Race on the 2010 census: Hispanics & the shrinking white majority

At our country's founding, we made race the constitutional test for those capable of self-government. Our nation's organic document allocated congressional seats among the states in proportion to "the whole Number of free Persons . . . excluding Indians not taxed [and] three fifths of all other Persons."¹ The Constitution then commanded that a census divine those racial numbers every ten years. From its first enumeration in 1790, the decennial census formed part of the process by which the racial state elaborated itself and society, race and democracy.

In the two centuries plus since, every census has tabulated the number of "white" persons in the United States.² The original Constitution clearly envi-

sioned a polity comprised of whites – they would be, as the Census Bureau put it in 1852, "the governing race."³ And whites have remained politically, economically, and socially dominant, notwithstanding the Reconstruction amendments that ended the explicit allocation of political representation along racial lines. The modern census shows that by almost every relevant sociological measure, whites continue to occupy the superior position in American society.

But a demographic revolution is underway, partly as a result of a long history of U.S. expansion, colonial incursions, and gunboat diplomacy throughout the Western Hemisphere. Latin Americans for several decades have composed the largest immigrant group

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1 U.S. Const., art. I, § 2, cl. 3.

2 Melissa Nobles, *Shades of Citizenship: Race and the Census in Modern Politics* (Stanford, Calif.: Stanford University Press, 2000), 28, 44. The 1850 and 1860 censuses constitute partial exceptions: "white" did not appear on the census schedule, but enumerators were instructed "in all cases where a person is white [to] leave the space blank."

3 Quoted in Clara E. Rodríguez, *Changing Race: Latinos, the Census, and the History of Ethnicity in the United States* (New York: New York University Press, 2000), 76.

in the United States, and this trend will continue, if not accelerate. Not even closing the border would significantly disrupt this development. Domestic births currently outpace immigration as the primary source of Latino population growth, with births to Hispanic mothers outnumbering all other deliveries combined in bellwether California. The U.S. Latino population increased 58 percent between 1990 and 2000, and this group, the largest minority in the country, now accounts for more than one of every eight Americans.⁴ The Census Bureau conservatively estimates that by 2020 Latinos will number 17 percent of the country.

What, then, of the white population in 2020? The Census Bureau projects that whites will still constitute a comfortable majority at 79 percent. But it gets this figure only by including 'Hispanic whites,' those Latinos who identify as racially white on the census. Without those Latino millions, the Bureau estimates that in the next fifteen years whites will fall to just sixty-four of every hundred Americans.⁵

So there it is: if Latinos are not counted as white, then whites within a few years will barely comprise three-fifths of all Americans, and not too long after that, probably before 2050, a numerical minority.

4 U.S. Bureau of the Census, *The Hispanic Population: Census 2000 Brief* (May 2001), 2.

5 The population projections are taken from U.S. Bureau of the Census, Population Projections Program, Population Division, *Projections of the Resident Population by Race, Hispanic Origin, and Nativity: Middle Series, 2016 to 2020* <<http://www.census.gov/population/projections/nation/summary/np-t5-3.tx>> (accessed January 13, 2000), and U.S. Bureau of the Census, *Current Population Reports: Population Projections of the United States by Age, Race, and Hispanic Origin: 1995 to 2050* (1996), 13.

This tectonic shift heralds more than a mere decline in relative numbers. The increasingly nonwhite population brings real pressure to bear on the advantages previously reserved for whites. Observe electoral politics, where the major parties increasingly see their futures bound up in attracting Hispanic votes. Or consider cultural politics and Sam Huntington's most recent screed decrying the threat ostensibly posed by Latino immigrants to our alleged "core Anglo-Protestant culture."⁶ And then there are the structural concerns, like the distribution of wealth and economic power; access to employment, government benefits, and health care; and patterns of residential and school segregation. Swelling Latino numbers make each of these potential flash points of conflict, with even greater strife looming in the future as an increasingly brown workforce shoulders the burden of supporting a predominantly white retired class.

One thing is clear: the declining percentage of whites in America imperils continued white dominance. This may sound like good news to those otherwise dedicated to ending racial hierarchy. But for those comfortable with the status quo, and for those who recognize that change often brings conflict, there's cause to worry. The "governing race" is in jeopardy – depending, partly, on how Latinos are counted.

During the nineteenth century, most whites regarded Latin Americans as mongrels debased by their mixture of Spanish and Native American (and sometimes African and Asian) blood. The perception that Hispanics were racially inferior buttressed and was in turn encouraged by Manifest Destiny,

6 Samuel P. Huntington, *Who Are We?: The Challenges to America's National Identity* (New York: Simon & Schuster, 2004).

the Monroe Doctrine, and U.S. expansion into Latin America. Yet paradoxically, conquest and colonialism also led the United States to categorize Latinos officially as white. When the United States annexed Mexico's northern half in the mid-1800s, and again when it claimed sovereignty over Puerto Rico at century's end, Congress preferred to grant citizenship to supposed inferiors rather than to transform the United States into an explicitly imperial power ruling over subjugated peoples. The net effect was an official presumption that Latin Americans were white, combined with state policies and popular beliefs that treated them as racial failures.

Prior to 1930, census takers followed the official presumption of whiteness, counting Latin Americans as white.⁷ But the early twentieth century saw increasing antagonism toward the foreign-born, just as immigration from Mexico surged. In 1924, Congress instituted administrative changes to curtail Mexican migration, effectively creating the modern border patrol. Legal Mexican immigration that had previously averaged almost sixty thousand persons a year dropped to three thousand in 1931. In this xenophobic context, the Census Bureau in 1930 classified Mexicans as a distinct non-white race. This classification helped legitimize federal and state expulsion campaigns between 1931 and 1935 that forced

almost half a million Mexican residents – nationals and U.S. citizens alike – south across the border.

Intense lobbying by Mexican Americans and the Mexican government, as well as the executive branch's desire to secure alliances in the face of impending war in Europe, led the Census Bureau to reverse course in 1940. For the next thirty years, census takers classified Mexican Americans and, after 1950, Puerto Ricans as white, unless they appeared to be "definitely . . . Negro, Indian, or some other race." Even so, the census continued to collect data on Mexican Americans as a distinct population. In 1940, the Bureau counted persons who reported Spanish as their mother tongue; in 1950, it began disaggregating "white persons of Spanish surname."⁸ Also in 1950, it began collecting data on persons who identified Puerto Rico as their birthplace.

Under pressure from Latino groups, President Nixon in 1970 ordered that the census include a national question about Hispanic ethnicity. Because millions of questionnaires had already been printed without this item, the Bureau included it only on the long form, asking the 5 percent who received this more detailed questionnaire to choose whether their "origin or descent" was Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish. The 1980 census was the first to ask all persons whether they were of "Spanish/Hispanic origin or descent." In doing so, it formally adopted the practice of conceptualizing Hispanics in ethnic terms, separating this item from the question about race.

Coincidentally, in 1980 the Bureau for the first time shifted from having census takers make racial determinations to asking respondents to classify them-

7 On the census and Hispanics, see generally Rodríguez, *Changing Race*; Sharon M. Lee, "Racial Classifications in the U.S. Census, 1890 – 1990," *Ethnic and Racial Studies* 16 (1) (1993): 75 – 94, esp. 75, 78; Jorge Chapa, "Hispanic/Latino Ethnicity and Identifiers," in Margo J. Anderson, ed., *Encyclopedia of the U.S. Census* (Washington, D.C.: Congressional Quarterly Press, 2000); U.S. Bureau of the Census, *Historical Census Statistics on Population Totals by Race, 1790 – 1990, and by Hispanic Origin, 1970 – 1990, for the United States, Regions, Divisions, and States* (September 2002), table 1.

8 Rodríguez, *Changing Race*, 102.

selves. The combination of self-reporting plus the new Hispanic ethnicity item produced a startling result: the numbers in the “other race” category, a fixture of every census since 1910, virtually exploded, increasing tenfold. In 1980, more than 7.5 million persons listed themselves under the “other race” designation – and they were almost all Latinos.

The Census Bureau, studying these numbers, concluded that the difference between ethnicity and race confused Hispanics. In another 1980 innovation, the Bureau attempted to distance itself from racial categorization by eliding explicit references to race, asking obliquely “Is this person ____?” and providing options like “white” and “black” before ending with “Other – specify.” Reversing course, in 1990 the Bureau made sure those considering “other” got that it meant race. Under “Race” neatly printed in boldface, the census worked “race” into the “other” option *four* times: “If other race, print race” the form commanded, with an arrow to a blank box, under which the form repeated for emphasis, “Other race (print race).”

Not only did the “other race” figure not decline, it increased – and by a lot. The number of racial others jumped by 45 percent between 1980 and 1990, making that category the second-fastest-growing racial group in the country. Again Latinos drove the increase: 97.5 percent of those choosing “other race” identified as Hispanics, while the proportion of Latinos opting for the “other race” designation rose to 43 percent. But the Bureau refused to be defeated. In both 1980 and 1990, the Hispanic question was the seventh item on the short form, well after the race question at number four. Perhaps the order and lack of propinquity proved just too confounding. In 2000, the Bureau put the Hispanic query immediately before the

race question and upped the number of references to race in the latter item by yet one more. The proportion of Latinos choosing the “other race” category finally declined – but only from 43 to 42.2 percent. Again, Latinos represented 97 percent of that category.

The census uses the “other race” category as a reserve, a catchall for outliers. It does not treat those who identify as “other” as a distinct group, but instead disaggregates them by imputing their numbers to the remaining races following a complicated formula. This approach worked well when “other” actually functioned as a residual category, but since 1980, “other” has become a Latino phenomenon. Virtually all persons choosing “other” are Hispanic, and this group now constitutes 6 percent of the nation’s population. More than one in twenty Americans is a Latino who describes him or herself as racially “other” on the census.

It is not likely that the large number of Hispanics choosing “other” are rebelling against race altogether. Admittedly, data from 1990 show that many Hispanics in fact left the race item blank – but this still came to only about 4.5 percent of Latino respondents, a far smaller group than that which identifies as “other.” No, it’s emphatically the case that consistently almost half of all U.S. Latinos believe they’re members of a race that’s not white, black, Native American, Asian, or Pacific Islander – the principal choices on the census. But if so, what race are they? And how should the census treat this group?

Latinos may be divided into three racial camps.⁹ First, there are black Hispanics, who identify as Latino ethnically

9 This discussion draws on census data analysis from John R. Logan, *How Race Counts for Hispanic Americans* (Albany, N.Y.: Lewis Mum-

and as black racially. This group, steady at just under 3 percent of the Latino population since 1980, numbers almost a million in the United States. Next come white Hispanics, who grew from 9 million in 1980 to just shy of 18 million in 2000. This doubling did not, however, keep pace with the growth of the Latino population as a whole; the proportion of Latinos claiming to be white has steadily declined, from 64 percent in 1980, to 54 percent in 1990, to just fewer than 50 percent in 2000.

Then there are Latino Hispanics, who identify as Hispanic on the ethnicity question and as “other” on the race item, most often writing in “Latino,” “Hispanic,” or a national origin term. This population has steadily gained among all Latinos, from 34 percent in 1980, to 44 percent in 1990, to 47 percent in 2000 – just shy of the number who identify as white Hispanics. It’s these nearly seventeen million respondents, Hispanics who claim Latino not only as an ethnicity but also as a race, who cause the Census Bureau so much consternation.

Latino Hispanics actively consider themselves a race. And their numbers may be much greater than the “other” category indicates. The census numbers imply that slightly fewer Latinos think they’re racially distinct than consider themselves white. But a major survey, using more intensive questioning, strongly suggests that in fact a significant majority of Latinos believe they’re a race, while only one in five identifies as white and a much smaller number claim to be black.¹⁰

ford Center for Comparative Urban and Regional Research, University at Albany), July 14, 2003.

10 Pew Hispanic Center/Kaiser Family Foundation, 2002 *National Survey of Latinos*, Summa-

Black, white, and Latino are not the only racial identities embraced by Hispanics, but they are the principal ones (in the 2000 census, 1.2 percent identified as American Indian, and 0.3 percent as Asian). These primary racial identities correspond to important differences among Hispanics, for example in nativity and language. Racial differences among Hispanics also shape life chances as measured by income, employment, poverty, and segregation. Along all four measures, a gradient traces the positions of Hispanics, with white and black marking the extremes, and Latino Hispanics consistently in between. For instance, in 2000 the unemployment rate rose from 8 percent for white Hispanics, to 9.5 percent for Latino Hispanics, to 12.3 percent for black Hispanics – which exceeded the black unemployment rate of 11 percent. Similarly, the proportion of persons living below the poverty level rose from less than a quarter of white Hispanics to nearly a third of black Hispanics – again exceeding the rate for non-Hispanic blacks. One demographer argues that racial dissimilarities among Latinos may be so great that “there are now better reasons to classify black Hispanics as black than as Hispanic.”¹¹

With so many Latinos thinking of themselves as a race, and yet with race dividing Hispanics so powerfully, how should the census count Latinos? Kenneth Prewitt has suggested one solution:

ry of Findings (December 2002), 31. “What race do you consider yourself to be?” Posing this and a series of follow-up questions to nearly three thousand Latinos, this survey found that 56 percent of Hispanics consider themselves racially Latino, while only 20 percent accept a white racial identity.

11 Logan, *How Race Counts for Hispanic Americans*, 10.

First, combine the race and ethnicity questions in a format that allows respondents to select more than one option. Second, follow up the race and ethnicity item with a question encouraging respondents to specify their ancestry, nationality, ethnic origin, and/or tribal affiliation.¹²

The modern census collects personal data for two principal reasons: to track the changing lives of our country's residents and to facilitate effective governance. For the latter, an accurate census plays various roles. But chief among these governmental functions is amassing the statistics necessary to enforce and measure the efficacy of civil rights laws.

These fundamental purposes provide a basis against which to judge proposed changes to how the census counts races. Measured this way, Prewitt's suggestion promises a dramatic improvement. Those Latinos who think of themselves in separate ethnic and racial terms – as white or black Hispanics – could indicate this by marking multiple categories. Their sense that Hispanic constitutes an ethnicity would be preserved, while they could also identify racially as they wish. At the same time, racial Latinos who under the current bifurcated census system identify as racially “other” could mark “Hispanic” alone to signal that this constitutes both their ethnic and racial identity.

In terms of sociological accuracy, creating a taxonomy in which virtually all Latinos can locate themselves racially would constitute a major advance. No longer would the census disregard the 6 percent of Americans who consider themselves racially Latino.¹³ Moreover,

comparability should remain high for all racial groups (save, of course, for the “other race” and the new Latino race categories), since the choose-one-or-more option ensures that race and ethnicity will remain complements rather than become mutually exclusive. Thus, no one would be forced to choose between, for instance, identifying as Hispanic or white. Finally and importantly, because race and ethnicity are already effectively fungible under antidiscrimination law, combining these questions on the census would not have a deleterious effect on civil rights enforcement.

But perhaps the real promise of Prewitt's proposal lies in joining the race and ethnicity item with a subsequent question on nationality, ancestry, ethnic origin, and/or tribal affiliation.

Despite its various drawbacks, the census short form actually gathers racial and ethnic data in a manner that allows a more sophisticated parsing of Latinos than of other groups. Hispanics under the current system can be disaggregated along lines of race and national origin, providing insight into significant differences within that group. As we've seen, Hispanic lives differ dramatically in ways that correspond to whether individuals identify as racially white, black, or Latino. Similarly, national origin drives profound sociological differences among Latinos; the census shows, for example, that 36 percent of Dominicans but only half that proportion of Cubans

while simultaneously allowing respondents to pick more than one identity. One result was that the number of Hispanics identifying as white fell to 13.7 percent; another was that the number choosing “other race” plummeted to 0.4 percent. Charles Hirschman, Richard Alba, and Reynolds Farley, “The Meaning and Measurement of Race in the US Census: Glimpses into the Future,” *Demography* 37 (2000): 381, 389.

12 See Kenneth Prewitt in this issue of *Dædalus*.

13 In 1996 the Census Bureau studied the effect of combining the race and ethnicity items

live below the poverty line in the United States. In this intragroup diversity, Latinos are entirely typical. No racial group is internally homogenous; whites, blacks, Native Americans, Asians, and Pacific Islanders all vary along internal fault lines.

Race is comprised by various forms of social differentiation, including nationality, ancestry, ethnic origin, tribal affiliation, and, I would add, color. In turn, these overlapping forms of identity establish internal differences and, often, hierarchies within racial groups. Yet the census captures such variation poorly with respect to Latinos, with still less accuracy for Asians and Native Americans, and not at all for whites and blacks. The most egregious omission is color, a crucial component in shaping how race is experienced. Without a question on color, the census can hardly hope to measure, even remotely, the full impact of race on American lives.

The census should move toward greater refinement in collecting racial data by following Prewitt's suggestion and asking each person not only a race and ethnicity question, but also a follow-up on national origin, ethnic background, ancestry, and/or tribal affiliation. And it should also have a question on color. I do not mean one whose answer would require a literal skin color test, such as a melanin count. Color here means somatic details that translate in racially significant ways – hair color and texture, facial features, skin tone, and so on. Few studies have tracked the influence of color on intragroup differences among minorities, and no study that I know of examines color among whites. Yet existing studies confirm a remarkably consistent and pernicious dynamic: light color correlates to privilege, dark to disadvantage.

Were the census to track socioeconomic position, education, homeowner-

ship, and so forth in terms of race supplemented by color, the results would be truly eye-opening. Indeed, they would almost surely force not only a major reconsideration of what we mean by racism in the United States, but also an overhaul of civil rights laws, which, as they stand, ineffectively respond to color discrimination.¹⁴ And measuring color wouldn't be all that difficult to do. A census color item could elicit self-descriptions ("Would you describe your skin color and features as very dark, dark, medium, light, or very light?"), or it could rely on interviewer evaluations of the sort developed in psychological studies. Whether in terms of sociological insight or effective civil rights laws, gathering data on not only race but also color would greatly improve current practices.

But let's be clear: the census isn't going to gather data on color anytime soon. Indeed, it's much more likely to bow to pressure in the other direction and eliminate questions on race entirely. George Will recently insisted that "because Hispanics have supplanted blacks as America's largest minority, it is time to remove the race question from the census form. This would... fuel the wholesome revolt against the racial and ethnic spoils system that depends on racial and ethnic categorizations."¹⁵ Which should remind us: the census remains just as much a weapon in struggles over race now as in 1790 or 1930. Technical arguments about census reform should not blind us to this larger reality.

14 See generally Taunya Banks, "Colorism: A Darker Shade of Pale," *UCLA Law Review* 47 (2000): 1705–1746; Trina Jones, "Shades of Brown: The Law of Skin Color," *Duke Law Journal* 49 (2000): 1487–1557.

15 George F. Will, "Race, Now an Anachronism," *San Francisco Chronicle*, May 5, 2003.

No one believes that today's census officials crudely calculate the best way to bend their power in the service of racial supremacy. Just the opposite, many census technocrats embrace the census's civil rights role and would fight to preserve it. Nevertheless, racial politics will inform, directly and indirectly, the academic discussions, intense lobbying, administrative wrangling, and executive and congressional politicking that will ultimately shape the 2010 census. And so we return to where this essay began, for surely a looming question behind the maneuvering is this: will Latinos and other minorities soon swamp the white race?

One response is to obfuscate any demographic change. Nathan Glazer's recent proposal to end the collection of racial data regarding all groups but blacks can certainly be read in this light. With only blacks counted, and that population steady at about 12 percent, whites would implicitly remain the overwhelming majority. "Underlying the proposal [is] an ideological or political position," Glazer admits, "that it is necessary and desirable to recognize and encourage the ongoing assimilation of the many strands that make up the American people."¹⁶ Does he not mean, on some level, that ceasing to count non-black minorities is desirable because it would superficially fold them into and thus perpetuate a majority that is implicitly white?

Glazer does not make this argument, instead defending his proposal by pointing to the census's symbolic role: "The census contains a message to the American people, and like any message it educates to some end: It tells them that the government thinks the most important

thing about them is their race and ethnicity."¹⁷ A census without these items presumably would convey Glazer's preferred message that the government thinks race and ethnicity unimportant. It's certainly true that the census implicitly communicates a state-sanctioned understanding of race, and that reformers should weigh the symbolic aspects of racial data collection. But largely eliminating race from the census, as Glazer proposes, would hamstring the government's ability to measure life chances or enforce civil rights laws – that is, would defeat the modern census's central purposes. Communicating a preferred racial message can hardly justify this result. Does Glazer really think we should overthrow racial counting and all that it achieves in both telling us about and improving life in the United States, because it suggests to Americans that race matters?

But Glazer also adduces another argument: the "irrationality" of the census categories. "Are there really so many races in Asia that each country should consist of a single and different race, compared to simply 'white' for all of Europe and the Middle East?" he asks.¹⁸ By irrational does Glazer mean incoherent? If so, what else would one expect of a set of ideas and practices formed over centuries through the clash of competing social forces? The different treatment the census accords the Asian and white races doesn't represent some intellectual failing among census bureaucrats or, as Glazer later implies, the wily machinations of self-interested minorities. It reflects instead changes in U.S. racial ideology during the first half of the twentieth century, when newly closed borders and the exigencies of the Great

16 Nathan Glazer, "Do We Need the Census Race Question?" *Public Interest* (Fall 2002): 21, 23.

17 *Ibid.*, 22.

18 *Ibid.*, 23.

Depression and World War II separated for whites but not for others the previously conjoined notions of race and nation, resulting in the monolithic white identity we're familiar with today.¹⁹

"The concept of race," the Census Bureau explained in defining that term in 1950, "is derived from that which is commonly accepted by the general public."²⁰ The census has always relied on culturally rooted concepts in measuring the impress of race – and after 1950, even the Bureau recognized this to be so. Glazer mistakes an increasingly commonplace insight for a compelling critique: that race is socially constructed does not amount to an argument that it should be jettisoned. The census has no choice but to rely on incoherent categories if it hopes to measure race in the United States – not because Bureau technocrats are incapable of designing commensurate categories, but because race arises out of (fundamentally irrational) social practices.

Glazer's arguments, taken at face value, are quite weak. He would be far more convincing if he opposed the census's use of race by forthrightly addressing its principal justifications, explaining directly why he thinks it no longer important to document race's social impact, or why he believes the census should no longer concern itself with assisting in or measuring the efficacy of civil rights laws. But despite their inanition, the sorts of arguments Glazer makes are

increasingly popular. I suspect calls for eliminating race from the census gain traction not on their merits but because they resonate with an emergent racial ideology – color blindness.

Invoking the early civil rights movement's formal antiracism, color blindness calls for a principled refusal to recognize race in public life. This ideology espouses a deep commitment to ending racial hierarchy, but in fact wages war not so much against white dominance as against the idea that white dominance persists. By rejecting all race-conscious government action, even that designed to end subordination, color blindness prevents the state from addressing structural racial inequality. Moreover, by eschewing all talk of race, color blindness forecloses debate regarding racism's continuing vitality. Color blindness protects racial supremacy from both political intervention and social critique.

Despite this, or rather because of it, color blindness is rapidly gaining as the most powerful way of (not) seeing race in America. Let's be clear, then, about its political and racial valences: color blindness is powerfully conservative, by which I mean that as a current practice (rather than as a distant ideal) it conserves the racial status quo. And in this, it takes on a racial cast, inasmuch as preserving the present works best for those currently racially dominant. In short, whatever its antiracist pretensions, color blindness primarily serves the political and racial interests of whites.

It should come as no surprise that color blindness and concern over the Hispanic presence sometimes merge, as Ward Connerly recently demonstrated. Connerly, the prime backer of the voter initiative that ended affirmative action in California, recently campaigned for what he termed the Racial Privacy Initia-

19 See Mathew Frye Jacobson, *Whiteness of a Different Color: European Immigrants and the Alchemy of Race* (Cambridge, Mass.: Harvard University Press, 1999); Mae Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton, N.J.: Princeton University Press, 2004).

20 U.S. Bureau of the Census, *Census of the Population: 1950, Population Characteristics of the Population* (1953), vol. 2, pt. 1, 35.

tive, which would have prohibited California from collecting racial data. He vociferously promoted the initiative, which lost, as a step toward color blindness. But in a less guarded moment, he also admitted that he intended through the initiative to prevent Latinos from claiming the status of racial minorities. "In California," Connerly explained to a *Washington Post* reporter, "those of Mexican descent will soon be a majority. . . . They want to see affirmative action policies remain so they can take advantage of them. They want to claim minority status when, in fact, they will soon be a majority in California. They want to hide behind the term 'Latino' and 'people of color,' but most of them check the white box [on the census form] anyway."²¹

At the precise historical moment when race has become a tool for undoing racism and when, in addition, the nonwhite population seems finally poised to surpass the white group, color blindness has emerged as a new racial ideology. Its adherents wield it mainly to forestall any recognition of, or response to, racism's deep and continuing legacy. In the context of Latino demographics and racial counting, however, its partisans see in color blindness a means of obscuring the rapidly approaching shift from a white-majority to a white-minority country.

Calls for a nostrum in which the census abandons racial categories should be regarded with strong suspicion. Certainly not everyone who argues that the census should abandon race proceeds from a commitment to freezing current hierarchies. But even among those who do not espouse color blindness, opposing the census's use of race entails an implicit disregard for the role race plays in

skewing life chances, and for the utility of civil rights laws in ameliorating racism. So long as racism strongly persists in the United States, race deserves a central place on the census.

Some opponents of racial counting, including Glazer, urge the Census Bureau to replace race with another concept, for instance ancestry or ethnicity.²² Such alternatives necessarily operate not as full proxies for but in tension with race, and would produce distorted census data. What does ancestry mean for blacks in the United States, for instance, when they have been stripped of family and ancestral history? How do whites conceive of ethnicity, when identities like Irish and Italian returned to vogue only recently in response to black gains during the civil rights movement? The census asks people to identify themselves. If we want to know about race, then the census must pose its questions in terms that respondents will recognize easily as racial. Technocrats and somatologists may entertain themselves with new or substitute constructs, but the census can only gather data effectively if it uses a broadly intelligible vocabulary. To gather racial data, the census must ask directly about race – there is no other way.

Our country faces dramatic racial change on two fronts, one demographic and the other ideological. The increasing Latino numbers and the spreading politics of color blindness make it difficult to discern the racial future. Nevertheless,

22 Glazer, "Do We Need the Census Race Question?" 23. See also David Hollinger in this issue of *Dædalus*, as well as American Anthropological Association, "American Anthropological Association Response to OMB Directive 15: Race and Ethnic Standards for Federal Statistics and Administrative Reporting" (September 1997), <www.aaanet.org/gvt/ombdraft.htm>.

21 Quoted in Darryl Fears, "California Activist Seeks End to Identification by Race," *The Washington Post*, July 5, 2003, A1.

two things are clear. First, we're in a moment of dramatic racial flux. Race will surely look profoundly different in 2050, and maybe even as soon as 2020.

Second, the census will have a central role in this racial revolution. Partly and importantly, as racial ideas evolve over the next decades, the census will help us track whether racial inequality diminishes or increases. But the census will do more than measure society; over the next decades, it will directly foster racial change. How the census counts race in 2010 will shape conceptions of race in 2020 and so on into the future, making the census itself an important battleground. The racial questions asked by the census reflect triumphs and defeats in this society's long engagement with racism – sometimes in battles fought immediately over the census and its racial data collection. Debates about the 2010 census must forthrightly engage the larger racial dynamics in which the census, for good or ill, remains deeply embedded.

Kim M. Williams

Multiracialism & the civil rights future

Spurred by a small group of activists in the 1990s, the American system of racial classification changed recently in a conceptually bold way. With moving reference to the self-esteem of their children, along with the moral conviction that multiracial recognition could help the entire nation beyond an impasse, multiracial advocates were astonishingly successful in the 1990s.

Yet at the height of activity, the multiracial movement involved no more than a thousand individuals, mainly living on the East and West Coasts. Only a handful of leaders pushed the multiracial category effort forward, in fits and starts, throughout the decade. Despite its small size, the group that advanced the cause did not agree on much beyond the belief that forcing multiracial Americans into monoracial categories was inaccurate and inappropriate. Still, with only the slightest nudging by this poorly financed and increasingly fractious handful of activists, six states passed

legislation between 1992 and 1998 to add a multiracial category to state forms. During the same period, legislators introduced multiracial category bills in five additional states, while two other states added a multiracial designation by administrative mandate.

The multiracialists' best-known campaign would have added a multiracial category to the 2000 census. While the group did not get exactly what it wanted, its efforts led to the creation of an unprecedented "mark one or more" option, allowing individual Americans to identify with as many racial groups as they saw fit. Throughout the prolonged review by the Office of Management and Budget (OMB) culminating in this 1997 decision, the priorities of traditional civil rights advocates were twofold. First, they strongly opposed a stand-alone multiracial category, fearing that it would jeopardize civil and voting rights enforcement by diluting the count of minorities. Having successfully averted this outcome, but faced with no alternative to multiple check-offs, civil rights proponents secondly strove to ensure that multiple-race responses would be tabulated to a minority group.

The OMB met both demands. It rejected a stand-alone multiracial category and arrived at a tabulation scheme that

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has actually increased the tally of minority groups in some contexts, since anyone who checks off boxes for both white and a minority race counts as part of the latter for civil rights purposes. From one perspective, the technical fix adopted by the federal government – intended to balance the tension between growing racial fluidity on the one hand, and ongoing racial and ethnic data needs on the other – amounted to symbolic appeasement. Federal-level multiple-race data serve no statutory purpose, and the tabulation guidelines stipulate a systematic process by which to convert multiple-race responses into single-race data. This is necessary because, to enforce civil and voting rights laws, we must be able to distinguish between those who are members of minority groups and those who are not.

Only 2.4 percent of the population, about 6.8 million people, identify with multiple races, as measured in 2000. At first glance, this might seem insignificant. Given that civil rights enforcement depends heavily on patterns, and that ‘multiple-race’ is not a protected class, the consensus has been that the multiple-race option is probably irrelevant to civil rights claims involving the size and the characteristics of minority groups.¹ But is the “mark one or more” format merely symbolic? Is the symbolism politically irrelevant?

On both counts, I think the answer is no. Consider the circumstances under which a handful of disorganized activists could mount such a successful campaign in the first place.

