

(Cite as: 25 Law & Ineq. 355)

Law and Inequality: A Journal of Theory and Practice
Summer 2007

Volume XXV Commemorative Symposium Law and Inequality: The Next 25 Years

***355 THE RACE AND CLASS NEXUS: AN INTERSECTIONAL PERSPECTIVE**

[John A. Powell \[FN1\]](#)

Copyright © 2007 Law and Inequality: A Journal of Theory & Practice; John A.

Powell

Introduction

In his groundbreaking 1903 treatise, *The Souls of Black Folk*, W.E.B. Du Bois wrote, "the problem of the twentieth century is the problem of the color-line." [FN1] A century later, and a generation removed from the struggles of the Civil Rights era, many now suggest that class, not race, is the greatest cleavage in American society. [FN2] They maintain that any real or apparent racial inequality between racialized groups is better explained by class and culture, and that if race ever had any explanatory power, that time is now behind us. [FN3] A declining minority stresses that race is still important and that in a number of circumstances race continues to trump class. [FN4] Those who advocate this position often point to the residential segregation of even middle class Blacks, racial profiling, or even the difficulty Black men encounter in fetching a cab in New York City. [FN5] This debate is not academic. Public opposition to race-based affirmative action is justified in part by a class assertion. [FN6] Others have argued that we should *356 pursue class based integration and drop the call for racial integration of K-12. [FN7] This debate is so familiar that we seldom linger to ask: "What is race and class?" Further, we fail to reflect on how they have influenced each other's development in America. The answer affects the way we carry out social policy, make law, and create meaning. Uncovering the influence and interrelationship of race and class is the aim of this Article.

More specifically, this Article argues that the development of a socially-inclusive agenda must account for race, class, and their interrelationship. [FN8] There is a prevailing assumption in liberal discourse that race and class are analytically separable and that it would be a wiser course, as a matter of strategy, to address racial disparities through class-based measures. [FN9] Liberals worry that a focus on race will quickly degenerate into a narrow form of balkanization and identity politics, alienating potential allies and population segments that might be receptive to a progressive message. [FN10] This Article asserts that these assumptions are wrong analytically, historically, and strategically. Many traditional liberals also long believed that conservatives enjoyed the "unwarranted support from poor and working-class Whites in the South because the race question diverted them from pursuing their 'real interests.'" [FN11] They assumed that the extension of the right to vote and other civil rights for southern Blacks would diminish the importance of racial issues and result in a class-based realignment in which southern working class Whites would *357 act more like their northern counterparts. [FN12] Paradoxically, the politics of the North and the nation as a whole since the late 1960s have become more like that of the old South; race is now more successfully used in defense of conservative politics in the country as a whole. [FN13] Part of the explanation for this error is due to an inadequate understanding of how race operates.

Conservatives rightly point out that race is a socially constructed category with no scientific or biological basis. [FN14] As such, many conservatives believe that the harm caused by race is the harm of racial classification. Continuing to see race, in their view, perpetuates racial stereotypes and stigmatizes people on the basis of skin color. [FN15] Many conservatives make the mistake that if something is not real by one measure (in this case biology), it

must not be real at all. [FN16] Although race is a scientific illusion, it remains a social reality that shapes our life chances and the way we experience both our external and internal world. [FN17] Those who espouse the race-neutral position, on the left and the right, are basing their view on an inadequate understanding of the role of race in our society in the twentyfirst century.

While they might appear quite different, both of these views rest on similar faulty assumptions. They understand racism as a psycho-social event that occurs between discrete individuals with a focus on the psychological motivation of the prejudicial actor. While liberals would include unconscious prejudice and discrimination within individual internal motivation, conservatives would focus on more overt and intentional discrimination and be skeptical of unconscious explanations. Conservatives are more likely to explain persistent racial disparities as bad choices of the racial other caused by a culture of poverty. For both groups then, racial disparities only require redress when there are identifiable, bad, discriminatory actors and particular victims and the remedy will likely require transferring resources between Whites and non-Whites. [FN18] This limited *358 understanding of race assumes that racism is primarily about discrimination and the needs of non-Whites. This model of victim/perpetrator, disparity, and either unconscious racism or bad culture does not sufficiently explain current inequalities nor does it grapple with the complex work that racial and ethnic identity do within the larger society.

I assert that there is a broader, richer understanding of race that is not only about individual, intentional, or unconscious discrimination directed at people of color. While individual prejudice and discrimination remain relevant, I will assert that race, racial meanings, and racial practices are really about all people in the United States, cultural meaning, institutional arrangements, and their interactions. These inter-institutional actions and structures cannot be understood by looking for a single cause. They produce outcomes through multiple interactions better understood as cumulative mutual causation. One of my assertions is that racial practices in the United States help define the meaning and development of our understanding, and the practices of class. The story of the fight for states' rights, unions, our electoral system, and limited federal government is radically incomplete without being informed by race. [FN19] Equally, fragmentation in metropolitan space with segregated neighborhoods and high poverty schools cannot simply be explained by racially-neutral, local controls. [FN20] I am not asserting that race is more important than class, but I am rejecting the notion that class explains race. Instead I am asserting that race and class are distinct and at the same time mutually constitutive, recursive processes in the United States that render race and class radically incoherent without understanding their interactive nature.

In Part II, I will focus on the heavy footprint race has left on the development and meaning of class in the United States. Racial meaning, identity, and practices have helped shape class identity and inhibit class consciousness. I will also show how racist attitudes, the creation of racial identities, and the *359 institutionalization of racial systems are themselves tied to economic development and influenced by economic fears and needs. Race and class are too often presented as opposing frames or reducible into the other. This Article rejects the claim that race and class can be reduced into each other.

In Part III, this Article turns to the importance of race in coalition building as the United States becomes a majority-minority nation. We have yet to grasp the full import of Martin Luther King Jr.'s insight that the fates of all Americans are linked across racial boundaries. [FN21] While it is important to understand this linkage, failure to appreciate that class and race interests are both real and distinct in our society has too often seduced us into believing poor Whites and poor non-Whites have the same co-terminus "real interest." The challenge is to build general and specific interests both along racial and economic axes, as well as along other significant interests that may emerge. This requires what I call a transformative set of programs and a transformative discourse, i.e., an intervention that works to permanently transform structural arrangements and to support new economic and racial interest and identification. [FN22] Efforts must be at the same time sensitive to existing and emerging universal values and ideals while being grounded in the shifting particularity of individuals and groups and their concrete lives. I call this effort

(Cite as: 25 Law & Ineq. 355)

"targeted universalism."

While it is clear there needs to be a focus on class and economic issues, unless properly approached, such an effort is unlikely to be fruitful. What we normally call class-based alternatives are misnomers and ultimately conservative. These alternatives are transactional rather than transformative. They focus on promoting disadvantaged individuals to the status of middle class rather than on transforming or restructuring the relations between classes on a more equitable basis. Because of the individualistic character of such proposals, they are not a useful organizing mechanism for building a coalition on the basis of shared interests or a sense of solidarity. A socially-inclusive ***360** alternative requires addressing race and building cross-class and multi-racial coalitions.

This Article challenges the assumption that race is necessarily divisive and disturbs the project of building a coalition with a socially inclusive agenda. By most accounts, the greatest improvement in racial attitudes for Whites occurred during the heart of the Civil Rights Movement, despite the heightened and forthright focus on race. While race can be, and has been used divisively, [\[FN23\]](#) it can also be used in a transformative manner which helps to bring people together. Indeed, it is extremely doubtful that an inclusive and just society can be built without deeply engaging race. I will also show how skillful politicians have used colorblind racism through symbolic appeals and coded meanings to undermine efforts to build an inclusive agenda in the United States. [\[FN24\]](#) Racialized systems, and the resistance to change they inspire, obstruct the advancement of a socially-inclusive agenda with negative consequences for Whites and non-Whites alike. [\[FN25\]](#) The answer is not, therefore, to avoid discussions of race. It is already in the discourse, albeit in a subterranean manner. The question is not whether race will be used, but how. Silence is concession to a use of race that will continue to blunt reform and stymie efforts to build a new movement for a fairer society. The response must be to make race explicit, but in a transformative manner.

I. The Racial Dimension of Class in the United States

Because race and class are so often used in American discourse, we have difficulty noticing that we understand class even less than race, and that our understandings of both are woefully shallow. Unfortunately, both terms as they are currently ***361** used more effectively obfuscate than enlighten. Perhaps the most glaring flaw in our popular formulations of race and class is that they are assumed to be phenotypical markers on one hand, or economic locations a-historically derived and a-contextually applied on the other. But class is more than annual income, just as race is more than skin color. Race and class acquired their meaning over time and are not comprehensible outside their historical social context. [\[FN26\]](#) For this reason, and because so much of our racial meaning and practices are reflective of our cultural narratives and formative structures, [\[FN27\]](#) this Article will look back on some of the historical moments when these narratives and structures were being constituted and contested. Although a comprehensive delineation of race and class is beyond the scope of this Article, the junctures I highlight continue to influence the understanding of race and class in the United States in the 21st Century. [\[FN28\]](#)

A. Race and Class at the Revolution

Racial dimensions in the class structure were visible in the United States as early as the seventeenth century with the creation of citizen patrols of slave populations. [\[FN29\]](#) This arrangement was prototypical of the need to control the "dangerous racial other" and early forms of competition and identity. [\[FN30\]](#) It evolved into a dual structure for race and class by the time of the American Revolution.

"The American Revolution was fought in the name of liberty. On the road to independence, no word was more frequently invoked" [\[FN31\]](#) The revolutionary victory and the republican ideology that it spawned emphasized independence. "Freeman," a critical ingredient of the new American identity, contemplated both "the double meaning of economic and political ***362** independence." [\[FN32\]](#) And yet, before the revolution, many people, both White and Black, enjoyed neither. In colonial America, most Whites did not vote and many colonists were indentured servants. [\[FN33\]](#) Indentured servants made up a significant portion of the non-slave labor force, [\[FN34\]](#) and "as late as

the early 1770s, nearly half the immigrants who arrived in America from England and Scotland had entered into contracts for a fixed period of labor in exchange for passage." [FN35] The circumstances of African slavery and European servitude were not all that different. "Indentured servants often worked in the fields alongside slaves. Like slaves, servants could be bought and sold, were subject to corporal punishment, and their obligation to fulfill their duties was enforced by the courts." [FN36] White freedom in the colonial era was partial and existed on a continuum that was not always clearly distinguishable from Black slavery.

Servitude was incompatible with republican citizenship. White indentured servitude was eliminated after the revolution. [FN37] Formerly indentured Europeans were converted to the republican ideology by appeals to freedom and promises of release from bondage. [FN38] The European servant transformed into a free White laborer. For a brief moment, the epidemic of freedom appeared to threaten the continued existence of slavery as well. To many of the founders, both Northern and Southern, the right to liberty was an endowment of the Creator. [FN39] According to David Roediger, "the *363 proximity of unfree whites and Black chattel slaves on a continuum of oppression helped create sympathies that ensured that the 'contagion of liberty' during and after the upheaval of the Revolution would result in attacks on racial slavery as well as indentured servitude." [FN40]

Unfortunately, the potential for class based solidarity born of the shared experience of servitude did not survive the revolutionary moment. While White indentured servitude died out peacefully, Black slavery was ended only by civil war and constitutional amendment. [FN41] Powerful economic and political interests protected Black slavery. The Southern economy, built upon lifelong hereditary Black bondage, was able to extract maximum profits through low-cost, coerced labor. [FN42] Southern elites, ironically, claimed that they were dependent upon African slavery at the same time that the dependence of slaves was used as one of the reasons they were unfit to be citizens in the new republic. [FN43]

The formation of the Union depended upon the acceptance of slavery in the South. Each of our Nation's formative institutions protected this racial arrangement, none more importantly than the Constitution itself. [FN44] Although the word slavery does not appear in the Constitution, many provisions were included for the purpose of protecting it. [FN45] The divide over slavery and the *364 Constitution created a structure in which the states became the primary political units and retained wide authority over internal matters. As such, the federal structure, and the limited federal government erected by the Constitution, "insulated slavery in the states from outside interference . . ." [FN46] Article I temporarily barred Congress from acting to end the importation of slaves. [FN47] Article IV, section 2 placed an affirmative duty on free states to return fugitive slaves to their place of service, [FN48] drawing even those states that opposed slavery into the control stratum. Article V prohibited any Amendment seeking to reverse the bargain that protected the slave trade until 1808. [FN49] Most importantly, the Constitution's Three-Fifth's Clause [FN50] ensured that slaveholders led the process of nation building until the election of Lincoln. [FN51]

The contradiction between the ideal of personal liberty and the existence of slavery was an uncomfortable ethical and philosophical tension. [FN52] Race emerged as the "justification for the existence of slavery in a nation ideologically committed to freedom as a natural right," [FN53] and the beginning of an enduring racialized ideology appeared. [FN54] By the nineteenth century, notions of Black *365 inferiority and White superiority had matured into full fledged ideologies that defined many of the United States' early institutions as well as its individual and national identity. [FN55] In the South, theories of scientific racism and polygenesis took root and flourished. [FN56] In the North, "Republicanism had long emphasized that the strength, virtue, and resolve of a people guarded them from enslavement White revolutionary pride could thus open the way for republican racism." [FN57] In the minds of working class Whites, who soon forgot their own sojourn in unpaid labor, the explanation for Black slavery became located in Blacks themselves. Whiteness was not simply about color or historical root, but was defined in opposition to Blackness and the conditions of servitude that came to be associated with Blacks. [FN58] The development of racialized identity in America coincided with the historic development of the American psyche.

(Cite as: 25 Law & Ineq. 355)

B. Industrialization and White Suffrage

American industrialization and the concomitant rise of wage labor posed a profound challenge for the ethos that defined economic dependence as incompatible with freedom. In the 1830s and 1840s, a "free labor" ideology became prominent, emphasizing the belief "that workers should be free and able to demand remuneration commensurate with their skill and tradition." [\[FN59\]](#) Yet "by 1860, roughly half of the non-slave labor force was dependent on wage labor and subject to new forms of capitalist labor discipline." [\[FN60\]](#) The commodification of free labor with a wage system met with resistance. [\[FN61\]](#) It disrupted the understanding that *366 developed during and after the Revolutionary War that freedom was antithetical to working for others. [\[FN62\]](#) Dependent labor had come to mean unfreedom, servitude, and Blackness. [\[FN63\]](#) It was not enough that White working class males were no longer servants. It was freedom from the control of others and ownership over one's self which made one free. [\[FN64\]](#) In this way, the Jeffersonian ideal of the small, independent farmer as the "best basis of public liberty" reemerged in Jacksonian America as a critique of early capitalism. [\[FN65\]](#)

The tension between the freeman identity and the reality of economic dependence under industrialization was mitigated by reforms expanding suffrage for White males. "Before independence, the right to vote had been subject to complex restrictions, which varied from colony to colony. Everywhere, property qualifications, while less exclusionary than in England because of the wide distribution of ownership, barred those deemed incapable of independent judgment--journeymen, servants, apprentices, and the poor." [\[FN66\]](#) Working class political freedom was won by an uneven process of democratization "through the substitution of taxpaying for property requirements in some states, the substantial reduction of the freehold qualifications in others, and the widespread enfranchisement of soldiers." [\[FN67\]](#) For White men, the process of democratization ran its course by the Age of Jackson. [\[FN68\]](#)

As a predictable consequence of the confluence of the stigmatization of "Blackness" with the need to give something to Whites who feared increasing dependence, universal suffrage paralleled movements to fully disenfranchise Blacks.

