Review Essay

Whitewashing Race: Scapegoating Culture

WHITEWASHING RACE: THE MYTH OF A COLOR-BLIND SOCIETY
By Michael K. Brown et al.†
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INTRODUCTION

The images of the suffering that washed over New Orleans in the wake of Hurricane Katrina seemed to provide incontrovertible evidence of the significance of race and persistence of racial inequality in contemporary U.S. society.[1] The simple fact that the faces of those left to fend for

1.   In mentioning only New Orleans I do not mean to minimize or overlook the tremendous loss suffered in the Gulf region more broadly. Because of New Orleans's unique position in the national imagination, as well as its racial demographics, 1 focus on the city as a prism to examine contemporary discourse on race. New Orlcans was not just a city that came to be predominately Black: it was a city

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themselves or die[2] were overwhelmingly Black challenged the prevailing paradigm that the United States is a colorblind society. Colorblindness holds sway in both legal and popular discourse and directs us to discuss race and racism in the past tense, as though they were vices that passed away with the conclusion of the civil rights movement. This racial grammar allows race no relevance or contemporary meaning, accepting instead the depiction of the television ads that Americans of all races intermingle as equals.[3] On this view persistent racial inequality is then largely invisible; any residual disadvantage is a consequence of something other than racism.

The tragedy in the Gulf challenged the supremacy of this colorblind narrative; indeed, it seemed the only way to achieve a colorblind perspective on what unfolded after Katrina would be to close one's eyes.[4] For everyone, except perhaps federal government officials, the disaster was riveting and impossible to ignore. Few disagreed that Katrina had exposed shameful fissures in America's social fabric, that the precipitating event was an act of God and not the victims' behavior, and that the government's response—at least in the initial phases—was woefully inadequate. The public seemed to perceive Black people as innocent victims deserving of

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that was culturally marked as Black. *See New Orleans Fights to Regain Cultural Roots*, ASSOCIATED PRESS, Oct. 4, 2005, *available at* http://msnbc.msn.com/id/9567668. As note historian Gwendolyn Midlo Hall has stated, "The unique culture of south Louisiana derives from black Creole culture." *Id.* For suggestions that the tragedy in New Orleans prompted a discussion about the role of race in our society, see *A Matter of Black and White? Close Up*, SEATTLE TIMES, Sept. 4, 2005, at A3 (noting that "[t]he multitude of anguished black faces telecast from New Orleans has stirred a national discussion") [hereinafter *A Matter of Black and White?*].

2.   Or fend for themselves and be punished for it. A particularly harrowing account of official indifference and hostility comes from the ordeals of two emergency room workers who had the misfortune of being in New Orleans for a conference when Hurricane Katrina struck. After their hotel in the French Quarter closed they, along with several hundred others, collected money to hire buses for their evacuation, but the buses were prevented from entering the city. While attempting to flee on foot, they were herded into an ever increasing crowd of Black men, women (some old and infirm) and children, and directed to wait on the interstate for rescue that never came. Neither the police nor the National Guard provided them with food or water. When the group managed to find food for themselves and set up a makeshift camp, they were repeatedly dispersed at gunpoint by the police. When they attempted to walk across the bridge into the neighboring city of Gretna, they were again turned back at gunpoint by Gretna police. *See* Larry Bradshaw & Lorrie Beth Slonsky, *Trapped in New Orleans*, COUNTERPUNCH, Sept. 6, 2005, http://www.counterpunch.org/bradshaw09062005.html.

3.   The easy juxtaposition of persons of different racial backgrounds in commercial media contrasts sharply with the actual fact of intense social segregation. *See, e.g.*, DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 60-82 (1993) (describing the increasing and persistent concentration of blacks in central cities and whites in suburbs over decades, resulting in intense clustering, isolation, and what the authors term "hypersegregation").

4.   Or to put them out. The Federal Emergency Management Agency's (FEMA) initial decision to prohibit news photographs of the dead floating in the floodwaters could be seen as an enactment of this metaphor. *See U.S. Won't Ban Media From New Orleans Searches*, CNN.com, Sept. 11, 2005, http://www.cnn.com/2005/LAW/09/10/katrina.media.

help. Seasoned mainstream journalists wept and railed,[5] while ordinary Americans flooded relief organizations with money.[6]

Yet, this consensus disintegrated as quickly as the levees, and the retreating floodwaters left behind a debate over the role of race in the tragedy. Why were those New Orleans residents who remained trapped during Katrina largely Black and poor? Was it, as hip-hop artist Kanye West argued, a case of presidential indifference to, or dislike of, poor Black people?[7] Or was it, as Ward Connerly argued, the predictable consequence of a natural disaster that befell a city that just happened to be predominately Black?[8] Was it, as Linda Chavez claimed, the result of a culture of dependency combined with local bureaucratic incompetence?[9] Was race a factor in determining who survived and who did not?[10] Was the tragedy a consequence of class rather than race?[11] Or was there, as some Black leaders

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5. *See* Jack Shafer, *The Rebellion of the Talking Heads*, SLATE, Sept. 2, 2005, http://www.slate.com/id/2125581 (reporting that as the disaster unfolded uncharacteristically sharp interchanges occurred between government officials and the press).

6. As of mid-November, 2005, the Red Cross had received over $1.5 billion in donations to hurricane relief. *Facts at a Glance: American Red Cross Response to Hurricane Katrina & Rita* (Nov. 18, 2005), *available at* http://www.redcross.org/news/ds/hurricanes/katrina_facts.html. On the peak day of donations to aid Hurricane Katrina survivors, the Red Cross received 943,653 donations, compared to an average daily donation total of 1,000. *Putting Compassion in Action* (Nov. 4, 2005), *available at* http://www.redcross.org/article/0,1072,0_507_4844,00.html.

7. On a nationally broadcast telethon to raise money for the victims of Katrina, Kanye West departed from the scripted remarks to say the following: "I hate the way they portray us in the media. If you see a black family, it says they're looting. See a white family, it says they're looking for food." *Rapper Kanye West Accuses Bush of Racism; NBC Apologizes*, CBC ARTS, Sept. 3, 2005, http://www.cbc.ca/story/arts/national/2005/09/03/Arts/kanye_west_katrina20050903.html.
Commenting on the slow pace of the government's response, West also said, "George Bush doesn't care about black people." *Id.* NBC immediately cut to another star on the program and censored West's remarks from the West Coast feed of the program. *Id.* It also issued the following disclaimer:

> Kanye West departed from the scripted comments that were prepared for him, and his opinions in no way represent the views of the networks ... It would be most unfortunate ... if the efforts of the artists who participated tonight and the generosity of millions of Americans who are helping those in need are overshadowed by one person's opinion.

Id.

8. In a recent newspaper article, Connerly was quoted as saying that since the city was "predominantly black and poor," it was "simply ... a matter of coincidence that most of the hurricane victims on television are black." *See A Matter of Black and White?*, *supra* note 1. He called the discussion about race a "needless distraction" and condemned "black leaders who are blaming [the government's response on] racism, shame on them." *Id.*

9. Chavez argues that self-sufficiency was "the commodity that largely differentiated those who escaped the deluge from those who got stuck at the Superdome and Convention Center." Linda Chavez, *Race-Baiters Emerge After Katrina*, SAN DIEGO UNION-TRIB., Sept. 15, 2005.

10. Howard Dean, Chairman of the Democratic Party, in an address to the National Baptist Convention, stated, "As survivors are evacuated, order is restored, the water slowly begins to recede, and we sort through the rubble, we must also begin to come to terms with the ugly truth that skin color, age and economics played a deadly role in who survived and who did not." *Excerpts of DNC Chairman Howard Dean's Remarks to the National Baptist Convention of America, Inc.*, U.S. NEWSWIRE, Sept. 8, 2005, http://releases.usnewswire.com/printing.asp?id=52955.

11. This was not simply a critique from the right. Progressive Black scholar Adolph Reed argues, "[c]lass will almost certainly turn out to be a better predictor than race of who was able to evacuate,

claimed, a connection between the legacy of slavery and the fact that the overwhelming majority of those left behind were Black?[12]

In the aftermath, the responses to these questions appeared to split along racial lines. Major public opinion polls reported a significant racial divide in perception of the events.[13] Over two-thirds of Blacks believed that the federal government would have responded more quickly if the victims had been White, while over three-quarters of Whites believed the response time would have been the same.[14] According to the Pew Research Center, seven out of ten Blacks said that the disaster "shows that racial inequality

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who drowned, who was left to fester in the Superdome or on overpasses, who is stuck in shelters in Houston or Baton Rouge, or who is randomly dispersed to the four winds." Adolph Reed Jr., *Classifying the Hurricane*, THE NATION, Oct. 3, 2005, at 6. While I would agree that the most vulnerable were those without economic resources, given the country's history of *de jure* and *de facto* racial subordination, race cannot be so neatly disaggregated from class. Particularly in the context of New Orleans—a city in which the legacy of slavery is still visible—the fact that those left on the overpasses and in the Superdome were Black had everything to do with why they were poor. Moreover, this legacy does not manifest itself only in income differentials; the city's identity as a Black enclave shaped official reaction to the crisis before and after Hurricane. See *infra* notes 74-84 and accompanying text. My object is not to reproduce another unhelpful version of the race *versus* class debate but to avoid sublimating the racial dimension of the issues implicated by Katrina. *See Katrina Hurts Blacks and Poor Victims Most*, CNN/USA Today/Gallup Poll, Oct. 25, 2005 (reporting that a CNN/*USA Today*/Gallup survey of Hurricane Katrina victims shows that Blacks were much more likely to suffer hardships than Whites, and low-income victims were more likely to suffer hardships than high-income victims.) See also, John Logan, The Impact of Katrina: Race and Class in Storm-Damaged in Storm-Damaged Neighborhoods, http://www.s4.brown.edu/katrina/index.html (examining FEMA storm damage data and concluding that the impact of the storm was disproportionately borne by the Black community in the region, by people who rented and by the poor and unemployed, so that the impact of the storm had both a racial and class dimension).

12.   Both Reverend Jesse Jackson and Representative Cynthia McKinney drew a link between the events in the Gulf and slavery. In response to a question by Anderson Cooper on CNN about whether race was a determinative factor in the federal government's response to Katrina, Jackson replied:

It is at least a factor. Today I saw 5,000 African Americans on the I-10 causeway desperate, perishing, dehydrated, babies dying. It looked like Africans in the hull of a slave ship. It was so ugly and so obvious. Have we missed this catastrophe because of indifference and ineptitude or is it a combination of the both? And, certainly I think the issue of race as a factor will not go away from this equation.

Jesse Jackson, Remarks on the Anderson Cooper 360 Degrees show (Sept. 2, 2005). In an address on the floor of the House of Representatives on September 8, 2005, Representative Cynthia McKinney said, "[a]s I saw the African Americans, mostly African American families ripped apart, I could only think about slavery, families ripped apart, herded into what looked like concentration camps." 151 CONG. REC. H7805 (daily ed. Sept. 8, 2005) (statement of Rep. MeKinney), *reprinted in Nobody Came to Get Them: A Few Thoughts on the State of Our Nation*, COUNTERPUNCH, Sept. 12, 2005, http://www.counterpunch.org/mckinney09122005.html.

In response, conservative commentators have denounced these linkages as Black paranoia and opportunistic pandering. *See, e.g.*, Chavez, *supra* note 9; Joe R. Hicks, *Levees Let Loose an Ugly Flood of Black Paranoia*, L.A. TIMES, Oct. 2, 2005, at M3 (denouncing Black leaders for attributing the slow response to racism, and for ignoring the fact that many of the rescuers were White, and that Americans donated record amounts of aid to Katrina victims).

13.   While there is some interesting intraracial diversity of opinion among minority public figures about the role of race and racism in explaining what happened, at the level of public opinion there remains a striking interracial difference in views of the disaster.