1 But see Roderick J. Harrison, “Inadequacies of Multiple-Response Race Data in the Federal Statistical System,” in Joel Perlmann and Mary Waters, eds., *The New Race Question: How the Census Counts Multiracial Individuals* (New York: Russell Sage Foundation, 2002).

The Census Bureau’s biggest problems since 1970 in one way or another have revolved around race. In an effort to avoid conflicts and lawsuits like those surrounding the prior three censuses (most of which concerned the undercount and its controversial remedy, sampling), the OMB requested that Congress hold hearings on the standards for racial and ethnic classification to be used in 2000.²

During the first round of hearings conducted in 1993, the OMB announced plans to begin a comprehensive review of the statistical standards used throughout the federal government for gathering and reporting data on race and ethnicity. Concerns about whether the government was “keep[ing] pace with changes in our nation’s population”³ topped the list of the OMB’s stated motives for initiating this review. Another clearly pressing, if less public, incentive involved the hard-to-defend procedures employed by the Bureau to classify people who disregarded the one-race census instructions in 1990. The Bureau received about half a million multiple-race responses that year. In cases where respondents marked two or more boxes, former Census Bureau director Kenneth Prewitt is reported to have heard, the box with the darkest mark was counted. Sharon Lee notes a similarly arbitrary, if systematic, process for write-in responses: “respondents who wrote ‘black-white’ were

2 The director of the Census Bureau is a presidential appointee who reports to the secretary of commerce. The OMB, which reviews and decides upon budget requests from the Bureau, exerts further control.

3 Katherine K. Wallman, Suzann Evinger, and Susan Schechter, “Measuring Our Nation’s Diversity: Developing a Common Language for Data on Race/Ethnicity,” *American Journal of Public Health* 90 (11) (November 2000): 1704–1708.

counted as blacks; those who wrote 'white-black' were counted as whites."⁴

Questionable at best, indefensible at worst, these makeshift remedies were not solutions. By the mid-1990s, the controversies that engulfed every census since 1970 (against a backdrop of rapid demographic change over the same period) opened political opportunities for multiracial activists. Although these activists had no control over the outcome, the OMB review itself represented a victory from their perspective, as almost all the major issues identified for exploration related directly to their concerns. Eventually, the multiracial issue became the driving force of the multiyear review. The clear advantage of a prolonged review was prolonged attention.

Meanwhile, a flurry of legislative activity was underway in the states. By 1988, enough multiracial organizations had gradually branched out from California to create the nationwide Association of MultiEthnic Americans (AMEA). Soon after the founding of AMEA, two other multiracial organizations appeared – A Place for Us (APFU) and Project RACE (for "Reclassify All Children Equally") – both claiming national memberships. A linked network of college-based organizations emerged as well, along with a proliferation of periodicals, conferences, summit meetings, and so forth. All these groups operated on shoestring budgets.

At odds with AMEA's Washington-focused strategy from the beginning, Project RACE director Susan Graham believed that "a better way to get to the federal government" would be to go "school to school, state by state."⁵

4 Sharon Lee, "Racial Classifications in the U.S. Census: 1890 – 1990," *Ethnic and Racial Studies* 16 (1993): 83.

5 Susan Graham, personal communication with author, April 16, 1998.

School is often the place where parents first face questions from the state about the racial identity of their children. According to a 1997 survey conducted by the Department of Education as part of the broader OMB review, thirty-one states reported receiving requests over the prior five years to add a multiracial category on state forms.⁶ Repeatedly confronted with paperwork demanding only one racial designation, parents complained that children from a growing number of interracial unions were being forced to choose one parent and deny the other.

Contrary to the situation at the federal level, neither funding nor the composition of legislative districts was at risk in the states. (Federal and state agencies are not barred from collecting racial and ethnic data in more detail, provided that, when necessary, the data can be reduced to the mutually exclusive categories required by the government.) With little at stake materially, and reallocation again being deployed by government agencies to reconcile multiracial responses with single-race data needs, state-level multiracial category legislation seemed like a symbolic gesture. In eleven states, lawmakers (nine Democrats and two Republicans) sponsored multiracial category legislation, apparently viewing it as a goodwill gesture toward minorities.⁷

6 Nancy Carey, Cassandra Rowand, Elizabeth Farris, and Shelley Burns, project officer, *State Survey on Racial and Ethnic Classifications*, NCES 98-034 (Washington, D.C.: National Center for Education Statistics, 1998), 12, table 8.

7 For the most part, the measures passed with little controversy. For some lawmakers, it seems to have served as a low-cost means to signal their stance on 'new' versus 'traditional' approaches to race and civil rights. Perhaps other state legislators saw it as racial sensitivity on the cheap. Passed: Ohio (1992), Georgia (1994), Indiana (1995), Michigan (1995), Illinois

This is interesting for at least two reasons. First, the few petitioners in the states were white women! (Note the parent-driven dynamic of the grievance.) In fieldwork, I discovered that most of the people involved in multiracial organizations near the height of the movement's activity did not identify as multiracial. Instead, about 80 percent of the local leaders in the universe of adult-based groups identified as either white or black.⁸ Group leaders reported that this pattern extended to their wider memberships. Cumulatively, leaders estimated that 52 percent of their members identified as white, 37 percent as black, 7 percent as multiracial, 2 percent as Latino, and 2 percent as Asian American. Thus, the multiracial movement at the grassroots was comprised almost entirely of black-white couples, who represented about 90 percent of its total adult membership base in 1997–1998.

In general, black men are much more likely than black women to marry whites.⁹ Multiracial organizations in the 1990s mirrored this gender/race dynamic. These groups consisted predominantly of white women married to black men. Following the gender gap in family-oriented, local support groups, wom-

en generally took the lead. Consequently and counterintuitively, most grassroots leaders of the multiracial movement in the 1990s were white women married to middle-class black men. Multiracial category legislation in the states was, in each instance, practically a one-woman crusade headed up by the white mother of a multiracial child. Perhaps it was parents, more than children, who were most uneasy with the preexisting options.

A second point of interest is that the state outcomes stood in sharp contrast to the more partisan situation at the federal level. The pattern of support in Washington was mostly the reverse of the bill sponsorship story in the states: congressional Democrats were opposed to a multiracial category; congressional Republicans favored it. Yet recognition ultimately came from the Clinton administration. Think of it this way: some Democrats wanted multiracial recognition *without* adverse civil rights consequences; some Republicans wanted multiracial recognition *with* adverse civil rights consequences. The appeal within the latter camp was that a multiracial category would have complicated litigation and protection in the civil rights arena. In *Race Counts*, I document a pattern of right-wing interest in multiracial activism as a means of capitalizing on the prevailing confusion about race.

Consider a few of the highlights. As the 1993 round of hearings was ending, Republicans gained control of the House of Representatives for the first time in forty years. Having served as the lone Republican on the subcommittee responsible for conducting the 1993 inquiry, Representative Thomas Petri of Wisconsin was among the first to act upon the possibilities: during the 104th Congress, he introduced H.R. 3920 as an amendment to the Paperwork Reduction

(1996), and Maryland (1998). Implemented by administrative mandate: North Carolina (1994) and Florida (1995). Introduced: California (1996), Minnesota (1997), Oregon (1997), Massachusetts (1997), and Texas (1997).

8 Kim M. Williams, *Race Counts: American Multiracialism and Civil Rights Politics* (Ann Arbor: University of Michigan Press, 2006).

9 From 1980–1998, 30 percent of all black-white intermarriages involved white males and black females; 70 percent involved black males and white females. U.S. Bureau of the Census, "Marital Status and Living Arrangements," Current Population Reports, Series P-20-514 (March 1998).

Act. It would have forced the OMB to add a multiracial category on the 2000 census had it not done so on its own volition.¹⁰ He reintroduced the bill in the next session as H.R. 830, calling it the Tiger Woods Bill. Despite repeated attempts to bring him on board, Tiger Woods himself refused to join or endorse the multiracial cause. Nonetheless, mention of golf runs thick in conservative commentary on the subject.

Alongside Petri's efforts, Newt Gingrich, then Speaker of the House, issued a series of statements in support of a multiracial category in the months leading up to the 1997 decision. Gingrich contacted Franklin Raines, head of the OMB, to declare his support of it, submitted favorable testimony in congressional hearings, and announced ten practical steps for building a better America, including "adding a multiracial category to the census" and "doing away with affirmative action."¹¹ In short, the members of Congress most supportive of a multiracial category were conservative Republicans who saw it as a step toward getting rid of racial categorization and, thus, race-conscious public policy altogether.

Proposition 54, California's so-called Racial Privacy Initiative, took this even further. With a few exceptions, Proposition 54 would have barred the state from collecting racial and ethnic data on grounds that it is illogical and counterproductive to do so, if our collective goal is to diminish racial polarization. Backed by Ward Connerly of Proposition 209

(anti-affirmative action) fame, the new initiative took its rationale for dismantling race-conscious public policy to a different strategic level. In Proposition 209, conservatives attacked race-conscious public policy. In Proposition 54, they attacked the idea of race itself. To drive the point home, proponents of the latter initiative exploited the new census data. "Surely, the government doesn't believe 58 new races have emerged since 1970," chided the official website promoting racial privacy. "The new race classifications were invented by different groups trying to get in on America's racial spoils system."¹²

That Proposition 54 was defeated tells us something about the state of popular thinking about racial categories in America – but given the extraordinary circumstances of that extraordinary vote, it tells us less than we need to know. Had the vote taken place when originally scheduled – in a March 2004 primary instead of alongside the dramatic recall of Democratic Governor Gray Davis – it probably would have been closer than 36–64.¹³ In the end, Proposition 54 opponents stressed the deleterious consequences of privatizing health data that incorporates race as a factor in what Butch Wing, California state coordinator for Jesse Jackson's Rainbow Push Coalition, called a "perfect storm."¹⁴ In other words, a convergence of improbable but propitious events contributed to the defeat of the initiative.

¹² <[http://www.racialprivacy.org/facts_myths .htm](http://www.racialprivacy.org/facts_myths.htm)> (accessed January 23, 2003).

¹³ Los Angeles Times exit poll, <[www.latimes .com/timespoll](http://www.latimes.com/timespoll)> (accessed March 25, 2004).

¹⁴ Butch Wing, "The Coalition that Kicked Proposition 54 Out of the California Door," John F. Kennedy School of Government, Harvard University, March 9, 2004.

¹⁰ A Bill to Amend the Paperwork Reduction Act, 104th Congress, 2nd sess., H.R. 3920, *Congressional Record* 142 (114) (July 30, 1996): H8982.

¹¹ Steven A. Holmes, "Gingrich Outlines Plan on Race Relations," *The New York Times*, June 19, 1997, B12.

The “mark one or more” format is not merely symbolic. Future census conflict is to be expected, if the past forty years of census taking is any indication. But the David and Goliath story of the multiracial movement will probably give hope to other aspiring racial groups as it leaves its imprint on future successful bids. Against a backdrop of immigrant-driven demographic change, multiracialism now holds an institutional foothold, one that conservatives seek to exploit. Under the circumstances, viewing the symbolism as irrelevant would seem to cede ground to the Right, which has taken the early lead in defining for Americans what multiracial is.

With all of this in mind, the prevailing civil rights response to multiracial claims seems out of proportion. According to Jesse Jackson, the multiracial category proposal was “a diversion, designed to undermine affirmative action.”¹⁵ It could be a “plot to create a ‘Colored’ buffer race in America,” warned *Ebony* magazine.¹⁶ The implication, reiterated in a range of forms and venues, is that multiracial identification is either frivolous or a right-wing conspiracy, or both.

I believe that it is neither. While modern-day federal racial categories were designed to monitor and act against racism, not to validate identity, multiracial identity claims were not and are not without power. To emphasize the inconsistencies in multiracial thought (and there are many, including how its strongest proponents advanced a working definition of multiraciality largely dependent on the idea of monoracial biological groups) does little to explain the

states’ favorable response to it. A presumption of frivolity is also impractical, considering that multiracial advocates based their claims, for the most part, on the self-esteem of their children. All the facts suggest that interracial family life is at least as challenging for parents as it is for children. Either way, we should be willing to accept that the multiracial experience takes a toll on both parent and child. Put differently, while the legitimacy of multiracial claims can and should be interrogated, dismissal on grounds of false consciousness or negligible suffering is unhelpful. In any case, the self-esteem claim cannot be dismissed as trivial without also bringing into question other applications of its use. Self-esteem, after all, was a primary rationale of the Supreme Court in *Brown v. Board of Education*.¹⁷

The more justified criticism is that multiracial advocates developed no antiracist agenda, even as they claimed, in one way or another, that the recognition of racial mixture was the next logical step in civil rights. This ideological *tour de force* is perhaps explained in the fact that many of the local leaders, disproportionately well-educated, affluent white women, reported having paid little to no attention to racial dynamics until they married and had children. Arguably, a midlife realization of racial discrimination is better than none at all; at the same time, the patterns and parameters of multiracial activism should be understood with this grassroots disposition and limitation in mind. Multiracial organizations have been deafeningly silent on inequality, and their leaders only recently inclined to acknowledge (more

15 Jerelyn Eddings and Kenneth T. Walsh, “Counting a ‘New’ Type of American,” *U.S. News and World Report*, June 14, 1997, 22.

16 Lynn Norment, “Am I Black, White, or In Between?” *Ebony*, August 1995, 110.

17 But see Lani Guinier, “From Racial Liberalism to Racial Literacy: *Brown v. Board of Education* and the Interest-Divergence Dilemma,” *The Journal of American History* 91 (1) (June 2004): 92–118.

or less) that their ‘right’ to self-identification might involve costs.

While civil rights forces united in the fight against creating a multiracial category, black civil rights advocates came to symbolize that opposition. At worst, the message from black advocates and institutions was that people championing multiracialism were racial defectors who wanted to be white, or at the least, to escape blackness. Latino advocates could not plausibly make analogous claims, and indeed, they did not. Latinos, as an ethnic group whose membership spans the racial spectrum, already had much of the latitude newly available to everyone else via the multiple-race option. With this flexibility, almost half the Latino population in 2000 identified racially as white. Latino advocates, with less to lose and little to gain, opposed multiracial recognition nonetheless. Asian groups joined their Latino and black counterparts in opposing the multiracial option.

One senses fragility in Latino and Asian groups’ official demeanor toward multiracial recognition, however, considering that intermarriage rates approach 30 percent in these groups. According to Frank Bean and Gillian Stevens’s calculations from the Current Population Survey, 27.2 percent of Asians and 28.4 percent of Latinos are intermarried; 86.8 and 90 percent of these intermarriages, respectively, involve a white spouse. In contrast, only 10.2 percent of blacks are intermarried, and within this small population only 69.1 percent are married to whites. Thinking about it the other way around, whites are least likely to marry blacks and most likely to marry Latinos, with Asians at a close second.

At this rate, per Bean and Stevens, the intermarriage patterns of Asians and Latinos “will parallel those of European

immigrants and their descendants over the course of the twentieth century.”¹⁸

At the other end of the spectrum, what little black-white intermarriage there is they attribute in part to “higher levels of acceptance of foreign-born than native-born blacks by native-born whites.”¹⁹ Blacks represent the outlier in intermarriage trends and are the least inclined among minorities to identify with more than one race. If interracial marriage and multiple-race identification are gauges of social distance, then black and, perhaps more specifically, native-born black isolation stands out amidst otherwise generally positive trends. Civil rights opposition to multiracial recognition became principally associated with black institutions, but the action in the multiracial trend is elsewhere.

The “mark one or more” format adopted by the OMB in 1997 has set a precedent whose meaning the government has been unwilling to interpret. There is no legal purpose for the multiracial data collected through the new format, but its very existence naturally leads one to conclude that it must refer to meaningful multiracial populations. (This data shows, for example, some measurable differences in the Asian-white population compared to the white or Asian population alone.) Yet the new OMB protocol offers no interpretive content.

We are partly creating it for ourselves. Civil rights institutions cannot ignore multiraciality and they cannot viably deal with it as they did in the 1990s. Considering the trends in Asian and Latino intermarriage, it is difficult to see

*Multiracialism
& the civil
rights future*

18 Frank Bean and Gillian Stevens, *America’s Newcomers and the Dynamics of Diversity* (New York: Russell Sage Foundation, 2003), 195.

19 Ibid., 192.

what about racial mixture the advocacy organizations representing these groups can continue to oppose. Black advocates, if for different reasons, will probably have to recalibrate their stance as well. The symbolism of civil rights all but demands it. The civil rights movement drew its power from the bedrock principles of goodwill across the races and full citizenship for all Americans. It brilliantly exposed the immorality of segregation and insisted that we were all in this together. That a multiracial movement could materialize at all is a complex testament to civil rights success.

Now recall the estimation of multiracial motives advanced by California's leading advocates of racial privacy: "the new race classifications were invented by different groups trying to get in on America's racial spoils system." By this logic, multiracial groups were not trying to dismantle race-conscious public policy at all; rather, they wanted to be included among its beneficiaries. A partial truth – multiracial advocates wanted many things. There is no coherent multiracial agenda, or closer to the point, the claims of that agenda are conflicted and evolving.

In spite of their many disagreements, the activists who spurred the recent census change shared one fundamental conviction: multiracialism enables individuals to think differently, and more humanely, about racial boundaries. Beyond that, the details were vague. Recall, however, that these same people sought out support groups to cope with racial tension and polarization. Overwhelmingly, members said they joined these multiracial advocacy groups to carve positive space for their families that they could not find elsewhere. If American society were so prepared to move beyond race, then this primarily support-oriented infrastructure would not exist as such.

Nor would the groups be so heavily dominated at the grassroots by black-white couples who, nine out of every ten times, explained that such couples predominate in the groups because they experience the most discrimination.

It would seem that color blindness in theory bears little resemblance to multiracialism on the ground. The asymmetry in the multiracial trend is a sign that larger problems of racial alienation persist. Among other things, black isolation may well grow as the color line shifts. The challenge amidst growing racial diversity is to register the reach and durability of the racial divide, while at the same time, to accept that the meanings attached to race itself are changing. As a wedge into a broader debate about what has changed – and what has not – the symbolism of racial mixture is inseparable from the ongoing quest for racial justice.

Victoria Hattam

Ethnicity & the boundaries of race: rereading Directive 15

Most of the racial and ethnic categories current in American life can be traced to an obscure government edict: Statistical Policy Directive No. 15, promulgated by the Office of Management and Budget (OMB) on May 12, 1977.¹ Although the directive was officially limited to federal statistics and administrative reporting, its categories quickly became the de facto standard for American society at large, setting the terms ever since for racial and ethnic classification in the United States.

The OMB categories – specifically the Census Bureau’s use of them – are currently being renegotiated. Stripped of important particulars, the question on the table is whether Hispanics, to use the Census Bureau term, will continue to be classified as an ethnic group and not as a race. Ethnicity has long served to establish the boundaries of race by marking the dividing line between black and

white. Where that line is drawn, who is designated as an ethnic, establishes the terms within which racial politics is waged in the United States.²

To comprehend the political choices at hand, we need to recover the somewhat arcane history of Directive 15. Retracing the OMB race categories is no simple antiquarian delight; it is required currency for following contemporary debates over racial classification and politics in the twenty-first-century United States.

Directive 15 was initially created as a means of standardizing the racial and ethnic categories used in government statistics. These data took on new political import after the passage of several civil rights laws. The Civil Rights Act of 1964, the Voting Rights Act of 1965, the Fair Housing Act of 1968, the Equal

1 See “Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting,” *Federal Register* 48 (87) (May 4, 1978): 19269 – 19270. The directive is accessible electronically as an appendix in “Standards for the Classification of Federal Data on Race and Ethnicity,” *Federal Register* 59 (June 9, 1994): 29834 – 29835. All citations to the directive will be to the 1994 reprint.

2 I use the term ‘Hispanic’ throughout because this was the term initially adopted by the OMB. The OMB did not use the term ‘Latino’ until the 1997 revision of the directive.

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Credit Opportunity Act of 1974, the Home Mortgage Disclosure Act of 1975 – all required the federal government to monitor discrimination in a variety of policy domains. In order to assess discriminatory practices, agencies first had to specify the relevant protected groups, which in turn required stipulating racial and ethnic categories. Throughout the late 1960s and early 1970s, key civil rights bureaucracies established their own terms in order to comply with these new legislative mandates. This dispersed multiagency process of data collection proved unwieldy – hence federal government efforts to standardize the racial and ethnic categories via an interagency committee whose report the OMB codified in Statistical Policy Directive 15.³

3 The federal interagency Committee on Education was established in June of 1974. The committee's report, published in April of 1975, lays out almost all the features later promulgated by the OMB in Directive 15. For the directive's history, see "Standards for the Classification of Federal Data on Race and Ethnicity," 29831 – 29832; Barry Edmonston, Joshua Goldstein, and Juanita Tamayo Lott, eds., *Spotlight on Heterogeneity: The Federal Standards for Racial and Ethnic Classification* (Washington, D.C.: National Academy Press, 1996); Katherine K. Wallman, "Data on Race and Ethnicity: Revising the Federal Standard," *The American Statistician* 52 (1) (February 1998): 31 – 33. For useful secondary sources on the directive, see Michael Omi, "Racial Identity and the State: The Dilemmas of Classification," *Law and Inequality: A Journal of Theory and Practice* 25 (1) (1997): 7 – 23; Margo J. Anderson and Stephen E. Fienberg, *Who Counts? The Politics of Census-Taking in Contemporary America* (New York: Russell Sage Foundation, 1999); David Hollinger, *Postethnic America: Beyond Multiculturalism*, postscript (New York: Basic Books, 2000); Melissa Nobles, *Shades of Citizenship: Race and the Census in Modern Politics* (Stanford, Calif.: Stanford University Press, 2000); Clara E. Rodriguez, *Changing Race: Latinos, the Census, and the History of Ethnicity in the United States* (New York: New York University Press, 2000); Peter Skerry, *Counting on the Census: Race, Group Identity,*

On first reading, Statistical Policy Directive 15 appears to be quite straightforward. The two-page document specifies that all federal agencies are to collect data under four racial and one ethnic heading. The four racial categories are black, white, American Indian or Alaskan Native, and Asian or Pacific Islander. The one ethnic category is Hispanic. (In 1997, the OMB added Native Hawaiian or Other Pacific Islander as a fifth racial category.⁴)

Two aspects of the directive's taxonomy are especially noteworthy: the mutual exclusivity of the four racial categories, and the sharp distinction the directive draws between race and ethnicity. Even though the directive variously specifies race as origin, geography, nationality, culture, and cultural identification, it nevertheless stipulates that census respondents must choose only one race. Someone of mixed race is instructed to select the "category which most closely reflects the individual's recognition in his community."⁵ This instruction was strongly contested in the 1990s, leading the OMB to revise the directive and

and the Evasion of Politics (Washington, D.C.: Brookings Institution Press, 2000); Darryl Fears, "The Roots of 'Hispanic': 1975 Committee of Bureaucrats Produced Designation," *The Washington Post*, October 15, 2003, A21.

4 The five OMB race categories post 1997 are "American Indian or Alaskan Native," "Asian," "Black or African American," "Native Hawaiian or Other Pacific Islander," and "White." The 1997 revision also allowed respondents to "check one or more" races for the first time. However, the 1997 revisions did not change the distinction between race and ethnicity. See "Revisions to the Standards for the Classification of Data on Race and Ethnicity," *Federal Register* 62 (210) (October 30, 1997): 58781 – 58790.

5 See Directive 15, 29834.

adopt the “mark one or more” race option in 1997.⁶

The ways in which the directive distinguishes ethnicity from race have by comparison received little attention – despite this distinction’s centrality to debates over the race question for census 2010 and for changes underway in contemporary American racial politics more broadly. It is to this second aspect of the directive that I attend.

The directive explicitly recommends that agencies “collect data on race and ethnicity separately.” The four racial categories stipulated by the directive parallel the classic nineteenth-century color designations of black, white, red (American Indian or Alaskan native), and yellow (Asian or Pacific Islander); there is no brown race in the American ethnoracial taxonomy. According to the directive, one is Hispanic because of one’s “Spanish culture or origin, regardless of race.” As a result, Hispanics must check a race box in addition to the one identifying their ethnicity. The directive specifies that “when race and ethnicity are collected separately, the number of White and Black persons who are Hispanic must be identifiable, and capable

of being reported in that category.”⁷ All of this underscores the directive’s presumption that race and ethnicity be considered separate phenomena. To be sure, the directive allows for a “combined format” in which the race and ethnic categories are presented in a single question. But even here the OMB intends to keep the social phenomena distinct.

Why were Hispanics designated as an ethnic group rather than as a race? The distinction has deep roots in American culture that make debates over question format considerably more than issues of bureaucratic politics.

American conceptions of ethnicity as different from race can be traced back to the first two decades of the twentieth century, when the category of ethnicity was invented. Men such as Louis Brandeis, Alfred Kroeber, Isaac Berkson, Julius Draschler, and Horace Kallen argued that ethnicity ought to be distinguished from race, and they went to considerable lengths to elaborate the nature and importance of the comparison. Ethnicity was cast by these New York intellectuals as cultural, plural, and malleable – in stark contrast to race, which they understood to be biologically fixed. One was an ethnic to the extent that one’s principle point of identification was tied to culture rather than to race. For these pioneering cultural pluralists, to be an ethnic meant being *different* from other Americans – but different in ways that were not tied to race.⁸ By signaling differences of culture rather than of blood, this conception of ethnicity served to delimit notions of race. From

6 The directive defines each of the categories in terms of origins: American Indians or Alaskan Natives are said to have “origins in any of the original peoples of North America”; blacks to have “origins in any of the black racial groups of Africa”; whites to have “origins in any of the original peoples of Europe, North Africa, or the Middle East”; and Hispanics to be persons of “Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.” (Note that the category ‘black’ is the only one in which the directive explicitly refers to race.) The directive allows for more detailed categories than these, but they must be “organized in such a way that the additional categories can be aggregated into these basic racial categories.” See Directive 15, 29834.

7 Ibid.

8 See Victoria Hattam, “Ethnicity: An American Genealogy,” in Nancy Foner and George Fredrickson, eds., *Not Just Black and White* (New York: Russell Sage Foundation, 2004).

this perspective, Directive 15 appears as a quite remarkable codification of New York Zionists' conceptions of ethnicity elaborated fifty years earlier.

In the 1940s and 1950s, the Census Bureau began to count those of Spanish surname and to classify them as an ethnic group and not a race. Perhaps the most pressing reason for doing so lay in the racial heterogeneity of peoples from Mexico, the Caribbean, Puerto Rico, and Central and South America. All were thought to share a common Spanish culture, but were not racially similar. But designating racial heterogeneity as the problem begs the question. Because the categories were in formation, their boundaries might have been drawn differently so as to diminish the fractured nature of the group. Indeed, many have bemoaned the category 'Hispanic' precisely because it suggests cultural commonality where they claim none exists.⁹

Yet the OMB opted for an expansive definition of 'Hispanic.' The numerical advantage of an omnibus category that avoided the contentious distinctions of race was clear, and most relevant stakeholders came to support the broad designation.

Despite the racial heterogeneity of the Hispanic population, there were long-standing pressures to acknowledge the historic discrimination against Mexican Americans in particular and against Hispanics more generally.

Indeed, all federal efforts to end discrimination across the twentieth century

considered discrimination broadly. FDR's Executive Order 8802, signed on June 25, 1941, prohibited discrimination on the basis of "race, creed, color, or national origin." Truman, Eisenhower, Kennedy, and Johnson all followed the FDR blueprint when they issued successive executive orders that prohibited discrimination in these very same terms. The mantra of "race, creed, color, or national origin" quickly became a hallmark of national policy. The problem of discrimination in America, federal policy makes clear, was never limited to race narrowly conceived. When Directive 15 cast the federal ethnoracial taxonomy in broad terms, it drew on a long-standing tradition.¹⁰

Moreover, it is worth remembering that Directive 15 appeared at a time of heightened concern about language rights and bilingual education. These were the years when the Subcommittee on Minority Education of the Federal Interagency Committee on Education was reconsidering the demands of some Spanish-speaking families that their children be taught in Spanish. The language rights movement was bolstered by *Lau v. Nichols*, the 1974 landmark Supreme Court decision mandating bilingual education under Title VI of the 1964 Civil Rights Act. That decision, which involved a class action suit on behalf of non-English-speaking Chinese students in the California public school system, established language discrimination as

9 For a powerful critique of the category 'Hispanic,' see Martha E. Gimenez, "Latino/'Hispanic' – Who Needs a Name? The Case Against a Standardized Terminology," *International Journal of Health Services* 19 (3) (1989): 557–571. For an early defense of the category, see Marta Tienda and Vilma Ortiz, "'Hispanicity' and the 1980 Census," *Social Science Quarterly* 67 (1) (March 1986): 3–20.

10 See Executive Order 8802, *Federal Register* 6 (June 27, 1941): 3109; Executive Order 9346, *Fed. Reg.* 8 (May 29, 1943): 7183; Executive Order 9980, *Fed. Reg.* 13 (July 28, 1948): 4311; Executive Order 9981, *Fed. Reg.* 13 (July 28, 1948): 4313; Executive Order 10308, *Fed. Reg.* 16 (January 4, 1951): 12303; Executive Order 10479, *Fed. Reg.* 18 (August 18, 1953): 4899; Executive Order 10925, *Fed. Reg.* 26 (March 8, 1961): 1977; Executive Order 11246, *Fed. Reg.* 30 (September 28, 1965): 12319.

a central component of the civil rights agenda.¹¹

Pressure to create a separate statistical category for Hispanics was consolidated when Congress passed Public Law 94-311 in June of 1976. That law mandated the collection and dissemination of “economic and social statistics for Americans of Spanish origin or descent.” Congress thus ensured that whenever the government was to count the various population groups, Hispanics would be included.¹²

In sum, Hispanics are ambiguously situated in American culture and politics, at once recognized as subject to persistent discrimination and yet not readily classified as a homogeneous racial group. OMB navigated these conflicting pressures by including Hispanics within the official American taxonomy as an ethnic group, not a race.