As Linda Faye Williams pointed out:

*367 New York in 1821 and Pennsylvania in 1838 both eliminated their property requirements for voting and prohibited black male suffrage in the same stroke. From 1819 to the Civil War, every state admitted to the union limited the franchise to white males in their constitutions. By 1860, only six percent of the Northern black population lived in states in which they could vote (Massachusetts, New Hampshire, Vermont, Rhode Island and Maine) and only half of eligible black voters in these states actually voted due to white terror at the polls. The white republic was also defended in state referendums. In the North between 1840 and 1870, equality with Black people was overwhelmingly rejected by white voters in 17 of 19 referendums. [\[FN69\]](#) In the Antebellum era, the White hireling was a political freeman and the Black was not, with very few exceptions.

Chattel slavery did not exist in any other nation during the years of significant working class formation. [\[FN70\]](#) As a consequence, working class formation in the United States, beginning with the transformation of indentured Whites into free laborers, went hand-in-hand with a story of Black inferiority and White superiority. Labor competition between Northern Blacks and White workers motivated the newly enfranchised White workers to reject Black political participation. [\[FN71\]](#) In this context, race exclusion and White suffrage were predictable ways in which White workers responded to fears arising out of the changes wrought by industrialization. The legacy for White workers was greater relative political freedom purchased at the expense of class unity and the development of cross-racial solidaristic associations. Although poor Blacks and poor Whites had much in common economically, racial identity inhibited the possibility of cross-racial collective action and working-class unity. This problem has confounded class-based political organizing in the United States for more than two centuries. [\[FN72\]](#)

C. Immigration, Class, and the Racial Bribe

(Cite as: 25 Law & Ineq. 355)

From this Nation's inception, the race line was used to demarcate and patrol the divide between those who constituted the "We" in "We The People." Whiteness was more than just a descriptor--it had a positive and negative dimension that were *368 related. Positively, it meant who could be part of the imagined community--a citizen. Negatively, it was anti-slave and anti-Black. It was no surprise when in December of 1856, the United States Supreme Court, led by Chief Justice Roger B. Taney, declared that all Blacks--slaves as well as free--were not and could never become citizens of the United States. [FN73] From the Nation's founding, citizenship had civic as well as racial and ethnic dimensions.

The Constitution empowered Congress to create a uniform system of naturalization, [FN74] and for eight decades following the Naturalization Act of 1790, [FN75] citizenship was limited to "free white persons." [FN76] Race and citizenship were bound together on the ground that non-Whites were incapable of being free. [FN77] Rational forethought, capacity for self-control, and devotion to the larger community were traits that many founders thought non-Whites and European aristocrats lacked. [FN78] In Notes on the State of Virginia, Thomas Jefferson claimed Blacks lacked these traits, partly due to natural capacity and partly as a consequence of the bitter experience of slavery. [FN79] Because this first legislative definition of American nationality was racially bounded, the definition of White was an issue of considerable importance and demonstrable impact.

From 1830 to 1845, the proportion of the electorate made up of foreign born voters rose from one in thirty to one in seven, with "the Great Famine exodus still to produce the greatest decade of immigration in antebellum American history." [FN80] By 1860, the number of Irish-born residents was 1.2 million. [FN81] It was their huge numbers which made possible and desirable a racial bribe. [FN82] *369 At the time, Irish Whiteness was the subject of considerable debate. The Census Bureau kept the Irish distinct from the Nation's other groupings. [FN83] A number of writers and ethnologists derided the "Celtic race." For example, George Templeton Strong, a Whig diarist living in New York City, wrote that the Irish workmen at his home had prehensile paws rather than hands. [FN84] Similar adjectives were applied to describe the Catholic Irish race in the years before the Civil War. [FN85] Nativists also opposed the Irish on the assumption that the Irish were subservient to the Catholic Church, [FN86] a claim very similar to the one justifying the exclusion of women and Blacks.

No immigrants ever came to the United States better prepared by tradition and experience to empathize with the African Americans than the Irish, who were emerging directly from the historical struggle against racial oppression in their own country. "The two groups often lived side by side in the teeming slums of American cities of the 1830s. They both did America's hard work, especially in domestic service and the transportation industry. Both groups were poor and often vilified. Both had experienced oppression and been wrenched from a homeland." [FN87]

In 1842, 70,000 Irish in Ireland signed an anti-slavery address and petition, [FN88] sponsored by the celebrated Irish abolitionist, Daniel O'Connell, who led the massive repeal campaign for Irish freedom through an end to union with Great Britain. [FN89] However, there are regular accounts of the Irish being staunchly opposed to Black liberty in the United States after 1843. [FN90] For instance, attempts to restore the Black franchise in the New York Constitution were thwarted in 1826 and 1846 by the efforts of Tammany Hall Democrats, an electorate swelling with Irish immigrants. [FN91]

The Democratic Party positioned itself to take advantage of the Irish vote by promoting a definition of Whiteness that *370 expansively included the Scotch, Irish, German, French, and Normans. [FN92] "The ways in which the Irish competed for work and adjusted to industrial morality in America made it all but certain that they would adopt and extend the politics of white unity offered by the Democratic Party." [FN93] The Irish decision is also explained by the attempt to distance themselves from slavery and the language of servitude. By driving Blacks out of their occupational niches, they could avoid the language that became so abhorrent in the post-revolutionary environment. [FN94] This was not only a move to disaffiliate with Blacks; it was also a move to reject cooperation with

(Cite as: 25 Law & Ineq. 355)

Blacks and be invited into the control stratum. [\[FN95\]](#) While there were economic benefits to Whiteness, there were also important non-economic social benefits.

The story of how the Irish became White is a recurring story about the meaning of race in the United States with important class dimensions, but not just class. The legal context, in which only free White persons could become naturalized, inscribed race into our definition of citizenship for the purpose of protecting slavery while further racializing our class consciousness. The political context, in which only Whites could vote, and the threat to civic freedom posed by nativists, made possible a racial bribe for immigrants forced to confront a racialized society and position themselves within it. This racial bribe would overwhelm the potential for economic unity among the two groups sharing the same economic circumstances and a common plight. Racial fences prevented understanding of common economic interests that might have formed the basis for concerted action. To some extent, it is a mistake to think of race being used in a particular campaign to divide. The very formation of racial structure and identity, particularly White identity, is about separation and control. [\[FN96\]](#)

*371 D. Race and Class During Reconstruction and Beyond

The struggle for independence by those freed from slavery through the Civil War brought renewed national attention to the appropriate role of the federal government. Matters long considered local in scope, including the provision of welfare and economic help, were now matters of national concern and priority. In Reconstruction era debates over the Freedmen's Bureau we see the emergence of a discourse that continues to haunt us today. Even when freed Blacks were brought into the political community and granted citizenship through the passage of the Fourteenth Amendment, a well-imbedded narrative of Black inferiority and legacy of separation worked to undermine and eventually reverse economic reforms.

A comparison between the Freedmen's Bureau and the veteran's pension programs reveals a two-tiered distributive pattern that has characterized social welfare programs ever since. Officially known as the Bureau of Freedmen, Refugees, and Abandoned Lands, the Freedmen's Bureau was designed to provide welfare services to freed persons and White refugees. [\[FN97\]](#) The Bureau provided food, clothing, and fuel; established schools; supplied medical services; supervised labor contracts between freedmen and their employers; managed confiscated or abandoned lands, leasing and selling some of them to freedmen; and attempted to secure for Blacks equal justice before the law. [\[FN98\]](#) The program was criticized by President Andrew Johnson and the Democrats in the mid-nineteenth century, however, as likely to make Blacks lazy, dependent, and prone to live off of "handouts." [\[FN99\]](#) Opponents to the Bureau fretted about Black women's sexuality, independence, and marital status, as well as the form and size of Black families. They threatened the character and prospects of freedman by implying that they did not have to work for a living, [\[FN100\]](#) and worried that the South would become a "welfare magnet." [\[FN101\]](#) In President Johnson's view, no such aid had been *372 provided for "our own people." [\[FN102\]](#) Moreover, the Bureau was characterized as an immense bureaucracy, too expensive for the federal government to pursue. [\[FN103\]](#) It was said to cater to special interests, to be unfair to Whites, and very probably to be a threat to harmonious race relations. [\[FN104\]](#)

By contrast to the criticisms of the Freedman's Bureau, the generous aid to Northern veterans of the Civil War and their widows and children was viewed as wholly justified, and in the end veterans' pensions became virtually an old-age insurance program. [\[FN105\]](#) Although this program did not formally discriminate, it posed discriminatory effects because the eligibility requirements disadvantaged former slaves. For example, Black Union veterans and their widows experienced difficulty in providing proof of their services--given requirements for marriage licenses, birth certificates, and so forth. [\[FN106\]](#) The effect of the racialized stories that justified these distributive patterns was to circumscribe the possibility of change by obscuring the common interests of poor Whites and Blacks.

Research on prejudice documents that people are more likely to be hostile toward those perceived as members

of an out-group on some salient dimension. [\[FN107\]](#) Proponents of welfare programs naturally attempt to draw distinctions between economic classes. Racial, religious, and ethnic divisions distract from those distinctions and reduce the ability to forge a common class-based identity. When there are significant numbers of minorities among the poor, the majority population can be roused to resist transfer of money. [\[FN108\]](#)

The American situation is ideal for using race-baiting to fight redistribution. The understanding and narrative of Blackness that developed in the post-revolutionary environment ensured that Whites did not see themselves as having commonalities with *373 Blacks. [\[FN109\]](#) As a consequence, Blacks were deliberately subject to laws and programs that excluded them from the social and economic benefits of life in America. The continued poverty and stigmatization of Blacks are used by opponents of welfare to make social welfare programs seem to poor Whites as little more than an extravagant transfer of resources to an unworthy, ungrateful other. [\[FN110\]](#)

It would be a mistake to assume that these narratives remained uncontested in the wake of the Civil War. Long-standing social, legal, and institutional arrangements were swept away, and the events of the Civil War shifted the thinking of a majority of Americans. [\[FN111\]](#) In just three years, President Lincoln's proposed Thirteenth Amendment had changed from a measure offering compensation to those states phasing out slavery before the turn of the century to an enactment which abolished slavery immediately, provided no compensation, and was followed closely by a declaration of full citizenship for former slaves. [\[FN112\]](#) As evidenced by the dramatic change of emancipation, there was a palpable change in the opinion of the country regarding African American equality. Black participation in the War [\[FN113\]](#) was critically important to this change, and "[n]othing else made Negro citizenship conceivable, [except] the record of the Negro Soldier as a fighter." [\[FN114\]](#) Also, as the army eventually drove into the Deep South and "encountered the full reality of plantation slavery, soldiers became imbued with abolitionist sentiment," even those who had been Democrats previously. [\[FN115\]](#) In 1864, White voters re-elected Abraham Lincoln with 212 electoral votes to George McClellan's 21. [\[FN116\]](#)

Although the South remained defiant both in its treatment of former slaves [\[FN117\]](#) and in the election of Confederate leaders to *374 Congress, [\[FN118\]](#) the Northern push for equality was strong. News of violence against the freedmen and the passage of the Black Codes in addition to reports describing a revival of rebel political power helped mobilize northern public opinion in favor of the Radical Republican agenda of ensuring full freedom for Blacks. [\[FN119\]](#) "When the Thirty-ninth Congress met on December 4, 1865, both the House and the Senate refused to seat members from the former rebel states." [\[FN120\]](#) Northern troops were sent back to the South where military districts were established and reconstruction began in earnest. [\[FN121\]](#) Republican militants swept the midterm elections of 1866, united on the issue of Black equality in the face of the most virulently racist Democratic campaign ever. [\[FN122\]](#) As W.E.B. Du Bois concluded, "for a brief period - for the seven mystic years that stretched between Johnson's Swing around the Circle to the Panic of 1873, the majority of thinking Americans of the North believed in equal manhood of Negroes." [\[FN123\]](#)

The legal transformation that occurred in the wake of the Civil War generated new possibilities for multiracial coalition building and the new consensus of the appropriate role of the federal government. In the words of Du Bois, the "South, after the war, presented the greatest opportunity for a real national labor movement which the nation ever saw or is likely to see for many decades." [\[FN124\]](#) Workers became a social force as the number of production workers rose dramatically in the aftermath of the Civil War. [\[FN125\]](#) The trade union movement inspired the multiracial Knights of Labor. [\[FN126\]](#) Farmers in the Midwest, South, and West *375 mobilized on a large scale. [\[FN127\]](#) The Farmers Alliance party made electoral inroads in many states. The Greenback-Labor parties enjoyed numerous successes. [\[FN128\]](#) These disparate social forces found united expression in the broad based Populist movement.

In the early expression of the Populist movement, it was the southern White populist leadership that realized the

need for multiracial coalitions in order to succeed. [FN129] There is evidence of extensive organizing of Black and White workers in the South by the Knights of Labor during the 1880s and 1890s. [FN130] The solidaristic associations that were a by-product of interracial organizing efforts stimulated broader political activities that attacked White supremacy. Populist leader Tom Watson took a strong stance against lynching, an issue that was of grave concern to Blacks. [FN131] "The freeing of Blacks from the stigma of slavery, their newfound respect as fighting men, and the growing abolitionism of many Union army veterans were all a legacy of a war which helped redirect the labor movement to a broader direction." [FN132] For the first time since the founding of the republic, there was a possibility that class, and not race, would become a primary organizing principle.

Early Reconstruction legislatures were marshalled by high levels of Black voters and deep political mobilization. For example, voting turnout for Blacks in the early years of Reconstruction sometimes reached as high as ninety percent. [FN133] Huge political rallies and meetings involving thousands of Blacks were common. [FN134] "[The] Reconstruction legislatures had a strong class notion of the role of an activist's government." [FN135] "They built public schools, hospitals, penitentiaries, insane asylums, and orphanages." [FN136] South Carolina provided free medical care for the poor and Alabama not only provided legal counsel for poor *376 defendants, but also protected minors from child abuse. [FN137]

Nonetheless, these revolutionary seeds were smothered by the Hayes-Tilden compromise of 1877 with the withdrawal of federal troops from the South. [FN138] "The Dixiecrats, with the help of new 'Black laws' of discrimination, psychological intimidation, physical violence and murder, were now on their way back to power in the South." [FN139] Tacitly sanctioned violence was a critical component of the repression that followed the end of Reconstruction. [FN140] According to Eric Foner, 500 White men indicted for the murders of Blacks in 1865 and 1866 in Texas were not convicted. [FN141] The Ku Klux Klan assassinated both Black and White Republican leaders, including at least one congressman. [FN142] The legacy of the failure of Reconstruction was the crushing of the most active areas of Black political activism. [FN143] The Black agricultural labor force was by and large reduced to "the semi-feudal condition it would remain in for another three-quarters of a century." [FN144] Any attempt by Black workers to organize met with harsh resistance. The opportunity for a united labor movement, North and South, Black and White, was missed. "The rigid system of white racial identities and separateness of white labor was shaken, although not destroyed." [FN145] When northern labor battles heightened in 1877, they went into battle isolated. The loss of this segment to the Populist cause would contribute to the crushing of the Populist movement in the South and the eventual establishment of the system of 1896.

