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FOREWORD:

Reexamining Race and Racial Identity in the United States

Jeffrey H. Rutherford*

It is not uncommon for a person to assume that his or her race is fixed and predetermined. People often think of themselves as being born into a certain race: that their race is genetically determined and is therefore free of social, economic and cultural influence. While they may recognize that there are social and economic implications attached to a person's race, they assume that these implications are derivative of a prior racial assignment. In other words, they assume that a person is Black by birth, and society happens to treat Blacks a certain way. Given this, a reexamination of the concept of race is viewed at best as an esoteric endeavor.

A strong argument can be made that race is not simply biological, but that the very notion of race as we have come to understand it is socially constructed. The argument that race is a social construct means that race derives its effective existence primarily from political, social and cultural underpinnings. This recognition at once dissolves some problems, while raising others.¹

Social constructions of race are part and parcel of our nation's foundation. From the institution of slavery and constitutionalization of the "three fifths" rule,² to the currency of the "one drop of blood" rule,³ the introduction of "racism"⁴ as a form of exclusion

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1. For example, one significant way race affects people is the area of government entitlements. This raises the issue of the appropriateness of the government relying on these categories to determine which group deserves what, and who is included in that group.

2. U.S. CONST. art. I, § 2, cl. 3 ("Representatives and direct Taxes shall be apportioned among the several states which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free persons . . . three fifths of all other persons.").

3. See, e.g., *Plessy v. Ferguson*, 163 U.S. 537, 552 (1896) (upholding the states' authority to segregate whites from persons having "any visible admixture of black blood").

and the use of racial categories in law,⁵ race has come to affect profoundly how we think of ourselves, who our friends are, where we live, what privileges and entitlements we enjoy under the law and what life opportunities we expect. Race is, inescapably, central to the discourses of rights, identity, fairness and community. Whether by design or by accident, our society is organized around the concept of race.⁶ Race is fundamental to our personal, social and institutional relationships, in that it is constitutive. Therefore it always operates and it always transforms us and our relationships with others.

Racial categories are a manifestation of the social construction of race.⁷ The racial categories currently utilized are an agglomeration of descriptive efforts—in part the product of linguistic heritage, cultural affiliation and biological references. While activists and public officials alike attempt to use rigid categories,⁸ race is not an absolute. An individual's sense of "racial identity" can shift over the course of his or her lifetime, as can the labels assigned by the government and other actors in society.

4. See DAVID THEO GOLDBERG, *RACIST CULTURE: PHILOSOPHY AND THE POLITICS OF MEANING* 62 (1993) (noting that the term "racism" adopted its modern meaning in the 1940s).

5. A great deal of post-1950s equal protection law has focused on racial categories. See Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1766-67 nn.260-61 (1993) (discussing some high points of the affirmative action debate, which Andrew Hacker described as "an epithet for our time").

6. Commentators have argued that whiteness is a form of property protected by law. See, e.g., *id.* at 1712-13 (likening "passing" as white with theft); *id.* at 1732-33 (examining the property attributes of alienability and productive capacity); *id.* at 1735-36 (examining the property right of reputation); *id.* at 1759 & n.224 (appraising the value of whiteness to individuals). Other commentators have pointed out that whiteness, although a valuable asset, can be a difficult one for whites to recognize or admit. See, e.g., Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, HUNGRY MIND REV., Fall 1994, at 12 (identifying twenty-six advantages of Ms. McIntosh's white skin, much to her surprise).

7. Examples of some racial categories used include: white, Black, African American, Asian, Asian American, Latino and Hispanic. This listing demonstrates how racial categories are inaccurate descriptions of purportedly biological race. An Asian (which could include someone with Sri Lankan ancestry or someone with Korean ancestry) is Asian unless they move to the United States. At that point, they switch racial categories from Asian to Asian American. The logic behind such racial categorization is clearly defunct.

8. Racial categories can be used by persons or entities seeking to exclude a racial minority and by persons or entities seeking to assist a racial minority. These categories can both confer a benefit, as in the case of a meaningful affirmative action admissions program at a college, and exclude, as in the case of federal tribal definitions that prescribe a means by which a person or community may be classified as a member of a Native American tribe. See, e.g., Gerald Torres & Kathryn Milun, *Translating Yonnonidio by Precedent and Evidence: The Mashpee Indian Case*, 1990 DUKE L.J. 625, 633-36 (criticizing a finding that the Mashpee lacked standing as a "tribe").

An investigation of the concept of race, then, is warranted. What can we know about people because of the way that we identify them (or they identify themselves) by race? How do our conceptualizations of race implicate and affect our evaluation of society and our system of democracy? How does or should a recognition of the socially constructed nature of race affect our perception of racial identity and our attempts to address issues of racism?

