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THREE BAD IDEAS ABOUT RACE IN AMERICA

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Brown v. Board of Education was decided at a time when racial liberalism was at its zenith among Americans concerned with the rights of African Americans. *Brown* itself was a product of both legal liberalism generally and racial liberalism specifically.¹

Racial liberalism has no urtext and so defies precise description, but racial liberals shared some beliefs. First, with regard to means of overcoming racial oppression, racial liberals believed that significant civil rights progress could be accomplished by a combination of civil rights legislation, courtroom constitutional challenges to discriminatory laws and policies, and moral suasion. All these means would be promoted by relying on egalitarian strands in the American political tradition as reflected in, for example, the Declaration of Independence's statement that all men are created equal and the Fourteenth Amendment's guarantee of equal protection of the laws.

Second, with regard to ends, racial liberals believed that society need not and should not be divided upon racial lines. Race was seen as a mere artificial construct whose significance would wither away relatively quickly if given the right push by the means mentioned previously. Racism was seen as the result of ignorance, custom and conformity,² and legal reinforcement. Racism could be vanquished by combating all three. Relatedly, racial liberalism implicitly saw improved conditions for Black Americans as a positive-sum

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- 1 Christopher W. Schmidt, "Freedom Comes Only from the Law": *The Debate over Law's Capacity and the Making of Brown v. Board of Education*, 2008 UTAH L. REV. 1493, 1497 (2008) (stating that "legal liberalism was not the product of *Brown*; rather, *Brown* was the product of legal liberalism"); see also Lani Guinier, *From Racial Liberalism to Racial Literacy: Brown v. Board of Education and the Interest-Divergence Dilemma*, 91 J. AM. HIST. 92 (2004).
- 2 E.g., Will Maslow, *Prejudice, Discrimination and the Law*, 275 ANNALS AM. ACAD. POL. SCI. 9, 12 (1951) ("Much discrimination does not stem from prejudiced attitudes but from the need to conform to prevailing social standards.").

game, one that would benefit not only African Americans but also their white fellow citizens. Racial liberalism, in short, reflected optimism that liberal means would serve integrationist ends, and integrationist ends were the key to victory for the civil rights movement.

Many racial liberals were extremely optimistic when *Brown* was brought to the Supreme Court in the early 1950s,³ and even more so in the immediate aftermath of the decision.⁴ However, a very quick end to American racism was never realistic. First, there was the stickiness of long-standing white supremacist ideology in American society. Many white Americans, even those who might not have consciously adopted white supremacy, were attached to the psychic gains it provided them.⁵ Second, social and economic segregation of Black and white American society was entrenched, making even integrating Major League Baseball an arduous endeavor.⁶ Racial liberals also underestimated or failed to consider the ability of demagogic politicians to win political support by stirring up racial animosity among their white constituents and sectional animosities among their southern white constituents.⁷

In short, given the nature of American society in 1954, most Americans would have found it difficult to imagine a society in which race⁸ no longer played a significant role in determining Americans' opportunities and life choices. And indeed, seventy years after *Brown*, significant concerns remain regarding employment discrimination, racism in the criminal justice system, housing discrimination, and other traditional civil rights issues.

3 Schmidt, *supra* note 1, at 1532–37.

4 Derrick Bell related that when in 1957 he told the first Black federal judge, William H. Hastie, that he wanted to be a civil rights lawyer, Hastie replied, “Son, I am afraid that you were born fifteen years too late to have a career in civil rights.” DERRICK BELL, *SILENT COVENANTS: BROWN V. BOARD OF EDUCATION AND THE UNFULFILLED HOPES FOR RACIAL REFORM* 2 (2004). Thurgood Marshall, meanwhile, is said to have believed that it would take about five years to implement *Brown* and that racial segregation would be eliminated by 1963. GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* 43 (1991).

5 W.E.B. Du Bois, for example, recognized the “psychological wage” white workers received from excluding African Americans. W.E.B. DU BOIS, *BLACK RECONSTRUCTION IN AMERICA* 700 (1935).

6 See, e.g., ROGER KAHN, RICKEY & ROBINSON: *THE TRUE, UNTOLD STORY OF THE INTEGRATION OF BASEBALL* (2014).

7 See, e.g., The “Southern Manifesto,” 102 CONG. REC. 4515–16 (1956). For a theoretical approach to how political actors can exacerbate racism, see Jennifer Roback, *Racism as Rent Seeking*, 27 *ECON. INQUIRY* 661 (1989). Racial liberals had surmised that by 1954, most white Americans were not strongly committed to segregation. See Schmidt, *supra* note 1, at 1532–35. That may have been a misjudgment, but perhaps more important, they failed to account for the possibility that people who were not sufficiently committed to maintaining segregation to pay a significant economic price for it would be offered by politicians advocating massive resistance to *Brown* the opportunity to maintain segregation in exchange for something relatively costless: their vote.

8 To clarify my own position, I believe not only that race is socially constructed but that the classifications used in the United States are especially arbitrary. See generally DAVID E. BERNSTEIN, *CLASSIFIED: THE UNTOLD STORY OF RACIAL CLASSIFICATION IN AMERICA* (2022). For purposes of this essay, however, I use “race” the way it is typically used in public and political discourse in the United States.

And yet, while progress has been slower than some racial liberals expected, it has nevertheless been dramatic. The United States has made substantial progress toward achieving the goals of the civil rights movement. While American society is not there yet, it is much closer in 2024 than it was in 1954. As discussed in more detail below, racial liberalism since *Brown*, imperfectly applied, has been much more successful than its contemporary critics acknowledge.

There are two ideological threats to further progress. The first, from the right, is a potential return to the notion of the United States as a “white man’s” country. The potency of this threat is reflected in the increasingly popular “Great Replacement” theory. According to this theory, the powers-that-be are seeking to replace the United States’ white population with members of minority groups. These purported usurpers are mostly drawn from post-1965 immigrants, including illegal immigrants, and their descendants.⁹ While this conspiracy theory is wrongheaded and dangerous, those who adopt it fortunately hold little sway in elite and academic circles.

The second ideological threat is various racist theories adopted by academics associated with the ideological left. These theories have spread to become something close to mainstream in some progressive circles. There is no single accepted moniker for this ideology, but many associate it with “woke,” “critical social justice,” and “critical race” theories of race and race relations. This ideology is perhaps more insidious than its counterpoint on the right; it reflects views held by people who call themselves “anti-racists” and who hold a great deal more cultural sway, especially among the American elite and in the establishment, than do right-wing racists.

Whatever one calls the theories emanating from the left, their advocates share a rejection of the racial liberalism that underlay *Brown*¹⁰ and explicit pessimism about the future of race in the United States.¹¹ These theories also implicitly adopt racial essentialism as a working assumption, despite acknowledging that race is in fact socially constructed. As we shall see, some who reject racial liberalism favor encouraging Americans, especially white Americans, to strongly identify with their race.

9 An extreme version of this theory posits that this “replacement” is being plotted by Jews; hence the chant at the infamous “Unite the Right” white-supremacist rally in Charlottesville, Virginia, in 2017, “Jews will not replace us.” *Explainer: What is “The Great Replacement” and What Are Its Origins?*, REUTERS (May 16, 2022), <https://www.reuters.com/world/us/what-is-the-great-replacement-what-are-its-origins-2022-05-16>.

10 “Unlike traditional civil rights [theory], critical race theory questions the very foundations of the liberal order, including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law.” RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* 2–3 (2001).

11 See, e.g., Richard Delgado, *Zero-Based Racial Politics and an Infinity-Based Response: Will Endless Talking Cure America’s Racial Ills?*, 80 GEO. L.J. 1879, 1880 (1992) (“Racism is natural and normal, the ordinary state of affairs.”).