E. Race, the Populist Movement and Social Welfare Spending

The 1870s through the 1890s was a transition period *377 featuring robust political activism. The energy that powered this activism was unleashed by the incredible social, economic, and political changes of the Civil War and Reconstruction era. [FN146] Voter turnout for the presidential elections reached eighty percent from 1876 to 1900. [FN147] The Farmers' Alliance, founded in Texas in 1878, spread throughout the South, Midwest, West, and Northwest, eventually forming the People's Party (the Populist Party). [FN148] As the Nation's industrial economy blossomed after the Civil War, production workers steadily grew as a political force, electing Greenback-Labor candidates. [FN149] Even in the South, where the Democratic Party tended to dominate state governments in the post-Reconstruction period, opposing party candidates were highly competitive. [FN150]

The political activism and popular protest peaked in the late 1880s and early 1890s and came to a halt with the establishment of the system of 1896. Populism in the North reached a turning point with the Haymarket affair on May 4, 1886. [FN151] The incident provided the license to crush the Northern labor movement using the power of the state, [FN152] and the Knights of Labor and other labor organizations lost important public support. [FN153] The Southern planters feared the alliance of Black and White farmers, [FN154] and populism in the South was des-

(Cite as: 25 Law & Ineq. 355)

troyed by a combination of violence, terror and fraud. [\[FN155\]](#) In the last two decades of the nineteenth century, hopes for a variety of political reforms had met with disappointment and frustration. A long cyclical depression of the 'nineties intensified the distress of the much longer agricultural depression. C. Vann Woodward argues that Blacks were the scapegoat:

These "permissions-to-hate" came from sources that had formerly denied such permission. They came from the federal *378 courts in numerous opinions, from Northern liberals eager to conciliate the South, from Southern conservatives who had abandoned their race policy of moderation in their struggle against the populists, from Populists in their mood of disillusionment with their former Negro allies, and from a national temper suddenly expressed by imperialistic adventures and aggressions against colored peoples in distant lands. [\[FN156\]](#)

The crushing of Southern Populist movement permitted the establishment of Jim Crow, an even more rigid system of racial control. [\[FN157\]](#) In the South, the new Jim Crow laws kept the Black and White segments of the working class separate. [\[FN158\]](#) The infamous Plessy v. Ferguson [\[FN159\]](#) was decided in 1896, thirty years after the end of the Civil War and two decades after the Hayes-Tilden compromise.

These developments both preceded and coincided with widespread disenfranchisement efforts. Constitutional conventions were held in Mississippi (1890), South Carolina (1895), Louisiana (1898), Alabama (1901), and Virginia (1902) for the purpose of removing Blacks entirely from state politics. [\[FN160\]](#) These conventions were made possible through violence, fraud and other voting restrictions that overcame initial resistance. [\[FN161\]](#) In fact, many of these constitutions were merely promulgated rather than submitted to the state at large for ratification. [\[FN162\]](#) The restrictions these conventions enacted were neutral as to race, but had the effect of barring all Blacks and many poor Whites through poll taxes and literacy tests. [\[FN163\]](#)

Other Southern states found ways of implementing similar laws without calling for constitutional conventions, amending suffrage clauses of state constitutions through referenda and implementing poll taxes and onerous registration, multiple-box *379 and secret ballot rules through legislation. [\[FN164\]](#) By 1904, the poll tax was used in all of the former Confederate states. [\[FN165\]](#) The multiple-box and secret ballot laws operated as a kind of literacy test, requiring voters to place their ballots in an appropriate box set up for the election being decided. [\[FN166\]](#) Registration laws often made voter registration deliberately inconvenient. "For example, after 1892, Alabama held registration only in May when farmers were the busiest in the field." [\[FN167\]](#) Some deadlines were set months in advance, long before voters were interested or aware of the issues at stake. [\[FN168\]](#) Sometimes specific information was required that Blacks, as former slaves, did not know, such as age. [\[FN169\]](#) Over time, as Blacks became more educated and economically secure, the White primary became popular. [\[FN170\]](#) Disenfranchisement shored up Democratic power in the South. Previously competitive elections were now solidly Democratic. [\[FN171\]](#)

Republican dominance in the North and Democratic control of the South became the hallmarks of the system of 1896. [\[FN172\]](#) "The consequences of one-party rule and the new electoral arrangements were a dramatic decline in voting participation in the country." [\[FN173\]](#) Michael Goldfield suggests that "the distinctive and exceptionally low voter participation rates and class skew in voting that have been a characteristic of twentieth-century American politics date from this period." [\[FN174\]](#)

The long-term consequences of this new political arrangement for social welfare development and class politics were steep. American political institutions, particularly the Presidency, are selected by electoral votes, which favored the South before the Civil War. The Three-Fifths Clause gave the South and pro-South candidates a substantial advantage in the electoral system, and *380 Southern states like Virginia were consistently over-represented in both the House and the Presidency. [\[FN175\]](#) For thirty-two of the Presidency's first thirty-six years, a Virginian occupied the Nation's highest office. [\[FN176\]](#) "In the first sixteen presidential elections, between 1788 and 1848, all but four placed a southern slaveholder in the White House." [\[FN177\]](#) "In turn, presidents would nominate cabinet

(Cite as: 25 Law & Ineq. 355)

heads, Supreme Court justices, and other Article III judges," among other appointments, [\[FN178\]](#) who then had to be confirmed by the Senate, a body in which the South held veto power. [\[FN179\]](#) In fact, no prominent antislavery leader was appointed to high executive office before the Lincoln administration. [\[FN180\]](#) After the Civil War, these institutions continued to over-represent low-density, non-industrial states. [\[FN181\]](#) The anti-industrial nature of the Senate is even more extreme because agricultural regions of the South dominated the Senate through the 1960s. [\[FN182\]](#)

In Europe, robust labor movements were a significant voice for social welfare. [\[FN183\]](#) In those countries, labor movements found themselves comfortably at home within the ranks of one or another political party. [\[FN184\]](#) "The comprehensive protection of European welfare states inspires solidarity or at least unified opposition to governmental proposals for austerity." [\[FN185\]](#) No such home was to be found in the United States. Southern control of American political institutions ensured that labor would never enjoy the national support necessary to advance social welfare development.

For these reasons, economists Alberto Alesina and Edward ***381** Glaeser argue that the thin American welfare state is partly attributable to race. [\[FN186\]](#) They support their argument by showing that welfare payments are less generous in American states that have a higher proportion of minorities. [\[FN187\]](#) The Populist Party (the first political party to focus on the redistribution of wealth [\[FN188\]](#) and emphasize racial tolerance [\[FN189\]](#)) was defeated in the South by the use of race hatred, violence and fraud. [\[FN190\]](#) However, the Populists did well in states with relatively homogenous populations, such as Wisconsin. [\[FN191\]](#) To this day, the Southern states are the least generous to the poor, while those states in which the Populists enjoyed success are among the most generous in their welfare payments. [\[FN192\]](#)

The juxtaposition of the failure of reconstruction and the crushing of the Populist movement brings into focus the interactive nature of our dual race and class structures. The failure to dismantle our race structures, characterized by racial separation and control, has had critical consequences for our class arrangements. In the North, the unfinished agenda of the Radical Republican wing gave way to the national economic agenda of pro-business Republican economic expansionists who were ambivalent, at best, to the demands of Northern labor. [\[FN193\]](#) This shift was aided by the weakening of the Republican party as a viable political entity in the South. With respect to the interaction of race and class, two consequences are clear. First, the radical Republican impulse to dismantle the structures of White privilege mutated into the new class politics of the gilded age, which were hostile to Northern labor and a socially activist state, yet vigorously supportive of an active federal role in subsidizing and promoting economic expansion. Second, the undoing of Reconstruction and the Populist movement helped reinscribe the race line once more, so that by the turn of the twentieth century a new system of Jim ***382** Crow was fully in place. This system of racial separation and exclusion had considerable class impact. Long into the twentieth century, the South remained a "one-party region" that used fraud and violence to stifle dissent. [\[FN194\]](#) This power of the solid South, an enduring consequence of Reconstruction's failure and the crushing of the Populist movement, weakened the prospects for both change in racial matters and progressive legislation generally, a fact that comes into focus in the New Deal era.

F. Race and Class During the New Deal

Class and race directly intersected in the cluster of social policies that emerged during the New Deal. Although Blacks were still excluded from the benefits of citizenship through various devices, such as poll taxes, they counted for apportionment purposes. [\[FN195\]](#) The Southern Congress possessed legislative veto power over all social policy. [\[FN196\]](#) In addition to the power of the filibuster, a power proudly exercised, the Southern Democratic Party was able to build "ramparts within the policy initiatives of the New Deal and the Fair Deal to safeguard their region's social organization." [\[FN197\]](#) This was accomplished through control of senior positions on key committees, "close acquaintance with the legislative rules and procedures, and by taking advantage of the gap between the intensity of

(Cite as: 25 Law & Ineq. 355)

their feeling and the relative indifference of their fellow members of Congress." [FN198] The seniority that Southern congressmen enjoyed was a corollary to one party dominance in the region. This legislative power was deployed in three ways to fortify racial hierarchy within New Deal programs: (1) drafting of laws that were racially discriminatory and drawn along racial lines; (2) insistence on local administration, which protected Southern social, political, and economic systems; and (3) prevention of the attachment of anti-discrimination provisions to pending legislation. [FN199] "The early architecture of the welfare state, created during the mid-1930s, thus bore the stamp of Jim Crow racism." [FN200]

*383 1. The Social Security Act

The Social Security Act was unparalleled in American history. It was a permanent edifice of social welfare programs providing for old-age pensions, benefits for surviving spouses, unemployment compensation, and assistance for the poor. [FN201] But because of exclusions of agricultural, domestic workers, and many self-employed workers, sixty-five percent of African Americans were denied its protections. [FN202] Only when Republicans gained control of the federal government in 1954 were the occupational exclusions removed and contributions on behalf of these groups initiated. [FN203] Even then, many Blacks were unable to catch up because of the requirement of five years contribution before receiving benefits. [FN204]

Provisions regarding aid to dependent children were made less national in that the federal government shared costs with the states, who in turn had discretion in setting benefit levels. [FN205] Once a state had received a grant, it controlled expenditure. [FN206] Benefit levels for assistance to the elderly [FN207] were also set by the states. [FN208]

The unemployment insurance provision exemplified both strategies. [FN209] It was less inclusive because it was limited to workers whose employers had previously paid into the system in addition to giving control over benefit levels to the states. [FN210] "In short, each of the old age, social assistance, and unemployment provisions of the Social Security Act" [FN211] took on racial contours, [FN212] and liberal, Northern Democrats acquiesced to maintain their alliance with Southern Democrats. [FN213]

*384 2. Labor Legislation

The National Labor Relations Act [FN214] ("NLRA") and the Fair Labor Standards Act [FN215] ("FLSA") were important and even revolutionary labor laws that helped improve the conditions of working-class Americans. These acts were passed by means of a trade of the votes of Southerners for the exclusion of farmworkers and maids--occupational categories open to African Americans in a racially restrictive labor market--from protection. [FN216] In circumstances where Republicans opposed these laws, the Democratic Party made racially relevant adjustments to secure a winning coalition. [FN217] Although the predecessor to these laws, the National Industrial Recovery Act ("NIRA"), [FN218] had no explicit exclusion for agricultural and domestic workers, [FN219] the National Recovery Administration ("NRA") retroactively read such exclusions into the law. [FN220] The new arrangements were thus friendly to labor, but inhospitable to the majority of African Americans living below the Mason-Dixon Line.

In the 1930s, unionization was uncommon in the South but "important to [Northern] Democrats who represented large industrial constituencies." [FN221] However, low unemployment and booming industry during WWII sparked fears that these new laws would help undermine the South's racial order as Blacks were being organized by labor while Whites were overseas. [FN222] Southerners were concerned "that labor organizing might fuel civil rights activism," [FN223] and that "close enforcement of the [FLSA] would cause wage leveling along racial lines." [FN224] "By the end of 1936, seasoned Southern Democrats feared that the New Deal was reeling beyond their control." [FN225] The Southern Representatives who had once helped construct the new labor regime flipped their votes. [FN226] It was only at this point that Northern Democrats united *385 to oppose Southern efforts to obtain

broad agricultural exclusions. [\[FN227\]](#)

The new industrial unions and Northern Black voters were important components of the Roosevelt landslide victory in 1936. [\[FN228\]](#) Roosevelt argued that the low-wage economy in the South stifled economic recovery and deprived the region of the benefits of economic growth: better schools, health, hospitals and highways. [\[FN229\]](#) However, there were poll taxes and other obstacles that prevented most Southern Blacks and low-income Whites from voting. [\[FN230\]](#) "This was the constituency of the New Deal," [\[FN231\]](#) and their inability to vote in the primary elections kept anti-progressive politicians in office. For that reason, Roosevelt "directly intervene[d] in the primary elections of 1938, supporting the liberal candidates who shared his commitments to a broad program of economic and social reform." [\[FN232\]](#) This attempt to bring the South into line with the national Democratic Party implicitly challenged the political foundation of White supremacy by mobilizing disenfranchised groups who supported the New Deal. [\[FN233\]](#) The Southern response was unmistakable in its opposition and fiery rhetoric. "Senator Walter George of Georgia called Roosevelt's . . . action 'a second march through Georgia.'" [\[FN234\]](#) Roosevelt's efforts ultimately failed and combined with "Republican gains in the midterm elections." [\[FN235\]](#) It marked what many historians call "the end of the legislative phase of the New Deal." [\[FN236\]](#) Thus, the rhetoric of Reconstruction and the racial ideology that sat at the center of it were once again deployed to prevent progressive reform.

The South was a White, one party system that could ignore Black interest. Democrats from the South enjoyed safe seats and, through the benefits of seniority controlled a number of key committee chairs. They exercised either a swing vote or a veto over any legislation that would challenge White Southern rule, [\[FN237\]](#) and therefore were hostile to the interest of most White working-class Americans as well. Although Republicans were "23 seats shy of a majority in the Senate" [\[FN238\]](#) and fifty from a majority in the House, "they found allies among Democrats who shared their opposition to the reformist and largely urban agenda of the New Deal and to the aggressive new labor movement it spawned." [\[FN239\]](#) "The power of the bipartisan anti-New Deal coalition was quickly demonstrated in . . . Congress." [\[FN240\]](#) A spate of anti-labor legislation, culminating with the Smith-Connally Act of 1943, [\[FN241\]](#) exposed the political weakness of the labor movement and the tentative nature of its achievements. The defection of southern Democrats from the coalition supporting labor issues was "devastating for unions and particularly harmful for black workers." [\[FN242\]](#) The product was the Taft-Hartley Act, [\[FN243\]](#) which curtailed the rights of labor organizers and unions generally. [\[FN244\]](#)

As a result, union action was considerably narrowed and constrained. "Unions continued to be relatively contained within the enclaves of the northeast, midwest, and far west, with rather low union density in . . . the south and the area between the Mississippi River and the states on the west coast." [\[FN245\]](#) Efforts to organize in the South virtually collapsed altogether after Taft-Hartley. [\[FN246\]](#) Unions moved to focus on workplace issues, such as wages, work rules and conditions, and fringe benefits, and thus limited the scope of union energy. Instead of pushing for government welfare programs for all who need them, "they concentrated on securing pension and health insurance provisions," and generous bargaining agreements for their members. [\[FN247\]](#) This made unions less class-focused and a less willing partner in progressive coalitions. Unions were the one national force best able to articulate and organize around ***387** economic issues. These decisions therefore stifled the civil rights impulse and unnecessarily narrowed it to non-economic issues. Ironically, the constrained position of unions helped sunder the issue of race and the question of labor markets so that the emergent civil rights movement "transformed jurisprudence and shaped landmark legislation without possessing instruments with which to redress economic harms." [\[FN248\]](#) Once again, racial divisions limited the political and economic vision and possibilities for all Americans.