Almost as soon as the directive was promulgated, groups began to protest its formulation and to call for the revision of its categories. Demands for change intensified as several groups, especially the emerging mixed-race movement, claimed that the directive no longer reflected the increasing diversity of the

American population. In 1993, the OMB initiated an extensive four-year review of the directive that included several public hearings it hosted in the spring and summer of 1993 and again in the summer of 1994. In March of 1994, the OMB established the Interagency Committee for the Review of Racial and Ethnic Standards.¹³ In addition, the OMB asked the Committee on National Statistics of the National Academy of Sciences to convene a workshop to discuss issues surrounding category revision.

The extended review considered several changes, including the possibility of adopting a question in which the federal government would cease distinguishing between race and ethnicity. In October of 1997, the OMB issued revised standards for maintaining, collecting, and presenting federal data on race and ethnicity that replaced Directive 15. In the end, the OMB focused primarily on the mixed-race issue, introducing the “mark more than one” option for the census race question. The distinction between ethnicity and race was not changed.¹⁴

What does it matter that the American ethnoracial taxonomy distinguishes ethnicity from race? I have argued elsewhere that the distinction sets in play a relational dynamic between the two categories in which the meaning of one helps to secure the meaning of the oth-

11 The Subcommittee on Minority Education produced a 1973 report that called for the creation of common definitions of racial and ethnic groups, which Casper Weinberger took up for further action. See *Federal Register* 59 (110) (June 9, 1994): 29831. See also *Lau v. Nichols* 414 U.S. 563 (1974). For an overview of language policy, see Ronald Schmidt, Sr., *Language Policy and Identity Politics in the United States* (Philadelphia: Temple University Press, 2000).

12 See Public Law 94-311 90 STAT. 688. The quotation is from Katherine K. Wallman, “Statistics for Americans of Spanish Origin or Descent,” *Statistical Reporter* 78-5 (February 1978): 148. See also Jeanne E. Griffith, “Update on Statistics for Americans of Spanish Origin or Descent,” *Statistical Reporter* (September 1980): 401–405.

13 See *Federal Register* 59 (110) (June 9, 1994): 29832; Edmonston, Goldstein, and Lott, eds., *Spotlight on Heterogeneity*.

14 For the 1997 standards, see “Revisions to the Standards for the Classification of Data on Race and Ethnicity.” For an overview of the revision, see Suzann Evinger, “How Shall We Measure Our Nation’s Diversity,” *Chance* 8 (1) (1995): 7–14.

er.¹⁵ That dynamic relation, established in the culture at large, is institutionalized in Directive 15. Although the directive explicitly eschews a biological definition of race, it treats race as a singular and evidently immutable fact, while it defines ethnicity in purely cultural terms that imply its malleability. In short, how race works in the United States, and what meaning it comes to embody, is constituted to a significant degree by the comparison with ethnicity. The OMB did not create this dialogic relation single-handedly; it had been in formation for half a century or more. Rather, Directive 15 formalized a set of cultural understandings already in play by incorporating the race-ethnicity distinction into the official classificatory scheme.

The full significance of the race-ethnicity distinction within the federal taxonomy has been obscured for the last three decades by the Census Bureau's inclusion of "some other race" as an option on the census race question. By obtaining special approval to modify Directive 15, the Census Bureau has elided the boundary between race and ethnicity. If OMB standards had been strictly adhered to, the census would have required Hispanics to select one of the four (later five) official race categories: black, white, Asian, Native American, and Pacific Islander. For many Hispanics, none of the OMB race categories seems especially appropriate, leaving them with no easy point of identification on the race question.

For the past three decades, Hispanics have been able to check Hispanic ethnicity along with "some other race" on the census. (An unprecedented 42.2 percent of Hispanics checked "some other race" on the 2000 census. Moreover, 97 per-

cent of those checking "some other race" were Hispanics.) Put differently, the "some other race" option has served as a political safety valve for the Census Bureau by masking the stark opposition that the official U.S. taxonomy mandates between ethnicity and race, and the rather inadequate race options available to Hispanics.

But the political safety valve offered by "some other race" may soon disappear. The Census Bureau is seriously contemplating dropping the option in 2010 in order to comply with the OMB race and ethnic standards. Doing so will politicize the designation of Hispanics as an ethnic group rather than a race, by leaving the vast majority of Hispanics with no other option than to identify as racially white. Dropping "some other race," I predict, will force us to revisit the long-standing distinction between race and ethnicity that pervades American culture and politics.

Indeed, I think it somewhat perverse for the Census Bureau to be sharpening the distinction between ethnicity and race at the very moment when most observers are noting demographic shifts in the opposite direction. Many scholars have noted how increased immigration and intermarriage have made diversity, and the discrimination that often follows, a more complex social phenomenon than the standard race categories record. While many are attending to increased demographic complexities, the Census Bureau is poised to reinstate the sharp distinction between an ethnic group and a race. Why?

The push to remove the "some other race" option stems from the dramatic increase in those selecting it in the last two decades and from the data quality concerns this has raised.¹⁶ Because other

15 See Hattam, "Ethnicity: An American Genealogy."

16 Only 0.03 percent of the total population checked "some other race" in 1950, 0.01 percent

government departments do not collect data under the heading “some other race,” recent census data are not compatible with the data gathered by other agencies. To address this incompatibility, the Census Bureau sorts all of those who selected “some other race” into one of the racial categories officially recognized by the OMB. This process of sorting, or imputation, is achieved via a statistical formula that imputes an officially recognized race to each respondent who marks that box on the census form. The Census Bureau then generates a Modified Age, Race, and Sex (MARS) file to be used by other federal departments and agencies for civil rights enforcement. Indeed, it is the MARS file, rather than the census returns, that provides the denominator for most government agencies requiring demographic data for policy implementation and evaluation.

The Census Bureau worries about escalating imputation rates, since it wants to avoid modifying census returns whenever possible. In order to get out of the imputation business, the Bureau is considering removing “some other race” from the 2010 census form. But removing this option may well create new problems. It may lead to a drop-off in the response rate from Hispanics on the race question – particularly if a growing number of Hispanics do regard themselves as an independent racial group that the OMB has yet to recognize officially. From the Census Bureau’s point of view, failure to answer the race question is as much of a problem as the “some

other race” option, since the Bureau will impute an officially recognized race to nonresponses as well.¹⁷

The root of the problem lies in the inadequacy of the racial and ethnic categories created by Statistical Policy Directive 15 and the 1997 revision. Many Hispanics simply do not recognize themselves within the existing categories. And a return to the sharp distinction between race and ethnicity will leave most Hispanics with little other choice than to identify as white ethnics. What should the Census Bureau do?

To see how the Census Bureau is dealing with the “some other race” option and how Hispanics are responding, I attended one of the Census Bureau’s Race and Ethnic Advisory Committee (REAC) meetings in Crystal City, Virginia, in May of 2004.¹⁸ The first Race Advisory Committee was established in the early 1970s as a means of ensuring African Americans and their advocates a voice in the census process. Eventually, the Census Bureau added subcommittees for each of the principal racial groups and for Hispanics as well.

Almost all current members of the Bureau’s Hispanic Advisory Committee were Republican appointees who could hardly be taken to represent the views of Hispanics as a whole. Six of the nine

in 1960, and 0.03 percent in 1970. That number jumped to 3 percent in 1980, 3.9 percent in 1990, and 5.6 percent in 2000 – almost a two-fold increase in the last two decades. See Nancy M. Gordon, “Race and Ethnicity Testing: Update and Discussion,” handout distributed at May 2004 REAC meetings, Washington, D.C., p. 4.

17 For the Census Bureau’s concern with imputation rates and current efforts to reduce them, see Gordon, “Race and Ethnicity Testing”; Elizabeth Martin, David Sheppard, Michael Bentley, and Claudette Bennett, “Results of 2003 National Census Test of Race and Hispanic Questions,” U.S. Census Bureau, October 1, 2003. For pretests planned for 2005 and 2006, see “Cognitive Questions for Nancy Gordon,” handout distributed at the May REAC meetings.

18 The Race and Ethnicity Advisory Committee meetings began on the afternoon of May 4, but I was only able to attend on May 5 and 6.

committee members have been appointed since May of 2003, and eight of the nine appointed since the election of 2000. When introducing themselves at the beginning of the concurrent sessions, three mentioned professional ties to George H. Bush, Pete Wilson, and Colin Powell. I was surprised to see that the current REAC bears the imprint of the Bush administration so directly; in this it differs greatly from the REAC of the 1970s, which served principally as a forum where civil rights activists could express their concerns. (One indication of how times have changed: during the Nixon administration, the director of the Census Bureau asked Bobby Seale, the prominent Black Panther, to serve on the first Race Advisory Committee.¹⁹)

The very first item up for discussion in the Hispanic Advisory Committee that I observed was the proposal that “some other race” be eliminated as a choice on the 2010 census form. In the course of their discussion, the committee members agreed that eliminating “some other race” would likely mean an increase in the number of Hispanics who would check “white” for the race question in 2010. No one argued this was a problem: indeed, one committee member said “the whole issue is for the census to give guidance to Hispanics as to where they belong.” In the end, not a single member of the Hispanic Advisory Committee protested dropping the “some other race” option. No one mentioned or ex-

plored the obvious alternatives – such as allowing Hispanic respondents to identify themselves as a race (as Ian Haney López has proposed), or eliminating altogether the distinction between race and ethnicity (as Kenneth Prewitt has proposed). What I saw in Crystal City was the intersection of Census Bureau data quality concerns with Bush Republicans’ preference that most Hispanics identify themselves as racially white – a convergence that is taking place largely under the political radar.

The choices the Census Bureau makes about the race question for 2010 are of considerable import. At issue is the long-standing meaning of ‘Hispanic’ and its relation to race. Where the line is drawn between race and ethnicity, and on what terms, will shape the contours of American racial politics for decades to come. Put simply, whether Hispanics identify as white or as people of color may shift the balance of power between the Democratic and Republican Parties, since racial identification and party allegiance have long been aligned. Certainly it will shape the contours of racial politics broadly conceived by redrawing the perimeter of those who might identify as people of color.²⁰ Nor is it difficult to imagine that white racial identification might eventually weaken some of the civil rights protections currently extended to Hispanics.

19 After some negotiation, Seale agreed to serve on the Advisory Committee as long as the Bureau paid for his bodyguard. In the end, Seale did not take up the appointment because he had to go underground. For discussion of the Seale incident and the early Race Advisory Committee, see Barbara Milton and David Pemberton, “Oral History Interview with Vincent P. Barabba,” August 7, 1989, 28–30. A transcript of the interview is available from the Census Bureau.

20 See Orlando Patterson, “Race by the Numbers,” op-ed, *The New York Times*, May 8, 2001, and the website of the National Association for the Advancement of Caucasian Latinos. For discussions of the fluidity of Hispanic party identification, see also Tamar Jacoby, “Republicans and Their Amigos,” *The Weekly Standard*, November 25, 2002, 18. For appeals to Hispanics as people of color, see Fernando Ferrer’s “other New York” campaign in the Democratic primary for the New York mayoral race in 2001.

Where do we want to draw the boundaries of race? On what grounds? And with what political effects? We face a rare opportunity for rethinking the American ethnoracial taxonomy. At the very least, the politics of census race categories are important enough to warrant a more serious public debate than has occurred to date. Moreover, it is imperative that the issues be aired now, while the Census Bureau is making decisions for 2010. Once census questions have been set it will be too late. The choices we make, or that are made on our behalf, are likely to establish the parameters of ethnic and racial identifications in American politics for years to come.

There are four principal taxonomic options for us to consider: continue with the status quo; eliminate “some other race”; shift Hispanic from an ethnic to a racial identification; blur the categorical distinction between race and ethnicity. While none of these options is without problems, my own preference is for the fourth one, with an important caveat. Let me briefly spell out why I come to this conclusion.

The status quo fails to address the very real problems of Census Bureau imputation – especially for the large number of Hispanics who select “some other race” only to have their responses imputed back to the official race categories. Removing “some other race,” currently the Census Bureau’s preferred option, would unnecessarily narrow the range of racial identifications available to Hispanics, leaving most of them with little choice but to identify as white ethnics. Changing ‘Hispanic’ from an ethnic into a racial category would likely meet with considerable resistance from the very population that option seeks to accommodate. After all, it was the racial heterogeneity of the various national origin groups that led to the creation of an

omnibus Hispanic category in the first place.

Finally, there is the possibility of *dis-mantling* the distinction between race and ethnicity from the federal statistical system by shifting to a combined race/ethnicity question. A respondent might select ‘Hispanic’ as either an ethnic or a racial identification, but the federal statistical system would no longer reify the distinction. You will recall that Directive 15 and the revised standards allow for such a combined format.

However, the combined option is not without its dangers. Eliding the formal distinction between race and ethnicity might well lead to a false sense of equality in which Americans assume, to paraphrase Nathan Glazer, that we are all ethnics now.²¹ Establishing formal equality without simultaneously changing the broader social practices that continue to secure ethnic privilege by distinguishing ethnicity from race may only mask persistent ethnic and racial divisions.

Thus, I advocate a double move: I think we should remove the formal distinction from the federal classificatory system, but we must also remain alert to, and seek to change, the complex ways in which ethnic privilege has long been secured by defining ethnicity against race. Changes in the taxonomy *alone* cannot redress the complex relation between ethnic and racial identification in place in the United States. Formal taxonomic equality will only be meaningful if it is sustained by more equitable social and political practices in American society at large.

21 Nathan Glazer, *We Are All Multiculturalists Now* (Cambridge, Mass.: Harvard University Press, 1997).

Jennifer L. Hochschild

Looking ahead: racial trends in the United States

In April of 2004, the quarterly newsletter *Migration News* summarized the most recent data on race and ethnicity from the U.S. Census Bureau: “In 2000, the racial/ethnic makeup of US residents was: White, 69 percent; Hispanic and Black, 13 percent each; and Asian and other, six percent. By 2050, these percentages are projected to be: 50, 24, 15, and 13.” For anyone who has been studying racial trends in America these figures weren’t surprising.¹ But the newsletter’s

conclusion certainly was: “It is possible that, by 2050, today’s racial and ethnic categories will no longer be in use.”

Migration News is a scholarly publication that “summarizes the most important immigration and integration developments.”² It is produced by Migration Dialogue, a group at the University of California, Davis, that aspires to provide “timely, factual and nonpartisan information and analysis of international migration issues.” *Migration News* cannot by any stretch of the imagination be described as fanciful or ideological – and yet in the middle of a summary of census data its authors produced the astonishing prognosis that “by 2050, today’s racial and ethnic categories will no longer be in use.” If *Migration News* is correct, residents of the United States will, within the lifetime of many readers of this issue of *Dædalus*, no longer talk of blacks, whites, Asians, Latinos, and Native Americans, but will instead speak of – what?

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1 This essay is part of a joint research project with Traci Burch and Vesla Weaver, both Ph.D. students at Harvard University. I thank them for their contributions to our shared enterprise. The views expressed in this essay are my own, and not necessarily shared by these coauthors of the larger project.

2 <<http://migration.ucdavis.edu/>>.

This essay explores possible answers to that tantalizing question. By looking backward at racial and ethnic constructions and practices in the United States over the past century, we will be better situated to project possible racial and ethnic constructions and practices over the next one. *Migration News* might well be right – although, as I will argue, that is a far cry from predicting that the old shameful racial hierarchies will disappear.

The idea of ethnicity did not exist in 1900; the term ‘ethnic’ was invented around World War I and came into widespread use in the 1930s. The term ‘race’ did much of the work that we now assign to ‘ethnicity’; phrases such as ‘the Irish race,’ ‘the Yankee race,’ and ‘the Hebrew race’ were common and uncontested. But race meant a lot more than ethnicity. Edgar Allen Poe wrote of “the race of Usher,” Charles Dickens, of “the race of Evrémonde.” Biologists measured cranial capacities and developed intelligence testing in order to make what they perceived to be scientific determinations of the biological differences among races of humans. In 1939 Carleton Coon, a physical anthropologist at Harvard University, published *The Races of Europe*, a textbook that named eighteen races that were spread across the continent, including “Partially Mongoloid,” “Brunn strain, Tronder etc., unreduced, only partly brachycephalized,” “Pleistocene Mediterranean Survivor,” “Neo-Danubian,” and so on. Meanwhile, the Negro and Indian races were routinely distinguished from the white race.

A century later we retain the term ‘race,’ but only in the last of these usages, that is, distinguishing a few major groups from each other. A family is described by ancestry, lineage, or descent –

not by race. The Irish are an ethnic group; to identify someone as a Yankee is to evoke a regional or cultural distinction; Jews are an amalgam of religion, ethnicity, and perhaps culture. Anthropologists no longer make racial distinctions among Europeans; in fact, current research in the field of cultural studies typically identifies all Europeans, from Swedes to Arabs, as a single race distinguished by its whiteness.

The biology of race has also changed dramatically. A century ago, biologists held that there were many races, that races could be distinguished from one another in objective and quantifiable ways, and that less measurable but nonetheless real differences in intelligence and emotional maturity were closely associated with measurable differences in skull size or proportion of white ancestry. Some still held that races had different origins or were even different subspecies. By the middle of the twentieth century, however, the number of commonly recognized races had shrunk to a few (in grade school, I learned about Caucasoids, Mongoloids, Negroids, and Indians). And by the end of the century, conventional wisdom, at least among scholars, held that a race was a purely social construction with no notable biological differences.

The wheel may be turning again, however. That well-known exemplar of post-modern deconstructionism, the U.S. census, is leading the way in proliferating racial identities: the census now recognizes 126 ethnoracial groups (or a mere 63 racial groups!) and, as Kenneth Prewitt points out, many more could come in quick succession. At the same time, some scientists and medical doctors are contesting the view that race is nothing but a social construction; as Neil Risch and his coauthors put it, “a ‘race-neutral’ or ‘color-blind’ approach

to biomedical research is neither equitable nor advantageous, and would not lead to a reduction of disparities in disease risk or treatment efficacy between groups.”³ People of different races or ethnicities may react differently to particular medications, may be especially susceptible to specific diseases, or may have bone marrow or kidneys compatible only with some co-ethnics. Most new biological research has been purified of the old eugenicist motivations; even the dean of Howard University Medical School has endorsed a major initiative to collect DNA samples from his hospital’s (mostly black) patients for medical research on diseases to which African Americans are especially prone, such as high blood pressure, asthma, and prostate cancer. By 2050 the historical seesaw between biology and social constructivism may be superseded by genomic research that disaggregates individuals at levels far below any groupings by race, ethnicity, geography, or culture.

In parallel with the changing meanings of race, we have witnessed the rise and perhaps fall of the concept of ethnicity. That concept was invented partly in opposition to the idea of race, since it was taken to denote possibly malleable culture rather than biologically fixed characteristics. It was elaborated as a way to make distinctions within a given race, usually among whites; Michael Novak wrote in 1972 of “the rise of the unmelt-able ethnics” within various European nationalities. Some analysts continue to insist that the two terms should be defined in opposition to each other. I, like other undergraduate lecturers, have taught my students that Latinos have a common ethnicity shared among multi-

ple races, whereas Pacific Rim Asians are a single race with multiple ethnicities.

But scholars and activists are now working to confound the distinction that was developed over most of the past century. Ian Haney López, for example, wrote in 1997 that “conceptualizing Latinos/as in racial terms is warranted The general abandonment of racial language and its replacement with substitute vocabularies, in particular that of ethnicity, will obfuscate key aspects of Latino/a lives.”⁴ Four in ten of those who identified as Hispanic or Latino on the ethnicity question in the 2000 census rejected all the racial categories offered to them in the next question, in favor of “some other race.” Whether that represents a principled refusal to distinguish race from ethnicity, or just respondents’ confusion with the census form, as the Census Bureau interpreted it, remains to be seen. David Hollinger has pointed out one of the more resonant ironies of American racial politics: the same federal government that separates Hispanic ethnicity from race in the census treats Hispanics as legally equivalent to African Americans in antidiscrimination policies such as affirmative action, voting rights, and minority set-asides.

Residents of the United States began the twentieth century by not distinguishing a race from an ethnicity; they spent most of that century elaborating the differences between the two concepts; and they appear now to be collapsing the distinction. The number of recognized races shrank drastically and is now expanding again. When the century began, the concept of race was tightly connected with the biological sciences; that bond was almost snapped but now may be regaining strength. I am

3 Neil Risch, Esteban Burchard, Elad Ziv, and Hua Tang, “Categorization of Humans in Biomedical Research: Genes, Race, and Disease,” *Genome Biology* 3 (7) (2002): 1–12.

4 Ian Haney López, “Race, Ethnicity, Erasure: The Saliency of Race to LatCrit Theory,” *California Law Review* 85 (5) (1997): 1143–1211.

not making a simple cyclical argument: the proliferation of races through multiple self-definitions is very different from the mapmaking of a physical anthropologist, and the biology of eugenics is unconnected with the biology of the genome project. Nevertheless, the transformations of the past century show that *Migration News's* casual suggestion that by 2050 today's racial and ethnic categories may no longer be in use is not as farfetched as it initially appears to be.

Definitions and usages of concepts such as race and ethnicity matter because they help us to understand the practice of racial and ethnic interaction. If immigrants are regarded as a race apart, biologically distinct from the rest of us, they will be treated very differently than if they are regarded as belonging to another ethnicity, similar in crucial ways to all the others. The structure of racial hierarchy will be different if races are conceived as discrete and insular (i.e., one can be black or white but not both) rather than if they are conceived as occurring along a continuum. The degree to which such conceptions and practices have changed over the past century can give us hints as to how they are likely to change over the next one.

Consider immigrants first. Ever alert to its responsibility as the newspaper of record, *The New York Times* reminded readers in the 1880s of "a powerful 'dangerous class,' who care nothing for our liberty or civilization, ... who burrow at the roots of society, and only come forth in the darkness and in times of disturbance, to plunder and prey on the good things which surround them, but which they never reach." This is, the *Times* proceeded to warn, "the poorest and lowest laboring class ... [who] drudge year after year in fruitless labor ... [but] never rise above their position They hate the

rich They are densely ignorant, and easily aroused by prejudice or passion." The members of this class "are mainly Irish Catholics."

Not only words were invoked to control the dangerous classes. Of the 1,713 lynchings in the decade after 1882 (the first year for which accurate records exist), half of the victims were white (largely Jewish or Catholic); in the succeeding decade, a quarter were. 'Hunkies,' Italians, and Russian Jews could live and socialize only in a 'foreign colony' in an undesirable part of town. Unless there was a substantial black population in the area, most new immigrants occupied the lowest-skilled and lowest-paying jobs in the lowest-status industries. When able to attain jobs that required more expertise, they were paid less than their northern European counterparts.

Eventually, however, the despised races became the celebrated white ethnics. The reasons included genuine assimilation, the desire to become white in order not to be black, the almost complete cessation of new European immigration after World War I, upward mobility in a growing labor force, and political incorporation through party machines. By the 1960s, Irish Catholic families enjoyed on average \$2,500 more than the national average family income.⁵ An Irish Catholic has been president of the nation, and during his presidential campaign John Kerry was coy about the fact that he is not Irish. Intermarriage rates among white ethnics are so high that demographers have largely given up trying to trace socioeconomic differences among nationalities. In short, the ethnic boundaries at the turn of the twentieth

5 Andrew Greeley, "Ethnic Minorities in the United States: Demographic Perspectives," *International Journal of Group Tensions* 7 (3 and 4) (1977): 64–97. See table 5-C for data.

century that were sometimes etched in violence have mostly dissolved into shades of whiteness.

The transformation of the status of Asian immigrants has been even more phenomenal. In 1877, a U.S. Senate committee investigating Chinese immigration to California concluded that “the Chinese do not desire to become citizens of this country, and have no knowledge or appreciation for our institutions An indigestible mass in the community, distinct in language, pagan in religion, inferior in mental and moral qualities, and all peculiarities, is an undesirable element in a republic, but becomes especially so if political power is placed in its hands.” Until the middle of the twentieth century, members of most Asian nationalities were prohibited from immigrating, becoming naturalized citizens, or owning certain types of property. Most Japanese Americans were interned in World War II, although few German Americans or Italian Americans were.

But now Asian Americans are perceived, often to their chagrin, as the ‘model minority.’ Elite private universities are rumored to use informal quotas to keep too many from beating out their non-Asian competitors. At the most prestigious state universities in California, where no such restrictions hold, Asian American students typically fill two-fifths of the student seats (in a state whose population is 12 percent Asian American). Almost half of adult Asian Americans have a college degree or more education, compared with three in ten Anglos, two in ten African Americans, and one in ten Latinos. A *Newsweek* cover story lauds the sex appeal of Asian men; analysts report that “Anglos living in close proximity to large Asian populations are more likely than racially and ethnically isolated Anglos to favor in-

creased immigration.”⁶ As of 1990, a fifth of the children who had one Asian parent also had a parent of a different race; that proportion is surely much higher now. In the same year, 30 percent of Asians who married wed a non-Asian American, and that figure too is rising. While discrimination persists, virulently at times, and the label of ‘foreigner’ sometimes seems impossible to escape, it is not crazy to think that Asians may by 2050 have followed the path of Irish Catholics and Polish Jews into the status of ‘just American.’

Conversely, another group of immigrants – Mexican Americans, or Latinos more generally – might become more sharply differentiated from other residents of the United States over the next few decades. Samuel Huntington argues that the “extent and nature of this immigration differ fundamentally from those of previous immigrations, and the assimilation successes of the past are unlikely to be duplicated with the contemporary flood of immigrants from Latin America. This reality poses a fundamental question: Will the United States remain a country with a single national language and a core Anglo-Protestant culture?”⁷ In this view, Latinos will follow the opposite trajectory from that of the Irish and Asians: Latinos, once perceived as part of an ethnicity with an identifiable but permeable culture, are becoming a race with increasingly defined boundaries.

The research evidence is completely mixed on this point. U.S.-born children

6 M. V. Hood III and Irwin Morris, “¿Amigo o Enemigo?: Context, Attitudes, and Anglo Public Opinion Toward Immigration,” *Social Science Quarterly* 78 (2) (1997): 309–323.

7 Samuel P. Huntington, “The Hispanic Challenge,” *Foreign Policy* (March/April 2004): 30–45.

of Mexican parents consistently receive more education than their parents, speak English better, earn more at higher-status jobs, move away from gateway cities more frequently, marry more non-Mexicans, and vote more. However, discrimination and subordination persist, and scholars such as Richard Alba and his coauthors find “no convincing sign of convergence in the educational attainments of later-generation Mexican Americans and Anglos.”⁸ That is, after the second generation, assimilation may lose its momentum. Sociologists even point to the possibility of a reversal, such that children and grandchildren of poor immigrants may lose ground economically, disengage politically, and end up with poorer health, higher rates of crime, or greater family instability than their ancestors or counterparts in their native country.

Huntington articulates a deeper anxiety: that the sheer magnitude of immigration and the high birth rates among Latinos who share a language, religion, and background and who mostly live in a distinct section of the United States are creating “a de facto split between a predominantly Spanish-speaking United States and an English-speaking United States.” In my view, this concern is unwarranted; the culture of the United States is certainly changing in response to massive immigration from Latin America, but the immigrants are changing just as much, if not more. From the perspective of African Americans, in fact, the danger may be altogether too much assimilation rather than too little – creating once again a society in which

immigrants get to become American by stepping over the only group that cannot, and does not want to, attain whiteness (or at least nonblackness).

Beyond the empirical complexities, I cannot forecast whether today’s racial and ethnic categories will no longer be in use with regard to immigrants in 2050, because of a crucial but unpredictable feature of immigration: the level and composition of immigration is largely a matter of political choice. U.S. immigration has not been drastically curtailed after forty years of increase, as it was in 1924 after about fifty years of a proportionally similar increase. But will it be? On the one hand, there are few signs of an impending cutoff. So the long period of incorporation with few newcomers that the United States experienced from 1920 until 1965 is unlikely to be repeated in the near future.

On the other hand, the war against terrorism may yet dramatically affect immigration laws and the treatment of immigrants. So far only a small segment of the population has been significantly affected. But arguably precedents have been set that could have powerful and, in my view, terrible consequences for the United States’s treatment of ‘foreigners.’ And with a few more terrorist attacks, residents of the United States could develop a powerful nativism tinged with religious and ethnic hostility and fueled by a genuine and warranted fear. The effect such developments would have on the racial and ethnic categories of 2050 is anyone’s guess.

For most of the twentieth century, the boundary between black and white was as firmly fixed in law and self-definition as it was blurred in practice. This boundary did not always exist; in the 1600s, the Virginia legislature had to outlaw interracial marriages because too many

8 Richard Alba, Dalia Abdel-Hady, Tariqul Islam, and Karen Marotz, “Downward Assimilation and Mexican Americans: An Examination of Intergenerational Advance and Stagnation in Educational Attainment,” University at Albany, SUNY, Albany, N.Y., 2004.

white indentured servants were marrying black proto-slaves. Interracial sexual activity persisted, of course, and government policy in the centuries since then has shifted from counting mulattoes, quadroons, and octoroons to establishing “one drop of blood” laws in thirty states by 1940. In some states or legal jurisdictions, not only blacks but also South Asians, Chinese and Japanese Americans, and Mexican Americans were forbidden to marry European Americans. Opponents used rumors of interracial sex to try to discredit Abraham Lincoln, the Populist movement, labor unions, New Deal agencies, desegregation in the Army, and the civil rights movement. The Supreme Court refused to take on cases of interracial marriage in the 1950s for fear of evoking uncontrollable anger; Justice Harlan is reported to have said, with Thurgood Marshall’s concurrence, that “one bombshell at a time is enough.”

Most of that sentiment has disappeared, or at least gone underground. Multiracial identity is now a point of public pride and private assertion; a social movement built around multiracial identity has shown surprising strength. In 1958, only 4 percent of whites endorsed interracial marriage; the most recent Gallup poll shows that 70 percent now do. A recent cover of *Parade* magazine is adorned with smiling, adorable children under the headline of “The Changing Faces of America”; Mattel has introduced Kayla, whom it describes as “Barbie’s racially ambiguous playmate”; *The New York Times* showcases “Generation E.A.: Ethnically Ambiguous”; *Newsweek* shows yet another set of adorable children in a story on “The New Face of Race.” Whatever motives one attributes to the marketing of racial complexity, the fact that multiracialism now has commercial appeal shows how far it has

moved from connotations of mongrelization and degeneration.