14.   See *id.*

remains a major problem" in this country; seven out of ten Whites said the opposite.[15]

Interestingly, this White-majority perception does not amount to an endorsement of the Bush administration's response: polls revealed a general consensus across all races that, at least initially, the federal government failed. Pew, for example, reported that 67% of those polled believed that the President could have done more to speed up the relief effort.[16] A majority of voters were more pointedly negative in their assessment: according to a *New York Times* poll conducted two weeks after Katrina, half of all respondents *disapproved* of the Bush Administration's response to the Katrina disaster.[17] Thus there was consensus among the general public that the federal government failed to provide effective relief.[18] The major point of contention, it seems, was whether race played a role in determining the official response both before and after Hurricane Katrina—it was a difference over the difference that race makes.

Whitewashing Race: The Myth of a Color-Blind Society uncannily presages the racial fissure underlying this debate. Though written long before Katrina, the book seeks to loosen the Gordian knot at the heart of these divergent perceptions over the significance of race. The authors attribute these differences in large part to the contradictory understandings of race and racism now present in our society. Colorblindness as the prevailing view of race, characterizes racism as an outmoded set of negative attitudes

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15.   *See* News Release, Pew Research Ctr. for the People & the Press, Huge Racial Divide Over Katrina and its Consequences, at 2 (Sept. 8, 2005), http://people-press.org/reports/pdf/255.pdf [hereinafter Pew Report].

16.   *See id.* at 3.

17.   Todd S. Purdum & Marjorie Connelly, *Support for Bush Continues to Drop as More Question his Leadership Skills, Poll Shows,* N.Y. TIMES, Sept. 15, 2005, at A18. While this is considerably lower than the almost seventy-five percent disapproval rating among Blacks, the point is that there was at minimum a fairly wide consensus that the government had not done its job.

18.   Later polls that focused not only on Blacks and Whites, but included Latinos and Asians, found other intriguing points of consensus as well as divergence. Among all four ethnic groups, there was substantial agreement—over two-thirds in each category—that life was "more difficult for poor people" than "ever imagined." Lessons of Katrina: America's Major Racial and Ethnic Groups Find Common Ground After the Storm, New California Media, Oct. 27, 2005, http://news.ncmonline.com/news/view_article.html?article_id=c6db092735d6fb5f21886d716cdf2464. Moreover, by similar percentages, all groups agreed that poverty was a national disgrace and that the government should work to eliminate it. While conceivably people could hold the view that poverty is intransigent but still believe that the government has a responsibility to address it, this data may be important indication of a shift from earlier studies finding that Americans were not optimistic that poverty could be eradicated. Also significantly, a substantial majority of whites (59%) and over 70% of Asians, Blacks, and Latinos agreed that "[w]e need to stop spending so much money and resources in Iraq and Afghanistan so that we can afford to take care of people in the United States." However, when asked whether "life is a lot more difficult for Blacks in the United States than . . . ever imagined," Whites disagreed (57%) and Asians and Latinos were evenly split. On the question of whether there was "a lot more racism in the United States" than imagined, Blacks again strongly agreed (76%), Whites disagreed (53%), Latinos strongly agreed (66%), and Asians were evenly split between those that agreed (48%) and those that disagreed (45%). Id.

about a group, largely eliminated by *Brown v. Board of Education*[19] and the civil rights reforms it inaugurated. Colorblindness further posits that to the extent that racism exists (and that is typically overstated), it is the product of the irrational behavior of self-declared racial bigots who are few and far between.

The gradual ascendancy of colorblindness means that racial disadvantage (manifested, for example, in disparities in wealth and educational outcomes between Whites and Blacks) is a function of something other than racism. Because notions of biological inferiority have largely been repudiated, racial inequality is then the product of Black dysfunction. The issue is not blood, but behavior. Were Black people to engage in normatively appropriate conduct—work hard, attend school, avoid drugs, resist crime, save money—they would transcend their current social status.[20] Under colorblindness, then, Black people are not inherently or biologically inferior to Whites, but culturally deficient and insufficiently assimilated. One implication of this claim is that Black disadvantage is a product of culture and racial inequality will only disappear when Black people are "fixed."

Contesting this colorblind conception of race and racism is the core commitment of *Whitewashing Race*. The authors illustrate that racism is a set of often unconscious, embedded institutional practices that produce and reinforce racially disparate results. Structural conditions, not just self-declared bigots, work to reproduce material, quantifiable racial inequality. Acknowledging these facts about the structural generation of racial inequality is a necessary predicate to a more racially just society.

Dislodging the dominant conception of race and racism is a tall order, given that conservatives have waged a long, well-financed campaign to install colorblindness as the principal discursive and legal framework.[21]

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19.   347 U.S. 483 (1954).

20.   For examples of different versions of the cultural deficiency argument by authors cited in the book, see TAMAR JACOBY, SOMEONE ELSE'S HOUSE: AMERICA'S UNFINISHED STRUGGLE FOR INTEGRATION 10-11 (1998) (arguing that persistent racial inequality results more from the failure of Blacks to take responsibility for their own lives and that Blacks need a stronger commitment to acculturation); JIM SLEEPER, LIBERAL RACISM 4, 8-9 (1997) (contending that the obsessive fixation on color obscures both the growing evidence of interracial cooperation and reflects an unwillingness to acknowledge black failure); ABIGAIL & STEPHAN THERNSTROM, AMERICA IN BLACK AND WHITE: ONE NATION INDIVISIBLE 254-56 (1997) (attributing black poverty to family disintegration, the "unwillingness of a growing number of black men to accept family responsibilities" and that black unemployment is because poor blacks "need to learn basic literacy and good diction, and also how to dress appropriately, wake up to an alarm, arrive at work on time, and listen to direction and criticism once there"); DINESH D'SOUZA, THE END OF RACISM: PRINCIPLES FOR A MULTICULTURAL SOCIETY 551-56 (1995) (arguing that persistent Black poverty is due to moral and cultural failure that can only be corrected when Blacks learn to 'act white'). While obviously different in tone, these works by authors that range from conservative to liberal in their political self-identification share the view that the principal cause of Black disadvantage is deficient cultural practices.

21.   *See generally* LEE COKORINOS, THE ASSAULT ON DIVERSITY (2003) (tracing the network of conservative activists and organizations that have waged a well-funded campaign over two decades to

Whitewashing Race relentlessly excavates the root causes of a "durable pattern of racial stratification" resulting from the long-term effects of labor market discrimination and racist institutional practices (22). The authors describe the dialectical phenomena of White accumulation and Black disaccumulation—the incremental economic and social advantage for Whites and corresponding disadvantage for Blacks—that aggregate and compound across generations (22). They further highlight the role of the legal system in consolidating these cumulative effects, showing how common and statutory law has entrenched and reenacted White racial preferences (27).

Yet in some sense, an acute dilemma inheres in this project. As the debate over Katrina reveals, the ability to process empirical facts into a different understanding of racism is itself compromised by the divergent racial perspectives through which the facts are viewed. Thus, while people of all races agree that Katrina exposed the social costs of poverty, most Whites consider race largely irrelevant in explaining what happened (or did not happen) while Blacks tend to view race as a crucial part of the story. In the aftermath of Katrina, the question that is being debated is less a matter of *what* happened—what is at issue is *why*—and here the absence of a consensus demonstrates how racial divisions in the interpretation of seemingly uncontested facts can result in entirely divergent assessments of causation. The facts in this case did not seem to lead to a new racial paradigm; indeed, initial differences in the perceptions of the salience of race seemed to persist, notwithstanding relative agreement on the facts. The debate over the role of race in the devastation of Katrina is a specific case that implicates a larger line of inquiry—how do conceptions of race influence empirically grounded analyses? Can empirically driven works such as *Whitewashing Race* reorient the public discourse on race and racism? What is the relationship between empirically grounded analyses on the one hand, and conceptions of race and racial justice advocacy on the other?[22] Do the facts matter and, if so, how?

This Review Essay offers some thoughts about these questions. I begin by reviewing the book's basic structure in Part I, paying particular attention to the authors' method—especially their focus on Black/White inequality and the contrast between materialist analyses of racial disparity, and colorblindness. The authors critique colorblind analyses that target deficient culture as the culprit underlying persistent racial inequality by focusing on how the social structure inscribes racial inequality. In Part II, I examine how the materialist analysis employed by the book marshals facts

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change the corpus of civil rights laws, end affirmative action, and reframe the political discourse on race and racism).

22.   This is not to suggest that the authors of the book claim that amassing this body of empirical evidence would ineluctably lead to the adoption of racially equitable policies. The purpose of this Essay is to ask, what else is needed to move forward from this foundational piece?

that challenge the prevailing colorblind framework. This part also considers the authors' work in light of the new literature on cognitive bias, which includes an array of new facts about how the brain operates and processes racial difference. Even when we aspire to take no account of race, it turns out that our brains function to do so beneath the level of our conscious awareness. Thus, social and cognitive science together reveal the bankruptcy of the colorblind framework and conclusively establish the fact of persistent institutional and cognitive processes that reenact racial inequality and reinscribe race. Yet, as I argue, this empirical evidence alone is unlikely to cause the jettison of cultural deficit models.

In Part III, I interrogate why the prevailing myth of colorblindness can and often does resist empirical interventions. The debate over the role of race in the devastation of Katrina is a window that reveals the impediments to dislodging the colorblind view. I contend that one significant barrier derives from the racial frames through which we perceive facts. Frames or frameworks refer to what lies between the facts and our perceptions—the mediating structures that allow us to make sense of the world.[23] This mediating architecture determines what facts "make sense" as well as what sense to make of the facts. My engagement with the idea of framing here is focused specifically on issues of race and racial framing. By racial frames I mean the conceptual structures at both the macro (societal) and the micro (cognitive) levels through which we consciously and unconsciously process experiences and information that implicate race. These frames are not static and, in fact, must respond to new information and epic events. Nevertheless, the book's demonstration of the flaws in the colorblind paradigm can only partially disrupt prevailing accounts that attribute racial inequality to Black cultural dysfunction, because the preexisting frames that instantiate the cultural model are so embedded, "natural," and easily activated. These frames must be unpacked and contested in order to move to the more empirically grounded understanding of racial inequality—the reframing—the authors so vigorously urge.

Finally, I consider the interventions that the authors offer in their conclusion to reverse the pattern of White accumulation and Black disaccumulation they compellingly outline in the text. The authors acknowledge that the social and economic policies they advocate are "neither complete . . . [n]or wholly new" (245), and that there is likely to be significant political resistance by Whites (247-48). I probe the nature of that resistance here. I suggest that these proposals, like so many similar prescriptions in the past, would ameliorate many of the social ills that have plagued not only Blacks but also the economically disadvantaged of all races. Nevertheless, there are particular racial frames that impede both the realization of these programs and that further explain why race-neutral

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23.   *See infra* notes 63-68 and accompanying text.

interventions alone will not eradicate the inequality that the book depicts and explicates.

I

THE PROJECT

A. About Method: Revisiting the Black/White Binary

At the outset, *Whitewashing Race* makes a critical methodological choice to focus almost exclusively on racial subordination as reflected by dichotomous constructions of Blackness and Whiteness, a binary that has been called the Black/White paradigm. Legal scholars have critiqued this racial frame as one that tends to view racial subordination solely through the experience of Blacks, and consequently obscures the ways in which subordination is experienced differently across racial groups. Clearly racial formation—the processes by which racial categories come into being and are maintained[24]—varies across time, geography, and peoples. As the authors of *Whitewashing Race* openly acknowledge, in the United States "the color of race and racism has never been monochromatic," particularly as the contemporary racial landscape is complicated by changing racial demographics in which the Black population is decreasing and interracial couplings produce contested racial identities outside familiar categories (x). Nonetheless, the authors choose to articulate their critique of colorblindness through an analysis of Black/White inequality (x-xi).