The Institute on Race and Poverty sought to answer some of these questions.⁹ The articles in this Symposium developed from a forum sponsored by the Institute on October 14, 1995 at Augsburg College in Minneapolis, Minnesota. The goal of this discussion was to explore the concept of race and its implications for identity and community, for who we are and how we organize ourselves and others, and for what race means to us individually and collectively. Particular to this discussion was the manner in which race and racial categories intersect with class, politics and community to determine who are the haves and have-nots, who has access and who is excluded, what it means to be "raced" and how race functions both as a benefit and a burden.

The lead article in this Symposium is written by the forum's keynote speaker, Michael Omi, professor of Ethnic Studies and Chair of the Asian American Studies Program at the University of California, Berkeley. He addressed the evolution of race as a social construction and its implications for how we organize and identify ourselves, for how race and racial categories affect and are affected by politics and power, and for how race and racial categories affect the distribution of resources and entitlements. He is the co-author of *Racial Formation in the United States*,¹⁰ a groundbreaking reexamination of race and racism and their political, institutional and social meanings in the contemporary United States.

At the forum, Professor Omi's presentation was followed by a panel discussion during which John Calmore, Amy Stewart Wells and John Powell responded to Professor Omi's remarks. The panel discussed race as a social construction, racial identity, racial segregation and integration, and each concept's relationship to class.

9. The Institute is a strategic research center located at the University of Minnesota Law School, Minneapolis, Minnesota. Its goal is to explore ways to address more accurately and effectively the issues confronting poor communities of color.

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

Professor Calmore, W. James Ford Fellow and professor of Law at Loyola Law School, has worked on race and poverty issues for over twenty years as a civil rights litigator, housing advocate and foundation program officer. Professor Wells, of the University of California, Los Angeles, is an expert on segregation and integration in primary and secondary education. She had just completed a two-year study of desegregation efforts in St. Louis, the site of one of the nation's largest city-suburb student transfer programs.¹¹ Professor Powell, Executive Director of the Institute on Race and Poverty and professor of Law at the University of Minnesota Law School, has spent his career addressing issues confronting poor communities of color as a civil rights litigator, housing and community development advocate and human rights activist. He is also the former National Legal Director of the American Civil Liberties Union. For this Symposium, these scholars are joined by Nancy Denton, professor of Sociology at the University of New York, Albany. Her book, *American Apartheid: Segregation and the Making of the Underclass*,¹² is widely considered the most influential study of racial residential segregation produced in the last three decades.

As the authors in this Symposium point out, race and racism are related through the purposeful use of apparent ancestry in the assignment of place or space in society. Residential segregation, as such, has major consequences for a person's life opportunities, affecting and determining access to employment, home equity, education and the personal contacts and networks that help make social mobility possible. The authors also demonstrate that the cost to society of racial exclusion has been a festering lack of understanding between the separated groups, a growing segregation of the poor, and the loss of many of our brightest minds, thwarted by poverty and inadequate education.¹³ The authors note that "white" has defined the culture in this country, the norm by which all are measured. The fact that the United States is highly segregated makes it possible for whites to construct explanations for the

11. Professor Wells' presentation at the Symposium is not published in this volume.

12. DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993).

13. This is not to say that majority-minority schools are inherently incapable of teaching, or that minority students need white students in the classroom in order to learn. Rather, the problem is that our current system of segregation has stacked the deck precipitously against the majority-minority schools by limiting access to critical resources and opportunities. See e.g., JONATHAN KOZOL, *SAVAGE INEQUALITIES: CHILDREN IN AMERICA'S SCHOOLS* 149-60 (explaining some of the sacrifices poor urban schools must make).

exclusion of poor people of color without expressly raising the issue of race. For this reason, even the "colorblind" ideal has been used as an instrument of white oppression.¹⁴

As the authors note, reexamining the concept of race and how it affects us individually and collectively is an important part of the project of transforming the racial structure. This reexamination need not dissolve the mosaic of our different ways of seeing, being and being seen, and it should not derogate into a claim of sameness. Examining the ways we differ and the ways we affect each other can increase our appreciation for one another as well as paint a more accurate portrait of who we are and why. Only by assessing and challenging the concept of race and its role in our lives, relationships and institutions can we bring the United States to the realization of its ideals of democracy and justice.

14. See John A. Powell, *An Agenda for the Post-Civil Rights Era*, 29 U.S.F. L. REV. 889, 900-01 n.55 (1995) (noting that virtually all Supreme Court opinions incorporating the concept of "colorblindness" have furthered white interests).