In this essay, I examine and critique three influential propositions regarding race promoted by some left-wing theorists and pundits. Part I discusses and rejects the notion that the default explanation for differences in socioeconomic status among racial and ethnic groups is these groups' power relationships with the dominant white majority. Part II considers the claim that racial categories define collective actors who inevitably have common interests and outlooks. This part concludes that this idea is flawed and perhaps incoherent. Part III addresses the proposition that white Americans should be encouraged to cultivate a "white racial consciousness," which in turn would lead them to recognize their privilege and become "antiracists"; that is, activists who oppose structural racism as understood by the academic left, advocating means to combat this racism that have broad support on the left. Part III concludes that such encouragement is both wrongheaded and dangerous.

I. ALL OR ALMOST ALL RACIAL INEQUALITY CAN BE EXPLAINED BY THE RACISM (EXPLICIT OR IMPLICIT, CONSCIOUS OR NOT) OF THE WHITE MAJORITY AND/OR THE STATE INSTITUTIONS THAT OPERATE ON ITS BEHALF

Some scholars and pundits argue that the socioeconomic status of nonwhites is primarily, perhaps exclusively, attributable to the power relationships nonwhites have with the white majority.¹² No one would deny that racism can affect and has affected the socioeconomic status of American racial minorities¹³ or that racism's effects can linger long after racial attitudes liberalize.

12 The most prominent proponent of this view is Ibram Kendi. IBRAM X. KENDI, *HOW TO BE AN ANTIRACIST* 9, 160 (2019) (arguing that it's racist to suggest that group differences in achievement reflect anything other than racist policies and practices); *id.* at 18 (claiming that all unequal outcomes among groups are inequitable).

13 Indeed, much of my own research has involved the way government power was used to create and sustain racial cartels that excluded African Americans and other minorities from various occupations or led to racial segregation. A partial list includes DAVID E. BERNSTEIN, *REHABILITATING LOCHNER: DEFENDING INDIVIDUAL RIGHTS AGAINST PROGRESSIVE REFORM* ch. 3 (2011); DAVID E. BERNSTEIN, *ONLY ONE PLACE OF REDRESS: AFRICAN AMERICANS, LABOR REGULATIONS, AND THE COURTS FROM RECONSTRUCTION TO THE NEW DEAL* (2001); David E. Bernstein, *Prevailing Wage Legislation and the Continuing Significance of Race*, 44 NOTRE DAME J. LEG. 158 (2018); David E. Bernstein, *Reflections on the 100th Anniversary of Buchanan v. Warley: Recent Revisionist History and Unanswered Questions*, 48 CUMBERLAND L. REV. 101 (2018); David E. Bernstein, *Revisiting Yick Wo v. Hopkins*, 2008 ILL. L. REV. 1393; David E. Bernstein & Thomas C. Leonard, *Excluding Unfit Workers: Social Control Versus Social Justice in the Age of Economic Reform*, 72 L. & CONTEMP. PROBS. 177 (2009); David E. Bernstein, *Bolling, Equal Protection, Due Process, and Lochnerphobia*, 83 GEO. L.J. 1253 (2005); David E. Bernstein & Ilya Somin, *Judicial Power and Civil Rights Reconsidered*, 114 YALE L.J. 593 (2004) (review essay of Michael Klarman, *From Jim Crow to Civil Rights*); David E. Bernstein, *Lochner, Parity, and the Chinese Laundry Cases*, 41 WM. & MARY L. REV. 211 (1999); David E. Bernstein, *Philip Sober Restraining Philip Drunk: Buchanan v. Warley in Historical Perspective*, 51 VAND. L. REV. 799 (1998); David E. Bernstein, *The Law and Economics of Post-Civil War Restrictions on Interstate Migration by African Americans*, 74 TEX. L. REV. 781 (1998).

Nevertheless, other factors beyond racism and racial hierarchy determine the success of a group. This includes cultural factors that reflect various influences including religion, class, education, level of urbanization, and history of discrimination. This seems obvious if one considers the wide socioeconomic disparities present among subgroups *within* the various standard American racial classifications; there are often greater socioeconomic differences within racial groups than among them.

For example, within the African American category, first- and second-generation immigrants have higher average incomes and greater educational achievement than do descendants of American slaves (ADOS).¹⁴ Black immigrants and their children are significantly better-represented at Ivy League universities compared to their percentage of the population than are ADOS.¹⁵ Among immigrant groups from African nations, Nigerian and Kenyan Americans on average have much higher family incomes than do Somali or Ethiopian Americans.¹⁶

Within the Asian American classification, Indian Americans earn the most of any American ethnic group.¹⁷ Filipino, Chinese, and Japanese Americans also have substantially higher average household incomes than do white Americans.

Legal classifications aside, we should consider South Asians separately from East Asians, given the vast differences in culture and appearance between the two groups. Among South Asians, Indian Americans on average have higher household incomes than do Pakistani Americans and median household incomes more than double those of Bangladeshi Americans.¹⁸ Meanwhile, among East Asians, Chinese, Japanese, and Korean Americans have much higher average household incomes than do Cambodian, Vietnamese, or Hmong Americans.¹⁹

Vast differences also exist within the white category. For example, Appalachian whites, who have the theoretical advantages of white privilege, Protestant heritage, and centuries of residence in the United States, have among the lowest socioeconomic statistics of any group.²⁰ Jewish Americans, a group typically characterized as an overwhelmingly white

14 Abdi M. Kusow, *African Immigrants in the United States: Implications for Affirmative Action*, 4 SOCIO. MIND 74 (2014).

15 Douglas S. Massey et al., *Black Immigrants and Black Natives Attending Selective Colleges and Universities in the United States*, 113 AM. J. EDUC. 243, 248 (2006).

16 Kusow, *supra* note 14, at 7.

17 U.S. CENSUS BUREAU, <https://data.census.gov/> (last visited Apr. 15, 2024).

18 *Id.* (tables), <https://data.census.gov/table?q=DP03&t=-04> (showing that Indian Americans have over twice the median household income of Bangladeshi Americans).

19 *Id.* (tables), <https://data.census.gov/table/ACSSPP1Y2021.S0201?t=013:014:015:016:017:018:019:020:021:022:023:024:026:027:028:029:032:033:034:035:036:037:038:039:040:041:042:043:045:046:047:048:081:084:073:076:Income%20and%20Poverty&g=010XX00US&moe=true>.

20 *List of Ethnic Groups in the United States by Household Income*, WIKIPEDIA, https://en.wikipedia.org/wiki/List_of_ethnic_groups_in_the_United_States_by_household_income#Detailed_ancestry.

population but who have endured specifically anti-Jewish prejudice, have well-above-average education and income.²¹

The standard response to such data from those who focus on systemic racism and the like as a one-size-fits-all explanation for group disparities is to ignore it. Some scholars, however, suggest that successful American minority groups must either be part of the dominant racial hierarchy or have been subject to manipulation by the majority to allow for their success.²²

As Professors Dan Farber and Suzanna Sherry pointed out in the 1990s, such conspiratorial explanations come with obvious antisemitic implications.²³ Farber and Sherry recounted that some law professors accused law schools of white supremacist hiring. At the time, Jews made up 30% or so of law professors at the top 100 law schools, despite long-standing discrimination against Jews in academia. From a Kendi-like perspective,²⁴ this implied either that Jews were the tools of white supremacists or that Jews were the power behind white supremacy in the legal academy.²⁵

One explanation provided for the success of some nonwhite minority groups is that these groups became “white adjacent,” or “honorary whites” via social evolution,²⁶ which permits them to succeed in a white-supremacist society. This theory lacks explanatory power. For example, it cannot explain why Chinese Americans but not Cambodian Americans are “white adjacent,” unless white-adjacency is a tautology—the more successful members of a given minority group are, the more that group is “white adjacent.”