3. Veterans' Benefits

The Selective Service Readjustment Act, [\[FN249\]](#) ("GI Bill"), was "the most wide ranging set of social benefits ever offered by the federal government in a single initiative." [\[FN250\]](#) "Between 1944 and 1971, federal spending

(Cite as: 25 Law & Ineq. 355)

for former soldiers [under the GI Bill] totaled over \$95 billion." [\[FN251\]](#) "More than 200,000 [veterans] used the bill's access to capital to acquire farms or start businesses. Veterans Administration mortgages paid for five million new homes." [\[FN252\]](#) President Clinton called the educational, residential, financial, and social changes brought about by the GI Bill a "true social revolution." [\[FN253\]](#) It was under GI Bill interest rates and thirty-year loans that Americans first became more likely to purchase a home than rent. [\[FN254\]](#) The domestic face of America underwent a transformation that included the seeds of suburban sprawl. "Residential ownership became the key foundation of economic security for the burgeoning and overwhelmingly White middle class." [\[FN255\]](#) Equally impressive were the educational benefits. "By 1950, the federal government spent more on schooling for veterans than on expenditures for the Marshall Plan." [\[FN256\]](#) For the first time, millions of Americans acquired a college degree, transforming the economic destiny of the nation. [\[FN257\]](#)

***388** Although the GI Bill was formally colorblind, "there was no greater instrument for widening an already huge racial gap in postwar America." [\[FN258\]](#) The GI Bill provided for local and state administration with Congressional oversight--oversight that lay in the control of a powerful committee headed by Rep. John Rankin, a Southern congressman. [\[FN259\]](#) As a result, Blacks were excluded, rejected, and discouraged from partaking in the benefits of a generous and formative federal program. [\[FN260\]](#) For example, one provision in the Bill prevented an agency of the United States from supervising or controlling any state educational agency in the administration of educational funds during this era of almost complete educational segregation. [\[FN261\]](#) Blacks in the South were shunted into Black institutions with poor quality facilities and fewer degree options. [\[FN262\]](#) Even the vocational programs under the GI Bill had discriminatory effects. Because Blacks were discriminated against in many professions, they were unable to secure jobs necessary to take advantage of the vocational subsidy. [\[FN263\]](#)

Thus, in the cluster of social policies that emerged during the New Deal, class and race directly intersected with profound consequences. Racially laden national programs widened the gap between White and Black Americans in the aftermath of the World War II just as a middle class first emerged. These New Deal programs, therefore, were not merely discriminatory; they were an affirmative action program for Whites. [\[FN264\]](#) Moreover, not only were Blacks excluded from the full benefits of the programs, a fact which results in tremendous disparities today, but racial fears also induced proponents of these programs to narrow their scope and applicability, and ultimately reverse their trajectory to the detriment of working-class Whites. To understand the full impact of the New Deal social policy, we need to understand how these policies influenced class identity.

***389** G. Race and the Middle Class

The class order that emerged in the post-war period was a break from the past. Americans today have no easily accessible perspective to appreciate the extent of this departure. The phenomenal economic growth of the post-war period was shaped by racially inscribed New Deal institutions to produce both the economic reality and a new identity of "middle class." "The unprecedented wage hikes (including increases in benefits, retirement funds, and social insurance programs), coupled with housing and educational subsidies of the GI Bill, transformed many Americans' understanding of the basic rules of society." [\[FN265\]](#) In this way the institutional apparatus built during the New Deal was instrumental in shaping the development of class identity and defining racial as well as class interest. "By the mid 1950s, the class consciousness of America was markedly different from what it had been even in 1946." [\[FN266\]](#) A "look at the 1930s and 1940s reveals open and intense conflict between workers and their employers." [\[FN267\]](#) In contrast, the newly emergent middle class was the embodiment of the idea that everyone could achieve the American dream by cooperating with corporate America. [\[FN268\]](#)

There is a prevailing assumption that class is primarily an economic location. [\[FN269\]](#) In fact, "class is as much a cultural as an economic formation." [\[FN270\]](#) The middle class is not organized around income or even wealth. Instead, the middle class is organized on a moral basis, built upon the concept of merit. "The narrative of the American

Dream - if individuals work hard and play by the rules, they succeed--invariably trumps other explanations such as class structure." [\[FN271\]](#) Thus, individual hard work is the primary explanatory variable for social mobility. [\[FN272\]](#) As a consequence, the middle class is understood in individualistic terms of status rather than economic status or group position.

***390** This middle class identity reflects concepts of self, individuality, merit, and access that impede change. Middle class notions of individuality and just desserts limit the potential for solidarity on the basis of class. With the arrival of the middle-class in the 1950s, working class consciousness evaporated from American society. [\[FN273\]](#) Coalition building requires some basis for commonality and solidarity. The middle class order does not offer a class alternative for organizing understood in group terms. Class-based programs are fundamentally conservative because they reaffirm the institutional arrangements that support existing class relations by attempting to advance particular individuals to the status of middle class. "Political transformation occurs . . . when we change asymmetrical power relationships, rather than merely struggle for the right to participate in them." [\[FN274\]](#) To build a sustainable, socially-inclusive majority, there must be a focus on building conditions for shared struggles for change, rather than just on advancing individuals to the status of the middle-class.

It is not simply that the middle class identity that emerged in the post-war period replaced solidaristic narratives of class struggle with individualistic narratives. The middle class is situated upon institutional arrangements that actively prevent cross-racial solidarity. "Class identity is constructed not only from economic position," [\[FN275\]](#) but also through shared action and experience, which is severely limited by educational, occupational, and residential segregation. [\[FN276\]](#) In this way, the middle class understanding that emerged affirms antebellum narratives of racial inferiority while obscuring the ways in which the institutional framework of the New Deal locked Blacks out of the middle class.

"Residential segregation was systematically promoted during the 1930s, 1940s, and 1950s by federal programs such as the Home Owners Loan Corporation and the Federal Housing Authority, which insured private sector loans." [\[FN277\]](#) These federally-backed instruments used redlining, local control, and overt discrimination to make it very difficult, if not impossible, for ***391** Blacks to qualify for mortgages. [\[FN278\]](#) "From the 1930s, through the 1950s, the FHA's Underwriting Manuals considered blacks 'adverse influences' on property values, and the agency instructed personnel not to insure mortgages on homes unless they were in 'racially homogenous' white neighborhoods." [\[FN279\]](#) Under the FHA's community eligibility rankings, [\[FN280\]](#) the "FHA actually refused to lend money or underwrite loans for whites if they moved to areas where people of color lived." [\[FN281\]](#) "Although the FHA removed explicitly racist language from its manuals in the 1950s, private appraisal associations, real estate agents and firms, and banks continued to use such language through the 1970s," [\[FN282\]](#) and the earlier FHA system became part of the free market. [\[FN283\]](#) In this way, the ranking system that the government initially used to determine eligibility structured the market in ways that persisted long after the market was scrubbed of explicit racial redlines. "Thanks to the FHA, no bank would insure loans in [low-income African-American neighborhoods], and few African Americans could live outside [of them]." [\[FN284\]](#)

The FHA set national standards in valuation and appraisal criteria that actors throughout the housing market adopted and applied to reinforce and institutionalize racial housing segregation on a national scale. [\[FN285\]](#) "Until 1949, the FHA [also] encouraged the use of restrictive covenants banning African Americans from certain neighborhoods." [\[FN286\]](#) Some "scholars have estimated that racially restrictive covenants were in place in more than half of all new subdivisions built in the United States until 1948, when the ***392** United States Supreme Court declared them unenforceable." [\[FN287\]](#) After *Shelley v. Kraemer*, [\[FN288\]](#) "the Federal Housing Administration's building and homeownership subsidies . . . drew whites out of central cities, denied mortgages to blacks and channeled capital into suburban housing construction." [\[FN289\]](#)

The use of racially restrictive covenants in the first half of the 20th century by the nascent real estate industry, local land developers, and homeowner associations was important not simply in the creation of residential segregation, but in the social construction of race and racialized space. [FN290] Prior to residential segregation, residents did not interpret Black culture or behavior as connected to a particular place occupied exclusively by Blacks. [FN291] However, "[k]ey actors within the emerging real estate industry, as well as housing reformers and social workers, helped nurture and promulgate a segregationist ideology and negative image of the emerging black ghetto as a pathological, dangerous and nefarious place, to be avoided by whites and other ethnic groups." [FN292] The use "of racially restrictive covenants helped nurture and reinforce emerging racial stereotypes that identified black living space and culture with deteriorating neighborhoods and dilapidated housing." [FN293] Arguments that exclusion of Blacks was necessary to preserve property values perpetuated such restrictive covenants. [FN294] "Over time, the perceived connection between race, behavior and place" has become a justification for residential separation and disinvestment "in racially mixed and *393 non-white areas." [FN295] Black neighborhoods and eventually entire cities became and remain stigmatized.

Homeowners associations also functioned as racial gatekeepers in many communities. "They raised money to purchase property from recent black homeowners, bought homes from landlords renting to blacks . . . and lobbied . . . for the passage of discriminatory land-use ordinances." [FN296] They organized boycotts of "businesses who catered to black clients" and threatened "suits to revoke the licenses of real estate agents who sold homes to blacks." [FN297] Some called meetings and solicited door-to-door, [FN298] while others used "legal and financial resources to enforce racial restrictions throughout the court system." [FN299] In some instances, they went so far as to post threatening letters and signs designed to discourage Blacks from moving into White neighborhoods. [FN300] Importantly, homeowners associations fostered White racial solidarity. The stereotypes that emerged were disseminated by real estate firms and community builders to protect their investments in cities throughout the country. [FN301] Across the Nation, residential segregation is both a cause and a product of what race has come to mean in America.

The combination of racially discriminatory public policy and private discrimination produced entrenched patterns of residential segregation and resource disparities that continue today in spite of "numerous anti-discrimination statutes, Supreme Court decisions, and fair housing legislation." [FN302] Achieving home ownership helped White American workers achieve middle class status in socio-economic terms and the thirty-year mortgage became the primary mechanism by which most White families created wealth. [FN303] "Renters accumulate no equity, while homeowners almost always secure financial gains that exceed inflation." [FN304] For Blacks, these *394 "missed chances at home ownership compound over time." [FN305] "By 1984, when GI Bill mortgages had mainly matured, the median white household had a net worth of \$39,135; the comparable figure for black households was only \$3,397 or just 9 percent of white holdings." [FN306] Today, in spite of significant past efforts to reduce housing discrimination and important recent efforts to address mortgage discrimination and boost homeownership rates for people of color, the average net worth of White families is still ten times that of African Americans. [FN307]

The racism that influenced the New Deal programs and excluded Blacks institutionalized racial disparities and opportunities. The invisibility of the racial imprint on middle class consciousness and institutions makes it possible for rejuvenated narratives of Black inferiority and unworthiness to persist. The inability of people of color to enter suburbia, though it was the direct result of federal programs, has been excused by means of the familiar narrative of Black inferiority. [FN308] Whites increasingly accepted the narrative of merit that they had "earned" their homes and all the opportunities associated with it. Thus, Whites described their rights in humble "bootstrap" terms: homeowners rights were the reward for sacrifice and duty. [FN309] "The government programs that subsidized white homeownership or defined political boundaries to determine access to education were taken for granted and remained largely invisible." [FN310] Segregated neighborhoods allow segregation to be naturalized to such a degree that today's residential patterns can be falsely perceived as the result of "natural" preference. [FN311]

(Cite as: 25 Law & Ineq. 355)

The narrative of White merit was also understood as Black failure. "Working class whites interpreted the 'wretched conditions' in predominantly black communities as the fault of 'irresponsible blacks.'" [\[FN312\]](#) White aspirations to upward mobility "depended on maintaining residential distance from blacks, even *395 though it was the more affluent and educated blacks that sought to move into white neighborhoods." [\[FN313\]](#) "White middle-class individualism, thus, is defined in opposition to blacks, who are seen as an excluded but ominous group who do not share white middle-class values." [\[FN314\]](#) Fears of integration were manipulated by politicians and self-interested business people who used racially coded rhetoric to divert attention from economic conditions. [\[FN315\]](#)

Racial meaning with class implications permeated the formative moments of institutional development, particularly the rise of suburbia. Because it appears natural and inevitable, this institutionalization supports narratives of inferiority and unworthiness without the racial animus that drove such narratives in the past. Consequently, this institutionalization is much more resistant to change because opposition to race-focused remedial programs appears rational. Racial segregation, largely a result of New Deal policies, set the stage for White "backlash" long before the civil rights movement.

As a consequence of this racializing of opportunity and the work of the civil rights movement, the meaning of racism changed. Although the stigmatization of Blackness continues, along with racist attitudes and stereotypes, racism is based more on hoarding than explicit animosity. [\[FN316\]](#) Consider, for example, White resistance to low-income housing in their neighborhoods as deriving from a fear of lower property values. The class interest encourages workers to seek multiracial and multinational unity. On the other hand, as a person with White privileges, a White worker also has a real material interest in preserving his or her privileged access to jobs, political power, citizenship, social services, education, housing, and so on. According to a study of White neighborhood associations in Detroit in the 1950s, "blue-collar whites measured their individual success by their ability to" [\[FN317\]](#) distance themselves from Blacks, [\[FN318\]](#) and working-class and *396 poor Whites expressed negative views toward Blacks more frequently than other respondents. [\[FN319\]](#)

Middle class identity and the assumptions that sustain it are significant impediments to change and the development of a broadly-based, socially inclusive movement. "The social processes that" [\[FN320\]](#) determined home ownership rates for "whites and not blacks" [\[FN321\]](#) have consolidated racial attitudes and institutionalized urban/suburban, "mak[ing] work on job development difficult." [\[FN322\]](#) Residence in public housing or the inner city signals lower-class status, which is identified with undesirable employment characteristics. [\[FN323\]](#) "Low levels of labor organization lead white workers to interact less with leaders who are invested in building multi-racial solidarity." [\[FN324\]](#) Diminished working class consciousness coupled with residential segregation exerts a conservative effect on White Americans. [\[FN325\]](#) Race provides an account for the fact that "few working-class and poor whites achieve their version of the American dream." [\[FN326\]](#) The merit ethic of the American Dream deprives White workers of the tools to engage in a critique that might motivate social change. [\[FN327\]](#) "Race is part of the construction of class-as-status," [\[FN328\]](#) and this individualistic ideology "is part of what defeats the development of solidaristic consciousness." [\[FN329\]](#) This individualistic middle class identity is an inadequate foundation upon which to build a socially inclusive movement.

H. Race and Class Today

Race and class are mutually constitutive. They developed in *397 a mutual trajectory despite their distinctiveness. The economic needs of Southern planters and the economic fears of the emergent White working class played a prominent role in the initial process of racialization and the outward spread of racial prejudice. [\[FN330\]](#) Today, the advantages of Whiteness, often understood in terms of the benefits of suburban schools and high-paying jobs, operate as a defense for the status-quo. The story of middle class individualism is deployed to stigmatize the Black underclass as unworthy and unmeritorious. [\[FN331\]](#) The social stigma of race is expressed through social meaning, not

simply individual attitudes. [\[FN332\]](#)

Race has left a heavy footprint on class. Slavery ensured that the emergent free White working class identified as White. The initial development of the welfare state was shaped by a concern to maintain Southern racial arrangements. In the twentieth century, racial segregation has given a predominantly White face to the suburban middle class and opportunities associated with it. Racial meaning is a major reason why America treats its poor more harshly than any other advanced country. The lack of a national labor movement and the failure of working class parties in the late nineteenth century can be partly attributed to our racial divide. Had the Southern labor force become a part of a national labor movement, today's class understandings would have looked quite different.

Today, race has been used to draw support to a host of policies that obstruct the development of a socially inclusive agenda. Some Whites are willing to vote against redistribution that would favor them because of racial animosity directed at Blacks who would receive the same benefits. [\[FN333\]](#) By the 1960s, by which time segregated institutions were under attack and Jim Crow was unraveling, White workers were unwilling to sign onto universalistic social policies. [\[FN334\]](#) White workers acted on what they perceived to be their short-term interest in maintaining racial control over labor and housing markets. [\[FN335\]](#)

Ultimately, the issue is not whether race or class perpetuates the urban underclass, but how race and class interact to undermine the social and economic well-being of most, if not all *398 Americans. In the co-development of racial and class consciousness in the United States, class tensions have consistently been relieved through the use of racial meaning. At times, Whites have benefited, such as when Whites were given suffrage rights. In the last seventy years, although Whites have made gains, they are more limited as a result of our racial history than they otherwise would have been.