How much actual multiracialism there is in the United States is indeterminate. The answer depends on what one defines as a race (is a marriage between a Mexican American and a European American interracial?), whether inter-ethnic marriages are factored in (how about a marriage between a Korean and a Japanese?), how far back one goes in a person’s ancestry to determine multiraciality, and what individuals know or acknowledge in their own family history. Nevertheless, it is probably safe to say that intermarriage is rising, along with the number of children who are, or who are recognized as being, multiracial. Up to 12 percent of youth can now readily be called multiracial, and plausibly by 2050 about 10 percent of whites and blacks and over 50 percent of Latinos, Asians, and American Indians will marry outside their group.

Since families are comprised of more than only parents and children, a single intermarriage can have a wide impact. As of 1990, “one in seven whites, one in three blacks, four in five Asians, and more than 19 in 20 American Indians are closely related to someone of a different racial group. Despite an intermarriage rate of about 1 percent, about 20 percent of Americans count someone from a different racial group among their kin.”⁹ And those calculations include neither marriages between or offspring of a Latino and a non-Latino, nor individuals with multiracial ancestry who consider themselves to be members of one racial group.

These changes in sentiment and behavior may grow even stronger over the

9 Joshua R. Goldstein, “Kinship Networks that Cross Racial Lines: The Exception or the Rule?” *Demography* 36 (3) (August 1999): 399–407.

next few decades, as Latinos' celebration of *mestizaje*, the mixing of races, as a cultural identity and social environment, rather than as a description of an individual's ancestry, spreads across the nation. Similarly, the census's invitation to identify with more than one race may spread, for simple bureaucratic and non-ideological reasons, to schools, state governments, corporations, hospitals, the criminal justice system, the military, and other far-reaching institutions. A frequently repeated offer to "check one or more" may encourage people to think of themselves as 'more than one.' If the trajectory of multiracialism persists, *Migration News's* speculation that today's racial and ethnic categories will no longer be in use in a few decades seems even less farfetched.

We cannot evaluate the impact of the unstable meanings of race and ethnicity, the fluctuating status of various immigrant groups, and the evolving connotation of multiracialism without considering African Americans. They are the perennial losers in the hierarchies of status, wealth, and power in the United States. The boundaries around blackness have been the most stringently monitored, first by oppressors and now perhaps by African Americans themselves; their relations with white Americans have been and continue to be the most fraught. If we knew how much the meaning of being black in the United States will change by 2050 – or more contentiously, whether racial oppression will be significantly undermined – we would know how seriously to take the speculation that our current racial and ethnic categories may become outmoded.

The standing of African Americans has changed dramatically over the past century: Republican President Roosevelt

was widely criticized for once entertaining Booker T. Washington in the White House; Republican President Bush has entrusted two of the most important cabinet-level positions to African Americans. The highest paid corporate executive on Wall Street in 2003 was black; some African Americans hold high elective office or judgeships; some are esteemed socially and culturally. Overall, using criteria that encompass roughly half of the white population, about a third of American blacks can be described as middle class. Affluent African Americans can now pass their status on to their children, so a fully developed class structure has emerged in the black community.

Still, perhaps a third of African Americans remain at the bottom of the various hierarchies in the United States. Compared with all other groups, poor blacks are more deeply poor, for longer periods of their life and from earlier in childhood; they are more likely to live among other poor people. Black children who begin their education with roughly the same knowledge and skills as white children lose ground in the public school system. Blacks are more likely to be victimized by crime than any other group, and black men are much more likely to be incarcerated and subsequently disfranchised for life than are white men.

More generally, we cannot dismiss the possible persistence of what Orlando Patterson once called the "homeostatic principle of the entire system of racial domination," in which racial subordination is repressed in one location only to burst forth in another.¹⁰ Regardless of their income, African Americans are overcharged for used cars, less likely

¹⁰ Orlando Patterson, "Toward a Study of Black America," *Dissent* (Fall 1989): 476 – 486.

to receive appropriate treatment for heart attacks, and less likely to receive excellent service from realtors and bankers. Blacks have drastically less wealth than whites with the same earnings. Whites seldom vote for black candidates when they have an alternative, and even less often move into substantially black neighborhoods, schools, and churches.

I am not sure what would count as persuasive evidence that the racial hierarchy in the United States is on a certain path to extinction. Certainly a strong black class structure that persists across generations would be essential (although it may merely substitute one hierarchy for another). A sense among African Americans that they can let down their guard – that embracing multiracialism is not just a way of inching closer to whiteness, that racism is only infrequently part of the explanation for a failure, that a commitment to racial solidarity need not take precedence over values such as feminism or patriotism or simple idiosyncrasy – would also be good evidence. And changed behavior by nonblacks, such as choosing a home or a child's school because of its quality rather than its racial composition, or repudiating implicit as well as explicit racial appeals by political candidates, or recognizing and disavowing the privileges that come with being the apparently raceless norm in U.S. society, would also be necessary.

Until we can be clear on what it will take to abolish racial hierarchy in the United States, and on how far we have moved toward that abolition, we cannot say whether by 2050 today's racial and ethnic categories will no longer be in use. If racial hierarchy persists, so will the categories of black and nonblack. Multiracialism and the history of American racial politics over the past few de-

CADES are on balance encouraging, but they are not dispositive.

I turn finally to discrimination by skin tone, which may be the deepest and most tenacious form of racism in the United States. The connection between lightness and virtue is at least as old as Shakespeare, whose Timon of Athens learned too late that enough gold “will make black white, foul fair, wrong right, base noble, old young, coward valiant.”

Europeans have not always denigrated dark-skinned people in favor of light-skinned ones, as Werner Sollors shows in *An Anthology of Interracial Literature*, but by the mid-nineteenth century, few residents of the United States publicly contested the view that lighter was better. Skin-color hierarchy held a fortiori across what we now call races; northern European whites were dominant, southern Europeans and Latinos held intermediate positions, and blacks were subordinated to all. But skin-color hierarchy also obtained within racial and ethnic groups, as phrases like ‘the black Irish’ and ‘the brown paper bag test’ and the advertising jingle asserting that ‘blonds have more fun’ attest.

The history of each racial or ethnic group includes its own variant of skin-color ranking. Spanish and Portuguese colonizers of Latin America elaborated rules for ranking according to a complex mixture of race, physical appearance, wealth, cultural heritage, and enslavement:

Whites generally have a superior status. People of Indian racial background whose cultural practices are mainly of Portuguese or Spanish derivation . . . would be next on the social ladder. Mestizos, people of mixed indigenous and white background, would have a higher rating than those of largely Indian background. At the

bottom of the social pyramid would be Afro-Americans, with mulattos occupying a higher social status than blacks.¹¹

My research (conducted with Traci Burch and Vesla Weaver) suggests that skin-color ranking has had an equally powerful impact on African Americans. Compared with their darker-skinned counterparts, lighter-skinned black soldiers in the Civil War's Union Army were more likely to have been skilled workers than field hands before they entered the service. Sergeants and lieutenants were most likely to be light-skinned, and black soldiers with light skin were more likely than their darker-skinned counterparts to be promoted while in the Army. They were significantly taller (a measure of nutrition) and – most striking of all – the lightest members of the black regiments were significantly less likely to die in service.¹²

Asian societies are not immune from the bias of skin-color ranking. An ancient Japanese proverb holds that “white skin makes up for seven defects,” and Indian newspapers and websites carry personal ads for women whose parents boast of their daughters’ purity and light skin in order to attract a husband. European Americans hold light skin in the same regard, as elucidated by that noted sociologist F. Scott Fitzgerald in *This Side of Paradise*. During a conversation about the virtues of strenuous exercise, Fitzgerald's Byrne suddenly observes,

“Personal appearance has a lot to do with it.”

“Coloring?” Amory asked eagerly.

“Yes.”

“That's what Tom and I figured,”

Amory agreed. “We took the year-books for the last ten years and looked at the pictures of the senior council . . . It does represent success here [at Princeton University] in a general way. Well, I suppose only about thirty-five per cent of every class here are blonds, are really light – yet *two-thirds* of every senior council are light . . .”

“It's true,” Byrne agreed. “The light-haired man is a higher type, generally speaking. I worked the thing out with the Presidents of the United States once, and found that way over half of them were light-haired, yet think of the preponderant number of brunettes in the race.”

They go on for several more paragraphs in the same vein, apropos of nothing in the book's plot.

Such examples range across several centuries because the importance of skin tone has changed relatively little, despite the growth of a black cultural aesthetic, the Latino celebration of *mestizaje*, and the Asian drive for panethnic unity. Surveys from the 1990s show that lighter-skinned African Americans and Hispanics continue to enjoy higher incomes and more education than their darker counterparts. They are more likely to own homes and to live among white neighbors, and less likely to be on welfare. Darker blacks and Latinos have higher rates of incarceration and unemployment; dark-skinned Mexican Americans speak less English and are less likely to be unionized if they are workers. Dark-skinned black men convicted of a crime receive longer sentences than lighter-skinned counterparts. Both blacks and whites attach more negative and fewer positive attributes to images of dark-skinned, compared with light-skinned, blacks.

11 Robert J. Cottrol, “The Long Lingered Shadow: Law, Liberalism, and Cultures of Racial Hierarchy and Identity in the Americas,” *Tulane Law Review* 76 (November 2001): 11 – 79.

12 These data are drawn from Jacob Metzger and Robert A. Margo, *Union Army Recruits in Black Regiments in the United States, 1862 – 1865*, computer file, University of Michigan, Inter-university Consortium for Political and Social Research, Ann Arbor, Mich., 1990.

Controls for class background reduce but do not eliminate these differences. That is, light-skinned people are more likely to come from a well-off family – reflecting the historical advantages of light skin – and they are more likely to be treated well by police, employers, teachers, and other citizens. The magnitude of these effects is impressive. One study found complexion to be more closely connected than was parents' socioeconomic status to blacks' occupation and income; another found that “dark-skinned blacks suffer much the same disadvantage relative to light-skinned blacks that blacks, in general, suffer relative to whites.”¹³ Even if racial and ethnic categories change drastically by 2050, one cannot assume that skin-color hierarchy will do the same.

Over the past century, the meaning of race and ethnicity has changed a lot, as have the status of most immigrants and the connotations of multiracialism. Skin-color hierarchy has changed little, and the subordination of African Americans has been challenged but not yet overturned. Combining these dynamics in various ways and with varying degrees of emphasis permits us to envision at least six possible futures:

- The United States might persist in a structure of black exceptionalism, or an updated Jim Crow. In this scenario, skin tone and ethnicity would matter, but the main divide would continue to be between those identified as black and all others. That is, race as we now

13 Michael Hughes and Bradley R. Hertel, “The Significance of Color Remains: A Study of Life Chances, Mate Selection, and Ethnic Consciousness Among Black Americans,” *Social Forces* 68 (4) (1990): 1105–1120; Verna Keith and Cedric Herring, “Skin Tone and Stratification in the Black Community,” *American Journal of Sociology* 97 (3): 760–778.

understand it would trump skin tone and ethnicity among blacks, even if skin tone or ethnicity complicates the meaning of race for all other residents of the United States. Biracial individuals would be treated as simply black or nonblack, and would mostly identify according to that binary, rather than become a liminal or new category.

- A similar possible scenario is white exceptionalism. Here too, skin tone and ethnicity would continue to matter, but the main divide would be between those identified as white and all others. Skin tone and ethnic identification would continue to matter little among European Americans, who would all share to a greater or lesser degree in white privilege. Appearance and ethnic groupings might matter a great deal for sorting the rest of the population, but only within a shared subordinate status.
- Alternatively, the United States might move toward a South African model. That would combine the first two scenarios, producing a nation sorted into three groups: whites and ‘honorary whites’ (most Asians, some Latinos, and some biracials), coloreds (some Asians, most Latinos, some biracials, and a few African Americans), and blacks and almost-blacks (indigenous Latinos, many Native Americans, and some biracials, as well as African Americans). Levels of affluence, status, power, and vulnerability to discrimination would on average vary accordingly, with wider variations between rather than within the groups.¹⁴

14 For more on this scenario, see Eduardo Bonilla-Silva, “We Are All Americans!: The Latin Americanization of Race Relations in the United States,” in Maria Krysan and Amanda Lewis, eds., *The Changing Terrain of Race and*

- Perhaps the United States will sort along a more complex set of racial and ethnic dimensions, with new understandings of race and ethnicity. One possibility is sharper regional divides. Thus the Northwest would mingle Asians, Native Americans, and Anglos; the Southwest would mix Latinos, Native Americans, and Anglos; the Midwest would remain largely Anglo; the South would continue to hold mostly separate populations of blacks and Anglos, and so on. These regional divides could develop important political and cultural implications, even if not at the level of the antebellum North, South, and West as described by Anne Norton, among others.¹⁵ Or the nation might divide along lines of nativity, so that the most salient characteristic is whether one is foreign- or native-born. Perhaps class lines or intensity of religious commitment or isolationism would cut across lines of race, ethnicity, and skin tone alike.
- The United States might be moving toward the eventual elimination of distinct racial and ethnic groups in favor of a skin-color hierarchy, *tout court*. Socioeconomic status, prestige, and political power would in that case depend on one's location on that continuum; identity, beliefs, and perceptions would eventually follow. Whether such a continuum would improve the United States's racial order by substituting fluidity for rigidity, or worsen it by disguising persistent racial stigma through a series of small gradations, remains to be seen.
- Finally, the United States might blur distinct racial and ethnic groups into a multiracial *mélange*. The logic of multiracialism differs from that of skin color since the former is not inherently hierarchical: black/white individuals have the same standing qua 'multiracials' as do Asian/Latino individuals. The crucial divide in this scenario would be between those who identify as monoracials and seek to protect cultural purity and those who identify as multiracials and celebrate cultural mixing. Skin tone, along with conventional distinctions of race and ethnicity, would recede in importance.

Prediction is a fool's game. The future will be partly controlled by political and policy choices not yet made, perhaps not yet even imagined. Furthermore, as others discuss in detail in this issue of *Dædalus*, the very categories that we employ to measure racial and ethnic change will themselves affect the direction and magnitude of that change. The census is not a neutral bean counter; Heisenberg's principle holds for the social as well as the physical world. Nevertheless, I will venture a guess: skin tone will continue to be associated with invidious distinctions; African Americans will remain a distinct although not always subordinated social grouping; and everything else in this arena – our understandings of race and ethnicity, our treatment of immigrants, our evaluation of people and cultures that cut across formerly distinct categories – is up for grabs.

Ethnicity (New York: Russell Sage Foundation, 2004): 149–183.

15 Anne Norton, *Alternative Americas: A Reading of Antebellum Political Culture* (Chicago, Ill.: University of Chicago Press, 1986).

Melissa Nobles

The myth of Latin American multiracialism

Many Latin American nations have long proudly proclaimed a multiracial ideal: unlike the United States, countries like Brazil and Mexico have celebrated the mixing of races, and claimed to extend equal rights and opportunities to all citizens, regardless of race. As a result of the region's regnant faith in racial democracy, it has long been widely assumed that Latin American societies are nondiscriminatory and that their deep economic and social disparities have no racial or ethnic component.

Yet new statistical evidence (a by-product of democratization) suggests that most of the region's societies have yet to surmount racial discrimination. At the very time that some in the United States have timidly embraced multira-

cialism as a fitting ideal for North Americans, Latin American critics have begun to argue that multiracialism, like racial democracy, functions as an ideology that masks enduring racial injustice and thus blocks substantial political, social, and economic reform.

Latin American elites have always been deeply concerned about the racial stocks of their populations and have always prized the European antecedents of their peoples and cultures – just like their counterparts in the United States. But at the same time, and unlike their U.S. counterparts, Latin American political and cultural leaders in the first half of the twentieth century viewed their societies as unique products of racial intermingling. Sensing that such racial mingling might help define an emergent nationalism, intellectuals and statesmen argued that extensive racial mixture had resulted in the formation of new, characteristically 'national' races.

For example, the Mexican philosopher José Vasconcelos (1882 – 1959) famously celebrated the idea of racial mixture by arguing that all Latin Americans, and not just Mexicans, were a *raza cósmica* (cosmic race) comprised of both Spanish and indigenous peoples. But his conception of mixture left no doubt as to the

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eminence to be accorded to peoples of European descent. As scholars have observed, the idea of a cosmic race at once gave indigenous peoples a place within a new racial identity while simultaneously relegating all things Indian to a backward and romantic past.

As a result of the work of writers like Vasconcelos, the idea of racial mixture in Latin America has long been a normative goal, and not just a simple assertion of demographic facts. Latin American societies have tended to pride themselves on their multiracialism. Although Brazil was for many decades the largest slaveholding society in the hemisphere, and lacked a mass multiparty democracy until 1945, it was one of the first Latin American countries to declare itself a racial democracy. The paradoxes of Brazil are typical: The ideal of racial democracy flourishes most vigorously when political democracy has not. The rhetoric of multiracialism has routinely been deployed by oligarchic and authoritarian regimes.

The myth of the region's racial democracy has nevertheless proved durable, mainly because few have critically questioned it. Most Latin American countries have collected data on racial identification erratically, if at all. For example, Venezuela has not collected such data since 1854, the year slavery was abolished there. Neither Colombia, nor Cuba, nor the Dominican Republic conducts a national census in which residents are classified by race or color. Instead, Latin American scholars and policymakers have generally drawn racial and ethnic data for their countries from foreign sources, such as the United Nations and the World Bank.

The absence of reliable data has made it virtually impossible to test the regional claims of racial democracy. While the visitor to a Latin American city may be

pleasantly surprised by the apparent lack of animus and social segregation along color lines, he or she will still be struck by the seemingly close correspondence between skin color and class that is characteristic of the region. This state of affairs is especially pronounced in the Andean area, where indigenous communities have recently begun to engage in visible and dramatic protests against the status quo, contributing to political instability.

In recent years, moreover, it has become ever harder to credit declarations of racial democracy, and for a simple reason: for the first time ever, many Latin American governments are gathering reliable racial and ethnic data. Demands for the gathering of such data have been most successful in Brazil, but groups representing blacks and indigenous peoples have pressed for similar measures in Colombia, Ecuador, and Guatemala.

In Brazil, as in the other countries, these organized efforts have come on the heels of greater political liberalization. The dual efforts to get Brazilians to identify their skin color as accurately as possible on their census schedules and to force the Brazilian Institute of Statistics and Geography (IBGE) to alter its methods of categorization began in 1990, five years after Brazil's emergence from twenty-one years of institutional military rule, the longest such rule in twentieth-century Latin American history. Similarly, in Colombia, attempts to change the census have accompanied the political opening and constitutional reform of the early 1990s. In both cases, organized groups have sought either to have census racial categories changed (as in Brazil) or added (as in Colombia) for two related reasons. The first is to challenge the view that the societies are indeed as 'white' as previously claimed,

and the second is to cross-tabulate the racial with other essential socioeconomic indicators in order to measure the extent of economic stratification by race.

Organized groups have not limited their activities to the domestic political arena. Recognizing the power of international institutions, they have also enlisted many of them in their census reform efforts. If governments are slow in responding, the reasoning goes, they will respond more quickly to international pressures. On this score, black and indigenous activists first lobbied to have international lenders take their issues on board, arguing that the ethnic and racial dimensions of class inequality in Latin America have been ignored. Their demands were consistent with the World Bank's priorities on poverty alleviation, for example, as articulated by Bank president James D. Wolfensohn in his 1997 annual address.¹

Once the banks had committed to addressing color inequalities, they had to ascertain the scope of the problem, and thus became stakeholders in the census data issue. Beginning in 2000, the Latin American and Caribbean Social Development Unit within the World Bank, along with Inter-American Development Bank and the Colombian Statistical Department, sponsored a workshop in which demographers, government census personnel, and indigenous and black Latin American and Caribbean organizations gathered to discuss how racial and ethnic questions should be incorporated into national censuses.² A follow-up meeting held two years later in Peru was attended by more than a hundred representatives from eighteen

Latin American countries. Representatives gave mixed reviews of the national census institutes' efforts. For example, Ecuadorian indigenous and black groups complained of being completely excluded from the census process, unable to participate in the formulation of a racial/ethnic question.³

Yet what is perhaps more revealing is how these census meetings were tied, by both the banks and activists, to bank-funded projects aimed at measuring the social inclusion of blacks and indigenous peoples. According to the reigning myth of racial democracy, after all, both of these groups were already fully incorporated in distinctively multiracial societies – so there was presumably nothing to measure.

The claim that inequalities in Latin America are borne disproportionately by indigenous groups and blacks has been significantly boosted by census data, when such data are collected and tabulated against other socioeconomic indicators. For most of the twentieth century, the IBGE had not cross-tabulated color categories with socioeconomic indicators; it was not until Brazil's 1976 household survey that color data were pegged to health, education, and housing. Furthermore, before the color question was reintroduced in the 1980 census, people trying to determine the possible role of color in these matters were forced to use data from the 1950 census. (The 1960 census asked a color question, but the data from it were belatedly and not fully released. The color question was removed from the 1970 census.)

Recent racial data for Brazil has made dubious the claim that skin color is inconsequential. Data from the 1976 household survey and from the 1980

1 The World Bank, *La Ventana Newsletter: A Report from the Latin American and Caribbean Social Development Unit*, vol. 1

2 Ibid., vol. 1.

3 Ibid., vol. 2.

census showed that Brazil's nonwhites were disadvantaged when compared to whites in terms of educational attainment, labor force participation, and wages.⁴ According to a 2001 study based on the most recent census data, economic and educational disparities persist, with blacks and browns concentrated at the bottom of the economic ladder, comprising 70 percent of the poorest decile. Blacks and browns also continue to earn less than whites with comparable levels of education.⁵ Statistical analysis has uncovered other patterns of discrimination besides those grounded in social and economic inequalities. Using Brazil's 1988 household survey, scholars found that blacks and browns were more likely than whites to be victims of police abuse.⁶

Data like these from Brazil are exactly what advocates for the gathering of racial data have hoped to find in other Latin American and Caribbean countries. Similar evidence of racial discrimination would undercut the political and economic claims that racial democracy has been realized in practice. As a result, parties across the political spectrum might be forced to rethink their public policies.

4 See, for example, Carlos Hasenbalg, "Race and Socioeconomic Inequalities in Brazil," in Pierre-Michel Fontaine, ed., *Race, Class, and Power in Brazil* (Los Angeles: Center for Afro-American Studies, University of California, Los Angeles, 1985); Peggy A. Lovell and Charles H. Wood, "Skin Color, Racial Identity, and Life Chances in Brazil," *Latin American Perspectives* 25 (3) (1998): 90–109. Color data from the 1991 census were not released until 1998.

5 Mala Htun, "From Racial Democracy to Affirmative Action: Changing State Policy on Race in Brazil," *Latin American Research Review* 39 (1) (2004): 63.

6 Michael Mitchell and Charles Wood, "Ironies of Citizenship: Skin Color, Police Brutality, and the Challenge to Democracy in Brazil," *Social Forces* 77 (3) (1998): 1001–1020.

Already, in the face of organized domestic pressure and international attention, politicians in the region have begun to change their views. They have strengthened antidiscrimination laws and introduced affirmative action policies. In certain cases new legislation has been passed, while in other cases, existing legislation is being enforced for the first time.

For example, Brazil's first antidiscrimination law, the Arinos Law, passed in 1951, was largely a dead letter, resulting in just two convictions with penalties in over forty years. Then in 1989 this criminal code was updated by the Caó Law, which for the first time made "acts of prejudice" a criminal offense subject to mandatory imprisonment. But while Brazilians increasingly have recourse to the Caó Law, scholars and practitioners agree that the myth of racial democracy still hampers the law's effectiveness.

At the same time, in recent years the Brazilian Center and Left have supported the implementation of new affirmative action policies. In 1996, following the recommendations of black activists such as Helio Santos and former senator Abdias do Nascimento, the former Brazilian president Fernando Henrique Cardoso introduced a national human rights program in which affirmative action policies were proposed.⁷ This program was further supported by Brazil's delegation to the 2001 International World Conference on Racism in Durban, South Africa. In preparation for the conference, activists and government officials prepared a report that called for the implementation of affirmative action, including racial quotas, in the admission policies of public universities.

7 Brazil Ministry of Justice, National Secretary of Human Rights, "National Program of Human Rights" (Brasília: Ministry of Justice, 1996).

This trend has continued under the current administration of President Ignacio Lula da Silva. He has appointed the first black Brazilian to serve on the nation's supreme court. Universities have recently announced new guidelines for admission. For example, the University of Brasília will adopt a 20 percent quota for Afro-Brazilians, with a special mechanism for accepting indigenous Brazilians. The application form includes a precoded question of ethnoraacial identification and requires a photograph. In contrast, the Federal University of Rio de Janeiro is implementing a 20 percent quota system for graduates of public high schools, regardless of racial or ethnic origin. Because public high schools are largely populated by Brazil's black and brown poor, this quota will dramatically alter the composition of student populations at the Federal University.

It is hard to overstate the significance of affirmative action policies in Brazil, given the country's long history of declaring such policies unnecessary. Yet, as in all other countries where these policies exist, disagreements over their value persist. In Brazil the recent debate has revolved around categorization and eligibility. In 2000, a number of Brazilian academics, census bureau officials, and black activists petitioned to replace the term 'race' with 'color' on the census, and to condense two color categories, *pardo* (brown) and *preto* (black), into the single category of *negro*. Proponents of the change argued that 'race' connoted a common cultural and historical trajectory in ways that 'color' did not. They also argued that *pardo* and *preto* should be grouped together under *negro* because the two groups share a similar socioeconomic profile, and because *negro* was the term used by most black organizations.

In the end, however, the IBGE decided against revising the categories to be used on the 2000 census forms.

Despite this setback, the issue of whether official categories, census or otherwise, are capable of capturing Brazil's color diversity and complexity is very much alive in the nation's ongoing debates over affirmative action. If it is agreed that color identifications in Brazil are complex, flexible, and relatively unstable, can public policies reliably be based upon them?

So far, the answer appears to be a qualified yes. Here, the mere existence of color categories on the census is decisive. Since these categories are the basis of national statistics and statistical analyses, they appear to comprise suitable, if blunt, criteria for affirmative action policies. However, there is a significant difference between categories that are used for national surveys and those that are used for job and educational applications. While attention to skin color and other physical characteristics permeates informal social interactions (witness Brazil's rich color lexicon), color terms do not, as a rule, appear on official documents, such as Brazil's national identity cards and hospital and school forms. (Telling exceptions to this rule are local police reports.) Critics of affirmative action deplore the growing use of racial categories in official documents, while advocates of affirmative action want to refine and revise the categories in order to pinpoint more precisely enduring inequalities.

One final point about racial statistics in Brazil is worth noting. While the nation's black activists have been successful in unraveling the claims of nondiscrimination and racial democracy, they have been far less successful in raising black racial consciousness. Their efforts around the 1991 census were designed to

do just that. Perhaps affirmative action policies will be more effective in that regard. Yet, in a paradoxical way, widespread consciousness, which presumably leads to mass political mobilization, has not been necessary to securing substantial policy gains. Affirmative action is now very much in play in Brazil, all without the mass movements and political unrest that have usually prompted these policies in other countries. Brazilian exceptionalism, of a different sort, may be alive and well.

Democratization has been an enormously important part of Latin America's experiences. In the past, by masking the deep inequities among Latin Americans, the myth of racial democracy has often hindered the deepening of political democracy. Yet as democracy becomes more real in the region, however slowly, the unreality of racial democracy becomes ever more obvious. For some Latin Americans, the challenge now is to preserve the ideal of racial democracy as a worthy aspiration. For others, though, the task is to construct new national narratives that break boldly with an ideology that has been discredited.

It is too soon to know the outcome of this debate, but one thing is clear. It is going to turn, in significant measure, on racial statistics.

George M. Fredrickson

Diverse republics: French & American responses to racial pluralism

At first glance, a comparison of French and American responses to ethnic and racial diversity may seem arbitrary and unproductive. One response emerges from an old European country with more than a thousand years of continuous existence, the other from a country formed by European settlement and then constituted as a nation scarcely two centuries ago. To avoid turning a historical comparison between France and the United States into a mere set of contrasts, it will be useful to begin with four salient similarities.

First and most obviously, both France and the United States revolted against kingship to establish republics in the

late eighteenth century.¹ In the process, they became the world's first nation-states of substantial size based on popular sovereignty and government by consent. By abolishing or prohibiting nobility as well as monarchy, they created a presumption of legal and political equality for all citizens. The Declaration of Independence and the *Déclaration des droits de l'homme et du citoyen* set forth the principle that merely being human entitles individuals to basic natural rights.

The kind of nationalism that developed to defend this radical political project is usually categorized as 'civic' or 'territorial,' as opposed to the 'ethnic' or 'organic' type that developed in nineteenth-century Europe, especially in Germany.² The civic type meant that, in theory at least, one belonged to the nation simply by being there; by contrast, membership according to the ethnic type required the right ancestry.

As Anthony D. Smith has pointed out, all nations – including France and the United States – have combined “ethnic

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1 For a comparison of the two revolutions, see Patrice Higonnet, *Sister Republics: The Origins of French and American Republicanism* (Cambridge, Mass.: Harvard University Press, 1988).

2 See especially Liah Greenfeld, *Nationalism: Five Roads to Modernity* (Cambridge, Mass.: Harvard University Press, 1992).

solidarity” and “political citizenship,” albeit in differing proportions.³ Still, whatever ethnoracial identities were implicitly or explicitly privileged in the two societies, the theory promulgated to justify the revolutions was a universalistic conception of citizenship as one embodiment of human rights. At the same time, citizenship in both France and the United States was also a bounded concept. The resulting need to establish qualifications for full membership in the nation-state enabled both societies to limit civil rights according to particularistic standards involving age, gender, place of birth, and (sometimes) parentage or racial ancestry.

A second common feature – in sharp contrast with the shared commitment, however abstract, to universal human rights – was the involvement of both France and the United States in the enslavement of Africans on the plantations of the Caribbean and the American South.

In the period just before the revolutions of the 1790s in France and Haiti, plantation slavery and the transatlantic trade associated with it constituted the most profitable and dynamic sector of the French economy. After the loss of Haiti, it declined in significance, but the planters of Martinique, Guadeloupe, and Bourbon (La Réunion) were able to resist significant reform until the revolution of 1848 unexpectedly put opponents of slavery into power.