21 Paul Burstein, *Jewish Educational and Economic Success in the United States*, 50 SOCIO. PERSPS. 209 (2007).

22 See generally Woody Doane, *Rethinking Whiteness Studies*, in *WHITE OUT: THE CONTINUING SIGNIFICANCE OF RACISM* 215, 228 (Ashley Doane & Eduardo Bonilla-Silva eds., 2003) (stating that “the ‘hidden’ nature of Whiteness is grounded in the dynamics of dominant group status”).

23 Daniel A. Farber & Suzanna Sherry, *Is the Radical Critique of Merit Anti-Semitic?*, 83 CALIF. L. REV. 853, 879 (1995). Concerns that certain antiracist theories foster antisemitism have intensified recently, see DAVID L. BERNSTEIN, *Woke Antisemitism: How a Progressive Ideology Harms Jews* (2022), especially after Hamas’s brutal terrorist attack on Israel of October 7, 2023, was met with apologetics and even support from the very ideological circles most inclined to antiracism, despite Hamas having an overtly antisemitic and genocidal agenda. See Suzanna Sherry, *DEI and Antisemitism: Bred in the Bone* (Vand. L., Research Paper no. 24-4, Jan. 26, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4706763.

24 See KENDI, *supra* note 12, at 160 (asserting that group differences in achievement reflect racist policies and practices).

25 Resentment over Jews’ “overrepresentation” in various professions and their relative economic success more generally played a major role in pre-Holocaust antisemitism in Europe, which often manifested itself in economic boycotts of Jewish businesses and quotas in universities. The underlying notion was that absent cheating of some sort, ethnic Germans, Poles, Hungarians and so forth should be proportionately just as successful in various business and professions as Jews. If Jews were “overrepresented,” the theory went, it must be due to some sort of illicit connivance or plotting against their Gentile neighbors. See MICHAEL L. MILLER & JUDITH SZAPOR EDs., *THE “JEWISH QUESTION” AND HIGHER EDUCATION IN CENTRAL EUROPE, 1880–1945* (2024).

26 Eduardo Bonilla-Silva & David Dietrich, *The Latin Americanization of Racial Stratification in the U.S.*, in *RACISM IN THE 21ST CENTURY: AN EMPIRICAL ANALYSIS OF SKIN COLOR* 151, 157 (Ronald E. Hall ed., 2008).

Sociologist Eduardo Bonilla-Silva has argued that skin color rather than race itself explains these differences.²⁷ Thus, within the Asian American group, Chinese, Filipinos, Koreans, and Japanese, whom he says have relatively fair complexions, qualify as honorary whites.²⁸ Darker-complexioned Southeast Asians, such as Vietnamese, Cambodians, and Laotians, however, are relegated to being part of the “collective black,” and thus are doomed to lower socioeconomic status.²⁹

Granting *arguendo* that the color line Bonilla-Silva drew makes sense, his theory nevertheless cannot explain various gaps in average economic achievement among racial and ethnic groups. For example, why do Filipino Americans, who were among the poorest ethnic groups in the United States in the late 1960s,³⁰ now have higher average incomes than Japanese or Chinese Americans, who in turn are wealthier on average than are white Americans?³¹

What do we make of Asian Indian Americans, who often have dark complexions yet have the highest income of any national-origin group? If their Caucasian physiognomy gives them an advantage, why don't other South Asian Americans, such as Pakistani, Bangladeshi, and Nepalese, have the same advantage?

Why are Appalachian whites, despite being of white Protestant origin and resident in the United States for centuries, at the bottom of the socioeconomic indicators pile?³² Why are Ethiopian and Somali Americans, whose physiognomy is relatively close to Europeans, less economically successful than are Nigerian Americans, who have a more distinctively African appearance?

Why some groups fare better by socioeconomic measures than others is a complex question; it may defy a comprehensive explanation. Researchers remain puzzled by the

27 Eduardo Bonilla-Silva, *From Bi-Racial to Tri-Racial: Towards a New System of Racial Stratification in the USA*, 27 *ETHNIC & RACIAL STUD.* 931, 933 (2004).

28 *Id.*

29 *Id.* As of this writing, every Asian American national subgroup has surpassed white Americans in terms of median household income. One expects that Bonilla-Silva would explain this by his theory that “white elites” wish to “create an intermediate racial group to buffer racial conflict” and have chosen Asians to be that group. *Id.* at 933. Exactly how white elites reached this decision in general, how they changed their mind and decided to include darker-complexioned Asian subgroups, and how they control the sociological and economic factors that have led to Asian American economic success is left unsaid, likely because it's a ridiculous theory with no plausible empirical basis.

30 CYNTHIA NORRIS GRAAE, ET AL., *TO KNOW OR NOT KNOW: COLLECTION AND USE OF RACIAL AND ETHNIC DATA IN FEDERAL ASSISTANCE PROGRAMS (1973)* (noting that Filipino Americans had the lowest median income of any ethnic group in California).

31 U.S. CENSUS BUREAU, <https://data.census.gov/table/ACSSPP1Y2021.S0201?t=013:014:015:016:017:018:019:020:021:022:023:024:026:027:028:029:032:033:034:035:036:037:038:039:040:041:042:043:045:046:047:048:081:084:073:076:Income%20and%20Poverty&g=010XX00US&moe=true> (last visited Apr. 15, 2024).

32 See THOMAS SOWELL, *BLACK REDNECKS, WHITE LIBERALS* (2015), for an attempt to pinpoint cultural attributes that lead some groups classified as white to be less successful.

seemingly simpler Hispanic paradox—why Hispanic Americans live longer than non-Hispanic white Americans, even though Hispanics have, on average, lower income, less education, higher rates of disability, and less access to health insurance.³³

While a comprehensive explanation may elude us, as noted previously one major factor in groups' differences in socioeconomic success is culture.³⁴ Consider as an example the contrast between Modern Orthodox Jews and Haredi (“ultra-Orthodox”) Jews in the United States. Modern Orthodox Jews have higher incomes, are much more likely to hold professional jobs, are much less likely to live in poverty, and have much higher levels of secular education.³⁵ Both groups are concentrated in major metropolitan areas, especially the New York City area. Both groups live their lives according to halacha (Jewish law). And both groups have similar, primarily Ashkenazi Jewish, heritage.

There are, however, very salient cultural differences. Modern Orthodox Jews tend to highly value secular education and professional success. They also typically have four children or fewer. Haredi Jews, by contrast, put much less value on secular education and professional success and live in more insular communities. They emphasize the importance of Torah study (for the men) and having many children; families with six or more children are common. Some Haredi Jews also practice strict sex segregation, which makes it especially difficult to thrive in the secular business and educational worlds.

As the discussion above suggests, the absence of a comprehensive explanation for disparities among and within U.S. racial and ethnic groups should not lead to the default assumption that such disparities inevitably reflect ingrained American racial and ethnic hierarchy. Such disparities are the norm around the world, including in societies with little in common with the United States.

Economist Thomas Sowell has devoted much of his career to documenting these disparities.³⁶ His scholarship debunks the assumption that group differences in success are

33 See Usha Lee McFarling, *The “Hispanic Paradox” Intrigues a New Generation of Researchers Determined to Unravel It*, STAT (Sept. 14, 2023), <https://www.statnews.com/2023/09/14/hispanic-paradox-life-expectancy-research>.