They justify this "Black and White" frame on two primary grounds (x). They first contend that their project responds to conservative racial politics that are largely articulated in Black and White terms. They note that Latinos and Asians, for example, appear in the dominant racial discourse primarily as disciplinary examples invoked in opposition to, and in condemnation of, Blacks (x). For example, Latinos, particularly immigrant workers, are lauded for their quiescence and hard work, in contrast to Black workers who are viewed as contentious and unmotivated. Asians are said to exhibit both a salutary work ethic and greater intellectual capabilities than Blacks.[25] Asian and Latino racial identities, while still subject to highly negative stereotypes, are nevertheless invoked to reinforce the story of Blacks' failure to assimilate. Asian and Latino racial experiences, then, are not engaged on their own terms, but are primarily mechanisms to reinforce Black inferiority and, by logical extension, the fact of White superiority.

However, that the prevailing view of race is grounded in Black and White does not necessarily legitimate the authors' choice, particularly

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24. OMI & WINANT, RACIAL FORMATION IN THE UNITED STATES FROM THE 1960S TO THE 1990S 55-56 (2d ed. 1994).

25. WALDINGER & LICHTER, HOW THE OTHER HALF WORKS: IMMIGRATION AND SOCIAL ORGANIZATION 160-68 (2003).

where, as here, the crabbed, dominant conception of race is precisely what is being contested. The authors therefore offer a second, more substantive rationale for working through the Black/White paradigm:

> [T]he Black/White binary persists as a feature of everyday life and is crucial to the commonsense understanding of racism. . . . [W]hiteness in the United States has never been simply a matter of skin color. Being White is also a measure, as Lani Guinier and Gerald Torres put it, "of one's social distance from Blackness." In other words, Whiteness in America has been ideologically constructed mostly to mean "not Black."
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> The increasing numbers of Asians and Latinos in the United States and the development of a Black middle class have not changed this ideological construction of Whiteness. . . . [The] dichotomy [is] not between Black and White, but between Black and nonBlack (*x-xi*).[26]

By explicitly focusing on Black/White inequality, the authors implicitly challenge the critique that the Black/White paradigm is a faulty description of racial hierarchies in the United States.[27] Their approach accepts that the Black/White paradigm may not accurately reflect racial demographics, because, in part, it does not seek to do so. Instead, it describes racial power.[28]

Within the Black/White binary that undergirds prevailing social relations, "Black" and "White" signify ideological concepts and do not operate as phenotypic markers, nor even as racial categories in the sense of creating socially constructed communities. Rather, Black and White are relationally constructed. Whiteness is the position of relative privilege marked by the distance from Blackness; Blackness, on the other hand, is a legal and social construction of disadvantage and subordination marked by the distance from White privilege.[29]

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26. The authors here are quoting LANI GUINIER & GERALD TORRES, THE MINER'S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY 224 (2002).

27. This critique of the Black/White paradigm is just one of many. *See, e.g.*, Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 CALIF. L. REV. 1213, 1220 (1997) (asserting the prevailing textbook paradigm of race as Black and White both marginalizes and distorts the experiences of Latino/as). For a survey and evaluation of additional critiques, *see generally* Devon W. Carbado, *Race to the Bottom*, 49 UCLA L. REV. 1283, 1305-12 (summarizing and evaluating variations of the critique). My discussion of the Black/White paradigm here is based on conversations with my colleagues Devon Carbado, Professor of Law, UCLA School of law and Saul Sarabia, Director of the Critical Race Studies Concentration. We are collectively undertaking a discussion of this question in a work in progress entitled, "Reconsidering the Black/White Paradigm."

28. As Charles Mills explains, "[w]hiteness is not really a color at all, but a set of power relations." CHARLES W. MILLS, THE RACIAL CONTRACT 127 (1997).

29. Lewis Gordon provocatively characterizes the two dominant principles of racist ideology as (1) be White, but above all, (2) don't be Black. *See* Lewis R. Gordon, *Critical "Mixed Race"?*, 1 SOC. IDENTITIES 381, 389 (1995).

This is not to say that "Yellow," "Red," and "Brown," are not also oppositionally positioned vis-à-vis Whiteness. Rather the point is that "Yellow," "Red," and "Brown," are often explicitly situated within the racial frames of "Black" and "White." Indeed, "Black" or "colored" have historically functioned within the law to include Chinese and Japanese immigrants, and others who have struggled to escape the chains of Blackness.[30] At the same time, "White" has expanded and contracted to both include and exclude Mexicans[31] and Arabs.[32] The real binary, then, is Black/not Black.[33] Thus, by focusing on Black/White inequality, *Whitewashing Race* does not uncritically affirm the Black/White paradigm that excludes or marginalizes the experiences of other racially subordinated groups, but instead self-consciously chooses to frame its analysis within this dominant view.

That said, it becomes important to situate this work, and indeed to situate any work that focuses on a binary racial comparison, in the context

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30.   *See* Carbado, *supra* note 27, at 1307-09.

31.   For a classic example of the law's hesitation in locating "Mexican" along a racial spectrum, see *Hernandez v. Texas*, 347 U.S. 475 (1954). The state of Texas sought to justify the exclusion of Mexicans from grand jury service on the grounds that Mexicans were not covered by the Equal Protection clause which contemplated only two racial groups—Black or White. While the court ruled that the state's practices were unconstitutional, it declined to specifically answer whether Mexican Americans constituted a distinct racial group. The Court held that the challengers were a protected group within the meaning of the Fourteenth Amendment because they belonged to a class distinguishable on some basis "other than race or color" that nevertheless suffered discrimination as measured by "the attitude of the community." *Id.* at 475. On the racial ambivalence of Mexicans and the slippage between white and non-white identity, see Laura E. Gomez, *Off-White in an Age of White Supremacy: Mexican Elites and the Rights of Indians and Blacks in Nineteenth-Century New Mexico*, 25 CHICANO-LATINO L. REV. 9 (2005).

32.   *See* John Tehranian, Note, *Performing Whiteness: Naturalization Litigation and the Construction of Racial Identity in America*, 109 YALE L.J. 817, 837-41, 843-45 (2000) (reviewing the contradictory treatment of Arabs as White and as non-White in immigration and anti-discrimination laws).

33.   Another reformulation suggests that it is appropriate to think of the dominant binary as White/not-White. *See, e.g.,* JOEL OLSON, THE ABOLITION OF WHITE DEMOCRACY 25-30 (2004). The condemnation of racial dualisms per se misapprehends the problem; the issue is the "ahistorical uses of dualisms." *Id.* at 26. The White/non-White polarity that Joel Olson traces to the work of W.E.B. DuBois is revealed through more current analyses that seek to complicate or go beyond dualisms. For example, in NEIL FOLEY, THE WHITE SCOURGE: MEXICANS, BLACKS, AND POOR WHITES IN TEXAS COTTON CULTURE (1997), Foley provides a lucid dissection of Mexican workers' conflicted position within race and class hierarchies of pre-WWII Texas. Foley describes how Mexican workers resisted the concerted efforts of White workers to racially marginalize them by fighting against White domination, while simultaneously distancing themselves from Blacks. *See id.* at 41. While one might describe Latino status as neither White nor Black, as Olson points out, this history actually further "demonstrates the value of the bipolar model rather than its irrelevance." *See* OLSON, *supra* note 33, at 26. The problem is not simply that the extant racial categories did not accurately capture Mexican workers' cultural experience, but rather that these workers either had to prove they deserved inclusion as Whites or accept subordinate racial status. *See id.* at 26-27. In some ways, this pressure to disassociate from blackness reflects a racial power dynamic that is still very much alive.

of its role in the racial dialogue.[34] Not all projects warrant condemnation for choosing to employ a Black/White analytic framework. On the other hand, it does not follow that any project that focuses on Black/White relations is immune from the criticism that this binary obscures rather than reveals current racial dynamics. How then do we tell the difference?

In part, the answer must begin with an analysis of the purpose for which the comparison is being deployed. Here the project is to attack colorblindness, a reductionist view of race and racism that is intimately linked to asserting a relationship between racial inequality and social pathology, of which Black people are the paradigm case.[35] While racial subordination impacts all persons, and particularly all persons of color, the point the authors make is that, given the strength of the Black/not Black paradigm, it is crucial to focus on Blackness, precisely because it is materially and phenomenologically defined relative to White advantage.

That said, the success of the bigger project—to expose the myth of colorblindness—depends upon engagement with other analyses of the experiences of Asians, Latinos, and indigenous peoples. To further expose the myth the authors seek to dislodge, these analyses should not only identify important commonalities and differences between groups, but should also clarify why everyone has a stake in eliminating racism.[36] Mapping the interlocking ways in which racial subordination functions both within and among groups remains central to shifting the national discourse about race and racism.

B.   Scapegoating Culture

Why has racial inequality continued to be an intractable problem? *Whitewashing Race* rejects the prevailing colorblind wisdom that the answer is culture (5) and focuses instead on the structural dimensions of inequality.

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34.   For example, one might argue that a work focusing on racial dynamics as it pertains to Mexicans and Mexican Americans is functioning within a binary as well, albeit a different one.

35.   *See generally* RODERICK A. FERGUSON, ABERRATIONS IN BLACK: TOWARD A QUEER OF COLOR CRITIQUE (2004); NATHAN GLAZER, AFFIRMATIVE DISCRIMINATION: ETHNIC INEQUALITY AND PUBLIC POLICY (1987).

36.   The importance of comparative racial analysis to rebut key arguments in the colorblind myth is demonstrated by the way data on Asian Americans entirely undermines the argument that inequality in Black earning power is the product of lower Black test performance. As the authors of WHITEWASHING RACE point out, Asian Americans' comparatively higher test scores correlate with higher college attendance and higher completion rates than Whites. However, Asian Americans earn lower wages than Whites with the same level of schooling. This suggests that something other than test scores is functioning to produce unequal labor market success. That "something" is race and racism, though societal norms of anti-discrimination and racial equality may obscure that fact. (120-21).

1. Foundations of Racial Realism

Whitewashing Race begins by dissecting the essential tenets of color-blind understandings of race and racial inequality. This narrative, which the authors call "racial realism,"[37] tells the following story (1-2): Underlying the colorblind conception is a belief that the civil rights movement has achieved its goals and that laws protecting civil rights have largely ended racial inequality and discrimination. To the extent that residual racial inequality remains, it is not because of the persistence of racism or the current effects of past discrimination, but because Blacks have failed to fully exploit their opportunities and, in fact, seek to benefit from opportunities they have not earned. Racial inequality, therefore, is the result of Black failure, in particular Black cultural pathologies. This view renders race-conscious remedies like affirmative action unnecessary and illegitimate, given that the United States is evolving to a colorblind society. Public discourse over race and racism (to the extent that it occurs) has tended to lock in and stalemate on the issue of affirmative action and the question of individual guilt (5).

In tracing the "emerging racial paradigm" (5), the authors of *Whitewashing Race* note that racial realism has achieved intellectual legitimacy through a number of books by authors spanning the ideological gamut. These include self-declared liberals like Jim Sleeper,[38] conservatives like Dinesh D'Souza, and others like Stephen and Abigail Thernstrom, who claim neither appellation, but whose support comes from clearly identified conservative institutions.[39] These "racial realists" have not created this particular racial narrative but "have codified it." (8). Although racial realism conservatively disparages government intervention more broadly, this discourse locates the problem of racial inequality within a "false dichotomy: either we have racial prejudice or we have Black failure." (9). Thus, while the notion of inherent biological racial hierarchies has fallen into

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37. There is considerable irony in this usage of the term "racial realism." The term has been a central part of Derrick Bell's work and in that context denotes the intransigent and, indeed, permanent character of racism. According to Bell, racial realism, like legal realism, rejects judicial formalism—a formalism that exclusively focuses on traditional anti-discrimination measures as the means of attaining racial justice. Racial realism argues that this quest for racial equality will be continually frustrated by forms of racial subordination that adapt to each new prohibition on discrimination. *See* Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363, 373-74 (1992).