North American slavery appeared to be in some trouble at the time of the American Revolution, principally because of the collapse of the tobacco market upon which the profitability of slavery in the Chesapeake region depended. But the relatively prosperous growers of rice and long-staple cotton in South

Carolina and Georgia would not have joined the Union had their interests been unacknowledged and unprotected. Subsequently, the rise in the production of short-staple cotton in the expanding Deep South of the early nineteenth century made the planter class so affluent and politically powerful that it took a bloody civil war to bring about the abolition of slavery. The long association of black people with a form of servitude never imposed on whites would encourage the belief in both countries that blacks were servile by nature and therefore incapable of being the self-governing citizens of a republic. One result of this belief was the long-lasting conflict in both societies between the universalism of the republican ideology and popular opinion about the natural incapacity of blacks.

A third common element is immigration. Unlike other European nations, France has been a country of immigration rather than emigration, and has at times resembled the United States in the proportion of its population recruited from foreign countries.

An estimated one-third of the current French population is of second-, third-, or fourth-generation foreign ancestry. (The U.S. proportion is quite similar.) Because of low birthrates and the extent to which the peasantry remained rooted to the soil, France in the late nineteenth and early twentieth centuries had to recruit much of the labor for its industrial revolution from other countries. As with American immigration of the same period, the principal sources were southern and eastern Europe, especially Italy and Poland.

The time of greatest influx was not exactly the same, however. American immigration from Europe peaked between 1900 and 1910, whereas the high point for France was the 1920s. The

3 Anthony D. Smith, *The Ethnic Origins of Nations* (Oxford: Blackwell, 1986), 149.

French manpower losses in World War I created an acute labor shortage, and America's new policy of immigration restriction made France a more feasible destination than the United States for work-seeking Poles and Italians.⁴ In the period since the 1960s, both countries have seen new waves of immigration (mostly from non-European countries) and both have engaged similar debates on how best to integrate the recent arrivals. Meanwhile, hostility to immigrants has been a recurring phenomenon in both countries. This hostility has in large part been the result of nativism, an attitude usually based more on cultural intolerance rather than on biological racism.⁵

The fourth salient element shared by France and the United States is a history of expansionism involving the conquest, subjugation, and (in some instances) assimilation of other peoples. The last stage of this expansionism was the establishment of overseas colonies that eventually became independent.

The creation of modern France through expansion goes back to the es-

4 Gary S. Cross, *Immigrant Workers in Industrial France: The Making of a New Laboring Class* (Philadelphia: Temple University Press, 1983). On French immigration more generally, see Gérard Noiriel, *The French Melting Pot: Immigration, Citizenship, and National Identity* (Minneapolis: University of Minnesota Press, 1996).

5 John Higham employed the term 'nativism' in his classic study of anti-immigrant movements in the United States, *Strangers in the Land: Patterns of American Nativism, 1860–1925*, rev. ed. (New Brunswick, N.J.: Rutgers University Press, 1988). Miriam Feldblum applies the term to France in *Reconstructing Citizenship: The Politics of Nationality Reform and Immigration in Contemporary France* (Albany: State University Press of New York, 1999), 52–53. The closest French equivalent is *xénophobie* (xenophobia). What Americans might call 'nativism' is often subsumed by the French under a loose conception of 'racism.'

tablishment of a small kingdom in the area around Paris in the late tenth century. The existing hexagon that took shape was the result of a long series of wars and conquests involving the triumph of French language and culture over what were once autonomous and culturally distinctive communities.⁶ The assimilation of Gascons, Savoyards, Occitans, Basques, and others helped to sustain the myth that French overseas expansionism in the nineteenth century, especially to North and West Africa, was a continuation of the same project. But a variety of circumstances, including the cultural and racial prejudices of the colonizers, impeded the transformation of Arabs and Africans into Frenchmen and put these groups on the path to national independence.

American expansionism before the end of the nineteenth century took the form of a westward movement that, despite some rhetorical gestures in the direction of assimilation, displaced rather than incorporated the indigenous Indian populations. The Spanish-speaking inhabitants of the territories wrested by force from Mexico in the 1840s were granted citizenship under the treaty that ended the Mexican-American War, but were excluded from effective power even in the areas where they predominated. With the acquisition of Puerto Rico and the Philippines after the Spanish-American War, the United States acquired its first overseas colonies, thus following the example of France and other European powers. As in the case of France, a prior history of conquering contiguous territories to enlarge the national domain influenced the character and ideology of the new imperialism.

6 See Suzanne Citron, *Le mythe national: L'histoire de France en question* (Paris: Edition Ouvrières, 1987).

Having established the broad commonalities on which a comparison can be based, we will now look for the differences that appear when we move from the general themes to their specific applications. Both nations have proclaimed themselves to be republics, but their conceptions of republicanism have differed significantly.

From the tradition of absolute monarchy the French revolutionaries inherited the concept of a centralized unitary state, with the critical difference that it should now reflect the general will as manifested in an elective national assembly rather than the particular will of the ruler. The belief that there should be no intermediaries between the individual and the sovereign state was basic to French revolutionary thought.

The American republic, on the other hand, began as the cooperative struggle of thirteen British colonies, each with a distinctive history and relationship to the crown, for independence from the mother country. During and immediately after the Revolutionary War, the states, as they were now called, functioned as a loose confederation. Although the Constitution of 1787 established a stronger central authority, it divided sovereignty between the federal government and the states in a manner that made no more sense to the French than French centralization and *étatisme* made to the Americans.

John Adams found Turgot's classic dictum that "all power should be one, namely that of [a single] nation" to be "as mysterious as the Athanasian creed."⁷ In the American republican ideology, a strong central state was viewed as a threat to liberty because it could fall into the hands of corrupt or

power-hungry men. For French revolutionaries, who were seeking to destroy strong preexisting hierarchies based on birth and to obliterate the remnants of feudalism, the prime objective was the guarantee of individual equality that could only be provided by a powerful state acting uniformly on all citizens. Although liberty and equality were affirmed in both revolutions, the priority was given to the former in the American case and to the latter in the French.⁸

A second difference that was there from the beginning and that has persisted to the present day was the role that religion was expected to play in the public life of the nation. The French Revolution was animated by a fierce anticlericalism directed at the association of the Catholic Church with the *ancien régime*. The revolution bequeathed to future republicans the principle of *laïcité*, which forbids the display of religious identities and symbols in what is considered public space. This tradition of official secularism can be understood in part as a defensive reaction to the Catholic Church's long-standing opposition to the republic and its support for a monarchical restoration – dispositions that lasted well into the twentieth century. That a powerful, centralized, and internationally supported religious body could retain the adherence of a French majority and still be at odds with the political principles of French republicanism created a contentious situation with no American analogue.

The American separation of church and state developed in the context of a basically Protestant religious pluralism. Since no single denomination could claim national predominance, and

7 Quoted in Higonnet, *Sister Republics*, 166 – 167.

8 David Brion Davis makes this point in *Revolutions: Reflections on American Equality and Foreign Liberations* (Cambridge, Mass.: Harvard University Press, 1990), 11.

movements for disestablishment and religious tolerance were developing in several states, it is not surprising that the Founding Fathers of 1787 decreed a separation of church and state that implied no hostility to religion. Consequently, expressions of a generalized, non-denominational theism (originally Protestant in inspiration but later broadened to cover the beliefs of Catholics and Jews) have a place in public discourse and patriotic ritual in the United States that they clearly do not have in France.

Paradoxically, however, a need to come to terms with the power and popularity of the Catholic Church has forced French republican regimes to associate with the church in ways that would violate American conceptions of church-state separation. Between the creation of the officially secular Third Republic in 1870 and the disestablishment of religion in 1905, the Third Republic paid the salaries of Catholic priests and held title to church property. Religious neutrality was maintained by also paying the salaries of Protestant ministers and rabbis. Even today the French state provides direct aid to religious schools on a contractual basis, and official, government-subsidized bodies negotiate with the state on behalf of religious communities.⁹ Last year, Muslims gained the right to elect a council empowered to make representations to the state, a privilege previously granted only to Catholics, Protestants, and Jews.¹⁰

America's tradition of religious tolerance and pluralism has for the most part precluded direct government support of

particular denominations or churches (except in the form of tax exemptions), while French *laïcité* has found a place for the official recognition and empowerment of religious communities, which the French state regards as corporate entities over which it must exercise a measure of control. A full analysis of this surprising anomaly is beyond the scope of this essay, but it needs to be borne in mind whenever claims are made that cultural pluralism or diversity is institutionalized in the United States but not in France. In the realm of religion, the reverse would actually seem to be the case. If American law and public policy recognize ethnoracial identities for some purposes, France makes an analogous accommodation in the realm of religion.

Comparison of the two forms of republicanism is of course complicated by the fact that there have been five republics in France and, in a formal sense at least, only one in the United States. France did not become permanently committed to democratic forms of republicanism until the establishment of the Third Republic in the late nineteenth century. The American Revolution on the other hand created a durable national consensus behind republican principles. The basic structure established by the Constitution of 1787 remains in effect to this day, although an argument could be made that the North's victory in the Civil War and the resulting Reconstruction-era amendments to the Constitution ushered in a de facto second republic.

What needs emphasis here is that the French Revolution was a much more internally divisive event than the American. It produced two nations – revolutionary, republican France with its commitment to the rights of man, and traditional, Catholic France with its lingering dedication to the institutions and values of the *ancien régime*. The latter allegiance,

9 See Jean-Louis Ormières, *Politique et religion en France* (Brussels: Complexe, 2002), and Guy Coq, *Laïcité et république: le lien nécessaire* (Paris: Editions du Félin, 1995).

10 Elaine Sciolino, "French Islam Wins Officially Recognized Voice," *The New York Times*, April 14, 2003.

although only a minority persuasion, came to the surface spectacularly in the hysteria surrounding the Dreyfus Affair at the turn of the century and in the rhetoric and policies of the Vichy government during World War II. Anti-Semitism and nativism were among its hallmarks, and its legacy can be found today in the anti-immigrant agitation of Jean-Marie Le Pen and the Front National.¹¹

If the precarious and episodic character of French republicanism stemmed from the Revolution's failure to eradicate the conservatism of the old order, the American experiment faced its greatest threat when the division of sovereignty between the states and the federal government became of crucial importance in the contest for national power between slave and free states in the period 1846 – 1861. The resulting civil war was far bloodier than the revolutionary upheavals that occurred in France in 1830, 1848, and 1871. The Union victory in the war ended claims of state sovereignty, but the retention of federalism and some states' rights left the postbellum United States far less centralized than the Third Republic. One consequence was that the citizenship rights for African Americans proclaimed in the Fourteenth and Fifteenth Amendments could not be effectively enforced in the Southern states after white supremacists regained control there in the 1870s.

The issue upon which the Union broke apart – the future of black slavery – was also an issue in France, both during the Revolution and in the 1830s and 1840s. But the relation of slavery to the dominant political and social values clearly loomed larger in the United States; for

the French, slavery before the Revolution had been mostly confined to distant Caribbean colonies. As Sue Peabody has shown, there were concerted efforts throughout the eighteenth century to prevent the growth of slavery and of the black population in metropolitan France.¹² Under a 1777 law, for example, West Indian planters visiting the metropole could be attended by their slaves during the voyage but then had to deposit them in special detention centers in the port cities from which they would be sent back on the next available ship.¹³ It is hard to determine how much of this exclusionary policy was based on the belief that slavery as an institution was contrary to French values, and how much of it was based on the prejudicial desire to ensure that France remained virtually all white. But the result in any case was to prevent both slavery and a black presence from developing in metropolitan France. As Robin Blackburn has suggested for both France and England, the confinement of slavery and of most blacks to distant colonies may have put limits on the growth of “popular racism.”¹⁴ Certainly there was less fertile ground in France than in the United States for the development of such racism.

Before the American Revolution, slavery had been established everywhere in the North American colonies; afterward it was phased out in the Northern states, although cities like New York and Philadelphia retained substantial black popu-

11 See Michel Winock, *Nationalism, Anti-Semitism, and Fascism in France* (Stanford, Calif.: Stanford University Press, 1998).

12 Sue Peabody, *There Are No Slaves in France: The Political Culture of Race and Slavery in the Ancien Régime* (New York: Oxford University Press, 1996).

13 Ibid., 116 – 118.

14 Robin Blackburn, *The Overthrow of Colonial Slavery, 1776 – 1848* (London: Verso, 1988), 528 – 529.

lations. The Constitution negotiated the slavery issue by making provision for the future abolition of the international slave trade, but also rendering it virtually impossible for the federal government to take action against slavery where it was authorized under state law. As previously suggested, such a compromise was necessary to appease the planter-dominated states of the Deep South.

Meanwhile, the French National Assembly, where West Indian planters were virtually unrepresented, voted to abolish slavery in 1794, the first time any nation had taken such action. Historians debate the extent to which this decision was motivated by principled adherence to the rights of man, as opposed to pragmatic calculations arising from the Haitian Revolution and the competition with the British for control of the Caribbean. But clearly there was a more efficacious sense of the incompatibility of republican values and chattel slavery in the Paris of 1794 than in the Philadelphia of 1787. French revolutionary emancipation was short-lived, however, except in Haiti. In 1803, at a time when gradual emancipation was proceeding in the American North, Napoleon reinstated slavery in France's remaining plantation colonies. By the 1830s and 1840s, antislavery movements had developed in both metropolitan France and in the northern United States.

The French movement, which scrupulously avoided mass meetings and popular agitation, was much more cautious and elitist than the American one. It succeeded in 1848 only because of a special opportunity created by the revolution of that year.¹⁵ American abolitionism, like that of Britain, appealed to the moral

and religious sentiments aroused by an evangelical revival that scarcely touched France, a country where Protestants were a small minority. But the American antislavery movement, unlike the British one, aroused massive internal opposition. Until 1860, the slaveholding South was able to dominate the national political arena and thwart antislavery reform and action against the expansion of slavery. Consequently, it took a sectional civil war to bring about a reform that occurred much more easily in mid-nineteenth-century France, where the institution under attack had come to be viewed as a marginal and mainly colonial interest.

Black slavery left significantly different legacies in the two countries because the cultural and social weight of slavery as an institution was so much greater in one case than in the other. Post-1848 France did not have a domestic color line for the simple reason that no significant black population had been allowed to develop there. That France had ever been seriously implicated in African slavery was virtually wiped from the national memory. The history texts used in French schools before the 1980s condemned slavery in general but contained no acknowledgement whatever that French slave colonies had ever existed or that slavery had been abolished, reinstituted, and then abolished again.¹⁶

In the United States, on the other hand, slavery left behind a domestic heritage of racial division and inequality that has remained a central feature of the national experience. African Americans have remembered slavery as the brutal oppression of their ancestors and as a source of their enduring stigmatization. Many whites, consciously or subconsciously, have used the memory of

15 Lawrence C. Jennings, *French Anti-Slavery: The Movement for the Abolition of Slavery in France, 1802 – 1848* (Cambridge: Cambridge University Press, 2000), 278 – 284.

16 Citron, *Mythe national*, 62 – 63.

blacks as slaves and whites as masters to buttress their sense of priority and supremacy over a race stereotyped as inherently servile. Emancipation did not destroy a status order based on pigmentation and ancestry. Indeed, the color line was most clearly and fully articulated in the Jim Crow system that developed in the South in the late nineteenth and early twentieth centuries. Reformist efforts to make the relationship between blacks and whites more egalitarian or competitive (such as those made by Reconstruction-era radicals and the interracial progressives who formed the NAACP in 1910) kept hopes for racial justice alive but also intensified the reactive racism of many whites. The French were not color-blind, but their sense of identity was far less dependent on whiteness than was that of many Euro-Americans. 'Otherness' for them would be construed somewhat differently.

As we have seen, both the United States and France were immigrant-receiving societies that required massive importation of foreign labor for industrialization in the late nineteenth and early twentieth centuries. But they did not manage immigration in the same way. Immigration to the United States was primarily an individual matter, especially after the 1885 ban on the importation of contract labor. Before the 1920s, the most salient restriction on the admission of foreigners to American shores was the exclusion of most Asians, beginning with the Chinese laborers in 1882. Most French immigration in the period 1900–1930 involved groups of workers whose recruitment was coordinated through state cooperation with labor-hungry industries, and whose terms of employment were negotiated with the countries of origin.¹⁷ For Euro-

pean immigrants to America, citizenship through naturalization was relatively easy to secure, but this right was denied to Asians until the mid-twentieth century.

France made naturalization much more difficult for everyone by establishing stringent cultural and linguistic requirements. In 1930, 55 percent of the foreign-born in the United States had become citizens, as compared to only 11 percent in France.¹⁸ Under the American system of *jus soli*, all American-born children of immigrants are automatically citizens. In France there has been an elaborate set of compromises between *jus soli* and *jus sanguinis* (descent-based citizenship). Under *double jus soli*, the system that has prevailed from 1889 to the present, birthright citizenship is granted only to the children of foreigners who were themselves born in France. Until recently, French-born children of immigrants could become citizens only through a process of naturalization when they reached maturity. Although the full naturalization process is no longer required, children of the second generation do not officially become citizens until they have reached maturity and met a residence requirement.

Bars to immigration and naturalization in the United States have tended to be based on ethnoracial categorizations, going back all the way to the first law governing the naturalization of immigrants, passed in 1790, which limited the right to "free white person[s]." The establishment of quotas for European nationalities in 1924 responded not only to cultural nativism, but also to the belief that old-stock Nordic or Anglo-Saxon Americans were innately superior to the new immigrants from southern and eastern Europe. In France an immigrant's right of entry has been based pri-

17 See Cross, *Immigrant Workers in Industrial France*.

18 Noiriel, *The French Melting Pot*, 259.

marily on the needs of the economy, and his or her access to citizenship has been more dependent on perceptions of cultural difference or distance than on the kind of broad racial categories that were traditionally applied in the American case.

The relation of immigration to national identity has played itself out quite differently in the two contexts. Inhabitants of a country populated mainly by settlers and immigrants (voluntary or involuntary), Americans have often viewed some form of immigration as central to the meaning of the national experience. As citizens of an old nation with a long past that predated substantial immigration by several centuries, the French have tended to see newcomers simply as candidates for assimilation into the existing cultural crucible. Although the subject has not been extensively investigated, it appears that the immigration to France from other parts of Europe that occurred between the 1880s and the 1930s did not inspire the kind of fervent assimilationism that has developed more recently. It was simply taken for granted that foreigners who desired citizenship would become culturally French. And to a considerable extent they did.

Two factors promoted rapid cultural assimilation, particularly of the second generation. One was a uniform, centralized, and compulsory educational system that effectively inculcated French language and culture. The other was the strength of class consciousness. Most immigrants were laborers. Foreigners brought in to work in mines and factories were sometimes objects of intense hostility from French workers who saw them as competition, especially during periods of high unemployment. But when these immigrants or their offspring gained citizenship rights, they

were likely to be integrated into the institutions and subculture of the French working class, and subsequently they often substituted a class-based identity and ideology (socialism or communism) for one based on national origins. Those of the second generation who had middle-class origins or did particularly well in school could benefit from the meritocratic quality of French higher education and public bureaucracies.

In the late nineteenth and early twentieth centuries, individual Jews may have had readier access to French elites than Jewish immigrants and their children had to the equivalent inner circles in the United States. But in France they also encountered more public anti-Semitism and found that the price of success was often the self-suppression of their ethnoreligious identity. A delegate to the National Assembly during the Revolution expressed an enduring French republican attitude toward Jews (and toward ethnicity in general): "To the Jews as a *nation*, one must refuse everything; but to Jews as *men*, one must grant everything . . . , there cannot be a nation within the nation."¹⁹

American schools, like those of France, played a major role in acculturating immigrants. But the decentralized American educational system also allowed for local control, which meant that in areas where one ethnic group predominated, public education often included instruction in a foreign language. World War I brought an end to this form of multiculturalism, which included German medium schools in the Midwest.

More powerful and lasting as sustainers of the ethnic identities of Americans

19 Quoted in Winock, *Nationalism, Anti-Semitism, and Fascism in France*, 133. See also Frederic Cople Jaher, *The Jews and the Nation: Revolution, Emancipation, State Formation, and the Liberal Paradigm in America and France* (Princeton, N.J.: Princeton University Press, 2002).

of recent immigrant background were the comparatively nonpolitical character of the American labor movement and the pervasive national belief in upward social mobility. Politics, especially local urban politics, did not normally revolve around class interests and ideologies, but around a struggle for ethnic influence in the allocation of public jobs and resources, as between the Irish and the old-stock Americans in many cities in the late nineteenth century. Whereas French centralization and class-based politics left little scope for mobilizing around ethnic identities, American localism and interest-group politics provided fertile ground for this kind of pluralism.

In the job market and other areas of American life, immigrants often benefited from claiming a white identity. Doing so put them on the right side of the great ethnoracial cleavage in American society, providing economic opportunities unavailable to blacks and simultaneously bolstering their self-esteem and sense of belonging. It also acted as a further inhibition to class consciousness.

The French, lacking a domestic color line, defined otherness primarily in terms of nationality. The major distinction was, and continues to be, between foreigners and French citizens of whatever ancestry. The question of the moment is whether some foreigners are more likely than others to become French. Before World War II, most immigrants to France came from other European nations, and their descendants are now regarded as thoroughly French. But the recent immigration from outside of Europe and especially from North and West Africa has raised serious questions about the current and future viability of the assimilationist model. Many Algerians have gained French citizenship by

virtue of having been born in Algeria when it was still considered part of France. But in this case, recognition of citizenship has not led to assimilation.

Understanding the situation of Algerians in contemporary France requires attention to our last comparative theme: the growth of the national domain and the establishment of new settlements and colonies. As we have seen, both the United States and France had a history of geographical expansionism even before they acquired overseas colonies. The creation of the French hexagon by conquests and annexations established an ideological precedent for the 'civilizing mission' that served as a rationale for French colonialism. A long history of turning peasants and culturally exogenous provincials into Frenchmen seemed to raise the possibility that the same could be done for colonized peoples in Africa and Asia. The universalism of the Revolution and the republican tradition could provide a blueprint for liberating and civilizing the world. The sense of mission that accompanied American expansionism also invoked universalist principles. Westward expansionism under the banner of Manifest Destiny was meant to extend 'the area of freedom,' and the acquisition of the Philippines in 1899 was proclaimed as an opportunity to bring civilization to what William Howard Taft called "our little brown brothers."

But proto-colonialist expansionism in the two cases differed in the degree to which indigenous populations were actually assimilated. Occitans, Savoyards, and Bretons became French to a fuller extent than American Indians, or the Latino inhabitants of the formerly Mexican Southwest, have become Americans. The greater role of 'race' in white American thinking is part of the explanation,

but not all of it. The cultural proximity of the peoples involved and the demographics of their relationship also have to be taken into account. Efforts to 'civilize' and assimilate American Indians were notably ineffectual (when not hypocritical), partly because of the sheer volume of white settlement in what had been their homeland, and partly because of cultural differences and antagonisms. Not only were whites contemptuous of what they took to be Indian savagery, but many Indians vigorously resisted the demands of missionaries and government agents that they abandon their traditional way of life. By contrast, those groups that were assimilated into France over the centuries were already part of the broader European (and Christian) civilization, and were usually not displaced by settlers from France.

These contrasts are obvious. Less self-evident and more intriguing were the consequences for subsequent colonialism of the earlier histories of expansion into contiguous areas. As in the case of nonwhite immigration, America's melting-pot assimilationism once again ran up against barriers of race and color. Elevating Filipinos and other nonwhites to citizenship was unthinkable at the end of the nineteenth century, both to the proponents of the new colonialism and to those who opposed it. Since these peoples could not become full citizens, they had to be granted independence or a peculiar 'commonwealth' status. French colonialism, on the other hand, was compatible, at least in theory and rhetoric, with a color-blind assimilationism.

But theory and rhetoric are not reality, and it would be unrealistic to conclude that the 'civilizing mission' of French imperialism was genuinely egalitarian in purpose and effect. The presumption that French republican civilization was

the universal norm to which all humanity should aspire can of course be seen as covertly ethnocentric. And quite apart from contemporary doubts about the truth claims of Enlightenment universalism, the assimilationist ideal could not be successfully implemented because of two principal factors. One was racial prejudice. While generally less susceptible to color-coded racism than white Americans, the French were not immune to it. In 1778, intermarriage between blacks and whites was formally prohibited in metropolitan France. Although the ban was not enforced and disappeared with the Revolution, it was indicative of a residual tendency to stereotype blacks as inferior, buffoonish creatures beyond the pale of respectable society.²⁰ Attitudes of this kind were most salient and openly avowed, it would seem, among traditionalists who retained serious reservations about republican ideals and values. Some in France believed that imperialist militarism might release the French from the dead weight of bourgeois egalitarianism and individualism.

A second and weightier factor impeding the assimilation of non-Europeans into a greater France was a sense of difference or otherness that was rooted in culture and religion rather than in race as marked and determined by physical characteristics or ancestry. Even those genuinely committed to a universalist civilizing mission had to confront the immediate and practical challenges of ruling colonies with cultures vastly different from that of France. Given the limited manpower and resources avail-

20 Peabody, *There Are No Slaves in France*, 128 – 131. For a variety of perspectives on French attitudes toward color and race, see also Peabody and Tyler Stovall, eds., *The Color of Liberty: Histories of Race in France* (Durham, N.C.: Duke University Press, 2003).

able, colonial administration in many places would have been impossible without establishing a dual system of laws and rights. In their North and West African colonies, the French generally made a distinction between the many indigenes who wished to adhere to their traditional way of life and those few who were willing to give up that way in order to become French. In practice this meant that most people were granted a dispensation to follow Islamic or other non-Christian laws and customs (polygamy, for example), but that the rights associated with French citizenship were withheld from them so long as they continued to do so.

The idea that colonized people could exercise citizenship within a greater France was always limited to those who would or could become culturally French, a qualification that paralleled the French concept of immigrant assimilation. When Algeria became a colony of European settlement with its own representative institutions in the late nineteenth century, members of the indigenous Muslim majority were in effect required to give up their religiously based customs and become apostates in order to vote and have full civil rights. (Very few were willing to do so.) If a color bar operated to limit the American civilizing and assimilating mission, a culture bar directed particularly at Islam had a similar effect in some French colonies.

Indicative of the dualistic character of the French response to ethnic *différence* was the open-door inclusiveness of eligibility for membership in French Algeria. Not only were the majority of settlers recruited from southern European countries other than France itself, but also the resident Jews were granted naturalized French citizenship in 1870. (This decision from the metropole sparked hostile reactions from many of the European settlers and made Algeria a hotbed of

anti-Semitism at the time of the Dreyfus Affair.²¹) After 1889, the descendants of non-French European settlers in Algeria could gain citizenship on the basis of the *double jus soli* that applied to the offspring of immigrants to France itself.

A somewhat different pattern prevailed in Senegal, where an original French enclave dating back to the slave trade of the seventeenth century had produced a class of African or mixed-race *assimilés* who were granted French citizenship in 1833, saw these rights suspended in 1851 under the Second Empire, and then had them restored by the Third Republic in 1871.²² As the colony expanded in the nineteenth century through the conquest of traditional societies, the ideal of assimilation continued to be proclaimed, and a few Africans took advantage of the opportunity to acculturate and gain French citizenship. But most did not and were ruled under a separate set of laws. During the early twentieth century, the ideology of the colonizers vacillated between assimilationism and 'associationism,' a doctrine that acknowledged cultural pluralism and sanctioned indirect rule through the agency of cooperative chiefs or other traditional authorities.²³

Appreciating the tangled and ambiguous heritage of French colonialism is essential to an understanding of current French attitudes toward race and ethnicity, even though its influence, like that of the heritage of slavery, is rarely acknowledged.

21 Jonathan K. Gosnell, *The Politics of Frenchness in Colonial Algeria, 1930 – 1954* (Rochester, N.Y.: Rochester University Press, 2002), 24, 160 ff.

22 Alice L. Conklin, *A Mission to Civilize: The Republican Idea of Empire in France and West Africa, 1895 – 1930* (Stanford, Calif.: Stanford University Press, 1997), 76 – 77.

23 Ibid., passim.

Currently the United States and France would appear to have sharply contrasting conceptions of how to manage ethnoracial diversity. Recognizing the role that race has played in producing group inequalities, the United States has adopted race-specific policies such as affirmative action and electoral reforms designed to promote greater representation for minorities. After a brief experiment with multiculturalism in the 1980s, France has decisively rejected the American model and has resolutely returned to an assimilationist approach to the diversity created by the new wave of immigration.²⁴

In recent years there has been much acerbic French commentary on American multiculturalism and similarly critical American complaints about the French refusal to acknowledge and confront forms of ethnoracial discrimination. Both sides in the debate have failed to give sufficient attention to differences in the two situations as they have developed historically. Group-specific policies in the United States were originally justified as a response to the peculiar disadvantages and caste-like status of African Americans. They were later extended to other groups, especially Latinos, on the grounds that they had also suffered historical injustices. The emphasis on cultural diversity as valuable in itself is a fairly recent development.

Elites in the United States are apparently more comfortable with understanding affirmative action as an effort to achieve diversity, loosely defined, rather than as a direct, redistributive attack on the structural inequalities bequeathed by a long history of slavery, segregation, and discrimination. The fact that there is no domestic population group in France with a history of oppres-

sion and disadvantage equivalent to that of African Americans must be constantly borne in mind when comparing the two situations. Policies that may seem warranted in one context might be more problematic or difficult to justify in the other.

The differences are subtler when it comes to comparing the responses to recent immigration from outside the developed West. In my view, France has a more serious problem with nativism and xenophobia than does the United States, where antiblack racism continues to affect group relations in a decisive way. In France, North Africans and especially Algerians experience the greatest hostility; blacks of slave ancestry from the French Antilles encounter less prejudice and discrimination. The colonial experience and the immense trauma of the Algerian War help to explain these attitudes. The long-standing view (going back to the early nineteenth century) that Muslims are the ultimate 'Other' and therefore difficult if not impossible to assimilate, along with the fallout from the traumatic failure to create an *Algérie Française*, is a major historical source of current prejudice.²⁵ The alleged incompatibility between a strong Islamic identity and the French concept of *laïcité* – as reflected most dramatically in the headscarf ban of 2004 – stimulates current fears about the growth of the Muslim population in France, and legitimates fervent appeals to the heritage of universalistic assimilationism.