34 I am hardly the first person to note this. See, e.g., Glenn C. Loury, *A Dynamic Theory of Racial Income Differences*, in WOMEN, MINORITIES, AND EMPLOYMENT DISCRIMINATION 153 (Phyllis A. Wallace & Annette M. LaMond eds., 1977).

35 *A Portrait of American Orthodox Jews*, PEW RSCH. CTR. (Aug. 26, 2015), <https://www.pewresearch.org/religion/2015/08/26/a-portrait-of-american-orthodox-jews>. (The latter study overestimates Haredi socioeconomic success by conflating Haredim and “Centrist” Orthodox Jews, who on many cultural measures are more similar to Modern Orthodox Jews than to Haredim.); Luke Tress, *US Orthodox Jews Financially Fragmented but Mostly Secure, Survey Finds*, TIMES OF ISRAEL (Dec. 23, 2021), <https://www.timesofisrael.com/us-orthodox-jews-financially-fragmented-but-mostly-secure-survey-finds>. (The latter study overestimates Haredi socioeconomic success by excluding very insular Hasidic groups and by including people who identify with the Chabad Lubavitch movement. Many non-Haredi Jews attend Chabad congregations but do not live in Haredi communities or live a Haredi lifestyle.)

36 E.g., THOMAS SOWELL, DISCRIMINATION AND DISPARITIES (rev. and enlarged ed. 2019); THOMAS SOWELL, SOCIAL JUSTICE FALLACIES (2015); THOMAS SOWELL, THE ECONOMICS AND POLITICS OF RACE: AN INTERNATIONAL PERSPECTIVE (1983).

always a direct result of majority oppression of minority populations. Sowell emphasizes that politically weak minorities often achieve greater socioeconomic success than does the more-powerful majority. Sowell's examples include Jews in Europe, overseas Chinese in Asia, and Indians and Lebanese in Africa.

It is still worth considering, and counteracting, the roles that historical and present-day racism and racial hierarchy play in socioeconomic disparity in the United States.³⁷ But giving too much weight to these factors crowds out consideration of what cultural factors contribute to individual and group success.³⁸ This makes it less likely that government, social activists, religious bodies, and others will learn about and try to encourage sociocultural traits that lead to greater socioeconomic success.³⁹

II. RACIAL GROUPS REPRESENT COLLECTIVE ACTORS WITH SHARED INTERESTS AND OUTLOOKS ON THE WORLD

Classic Marxism asserts that all workers have the same “class” interests, as do all capitalists, and each group acts collectively on those interests. This assertion has served as a great barrier to historical and sociological understanding. For example, for decades Marxist and Marxist-influenced labor historians did not confront the history of racism among

37 See David L. Bernstein, *In Search of Systemic Racism*, FREE BLACK THOUGHT (June 22, 2022), <https://freeblackthought.substack.com/p/in-search-of-systemic-racism>.

38 One way of evading such a question is to call everything “that perpetuates or creates racial inequality in outcomes, including institutions, individual acts (unconscious ones included) and unintended consequences” racism. As Wimmer points out, this “conceptual move produces its own set of logical problems.” For example, imagine that the government enacts a program promoted by antiracist activists to combat racial inequality. However, the program winds up backfiring. By the wordplay noted above, the antiracist initiative magically becomes racist. Andreas Wimmer, *Race-Centrism: A Critique and a Research Agenda*, 38 *ETHNIC & RACIAL STUD.* 2186, 2191 (2015).

39 Ibram Kendi contends that to attribute group differences in economic success to culture implies that one believes that the less economically well-off group is inferior. See, e.g., Lou Cortina, *Kendi Delivers Message on How to Be Anti-Racist*, UMB NEWS (Feb. 18, 2021), <https://www.umaryland.edu/news/archived-news/february-2021/kendi-delivers-message-on-how-to-be-anti-racist.php>.

Some correlates with economic success, such as low rates of substance abuse, have moral overtones, though suggesting that a high rate of substance abuse in a given group is correlated with less economic success is hardly suggesting that the group is inferior.

In any event, not all such correlates have moral implications. If one Hasidic Jewish sect devotes more of its energies to business success and another to *tzedakah* (charity and good works), and as a result the latter group has a lower average median income, it's not obvious which group is more “successful,” much less which one is more admirable. For that matter, if one group values family time over dedicating one's life to climbing the economic ladder or values retaining intergenerational ties to a geographic area over economic mobility, and this results in a lower median income for that group, there is no objective reason to say that this group is somehow inferior to groups that put more value on economic success.

white-dominated labor unions in the United States and how it was primarily a result of white workers' racist attitudes trumping class solidarity.⁴⁰

The underlying ideological paradigm the historians adopted required that interracial and interethnic conflict among workers of different races and ethnicities had to have resulted from manipulation by “the capitalists.”⁴¹ Most scholars ignored the possibility that Group A of workers believed that their interests conflicted with those of Group B or even that members of Group A preferred their union be less successful to granting “social equality” to workers from Group B by accepting them as fellow union members.⁴²

Modern racialists adopt a framework analogous to that of the Marxists but substitute racial identity for class. This is most obvious in traditional, generally right-wing antisemitic ideology. This posits that actions by individual Jews or groups of Jews are explained by Jews' purported collective desire to dominate the world at the expense of non-Jews.

The left has its own versions of identitarian theory. In the legal academy, the late Professor Derrick Bell's “interest convergence” thesis is especially prominent.⁴³ Bell argued that advancement in society for minority groups occurs only when such advancement

40 NOEL IGNATIEV, *HOW THE IRISH BECAME WHITE* 180–81 (1995) (arguing that labor historians have treated race as “peripheral to . . . working-class formation and struggle”); BRUCE NELSON, *DIVIDED WE STAND: AMERICAN WORKERS AND THE STRUGGLE FOR BLACK EQUALITY* xxii (2001) (denouncing the “widespread tendency of labor historians to portray the working class as white . . . either to minimize the importance of race in writing the history of American workers or to assign it a distinctly secondary role as an explanatory factor”); DAVID R. ROEDIGER, *THE WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS* (1991) (criticizing traditional Marxist analyses for not giving sufficient attention to the ways in which racial consciousness shape workers' identities); Eric Arnesen, *Following the Color Line of Labor: Black Workers and the Labor Movement before 1930*, 55 *RADICAL HIST. REV.* 53 (1993) (contending that labor historians had “largely ignored or relegated to the margins of their stories both white workers' racial ideologies and practices and the presence of African Americans and other non-white workers”); Marion Crain & Ken Matheny, *Labor's Divided Ranks: Privilege and the United Front Ideology*, 84 *CORNELL L. REV.* 1542 (1999); Herbert Hill, *The Problem of Race in American Labor History*, 24 *REVS. IN AM. HIST.* 189, 196 (1996) (arguing that labor historians, acting for ideological reasons, denied or underplayed union racism and instead created a myth of interracial worker solidarity); Herbert Hill, *Rejoinder to Symposium on “Myth-Making as Labor History: Herbert Gutman and the United Mine Workers of America,”* 2 *INT'L J. POL., CULTURE, & SOC.* 587, 593 (1989) (arguing that historians distort history to conform to their ideological priors); David Roediger, *History Making and Politics*, 2 *INT'L J. POL., CULTURE, & SOC.* 371, 371 (1989) (“most labor historians generally ignore issues of race and racism”).

41 E.g., Edna Bonacich, *A Theory of Ethnic Antagonism: The Split Labor Market*, 37 *AM. SOC. REV.* 547 (1972) (arguing that ethnic or racial differences among workers are manipulated and exacerbated by employers to weaken working-class solidarity).