III. Targeting Within Universalism: Using Race Transformatively

Thus far we have examined the ways in which race and class interact and interrelate. Race, racialized meanings, and racialized narratives infuse our understanding of class, our political arrangements, and our social space. Nonetheless, there is deep skepticism about the utility of race as a mechanism for coalition building or agenda setting. We have been schooled to think that race may ultimately be divisive. The colorblind ideal is appealing both to liberals who fear that race will divide their constituency and to conservatives who think that race is an irrelevant category and that racial classification is the real race problem. [\[FN336\]](#) Although race may be a social construction, it is a category that continues to influence the life chances and lived experiences of millions of Americans. [\[FN337\]](#) Clearly, ignoring race will not change how it is used to divide. Race operates perniciously through institutions and institutional arrangements as well as symbolically through coded meaning. A recent example of the latter is the infamous "Call Me" political advertisement in a Tennessee Senate race. [\[FN338\]](#) Our silence will not allow the issue to just go away. It is much too embedded in our notion of self, individually and collectively, to just *399 disappear. Like the return of the repressed it will continue to unwittingly define us until we constructively understand and expose it to light. We must begin to understand the larger roll of race, its relationship to class, and the transformative capacity of race properly used.

I suggest that race can be a diagnostic and bridging tool to advance racial justice efforts as well as a more inclusive social agenda. Those who are racially marginalized are like the miner's canary. Their distress is the first sign of a danger that threatens us all, and their vulnerabilities reveal the places where the social fabric is disintegrating. [\[FN339\]](#) Race as a diagnostic tool serves several purposes. First, race consciousness will help inoculate any social justice agenda from the negative, coded use of race. Second, it helps us see how the fates of Whites and the fates of those raced as non-Whites are linked--the miners and the canaries--how they exist as part of a common social fabric threatened by the same dangers. Finally, the transformative use of race may then serve as the foundation to construct a broader social agenda. In this way, race can operate as a bridging tool. I reject both the universalist and the particu-

(Cite as: 25 Law & Ineq. 355)

larist approach. Instead, race as a bridging tool is exemplified by programs that typify targeting within universalism. As we will examine in Section C, *infra*, the challenge is to integrate the interests of people of color with working class Whites without losing sight of race. Many multi-racial coalitions were built with this understanding. Demographic forecasts suggest opportunities as well as challenges for such efforts in the future.

A. Race as a Diagnostic Tool

Lani Guinier and Gerald Torres have examined contemporary obstacles to racial and social justice and offer "political race" as a visionary solution for advancing racial justice in an increasingly hostile political and legal landscape. [FN340] The authors adopt the notion of race as a miner's canary. [FN341] Miners would use a canary to alert themselves to the presence of poisonous gases in the mines because "the canary's more fragile respiratory system would cause it to collapse before humans were *400 in danger." [FN342] The authors argue that race, like the canary, is diagnostic. The canary metaphor illustrates the need to address the noxious gas in the atmosphere rather than blaming the canary as an actor.

Like the miner's canary, race hints at and directs us toward larger social ailments. This premise suggests the possibility for building broad-based coalitions based upon common danger. The problems facing racially marginalized groups spur those affected to articulate the source of their difficulties. This articulation invites a more systematic critique which may alert others of the danger and inspire broader democratic experimentation. As a diagnostic tool, race is a prism to focus attention on problems which threaten everyone.

Hurricane Katrina illustrated a profound connection between race and poverty in the United States. The geography of race led directly to a disproportionate storm impact. Prior to the storm, New Orleans was rigidly segregated by race. [FN343] Decades of housing discrimination had kept the vast majority of the city's Black residents in a handful of neighborhoods deemed undesirable because they were susceptible to flooding. [FN344] Our traditional way of thinking about race and racism as a product of individual intent, Bull Connor racism, was not particularly helpful. This mode of thinking about race focuses on assigning blame and finding culpability rather than changing structures that perpetuate disparities. By talking about race in a structural way, we begin to see how structural arrangements help arrange all of our lives. We can then apply this analysis to other urban areas. Racialized poverty, segregation, and decaying infrastructure of our central cities are common problems plaguing urban areas nationwide. [FN345] All of the aspects of opportunity--housing, education, job training, employment, health care and transportation--interact with one another structurally. [FN346] Housing location determines the quality of schools children attend, the quality of public services, access to employment and transportation, health risks, access to health care and public *401 safety. [FN347] Like canaries gasping for air, the marginalized signal broader problems in our democracy.

B. Race as a Bridging Tool: Targeting Within Universalism

"[H]ard and fast distinctions between universal and particular approaches--and a strict preference for one over the other--are unproductive." [FN348] For one thing, universal programs are rarely universal; the decision of what will be universal is almost always informed by the particularities. Even our most ostensibly universal programs contain important exclusions. [FN349] Further, universalist and particularist approaches are false choices. The failure to distinguish between the focus of a program and its justification has obscured the complex dynamics of race and wrongly suggested that government assistance programs must either be race-neutral or race-specific. [FN350] The primary purpose of the Fourteenth Amendment was to bring freed slaves into the political community and make them full members of American society who could enjoy all of the benefits of citizenship. [FN351] Yet, it did so in language that was universally applicable, providing citizenship for all persons who were born or naturalized in the United States. [FN352]

(Cite as: 25 Law & Ineq. 355)

Nonetheless, the universalist call is attractive, and "[c]alls for more universalism, as a way of avoiding the race trap, . . . have become increasingly common in recent years." [FN353] Population segments potentially receptive to a broad, socially inclusive message, such as working class Whites, may consider themselves victims of "reverse discrimination" and feel threatened by race-*402 focused programs. [FN354] Liberals seem concerned with finding ways to appeal to low-income and middle class Whites as a panacea to electoral woes:

Many liberals . . . believe that the Democratic party cannot hope to reestablish itself as a vehicle for progressive social policies so long as it embraces the racial agenda of the 1960s; it will only become a majority party once again to the extent that it cultivates middle-class loyalties and sheds race-specific policies. [FN355] However, as we have seen, such a policy inadequately accounts for how race operates in the United States and does not offer a way to break either racial or class inequality.

Grassroots organizers and coalition leaders must first begin with an understanding of race before striving to build a class identity that is largely lacking in the United States Mayor Dennis Kucinich of Cleveland tried to build a progressive class coalition without this understanding. [FN356] He called his strategy "urban populism." [FN357] This strategy emphasized economic issues, since these united various city constituencies, but downplayed social issues, the most important of which was race. [FN358] In doing so, he ultimately allowed race baiting into his reelection campaign. [FN359] Kucinich thus "destroyed his chances of uniting the city's black and White working-class neighborhoods." [FN360] Kucinich failed to learn from the multiracial successes of the populist progressive movement in the nineteenth century or understand how this movement lost its energy. [FN361]

Commitment to interracial solidarity determines both whether the constituent coalitions will obtain widespread support and the level of commitment by supporters. [FN362] In the United *403 States, such a commitment has always been a source of moral legitimacy and strength. [FN363] Because individual struggles in a particular locale or industry are often overwhelmed by unified state and/or corporate opposition, [FN364] the hope for decisive working-class victory lies in broad solidarity across skill, occupation, region, and gender. The Achilles heel of the labor movement--and its greatest potential for broad unity--revolves around issues of race. Interracial union efforts are more resilient in that they bounce back more quickly after defeat. [FN365] Universalist approaches have the effect of ignoring and undermining the very groups that would be most likely to campaign aggressively for a socially inclusive agenda. [FN366] Kucinich ignored this critical lesson.

Race is the most divisive, but also the most powerful motivating force in the grass-roots movements of the larger United States cities. [FN367] Even William Julius Wilson, one of the most ardent supporters of a racially neutral universal strategy, reluctantly concedes that efforts that ignore race will likely fail. [FN368] He asserts that non-Whites are unlikely to stay in coalitions where their racial concerns are ignored. [FN369] By not including race explicitly, what messages do we send to communities of color? Essentially, race-neutral strategies require communities of color to abandon their well entrenched political identity as well as the claims made on the state in the name of that identity in exchange for an unspecified, unrecognizable, undefined identity in American politics--a class-based identity.

Organizing efforts must unify race concerns with other concerns in a constantly evolving "struggle[]" to find language and metaphors . . . [in] a multirace, multiclass development environment." [FN370] There is a need to appeal to racially *404 marginalized communities and then weave that message into a larger mosaic. An alternative to both a universal program and a solely particularistic program is to pursue what I call "targeted universalism." [FN371] This is a "paradigm that combines a call for the universal common good with attention to the particular experience of minority Americans." [FN372] This is an approach that supports the needs of the particular, while reminding us that we are all part of the same social fabric. Targeted universalism rejects blanket universalism and claims of formal equality. These claims ignore the reality that different groups are situated differently in the institutions and resources of society. Targeted universalism also avoids the particularistic approach that refuses to see how middle

(Cite as: 25 Law & Ineq. 355)

class and working class Whites are suffocating from the same poisonous air.

There are many issues that "offer the possibility of shared goals even as they address entrenched racialized disparities." [FN373] The shift from equity to adequacy in educational reform exemplifies an approach in which race is diagnostic and then deployed as a bridging tool. In *Leandro v. State of North Carolina*, [FN374] for example, the North Carolina Supreme Court sided with a coalition of poor school districts in ruling that the State violated constitutionally guaranteed rights to education when it simply stood by as children received inadequate educations. [FN375] The standard is set on the basis of what is optimal for society, rather than on what is "equal" in a narrow sense. [FN376] Although the interests of different racial and economic groups are linked together through the same standard, the result is sensitive to the disadvantages that economic and racially marginalized communities confront.

Another issue that has the potential to unify suburban and urban communities is the issue of sprawl and the "smart growth" movement designed to counter it. [FN377] The smart growth movement is built around the notion that developers should be required to *405 pay the full cost of extending infrastructure to new developments, internalizing an expense that was previously provided by local government. [FN378] Smart growth appeals to a diverse group of interests. In Virginia, Democratic Governor Timothy Kaine managed to attract a slight majority of votes in solidly Republican counties with the message "build the roads before building the subdivisions." [FN379] At least one smart growth group in Ohio is "promot[ing] state policies for land use that revitalize existing cities and towns, strengthen regional cooperation and conserve Ohio's farmland and natural resources." [FN380] Such a message appeals to inner city communities who have long opposed sprawl when there is a demand and need for investment in the central city. [FN381] It also satisfies inner-ring suburban voters frustrated with long commutes, over-crowded roads and highways, and poorly planned developments. [FN382] The smart growth movement exemplifies targeted universalism. A re-evaluation of the policies entails an examination of the harms to urban communities and their racial impacts, [FN383] while also universally appealing to common interests.

C. The Prospects for Multiracial Coalition Building in the Twentyfirst Century

The realization of a broad, inclusive social agenda that includes targeted universal strategies requires efforts to build and sustain a supporting coalition. To advance a significant agenda, it will be necessary to cultivate enduring coalitions that regularly command more than fifty-one percent of the relevant vote. [FN384] An *406 electoral victory based on demographic maneuvering and policy positioning is an illusory substitute for building a durable coalition. A momentary convergence of interest can lead to an electoral victory, but governance requires more. Slender electoral victories are easily reversed. Embedded institutional actors, such as administrative officials, are often positioned to resist or influence policy implementation. Control over critical institutions such as schools or housing may be dispersed among different levels of government. [FN385] Agenda implementation will not be effective unless these institutional resistances are overcome, a process that necessitates a long term vision and a sustained convergence of interest based on a sense of shared fate.

This coalition must be multiracial, multiethnic and multiclass. There have been multiracial coalitions in virtually every serious movement in the United States. The most successful and progressive of these efforts have tended to be those that addressed race explicitly. [FN386] For example, there were important multiracial coalitions during the abolition movement, Reconstruction, the New Deal, and the civil rights movement. [FN387] But because of their focus on race related issues, they may appear to be less instructive today where issues of race are less central. Census projections foretell a minority-majority nation by 2060 [FN388]--a projection that represents great opportunities and challenges for building multiracial coalitions. With rising diversity, it is increasingly unlikely that a single racial group can succeed in independently pursuing a policy agenda. The primary challenge is to find ways to successfully broaden their coalitions in ways that engage diverse constituencies.

1. Modern Examples of Successful Multi-Racial Coalitions

(Cite as: 25 Law & Ineq. 355)

Harold Washington's period as Mayor of Chicago was cut *407 short by his untimely death in 1987, only a few months after his successful re-election. [FN389] However, his victorious 1983 campaign and mayoral administration provide an instructive example of the prerequisites and limitations to a truly socially inclusive agenda and supporting coalition. Washington was elected at a time of changing demographics: the African American population had grown to 40% of the city's electorate; Hispanics had grown to 8%; and Chicago's White population declined from 60% in 1970 to 47.6% in 1980. [FN390] Mayor Washington's electoral base was overwhelmingly Black in composition. [FN391] However, the support of poor Latinos and poor Whites was critical to his election. [FN392] As one study shows:

In the primary of 1983, the critical ingredient was progressive Whites. Although Washington received 80 percent of the black vote, 17 percent of his coalition was White, and that provided him with the margin of victory in the primary. In the general election, Latinos provided the margin of victory. He was able to improve from 25 percent of the Latino vote in the primary to about 65 percent in the general election. [FN393]

It is important to recognize that "the movement underpinning Harold Washington's campaign and his early administration was marked by aggressive, vocal, and independent action on the part of people associated with neighborhood organizations and community action groups. [FN394] "Washington's election was a movement election." [FN395] Before Washington, the power base in Chicago had been a coalition of business interests and the White working class, [FN396] which kept the Daley administration's so-called "political machine" in power. [FN397] Washington ran as a progressive alternative to the traditional political machine, [FN398] tapping into a diverse reform constituency that had been developing throughout the neighborhoods of Chicago *408 during prior administrations. [FN399] The community-based agenda provided the basis for the mobilization of the Black and allied groups. [FN400] It provided an organizational basis for his campaign and the substance of much of its policy direction. [FN401] Similarly, the coalition that swept Antonio Villaragiosa into office in Los Angeles was built upon vigorous community mobilization. [FN402]

Although both Washington and Villaragiosa represented particular racial concerns, they managed to build broad, inclusive coalitions. For example:

Prior to 1983, no Latino had been elected as members of the [Chicago] city council. Only 2 percent of city employees were Latino, [and] only two Latino-owned firms had been awarded municipal contracts In the four years following Harold Washington's mayoral victory, these trends were reversed. By 1987, four Latinos sat in the city council chambers, more than 5 percent of the city employees were Latino, [and] 8 percent of city contract dollars were going to Latino-owned firms. . . . [FN403]

"Latino and Black interests came together on a range of issues: affirmative action in city employment and contracts, defense of communities against developers, education, and some foreign policy issues." [FN404] Although Washington made great strides, as one commentator explains:

the coalition between blacks and progressive whites appears to have been easier to operate than that between Blacks and Hispanics. Blacks and Hispanics [were] in a more competitive situation with each other than either one [was] in with whites. Blacks and whites did considerably better in obtaining top positions than Hispanics. [FN405]

[Ten] percent of all mayoral appointments and 20 percent of appointments to major boards and commissions were Latinos. Hiring, both entry level and high-level hiring, was another story. . . . The city's hiring of Latinos was lower than the *409 mayor had promised and much slower than the hiring of blacks. . . . This was an issue that was splitting the black Latino coalition apart. [FN406]

Black nationalists wanted to keep the maximum number of appointments for blacks and were reluctant to accord Hispanics minority status. In that sense whites were less of a threat, because they would not take up "minority" slots. Also, whites were more of an agreeable coalition partner for either blacks or Hispanics than

(Cite as: 25 Law & Ineq. 355)

they are for each other because whites control more resources. [FN407] Understanding the challenges and opportunities presented by a growing Latino population and the nature of the Black-Latino divide is critical to our understanding of the race-class intersection and the development of successful targeted universal strategies.