Before 9/11 at least, and arguably up to the present, the United States has had less of a problem accommodating immigrants of Islamic faith because of its stronger tradition of religious pluralism and toleration. American concerns

²⁴ On how and why this occurred, see especially Feldblum, *Reconstructing Citizenship*.

²⁵ See Patricia M. E. Lorcin, *Imperial Identities: Stereotyping Prejudice and Race in Colonial Algeria* (London: I. B. Tauris, 1995).

about the diversity created by recent immigration have tended to focus on Latinos and especially Mexicans. The sheer size of the influx, and the close ties immigrants maintain with their friends and relatives across the border, has engendered a concern for the survival of Anglo-American culture in some parts of the nation. But the reaction has been muted by a thirst for the low-wage, unskilled labor these immigrants provide, and also by the increasing acceptance of cultural pluralism as a general principle.

It seems to me that the United States and France can learn from each other. French universalism is a powerful weapon against any form of racism that is based on the belief in innate unalterable differences among human groups. A stronger awareness of such human commonality may be needed in the United States at a time when emphasis on diversity and ethnic particularism threatens to deprive us of any compelling vision of the larger national community and to impede cooperation in the pursuit of a free and just society. On the other hand, the identification of such universalism with a particular national identity and with specific cultural traits that go beyond essential human rights can lead to an intolerance of the other that approaches color-coded racism in its harmful effects.

Ian Hacking

Why race still matters

Why has race mattered in so many times and places? Why does it still matter? Put more precisely, why has there been such a pervasive tendency to apply the category of race and to regard people of different races as essentially different kinds of people? Call this the 'first question.' Of course there are many more questions that one must also ask: Why has racial oppression been so ubiquitous? Why racial exploitation? Why racial slavery? Perhaps we tend to think of races as essentially different just because we want to excuse or to justify the domination of one race by another.

I shall proceed with the first question by canvassing five possible answers to it that variously invoke *nature*, *genealogy* (in the sense of Michel Foucault), *cognitive science*, *empire*, and *pollution rules*.

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One final preliminary remark is in order. Most parts of this essay could have been written last year or next year, but the discussion of naturalism, medicine, and race could only have been written in November of 2004, and may well be out of date by the time this piece is printed.

Why has the category of race been so pervasive? One answer says that the distinction is just there, in the world for all to see. Superficial differences between races do exist in nature, and these are readily recognized.

The naturalist agrees at once that the distinctions are less in the nature of things than they once were, thanks to interbreeding among people whose ancestors have come from geographically distinct blocks. Racial distinctions are particularly blurred where one population has been translated by force to live in the midst of another population and yet has not been assimilated – slaves taken from West Africa and planted in the Southern United States, for example. The naturalist notes that traditional racial distinctions are less and less viable the more children are born to parents whose geographical origins are very different.

Sensible naturalists stop there. The belief that racial differences are anything

more than superficial is a repugnant error. John Stuart Mill was the wisest spokesman for this position.

Here, in modern terminology, is his doctrine: (1) Nature makes differences between individuals. These differences are real, not constructed. (2) We classify things according to differences we observe. Classifications are made by people and encoded in social practices, institutions, and language. (3) Some classes are such that their members have little in common except the marks by which we sort them into those classes – call those superficial kinds. (4) Other classes have members with a great many things in common that do not follow from the marks by which we sort them into classes. These are “real Kinds.”¹

Examples? “White things,” he wrote, referring not to race but to the color itself, “are not distinguished by any common properties except whiteness; or if they are, it is only by such as are in some way dependent on, or connected with, whiteness.” But horses, to use one of his other examples, have endless properties

in common, over and above whatever marks we use to distinguish them from other animals or other kinds of things. Horses form a real Kind, but the class of white things is a superficial kind.

The contemporary philosophical concept of a ‘natural kind’ is a descendent of Mill’s notion. Nonphilosophers who have come across this phrase may suppose it refers to a well worked out, technical, and stable concept. I argue elsewhere that it does not.²

Mill himself was as notable a profeminist and antiracist as can be claimed for a white nineteenth-century man. Although he argued that real Kinds exist, he at once went on to ask whether the races and sexes are real Kinds, or if they are merely superficial, like the classifications “Christian, Jew, Musselman, and Pagan.” The religious confessions are not real Kinds, he argued, because there is no property that Christians have and Muslims lack, or vice versa, except whatever follows from their faiths.

What about race? Most anthropologists of Mill’s day held that there were five races, named geographically but recognized by color: Caucasian, Ethiopian, Mongolian, American, and Malayan. According to Mill, color and certain other physiological traits are the marks by which we distinguish members of the different races. Races would be real Kinds if there were endlessly many other differences between the races that did not follow from the marks by which we distinguish them. Are there endlessly many such differences?

Well, you cannot rule that out a priori, Mill thought. “The various races and temperaments, the two sexes, and even the various ages, may be differences of Kind, within our meaning of the term. I

1 His own words are old-fashioned but lovely. The differences between members of classes “are made by nature . . . while the recognition of those differences as grounds for classification and of naming is . . . the act of man.” However, “we find a very remarkable diversity . . . between some classes and others.” Only superficial resemblances link members of one type of class, while members of classes of the other type have a vast number (he said an endless number) of properties they share. Those that share an almost endless number of properties are his real Kinds. From John Stuart Mill, *A System of Logic: Ratiocinative and Inductive*, first published in 1843. The discussion of racial classification is found in bk. 1, chap. 7, sec. 4. The changes Mill made in later editions of the book involved sex, not race – doubtless because Mill hoped to get the questions about sex exactly right for Harriett Taylor. See chap. 7, on Millon classification, in my forthcoming book, *The Tradition of Natural Kinds* (Cambridge University Press).

2 This is one of the conclusions urged in my book *The Tradition of Natural Kinds*.

say they may be; I do not say they are.” Mill believed that only empirical science could determine whether the various races, as distinguished by color and a few other features, pick out classes that are distinct in a great many unrelated ways. “If their differences can all be traced to climate and habits [or, he added in later editions, to some one or a few special differences in structure], they are not, in the logician’s view, specifically distinct.” He would have been pleased by Anthony Appiah’s careful discussion of very much the same question using more recent terminology. Science might have revealed an endless number of differences between the races that are not consequences of the marks by which we distinguish them, namely color and physiognomy. But science has not done so, and almost certainly will not. Mill, like Appiah, thus concludes that the races are not real Kinds.

This conclusion, however, does not answer, or aim at answering, the specific question I raised at the outset, of why there is such a pervasive tendency to apply the category of race. Maybe Mill thought the answer was obvious. The desire of one racial group to dominate, exploit, or enslave another demands legitimacy in societies that, like modern Europe and America, are committed to versions of egalitarianism. Race sciences were devised to discover a lot of differences between races that do not follow from the marks of color and structure by which we distinguish them. You do not have to treat people equally, if they are sufficiently different.

Although it takes us some distance from the ‘first question,’ some recent events force us to clarify the naturalist position on race. In an important editorial on the U.S. census published in the year 2000, *Nature Genetics* stated: “That

race in this context is not a scientific term is generally acknowledged by scientists – and a message that cannot be repeated enough.” An editorial in 2001 observed that “scientists have long been saying that at the genetic level there is more variation between two individuals in the same population than between populations, and that there is no biological basis for ‘race.’”³ Now – in November of 2004 – this selfsame journal has produced a special supplement on the medical and genetic uses of racial and ethnic classification. And the November 11 issue of *The New England Journal of Medicine* highlights the news of the ‘race-based’ drug targeted at African Americans suffering from certain types of heart failure. All this is breaking news. Hence what follows cannot be definitive, but one may hope that a perspective somewhat distanced from media discussion can be useful even in the midst of it.

We must first update Mill with a little logic. When he wrote about differences between classes, he had in mind properties that serve to distinguish members of one class from another in a uniform way. A uniform difference between cows and horses is something that is true in the main of any cow but not true in the main of any horse – digestion by rumination, for example. There are ever so many such differences between horses and cows; hence they are real Kinds. Call them *uniform differences*. There are a great many uniform differences that distinguish horses from other kinds of animals, but almost no uniform differences that distinguish white things from green things, except their color, or Muslims from Christians, except their faith.

Writing in 1843, Mill had little occasion to think about statistical differ-

3 “Census, Race and Science,” *Nature Genetics* 24 (2000): 97; “Genes, Drugs and Race,” *Nature Genetics* 29 (2001): 239.

ences, which were only just beginning to loom large on the scientific horizon. We need some new concepts: I will use the words ‘significant,’ ‘meaningful,’ and ‘useful.’ All three go with the dread word ‘statistical.’ Since we are among other things talking about so-called races, namely, geographically and historically identified groups of people, we are talking about populations. And we are talking about some characteristic or property of some but not all members of a population.

‘Significance’ was preempted by statistics early in the twentieth century. It is completely entrenched there. Here I use it for any major difference detected by a well-understood statistical analysis. A characteristic is *statistically significant* if its distribution in one population is significantly different from that in a comparable population. Let us say that a characteristic is *statistically meaningful* if there is some understanding, in terms of causes, of why the difference is significant. For example, in the early days no one knew why smoking was associated with lung cancer, but now we understand that quite well, although not completely. The correlation used to be merely significant, but now it is meaningful.

Finally, a characteristic is *statistically useful* if it can be used as an indicator of something of interest in some fairly immediate practical concern. Take an example from another topic nowadays much discussed. A body mass index (BMI) over 31 is a statistically useful indicator of the risk of type 2 diabetes, and is therefore useful in epidemiology and preventive medicine. (There are much better indicators involving the distribution of mass and muscle in the body, but at present such indicators are expensive to measure, while BMI measurement costs almost nothing.)

Classes that are statistically significant, meaningful, or useful are *not* thereby real Kinds. There is no reason to believe that there are a great many independent and uniform differences that distinguish obese persons from those whose BMI is in the recommended range of 18 to 25.

‘Significant’ in the end relies on technical notions in applied probability theory. ‘Meaningful’ has no resort to viable technical notions in any discipline (all claims to the contrary are spurious). There do exist clear, although often abused, criteria of statistical significance. There are no clear criteria for being statistically meaningful. In practice the distinction is often easily made. For a long time, the class of people who smoke was known only to be statistically significant with respect to lung cancer. One had no idea of the causal mechanisms underlying the correlation. Now we think we understand the connections between nicotine and death, although these connections are still merely probable. We cannot say of a young man beginning to smoke that if he continues with his vice he will succumb to lung cancer if nothing else gets him first. But we can say that many such young men will die of lung cancer, and oncologists know enough to be able to explain why.

Unlike statistical significance, the idea of being statistically meaningful is a hand-waving concept that points at the idea of an explanation or a cause. Imprecise hand-waving concepts are dangerous when they are given fancy names. They can be put to wholly evil ends. But if we do not give them phony names and are well aware of their imperfections, they can be useful when we need them.

We do need this concept. Many people – as evidenced by debates going on

at the time of this writing, in November of 2004 – are scared of the idea that the traditional list of races employed by traditional racists might be statistically significant classes. With good reason!

Ten years ago *The Bell Curve* by Richard Herrnstein and Charles Murray attracted a great deal of attention. The authors claimed that the Gaussian distributions of IQ scores establish a natural distinction of some importance between different races. They forcefully argued that the class of African Americans is a statistically significant class – significant with respect to a property they called intelligence, and which they measured with IQ tests.

They did not imply that the races are real Kinds. That is, they did not state that there is a host of uniform differences between Caucasian Americans and African Americans. Readers not unreasonably assumed, however, that the authors meant exactly that. At any rate, the authors clearly were not talking about mere correlations, namely, disparities between IQ scores within different racial groups. But they did not establish that these disparities are statistically meaningful to any biological understanding.

About the same time that *The Bell Curve* was published, ogre naturalists, such as Philippe Rushton in *Race, Evolution, and Behavior*, made more sweeping claims to biologically grounded racial differences. They claimed that the races are distinguished by many properties rightly prized or feared for different strengths and weaknesses. If that were true, then races would exactly fit Mill's definition of a real Kind.

One deplores both Rushton and *The Bell Curve*, but there is an absolutely fundamental logical difference between what the two assert. Rushton claimed that the races are real Kinds. One imag-

ines that Herrnstein and Murray thought so too, but what they claimed was that the races are statistically significant classes. And they implied that this is statistically meaningful.

Despite the fact that his doctrines have a centuries-old pedigree, we can dismiss the egregious Rushton. We can also refute Murray and Herrnstein.⁴ Mill's type of naturalism has contempt for both doctrines. Loathing of these quite recent doctrines and their predecessors has, not surprisingly, produced revulsion against any sort of naturalism about race. Today there is some consternation over the appearance of what is called race-based medicine.

The science of medicine was for quite a long time the science of the European male body, with footnotes for non-European or female bodies. All that has changed: those footnotes are now chapters. But the current situations for the groups that had been relegated to the footnotes are quite different. Many medical differences between males and females are uniform, but medical differences between races are almost always only statistical.

We have long known that some ailments are restricted to some gene pools. Tay-Sachs is a hereditary disease (in which an enzyme deficiency leads to the accumulation of certain harmful residues in the brain and nerve tissue, often resulting in mental retardation, convulsions, blindness, and, ultimately, death) that almost exclusively affects young children of eastern European Jewish de-

4 There is a tendency among proper-thinking people to dismiss *The Bell Curve* cavalierly, as both wrong-headed and refuted, without actually saying why. Many things wrong, and one has an obligation to say what. My own 'genealogical' objections are stated in a piece in *The London Review of Books*, January 26, 1995.

scent. 'Ashkenazi' is a valuable geographical, historical, and social classification. It is geographical because it indicates where members of this class, or their near ancestors, came from, namely, eastern Europe. It makes a contrast with Sephardic Jews, whose roots are in Spain. In modern Europe and North America, social differences between the Ashkenazi and Sephardic hardly matter to most people, but they remain significant in North Africa and West Asia. Until further interbreeding makes it totally obsolete, Ashkenazi is a statistically significant and a statistically meaningful class with respect to Tay-Sachs disease.

There are similar geographical-historical indicators for lactose intolerance and for an inability to digest fava beans. West African ancestry is an indicator for being a carrier of the sickle-cell anemia trait, which confers some immunity against malaria. This trait was often stigmatized as simply 'black.' In fact, it is primarily West African, although it shows up in Mediterranean populations where malaria was a major selector for survival. The indicator was abused for racial reasons in widespread screening.

"Drug approved for Heart Failure in African Americans" – headline on the first business page of *The New York Times*, July 20, 2004. Here we go again? Quite possibly. "The peculiar history [of this drug] on the road to the market presents a wide array of troubling and important issues concerning the future status of race as a category for constructing and understanding health disparities in American society."⁵ For a stark reminder of the commerce, the *Times* reported that the previous day the stock of the drug's maker, NitroMed, rose from \$4.31

to \$10.21, and had reached \$16 at midday. This story has been ongoing for a decade in medical, commercial, and regulatory circles.

There are real problems about the racially targeted heart drug. BiDil is a mixture of two well-known heart medications. Scientific papers assert, first, that other medicines are not as good for African Americans with heart failure as they are for other Americans with this problem, and, second, that BiDil works better for African Americans with certain specifics than any other drug on the market.⁶ In fact, randomized trials were discontinued because the drug was manifestly effective on black patients. Nobody well understands why. The reasons could be at least in part social and economic (including dietary) rather than hereditary. The correlation is strongly significant, but it is not statistically meaningful at present from a genetic or other biological point of view.

Even if one is a complete skeptic about, for example, a genetic basis for the differential efficacy of the drug, the drug does appear to be statistically *useful* in treating the designated class of patients. That means that race may be a useful indicator to a physician of the potential effectiveness of this rather than another drug – under present social and historical conditions.

Now turn to leukemia. Bone marrow transplants help an important class of patients. Donors and recipients must have matching human leukocyte antigens (HLAs); at present, doctors try to match six different types of them. If a patient has no relative to serve as a donor, matches are hard to come by. The

5 Frederick Kahn, "How a Drug Becomes 'Ethnic': Law, Commerce, and the Production of Racial Categories in Medicine," *Yale Journal of Health Policy, Law, and Ethics* 4 (2004): 46.

6 Anne L. Taylor, "Combination of Isosorbide Dinitrate and Hydralazine in Blacks with Heart Failure," *New England Journal of Medicine* 351 (2004): 2049 – 2057.

relevant antigens are unevenly distributed among ethnic and racial groups.⁷ There exist registries of possible donors – truly generous persons, for at present donation of bone marrow is quite harrowing. Happily, free-floating stem cells in the blood also help, but the donor must take a lot of drugs to boost those stem cells. Another source of cells is umbilical cord blood. But this, like all the other options, requires antigen matching.

In the United States, the National Bone Marrow Program maintains the master registry. Most people in existing registries have tended to be middle-aged and white, which means that whites have a good chance of finding a match. Hence there have been racially targeted programs for Asian and African Americans. In the United States and Canada there is also the Aboriginal Bone Marrow Registries Association, and in the United Kingdom there is the African Caribbean Leukemia Trust. Asians for Miracle Marrow Matches has been very successful, especially in the Los Angeles region. The African Americans Uniting for Life campaign has been less successful, for all sorts of historical reasons. An African American with leukemia has a far worse chance of finding a match in time than members of other populations have. That is a social fact, but there is also a biological fact: there is far greater heterogeneity in the human leukemia antigen in persons of African origins than in other populations.⁸ (This fact fits well with the hypothesis that all

racess are descendants of only one of many African populations that existed at the time that human emigration began out of Africa – populations whose characteristics have continued to be distributed among Africans today.)

If you go to the websites for the organizations that maintain the registries, you will see they do not shilly-shally in some dance of euphemistic political correctness about race. For them it is a matter of life and death. Without the Asian registries there would have been many more dead Asian Americans in the past decade. For lack of more African Americans on the registries there will be more dead African Americans in the next few years than there need be.

We certainly lack a complete understanding of the distribution of human leukemia antigens in different geographically identified populations. But we do have some biological understanding of the underlying causal differences. And race is a very useful quick indicator of where to look for matches, just as the BMI is a useful quick indicator of potential health problems.

So when, if ever, is it useful to speak in terms of the category of race, on the grounds that the races in some contexts are not only statistically significant but also statistically useful classes? To answer this question, we can use our distinctions:

- *The Bell Curve* may show that IQ is a statistically significant characteristic

7 This also matters to renal transplants. See Pauline C. Creemers and Delawir Kahn, “A Unique African HLA Haplotype May Identify a Population at Increased Risk for Kidney Graft Rejection,” *Transplantation* 65 (1998): 285–288.

8 For HLA differentiation, see T. D. Lee, A. Lee, and W. X. Shi, “HLA-A, -B, -D and -DQ Antigens

in Black North Americans,” *Tissue Antigens* (1991): 79–83. For maps, see, for example, one of the essays in the November *Nature Genetics* issue referenced in the text: Sarah A. Tishkoff and Kenneth K. Kidd, “Implications of Biogeography of Human Populations for ‘Race’ and Medicine,” *Nature Genetics Supplement* 36 (2004): 521–527.

of some American subpopulations, but it is neither meaningful from a biological point of view nor useful for any well-defined purpose.

- Some medications may be less effective, and BiDil may be more effective, for African Americans with certain types of heart failure. If so, this is statistically significant and statistically useful for helping patients, but (in my opinion) it is at present not statistically meaningful.
- The relationships between human leukemia antigens and race are statistically significant, statistically meaningful for a biological understanding, and statistically useful in making marrow matches possible for minority groups.

It is not a good idea, in my opinion, to speak of BiDil as a race-based medicine, as do *The New York Times* and other media. The drug is not in the least *based* on race. It is quite possible that the reason it is more useful for African Americans than for other large and loosely characterized groups has less to do with the inherent constitution of their cardiovascular systems than with a mixture of social factors. If we had reliable data on the relevance of diets shared by a subclass of white and black Americans, we might be able to help whites with similar diets. The drug would not then be 'diet-based' but 'diet-targeted.' If you find it useful to use the word 'race,' say 'race-targeted' medicine.

I should have thought that the differential distribution of human leukocyte antigens would be esoteric enough to escape notice. Not so. The Stormfront White Nationalist Community, whose best-known figure is the neo-Nazi David Duke, is having a good time on one branch of its website discussing HLA diversity. In my opinion, the correct

strategy is not to play down the differential distribution of HLA, but to make it common knowledge that specific differences among peoples may be used in helping them – in much the same way that white Australians, given their socially induced tendency to overexpose themselves to the sun, should be targeted to cut down on the rate of death due to skin cancer.

I have introduced these remarks to make plain that naturalism about race, far from being an atavistic throwback to an era well left behind, is a topic for today, one about which we have to become clearer. Not because the races are real Kinds, denoting essentially different kinds of people. But because already we know that the races are not only statistically significant classes for some diseases, but also statistically useful. Some correlations are statistically meaningful. There is every reason to believe that more statistically meaningful correlations will be discovered.

Every time such a phenomenon is found useful, the racists will try to exploit the racial difference: witness the neo-Nazi use of differential antigens. Hence we need to be fully aware of what is involved.

A historian may well despise the complacency of naturalism. Differences between the races have seemed inevitable in the West, it will be argued, because of a framework of thought whose origins can be unmasked only by a genealogy. Classification and judgment are seldom separable. Racial classification is evaluation. Strong ascriptions of comparative merit were built into European racial classification and into evaluations of human beauty from the beginning. And so the Caucasian face and form were deemed closest to perfect beauty.

That is the vein in which Cornel West has sketched a genealogy of modern racism.⁹ Though his is not exactly a deep genealogy in the spirit of Nietzsche and Foucault, it is an excellent résumé of events. I wish only to comment on his starting point, less to correct it than to encourage rethinking the connection between race and geography.

According to West, “the category of race – denoting primarily skin color – was first employed as a means of classifying human bodies by François Bernier, a French physician, in 1684. He divided humankind into four races: Europeans, Africans, Orientals and Lapps.” Note that none of these is named by color and that the first three are identified by where they live or come from. It hardly matters now, but the fourth name, “Lapp” (probably derived from a word meaning simpleton), for the people who call themselves Sami, is about as racist a designation as there is. Bernier seems to have met only two Lapps, and he found them loathsome, and he simply reports that other unnamed travelers told him that the inhabitants of Lapponia were “vile animals.”¹⁰

There are certain emendations to be made in Cornel West’s account. Bernier did not designate a race restricted to Europeans. What he called the “first race [sic]” included Europeans (the disgusting Lapps aside), North Africans, and the peoples of West and South Asia.

9 Cornel West, “A Genealogy of Modern Racism,” in West, *Prophesy Deliverance!: An Afro-American Revolutionary Christianity* (Philadelphia: The Westminster Press, 1982), 47–65.

10 François Bernier, “Nouvelle division de la terre,” *Journal des Sçavans* (April 24, 1684): 148–155. A definitive account of this paper is Siep Stuurman, “François Bernier and the Invention of Racial Classification,” *History Workshop Journal* 50 (2000): 1–21.

With some hesitation, he also included Native Americans of both hemispheres in that category.

He did not classify by color but mostly by facial features. Although he counted Mongols, Chinese, and Japanese as white (*véritablement blanc*), he felt they had such differently shaped faces and bodies that they constituted a different race. Indigenous Americans were also white. South Asians were less white (*olivâtre*), he thought, because of the torrid climate. When his categories (minus the Lapps) were expressed in terms of color during the next century, they became ‘white,’ ‘yellow,’ and ‘black’ – categories still going strong in Mill’s day. It may come as some surprise that for high-brow race science, whites included Arabs, Turks, everyone on the Indian subcontinent, and maybe Americans, that is, the indigenous ones.

Bernier does discuss color, but mostly when noting the existing hierarchy in the Indian subcontinent, where the lighter skin of the Moghul elite puts them ahead of the browner Hindus. Bernier’s observations of Africans seemed to be based almost entirely on African slaves, especially at Turkish or Arab slave markets (where of course he saw white, mostly female, slaves too). Yes, (sub-Saharan) Africans were black, but they contrasted with the first race chiefly in other aspects of the body, especially the hair and lips. “Here Bernier,” Siep Stuurman writes, “surely anticipates later racial discourse.”¹¹

In 1685, the year after Bernier published both his classification of races and his abridgement of Gassendi, Louis XIV promulgated the rules of the Transatlantic slave trade, the *Code noir*, making the effective identity of blackness and

11 Stuurman, “François Bernier and the Invention of Racial Classification,” 4.

slavery a point of law, in no need of any race science to legitimate it.¹²

In West's important subthesis about aesthetics and human beauty, he shows that Bernier's conception was not simply that black Africans were uglier than the first race. There was also the element of sexual exoticism. Bernier raved about African women on display for sale in Turkey, naked. He regretted only that they cost so much.

West wanted to write a genealogy in part because he had the insight to address an intellectual problem that is seldom stated: The oceanic empires of Europe, chiefly France and Britain, and the United States in their wake, are unique in world history in that the dominant tendency of their moral and political philosophy from the start emphasized equality. Backsliding and self-interest are apparent beyond exaggeration, but the propensity for egalitarianism has been permanent and progressive. At the same time, West cites numerous celebrated egalitarians and reminds us of their persistent racism. In justice, Mill himself does not escape criticism.

How can racism and egalitarianism coexist? Because equality is among those who are essentially the same. If races are essentially different, they need not be treated alike. The framework for this alliance was established at the beginning, West urges, and became entrenched as Western thought passed from the first stage described in his genealogy to the second. One can envisage broadening West's analysis into something with the same form as Michel Foucault's *A History of Insanity in the Age of Reason* – a history of racism in the age of equality. Stuurman, whom I have cited as the authority on Bernier, has impor-

tantly contributed on the other side, in his newly published *François Poulain and the Invention of Equality*.

Now we turn to the universalist approach favored in the cognitive sciences. It is proposed that human beings are born with an innate capacity not only to sort other people along racial lines, but also to act as if the differences distinguished are essential characteristics of people. This capacity is 'preprogrammed' by a genetic inheritance and matures and becomes operational early, say, at three or four years of age. A further proposal is that children are born not only with an ability to sort items into specific types of classes, but also with a predisposition to identify certain properties as essential to specific classes.

Lawrence Hirschfeld is an anthropologist who works at the intersection of cognitive science and developmental psychology – to use proper names, the improbable intersection of Noam Chomsky and Jean Piaget.¹³ Hirschfeld draws on the work of psychologists, child-development experts, anthropologists, linguists, philosophers, neuroscientists, and others to postulate the distinct innate cognitive modules with which all of us are born. These modules

13 Lawrence Hirschfeld, "The Conceptual Politics of Race: Lessons from our Children," *Ethos* 25 (1997): 63–92. See also his book *Race in the Making: Cognition, Culture, and the Child's Conception of Human Kinds* (Cambridge, Mass.: MIT Press, 1996). The expression 'human kind' is obviously derived from 'natural kind.' I regret that it was I who put the phrase into circulation with this use, in Paris in 1992, at a conference on culture and cognition attended by Hirschfeld: Ian Hacking, "The Looping Effects of Human Kinds," in Dan Sperber, David Premack, and Ann James Premack, eds., *Causal Cognition: A Multidisciplinary Approach* (Oxford: Oxford University Press, 1995), 351–383. I have abandoned this terminology, partly, and only partly, because it was modeled on the unsatisfactory idea of a natural kind.

12 Louis Sala-Molins, *Le Code noir, ou, le calvaire de Canaan* (Paris: Presses Universitaires de France, 1987).

enable infants to acquire specific abilities. There is not just an all-purpose module for sorting things according to their resemblances, but specific modules for classifying living things, for making judgments of number, for sorting according to motion, and so forth.

Where does race enter? Hirschfeld proposes a module that enables children to distinguish different kinds of people. Some of the earliest distinctions children make using this module involve racial traits, primarily stereotypical skin color and a few facial characteristics. There is the further proposition that due to an innate disposition, the races, like any classes recognized using this module, are treated as if they were essential characteristics of people. Experiments show that children believe that changing a person's race, as marked by stereotypical features such as color, would change the kind of person that that individual is. In these first experiments, children were asked only about black and white individuals, illustrated by simple cartoon representations. Hirschfeld's initial data were drawn from experiments on school children in Ann Arbor, Michigan, but they now appear to be confirmed in results from more diverse groups.

This cognitive theory proposes that the tendency to regard racial classifications as essential is a corollary of a developmental fact about the human mind. We have a phenomenon on the order of the cognitive fallacies known from Tversky and Kahneman's studies of decision under uncertainty. Whatever evolutionary value our human kind module might have had, it made disastrous racist practices all too easy. But this proposal stands wholly apart from ogre naturalists' claim that the alleged differences between the races are grounds for making social arrangements that discrimi-

nate between the races. The cognitive scientists will say their results show how hard we must fight to control our innate tendencies to find essential differences between races.

Hirschfeld's analysis may be queried on grounds specific to race. Experimenters are vigilant not to confuse cultural from cognitive input. They highlight the issue in titles such as *Culture and Cognition*, which is the present approved way to express the nature-nurture debate. Yet one cannot but suspect that they underestimate how quickly very young children catch on to what is wanted of them. One might say, with a whiff of irony, that children have an innate ability to figure out what adults are up to, and hence to psych out the experimenters.

In any event, nurture has preprogrammed very young Americans to attend to race. Well-intentioned television programming for children constantly emphasizes that the characters, even if they are not human, are of different races. From infancy, children watch television cartoons that show, for instance, a happy black family playing with a happy white family. The intended message is that we can all get on well together. The subtext is that we are racially different, but should ignore it. Experimenters discover that small children expect parents of any color to have children of the same color. Is that proof of innate essentialism or of the efficacy of television?

It is time to turn away from cognition, and back to institutions and history.

Categories become institutionalized, especially by censuses and other types of official tagging. It is important to remember that the first working European censuses were carried out in colonies – Quebec, New Spain, Virginia, and Iceland. Categorization, census, and empire: that is an important nexus.

I turn to empire in part for personal reasons. Race, as a category, has its own manifest meanings in the United States. For me, race has of course the American connotations, but other ones as well. The primal racial curse for me as a Canadian is my country's history of relations with the native peoples. Now I work in France, where the chief racial issue concerns people of North African descent. Despite all their differences, the Canadian, French, and American racial obsessions have a single historical source: Empire. Conquest and control – whether of North Africans, West Africans, or the first nations of North America.