42 See HERBERT R. NORTHRUP, *ORGANIZED LABOR AND THE NEGRO* 50 (rev. ed. 1971) (noting that railroad union members refused to admit Black workers as members even when it would be in their economic interest to do so because that would be tantamount to admitting that Blacks were the social equals of whites); IRA D.A. REID, *NEGRO MEMBERSHIP IN AMERICAN LABOR UNIONS* 45 (1930) (discussing union's refusal to admit Blacks because of white workers' refusal to accept social equality).

43 See Derrick Bell, *Brown v. Board of Education and the Interest Convergence Dilemma*, 93 *HARV. L. REV.* 518 (1980); see also Sheryll D. Cashin, *Shall We Overcome? Transcending Race, Class, and Ideology Through Interest Convergence*, 79 *ST. JOHN'S L. REV.* 253 (2005).

aligns with the interests of the dominant, majority group. In particular, white Americans will support equal rights and economic progress for African Americans only when whites perceive it to be in their own group self-interest.⁴⁴

There are several flaws in this analysis. As Justin Driver noted, “even if one accepts the notion that interests can be divvied up by race, the interest-convergence theory offers an overly simplistic view of both the ability to identify and to express what constitutes ‘black interests’ and ‘white interests.’”⁴⁵ To take one example from contemporary politics, are school-choice reforms such as charter schools or tuition vouchers in the interest of whites but not Blacks, Blacks but not whites, whites and Blacks, or neither whites nor Blacks? One can surely find many self-identified members of both groups who would assert each of these positions.

Interest convergence theory also ignores the fact that many “whites” do not see their identity primarily as being “white people.” Many Caucasian Jewish people think of themselves as “other.”⁴⁶ Italian or Irish or Polish Americans or mixed-European Americans may self-identify as “hyphenated Americans,” or as “just American” rather than as white. Christian or Muslim whites may primarily identify as Christians or Muslims, duty-bound to see race as irrelevant and treat their fellow human beings as individual children of God. Socialist, libertarian, or anarchist white Americans may primarily see themselves as socialists, libertarians, or anarchists. Other white Americans might primarily identify as LGBTQ, fans of their favorite sports team, gamers, feminists, parents, members of a local community, or a host of other identities. There is no reason to assume that people of European heritage who do not see their main identity as white are motivated to serve the perceived interests of white people at the expense of nonwhites.⁴⁷

44 Bell, *supra* note 43, at 525 (“The interests of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites.”); *see also* DELGADO & STEFANCIC, *supra* note 10 (stating that “this concept holds that white elites will tolerate or encourage racial advances for blacks only when these also promote white self-interest”); MICHAEL OMI & HOWARD WINNANT, *RACIAL FORMATION IN THE UNITED STATES* 147–49 (3d ed. 2014) (suggesting that whites act collectively to suppress people of color, making only the occasional concessions necessary to preserve white supremacy.); *see generally* MUSTAFA EMIRBAYER & MATTHEW DESMOND, *THE RACIAL ORDER* 152 (2015) (claiming that white people have “collective emotions,” most prominently the desire to exercise dominance over other groups); JOE R. FEAGIN, *RACIST AMERICA: ROOTS, CURRENT REALITIES, AND FUTURE REPARATIONS* 12–14 (2014) (suggesting that white and Black Americans have been and continue to be separate racial classes with divergent group interests).

45 Justin Driver, *Rethinking the Interest-Convergence Thesis*, 105 *Nw. U. L. Rev.* 149 (2015).

46 *E.g.*, Liel Leibovitz, *No, Jews Aren’t White*, *COMMENTARY* (July/Aug. 2021), <https://www.commentary.org/articles/lielleibovitz/jews-are-not-white; I’m Jewish and Don’t Identify as White. Why Must I Check That Box?>, *N.Y. TIMES* (Oct. 13, 2020), <https://www.nytimes.com/2020/10/13/magazine/im-jewish-and-dont-identify-as-white-why-must-i-check-that-box.html>.

47 Relatedly, according to Pew Research, 54% of Black Americans say that being Black is extremely important to how they see themselves, which means that 46% do not. Kiana Cox & Christine Tamir, *Race Is Central to Identity for Black Americans and Affects How They Connect With Each Other*, *PEW RSCH. CTR.* (Apr. 14, 2022), <https://www.pewresearch.org/race-ethnicity/2022/04/14/race-is-central-to-identity-for-black-americans-and-affects-how-they-connect-with-each-other>.

Moreover, the interest convergence theory assumes that to the extent whites will pursue their collective self-interest, this self-interest excludes whites desiring to live in a just, fair society.⁴⁸ As Driver suggested, adherents to interest convergence theory “risk undervaluing the role that morality and honor play in shaping political and legal debates. And the moral considerations of many whites, contrary to Professor Bell’s view, have played an important role in Black advancement throughout American history.”⁴⁹ For example, in antebellum times, racism was virtually ubiquitous among white Americans. Interest convergence theory cannot explain John Brown’s, William Lloyd Garrison’s, and other white abolitionists’ zealous commitment to ending slavery.

Finally, adherents to interest convergence theory, like racists on the right, think of race relations as a zero-sum game and assume everyone else does as well.⁵⁰ Under a zero-sum analysis, if white people benefit from a policy, then African Americans are harmed, and vice versa. For white racists, for whites to thrive, members of other groups need to be subordinated. For antiracists, this means that since whites have benefited at the expense of other groups, whites must give up their “privilege” and reduce their own standard of living to allow other groups to thrive.

In fact, whites as a group do not benefit from discrimination against, or oppression of, other groups, at least from an economic perspective. Economic growth and new wealth come from gains from trade, and the wealthier your trading partners, the more wealth you can accrue.

Imagine, for example, that I started a racist movement declaring that Americans named Bernstein in the United States were a superior race and all non-Bernsteins henceforth could do only menial jobs. The Bernsteins somehow took over. Without enough doctors, engineers, plumbers, electricians, software coders and so on, the whole country would soon be reduced to squalor and poverty. The Bernsteins would still be better off than the non-Bernsteins, but they would be much worse off than they would be in a scenario in which everyone is free to work to his or her full capacity.

Imagine if instead of leading a Bernstein racist movement, I led a successful racist movement for Americans with attached earlobes (twenty percent of the population). We take over and relegate everyone with detached earlobes to menial labor. The economic collapse wouldn’t be as bad as under the Bernstein regime, but Americans with attached earlobes would still wind up poorer than we had been.

48 For that matter, interest-convergence theory implies that when it comes to political goals, African Americans are also motivated solely by materialistic self-interest and not moral considerations. Brandon Hogan, *Derrick Bell’s Dilemma*, 20 BERKELEY J. AFR.-AM. L. & POL’Y 1, 3 (2019).

49 Driver, *supra* note 45, at 190.

50 The next several paragraphs originally appeared in slightly different form in David Bernstein, *A Mistake That Racists and Anti-racists Have in Common*, WASH. POST (July 22, 2016), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/07/22/a-mistake-that-racists-and-anti-racists-have-in-common>.

Or consider a real-world example: the huge opening of economic opportunities for women in the past fifty years. Men, as a group, may have lost some psychic benefit: feeling superior to women. But by pursuing careers commensurate with their talent, women make American society much wealthier. This means that men are wealthier and have better doctors, better products to buy, better job opportunities, and so on.⁵¹

The same dynamic applies when a majority imposes economic restrictions on a minority, whether through law, custom, violence, or some combination thereof. Let's say a young African American man born in 1920 had the potential to be a great scientist. Instead, because of discrimination and racism, he wound up enmeshed in the criminal justice system. The majority lost whatever scientific contributions that individual could have made, risked being victimized by his criminal behavior, and had to contribute taxes to pay for his incarceration. Even if a potential scientist becomes a laborer rather than a criminal because of racism, there is still a loss to society, including to the white majority. Multiply such scenarios by millions of people and the huge economic loss to the majority is clear.