2. The Black-Latino Divide

Latino-African American coalition possibilities are important to coalition builders. It is projected that "the Latino population will eventually exceed all of the other minority populations combined." [FN408] As one author explains:

Both Latinos and Blacks are economically disadvantaged relative to Whites; both experience substantial discrimination in housing, education, and employment; and both advocate for *410 enlarging the social welfare state. In spite of these shared interests, competition over jobs, educational resources, housing, and political power often place Blacks and Latinos in conflict against one another and this conflict can act as a powerful barrier to political alliance. [FN409]

Leadership can make a critical difference. "Religious leaders, Black and White, played a seminal role in the civil rights movement . . ." [FN410] Leaders in the new millennium must possess a multiracial/multiethnic perspective that fully appreciates each group's needs while successfully advocating for multigroup goals that produce a greater good for everyone. [FN411] In the Los Angeles mayoral race of 2001, Antonio Villaraigosa built his campaign around a labor-left-Latino alliance that consisted mostly of Latinos and liberal Whites. [FN412] Villaraigosa lost. [FN413] His opponent, James K. Hahn, had the support of the African American community and moderate Whites. [FN414] It was not until Villaraigosa broadened his coalition by reaching out to Blacks that he won in a landslide in 2005. [FN415] The key to victory was forming a coalition across color lines in the Los Angeles area. Critically, he mobilized non-Latino voters by assuaging Whites and African Americans that he would be sensitive to their interests. [FN416]

However, it is clear that sustaining a coalition between Latinos and African Americans requires more than elite cues. Electoral coalitions that are politically consequential because of their durability derive their power from mass attitudes and mass behavior. [FN417] "Recent public opinion data points to an asymmetry in the affinity that African-Americans and Latinos have for one another." [FN418] "While 75 percent of Blacks feel a significant amount *411 of commonality with Latinos, only 33 percent of Latinos reciprocate those feelings. And while Blacks feel notably closer to Latinos than Whites, there is no such distinction apparently made by Latinos." [FN419] Interestingly, the most robust predictor of Latino-Black commonality is pan-Latino affinity. [FN420] "[L]atinos who feel close to one another as a group are much more likely to feel close to African Americans, while Latinos who identify more with their own subgroup than the Latino collective are substantially less likely to identify with blacks." [FN421] Unfortunately, "a strong sense of pan-ethnic identity is not yet evident among Latino subgroups." [FN422] Despite commonality in language and religion, geographic and nationalistic insularity has prevented the development of a sense of cultural solidarity. [FN423] On average, only about half of the Latino subgroups feel that they have a fair amount or a lot in common with Latinos of other nationality groups. [FN424] Unfortunately, Mexicans, the most influential of the Latino sub-groups, have the lowest level of affinity with other Latino subgroups. [FN425]

There are reasons to hope that this may be changing. With Latino's growing political presence, Latino leaders have taken strides to inculcate a sense of shared fate among Latino subgroups. [FN426] As more Latino politicians gain prominence, this will create a feedback loop reinforcing a growing sense of pan-Latino identity. As one author concludes:

Several generations of African-American leadership, not to mention the powerful socializing force of the civil rights movement, have linked the fate of African-Americans to other racial and ethnic minorities. . . . The strategic decisions of many visible Black leaders and the content of their political *412 rhetoric, in particular the

(Cite as: 25 Law & Ineq. 355)

notion of a rainbow coalition, has arguably socialized many African-Americans to see themselves as part of a larger collective. Within the last 20 years [] a large immigrant influx ha[s] placed pressure on Latino political organizers to broaden their concerns and their appeal. [FN427] With the recognition of a pivotal voice in the electorate, Latino communities have a powerful incentive "to organize and maximize their political leverage." [FN428] Fears of restrictive immigration proposals have begun to mobilize hundreds of thousands of Latinos [FN429] from diverse Latino subgroups. As pan-Latino solidarity increases, there should be a corresponding increase in Latino affinity with African Americans--a prospect of tremendous opportunity. In addition, there is evidence that Latinos are rejecting the racial bribe. Over the last three censuses, the number of Latinos that consider themselves White has declined. [FN430] The construction of a pan-ethnic Hispanic-Latino identity could become the site for mobilization.

3. The Black-White Divide

Professor Derrick Bell has explained that one of the reasons that *Brown v. Board of Education* [FN431] has failed to live up to its expectations is that the case's power to promote social justice was shaped not by the intentional coalescing of a broad social movement reaching across race and economic class, but by a momentary convergence of interest between Northern liberals embarrassed by American apartheid in the Cold War propaganda campaigns, Southern moderates, and Blacks. [FN432] Consequently, poor Whites experienced a "downward mobility" forced by the implementation of desegregation to associate with Blacks. [FN433] In that way *Brown* exacerbated the interest divergences between poor and working class Whites and Blacks. [FN434] In the words of Lani Guinier, "[p]ublic education became a battlefield rather than a *413 constructive gravitational force within many communities." [FN435]

Derrick Bell's interest convergence formula holds that the interest of Blacks in achieving racial equality will be accommodated only when it converges with the interests of Whites. [FN436] In a contest between White self-interest and White racism, justice is the product. [FN437] This equation tells us that there are opportunities for social justice where allies of social progressives can identify and harness support of Whites.

As we have seen, conceptions of race have not been stable or a given. Our understanding of race is a product of historical and social conditions that have changed over time. It is inconsistent to recognize that race is not fixed and fail to see the contingency of interest. Harvard Law Professor Roberto Mangabeira Unger reminds us that there are alternative persuasive ways to define and defend group interests. [FN438] "Ideals and interests draw much of their substance from their implicit institutional setting." [FN439] If the institutional arrangements are assumed to be a given, the set of interests that a group sees at stake will be both defined and defended as exclusive. [FN440] For example, "unionized workers in a capital-intensive industry may see temporary workers or subcontractors as threats, and seek . . . collective bargaining agreements [that protect the union from] encroachment by these rivals." [FN441] The definition of interest becomes preservation of niche and the defense is one of exclusivity. [FN442] If the institutional arrangements are open to revision, then both the definition and defense of a set of interests is likely to be broad.

The conservative and exclusive defense has the advantage of *414 seeming safe and tangible. Thus, it is understandable why middle-income White families might oppose busing programs designed to integrate schools. Whites have a group interest in protecting their investment in educational opportunity for their children. Residential housing values are based upon school quality and educational opportunity. [FN443] Educational opportunity in turn influences occupational life. [FN444] The powerful history and nature of residential segregation makes White-Black interest convergence particularly difficult. "A strong causal connection exists between the power of institutional arrangements to generate such divisions, hierarchies, and roles and the relative insulation of such arrangements against effective challenge and revision." [FN445] By accepting a set of institutional arrangements and their corresponding

(Cite as: 25 Law & Ineq. 355)

group antagonisms as a given, it becomes impossible to see alternative persuasive ways of pursuing self-interests.

Economic patterns are applying pressure to the definition of White interest. Globalization unleashes forces which create a crisis not only in the developing world, but also within the United States. [\[FN446\]](#) As globalization takes its toll, the United States economy is increasingly "bifurcat[ing] between jobs that require little skill and education and those that require college or postgraduate degrees. The 'college' premium, the average amount that a college graduate earns over a noncollege educated worker, was 31 percent in 1979. . . . By 1993, the college premium had grown to 53 percent." [\[FN447\]](#) This trend reflects the transportation of low-skilled jobs overseas at a greatly reduced wage rate. [\[FN448\]](#) Moreover, although real wages have been stagnant, the rising costs of health care, education, retirement, and housing have further stressed the middle class. [\[FN449\]](#) Middle class workers work longer and harder. [\[FN450\]](#)

The economic condition and insecurity of the middle class might suggest greater class identity between the middle class, *415 working class, and people of color; but this new identity has not emerged. Instead of engendering great class consciousness and a critique of the expanding prerogative for the elites, there has been increased racial resentment: "Resentment, however, is not directed strongly at those who are managing the economy, at those who are reaping enormous profits and benefits, or at the system as a whole, but at affirmative action, at nonwhite foreign (especially Asian and Mexican) competition, and at immigrants." [\[FN451\]](#) One author writes:

The dominant politics of this era has been to galvanize and appeal to middle class voters' fear of falling. From anti-immigrant policies to attacks on civil rights policies such as affirmative action, to a high-profile war on drugs, to the expansion of prisons and the use of the death penalty, to the war on terrorism, politicians have become highly skilled at creating dangerous foes to attack and contain. . . . [W]ars on crime create "the good" people and values by sanctioning "the bad." The creation of fear of criminals has . . . shored up the ideology of the middle class as honest, [hard workers and] the claims that immigrants are taking away "our" jobs and using "our" social services has . . . [been] a convenient explanation for the declining standards of living. [\[FN452\]](#)

In short, "[t]he global era's pressures means that an increasing number of Americans feel left out of the social order (i.e. denied access to stable jobs, home ownership, and college education)." [\[FN453\]](#) The erosion of the American dream may open up new ideas about the "good life," especially the affirmative responsibilities of corporations and government to civic society. [\[FN454\]](#) As Professor Barlow reminds us, "[t]he middle class order and attendant norms embedded within its cultural conception became hegemonic in the historically anomalous conditions of the post-World War II era," [\[FN455\]](#) and it is certainly not the only way to organize a social order. The forces of globalization have the potential to undermine institutional arrangements that perpetuate institutional racism based on hoarding. Instead we have the middle class seeking refuge in the new White resentment. Globalization is opening up new political and ideological spaces. It is not clear if this space will be progressive *416 or reactionary. In part, it will depend on how we use race. [\[FN456\]](#)

4. Building Solidarity

The present condition should counsel us not to assume that the changing global world and the new institutional arrangement will in and of itself entail new class solidarity or an inclusive response. There will be a critical need for leadership to help frame these changes into a transformative agenda. For the targeted universalist, the development of solidaristic associations should be supported by programs that are not susceptible to being framed as zero-sum. The momentary convergence of interests is not a sufficient condition to coalition building. Whether a certain alliance among social groups can be developed and sustained over time depends on whether there is a trajectory of institutional reform enabling the interest and ideas of participant groups to converge. "[A] progressive strategy is flawed if its primary focus is to win within the zero-sum world of elections." [\[FN457\]](#) Harold Washington's campaign was the product of decades of cross-racial organizing at the community level. [\[FN458\]](#) For the energy of the

(Cite as: 25 Law & Ineq. 355)

movement to remain animated beyond an electoral victory, progressives need to summon social justice commitments as a moral force. [\[FN459\]](#)

The Washington administration illustrates a limitation on coalitions that are not sustained outside of the electoral arena. When dealing with zero-sum issues, such as political representation or public jobs, coalitions tend to break down into racial antagonism. [\[FN460\]](#) In the words of Doug Gills, who was centrally active in the coalition building efforts precipitating the election of Harold Washington:

We took coalition building for granted. We operated as if all we had to do was to proclaim movement politics or profess to be a supporter of black-Latino or black-white unity and . . . *417 Presto!--we got instant unity!--when our experience had been that solidarity is forged in struggle and then debated and tested in battle. [\[FN461\]](#) Building a multiracial coalition depends on more than merely adopting an attractive agenda. It requires a movement that seeks to instill a sense of solidarity largely lacking in the United States. [\[FN462\]](#) "Social and ideological conflict wear away the patina of naturalness and necessity surrounding our views of agency and alliance." [\[FN463\]](#) We must envision new narratives to replace those which prevent coalition building. The crucible of struggle and collective resistance opens up the potential for new stories that are not zero-sum.

Lani Guinier and Gerald Torres provide an illustration that highlights the ingredients of successful multi-racial coalitions and the way that race can be used to bridge group interests and instill a sense of linked fate. [\[FN464\]](#) The authors recount "the struggle in the 1990s to unionize a K-Mart distribution center in Greensboro, North Carolina and secure a wage contract." [\[FN465\]](#) Sixty-five percent of the workers were Black. [\[FN466\]](#) Initially in the dispute, two stock stories framed the dispute. One claimed that this was a unionizing effort and, therefore, a labor problem. [\[FN467\]](#) The other story claimed that this was a civil rights matter that only involved issues of race. [\[FN468\]](#) In order to create a broader coalition, these stories had to be superseded. Denying the salience of race would risk losing Black workers and the Black community. On the other hand, organizing the union effort solely around the issue of discrimination would alienate some Whites and play into the divide-and-conquer strategy that opponents of the organizing effort were counting on.

The union eventually turned to the Pulpit Forum, an association of Black pastors in the area for help. [\[FN469\]](#) The union informed the Pulpit Forum "that the Greensboro plant--the only K-Mart distribution center with a majority nonwhite workforce--received the worst wages and benefits of any center in *418 the country." [\[FN470\]](#) This in turn led the Pulpit Forum to reframe the issue not in terms of labor or race per se, but in terms of whether it was just that K-Mart should pay wages lower than any other plant simply because the workforce was mostly Black. [\[FN471\]](#) The issue was transformed from one of purely a labor struggle to one implicating the welfare of the larger community. K-Mart attempted to undermine the coalition by suing only Black protesters and Black workers for criminal trespass. [\[FN472\]](#) The White workers remarkably asked: "Why weren't we sued?" [\[FN473\]](#) They were affected by a wage structure that had raced them as Black, and they joined in resistance. The movement successfully reframed a labor or race issue into a justice issue that included both Whites and Blacks.

Solidaristic approaches are difficult because their long-run power is often insufficient to outweigh the advantages groups currently enjoy. Today, Whiteness and the tangible benefits of White space prevent working class Whites from allying themselves with poor and working-class Blacks who share common interests. The advantages of White neighborhoods and schools seem to outweigh the long-run benefit of cross-racial solidarity. A progressive movement will have to "expose . . . alternatives of development that lay hidden and invisible" by intimating a different world in which we would become "(slightly) different people, with (slightly) revised understandings of our interests and ideals." [\[FN474\]](#) The development of a sustainable progressive movement must take as one of its tasks the redefinition of its participants as members of a democratic polity. A progressive movement cannot take its members as individuals with predefined interests and identities. Historically constructed interests need space to be reimagined.

(Cite as: 25 Law & Ineq. 355)

One sharecropper told a student organizer that the most important accomplishment of the civil rights movement, as far as Blacks in Mississippi were concerned, was not the vote, but the opportunity to meet. [FN475] Lani Guinier and Gerald Torres offer the imagery of building a sandcastle. [FN476] The fact that the tide will *419 inevitably sweep away the effort does not destroy the community spirit that was generated by the activity. [FN477] Building a progressive movement and generating durable coalitions requires a change in perspective first: the opportunity to envision one's interests and one's identity in a slightly different light. At some point the participants may need to learn how to stop the tide, but the goal is not simply to participate in the building of a sandcastle competition, but to learn how to work together and keep the sandcastle standing for as long as possible. [FN478]

5. Race in the 21st Century

One should not assume that non-Whites are the main challenge to multiracial coalitions. African Americans have been the staunchest defenders of a federally controlled, universalistic welfare state from the 1930s to the present day. [FN479] History suggests that Whites and the identity of Whiteness have been the major impediments to multiracial coalitions. [FN480] There are reasons to believe that this is changing, [FN481] but not without a clear strategy and adroit leadership. A simplistic focus on class would not serve that end. Worse, racial neutrality would undermine these efforts.

We have already pointed out a number of shifts in racial identities including White identities. The definition of Whiteness was a matter of considerable importance to immigrants arriving in this country in the nineteenth century. [FN482] "Slavery and Jim Crow cemented racial divisions in U.S. society, creating a dynamic that has framed all interactions across race and ethnicity." [FN483] How the Irish became White is a recurring story in American history. [FN484] Eastern and Southern Europeans were, after a similar debate, drawn into the category "White" during the early decades of the *420 twentieth century. [FN485] But it is not simply that racial and class categories shift; racial meanings and narratives are equally dynamic.