38. Jim Sleeper contends that the "reality of social class divisions [ ] are arguably more fundamental than racial divisions in perpetuating social injustice." (5) (citing JIM SLEEPER, THE CLOSEST OF STRANGERS: LIBERALISM AND THE POLITICS OF RACE IN NEW YORK 160 (1990)).

39. The Thernstroms claimed a strong dedication to liberalism until their disillusionment with what they assert to be maltreatment by the civil rights establishment and unprincipled capitulation to "political correctness." They now serve as board members on leading right-wing think tanks, like the Manhattan Institute and Linda Chavez's Center for Equal Opportunity. Their work is largely supported by conservative foundations like the John M. Olin Foundation. *See* Adam Shatz, *The Thernstroms in Black and White: the Story of how Two Dedicated Civil Rights Activists Became the First Couple of the Crusade Against Racial Preferences*, AM. PROSPECT, Mar. 12, 2001, at 32.

disfavor, at least in public discourse,[40] the more "enlightened" view of racial realists is that the fault lies in deficient cultural practices. Under this view, the problem is not biology, but culture.[41]

Whitewashing Race contends that racial realism is grounded in two fundamental conceptual errors. The first is the definition of racism as attitudinal bias only. Racial realists rely on survey data as assessed by opinion polls to argue that the decline in the number of Whites who believe in racial stereotypes demonstrates the declining force of racism (9). This view suggests that gains in the elimination of racial inequality between 1940 and 1970 were produced by shifts in popular opinion, not government intervention into the market in the form of civil rights laws. This argument overstates the decline in negative racial attitudes, as many studies document the persistence of tenacious stereotypes (39-40). Furthermore, racial realism relies upon an obsolete understanding of racism which is "better understood as a sense of group position" (43)—a position or racial privilege that is maintained through routine, normal, and implicit practices. Thus, while Blacks gained as the economy shifted from agriculture to manufacturing and Black workers began to break through racially segregated labor markets, at the same time Whites gained even more, with substantial percentages moving into middle class status after World War II. The result was that the absolute income gap between White and Black workers almost doubled between 1940 and 1960—the same period in which racial realists assert that racism declined—and that the Black-White unemployment ratio actually rose with the education of Blacks (70-73). The picture then is one

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40. An important countertrend regarding the relationship between race and genetics has emerged. *See generally* TROY DUSTER, BACKDOOR TO EUGENICS (2d ed. 2003) (describing and criticizing government-mandated, mass screening programs to identify carriers of genetic disorders). Duster has noted that while the Human Genome Project has revealed that intraracial genetic difference is often greater than interracial genetic difference—implying that race has no genetic basis—recent scientific developments have associated specific genetic clustering with certain groups. This links genes once again to race, not because genes are actually racially marked, but because researchers are mapping genetic differences onto socially constructed racial categories. *See* Sally Lehrman, *The Reality of Race*, SCI. AM., Feb. 2003, at 32-33 (describing Duster's analysis). Thus, while it might be correct to say that as a society we have (publicly) discarded a conception of race as a genetically determined hierarchy of White over Black, it is interesting to consider the simultaneous promulgation of social-constructionist conceptions of race—in which race is indeterminate and fluid—with the rise of scientific interventions that both establish race as a category and re-constitute it as genetically related.

41. Sociologists Lawrence D. Bobo and Ryan A. Smith describe this view as "laissez-faire racism," and distinguish it from forms of racism existing prior to *Brown*:

> Laissez-faire racism blames blacks themselves for the black-white gap in socioeconomic standing and actively resists meaningful efforts to ameliorate America's racist social conditions and institutions. These racial attitudes continue to justify and explain the prevailing system of racial domination, even while a core element of racist ideology in the United States has changed. Jim Crow racism was premised on notions of black biological inferiority; laissez-faire racism is based on notions of black cultural inferiority. Both serve to encourage whites' comfort with and acceptance of persistent racial inequality, discrimination, and exploitation.

Lawrence D. Bobo & Ryan A. Smith, *From Jim Crow Racism to Laissez-Faire Racism: The Transformation of Racial Attitudes*, in BEYOND PLURALISM 186 (Wendy F. Katkin et al. eds., 1998).

of gradual linear progress driven by changes in reported attitudes—reports which often merely reflect expected societal norms. Dismantling racial barriers was (and is) intimately tied to changes to the legal, political, and economic infrastructure that sanctioned and maintained racial discrimination.

Secondly, racial realists contend that racism is largely inefficient and will be driven out by competition (10). Because Black deficits in education, job skills, and experience produce lower economic attainment and stability for the entire marketplace, society will naturally act to rectify these deficits. Thus, because *Brown v. Board of Education* already ended state-sponsored discrimination, skill levels will equalize and the market will function in a nondiscriminatory way (10). Facts belie this simplistic story. While the late 1960s and early 1970s saw significant increases among Black workers in white collar occupations, particularly in the public sector where government implemented affirmative action and other equal opportunity policies, these gains were sharply arrested in the 1980s. During the Reagan years, the authors point out that while unemployment rose for all Black men relative to White workers, by 1980 college educated Black men were nearly three times as likely to be unemployed as college educated White workers (80-83). At a time when skills of Blacks were increasing, Black men not only made fewer gains, their disadvantages increased according to certain measures. Indeed, there is a widening gap between Black and White families with similarly low levels of education (82). Evidence that increased education achievements do not ineluctably lead to gains for Blacks counters the notion that efficient markets will solve discrimination and that inequality is entirely a function of differentials in skill levels.

While not all racial realists subscribe to the self-correcting depiction of the market or believe that the law had little to do with gains in Black economic progress, these precepts contribute to the crucial point of convergence in racial realism: the conclusion that ongoing inequality and persistent Black poverty are not the result of racism but of Blacks' antisocial behavior (10).[42]

2. Racial Realism Across the Ideological Divide: A Bridge Over Troubled Waters?

For the most part, conservatives have consistently resisted all forms of race-conscious remediation of racial inequality as both unnecessary and unconstitutional.[43] While this conservative campaign has not completely

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42. According to the authors of WHITEWASHING RACE, "[i]t clearly makes much more sense, [White racists] think, to look at the counterproductive and antisocial choices of poor blacks—choices that lead young women to have babies out of wedlock, young men to commit crimes, and young men and women drop out of school." (10).

43. It is interesting to note, however, that it was Nixon—a Republican president, not noted for his progressive politics—who actually pursued the modest forms of affirmative action inaugurated by

succeeded, efforts to cast affirmative action as an extraordinary and unjus-
tified practice have severely eroded the ideological and political foundation
for pursuits to rectify racial disparity.[44]

This conservative agenda should not surprise. What is more troubling
is the apparent advocacy of the colorblind paradigm by self-identified lib-
erals and progressives, as well as a number of Blacks not officially on the
Bush administration payroll. Liberal racial realists, such as Orlando
Patterson—renowned Black sociologist—are cases in point. While
Patterson argues that hereditarian arguments about intelligence have no
validity, he contends that the Black/White skill gap that produces differ-
ences in real wages is caused by "the subcultures and modes of socializa-
tion of children into their communities."[45] Ironically, the case against
biological inferiority is made by invoking cultural inferiority and dysfunc-
tion. This argument has many iterations. On the right, Thomas Sowell es-
pouses the vitriolic version: it is Blacks' fidelity to "redneck" culture that
explains their plight.[46] Bill Cosby, a prominent Black cultural icon, has
utilized different tropes to similarly indict the Black "underclass" for repli-
cating the same set of maladaptive cultural practices.[47] The point is that, as

Kennedy. *See* Thomas J. Sugrue, *Affirmative Action from Below: Civil Rights, the Building Trades, and
the Politics of Racial Equality in the Urban North, 1945-1969*, 91 J. AM. HIST. 145, 145 (2004) (noting
that Kennedy's issuance of the executive order authorizing affirmative action was actually "vaguely
defined" and that it was six years later in 1969 that Nixon actually implemented it through the
announcement of the Philadelphia Plan that opened jobs in the white-dominated construction industry),
available at http://www.historycooperative.org/journals/jah/91.1/sugrue.html.

44.   The legal terrain has been narrowed, with only certain justifications and certain methods
passing the filter of strict scrutiny applied by the courts. *See, e.g.,* Gratz v. Bollinger, 539 U.S. 244
(2003) (holding that Michigan's undergraduate admissions program that took account of race in a point
system was unconstitutional); Grutter v. Bollinger, 539 U.S. 306 (2003) (holding the law school's
admission program that took account of race in holistic review process designed to produce a critical
mass of underrepresented students was lawful).

45.   ORLANDO PATTERSON, THE ORDEAL OF INTEGRATION 144 (1997). In other words,
Patterson's argument suggests that because the explanation is not genetic, it must perforce be cultural.
While Patterson is Black, like other researchers, he refutes scholars who claim a genetic basis for racial
inferiority by pointing to studies that show the higher IQ scores of Black children borne to White
mothers, even after controlling for the mothers' IQ. *See id.* at 145. Apparently, Black mothers burden
their children with negative cultural signals that impede their intellectual development.

46.   Thomas Sowell, *Crippled by Their Culture*, WALL ST. J., Apr. 26, 2005, at A14.

47.   At a speech on the fiftieth anniversary of *Brown v. Board of Education*, 347 U.S. 483 (1954),
Cosby excoriated lower-class Blacks for high drop out rates ("50 percent drop out rate . . . these people
are fighting hard to be ignorant"); promiscuity ("women having children by five, six different men");
poor parenting skills ("They're buying things for the kid. $500 sneakers, for what? They won't buy or
spend $250 on Hooked on Phonics."); style of dress ("Isn't it a sign of something when she's got her
dress all the way up her crack . . . and got all kinds of needles and things going through her body.");
choice of names ("With names like Shaniqua, Shaligua, Mohammed and all that crap and all of them
are in jail."); failing to speak proper English ("It can't speak English. It doesn't want to speak
English. . . . I don't know who these people are."); and lack of ambition ("[T]hey're just hanging out in
the same place, five or six generations sitting in the projects when you're just supposed to stay there
long enough to get a job and move out."). Bill Cosby, Speech at the Fiftieth Anniversary
Commemoration of the Brown vs. Topeka Board of Education Supreme Court Decision (May 17,
2004), http://www.eightcitiesmap.com/transcript_bc.htm.

the book argues, even self-identified liberals have embraced the racial realist arguments that culture rather than race explains inequality, thereby dismissing racism as a salient force in shaping the structures of wealth and power in our society.[48]

But what is the appeal of these arguments to liberals and even some progressives? Perhaps the old dialogue on race and racial inequality no longer seems to capture current conditions, which are indeed more complicated than White over Black. But if our society is indeed increasingly racially diverse,[49] why does the increasing complexity of racial identity not argue for the heightened salience of race rather than its erasure?[50] Perhaps it is because traditional organizations of liberal political power, like labor unions and the Democratic Party, have made little or no resistance to the well-funded and concerted conservative effort to shift the dialogue on race and the role of state. The best that could be mustered was "Mend it, Don't End It," or the admonition of the Democratic Leadership Conference to move away from advocating for racial justice.[51] Even within the left, some progressives decry the characterization of the struggle for equality in terms of race rather than other factors, such as class.[52] While liberals and

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48.   Of course, the labels "liberal" and "conservative" are legendarily imprecise. I invoke them here in two senses: first, as a simple reflection of how people self-identify, and second, as rough depictions of the differing views on the proper role of government. At some point, however, it is clear that the shift from liberal to conservative or neo-conservative can occur without explicit acknowledgment. Authors often self-identify as liberals to legitimate their "culture-not-racism" arguments. As a marketing tool, this technique is unmatched as the media is endlessly fascinated by the proverbial man bites dog story. *See, e.g.*, Stuart Silverstein, *Professor Assails Anti-Bias Program*, L.A. TIMES, Nov. 15, 2004, at B1 (reporting that Richard Sander's attack on affirmative action as harmful to Black law students came from "an unlikely candidate," given Sanders' self-description as a "pragmatic progressive" who supported John Kerry). In referring to his biracial son as one of the factors motivating his research, Sanders employed another common trope of claiming a personal connection to racial minorities to establish one's credibility to propound theories of race and racism. *See id.*

49.   As the authors put it, "America is now a nation so racially complicated that one black person can be secretary of state, while another is racially profiled or sodomized in a New York City police station, all in the same historical moment." (x).