It's true, of course, that individual white people can be made worse off by the absence of racism. A white baseball player in the late 1940s whose primary goal in life was to play in the major leagues might find himself "bumped" by a better Black player once integration commenced. A white Christian who is single-mindedly intent on attending Harvard might be better off if the university excluded nonwhites and non-Christians.

Relatedly, in the very short term, government or private violence can generally make one group wealthier by confiscating and redistributing another group's property. If, however, we are looking at entire groups across significant stretches of time, the economic self-interest of the majority dictates treating minority groups fairly.

Erroneous zero-sum thinking, though common, is neither inevitable nor ubiquitous. To the extent people recognize that fair treatment of all groups benefits everyone, interest-convergence theory falls apart. Moreover, from a strategic point of view, it's much easier to persuade white people to oppose racism if they understand that doing so not only helps members of other groups but also benefits whites.

One could also encourage people to think of themselves primarily as Americans rather than as members of racial subgroups. If that succeeded, erroneous zero-sum thinking would at least be limited to the rest of the world rather than their fellow citizens.

Ironically, however, large swaths of the academic left want to encourage Americans, especially white Americans, to more strongly identify by race. As we shall see in part III of this essay, scholars of race increasingly argue that American society should cultivate "white racial consciousness" among white Americans. The goal is to then persuade them

51 See Christine LaGarde & Jonathan D. Ostry, *Economic Gains from Gender Inclusion: Even Greater than You Thought*, IMF BLOG (Nov. 28, 2018), <https://www.imf.org/en/Blogs/Articles/2018/11/28/blog-economic-gains-from-gender-inclusion-even-greater-than-you-thought>.

to recognize their privilege and that because of their privilege justice requires that they sacrifice whites' self-interest for the benefit of nonwhite Americans.

III. ENCOURAGING "WHITE RACIAL CONSCIOUSNESS"

While researching my book *Classified: The Untold Story of Racial Classification in America*, I repeatedly encountered the phrase "white racial consciousness." I had previously associated this concept with white supremacists, the alt-right, and neo-Nazis.⁵² But I instead encountered academic articles by progressive sociologists, psychologists, anthropologists, and others depicting "white racial consciousness" or similar constructions describing white racial identity in a favorable light.⁵³

This literature supports or adopts the notion that overcoming societal racism requires white Americans to adopt a white racial consciousness.⁵⁴ Increased white racial consciousness will give white Americans an opportunity to acknowledge their "white privilege." In turn, this will allow white Americans to develop a collective critical consciousness, making them into antiracist allies.⁵⁵ Psychologists have developed formal models of how this progression purportedly occurs.⁵⁶ Prominent legal scholars have jumped on board, to the point, in some cases, of criticizing the diversity rationale for affirmative action for stunting the proper growth of white racial consciousness.⁵⁷

There are obvious potential benefits to white Americans understanding the extra burdens that other Americans have inherited and still experience. The suggestion, however, that the

52 And indeed, white-supremacist leaders still seek to foster "white racial consciousness" among their followers. See RICHARD C. FORDING & SANFORD F. SCHRAM, *HARD WHITE: THE MAINSTREAMING OF RACISM IN AMERICAN POLITICS* ch. 3 (2020).

53 E.g., Charles A. Gallagher, *Color-Blind Privilege: The Social and Political Functions of Erasing the Color Line in Post Race America*, 10 *RACE, GENDER, & CLASS* 22 (2003); Catherine R. B. Thomann & Karen L. Suyemoto, *Developing an Antiracist Stance: How White Youth Understand Structural Racism*, 38 *J. EARLY ADOLESCENCE* 741 (2018); Pamela Perry, *White Means Never Having to Say You're Ethnic: White Youth and the Construction of "Cultureless" Identities*, 30 *J. CONTEMP. ETHNOGRAPHY* 56 (2003); Ashely W. Doane, *Dominant Group Ethnic Identity in the United States: The Role of "Hidden" Ethnicity in Intergroup Relations*, 38 *SOCIO. Q.* 375 (1997); see generally LUCIUS T. OUTLAW, JR., *ON RACE AND PHILOSOPHY* (1996) (arguing that encouraging "white pride" can be beneficial for antiracist movements).

54 See CHRISTOPHER S. COLLINS & ALEXANDER JUN, *WHITE EVOLUTION: THE CONSTANT STRUGGLE FOR RACIAL CONSCIOUSNESS* (2020); John Yemma, "Whiteness Studies" an Attempt at Healing, *BOS. GLOBE*, Dec. 21, 1997, at A1 (quoting Charley Flint as follows: "We want to racialize whites. How can you build a multiracial society if one of the groups is white and it doesn't identify itself as a race?").

55 See ROBIN DIANGELO, *WHAT DOES IT MEAN TO BE WHITE?: DEVELOPING WHITE RACIAL LITERACY* xvii (2012).

56 Rita Hardiman & Molly Keehn, *White Identity Development Revisited: Listening to White Students*, in CHARMARINE L. WIJEYESINGHE & BAILEY W. JACKSON III EDs., *NEW PERSPECTIVES ON RACIAL IDENTITY DEVELOPMENT: INTEGRATING EMERGING FRAMEWORKS* 123–24 (2d ed. 2012); Janet E. Helms, *Toward a Model of White Racial Identity Development*, in *BLACK AND WHITE RACIAL IDENTITY: THEORY, RESEARCH, AND PRACTICE* 51–52 tbl.4.1 (Janet E. Helms ed., 1990).

57 Osamudia R. James, *White Like Me: The Negative Impact of the Diversity Rationale on White Identity Formation*, 89 *NYU L. REV.* 425 (2021).

primary effect of encouraging white racial consciousness would be white Americans evolving into activists dedicated to combatting systemic racism is optimistic to the point of ingenuousness.⁵⁸ For one thing, the literature on in-group favoritism and hostility to outgroups suggests that the more people think of themselves as white, the more likely they are to favor their own white in-group and disfavor nonwhites.⁵⁹ Indeed, common human experience suggests that groups are much more likely to use their identities to favor themselves at the expense of others than vice versa. Among the thousands of street gangs, for example, few if any dedicate themselves to the welfare of members of *other* street gangs at their own expense.

Suggesting to people that their membership in a group makes them “privileged” breeds resentment. A poor, white person living in a dying industrial town with no decent jobs and an opioid epidemic resents being called privileged by people of higher socioeconomic status. This resentment leaves the target vulnerable to identity politics on the right, which is especially dangerous to the extent it appeals to the white majority.⁶⁰

Not surprisingly, social science data show that increased white racial consciousness is associated with racism, nativism, and other manifestations of intolerance.⁶¹ More specifically, the more Americans self-identify as white, the more likely they are to seek to promote the interests of whites at the expense of other groups.⁶²

58 One reason progressive academics, especially those who study race, may be inclined to believe that encouraging white racial consciousness will lead to antiracist attitudes is that they and their close associates may, at least in the short to medium term, be examples of the phenomenon. Indeed, among liberal whites more generally, by 2016 white liberals were more likely than Black Americans to say they had negative attitudes toward white people. YASCHA MOUNK, *THE IDENTITY TRAP: A STORY OF IDEAS AND POWER IN OUR TIME* (2023). This, however, may be a product of the very sort of nonracial identity that would argue against encouraging white racial consciousness. One interpretation of these polling results is that encouraging white racial consciousness discourages in-group bias toward whites, but another, probably sounder, interpretation is that the relevant sample of white liberals primarily identify as progressives rather than as white people, so their in-group is not white people but fellow progressives who see white people as oppressors (or at least know they are supposed to say so publicly), in line with current ideological trends.