On Webster's definition, empire – “a state that has a great extent of territory and a great variety of peoples under one rule” – is about the conquest of peoples. With it comes an imperial imperative to classify and enumerate the conquered peoples. Thus the words cast in stone three times – in Old Persian, Elamite, and Babylonian hieroglyphics – on the Great Staircase of Persepolis at the heyday of the Persian Empire:

A great God is Ahuramazda, who created this earth, who created yonder heaven, who created man, who created welfare for man, who made Xerxes king, one king of many, one lord of many. I am Xerxes the great King, King of Kings, King of the countries having many kinds of people, King of this great earth far and wide, the son of Darius the King, the Achaemenian.¹⁴

Xerxes (?519 – 465 B.C.E.) inherited the Persian Empire in 485. The lapidary invocation to his power, thought to date from the beginning of his reign, includes carved processions of the many peoples

he ruled. First come the Medes bearing vessels, daggers, bracelets, coats, and trousers. Then twenty more stereotypes of peoples, each similarly accompanied by their characteristic tribute. They process in the following pecking order: Medes, Elates, Parathions, Sogdians, Egyptians, Bactrians, Armenians, Babylonians, Cilicians, Scythians, Thracians, Assyrians, Phoenicians, Cappadocians, Lydians, Afghans, Indians, Macedonians, Arabs, Somalis, and Ethiopians. Surprise, surprise, the blackest come last.

Empires have a penchant for classifying their subjects. Doubtless there are administrative reasons: some conquered societies furnish goods, some furnish soldiers. But over and above practical exigencies, there seems to be an imperative to classify subject peoples almost as an end in itself. Or rather, the end is to magnify the exploits, glory, and power of the ruler. Classification, as an imperial imperative, invites stereotyping.

Persepolis has seen other empires, other conquests, a fact to which graffiti on the remaining walls of the city (rendered mostly by bored British soldiers from the eighteen and early nineteenth centuries who identify themselves by their names, dates, and regiments) attests. There is only one inscription to rival Xerxes' own: an enormous diamond carved into the side of the only standing entrance door of the royal gate. It is inscribed,

STANLEY
NEW YORK HERALD
1870

In the unvarnished words that describe Henry Morton Stanley in the 1911 edition of *The Encyclopaedia Britannica*, “In geographical discoveries Stanley accomplished more than any other explorer of Africa, with which continent his name is

14 Ali Sami, *Persepolis (Takht-Jamshid)*, 9th ed., trans. R. Sharp (Shiraz: Musavi Printing Office, 1977), 35.

indissolubly connected. Notwithstanding his frequent conflicts with Arabs and Negroes, he possessed in extraordinary degree the power of managing native races; he was absolutely fearless and ever ready to sacrifice either himself or others to achieve his object." This is the man who made the Congo Belgian. Managing native races was the name of the game for Stanley and for Xerxes' imperial staff.

The category of race may be found in all empires. The Chinese, for sure, even in the era of the People's Republic. The five stars on the flag denote the five peoples of the Republic, whose equality was constitutionally enshrined after 1949. The Han are only one of the five stars. Tell that to the inhabitants of the western provinces, whose equality ends at a star on a flag.

Here we have another answer to the 'first question,' about the pervasive tendency to regard people of different races as essentially different kinds of people. That tendency is produced by the imperial imperative, the instinct of empires to classify people in order to control, exploit, dominate, and enslave. The racial concepts of the Western world are as contingent as those of the Persian Empire, but both are the products of the same imperative.

Empire helps create stereotypical 'others,' but by definition any group of anything has items outside itself. Every form of human life is social. People live in groups. Groups need internal bonds to keep them together, as well as external boundaries for group identity. The internal bonds are furnished by the practices that maintain ties among individuals and subgroups. In many cases, the external boundaries are furnished by what Mary Douglas aptly identifies as pollution. Rules of pollution define who

one is not, and hence provide a sense of self-identity and self-worth: *we who are not polluted*. Every stable group has pollution rules.

So as not to offend others, I shall give my own example. The most important group boundary for English-speaking Canada is with the United States. At present our central pollution rule has to do with the social net: *We are gentle and caring; you Americans are indifferent to the sufferings of the poor*. We have universal health care; x percent of Americans have no health-care plan at all. (We produce all sorts of large numbers for x – this is part of our folklore, not our science.) We make peace; you make pre-emptive war. Et cetera, guns, crime – the list of pollutants goes on.

This conception of the defiling other is a sociological universal. One wonders if in the titanic duel between *Homo sapiens* and Neanderthals the two groups were sufficiently similar that the future human race needed pollution rules to keep each separate from the other lot. I have heard it suggested that one of the early evolutionary advantages to language was that different groups of people could use a 'bad,' i.e., different, accent to avoid mingling.

Evolutionary psychologists may propose some sort of just-so story for the survival value of pollution rules. Better to consult the foremost expert, Charles Darwin himself, in *The Descent of Man*. It is truly a humbling read: the wealth of information, the variety of considerations, the caution about conclusions – the imaginative framing of tentative hypotheses overshadows anything written since about his topics, including race. He canvasses many explanations for racial variety, but in the end favors sexual selection of, among other elements, like for like. It is still an open question, inadequately considered, whether, for exam-

ple, sexual selection trumps pollution rules, or vice versa.

How much more powerful pollution and the imperial imperative become when history puts them together! Pollution rules are important for maintaining the imperial group intact. As soon as pollution rules break down, men of the master group sire children with women from subjugated groups, and a new kind of person – the half-breed – emerges. The etymology of words such as ‘Eurasian’ embodies this phenomenon. We learn from the trusty 1911 *Encyclopaedia* that ‘Eurasian’ was “originally used to denote children born to Hindu mothers and European (especially Portuguese) fathers.” There are pecking orders between conquerors, as well as among the conquered – and this British word was a put-down meant to keep the Portuguese in Goa in their place. Note also the dominance order between the sexes: a Hindu father and a European woman would yield, at least in the official reckoning, a Hindu, not a Eurasian.

The French noun *métis*, derived from a Portuguese word originally used for Eurasians, dates back to 1615. In French Canada it signified the children of white fathers and native mothers. Early in the nineteenth century it was adopted in English to denote the offspring of French Canadian men, originally trapper/traders, and native women. In other words, ‘Eurasian’ and *métis* alike meant the children of males from conquering groups of lower status and females from the totally subjugated groups – and then the offspring of any of those children.

For a few generations, one can be precise in measuring degrees of pollution. At that the Spanish and Portuguese Empires excelled. First came ‘mulattoes,’ the children of Spanish or Portuguese men and South American Indian women. With the importation of black slaves from West Africa, the label was trans-

ferred to the children of white masters and black slaves, and then to mixed race in general. The *OED* says it all: the English word is derived from Portuguese and Spanish, “*mulato*, young mule, hence one of mixed race.”

The Spanish *cuarteron* became the English ‘quadroon,’ the child of a white person and a mulatto. The few quotations given in the *OED* are a record of colonial history. Here is the first, dated 1707: “The inhabitants of Jamaica are for the most part Europeans . . . who are the Masters, and Indians, Negroes, Mulatos, Alcatrazes, Mestises, Quarterons, &c. who are the slaves.” The next quotation in the list is from Thomas Jefferson.

And so on: from Spanish the English language acquired ‘quintroon,’ meaning one who is one-sixteenth of Negro descent. The 1797 *Encyclopaedia Britannica* has it that “The children of a white and a quintroon consider themselves free of all taint of the negro race.” More importantly, from an 1835 *OED* citation, “‘The child of a Quintroon by a white father is free by law.’ Such was recently the West-Indian slave code.” Better to have a white father than a white mother.

In real life, interbreeding was endemic, so such classifications were bound to become haphazard. Only one option was left. The American solution was definitive. One drop of Negro blood sufficed to make one Negro. Which in turn implied that many Americans could make a cultural choice to be black or not, a choice turned into literature in Toni Morrison’s *Jazz* and, more recently, in Philip Roth’s *The Human Stain*. The one drop of blood rule perfectly harmonizes the imperial imperative and the preservation of group identity by pollution prohibitions.

Why is there such a widespread tendency to regard people of different races

as essentially different kinds of people? That was our first question.

I have argued that naturalism of the sort taken for granted by John Stuart Mill has more going for it than is commonly supposed, and I have also explained why it may make sense in the context of medicine to regard races as statistically significant and also statistically useful classes. But neither of these forms of naturalism explains the widespread tendency to regard people of different races as essentially different.

There is the cognitive answer, that essential distinction by race is the result of a universal human kind module. I have discounted that, and have also dismissed what I call ogre naturalism, which claims that races are real Kinds. Note, however, that if there is any vestige of truth in any type of naturalism, that could only reinforce the effect of other considerations.

We are left with Cornel West's genealogy of modern racism, pollution rules, and the imperial imperative. Together they describe the foundation of the racial predicament of the Western world. The imperial imperative employs a particular type of pollution rule to reinforce caste distinctions and degrees of subjection within an empire. The racial essentialism of the European empires and their American continuation are to be regarded as a special case of the imperial imperative.

One specific feature of modern racism – race science – results from a central aspect of modern European history. From a world-historical point of view, only one feature of early modern Europe stands out. It is the coming into being of modern science. The first stage of West's genealogy of modern racism is wholly embedded in that period when early modern science developed. As biology emerged in the second stage, around

1800, so did race science, that strange blend of evolutionary biology and statistical anthropology. In the heyday of positivism, race science repainted old pollution rules, the ones selected as suiting the imperial imperative, with a veneer of objective fact.

There are two strands of thought in the human sciences, the one universalist, the other emphasizing contingencies. They seldom harmonize. Here they do. West's genealogy is a wholly contingent account of the reasons for the pervasive tendency to regard racial distinctions as essential. In contrast, the use of pollution rules is a universal technique for self-stabilizing a human group. Classification of peoples by a category of race is an integral part of the control necessary to organize and maintain an empire, and it employs pollution rules. These observations suggest a fruitful way to combine contingent and universal theories that help to explain why the category of race remains so pervasive.

Poem by Rachel Hadas

Inspissation

Definitions. Density. Conundrum.
Condensation. Etymology.
Abstraction and the hissing as of air
escaping. And indeed, the atmosphere
becomes so thick that vision fogs
up like a windshield in the wet.
Socked in: was this what the word meant?
The bright and baggy world gone blank,
The world, capacious, starts to shrink:
tugging of tendrils, tightening
of texture, so our habitat,
already a snug fit, begins
to fold its wings, draw in and in.
Crisscross of kinships, instances,
recognitions and reunions,
coincidences, fertilizations
at an ever thickening pace,
blanket of fog and muffling mist,
crosshatching of the busy thin
but countless filaments scribbling
to chiaroscuro, then obscure,
almost opaque, unnumbered, slight
only if taken one by one,
but thickly strewn, oh I am caught,
the small world tighter, smaller, clasps me,
blinds me: inspissation.

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Fiction by Sigrid Nunez

The naked juror

It was always the same: she received her summons in the mail, reported to the courthouse punctually on the given date, went through voir dire two or three times, failed to be picked as a juror, and was told her service was done. The whole process would take two or three days. Much of that time would be spent in a large, crowded room, waiting to hear her name, Flora Defoe (“Present” was how they were instructed by the clerk to respond, though always a few people forgot), and to take her belongings and follow the guard, or bailiff, as he was called, to another room.

It was her sixth time, and it puzzled her that although she was called regularly, every couple of years, either to civil or criminal court, many people she knew had been called only once or twice in their lives, and some (her cleaning woman, for example) had never been called at

all. Another mystery to Flora was the way so many people seemed to consider the prospect of jury duty about as pleasant as time spent in the dentist’s chair, say, and would do anything (which usually simply meant committing perjury) to get out of it. She knew a couple who, though both had flexible schedules (they were both artists and childless), had had a psychiatrist write letters for them saying – well, whatever needed to be said to make sure that neither of them would ever have to serve. She had disapproved of this (*so self-important*, she judged them), had disapproved of their even talking about it, without shame, and though she still occasionally saw the couple, since then she had never really liked them.

On the other hand, she found it amusing, in the courtroom, to listen to what people said and to try and guess whether they were on the level or just hoping to be disqualified. “The defendant’s got the same haircut as my mother-in-law, which I feel I should reveal, being as I hate my mother-in-law.” “I don’t understand why you keep saying he’s presumed innocent. Obviously, he wouldn’t be here if he wasn’t presumed *guilty*.” “I just got married and my wife and I – well, I don’t know if I get enough sleep these nights to concentrate on a lot of

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testimony, especially about something as boring as insurance.” Flora had found herself repeating these lines to her friends. The straight faces the attorneys and judges managed to keep throughout were often just as hilarious. Though, in fact, Flora felt sorry for those people. This part of their job, at least, struck her as painful, too tedious for words. If she had to repeat herself all day long like that, asking the same questions, over and over, giving the same explanations, over and over, clarifying the same points, again and again – not to mention having to listen to the others involved in the case do the same – she’d go mad. (Look around, and don’t be surprised if you see one of the bailiffs dozing.)

Flora had a curious nature (“like a child,” her husband, Ross, used to say), and she was very curious about everything that went on in a courtroom. *She* would never doze, or even let her attention wander, and once – it was her first voir dire – the defendant had caught her scrutinizing him and gave her a dirty look!

Another time, the prospective jurors had been asked whether any of them had ever been mugged, and everyone in the jury box had put up a hand. Flora had been appalled. Were half of them lying, or had it really come to this? (However bad, better the former.) *She* had not been lying, of course. The year she moved to the city she had been mugged at gun-point by a child (so he seemed) wearing a cowboy hat and mask like the Lone Ranger (she’d half expected to hear “Trick or treat!”). But, as she told the court, that had been ages ago, she had all but forgotten the incident, and at any rate could promise that it would not interfere with her ability to be a good juror.

In fact, Flora had perfect confidence in her ability to be a good juror. Two words

that came up frequently during the selection process were “common sense,” and – *pace* Ross, who would have roared at this – she knew the difference between the kind of common sense Ross thought she lacked (“Why did you park so far away when you knew you were going to have all these packages?”) and the kind of common sense the court was looking for. And she was confident that she had this other, more important, kind of common sense, and that she also had the other desired qualities, such as patience and fair-mindedness – but what did any of this matter, since she was never chosen?

It was a mistake, Flora thought. For whatever reasons (which were, of course, never given), these people were depriving themselves of an ideal juror. But she had been excused so many times now, she no longer expected a different outcome. And that was all right, because although she was not like all those other people, praying to be excused, or lying to be disqualified, it was certainly not a matter of pride to Flora that she be chosen for a jury. Some people, she knew (the clerk had told them as much), took offense when they were not chosen and would demand an explanation. Silly things. Anyway, when Flora thought about how she would enjoy sitting on a jury, she was thinking of criminal cases only (she had to agree: insurance *would* be boring), because crime is always interesting, and Flora liked police and court dramas, she liked mysteries, though this was not her genre. (“What do you do, Ms. Defoe?” “I am a writer.”)

She had some reason to believe her being a writer might have been the very problem, because always someone, judge or attorney, would say something the sense of which put crudely would have been: “Any danger of you mixing up fact and fiction?” (She wrote fiction.) Al-

ways a hint of concern that her writer's imagination might get in the way of the all-important common sense, or that she might be tempted to turn the case into a story. One judge in particular had seemed very concerned about this, that she might want to write about the case.

Flora had often heard – though she had also heard it denied – that the higher your level of education the less likely you were to end up on a jury. Flora herself had nothing higher than a BA. An old friend of hers who happened to be in the academic job market, and who hated jury duty, said it was nice to know a doctorate turned out to be good for something. From what Flora could tell, if not professors, schoolteachers, especially retired ones, were a favorite, and this gave her pause. How would she have liked to be judged by old Miss Thorne, the Spinster Scourge of Grade Seven!

It was July, and the courthouse, which was of course air-conditioned, was as cold as if everyone were a judge with a long robe over street clothes. Flora had brought a sweater, but it was not enough. She was uncomfortable; the cold particularly bothered her neck.

It seemed that more and more of the attorneys were women, instantly identifiable because of their resemblance to their fictional counterparts – so familiar from TV shows like *Law and Order* – a resemblance you had to wonder at, hoping it was coincidence but fearing it was not. These women were usually on the young and thin side, and they all had either long or medium-length hair, and they all wore the same kind of tailored suit: plain, solid-colored jacket with matching narrow skirt. They wore pale nylon stockings and high heels. Flora (and she was not alone, she knew, having made small talk with the people around her) did not understand how these women

could bear to work in such frigid air. Their legs especially must feel it.

It was criminal court, and after less time than usual in the waiting room Flora heard her name (“Present!”) and found herself shepherded by the bailiff with what must have been a hundred others to a courtroom on an upper floor. When they had all filed in and sat down, the judge addressed them in that soothing voice so many of the judges seemed to have, which always made Flora wonder whether these men were the same at home, or if they were all more like Ross. She would never forget a Christmas card Ross had received from his staff at the animal hospital he headed, with a picture of a kitten stuffed in a red stocking: “To a boss who’s a real pussy cat.”

That was Ross. It was only at home that he was known for his sharp tongue and violent rages, the last of which had brought on the attack that carried him off at age forty-six. But it was things like that Christmas card that had kept Flora convinced for years that it must have been her: somehow she brought out this ogre in him. But then the children were born and they, too, more and more as they grew older, had had the same effect on him. (It had broken Flora’s heart to think this might have been because both Meg and Nicholas took so much after her.) And so she would not have been at all surprised to learn that it was the same with this judge, who was now telling them in his gentle way that the defendant, whom Flora, stuck way in the back, could barely see when he was introduced (Bruno something, she hadn’t caught the surname, but it sounded remarkably like “son of a bitch”), was on trial for murder. Bruno Sonovabitch was accused of having murdered his wife.

While the judge was speaking it had seemed that the room was utterly quiet,

but now you knew it had not been so. This was quiet. It was one of those moments when although there are many bodies in a room there is only a single consciousness. Now the judge spoke a little more, telling them about how long he thought the trial would last (two weeks), and assuring those for whom it might be a concern that the death penalty was not an issue. He then asked for the oath to be administered.

"Now," he said, when they had all settled back in their seats. "There are a great many of you here, and to simplify things, let me begin by asking this. Are there any of you who feel that, for whatever reason, you would not be able to serve as a juror in this trial? Please raise your hand." A big *whoosh* filled the room. Flora crossed her arms over her chest. Liars! Perjurers! But the judge, still the soul of courtesy, said that all those who had raised their hands were excused. Once those people had filed out, it could be seen that about twenty remained.

The judge now gave a few more details about the crime. The defendant and his wife had been quarreling (about what was not disclosed), and they had come to blows. The defendant was accused of having struck the victim with a blunt instrument. (For some reason Flora immediately thought *hammer*.) The prospective jurors were told that among the evidence they would be asked to examine were graphic, possibly disturbing, photographs. A girl who looked too young for jury duty raised her hand. If it was not too late, she said, she had changed her mind. Judge Easygoing said she could leave.

The same court officer who had administered the oath now placed the juror ballots in a drum, gave the drum several turns, and took the ballots out. Flora's was the third name to be called.

She had learned her lesson from that first time: be discreet; avoid eye contact. This usually wasn't too hard, because the defendants she had observed so far all but ignored the prospective jurors. Perhaps they had been instructed to do so, Flora didn't know, but it always amazed her how indifferent those defendants seemed. There had never been one who looked especially anxious or under stress, as she was sure she would have looked in their place. But no, they were always as cool as the judge himself, apparently bored by the process, not paying attention, leaving it all to counsel. Didn't they realize what a bad impression this made (especially on school-teachers)? Defendants were permitted to take notes during voir dire, but she had only ever seen one do so. That, too, had been a case of murder, and Flora had found it a bit disconcerting that those in the jury box were asked to state their names and where they lived, with this particular defendant scribbling away the whole time. But she had not been seriously concerned. You couldn't worry about everything, every little potential danger, could you, or how could you live?

It was as she was taking her chair in the jury box, pulling her sweater more tightly around her, that Flora permitted herself a peek at the defendant.

Sit tight. Don't raise your hand. Don't do anything. No reason to act, not yet, and probably never. Be calm. Go through the process. Then you'll be excused as usual, and no one will be the wiser.

Of course, he might recognize her, too. But the possibility, Flora thought, was slim. So many years had passed, and she was all too aware of how much she had changed. And even if he did recognize her, what would it matter? God knew, the man had more important things on his mind at the moment! Still, she did

The naked juror

not want to be recognized. She kept her head turned away, which was painful, because her neck was stiff from the cold.

He had changed, too, of course, if not as much as she had. He must dye his hair, she thought: impossible that it could have remained so black. But it was the same strong profile, the same striking face with the Slavic cheekbones, somewhat craggier, somewhat thinner. A face she could never forget.

When it was her turn to be questioned – and how glad she was to have only two people ahead of her – she answered, as always, concisely and truthfully. She could usually count on a sympathetic glance from one or two people when she said that she was a widow (she would flatter herself that they were thinking *And still so young!*). Did she ever write about crime, or about anything that might have to do with the criminal justice system? Not so far, no. Would she ever think of being on a jury as a possible source of material? Well, for a writer every experience was a possible source of material. It amazed Flora that her voice did not crack. Her neck was killing her, her hands were so cold they burned. She was suddenly terrified that Bruno Sonovabitch was going to recognize her.

When she and the other excused jurors returned to the waiting room, they were told they could go home and would not have to come back. What – after only one morning? The clerk said it was because of the holiday: the day after next was July Fourth.

In the early days of their marriage, Flora and Ross had lived in an apartment a few blocks from the animal hospital where Ross had just started working. It was not a very nice apartment, and neither of them liked the neighborhood, but they did not plan to stay long – in fact, the apartment was just a sublet.

Flora was very much in love, but already she had had her first inklings that she might have made a mistake. She was unhappy. She had not yet developed the thick skin that would make life with Ross possible. Her husband. A compassionate man. A hero – rescuing the mute and helpless, day in day out, and not always demanding payment. Give him that. Responsible. He had left them all well provided for – give him that, too. And there had been times when months might have passed without an explosion.

She embarrassed him, he said, when they met other people, when he introduced her to colleagues and friends. “And what do you do, Flora?” “I am a writer.” “A writer is someone who *publishes*,” he would groan. And she would try to explain that it didn’t happen overnight, it took time – just as it had taken time for him to become head of his hospital. It could take years to get published. But he would see. She would show him!

And it had taken years, but she had done it. She had published stories, and she had published a book of stories. And she had done this while taking care of a family, raising two children who had in no way suffered for her career – she had made sure of that. She had been a good mother, her children knew it, and she knew it, because they had been loving enough to tell her so.

So why was it that now, whenever she said that she was a writer – in the courtroom, for example – Flora felt like a perjurer?

Because she had not written anything in years. Now, with Ross gone, and Nicholas and Meg on their own, with so much free time (all the time in the world, it could seem), now, though she tried – had tried every day for a while – she had not written anything in years.

Bruno. She had forgotten the name completely. He worked in the building next door, a building much larger than their own brownstone, with a hotel-like lobby and a large, mostly immigrant, staff. Flora had never been clear where exactly in eastern Europe he was from. He barely spoke English. He should have been in school rather than working. An uncle – one of the building’s doormen – had got him the job. He looked like an actor with that strong face, and all that lovely thick black hair, and he always wore black, too – in fact, from what Flora could tell those were the same clothes he wore every day: black jeans and a black vest, with no shirt underneath. And skin like milk. He had the arms and shoulders of a gymnast, a small waist.

Flora would often see him, putting out garbage cans, sweeping the sidewalk. But more often loafing, leaning against a parked car or sitting on the stoop of their brownstone, smoking (he smoked constantly), girl watching. And to this or that girl he might make some comment, and if one of them gave him a dirty look or said something nasty back he would laugh. And though he never made such comments to her, he would stare quite openly at Flora, though he knew she was married, knew who her husband was. And he flustered her – especially if she happened to be wearing a skirt and he happened to be sitting on their stoop when she went out. But she was never offended by him, he was so good natured, so young, just a boy, a poor immigrant boy. And so beautiful. And then one day she passed too close to him, and he caught it: the smell of her unhappiness, her desperation.

Once, it happened only once, she kept telling herself later. Her apartment. Her marriage bed, common sense right out the door – hand in hand with common

decency! But, in all honesty, she thought it probably would have happened again, except at the time she was already pregnant with Meg. Then Flora’s mother broke her hip, and Flora went home for a few weeks to take care of her, and by the time Flora returned she had begun to show. And when he saw this he changed completely towards her. He was polite, always, but now, stricken with confusion, or shyness, or disgust, he could barely bring himself to look at her. And then she and Ross heard about an apartment, a much better apartment, at a very good rent, and rather than wait as planned for the baby to be born, they decided to move at once.

But the shame went with Flora, and stayed with her a long time. She wanted to blame her having been pregnant. But why pretend – why lie? She had known what she was doing. She had done exactly what she wanted to do. She had known how pathetic it was, how wicked, how possibly even dangerous. But you couldn’t be afraid of every little danger, could you, or how could you live? Besides (honesty, again!) it had not been entirely out of character. Before marriage, before babies, Flora had been something of a party girl. She had had lots of men before Ross. She could not remember some of their names, either.

But to think that this same boy had turned out to be the kind of man who would take a hammer to his wife! And that by pure chance, after all this time, she would have to find this out about him! Millions of people lived in this town, yet such things were bound to happen – in fact, more than likely, it had happened before that a juror had recognized a defendant. (And she’d bet her life more than one clever person had *pretended* to recognize a defendant.) But it was cruel of the gods to throw this at her, when she had only been doing her

*The naked
juror*

civic duty. Was this her reward for being a good citizen? (But then, had she really deserved so unhappy a marriage?)

What brought her to the old neighborhood about a year later was, again, chance. She had been visiting a friend in the hospital, which was across the street from the animal hospital, or rather from where the animal hospital used to be (it was now a radiology clinic). It was a difficult visit. Her friend was dying, as it happened, of the same illness that had killed Flora's mother. Afterwards, Flora had not wanted to go directly home. She had started walking, and more because of her state of mind than because of any big changes in that street, she had not even realized where she was until she had almost reached the brownstone. And there he was, coming towards her from the opposite direction, clutching a package, smoking a cigarette, dressed in a dark blue worker's uniform. He glanced at her, caught her looking at him and nodded politely, but he had not recognized her. He seemed preoccupied, or in a hurry. A huge ring at his belt held numerous keys, which clanked with each hurried step. She watched him disappear into the large building through the service entrance, saw the red stitches on the back of his shirt spelling "Superintendent."

It had not been an apparition. There was no doubt in Flora's mind. Oh, granted, he was much changed. All that smoking had creased and discolored his skin, his back was stooped, his chest sunk, and his black hair, which was still remarkably thick, might have been dusted with flour. He looked every bit his age, if not older. But she knew him.

When she reached the end of the street, Flora was relieved to find an empty bench, where she sat down to collect herself. As if saying farewell to a dying

friend had not been enough tumult for one day! Oh Flora, Flora, she scolded herself. But it was really Ross she was hearing. How could you have made such a ridiculous mistake? How could you not have seen at once that the man in the courtroom was much too young to be the same person? *Why must you always be such a scatterbrain?*

Oh, how she had exasperated him. How any stupid mistake of hers could set him off, like that horrible horrible time, who could forget, him railing at her a good half hour before slamming into the bedroom. (Thanks to her, they had shown up for a dinner party the wrong evening.) And when she had dared to go in, she had found him sitting on the bed, his face the most unlikely color. He was dizzy, he said, reaching out for her, he was sick, and he had vomited right there, unable to stand.

Later, the ambulance, the emergency room, the doctor helplessly spreading his hands.

Oh, Ross, she thought, getting up from the bench to go home. Forgive me.

Her next summons to jury duty was from civil court. The day it arrived in the mail Flora misplaced it. Later, she turned the house upside down but could not find it, until she went to bed and took up the novel she was reading and there was the summons stuck inside. She laid it on the night table. And perhaps it was because the summons was there, next to her pillow, that she dreamed of jury duty.

In *The Interpretation of Dreams*, Freud writes that there are two types of dreams in which the dreamer finds himself naked in public – in one, the dreamer is ashamed and embarrassed; in the other, the dreamer feels no shame or embarrassment at all. Freud does not concern himself with the latter type. But why

not, Herr Doktor, when those are some of the best dreams of all?

Flora was sitting in the jury box, she was completely naked, and no one, neither those sitting in the box with her nor anyone else in the courtroom, batted an eye. No shock, no shame, no notice, even; everyone carrying on with perfect naturalness. And though she was naked Flora was not at all cold. She was as comfortable as could be, and she was doing all the talking. Just what she was talking about was not clear, but she was going on and on, in a lively, urgent way, and everyone was listening. She paused, and the prosecuting attorney in her lovely strapless pink gown said, "And then what happened?" And everyone in the room leaned forward to hear. Wine and cheese had been set out on the counsels' tables, and tall vases of flowers adorned the judge's bench. Quite a few people were smoking. The person sitting to her left tapped Flora's arm and passed her a large box of chocolates.

It was the last dream of the night, the one that came just before waking, so Flora would be sure to remember it, and she woke from it feeling purged and light, knowing that everything she did that day was going to be right.

Dialogue between Michel Foucault & Baqir Parham

on Marx, Islam, Christianity & revolution

Note by Janet Afary and Kevin B. Anderson: In 1978, as the protests against the shah were becoming a mass movement, Michel Foucault made his first visit to Iran. During the next eight months, Foucault wrote a number of articles on the Iranian Revolution for "Corriere della Sera," "Le Monde," and other publications. These articles constitute the most sustained treatment anywhere in his writings of a non-Western society. Foucault's support for Iran's Islamist movement touched off a controversy that continues to this day.

This conversation, conducted in Iran in September of 1978 with the noted writer Baqir Parham, includes Foucault's first reflections on the Iranian Revolution. In addition, it connects his concern with Iran to his larger critique of Western modernity. It shows how his search for new forms of resistance to modernity had led him to look at religious revolts.

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for permission to publish this material in "Dædalus."