50.   In other words, why were liberals not beguiled by a title like "the changing faces of racism" rather than "the end of racism"? *See, e.g.*, D'SOUZA, *supra* note 20.

51.   Claire Jean Kim, *Managing the Racial Breach: Clinton, Black-White Polarization, and the Race Initiative*, 117 POL. SCI. Q. 55, 70 (2002).

52.   As historian Robin D.G. Kelly writes, some progressives maintain that race is not the correct conceptual grounding for intervention:

   While the Right blames personal behavior, weak morals, and a pathological culture for the current state of black urban life, a growing posse of white self-proclaimed "progressives" blames the Black Liberation movement, along with other movements seeking to emancipate oppressed ethnic groups, women, and sexual minorities, for destroying the Left. With the implosion of the Left went our only opportunity to challenge three decades of conservative rule and deleterious social policy. . . . [A]ccording to critics such as Todd Gitlin, Michael Tomasky, Eric Hobsbawm, and others, the Left has lost touch with its Enlightenment roots, the source of its universalism and radical humanism, and instead has been hijacked by "identity movements" that have led us into a blind alley where universal demands are cast aside in favor of narrow battles around race, ethnicity, gender, and sexuality. . . . In the name of radical universalism, [these claims represent a] repackag[ing of] the old socialist idea that

progressives are divided on the issue, the field of popular opinion and po-
litical discourse about race is left open to domination by conservative ideo-
logues who are now essentially uncontested in their claim that race is no
longer salient.

Herein lies the rub. The vitality of colorblindness across the ideologi-
cal divide suggests that colorblindness has shaped a now strongly held con-
sensus about how the facts of racial inequality should be interpreted.
Colorblindness narrates a very familiar racial script that supercedes party
loyalty, notions of the common good—the idea that the social costs of sys-
temic exclusion are broad societal burdens—and, in some ways, even em-
pirical evidence. The next Part considers the empirical case against
colorblindness as a predicate to analyzing why the facts have not hereto-
fore been persuasive.

II
THE EMPIRICAL CHALLENGE TO RACIAL REALISM

In *Whitewashing Race*, the authors dispute the racial realist view that
racial inequality is not the product of racial subordination but is the self-
inflicted wound of a dysfunctional Black culture. As the authors explain,
the deficient-culture thesis is linked to the myth of the declining signifi-
cance of racism in mainstream U.S. consciousness. The analysis of race
through a more empirically driven framework, rather than by conflating
attitudes with institutional practices, reveals a substantial body of evidence
suggesting that both our institutional practices and our cognitive processes
are infected with racial bias. The focus of the analysis is not individual in-
tent but relative group position.

A.   Matter Over Mind

The authors refute the empirical basis for racial realism, in part by
contesting the metric by which racism is measured; they contend that ra-
cism cannot be confined to intentional bias, but is also manifested in struc-
tures of wealth and power. They enlist a robust social science literature that
documents the persistence of "durable racial inequality" as measured by
significant gaps between Blacks and Whites in family income, wages,
wealth, housing, and health care (13-14). These inequalities are not the
product of individual choices but rather are the "long-term effects of labor

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class, unlike race, gender, or ethnicity, constitutes the only basis for "true" progressive
politics. . . .
    . . . [But this] Gitlin/Tomasky school of thought fails to see how class is lived through
race and gender. Their failure to see social movements focused on race, gender, or sexuality
as essential to the emancipation of the whole remains the fundamental stumbling block to
building a deep and lasting class-based politics and a new multiracial, grassroots movement
in our crisis- ridden eities.
ROBIN D.G. KELLEY, YO' MAMA'S DISFUNKTIONAL! 11 (1997).

market discrimination and institutional practices that have created cumulative inequalities by race." (22). As the authors explain, "Whites have gained or *accumulated* opportunities, while African Americans and other racial groups have lost opportunities—they suffer from *disaccumulation* of the accoutrements of economic opportunity." (22).

The authors' key insight here is that intergenerational accumulation for Whites directly corresponds to intergenerational disaccumulation for Blacks. Just as investments compound in value over time, disinvestments compound disadvantage. Home ownership provides a particularly salient example (23). The massive gap in wealth, as measured by median net worth, between Whites and Blacks is by and large the result of the racial gap in home equity.[53] Individual home ownership is the largest source of individual wealth. Because of legal and informal barriers to Black owner-ship, Blacks enter the market without the advantage of economic security generated by the accumulated equity of prior generations. They find it more difficult to secure a mortgage, and the housing they purchase is usu-ally worth less. Residential segregation ensures that values of homes owned by Blacks remain depressed relative to comparable White homes; once White flight begins, housing prices often decline. Because Blacks pay higher mortgage interest rates—they are typically assessed as a higher risk—and acquire less valuable property, they accumulate less equity (23). Their neighborhoods thus appear financially riskier, less stable, and less attractive to lenders, both commercial and residential. Disinvestment in Black neighborhoods results in abandoned buildings, fewer amenities, and overall a lower property tax base (23-24). These incremental decisions coa-lesce to produce a downward spiral—the accumulation of disadvantage—that reproduces racial inequality, reinforced by the logic of the market but relatively independent of overt racist intent (23).

The inverse mirroring of White accumulation and Black disaccumula-tion is not a new phenomenon. Historically, even New Deal policies in-tended to reduce poverty and provide a minimum social floor for the working class produced racially disparate effects and operated to entrench White advantage. For example, the three central pillars of the New Deal—the Social Security Act, the Wagner Act, and the Federal Housing Act—reinforced patterns of racial stratification by excluding from coverage do-mestic and agricultural laborers, who were overwhelmingly non-White

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53. This significance of the home equity gap can hardly be overstated. Differential access to wealth also affects the ability to weather economic dislocations, which stands the Black middle class on much more fragile footing than their White counterparts. The authors cite Dalton Conley in this regard:
> One may conclude that the locus of racial inequality no longer lies in the labor market, but rather in class and property relations that, in turn, affect other outcomes. While young African American men may have the opportunity to obtain the same education, income, and wealth as whites, in actuality, they are on a slippery slope, for the discrimination their parents faced in the housing and credit markets sets the stage for perpetual economic disadvantage. (21)
(citing DALTON CONLEY, BEING BLACK, LIVING IN THE RED 152 (1999)).

(27). The exclusion of domestic workers from unemployment compensation in particular was a major factor in their increased over-representation in the welfare rolls (29). The Wagner Act, which governed organized labor, did not include anti-discrimination provisions, despite the efforts of Black leaders to add such protections into the statute (30). The legalization of the closed shop—the provisions in labor contracts that restricted hiring to union members—and the proscription on strikebreaking ensured that Black workers had access only to those jobs that Whites permitted them to occupy. Blacks were excluded from skilled labor by White unions, and could not lawfully undertake any activities that might break the unions' hold on jobs. Consigned to low-wage, unskilled labor, Blacks were the group most vulnerable to layoffs (30).

With the prioritization of White interests statutorily inscribed, the post-World War II economic boom inaugurated a dramatic decline in White poverty rates and a corresponding rapid increase in the Black/White wealth gap, resulting, in part, from discrepant access to employment and homeownership. The GI Bill, which facilitated access to jobs, training, education, and housing for returning war veterans, further perpetuated racially divergent access to government benefits (75). Black veterans did not secure the same gains as White veterans since many were excluded from job training programs and segregated institutions of higher learning and instead were funneled into low-wage, unskilled jobs (76-78).

These factors, and a host of other rich depictions of structural racism in *Whitewashing Race*, rebuke the assertion that race is no longer a salient force in U.S. society just because most Whites do not believe that it is.[54] As the authors point out, what is striking is the gap between the attitudinal shift towards egalitarianism and the lack of support for governmental intervention to achieve equality (41-43). Contemporary White hostility to "racial preferences"—a common but reductive label for affirmative action—ignores this long history of White racial preference, culminating in these twentieth-century examples of how facially neutral laws perpetuate the White-Black hierarchy (25).

The mass of evidence of racial inequality presented throughout the book—in wealth accumulation, education, criminal justice, employment, and disenfranchisement (both literally and constructively)—demonstrates that intentionality as the touchstone of discrimination profoundly misses the mark. By revealing the logic and perpetuation of structural inequality, the authors demonstrate that inequality reproduces itself, even in the absence of overt discriminatory intent, and even within a society that publicly embraces racial-equality norms. Turning attention to structure—most

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54.   Nor is it necessarily persuasive that some Black, Latino and Asians hold to the colorblind view. The point is that what people believe about the force of racism is less critical that the entrenched nature of structural racial advantage and disadvantage.

particularly, the political, economic, and social ordering of society—to reveal the perpetual reinscription of racial hierarchy crucially reiterates the basic architecture of the American racial order. *Whitewashing Race* stresses that it is not what is in the mind, but what is built into the very fabric of our social institutions that matters.

B.   Mind Over Matter

As it turns out, the story is more complicated still. *Whitewashing Race* does not explicitly engage with cognitive science and its findings about the brain's reaction to various stimuli and complex social categories, such as race. This evidence complements and reinforces the empirical case against colorblindness. Cognitive science reveals that what is in our minds does matter very much, even when we are not aware. Subconscious biases, which often directly contradict our self-reported measures of bias, are not only significant and nearly omnipresent; they affect our behavior. That is, opinion polls only tell us what we think we believe about our racial biases, but measurements of our cognitive processes reveal that racial biases are operating even when we tell ourselves that they are not.

As the well-developed body of cognitive science literature has demonstrated, even subliminal exposure to visual cues like a Black face are enough to trigger recognition of a target as Black, and for that recognition itself to produce a reaction.[55] Thus, as Jerry Kang describes it, "[racial] schemas operate not only as part of a conscious, rational deliberation. . . . Rather, they also operate automatically—*without conscious intention* and *outside of our awareness* (an 'automatic process')."[56] The predicate for this observation is not simply that racism is and can be unconscious; it is, more specifically, that our brains respond in a particular way to what we see, even when we do not realize that we have seen it. This is not unique to racial perception: cognitive structures are simply a part of how our brains function. Racial recognition is part of the

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55.   The classic experiment here involves exposing subjects in two groups to subliminal images while performing a task at a computer. At various intervals, the experimental group was exposed to subliminal images of a Black male face, while the control group was exposed to images of a White male face. The task was relatively rote—counting whether the number of circles on the screen was even or odd. After 130 iterations of the task, the computer was programmed to display the message "F11 error: failure saving data. . . . You must start the program over again." The reactions of the subjects were recorded by a hidden video camera. When the tapes were reviewed and coded by evaluators, the reactions of the group exposed to the Black faces were considerably more hostile and angry than the control group. What is particularly notable about the experiment is that none of the subjects was aware that they had seen pictures of any faces, Black or White. This suggests that the activation of a negative stereotype had occurred, even though the subjects were not even aware that they had been exposed to it. Based on this and other experiments that have produced similar results, social cognition scientists describe this reaction as "automatic." *See* John A. Bargh et al., *Automaticity of Social Behavior: Direct Effects of Trait Construct and Stereotype Activation on Action*, 71 J. PERSONALITY & SOC. PSYCHOL. 230, 238-39 (1996).

56.   Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489, 1505-06 (2005).

routine cognitive process of categorization, and those categories are constructed, not by way of identification of features that mark the category, "but by means of prototypes, sets of particular exemplars, or 'idealized cognitive models.'"[57] These prototypes—or perhaps more accurately in the case of race, stereotypes—determine what we attend, what we ignore, what we remember, and what we forget.