59 Marilyn B. Brewer, *The Psychology of Prejudice: Ingroup Love or Outgroup Hate?*, 55 *J. SOC. ISSUES* 429, 430–31; Henri Tajfel & John Turner, *An Integrative Theory of Intergroup Conflict*, in *THE SOCIAL PSYCHOLOGY OF INTERGROUP RELATIONS* 33, 40–43 (William G. Austin & Stephen Worchel eds., 1979). See generally MOUNK, *supra* note 58, at 13 (“As social psychologists have demonstrated again and again, drawing lines between different groups seems to come naturally to members of our species. We are capable of great courage and altruism when called upon to assist members of our own group, but also terrifying disregard and cruelty when confronted with people whom we think of as members of another group.”).

60 The author thanks David L. Bernstein for this point.

61 ERIC KAUFMANN, *WHITESHIFT: POPULISM, IMMIGRATION, AND THE FUTURE OF WHITE MAJORITIES* (2019).

62 ASHLEY JARDINA, *WHITE IDENTITY POLITICS* (2019); Alan Abramowitz & Jennifer McCony, *United States: Racial Resentment, Negative Partisanship, and Polarization in Trump’s America*, 681 *ANNALS AM. ACAD. POL. & SOC. SCI.* 137 (2019); Douglas Hartman et al., *An Empirical Assessment of Whiteness Theory: Hidden from How Many?*, 56 *SOC. PROBS.* 403 (2009); Brian S. Lowery et al., *Concern for the In-Group and Opposition to Affirmative Action*, 90 *J. PERSONALITY & SOC. PSYCH.* 961 (2006); Ashley V. Reichelmann et al., *Racial Identity, Reparations, and Modern Views of Justice Concerning Slavery*, 86 *PUB. OP. Q.* 547 (2022).

Encouraging white racial consciousness also reduces the possibility that American racial divisions will ever heal. Society will always be divided by race if our educational institutions and popular culture encourage, even demand, that Americans divide themselves by race.

The inevitable response to this critique is that American racial classifications and identities are so deeply embedded⁶³ that absent a revolution in white consciousness, racism will remain “an integral, permanent, and indestructible component of [American] society.”⁶⁴ Racial division, in other words, will be a permanent part of the American landscape, so it’s best to try to manipulate such division to favor antiracist outcomes.⁶⁵

This view shares a more-than-passing resemblance to the Marxist claim that class conflict between workers and capitalists is inevitable in industrial society. Just as developing class consciousness is considered crucial in the Marxist paradigm to successful overthrow of the capitalist system, developing race consciousness is seen as crucial to overcoming racial hierarchy.

In fact, however, racial identities are not fixed, nor is significant racial conflict inevitable in the absence of raising racial consciousness. As I note in *Classified*:

Many American interethnic conflicts have faded into distant memory. This includes relatively obscure intergroup friction, such as Germans versus Scandinavians in the Upper Midwest and clashes between Basque shepherds and ranchers of other ethnicities. It also includes better-known antipathies, such as anti-Chinese agitation in the American West and tensions between ascendant Irish Americans and the Anglo establishment in East Coast cities. Bitter and sometimes violent hostility to non-Protestant religious groups that once marked American life has also faded. This includes anti-Mormon violence in the 1800s and the hostility toward Catholics that led to a vigorous rebirth of the Ku Klux Klan in the 1920s. These conflicts have only faint echoes today and seem faintly ridiculous to most Americans.

63 MOUNK, *supra* note 58, at 187–88 (“Though they regularly acknowledge identities as socially constructed, they effectively treat race as a natural category, and have given up the hope that a truly just society would render it less salient.”). Some of the scholars to whom Mounk is alluding adopt this position strategically rather than sincerely. GAYATRI CHAKRAVORTY SPIVAK, *IN OTHER WORLDS: ESSAYS IN CULTURAL POLITICS* 197–221 (1987) (setting forth and defining the concept of “strategic essentialism”); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 *STAN. L. REV.* 1241, 1296 (1991) (stating that “at this point in history, a case can be made that the most critical resistance strategy for disempowered groups is to occupy and defend a politics of social location,” i.e., to preserve and encourage identification with socially constructed racial categories).

64 DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* ix (1993).

65 MOUNK, *supra* note 58, at 9 (noting that progressives have “increasingly embraced the vision of the future in which society would forever be profoundly defined by its division into distinct identity groups”).

Consider that in the 1920s, the Klan, which focused its ire on American Catholics, was likely the most powerful private organization in the United States.⁶⁶ In 1924 the United States passed immigration legislation,⁶⁷ supported by the Klan,⁶⁸ severely reducing immigration by Catholics and Jews, whom the Klan considered to be unassimilable and threats to American values.⁶⁹

As late as 1960, there was significant doubt that Americans would be willing to elect a Catholic president. John F. Kennedy barely won, and only because millions of Catholics who had voted for Eisenhower voted for Kennedy because he was Catholic.⁷⁰ These Catholic voters counterbalanced the millions of Protestants who voted for Democrat Adlai Stevenson in 1956 but then voted for Nixon because they would not vote for a Catholic.

Fast forward sixty years. After the 2020 election, the United States had a Catholic president, a (female) Catholic Speaker, and six Catholic, two Jewish, and three female Supreme Court Justices. Additionally, the vice president-elect was a Black-identifying woman with one Asian Indian and one mixed-race Jamaican parent, and the incoming Senate Majority Leader was Jewish. None of this attracted mainstream controversy.

From a 1960—much less a 1920—standpoint, the highest levels of U.S. government being populated mostly by Catholics, with a starring role for Jews, women, and a Black vice president, would have been inconceivable. The U.S. political elite, after all, had been dominated throughout American history by white Protestant men.

To take a narrower example, Italian Americans once faced significant hostility in the United States, including an infamous mass lynching in Louisiana in 1891.⁷¹ This hostility resulted from a combination of anti-Catholic prejudices, labor competition, public association of Italian Americans with organized crime in urban areas, and most Italian Americans' Sicilian origins, which resulted in their having complexion darker on average than other European immigrant groups.

The Columbus Day national holiday, now often depicted as insensitive to the travails of American Indians, was meant to mitigate hostility to Italian Americans and encourage ethnic pride by honoring the famous Italian explorer. As late as 1986, it was considered

66 See LINDA GORDON, *THE SECOND COMING OF THE KKK: THE KU KLUX KLAN OF THE 1920S AND THE AMERICAN POLITICAL TRADITION* (2018).

67 Immigration Act of 1924, ch. 190, 43 Stat. 153 (repealed 1952).

68 Jared A. Goldstein, *The Klan's Constitution*, 9 ALA. C.R. & C.L. L. REV. 285, 340–41 (2018); *Immigration Bill Taken Up in House: Party Lines Are Forgotten as Representative Johnson Presents Contentious Measure*, N.Y. TIMES, Apr. 6, 1924.

69 Douglas S. Massey & Karen A. Pren, *Unintended Consequences of US Immigration Policy: Explaining the Post-1965 Surge from Latin America*, 38 POPULATION & DEV. REV. 1 (2012).

70 SHAUN CASEY, *THE MAKING OF A CATHOLIC PRESIDENT: KENNEDY VS. NIXON 1960* (2009); Lucy S. Dawidowicz, *Religion in the 1960 Presidential Campaign*, 62 AM. JEWISH Y.B. 111 (1961).