The civil rights movement was successful at changing attitudes so that the era of the mass appeal of overt racism appears to be over. [FN486] Nonetheless, race continues to infuse itself into policy debates today in less visible but no less potent ways. "A new and cryptic vernacular for racial politics developed": poverty, crime, taxes, rights, values, and urban development implicate race. [FN487] It is impossible to separate racial meaning from these discussions. "Through these code words, writes Stephen Steinberg, 'it is possible to play on racial stereotypes, appeal to racial fears, and heap blame on blacks, other people of color, and immigrants without naming them.'" [FN488] The race issue undergirds messages on taxes, guns, religion, patriotism, conventional gender roles, abortion, family values, and big government spending, making them attractive, [FN489] particularly in the South. For example, opposition to taxes is not simply opposition on the philosophical level; it is tied to the issue of federal programs, which to many White Southerners means taxpayer supported programs to benefit Black Americans. [FN490] Guns have become synonymous with personal protection against a grasping federal government (harkening back to Reconstruction) that could and would ram unwelcome legislation down the throats of people, as well as personal protection against criminals, associated so closely and for so long in the White mind with African Americans. [FN491] Morality has also long had a racial lining in the popular consciousness, in part, as a consequence of the residential divide. [FN492] Even ostensibly race-neutral programs, such as aid programs with broad class benefits for low-income Americans, have become publicly "raced" in White *421 perception. [FN493] Programs like public housing, Medicaid, welfare, and food stamps are marked as non-White. [FN494] As one author writes:

[T]he stereotype of the single black mother as a long-term welfare recipient who would rather have another child than work her way off public assistance has driven welfare reform, even though most welfare recipients receive benefits for less than two years and are as likely to be white as black. [FN495]

There are reasons to believe that globalization and the demographic changes will produce another shift in not

(Cite as: 25 Law & Ineq. 355)

only our racial categories but also racial meaning. What is not yet evident is the directions that these shifts will take. What is clear is that the racial future of the United States is bound up with Latino and Asian racial identity. [FN496] "Latin Americans for several decades have composed the largest immigrant group in the United States . . . [T]his population grew 58% between 1990 and 2000." [FN497] Some estimates suggest that by 2100, one in three Americans will be Latino. [FN498] Despite the many possible futures that race could take in the twenty-first century, [FN499] there are signs that growing diversity may harden, rather than soften, racial divisions and racialized cultural narratives. A study by Pamela Perry in two California high schools may be a portent of the future. [FN500]

The sites of study were chosen to illuminate the meaning of Whiteness under the light of contrast. [FN501] "Clavey High is a large, urban public school in a metropolitan area on the Pacific coast of California with a majority African American student body." [FN502] Valley Groves is a similarly sized, suburban public school located *422 less than twenty miles from Clavey with an eighty-three percent non-Hispanic White student body. [FN503] White students at suburban Valley Groves organized their social world through a race-neutral, norm-other logic. [FN504] This logic "was at least partially constituted and reinforced by, on the one hand, little face-to-face association with racialized 'others' and, on the other, a . . . school culture . . . derived from white European American culture but experienced as natural, commonsense, and normal." [FN505] In contrast, at Clavey high, a minority predominant school, race was the primary social organizing mechanism of the high school. [FN506] Not only was youth culture at Clavey divided and categorized with race as a primary referent, but sports, school space, club activities and even the curricula structure itself was racialized. [FN507] Associational stereotyping pervaded the construction of Whiteness at Clavey High. For instance:

the territories at Clavey took on racial meaning in part because one racial group or another was numerically predominant, but also because certain use values of the space or practical behaviors within them simultaneously reproduced and constituted particular racialized styles or stereotypes. The "Lawn" was marked by whiteness, . . . [t]he lower-lawn was marked by Blackness, . . . and the 70 building was marked by Asian-ness. [FN508]

The implications of these observational differences are profound. Whiteness becomes more central and more salient to Whites in a world in which Whiteness is rendered visible. The slowly changing demographic reality is that Whites in the United States are projected to be a minority by 2060. [FN509] In such a context, norms are no longer subsumed under the meaning of "White" nor taken for granted as White, opening up a social space of meaning and struggle not found in a predominantly White context. Perry's ethnographic and social mapping therefore suggests an opportunity that we must be poised to grasp at the same time that it warns us of potential pitfalls. As Whites begin to inspect the meaning of Whiteness in the context of a more clearly observed *423 multi-racial society, the meaning of Whiteness grows malleable, fluid, and open to re-interpretation.

The danger to be avoided is the social fact that a multi-racial context also appears to rigidify and reify associational stereotyping and racial cohesion. The social organization of Clavey High School by race may open up a space for Whites to engage in a dialogue over the meaning of Whiteness, but it also may tend to increase social cohesion among Whites, make Whites more protective of their identity, and less open to coalition building. This danger is not limited to Whites. The rigid racial structure of the highly diverse Clavey High School may paradoxically inhibit coalition building between all races. This hypothesis has been anecdotally confirmed in other contexts. New York City's non-Hispanic Black, Hispanic, and Asian populations grew to 60% by 1990. [FN510] Despite having a robust history of mobilization for electoral politics and protest and a generally more liberal White voter base, New York City has been unable to form a durable multi-racial coalition. [FN511] John Mollenkopf notes that "the case of New York City shows that whereas a city can become less white, it does not necessarily become more Black." [FN512]

IV. Closing Thoughts

The argument advanced by this Article is that a socially inclusive agenda must engage the interactive and co-

constitutive nature of race and class. This Article is written to challenge and correct the assumption that racism and racial stratification can be understood and addressed through a class lens. This reductionist position is often countered by a different, but equally flawed position: that race always trumps class. As an alternative to these positions, I have offered an analysis that suggests that race and class are mutually constitutive and highly interactive. Racial arrangements have direct consequences for class structures and vice versa. The crushing of the Populist movement and the failure to build a national labor movement accelerated the development of Jim Crow. Neither race nor class can be adequately understood or productively engaged without a historical recognition of the profound interaction between the development of the meaning and *424 structure of race and class in the United States. This interaction is not a historical artifact, but, as this Article described, continues unabated today. I assert that the failure to understand this greatly limits the possibility of a more inclusive society that invests in its people.

The mistakes made in the examination of the relationship of race and class are caused by a number of factors. The mistake may originate with an inadequate understanding of either race or class. With regard to race, we are seduced into narrowly defining it, and with this narrow definition in mind, we are tempted to dismiss it. The way we think of racial issues is largely about those populations categorized as racially marginalized people who historically suffered as a result of racial prejudiced Whites. This narrative is well-traveled in debates over affirmative action. Notably absent from this narrative, however, is consideration for the ways in which our racialized arrangements impact the lives of poor Whites. Our thin welfare state, anemic labor movement, and weak class consciousness are a product of our racialized institutional arrangements. Whites only show up in the current narrative as bad actors and perpetrators. Racial issues are seen as special pleaders by non-Whites, drawing on the White guilt. It is understandable that many Whites would not wish to see themselves as perpetrators or follow the logic of this position of having to pay for the injury suffered by non-Whites. When pundits argue a racial focus divides, it is likely this narrative that they draw on. The wisdom of their arguments seems unassailable as polling, focus groups, and voting patterns seem to confirm White resistance to focusing on race. There seems to be more willingness to address issues through a "universal" lens, such as class. And yet, when one looks at prior efforts to implement universal programs, they have been inadequate to address race issues and to quiet the debate. Progressive efforts seem to falter whenever the decision is made to submerge the race question. Dennis Kucinich, the AFL-CIO, and the Populists all made this mistake.

When race is understood more broadly, much of the rancor dissipates. I have asserted that race helps constitute how we understand class and class identity. Those who would use class identity as a unifier instead of race fail to account for the weak identification with class and the strong identification with race. Indeed, I have asserted that class identity in the United States is already a racial identity. I also asserted that while the issue of *425 special pleader can be divisive, a more nuanced and historic understanding of race is not. Race not only tells the story of how non-Whites were treated; it helps define Whiteness, class consciousness, and institutional design and meaning. In short, race sets the terms for both Whites and non-Whites. The institutional design and meaning of race limits the social imagination and constrains opportunities for Whites and non-White alike. I have asserted that this is done partially through the ideology of hyper-individuality that embraces the isolated, unorganized-self in the face of organized capital and business. Even when unions have organized, in part because of our racial history and in contrast to European labor movements, their scope has been limited and private-oriented, focused on particular employees instead of workers more broadly. The failure to adequately understand and address race, therefore, relates to the failure to develop and sustain a robust class consciousness. I have tried to show that this is not simply an analytical position, but a fact reflected in our history. Contrary to received wisdom, when the particularity of race is properly raised, it lays the foundation for class and race solidarity. Part of what is required is a universality that is grounded in particularities. An approach that is just particular or just universal has not been effective.

I have also asserted that race and class are not just psychological constructs. They are part of a narrative that is supported and reflected in institutional arrangements. I suggest that building effective multiracial/ethnic coalitions cannot be done just through dialogue--there must also be attention to institutional structures and design as we ex-

(Cite as: 25 Law & Ineq. 355)

plore new racial meanings. As the United States marches deeper in the twenty-first century, it is clear that race and racial meanings and identity will continue to change as they have thus far. As the ground begins to shift, opportunities to re-imagine group interests will arise and calcify once more. The difficulty, and the first step, is to reframe issues and narratives that would permit groups to see their interests in a different light. It is the work of political vision to offer a competing narrative at a time when things are up for grabs. Once a narrative can be established that re-frames such divisions, the possibilities emerge for institutional innovations which may result in sustainable alliances. This will partially depend upon how Latinos and Asians define themselves. We are not helpless to challenge and shape these meanings. I recognize that racial meanings and group interest are influenced by *426 institutional arrangements and context. Our collective actions and inactions create structures that perpetuate group-based inequality, but also distribute meaning. Once structures are in place, they appear to have a logic and momentum of their own. This cycle appears as inevitable as it is vicious.

The challenge is that race neutral tactics are not up to the task. A colorblind agenda is incapable of addressing many of the structural problems that prevent the development of social solidarity across racial boundaries. My analysis demonstrates that class and race interact and are not separable. Segregation, a critical institutional impediment, cannot be addressed through universal programs. Race operates through urban housing markets to produce a uniquely disadvantaged neighborhood environment for many African Americans, an environment that builds a variety of self-perpetuating processes of deprivation into Black lives.

Much of the literature on racial disparities examines the race-specific effects of a particular outcome within a particular domain at a particular point in time. [FN513] What is missing in these analyses is the way that particular disparities accumulate over time and across domains. [FN514] The emphasis needs to be on dynamic and systematic processes. For example, an investigation into discrimination in the labor market misses the impact of educational opportunities on labor market outcomes. Race-conscious hiring policies may not have their desired effect if limited educational opportunities fail to create a pool of candidates to draw from. Universalism assumes that its subjects are similarly situated. Particular policies may assume that removing a particular burden enables the beneficiary to advance. Both assumptions may be flawed. Public policies therefore must *427 address both race and class issues if they are to be successful. [FN515] "Race-conscious steps need to be taken to dismantle the institutional apparatus of segregation, and class-specific policies must be implemented to improve the socioeconomic status of African Americans." [FN516]

We are at a cross roads. Because of neo-liberal globalization and the attendant stress to the middle class there is a growing similarity in the conditions of Whites and non-Whites. The current response has largely been associated with racial retrenchment, even where, or maybe because, race is not explicitly discussed. I believe that the best way to address this is to re-conceptualize race and class in a way that would support solidarity and induce a change in institutional design and meaning that would support the role of government in investing in the lives and infrastructure of its citizens. This requires a new way of understanding our institutions, a new narrative, and a new understanding of race and class. It is my hope that this Article can support such an effort.

This Article articulated the means by which a broad multi-race, multi-class coalition may utilize race to frame and sustain a national policy of social inclusion. This requires an understanding of the transformative role and limitations of a race dialogue and the relationship between race and class. We must be careful in using race to avoid creating divergences within and between communities that would sustain such a coalition. These goals can be achieved by using race as a diagnostic tool that frames the issues for a broader coalition. The conditions of the most marginalized racial minority should draw attention to inadequacies in the social systems that harm everyone. Their call for help can be a lens to focus attention on problems that an agenda of social inclusion should address. In this way, race can be used to craft policies with broad support.

(Cite as: 25 Law & Ineq. 355)

In the face of resistance, resentment, and a seemingly intractable status quo, it has rarely proved difficult to persuade progressive oriented thinkers to compromise pursuits of racial justice and equality in the name of political expediency. The earliest and most enlightened American statesmen protected African slavery for that very reason, termed a compromise, forever *428 etched, to our shame, in the Constitution. [FN517] Radicals in the Jacksonian era, who deeply felt the dissonance between the revolutionary ideals and the existence of growing wage labor in a slave society, compromised principled calls for the abolition of slavery in favor of what they felt were attainable, political goals of improving the conditions of Northern workers. [FN518] Although the content of the algorithm changes in each era, the logic remains the same. Race seems divisive, secondary, and impractical in a platform for a broadly based, socially inclusive movement. This is an error of enormous magnitude.

There never has been, at least in twentieth century America, a broad based political movement built solely on class. [FN519] Americans do not think of themselves purely in class terms. Instead, a movement that seeks to shape the national agenda has to recognize multiple identities, race being one of the most important. [FN520] Since White supremacy is corrosive to inclusive, broad-based politics, it is necessary to find a way to speak to racial, class, and gender issues along with a host of other identity issues frankly and honestly and in ways that promise inclusion with ideas like targeted universalism and with language that unashamedly embraces American values of justice.

[FN5a1]. Williams Chair in Civil Rights and Civil Liberties, Moritz College of Law, Ohio State University; Executive Director, Kirwan Institute for the Study of Race and Ethnicity, Ohio State University.

[FN1]. W.E.B. Dubois, *The Souls of Black Folk* 15 (Modern Library ed., The Modern Library 2003) (1953).

[FN2]. See, e.g., Adolph Reed, *The Real Divide*, *The Progressive*, Nov. 2005, at 27-32, available at http://progressive.org/mag_reed1105.

[FN3]. See id.

[FN4]. See generally Derrick Bell, *Race, Racism and American Law* (2000) (discussing segregation in public schools, housing, and discrimination in voting rights and the administration of justice); Lani Guinier & Gerald Torres, *The Miner's Canary* (2002).

[FN5]. See Reed, *supra* note 2, at 31; see also Richard Kahlenberg, *The Remedy: Class, Race, and Affirmative Action* 162 (1996).

[FN6]. See Kahlenberg, *supra* note 5, at 115 (discussing how affirmative action used to be popular when the economy was prosperous but as family incomes in the United States start to fall flat, race-based affirmative action is becoming less popular).

[FN7]. See, e.g., Kahlenberg, *supra* note 5, at 99-100, 155-156; see also Richard H. Fallon, Jr., [Affirmative Action Based on Economic Disadvantage](#), 43 *UCLA L. Rev.* 1913 (1996); Martha Mahoney, [Class and Status in American Law: Race, Interest, and the Anti-Transformation Cases](#), 76 *S. Cal. L. Rev.* 799, 800 n.2 (2003) (citing R. Richard Banks, [Meritocratic Values and Racial Outcomes: Defending Class-based College Admissions](#), 79 *N.C. L. Rev.* 1029 (2001)); Deborah C. Malamud, [Assessing Class-Based Affirmative Action](#), 47 *J. Legal Educ.* 452 (1997); Deborah C. Malamud, [Class-Based Affirmative Action: Lessons and Caveats](#), 74 *Tex. L. Rev.* 1847 (1996); Richard H. Sander, [Experimenting with Class-Based Affirmative Action](#), 47 *J. Legal Educ.* 472 (1997).

[FN8]. We will focus on the race aspect of this dynamic both because of its importance but also because of the current trend to move away from race. See Reed, *supra* note 2, at 31; see also Ward Connerly, *The Michigan Win*, *The Nat'l Review Online*, Jan. 30, 2007, <http://article.nationalreview.com/?q=MjYwYThkMGJmZmE3OTE4ZjBmMzQ0YTBlkNzZkNzA0=> (last visited Mar. 26, 2007). I believe this is a de-

(Cite as: 25 Law & Ineq. 355)

structive move that must be corrected if we are to have a fair society not just for those raced as non-White, but for all Americans.