While the contest over racial discrimination has frequently been articulated as a dispute over whether discrimination is caused by cognitive processes or institutional structures, the reality is that both are involved and are highly interactive. The account of racism offered by *Whitewashing Race*, which focuses on the accumulation of White advantage and corresponding Black disadvantage, and the conception of racism offered by cognitive science research on implicit bias upset the view of racism as the product of intentional conduct.
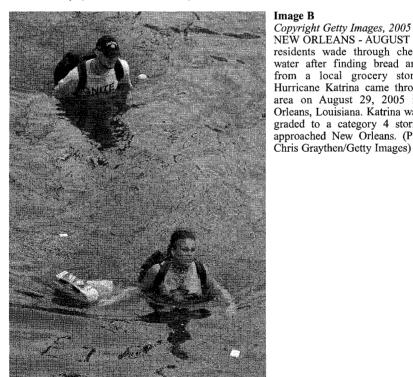
Moreover, combining structural analyses such as that offered by the book and the insights of cognitive science offers an interactive model that further rebukes the colorblind paradigm. If, as the authors explain, structural impediments to equality consistently place Blacks in subjugated social positions (because they are less educated, hold less rewarding jobs, etc.), individuals in society witness, rationalize, and ultimately reflect and justify these empirical realities through subconscious cognitive biases. Thus, for example, an employer's view of a Black applicant may be influenced by unconscious racialized associations between Black racial identity and inferior skills or other undesirable traits. This view of Blacks as a group is confirmed by their social position, which is partly determined by the structural exclusion and disadvantage that the book describes. In this way, inequality perpetuates itself and discrimination appears to be rational and normal. Colorblindness and racial realism are largely out of sync with these facts. The next Part further explores why this disjuncture does not necessarily weaken the grip of colorblindness as the predominant racial narrative.

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57.   Gary Blasi, *Advocacy Against the Stereotype*, 49 UCLA L. REV. 1241, 1255 (2002).

III
BEYOND THE FACTS

Image A *Copyright Associated Press, 2005*
A young man walks through chest deep flood water after looting a grocery store in New Orleans on Tuesday, Aug. 30, 2005. Flood waters continue to rise in New Orleans after Hurricane Katrina did extensive damage when it made landfall on Monday. (AP Photo/Dave Martin)

Image B
Copyright Getty Images, 2005
NEW ORLEANS - AUGUST 29: Two residents wade through chest deep water after finding bread and soda from a local grocery store after Hurricane Katrina came through the area on August 29, 2005 in New Orleans, Louisiana. Katrina was down graded to a category 4 storm as it approached New Orleans. (Photo by Chris Graythen/Getty Images)

Chris Graythen / Getty Images

A.   Evidence of Things Seen

I begin this Part with the now iconic photographs of New Orleans residents wading through chest-deep, fouled floodwater several days after the storm. What facts do the images convey? The first—call it "Image A"—depicts a young Black man carrying food supplies and a big Black bag; the other—call it "Image B"—shows a White man and woman, both of whom are carrying backpacks, and one of whom appears to be carrying food supplies.

Of course, as we now know, this is not how these images were factually represented in the press. Taken by two different photographers, the images were captioned in more explicit terms. The caption for Image A read: "A young man walks through chest deep waters after looting a grocery store in New Orleans." The caption for Image B read: "Two residents wade through chest-deep waters after finding bread and soda from a local grocery store after Hurricane Katrina came through the area." The caption for Image A, then, tells us that a crime has been committed; the caption for Image B describes a fierce, poignant struggle for survival.

Both the images and their respective captions appeared on Yahoo news on September 1, 2005 and almost immediately they stirred up significant controversy. People complained that the captions accompanying the images were racially suggestive: Black people "loot" and White people "find." Boston Globe correspondent, Christina Pazzanese, had this to say:

> I am curious how one photographer knew the food was looted by one but not the other. . . . Were interviews conducted as they swam by? Should editors, in a rush to publish poignant or startling images, relax their standards or allow personal or regional biases creep into captions and stories?[58]

Not everyone agreed that the images and captions reflected a racial problem. As one commentator put it:

> It's difficult to draw any substantiated conclusions from these photographs' captions. Although they were both carried by many news outlets, they were taken by two different photographers and came from two different services, Associated Press (AP) and the Getty Images via Agence France-Presse (AFP). These services may have different stylistic standards for how they caption photographs, or the dissimilar wordings may have been due to nothing more than the preferences of different photographers and editors, or the difference might be the coincidental result of a desire to avoid repetitive wording (similar photographs from the same news services variously describe the depicted actions as "looting," "raiding," "taking," "finding," and "making off"). The viewer also

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58.   Cited in Aaron Kinney, *"Looting" or "Finding"?*, SALON, Sept. 1, 2005, http://www.salon.com/news/feature/2005/09/01/photo_controversy/print.html.

isn't privy to the contexts in which the photographs were taken—
it's possible that in one case the photographer actually saw his
subject exiting an unattended grocery store with an armful of
goods, while in the other case the photographer came upon his
subjects with supplies in hand and could only make assumptions
about how they obtained them.[59]

For the most part, the controversy focused on a question of fact. Did
the Black person really loot the goods he was carrying? Did the White man
and White woman really find the food they were carrying? Indeed, the di-
rector of media relations at the Associated Press suggested that, as to
Image A, "he [the photographer] saw the person go into the shop and take
the goods . . . that's why he wrote 'looting' in the caption."[60] In other
words, the fact of the matter was that the Black man in Image A was a
looter.

On the other had, the photographer of Image B, Chris Graythen, main-
tained:

I wrote the caption about the two people who 'found' the items. I
believed in my opinion, that they did simply find them, and not
'looted' them in the definition of the word. The people were
swimming in chest deep water, and there were other people in the
water, both White and Black. I looked for the best picture. There
were a million items floating in the water—we were right near a
grocery store that had 5+ feet of water in it. [I]t had no doors. [T]he
water was moving, and the stuff was floating away. These people
were not ducking into a store and busting down windows to get
electronics. They picked up bread and cokes that were floating in
the water. They would have floated away anyhow.[61]

Putting to one side the credibility of these explanations, key questions
nonetheless arise. What did these images communicate? What were the
stories these photos told? How did they fit within the familiar racial script?
These questions ought not be answered solely with reference to the indi-
vidual intent of those who either took the picture or produced the accom-
panying interpretive text. Indeed, it is entirely plausible that had the photos
appeared without any captions, they would have been perceived in the
same way.[62] Strong associations between race and criminal behavior long

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59. *Loot Loops*, Snopes.com, Sept. 1, 2005, http://www.snopes.com/katrina/photos/looters.asp.
60. Kinney, *supra* note 58.
61. *Id.*
62. Franklin Gilliam, Jr. and Shanto Iyengar report that in one study of the relationship between
local television news stories on crime and public opinion, participants were shown an identical news
story under three different conditions: one group witnessed a version in which the perpetrator was
white; another group saw a version in which the perpetrator was black; and a third group viewed a
version in which there was no picture of the perpetrator. Following the screening, the participants
completed a questionnaire that asked them to recall some details about the story, including the race,
age, and gender of the suspect. The participants in the first, white-perpetrator group were less likely to

predate Katrina and are the basis for an extremely resilient stereotype that strongly associates Blackness with criminality.[63] Thus, while the underlying facts depicted within the four corners of the photographs appear to be virtually the same, the interpretations of what is going on are likely to be radically different. One shows us a criminal; the other shows us victims. As it turns out, the race of the subjects is a crucial cue in reading and making sense of the photographs.

B. Framing and Race

Facts are not synonymous with (our perception of) social reality. In between facts and social reality is a "natural" activity that all of us engage in: interpretation. It is through interpretation that our social world comes into being. One can query of course whether facts exist apart from interpretation—that is, whether calling this or that thing a fact itself requires an act of interpretation. Nevertheless, the basic points are these two: first, facts do not speak for themselves and, second, what facts say is a function of how we interpret them.

There are a variety of theories across academic disciplines—including sociology, political science, law, anthropology, psychology, economics, and communications—that attempt to explain how we interpret events. They share a core insight that we interpret events through frames—pre-existing "systems of ideas"[64] or scripts that inscribe meaning into facts. Erving Goffman explains the concept as follows:

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recall having seen a suspect than subjects in the second, black-perpetrator group. Among those in the third group, who saw no image of the perpetrator, over sixty percent erroneously recalled seeing a perpetrator, and in seventy percent of those cases identified that non-existent image as black. Gilliam and Iyengar suggest that the crime story in local news is a narrative script in which criminal behavior is associated with racial identity. *See* Franklin Gilliam, Jr. & Shanto Iyengar, *Prime Suspects: The Influence of Local Television News on the Viewing Public*, 44 AM. J. POL. SCI. 560, 561 (2000).

63.   *See* Bobo & Smith, *supra* note 41, at 199 (reporting a national survey in which Whites rated Blacks as more violence prone). Social science research frequently reinforees the prototype of Blacks as criminals. As tbe authors of WHITEWASHING RACE report, a prevailing consensus emerged in the early 1990s that the substantially higher rate of Black incarceration compared to Whites is caused by substantially higher Black erime rates (136-38). Since then however, another wave of research has demonstrated several methodological flaws with that analysis. The first relates to the aggregation of data into national trends that obseures significant regional differences between arrest and incarceration rates (138-39). Second, both the rate and severity of sentencing for drug sentences is intensified for Blacks (139). Finally, controlling for additional factors discloses that the differential treatment of juvenile offenders by race results in "a pattern of cumulative overrepresentation" (140-41). This differential treatment relates to the application of a series of formally race-neutral factors, such as the availability of community resources or family support, in determining who is a poor risk and thus should be committed to custody. This in turn leads to decreased opportunities upon release and the creation of "another kind of self-fueling downward cycle." (141). These results are particularly pronounced for young Black men (145).

64.   In the context of linguistics, George Lakoff describes framing as both "systems of ideas" as well as a cognitive linguistic concept—the way in which language and metaphors shape understandings and ideas. *See* George Lakoff, *Framing: It's About Values and Ideas*, ROCKRIDGE INST. (2005), *available at* http://www.rockridgeinstitute.org/research/lakoff/valuesideas.

> When the individual in our Western society recognizes a particular event, he tends, whatever else he does, to imply in this response (and in effect employ) one or more frameworks or schemata of interpretation of a kind that can be called primary. . . .
>
> . . . [E]ach primary framework allows its user to locate, perceive, identify, and label a seemingly infinite number of concrete occurrences defined in its terms. He is likely to be unaware of such organized features as the framework has and unable to describe the framework with any completeness if asked, yet these handicaps are no bar to his easily and fully applying it.[65]

More economically, he explains, "sometimes a particular framework is chiefly relevant and provides a first answer to the question 'What is it that's going on here?'"[66]

I do not attempt to set forth either a definitive explanation or an exhaustive examination of this field here. What lies between the facts and our perceptions—the mediating architecture—is what I mean by frame or framework. We perceive the world around us through the lens of the frameworks that are both internally embedded in our cognitive structures and externally triggered and shaped by our social experiences. As one writer describes it, "understanding means finding a story you already know and saying, 'Oh, yeah, that one.'"[67] As we process and make sense of an event, we attend to and filter facts in accordance with our preexisting frames, noting facts, ignoring others and in some instances, supplying facts that are missing. It is in this sense that it is sometimes said that "frames trump facts."[68]

I am particularly interested in racial frames—the familiar racial scripts that predetermine whether we notice race and when and how we do so. Racial frames are conceptual structures that operate at both the macro (societal) and the micro (cognitive) levels, which both consciously and unconsciously shape our everyday understandings and communications that implicate race. Frames typically rely upon and instantiate stereotypes, and racial frames are no exception. Stereotypes are a particular way that we construct and store cognitive pictures of social categories.[69] They need not

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65. ERVING GOFFMAN, FRAME ANALYSIS 21 (1974). Goffman further distinguishes between types of primary frameworks—the natural and the social. While he explicitly is focused on framing as a feature of the "organization of experience," and "not the organization of society," the social framework is relevant to our consideration here of the social meanings attached to events and what we see. *See id.* at 22 ("Social frameworks . . . provide background understanding for events that incorporate the will, aim, and controlling effort of an intelligence, a live agency, the chief one being the human being.").