71 RICHARD GAMBINO, *VENDETTA: THE TRUE STORY OF THE LARGEST LYNCHING IN U.S. HISTORY* (2d ed. 2000).

highly salient that Antonin Scalia was the “first Italian American Supreme Court Justice.”⁷² By contrast, Florida governor Ron DeSantis’s Italian ancestry is a nonissue.

One might argue that racism against Black people and perhaps others is so ingrained in American society that it cannot reasonably be analogized to discrimination against Jews, Catholics, Italians, and other white ethnic groups. If so, perhaps a better analogy is the decline in prejudice against gay men and women.

Cultural and legal hostility to homosexual acts, especially sex between men, has been ingrained in the Judeo-Christian tradition for approximately three thousand years. Within my lifetime, homosexual sex was illegal in much of the United States, homosexuality was considered a mental illness, and most homosexuals were “closeted” and being “outed” carried severe risk of being disowned by one’s family, career ruin, and even suicide. The idea that homosexuals could marry members of the same sex was considered fantastical beyond a very small circle of activists.

Polling data show dramatic shifts in attitudes toward gay and lesbian Americans since the 1970s. For example, the percentage of Americans who think that homosexuals should be permitted to adopt children rose from 14% in 1977 to 75% in 2017.⁷³ If ingrained attitudes toward homosexuality could change so drastically over a forty-plus-year period, racial attitudes can see equally dramatic changes.

And indeed, in contrast to the pessimism of Derrick Bell and others,⁷⁴ over time racist attitudes among Americans have plummeted. One significant indicium is the remarkable growth of approval of interracial marriage. Proponents of housing segregation laws, school segregation, and even lynching once argued that they were justified as means of preventing interracial relationships. In 1958, the first time the Gallup Poll inquired, only 4% of Americans approved of interracial marriage.⁷⁵

By 2021, the rate of approval had increased to 94%, including near unanimity among respondents under age thirty.⁷⁶ Interracial marriage is increasingly common,⁷⁷ and a stroll

72 See, e.g., Opening Statement of Chairman Strom Thurmond, Hearings Before the Committee on the Judiciary United States Senate Ninety-Ninth Congress Second Session on the Nomination of Judge Antonin Scalia, to be Associate Justice of the Supreme Court of the United States: August 5 and 6, 1986, at 2, <https://www.govinfo.gov/content/pkg/GPO-CHRG-SCALIA/pdf/GPO-CHRG-SCALIA.pdf> (“Judge Scalia is now cast in the role of a symbol. Certainly, he creates great pride by being the first Italian-American who will sit on the Court.”).

73 *LGBTQ+ Rights*, GALLUP, <https://news.gallup.com/poll/1651/gay-lesbian-rights.aspx> (last visited Apr. 15, 2024).

74 See Derrick Bell, *The Racism Is Permanent Thesis: Courageous Revelation or Unconscious Denial of Racial Genocide*, 22 *CAP. U. L. REV.* 563 (1993) (suggesting that any seeming progress for Black Americans would prove ephemeral).

75 Justin McCarthy, *U.S. Approval of Interracial Marriage at New High of 94%*, GALLUP (Sept. 20, 2021), <https://news.gallup.com/poll/354638/approval-interracial-marriage-new-high.aspx>.

76 *Id.*

77 Gretchen Livingston & Anna Brown, *Intermarriage in the U.S. 50 Years After Loving v. Virginia*, PEW RSCH. CTR. (May 18, 2017), <https://www.pewresearch.org/social-trends/2017/05/18/intermarriage-in-the-u-s-50-years-after-loving-v-virginia>.

through any American town or city confirms the ordinariness of interracial relationships. Vice President Kamala Harris's marriage to a white man received virtually no negative attention during the 2020 presidential campaign.

One can point to many other indications of a declining racial hostility in the United States, including the election and reelection of an African American president in 2008 and 2012. Racial prejudice among whites continued to decline during the Trump presidency.⁷⁸ Does this mean that racial conflict, especially Black–white conflict, may not only continue to diminish but largely fade away over time? Ideology aside, there is no reason to assume otherwise.

The goal, then, should not be increased racial consciousness, white or otherwise. Rather, we should encourage the development of a common nonracial or multiracial American identity, such that Americans lose the impetus to divide themselves into in- and out-groups by race.⁷⁹ Returning to the psychological literature, encouraging people to think of themselves at broader levels of collective identity creates a common in-group identity. This can broaden the scope of what people perceive as their in-group and thus reduce intergroup bias.⁸⁰

CONCLUSION

Those who promote the ideas discussed and critiqued in this essay share several premises: pessimism about the United States overcoming its racist history, what I consider a naïve belief in an identitarianism shaped by antiracist ideology as the best way to mitigate racism, and a concomitant belief that preserving the salience of existing socially (and legally) constructed racial categories is both inevitable and mostly desirable.

These premises, in turn, are ultimately based on a skepticism of or hostility to the ability of liberalism to overcome racism. In other words, they represent a rejection of the optimistic racial liberalism prevalent among civil rights activists when *Brown* was decided.

The most significant liberal idea rejected by critics is that Americans should adopt interpersonal solidarity based on common humanity and shared citizenship. In this liberal

78 Daniel J. Hopkins & Samantha Washington, *The Rise of Trump, the Fall of Prejudice? Tracking White Americans' Racial Attitudes 2008-2018 via a Panel Survey*, 84 PUB. OP. Q. 119 (Oct. 1, 2019), <https://ssrn.com/abstract=3378076>.

79 MOUNK, *supra* note 58; *but cf.* Bonilla-Silva & Dietrich, *supra* note 26, at 155–56 (suggesting that encouraging the notion that “we are all Americans” is an example of “color-blind racism”).

80 S. L. Gaertner et al., *The Contact Hypothesis: The Role of a Common Ingroup Identity on Reducing Intergroup Bias*, 25 SMALL GRP. RSCH. 224 (1994); *see also* V. Yzerbyt et al., *I Feel for Us: The Impact of Categorization and Identification on Emotions and Action Tendencies*, 42 BRIT. J. SOC. PSYCH. 533 (2003) (relating that students who were prompted to consider themselves as students in general, rather than as students of their particular, French-speaking, university, were less likely to discriminate against students from a non-French-speaking university).

order, self-identification by race would be permitted in line with liberal pluralism. However, the government would avoid using racial classifications without a compelling reason for doing so, and racial identification would not be encouraged as a matter of public policy.

The significance, for an American's fate, of being of northern, southern, or eastern European heritage or being Protestant, Catholic, or other is now generally quite limited. In a society with liberal racial policies, racial identities would be expected to similarly fade in significance. Indeed, as interracial relationships flourish, one could expect the traditional racial classifications to become unstable to the point of potential incoherence.

One significant barrier to such a future, discussed in detail in my book *Classified*, is the government's insistence that Americans constantly check boxes classifying themselves as members of one or another racial category.⁸¹ Another danger is lingering racist attitudes in constant danger of being revived by reactionary and demagogic political movements and politicians. The third danger, however, comes from a surprising source: academics and activists on the left who style themselves antiracists but adopt racist ideas that undermine racial liberalism. These ideas are not only dangerous in and of themselves but also provide intellectual support for continued racial classification by the government. Finally, by encouraging racial identitarianism, such as by cultivating "white racial consciousness," adoption of these ideas also ultimately, albeit inadvertently, risks providing a future constituency for right-wing reactionaries and demagogues.

81 See BERNSTEIN, *supra* note 8.