PREFACE BY PARHAM: Michel Foucault, the famous French thinker and philosopher, was recently in Iran. He came to visit the country, to travel around, and to write several articles on it. His trips apparently took him to Qom,¹ where he spoke with some of the grand ayatollahs. Although Foucault is not well known in Iran, he has an immense reputation in the world of philosophy. By first analyzing the field of medicine and its history, he initiated a unique and penetrating study of reason, of the structure and organization of knowledge. He has a number of valuable works, such as *Madness and Civilization*, *The Archaeology of Knowledge*, and *The Order of Things*. Foucault's short trip to Iran was an occasion to have a conversation with him about structuralism and some other key issues. Perhaps, in a search for an answer to them, he has come to this end of the world. This interview was conducted on Saturday, September 23, 1978, in Tehran.

PARHAM: Philosophy has a claim to objectivity in its worldview. How do you, as a philosopher, see the question of political commitment?

Excerpted from the forthcoming *Foucault and the Iranian Revolution: Gender and the Seductions of Islamism* by Janet Afary and Kevin B. Anderson, published in the United States by the University of Chicago Press.
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¹ This city is the Shiite religious center of Iran.

FOUCAULT: I do not think that we could give a definition of an intellectual unless we stress the fact that there is no intellectual who is not at the same time, and in some form, involved with politics. Of course, at certain points in history, there have been attempts to define the intellectual from a purely theoretical and objective angle. It is assumed that intellectuals are those who refuse to become involved in the issues and problems of their own societies. But in fact, such periods in history have been very rare and there are very few intellectuals who have adopted such a premise.

If we look at Western societies, from the very first Greek philosophers up to today's intellectuals, we see that they all had ties in some form to politics. They were involved in politics and their actions had meaning only insofar as they concretely affected their societies. At any rate, this is a general principle. Therefore, to the question, "Should an intellectual interfere in the political, social, and economic life of his or her country?" I respond that it is not a matter of should or ought. Being an intellectual requires this. The very definition of an intellectual comprises a person who necessarily is entangled with the politics and major decisions of his society. Thus, the point is not whether or not an intellectual has a presence in political life. Rather, the point is what should the role of an intellectual be in the present state of the world, in order that he or she [*u*] would reach the most decisive, authentic, accurate results.² I am, of course, only dealing with the society of which I am a part. Later, in comparison to your experiences we shall see what are the differences between our situation in the West and yours.

In France and in Europe in general, ever since the French Revolution, the

² In Persian, the pronoun *u* can be male or female.

intellectual has played the role of a prophet, a foreteller of the future society. In other words, the intellectual was one whose responsibility was to deal with general and universal principles for humanity. But in our Western societies something important has happened. The role of science, knowledge, technique, and technologies has perpetually increased and so has the significance of these issues for politics and the organization of society. Engineers, lawyers, doctors, health-care workers and social workers, researchers in the humanities – all form a social layer in our society whose numbers, as well as whose economic and political significance, are constantly increasing. Therefore, I think that the role of the intellectual is perhaps not so much, or maybe not only, to stand for the universal values of humanity. Rather, his or her responsibility is to work on specific objective fields, the very fields in which knowledge and sciences are involved, and to analyze and critique the role of knowledge and technique in these areas in our present-day society. In my opinion, today the intellectual must be inside the pit, the very pit in which the sciences are engaged, where they produce political results. Thus, working with intellectuals – mostly doctors, lawyers, psychiatrists, and psychologists – has paramount importance to me.

PARHAM: In response to my first question, you also partly answered my second question.

FOUCAULT: No problem, ask it again. Maybe this way I could answer your first question!

PARHAM: Very well. You see, we have witnessed a closeness between philosophy and political reality. I wanted to ask you, with regard to this proximity be-

tween philosophy and politics, do you see any basic change in the philosophical worldview of our time? And if so, what is its foundation and its nature?

FOUCAULT: If again we keep in mind the West, I think we should not forget two grand and painful experiences we had in our culture in the last two centuries. First, throughout the eighteenth century, philosophers, or it is better to say intellectuals, in France, England, and Germany attempted to rethink society anew, according to the vision and principles of good government as they perceived it. The impact of this type of thinking can be seen, to a great extent, in the revolutions and in the social and political changes in France, England, and Germany. In actuality, out of this philosophical vision – the vision of a nonalienated, clear, lucid, and balanced society – industrial capitalism emerged, that is, the harshest, most savage, most selfish, most dishonest, oppressive society one could possibly imagine. I do not want to say that the philosophers were responsible for this, but the truth is that their ideas had an impact on these transformations. More importantly, this monstrosity we call the state is to a great extent the fruit and result of their thinking. Let us not forget that the theory of the state, the theory of the all-powerful state, the all-powerful society vis-à-vis the individual, the absolute right of the group against the right of the individual, can be found among French philosophers of the eighteenth century and German philosophers of the late eighteenth and early nineteenth centuries. This is the first painful experience.

The second painful experience is the one that emerged not between the philosopher and bourgeois society, but between revolutionary thinkers and the socialist states we know today. Out of

the visions of Marx, the visions of socialists, from their thoughts and their analyses, which were among the most objective, rational, and seemingly accurate thoughts and analyses, emerged in actuality political systems, social organizations, and economic mechanisms that today are condemned and ought to be discarded. Thus, I think both of these experiences were painful ones, and we are still living through the second one, not just in thought but also in life.

I can give another example that is both most interesting and tragic for Western intellectuals – that of Vietnam and Cambodia. One felt that there was a people's struggle, a struggle that was just and right at its foundation, against vicious American imperialism. One anticipated that out of this remarkable struggle a society would emerge in which one could recognize oneself. By "ourselves," I do not mean the Westerners, since this was not their battle. I mean a society in which the face of revolution could be recognized. But Cambodia, and to some extent Vietnam, presents us with a face from which freedom – a classless society, a nonalienating society – was absent.

I think we live at a point of extreme darkness and extreme brightness. Extreme darkness, because we really do not know from which direction the light will come. Extreme brightness, because we ought to have the courage to begin anew. We have to abandon every dogmatic principle and to question one by one the validity of all the principles that have been the source of oppression. From the point of view of political thought we are, so to speak, at point zero. We have to construct another political thought, another political imagination, and teach anew the vision of a future. I am saying this so that you know that any Westerner, any Western intellectual with some integrity, cannot be indifferent to what

she or he hears about Iran, a nation that has reached a number of social, political, and so forth dead ends. At the same time, there are those who struggle to present a different way of thinking about social and political organization, one that takes nothing from Western philosophy, from its juridical and revolutionary foundations. In other words, they try to present an alternative based on Islamic teachings.

PARHAM: In my first two questions, the topic of discussion was mostly philosophy, science, and especially the humanities. Now, with your permission, I would like to speak of something that is closer to our particular situation in Iran, that is, religion. Could you please tell us what your opinion is of the role of religion as a world perspective and in social and political life?

FOUCAULT: One of the statements I have heard repeatedly during my recent stay in Iran was that Marx was really wrong to say, "Religion is the opium of the people." I think I must have heard this statement three or four times. I do not intend to begin anew a discussion of Marx here, but I do think that we ought to reexamine this statement of Marx's. I have heard some supporters of an Islamic government say that this statement of Marx's might be true for Christianity, but it is not true for Islam, especially Shiite Islam. I have read several books on Islam and Shiism, and I totally agree with them, because the role of Shiism in a political awakening, in maintaining political consciousness, in inciting and fomenting political awareness, is historically undeniable. It is a profound phenomenon in a society such as Iran. Of course, there have at times been proximities between the state and Shiism, and shared organizations have

existed. You had a Safavid Shiism³ and against it you have tried to resurrect an Alavid Shiism.⁴ All of this is accurate. But on the whole, and despite changes that occurred in the nature of religion due to the proximity between Shiism and state power in that period, religion has nevertheless played an oppositional role.

In the Christian centers of the world, the situation is more complicated. Still, it would be naïve and incorrect if we said that religion in its Christian form was the opium of the people, while in its Islamic form it has been a source of popular awakening. I am astonished by the connections and even the similarities that exist between Shiism and some of the religious movements in Europe at the end of the Middle Ages, up to the seventeenth or eighteenth century. These were great popular movements against feudal lords, against the first cruel formations of bourgeois society, great protests against the all-powerful control of the state. In Europe in the late eighteenth and early nineteenth centuries, before they adopted a directly political form, all such movements appeared as religious movements. Take,

3 The shahs of the Safavid Dynasty (1501 – 1722) were the first Iranian rulers to make Shiism the country's official religion.

4 Literally, the Shiism of Ali. Ali was Muhammad's cousin and son-in-law, as well as the fourth caliph (656 – 661 C.E.). The notion of returning to an original, supposedly uncorrupted Shiism, in which martyrdom was the supreme virtue, was developed by the lay Muslim theologian Ali Shariati. Shariati, who died in 1977 after what many Iranians assumed at the time was foul play from the government, had received a doctorate in philology from the Sorbonne. His writings had a dramatic impact on a whole generation of Iranian activists. At the time of the revolution, his picture was carried alongside that of Khomeini in the demonstrations.

for example, the Anabaptists, who were allied to such a movement during Germany's Peasant Wars.⁵ It was a movement that rejected the power of the state, government bureaucracy, social and religious hierarchies – everything. This movement supported the right to individual conscience and the independence of small religious groups that wished to be together, have their own organizations, without hierarchy or social stratification between them. These were all extremely important social movements that left their mark on the religious and political consciousness of the West. In England, during the bourgeois revolutions of the seventeenth century, underneath the bourgeois and parliamentary revolutions as such, we had a complete series of religious-political struggles. These movements were religious because they were political and political because they were religious, and were very important. I therefore think that the history of religions, and their deep connection to politics, ought to be thought anew.

In actuality, the type of Christianity that was the opium of the people was the product of political choices and joint tactics by the states, or the government bureaucracies, and the church organization during the nineteenth century. They said we ought to bring the rebellious workers back to religion and make them accept their fate. In Marx's time, religion was in fact the opium of the people, and Marx was right for this reason, but only in the context of his own time. His statement ought to be understood only for the time period in which he lived, not as a general statement on all eras of Christianity, or on all religions.

5 During the years 1524 – 1534, in the aftermath of Martin Luther's break with Rome, Germany experienced a series of radical peasant revolts, which are the subject of Frederick Engels's *Peasant Wars in Germany* (1852).

PARHAM: Precisely. Now I come to my last question, which, unlike my other questions, is more academic. I want to use this opportunity to ask you about philosophical structuralism. You have been known as one of the most authentic representatives of this form of thought. Could you please tell me what the issues are exactly?

FOUCAULT: Very well, but let me first say that I am not a structuralist. I never have been. I never made such a claim. And I have always clearly said that I am not a structuralist. But such terms, such labels, are out of necessity both correct and incorrect. There is a truthful dimension to them and an untruthful one. In actuality, what is known as structuralism is a methodology used in linguistics, sociology, history of religions, comparative mythology, and so forth. These make up a group of scientific fields that use the structuralist method. In other words, their analysis is based more on systems of relations than on explorations of elements and contents. Structuralism in this meaning has no relationship to my work – none.

Beyond this, there is the fact that in the 1960s in the West, especially in France, a change took place in the form of analysis and philosophical thinking. Briefly, without wishing to enter a debate, the issue is this: From the time of Descartes until now, the point of origin of philosophical thought was the subject, and the foundational subject of philosophy was to determine what is the subject, what is self-consciousness. Is the subject free? Is self-consciousness absolute self-consciousness? In other words, is it aware of itself? In sum, can self-consciousness, as Hegel said, become worldly?

Around the 1960s, after the world became more connected with technique and technical knowledge, I believe that

a rethinking at the point of origin of philosophical thought began. That is, it seemed better to begin with contents, with things themselves. In other words, and very simply, this meant to begin with things that exist positively and to analyze them. It meant to see how the subject could be placed within this content – which is the only role that the subject can play – focusing on how the subject is determined by outside elements. In other words, the principal change is not to privilege the subject as against the objective reality from the very beginning. Rather the objects, the relation between the objects, and the comprehensibility of the objects within themselves are what we explore. That is, we pay more attention to the comprehensibility of things in their own right than to the awareness of the subject.

From this point of view, we can understand why some types of research are called structuralist research. For example, look at the problem of psychoanalysis. Lacan tried to discuss the subject on the basis of the unconscious, whereas Sartre and Merleau-Ponty began with the subject and tried to see if they could reach the unconscious or not, and they never, of course, reached it. Lacan begins with the unconscious, the principle of the unconscious that appears in the process of psychoanalytical probing, and asks the question, “Given the existence of this unconscious, what would the subject be?”

Now I turn to myself, since your question was for me. My first book was called *Madness and Civilization*, but in fact my problem was rationality, that is, how does reason operate in a society such as ours? Well, to understand this issue, instead of beginning with the subject moving from awareness to reason, it is better if we see how, in the Western world, those who are not the subjects of reason,

those who are not considered reasonable, that is, those who are mad, are removed from the life process. Starting with this practice, with this constellation of real practices, and finally, a process of negation, we reach the point where we can see the place of reason. Or we find out that reason is not just the movements and actions of rational structures, but the movements of the structures and the mechanisms of power. Reason is what sets aside madness. Reason is what gives itself the right and the means to set aside madness.

From such analyses that do not start with the subject, I reached the point of how one could question various manifestations of power and analyze them. In general, we can say that a philosophy based on self-consciousness is necessarily related to the idea of freedom. And this is very good, but the philosophy or thinking whose subject matter is not self-consciousness, but real practice or social practice, relates to the theory of power. In other words, instead of self-consciousness and freedom, we reach practice and power.

I do not mean to say that power, from my point of view, is a foundational, unconquerable, absolute entity that one has to kneel before. Rather, the purpose of all of my analyses is that, in light of them, we find out where are the weak points of power from which we can attack it. When we speak of the relationship between reason and madness, when we show that reason exercises its power on madness, this is not to justify reason. Rather, it is to show how a system of power can be questioned and fought against. Thus, my analyses are in fact strategic analyses and are meaningful only in relation to strategies.

My studies on the issues of youth crime and prison are of a similar nature. I want to show what are the existing

mechanisms of power that separate the criminal from the noncriminal. What are the points of weakness of this system, or the historic points in between which the system has taken shape, so that we could objectively and practically challenge them? Many regard structuralism as an analysis of mechanisms that are undefeatable and imperishable, whereas the opposite is true. They say that structuralism is about analyzing relations that are part of the nature of the objects and cannot be changed. The opposite is true. I want to explain relations that have been tied together through the power of human beings and that for this very reason are changeable and destructible. Therefore, from my point of view structuralism is more a philosophy or a manual of combat, not a document of impotence. My problem is not to explore my self-consciousness to see if I am free or not. My problem is to analyze reality to see how one can free oneself.

Shelley E. Taylor

on healthy illusions

When people see news reports about survivors of traumatic events, they are often startled to hear them sound so upbeat – even grateful. “We all pulled together” and “I found out what is really important in life” are common themes. In interviews I have conducted with survivors of life-threatening diseases, I’ve often heard such statements as “I can keep the cancer from coming back,” “I have control over the course of my HIV,” and “I am a better person for having had a heart attack.”

Many of these accounts reflect the self-affirming beliefs that arise from having done battle with an intensely stressful experience and won, at least for the short term. Others, however, are

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based on mild but unquestionable illusions. There is no hard evidence that cancer patients can keep their cancer from coming back, for example, or that people with HIV can personally exert control over its course, yet the optimism that illness can be overcome by will is common among people with life-threatening diseases. When interviewed some months after what would seem to be devastating experiences, people often say their lives are even more happy and satisfying than they were before these catastrophic events. My research program of the last twenty-five years has explored such ‘positive illusions’ and their impact on mental and physical health.

When I first began this work, I had assumed that adjustment to trauma and recovery was a homeostatic process. That is, I suspected there were mechanisms within the mind that help restore people’s emotional balance to levels they experienced before encountering a threatening event. Homeostasis is a logical theory for such a process, because it accounts for the many biological systems that function after a perturbation. When we run from a threatening dog, for example, respiration and heart rate first increase and then quickly decline to their normal levels after the event has passed.

But my students and I soon learned from our interviews that the process that characterizes recovery from a broad array of traumatic events – cancer, heart disease, natural disasters, even rape – is not defined by homeostasis. Rather, many people who have been through these challenging events appear to have achieved a higher level of emotional and social functioning than they had experienced prior to the event. Many of them say the event forced them to rethink their values and priorities and to live a

moment at a time in order to extract as much enjoyment and meaning from life as possible. As one of the cancer patients put it: "The trick, of course, is to do this without getting cancer."

At the same time, many of the recoveries seemed to depend on certain distortions. I was, for example, surprised and somewhat disturbed to hear a cancer patient state with complete confidence that she would never get cancer again, knowing from the medical chart that she would almost certainly develop a recurrence and ultimately die of the disease.

At first we were concerned that these optimistic illusions reflected a poor adjustment to the illness, and that when recurrences subsequently appeared people would be left more devastated than if they had not clung to such optimistic fantasies. But our concerns were misplaced. In fact, those who maintained optimistic assessments of their situations, who believed, despite evidence to the contrary, that they could conquer their problems, were actually *healthier*: they were better adjusted to their circumstances, as assessed by standard clinical tools, than were patients with a more realistic understanding of their condition. Moreover, when a disease recurred, those who had expressed unwarranted optimism about their ability to stave off illness nonetheless fared better psychologically than patients whose expectations were more reasonable. Indeed, it seemed that optimistic illusions were an invaluable resource; they gave patients a sense of personal control and bolstered their ability to find meaning in life's unwelcome experiences, enabling them to cope effectively with intensely stressful events.

Over the past decade, our research has addressed an even more intriguing question: Can positive illusions not only buffer people psychologically against adverse responses to threatening events,

but also actually influence biological responses to stress and illness?

This complex and controversial question has long been a focus of attention for both humanists and scientists, yet until recently the idea that the mind can influence the body in ways that promote healing has been little more than a hunch. Now there is mounting evidence that positive beliefs do indeed influence health and the course of physical illnesses. Solid medical research has demonstrated the relation of negative emotional states such as depression to the course of several chronic diseases, including heart disease and hypertension. Depression and anxiety have been linked unequivocally to altered immune processes. In laboratory studies, scientists have been able to induce positive emotional states and show how they lessen biological responses to stressful events.

To address these issues in the context of a physical disease, my colleague Margaret Kemeny and I examined the relation of positive beliefs to the course of HIV infection. Unlike the progression of cancer, heart disease, and some of the other illnesses we studied with respect to psychological adjustment, HIV progression can be precisely charted through the numbers of CD4 T-helper cells and the amount of viral load, that is, the amount of HIV in the system. Using methods like these, scientists have uncovered many of the biological and treatment-related cofactors that independently influence the course of HIV infection, which include alcohol consumption, drug use, sleep, and medication use. These factors can be precisely controlled when looking at the potential role of positive beliefs in affecting the course of the disease.

An early study spearheaded by Geoffrey Reed focused on men who had been diagnosed with AIDS. We were able to identify a group of men who had realisti-

cally accepted and were preparing for their inevitable death, and a second group of men who were holding on to their optimistic beliefs, despite the progression of their illness. Controlling for the many other factors that influence the course of the illness, we found that those men who maintained their optimistic beliefs lived an average of nine months longer than those who had accepted their decline. We conducted similar studies with men who were HIV seropositive but asymptomatic with respect to AIDS and found that those who held positive beliefs about their future were less likely to develop symptoms and decline over a several-year follow-up period. Remarkably, then, positive beliefs are protective against the progression of what was at the time and often continues to be a fatal disease.

But how does this remarkable psychological achievement occur? What converts positive beliefs into biological benefits? We reasoned that optimistic illusions may enable people to cope more successfully with stress and thereby keep physiological and neuroendocrine responses to stress at low levels. Everyone is familiar with the biological changes that occur in response to stress, which include shallow rapid breathing, an increased heart rate, and neuroendocrine changes within the body.

In the short term, such changes are protective. They engage the fight-or-flight response that helps us escape from harm. However, with repeated exposure to stressful events, the biological systems responsible for mounting these protective emergency reactions get overused and may lose their elasticity and ability to respond. Blood pressure, for example, increases in response to stressful events, and with accumulating exposure to such events may permanently increase. The almost inevitable increase in resting blood pressure that accompa-

nies aging is thought to result from the wear and tear exerted on this regulatory system by repeated exposure to stress.

With these observations in mind, one may hypothesize that unrealistically optimistic beliefs are protective of health. Beliefs that the future will be better, that one has the ability to cope with it, and that personal efforts to control stressful events will be successful may enable people to confront the challenges of daily life with tempered biological responses to those events. Over time, the cumulative wear and tear on their biological stress regulatory systems will be less than if they met stressful events head-on, with no psychological buffer.

Our most recent investigations have confirmed this hypothesis. When people with positive illusions are brought into the laboratory to face challenging events, such as giving a speech or computing mental arithmetic, their biological stress responses, in the form of heart rate, blood pressure, and neuroendocrine responses, are lower and remain so throughout the events, compared to those of people who do not hold these positive beliefs.

Science has now taken some of the mystery out of how the mind influences the body, but none of the wonder that such psychological achievements inspire. The ability of human beings to remain hopeful in the face of tragedy is a remarkable psychological achievement. Exploring how the mind imposes meaning on challenging events, and does so in ways that are ultimately adaptive for physical and mental health, is not only scientifically exciting, but also yields great respect for a species that has evolved to the point that it can triumph over many adversities through sheer mental effort.

Philip L. Quinn

*on religious diversity
& tolerance*

Since September 11, 2001, the fragility of tolerance has become a source of acute anxiety in scholarly reflection on religion – as shown by some of the contributions to the Summer 2003 issue of *Dædalus* on secularism and religion. In that context, James Carroll asked how it was possible for people committed to democracy to embrace religious creeds that underwrite intolerance. Daniel C. Tosteson identified conflicting religious beliefs as a particularly serious cause of the plague of war.

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Such anxieties are reasonable. After all, Osama bin Laden professes to fight in the name of Islam. And in the aftermath of 9/11, the United States has experienced a significant rise in reported incidents of intolerant behavior directed at Muslims.

Moreover, tolerance has long been under assault in more limited conflicts fueled in part by religious differences. Religious disagreement has been a cause of violence in Belfast, Beirut, and Bosnia during recent decades. The terrorism of Al Qaeda threatens to project the religious strife involved in such localized clashes onto a global stage. In short, early in the twenty-first century, the practice of tolerance is in peril, and religious diversity is a major source of the danger.

During the past two decades, diversity has also been a topic of lively discussion among philosophers and theologians. What philosophers have found especially challenging about religious diversity is an epistemological problem it poses. Here the philosophical debates have focused primarily on the so-called world religions – Hinduism, Buddhism, Judaism, Christianity, and Islam. Though most of the philosophers involved in these debates have not addressed the topic of tolerance directly, there is a clear connection between the epistemological problems posed by religious belief and the political problems posed by religious diversity.

Take the case of Christianity. One way to justify a Christian's belief in God is the arguments offered by natural theologians for the existence of God. Another source of justification is distinctively Christian religious experiences, including both the spectacular experiences reported by mystical virtuosi and the more mundane experiences that pervade the lives of many ordinary Christians. A third source is the divine revelation

Christians purport to find in canonical scripture. And, for many Christians, a fourth source is the authoritative teaching of a church believed to be guided by the Holy Spirit. When combined, such sources constitute a cumulative case for the rationality of the belief in God professed by most Christians.

Let us suppose, if only for the sake of argument, that these sources provide sufficient justification to ensure the rational acceptability of the Christian belief system. But this will be so only if there are no countervailing considerations or sources that present conflicting evidence. Before we can render a final verdict on the rational acceptability of that belief system, challenges to the Christian worldview must be taken into account. One of the most famous challenges is, of course, the existence of evil. The sheer diversity of religions and religious beliefs presents an equally vexing challenge. And the growth of religiously pluralistic societies, global media, and transportation channels has rendered this challenge increasingly salient in recent times.

A Christian today who is sufficiently aware of religious diversity will realize that other world religions also have impressive sources of justification: They too can mobilize powerful philosophical arguments for the fundamental doctrines of their worldviews. They are supported by rich experiential traditions. They also contain both texts and authoritative individuals or institutions that profess to teach deep lessons about paths to salvation or liberation from the ills of the human condition.

Yet quite a few of the distinctive claims of the Christian belief system, understood in traditional ways, conflict with central doctrines of other world religions. Though each world religion derives justification from its own sources,

at most one of them can be completely true. Each religion is therefore an unvanquished rival of all the rest.

To be sure, Christian sources yield reasons to believe that the Christian worldview is closer to the truth than its rivals. But many of these reasons are internal to the Christian perspective. Each of the other competitors can derive from its sources internal reasons for thinking it has the best access to truth. Adjudication of the competition without begging the question would require reasons independent of the rival perspectives. It seems that agreement on independent reasons sufficient to adjudicate the rivalry is currently well beyond our grasp.

It is clear that this unresolved conflict will have a negative impact on the level of justification Christian belief derives from its sources. In his magisterial book *Perceiving God* (1991), William Alston investigated the matter of justification for the Christian practice of forming beliefs about God's manifestations to believers. He argued persuasively that the unresolved conflict does not drop the level of justification for beliefs resulting from this practice below the threshold minimally sufficient for rational acceptability. He acknowledged, however, that the level of justification for such Christian beliefs is considerably lowered by the conflict, and that similar conclusions hold, *mutatis mutandis*, for analogous experiential practices in other world religions.

A generalization from the special case seems to be in order. For those Christians who are sufficiently aware of religious diversity, the justification that the distinctively Christian worldview receives from all its sources is a good deal less than would be the case were there no such diversity, even if the level of justification for the Christian belief system were not on that account reduced below

the threshold for rational acceptability. And, other things being equal, the same goes for other world religions. This reduction of justification across the board can contribute to a philosophical strategy for defending religious toleration.

The basic idea is not new. The strategy is implicitly at work in a famous example discussed by Immanuel Kant in his *Religion within the Boundaries of Mere Reason* (1793). Kant asks the reader to consider an inquisitor who must judge someone, otherwise a good citizen, charged with heresy. The inquisitor thinks a supernaturally revealed divine command permits him to extirpate “unbelief together with the unbelievers.” Kant suggests that the inquisitor might take such a command to be revealed in the parable of the great feast in Luke’s Gospel. According to the parable, when invited guests fail to show up for the feast and poor folk brought in from the neighborhood do not fill the empty places, the angry host orders a servant to go out into the roads and lanes and compel people to come in (Luke 14: 23). Kant wonders whether it is rationally acceptable for the inquisitor to conclude, on grounds such as this, that it is permissible for him to condemn the heretic to death.

Kant holds that it is not. As he sees it, it is certainly wrong to take a person’s life on account of her religious faith, unless the divine will, revealed in some extraordinary fashion, has decreed otherwise. But it cannot be certain that such a revelation has occurred. If the inquisitor relies on sources such as the parable, uncertainty arises from the possibility that error may have crept into the human transmission or interpretation of the story. Moreover, even if it were to seem that such a revelation came directly from God, as in the story told in Genesis 22 of God’s command to Abraham to kill Isaac, the inquisitor still could not be

certain that the source of the command really was God.

For Kant, certainty is an epistemic concept. It is a matter of having a very high degree of justification, not a question of psychological strength of belief. Thus his argumentative strategy may be rendered explicit in the following way: All of us, even the inquisitor, have a very high degree of justification for the moral principle that it is generally wrong to kill people because of their religious beliefs. Our justification for this principle vastly exceeds the threshold for rational acceptability. It may be conceded to religious believers that there would be an exception to this general rule if there were divine command to the contrary. However, none of us, not even the inquisitor, can have enough justification for the claim that God has issued such a command to elevate that claim above the threshold for rational acceptability. Hence it is not rationally acceptable for the inquisitor to conclude that condemning a heretic to death is morally permissible.

No doubt, almost all of us will recoil with horror from the extreme form of persecution involved in Kant’s famous example. Other cases may not elicit the same kind of easy agreement.

Suppose the leaders of the established church of a certain nation insist that God wills that all children who reside within the nation’s borders are to receive education in that orthodox faith. No other form of public religious education is to be tolerated. These leaders are not so naive as to imagine that the policy of mandatory religious education they propose will completely eradicate heresy. But they argue that its enactment is likely to lower the numbers of those who fall away from orthodoxy and, hence, to reduce the risk of the faithful being seduced into heresy. And they go on to

contend that the costs associated with their policy are worth paying, since what is at stake is nothing less than the eternal salvation of the nation's people.

The claim that God has commanded mandatory education in orthodoxy might, it seems, derive a good deal of justification from sources recognized by members of the established church. It is the sort of thing a good God, deeply concerned about the salvation of human beings, might favor. Perhaps the parable about compelling people to come in could, with some plausibility, be interpreted as an expression of such a command. So if the challenge of religious diversity were not taken into consideration, the claim that God commands mandatory education in orthodoxy might derive enough justification from various sources to put it above the threshold for rational acceptability for members of the established church. But the factoring in of religious diversity may be enough to lower the claim's justification below that threshold, thereby rendering it rationally unacceptable even for members of the church who are sufficiently aware of such diversity. And an appeal to the epistemological consequences of religious diversity may be the only factor capable of performing this function in numerous instances. Thus such an appeal may be an essential component of a successful strategy for arguing against forms of intolerance less atrocious than extirpating "unbelief together with the unbelievers."

Of course, the strategy being suggested here is no panacea. It is not guaranteed to vindicate the full range of tolerant practices found in contemporary liberal democracies; it may fail to show that the religious claims on which citizens ground opposition to tolerant practices fall short of rational acceptability by their own best lights. This is because

the strategy must be employed on a case-by-case basis. However, such a piecemeal strategy has some advantages. It does not impose on defenders of tolerance the apparently impossible task of showing that the whole belief system of any world religion falls short of rational acceptability according to standards to which the adherents of that religion are committed. It targets for criticism only individual claims made within particular religions, claims that are often sharply disputed in those religions by believers themselves.

Nor can this strategy be expected to convert all religious zealots to tolerant modes of behavior. All too often religious zealots turn out to be fanatics who will not be moved by any appeal to reason. But in any event, the strategy should not be faulted because it cannot do something that no philosophical argument for tolerance, or for any other practice, could possibly do.

Religious diversity must be counted among the causes of the great ills of intolerance. It also happily shows some promise of contributing to a remedy for the very malady it has helped to create.



a_1



a_2



a_3



a_4



a_5



b_1



b_2



b_3



b_4



b_5

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