66. *Id.* at 25.

67. ROGER C. SCHANK, TELL ME A STORY: NARRATIVE AND INTELLIGENCE 71 (1995).

68. A more nuanced formulation suggests that "[l]ike well-accepted theories that guide our interpretation of data, schemas incline us to interpret data consistent with our biases." Kang, *supra* note 56, at 1515.

69. As Gary Blasi contends:

be negative, but in the context of Black stereotypes, they far too often are. Racial recognition of a Black person—the act of recognizing the racial identity of a subject—often entails the unconscious activation of these negative images to the extent that they are part of a familiar racial frame or narrative. These stereotypes shape not only how we see Black people but also how we interpret facts about them.

One way of thinking about colorblindness is that it is a dominant, racial frame that tells us that race is *not* a factor in how we should make sense of the world. Indeed, colorblindness is a kind of metaframe that embraces interwoven racial scripts: that racism is the product of the actions of bigoted individuals; that since there are fewer people who hold bigoted ideas, racism is no longer a significant factor in American life; and that residual inequality is therefore the product of Black cultural dysfunction.

It is noteworthy that in the move from biological inferiority to cultural deficiency as the explanation for racial inequality, the same negative stereotypes about Blacks fit quite well. These are often invoked via explicit references to race, but more commonly they are now encoded within other framings that are race-neutral on their face. Thus, we encode "welfare queens," as Black. We also racially inflect "law and order" because of the strong association between Black identity and criminality. Frames can both explicitly invoke race or, even more powerfully, implicitly play the race card. Undoing colorblindness is therefore a matter of understanding racial framing as much as it is an empirical project. One way of illustrating this point is to think about racial framing in the context of Katrina. The media was both author and reader of events in ways that both challenged and underwrote this racial frame.

C. Racial Frames and Katrina: The Eye of the Storm

Facts, of course, often powerfully disrupt the comfortable stories that we believe we know. Frames are not static. Epic events like Katrina push up against and temporarily displace familiar frames. At least initially, it seemed that the tragedy of Katrina created a rupture in the racial progress narrative that had all but erased the suffering of poor Black people from the political landscape and eliminated considerations of race from legitimate public discourse. The racial character of the disaster contradicted the colorblind frame. This helps to explain the mass public criticism of the snail-like pace at which relief was dispensed. Indeed, in contrast to the pre-Katrina picture in which Black people were the source of their own condition, in the wake of the storm society perceived Black people as innocent

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If we store social categories in our heads by means of prototypes or exemplars rather than statistics, then our basic cognitive mechanisms not only predispose us toward stereotypes ... but also limit the potentially curative effect of information that contradicts the statistical assumptions about base rates that are embedded in our stereotypes.

Blasi, *supra* note 57, at 1256-57.

victims with legitimate claims on the nation state. All those people. All that suffering. How could we let this happen? This can't be America.[70] Implicit in the frame "This can't be America," is the notion that the nation's neglect in the wake of Katrina violated the duty of care it owes to all citizens. This social contract includes Black people as citizens. Thus, the claim by Blacks in New Orleans that "We are American"[71] responded to and relied upon that frame, as did their rejection of the reference to them as "refugees." This reframing triggered an outpouring of empathy that was real and reflected genuine humanitarian concern. Katrina—or the facts that the public observed about its effects—disrupted the tendency to frame Black disadvantage in terms of cultural deficiency.

The role of the media in attacking and perpetuating these frameworks was complex. The media exposed and depicted the crisis as not simply the product of nature, but as a failing of human beings and public institutions. Thus, reporters for many of the major networks were visibly moved during the broadcasts and pointedly critical of the lack of government response. CNN reporter Jeanne Meserve broke down in tears during a report on September 1, 2005. The same day, on ABC's Nightline Program, when former FEMA director Michael Brown told anchor Ted Koppel that he had only learned about the conditions at the New Orleans Convention Center that morning, Koppel snapped: "With all due respect, Mr. Brown, don't you guys watch television or listen to the radio? We knew it was happening. Why didn't you?"[72]

The compelling facts about Katrina raised a number of questions about racial inequality that notions of colorblindness previously suppressed. The unrelenting spectacle of Black suffering bodies demanded an explanation and pushed a debate about race and the legacy of slavery into the foreground. However, the frame of colorblindness did not disappear; it manifested itself in the racial divide that emerged with respect to how people assessed the role of race in the disaster. Whites largely reject the notion

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70. Rick Badie, *Katrina: The Aftermath: Public Opinion: Accusations Spark Race-Tinged Debate; Activists, Lawmakers Blast Administration*, ATLANTA J.-CONST., Sept. 30, 2005, at A16.

71. *See* Michael Ignatieff, *The Broken Contract*, N.Y. TIMES, Sept. 25, 2005, at 15 (reporting that a woman held at the Convention Center asserted, "We are American," during a televised interview, demonstrating both anger and astonishment that she would have to remind Americans of that fact and that the social contract had failed). Note that this frame is simultaneously inclusionary and exclusionary. To the extent that it asserts black citizenship it seeks to include black people within the nation state. However, at the same time, it excludes non-citizens, black as well as others, from the circle of care based on lack of formal American belonging. This is deeply problematic but it reveals the limited space within which Blacks could assert legitimate claims on national empathy.

72. Scott Collins, *Katrina's Aftermath: Reporters Confront Leaders on Government's Response*, LA TIMES, Sept. 3, 2005, at A31. After a White House news briefing during which officials representing the President asserted that the time of crisis was not the time to play the "blame game," ABC news reporter Terry Moran responded: "It's not a blame game. It's accountability! It's accountability!" Dan Froomkin, *Demanding Answers*, WASH. POST, Sept. 7, 2005, http://www.washingtonpost.com/wp-dyn/content/blog/2005/09/07/BL2005090701133.html.

that race explains the governmental disregard, while Blacks assert that race was a significant factor in the events leading up to and following the crisis. Thus, while Katrina's aftermath unsettled the familiar colorblind racial script that poor Black people were the authors of their own plight, the facts of Katrina did not ultimately overturn core precepts of colorblindness: that race is irrelevant and racism largely does not exist. Most Whites were initially able to see Black people as victims, but they were largely unwilling to link that victim status to race or racism. A more acceptable story was that Black people in New Orleans suffered because of bureaucratic incompetence. Race simply could not be a factor.

Katrina thus only partially destabilized the frame of colorblindness. To the extent that one's starting point for thinking about race is that it doesn't matter, other racial frames fit more easily, including familiar ones that invoke familiar characters. After the initial uncertainty, what emerged in the wake of Katrina was the frame of "law and order"—a racial script that permeated the debate over the photographs with which this Part begins, as well as the post-Katrina relief efforts. The media here contributed to the construction of a discourse about disorder and blackness that shaped the larger debate.

D.   A Picture is Worth a Thousand Words

Recall Graythen's response to the racial controversy concerning the images I presented at the beginning of this Part. With regard to Image B, Graythen asserted that he "looked for the best picture." More specifically, Graythen searched for an image that would best narrate a particular factual story—that people were wading through water to find food. According to Graythen, both Whites and Blacks were finding food in the chest-high water. Unlike pre-Katrina New Orleans, this space was racially integrated. Graythen searched this racially integrated body of water for a picture that would most successfully convey the idea of people finding food (as distinct from people "ducking into a store and busting down windows to get electronics"[73]). Graythen's "best picture"—his "Oh yeah, that one"—emerged when he saw the two White people, which he photographed in Image B. Their images would best fit the caption that Graythen already had in mind—people wading through water to find food. Because people are more likely to associate Blacks with looting ("ducking into a store and busting down windows to get electronics") than with finding food, Graythen's selection "makes sense."

Indeed, one can infer from Graythen's decision to photograph White people that in the aftermath of Katrina it was easier to frame Whites as despondent people finding food than it was to frame Black people in that

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73.   Loot Loops, *supra* note 59.

way. Implicitly, Graythen's choice recognized that there would be some dissonance between the image of Black people in those high waters and a caption describing people finding food. This dissonance is not only about facts (whether the Black people were in fact finding food); the dissonance is also about frames (the racial association between Black people and looting, particularly on the heels of a natural disaster or social upheaval).

It is important to understand that I am not suggesting that Graythen's decision to photograph the two White people was racially conscious—that is, intentionally motivated by race. As I indicated earlier, frames operate both consciously and unconsciously. The point is that his selection to photograph Whites (and, thus, his "natural selection" against Blacks) converged with existing racial frames about criminal perpetrators on the one hand, and law abiding victims on the other. Only Image B could convey a story of survival against adversity. Image A could not tell that story as compellingly (if at all). We already inscribe an image of a Black man with a big plastic bag in the context of natural disaster with meaning. In that sense, the Black man in Image A did not require a caption for us to frame it; nor did the White man and woman in Image B. More broadly, Image A and the many others like it activate the stereotype of Black criminality, which showed that the central problem in New Orleans was not the lack of humanitarian aid, but the lack of "law and order."

E.   From Rescue to Occupation: Seeing the Invisible

In the immediate aftermath of the hurricane, the media was pointed in its critique of the pace of the government's response. However, this critical stance was short-lived and quickly gave way to a focus on the breakdown of "law and order"—a frame that activated all of the entrenched stereotypes about Black criminality. While citizens initially saw Blacks as victims of both the hurricane and the failed governmental response, this victim status proved highly unstable. As time progressed, the social currency of the image of Blacks as citizens of the state to whom the government owed a duty of care diminished. That image rubbed uneasily against the more familiar racial framing of poor Black people as lazy, undeserving and inherently criminal. Concern over the looting of property gradually took precedence over the humanitarian question of when rescuers might take people off of the highways and rooftops. Thus, while armed White men were presumptively defending their property, Black men with guns constituted gangs of violent looters who society should contain. Black New Orleans residents who had no means to evacuate before the storm were barred from the potential refuge of surrounding towns and parishes for fear of Black criminality.

Assistance was denied not only by local authorities who, like the Gretna police, turned people away at gunpoint, but also by the National

Guard and other local authorities who purportedly denied the Red Cross permission to enter the city shortly after the storm because of concerns about the safety of the rescuers.[74] These fears were grounded in what ultimately proved to be grossly exaggerated or completely unsubstantiated media accounts of violence and attacks, particularly in the Superdome and the Convention Center.[75] Police, law enforcement, and even the mayor of the city took these reports in earnest. The mayor, Ray Nagin, who is Black, spoke of "hundreds of armed gang members" killing and raping people inside the Dome, such that the crowd had descended to an "almost animalistic state."[76]

My point is not that there was no violence; rather, the frame of "law and order" overdetermined how we interpreted both the extent and nature of that violence and how we constructed the response (or nonresponse). To make this more concrete, consider specifically how the "facts" about rape were interpreted and discussed. Recently, advocacy groups for victims of sexual assault have begun to challenge the official count of reported rapes—four—as unrealistically low. A national database newly created by the National Sexual Violence Resource Center reports over forty sexual assaults while another victims' rights organization has reported over 150 post-Katrina violent crimes of which about one-third were sexual assaults, including those committed in the homes of host families.[77] This suggests that sexual assaults were underreported. Paradoxically, at the same time that the media cited reports of rape to confirm stereotypes of Black criminality, the Black female victims of *actual* rapes suffered an unconscionable degree of official disregard. While accounts of rape were invoked as signs of the disintegration of social order in New Orleans, many of the Black women who experienced sexual violence now report that they were unable to file reports with law enforcement officials despite their efforts to do so.[78]

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74.   *See* Anna Johnson, *Jackson Lashes Out at Bush Over Hurricane Response, Criticizes Media for Katrina Coverage*, ASSOCIATED PRESS, Sept. 3, 2005, *available at* http://www.belleville.com/mld/belleville/news/local/12555573.htm (reporting that the Red Cross asserted that it could not enter New Orleans on orders from the National Guard and local authorities).

75.   *See* Brian Thevenot & Gordon Russell, *Rumors of Deaths Greatly Exaggerated*, TIMES-PICAYUNE, Sept. 26, 2005, http://www.nola.com/newslogs/tporleans/index.ssf?/mtlogs/nola_tporleans/archives/2005_09_26.html (reporting that "the vast majority of reported atrocities committed by evacuees have turned out to be false, or at least unsupported by any evidence, according to key military, law enforcement, medical and civilian officials in positions to know."); *see also* Brian Thevenot and Gordon Russell, *Reports of anarchy at Superdome overstated*, SEATTLE TIMES, Sept 26, 2005, *available at* http://seattletimes.nwsource.com; Susannah Rosenblatt and James Rainey, *Reports of Post-Katrina Mayhem May Have Been Overblown*, L.A. TIMES, Sept 27, 2005.

76.   *See* Thevenot & Russell, *supra* note 75.

77.   *See* Alec Gifford, *40 Rapes Reported in Hurricane Katrina, Rita Aftermath*, WDSU.com, Dec. 30, 2005, http://www.wdsu.com/news/5627087/detail.html; Nancy Cook Lauer, *Rape-Reporting Procedure Missing After Hurricane*, WOMEN'S ENEWS, Sept, 30, 2005, http://www.womensenews.org/article.cfm/dyn/aid/2448.

78.   Lauer, *supra* note 77.

One of the more prominent examples of this official disregard was Charmaine Neville, a member of the family of renowned New Orleans musicians, who was raped by a roving group of men who invaded her community in the Lower Ninth Ward as she and her neighbors unsuccessfully struggled for several days to evacuate and obtain medical care.[79] Neville's searing account of this incident is a clear indictment of the governmental neglect in the aftermath of Katrina: "[W]hat I want people to understand is that if we hadn't been left down there like the animals that they were treating us like, all of those things wouldn't have happened."[80] Neville reported that law enforcement officers and the National Guard ignored her efforts to report her assault. Neville's prominence and her fortuitous encounter with a member of the Catholic archdiocese in New Orleans during an interview at a local news station meant that her assault received media attention. Others did not.

I should be clear that I am neither excusing the conduct of the rapists nor blaming that conduct on the government. My point is simply that the overall governmental response in the aftermath of Katrina, shaped as it was by the racial frame of "law and order," created conditions of increased danger of rape, as well as an increased likelihood that those rapes would be unaddressed. Problematically, these sexual assaults against women—the vast majority of them Black—became markers of Black disorder, chaos, and the "animalistic" nature of New Orleans residents. At the same time, however, society failed to perceive these Black women as victims worthy of rescue. Their injuries were only abstractions that were marshaled to make the larger point about the descent of New Orleans into a literal and figurative Black hole. Society thus invoked but did not address the rapes of Black women. To borrow from Kimberle Crenshaw, their stories of rape were "voyeuristically included"[81] in a "law and order" campaign, but the government largely ignored their specific injury—the fact that they were actually victims.

Instead, the government focused its attention on people's violence against property and the rescuers—much of which has proven to be false or grossly embellished. The characterization of the Superdome and the Convention Center as unsafe facilitated the shift in the authorities' mission from humanitarian rescue to military occupation and security. Partly because of the perception of the severe security threat to rescuers, no food, water, or medical care was provided to the Convention Center until the government sent a 1,000-member force of soldiers and police in full battle

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79.   *See* Charmaine Neville, *How We Survived the Flood*, COUNTERPUNCH, Sept 5, 2005, http://www.counterpunch.org/neville09072005.html.

80.   *Id.*

81.   Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1261 (1991).

gear to secure the Center on September 2 at noon. They were able to do so in twenty minutes and encountered absolutely no resistance, though thousands of people were in the building.[82] Authorities have confirmed only one shooting in the Superdome, which occurred when a soldier shot himself during a scuffle with an attacker. Other reports of violence were also proven false. New Orleans Police Chief Eddie Compass reported that he and his officers had confiscated over thirty weapons from criminals who had been shooting at the rescuers by following the flash of the muzzle. Later, Compass disclosed that this had really happened to another unit, a SWAT team at the Convention Center. However, the director of that unit reported that his unit had heard gunshots only one time and that his team had recovered no weapons despite aggressive searches.[83]

What accounts for this gross exaggeration of the security threat to the rescue mission? Certainly the general chaos and the breakdown of the communications network were major factors in developing a climate in which rumors could and did flourish. Yet under similarly difficult conditions in circumstances involving natural disaster and even war, reporters have been able to adhere to basic journalistic standards. That they did not do so under these conditions could be explained as an isolated case of failure under extremely trying circumstances.

However, the important part of this story is not the media's failure to observe rules of journalism, but rather the readiness of people to accept the media's story. It was a narrative that made sense within a commonly accepted racial frame of "law and order" that activates and depends upon Black criminality. These frames made it difficult to make sense of other images such as reports of "guys [who] look[ed] like thugs, with pants hanging down around their asses," engaged in frantic efforts to get people collapsing from heat and exhaustion out of the Dome and into a nearby makeshift medical facility.[84] These images did not make racial sense. There was no ready-made frame within which the images of Black male rescuers could be placed. Indeed, without the standard racial frames, Black male rescuers are a socially unintelligible image. That we have trouble seeing "guys who look like thugs" as rescuers is not a problem of facts. It is a problem of framing.

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82. Thevenot, *supra* note 75. See also Andrew Gumbel, *After the Storm US Media Held to Account for Exaggerated Tales of Katrina Chaos*, THE LONDON INDEPENDENT, Sept. 28, 2005, http://news.independent.co.uk/world/americas/article315511.ece.
83. *See id.*
84. Thevenot & Russell, *supra* note 7579.

IV

CONCLUSION

The book's materialist focus on racialized accumulation and disaccumulation leads the authors to consider the question of how to disrupt such an entrenched pattern of inequality. The authors of *Whitewashing Race* conclude with a chapter in which they advocate increased public investment in schools, jobs, and alternatives to incarceration, as well as programs to invest assets in wealth creation funded through increased taxes on wealth. They also suggest universal health care and expansion of the earned income tax credit (236-37). Additionally, they propose increased enforcement of civil rights laws and challenging neutral institutional practices that generate inequality (237). They are not unaware of the resistance to these reforms born of what has elsewhere been called the wages of Whiteness.[85] Yet they assert that the broad sweep of many of these proposals could garner the support of many Whites who would benefit from them along with disadvantaged racial minorities (248). Moreover, they argue that Whites do not uniformly benefit from the continuation of Black disadvantage (249).

If the facts about structural racism and cognitive bias are substantial and soundly researched, we may be at a watershed moment that might well lead to the adoption, or at least serious consideration, of a host of ameliorative measures like those advanced by *Whitewashing Race*. Such a breakthrough is very possible, particularly since the current set of racial arrangements are unstable. Although it does not necessarily follow that out of instability will result a better and more racially just order, there are signs on the horizon of possible changes. Such signs include the rupture in the status quo created by Katrina and the growing disquiet over governmental priorities that invest in building democratic regimes abroad rather than rebuilding at home.[86]

However, the distance between current legal doctrine and the changes necessary to achieve a more progressive future is not easily traversed. While I am largely sympathetic to the proposals advanced in the book, as the authors acknowledge, it is telling, in the main, they are strikingly similar to many made over thirty-five years ago in the wake of the urban riots of the 1960s. This suggests that the impediments to change lie at a deeper level. Then, as now, epic upheavals in the social structure—the urban riots of the sixties—and now, Katrina—ruptured the dominant racial frames and

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85. DAVID ROEDIGER. THE WAGES OF WHITENESS (1991).

86. *See supra* note 18 and accompanying text (describing polling data in which the majority of Blacks, Latinos, and Asians, and a plurality of Whites, support the view that the reconstruction of New Orleans should be funded by withdrawing from Iraq as soon as possible, and that the government should stop spending money in Iraq and Afghanistan so that "we can afford to take care of people in the United States").

opened the possibilities for a reframing of public discourse about race and a repudiation of colorblindness. Black people then, as now, were central to illuminating the deficiencies in the prevailing racial script. However, the fact that interventions, even race-neutral ones, were inadequately pursued or discarded in the intervening thirty-five years is a telling reminder that not only is race-conscious remediation unpalatable to many Whites; so too are race-neutral interventions that are seen to benefit significant numbers of Blacks, even if overall they would stand to bring economic benefit to Whites as well. Here is another instance of the frame—Blacks as undeserving, criminal, and culturally deficient—overriding the fact of potential benefits to Whites.

This Review Essay's modest observation is that empirical interventions, powerful though they are, cannot in and of themselves do all the work that is required. This is because the vexed nature of American common sense about race contravenes the empirical evidence.[87] This is perhaps unsurprising given that colorblindness was a racial frame installed not as a result of empiricism but in spite of it: it was the product of a well-financed political project.[88] Accordingly, something more than facts is required to undo colorblindness as a racial frame. Facts are important—indeed, crucial, since so much of public opinion is grounded in misinformation. But there is no linear progression between more facts and more enlightened public opinion about race and racism. It turns out that the very questions we ask, and the presumptions we make, shape the facts that we find. What we know about racial inequality—our racial common sense—is shaped not only by facts, but by a framework produced through a complex network of social interactions, official knowledge, media images, and embedded stereotypes.

As Michele Landis Dauber has observed, the template for the American social welfare system has been disaster relief, and the entitlement to government resources has always depended upon the claimants' ability to "narrat[e] their deprivation as a disaster—a sudden loss for which the claimant is not responsible."[89] In the specific case of Katrina, this

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87. The point here is that racial hierarchy is entrenched through routine and everyday life and practices. As Haney López describes it:

> [Common sense racism] informs action not through the relatively hot processes of egotistical turmoil and repression but through a cooler dynamic of cognitive distortion. Individuals are not struggling to reconcile conflicting values and thoughts but are operating as socialized group members according to an accepted manner of thinking and acting. When people treat racial ideas as a legitimate, expected part of the natural order, common sense racism often results.... Common sense racism suggests that in their daily lives most individuals act to entrench racial hierarchy, though by relying on background racial understandings rather than discriminating purposefully.

HANEY LÓPEZ, RACISM ON TRIAL: THE CHICANO FIGHT FOR JUSTICE, 131-33 (2003).

88. COKORINOS, *supra* note 21.

89. *See* Michele L. Landis, *Fate, Responsibility, and "Natural" Disaster Relief,* 33 LAW & SOC'Y REV. 257, 264 (1999).

disaster-relief conception of welfare would seem to promote immediate national response to aid the hurricane victims. The problem for Black people and other non-Whites, however, as Dauber has also noted, is that racial minorities' claims to victim status has always been undermined "because they are highly likely to be cast as a 'disaster' for the dominant racial group."[90] Implicit in Dauber's analysis is the idea that the move to realign America's racial discourse and policy away from current distortions must confront the complex character of cognitive and societal frameworks that mutually constitute and reinforce scripts that tell us what makes sense. The ability to process facts into a conception of racism that does not depend on Black dysfunction is deeply compromised by the racial frames through which facts are filtered, selected, and processed, and the manner in which we realign the facts to fit pre-existing structures. Facts alone will rarely if ever be able to transcend the gravitational pull of colorblindness.

The tragic consequences of Katrina provide a moment through which we might reflect on both the possibilities and impediments to a broader and more just societal consensus about race, class, and rights. The authors of *Whitewashing Race*, having laid out in compelling fashion their empirical case, cannot fairly be charged with solving the whole problem. Our efforts to shift racial frames have to be grounded in a broader orientation than raw empiricism; what is required is attention to social organization and social movements that open up the space for reframing.

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90. *See id.* at 307.