[FN9]. See, e.g., Reed, *supra* note 2, at 31-32.

[FN10]. See *id.*

[FN11]. Michael Goldfield, *The Color of Politics* 8 (1997) (discussing the views of V.O. Key).

[FN12]. See *id.*

[FN13]. See *id.*

[FN14]. See Carol R. Goforth, "[What is She? How Race Matters and Why It Shouldn't](#)," 46 *DePaul L. Rev.* 1, 9-11 (1996).

[FN15]. See Connerly, *supra* note 8.

[FN16]. See John A. Powell, *The Colorblind Multiracial Dilemma: Racial Categories Reconsidered*, 31 *U.S.F. L. Rev.* 789, 790 (1997).

[FN17]. See John A. Powell, [Dreaming of a Self Beyond Whiteness and Isolation](#), 18 *Wash. U. J.L. & Pol'y* 13, 39-42 (2005).

[FN18]. Because race and racism are identified as static, it is assumed that the absence of prejudiced actors means that there is no racism. Race, racial meanings, and racism are an evolving set of social practices and circumstances that change just as other social practices change.

[FN19]. See *infra*, Part II. A. and B.

[FN20]. See Inst. On Race & Poverty, *Racism and Metropolitan Dynamics* 4 (2002), available at <http://www1.umn.edu/irp/publications/racismandmetrodynamics.pdf>.

[FN21]. The Rev. Dr. Martin Luther King, Jr., *Letter from Birmingham Jail* 2 (The Overbrook Press 1968) ("We are caught in an inescapable network of mutuality tied in a single garment of destiny. Whatever affects one directly affects all indirectly.")

[FN22]. A transactional intervention, on the other hand, is one that may impact outcomes across several domains but does not fundamentally change the way structures and institutions operate.

[FN23]. See Linda Faye Williams, *The Constraint of Race: Slavery, the Legacy of the "White Citizen," and American Social Policy, Repairing the Past: Confronting the Legacies of Slavery, Genocide, and Caste* 4, 11-12 (Oct. 27-29, 2005) (unpublished article, available at <http://www.yale.edu/glc/justice/williams.pdf>) (describing Whites in the South who would not go to a church, would not swim in a pool, and would take their children out of schools to avoid any interaction with Blacks).

[FN24]. See Williams, *supra* note 23, at 13 (giving the example of the "welfare queen"); see also Goldfield, *supra* note 11, at 8.

[FN25]. As one commentator recently concluded in the wake of Hurricane Katrina, "For race is the biggest reason the United States, unique among advanced countries, is ruled by a political movement that is hostile to the idea of

helping citizens in need." Paul Krugman, Op-Ed., Tragedy in Black and White, N.Y. Times, Sept. 19, 2005, at A1.

[FN26]. See Martha Mahoney, Whiteness and Remedy: Under-Ruling Civil Rights in Walker v. [City of Mesquite](#), 85 [Cornell L. Rev.](#) 1309, 1323 (2000).

[FN27]. See infra Part II. A.

[FN28]. Though the racialization of the Native Americans is foundational to our understanding of race, we do not discuss it in this Article.

[FN29]. See, e.g., Steve Martinot, The Rule of Racialization, 28-74 (2003). See generally Ted Allen, The Invention of the White Race (1994) (arguing that the process of racialization conditioned the initial structuring of class as a predominant way of organizing).

[FN30]. Martinot, supra note 29, at 79-80.

[FN31]. Eric Foner, The Story of American Freedom 12 (1998).

[FN32]. David Roediger, The Wages of Whiteness 56 (rev.ed. 1999).

[FN33]. In Connecticut, for example, there were twice as many inhabitants as freeman in the late 1780s. See Akhil Reed Amar, America's Constitution 503 (2005) (cited in Conversation with ARA, Aug. 2002 and Christopher Collier, A Constitutional History of the Connecticut General Assembly, 110-112 (1988)).

[FN34]. See Foner, supra note 31, at 10.

[FN35]. Id.

[FN36]. Id. at 10-11.

[FN37]. See id. at 19. Apprenticeship, a similar institution, was also on the wane. Id.

[FN38]. See Roediger, supra note 32, at 32.

[FN39]. See Winthrop Jordan, The White Man's Burden 118-122 (1974) (arguing that the American Revolution provoked a revolution in American consciousness). Secular equalitarianism was a result of the convergence of environmentalism, a popular mode of thought in the revolutionary era, and the dogma of natural rights. Further:

During this third quarter of the eighteenth century, many Americans awoke to the fact that a hitherto unquestioned social institution had spread its roots not only throughout the economic structure of much of the country but into their own minds. As they became conscious of this infiltration they came to recognize that enslavement of the Negro depended on their assessment of him, that Negro slavery existed within themselves, within their "prejudices," particularly "in relation to color."

Id.

[FN40]. Roediger, supra note 32, at 30.

[FN41]. See id. at 32; see also Amar, supra note 33, at 351.

[FN42]. See Jonathan Huges & Louis P. Cain, American Economic History 168 (5th ed. 1998). "Slaveholders constituted the wealthiest class in the country by far. The average slaveowner was more than five times as wealthy as the average northern, more than ten times as wealthy as the average non-slaveholding southern farmer." Id. It is import-

(Cite as: 25 Law & Ineq. 355)

ant to recognize that the South was not monolithic when it came to slavery. Winthrop Jordan reflects some of this nuance when he says "there was not one south, but two and a half." Jordan, *supra* note 39, at 126. The economic differences, patterns of antislavery sentiment, and population of slaves in the south separated the upper south from the lower south with North Carolina as "an anomalous borderland." *Id.*

[FN43]. See, e.g., Goldfield, *supra* note 11, at 70 (stating that General Pinkney, a representative from South Carolina, said that without slaves, "South Carolina would soon be a desert waste").

[FN44]. See Foner, *supra* note 31, at 35 (stating that the proposed Constitution, in the words of James Madison, "offered slavery 'better security than any that now exists.'").

[FN45]. Foner, *supra* note 31, at 36 (quoting Benjamin Rush, who apparently wrote that the use of the word would "contaminate the glorious fabric of American liberty"); see also Donald J. D'Elia, Dr. Benjamin Rush and The Negro, *J. Hist. Ideas* 419 (1969).

[FN46]. Foner, *supra* note 31 at 36. Even though the federal government may be far more powerful today than it was in the 19th Century, I believe that the divide the Constitution created, formed a structural legacy in which the states became the primary political unit.

[FN47]. See [U.S. Const. art. I, § 9, cl. 1.](#)

[FN48]. See [U.S. Const. art. IV, § 2, cl. 2.](#)

[FN49]. See [U.S. Const. art. V.](#)

[FN50]. See [U.S. Const. art. I, § 2, cl. 3.](#)

[FN51]. See Martinot, *supra* note 29, at 83. See also Amar, *supra* note 33, at 20-21 (arguing that since slaves counted toward congressional apportionment, each slave state was awarded extra seats in the electoral college and in the Congress relative to its free population). Amar notes this acted as a "perverse incentive [] to maintain and even expand slavery. If a state freed its slaves and the freedmen then moved away, the state might actually lose House seats." *Id.* at 21.

[FN52]. See Martinot, *supra* note 29, at 6-7.

[FN53]. Foner, *supra* note 31, at 40.

[FN54]. See Goldfield, *supra* note 11, at 15-16 (summarizing the argument of Stanley Greenberg, *Race and State in Capitalist Development* (1980)). Greenberg argues that racial systems of discrimination did not originate in culture or individual attitudes,

rather, they were originally rooted in the economic needs and desires of large agricultural producers to have highly exploited and controlled black labor forces. The social and political structures and the racial identities that were required to sustain such a system were by necessity codified and extended to the societies as a whole.... Both the difficulty of overcoming racist attitudes among whites and the problems faced by racially solidaristic labor movements must be explained within this context. Changing the systems of racial domination and subordination ultimately requires the challenging and overthrowing of those economic interests that gain the most.

Id. From this perspective, the Constitution, in the words of Goldfield, "codified" the racial system used by the South and extended it to the society as a whole. See *id.* at 73. The political architecture of our nation subsequently enhanced the racial arrangement in ways that will become clear later in this Article.

[FN55]. See generally George M. Fredrickson, *The Black Image in the White Mind* (1987) (describing the various ideologies and ideas that emerged in the 19th Century).

[FN56]. See *id.* at 71-96.

[FN57]. Roediger, *supra* note 32, at 35.

[FN58]. See *id.* at 35-36.

[FN59]. Martinot, *supra* note 29, at 84.

[FN60]. Roediger, *supra* note 32, at 20.

[FN61]. See Foner, *supra* note 31, at 60. Foner recounts the essays of New England social philosopher Orestes A. Brownson, novelist Herman Melville, and demagogue politician Mike Walsh, who compared a wage system itself to slavery. *Id.*

[FN62]. See Roediger, *supra* note 32, at 56.

[FN63]. See *id.* at 177-80.

[FN64]. See *id.*

[FN65]. Foner, *supra* note 31, at 21, 59. "Those who labor the earth are the chosen people of God," the embodiments of "genuine virtue." Thomas Jefferson, *Notes on the State of Virginia 164-165* (1775). Thinking of Manchester and the manufacturing cities of Europe, Jefferson feared that factory workers were bound to become a dependent, propertyless mob, unable to stand on their own two feet, incapable of talking back to government or to exercise independent judgment. They would, in short, lack civic virtue. "Dependence begets subservience and venality, suffocates the germ of virtue, and prepares fit tools for the designs of ambition." *Id.* at 165.

[FN66]. Foner, *supra* note 31, at 17.

[FN67]. *Id.* at 18.

[FN68]. See *id.*

[FN69]. Williams, *supra* note 23, at 4.

[FN70]. See Roediger, *supra* note 32, at 46.

[FN71]. See *id.* at 56-57.

[FN72]. See Williams, *supra* note 23, at 10-11.

[FN73]. See [Dred Scott v. Sandford](#), 60 U.S. 393, 404-05 (1856).

[FN74]. See [U.S. Const. art. I, § 8, cl. 4](#).

[FN75]. *United States Statutes at Large*, 1 Stat. 103 (1789-1873).

[FN76]. See Foner, *supra* note 31, at 39.

[FN77]. See id.

[FN78]. See id. at 40.

[FN79]. See Jefferson, *supra* note 65, at 138-43. Women, although citizens, were also denied the right to vote. This exclusion was justified on the ground that the same natural incapacity existed. See Amar, *supra* note 33, at 419-26.

[FN80]. Roediger, *supra* note 32, at 141.

[FN81]. See Theodore W. Allen, *The Invention of the White Race: Volume One* 168 (1994).

[FN82]. See Guinier & Torres, *supra* note 4, at 224-25. The authors discuss the dynamics of the racial bribe. They argue that two of the goals of the racial bribe are to "diffuse the previously marginalized group's oppositional agenda... [and] to offer incentives that discourage the group from affiliating with black people." *Id.* Both of these motives were present at the moment of the Irish racial bribe.

[FN83]. See Roediger, *supra* note 32, at 133.

[FN84]. See id.

[FN85]. See id.

[FN86]. See id. at 138.

[FN87]. *Id.* at 134.

[FN88]. See id.

[FN89]. See Roediger, *supra* note 32, at 134.

[FN90]. See Allen, *supra* note 81, at 187.

[FN91]. *See id.*

[FN92]. See Roediger, *supra* note 32, at 142.

[FN93]. *Id.* at 144. The conflation of nationality with blood may have troubled the Irish who despised the English, but "within the constrained choices and high risks of antebellum American politics such a choice was logical." *Id.*

[FN94]. See Allen, *supra* note 81, at 187.

[FN95]. See Martinot, *supra* note 29, at 59.

[FN96]. Martinot, *supra* note 29, at 64. See also Powell, *supra* note 17, at 37. This insight gives meaning to James Baldwin's phrase, "As long as you think you are white, there's no hope for you." *The Price of a Ticket* (American Masters and Maysles Films 1985). It is also important to note that race can be used and has been used in the spirit of liberation and social justice. See Guinier & Torres, *supra* note 4, at 81-82.

[FN97]. Ohio Historical Society, Bureau of Refugees, Freedmen, and Abandoned Lands, 2005, <http://www.ohiohistorycentral.org/entry.php?rec=2107>.

[FN98]. Eric Foner, *A Short History of Reconstruction* 65 (Harper & Row 1990).

[FN99]. *Id.* President Johnson vetoed the Freedman's Bureau Bill submitted by Congress in 1866 characterizing it as an "immense patronage" that was unwarranted by the Constitution and unaffordable given the "condition of our fiscal affairs." *Id.* at 112.

[FN100]. See *id.* at 112.

[FN101]. Williams, *supra* note 23, at 7.

[FN102]. Foner, *supra* note 98, at 112.

[FN103]. See *id.* at 111.

[FN104]. See Williams, *supra* note 23, at 7.

[FN105]. See *id.* at 6.

[FN106]. See Foner, *supra* note 98, at 112.

[FN107]. See Alberto Alesina & Edward L. Glaeser, *Fighting Poverty in the U.S. and Europe* 134 (Oxford 2004). Note that what is salient is not natural but socially constructed and managed.

[FN108]. See *id.* However, racial and ethnic divisions do not always block redistribution. When the racial minority is particularly rich (as the Walloons in Belgium), then it is hardly natural to fight the welfare state by exploiting racial hostility. *Id.* at 135.

[FN109]. See discussion *supra* Part II.A.

[FN110]. See, e.g., Alesina & Glaeser, *supra* note 107, at 165.

[FN111]. See Foner, *supra* note 98, at 2.

[FN112]. See Amar, *supra* note 33, at 357.

[FN113]. See Amar, *supra* note 33, at 358. Roughly 180,000 Blacks fought for the Union cause, more than twenty percent of all African-American males of military age. *Id.*

[FN114]. Goldfield, *supra* note 11, at 115.

[FN115]. Goldfield, *supra* note 11, at 119 (citing Foner, *supra* note 98).

[FN116]. Amar, *supra* note 33, at 358.

[FN117]. See Goldfield, *supra* note 11, at 120. As early as late 1865, Deep South states began instituting Black Codes that required Blacks to have onerous year-long labor contracts with plantation masters. The Mississippi law, for instance, went so far as to include a clause that all previous penal codes specifying crimes for slaves and free Blacks were still in force. See *id.*

[FN118]. See Foner, *supra* note 98, at 92. The South elected former Confederates to Congress in December of 1865. The elected included the Vice President of the Confederacy, four Confederate generals, six cabinet officers, and fifty-eight Confederate congressmen. Among the policies these representatives threatened included the elimination of the national bank, compensation for emancipation, and lower taxes. See Goldfield, *supra* note 11, at 120-21.

(Cite as: 25 Law & Ineq. 355)

[\[FN119\]](#). See Foner, *supra* note 98, at 102-03.

[\[FN120\]](#). Amar, *supra* note 33, at 366.

[\[FN121\]](#). See Goldfield, *supra* note 11, at 121.

[\[FN122\]](#). See *id.* at 127-28.

[\[FN123\]](#). W.E.B. Du Bois, *Black Reconstruction in America 1860-1880*, 319-20 (Atheneum 1935).

[\[FN124\]](#). Goldfield, *supra* note 11, at 133 (citing Du Bois, *supra* note 123, at 353).

[\[FN125\]](#). See Goldfield, *supra* note 11, at 140.

[\[FN126\]](#). See *id.* at 155. Michael Goldfield notes many examples of multiracial solidarity within this movement. For example, at the 1886 Knights convention, national leaders successfully insisted that Richmond theatres and hotels accept African-American delegates. See *id.*

[\[FN127\]](#). See *id.* at 140.

[\[FN128\]](#). See *id.* at 141.

[\[FN129\]](#). See Foner, *supra* note 98, at xvi. As one Washington newspaper noted in 1868, "[i]t is impossible to separate the question of color from the question of labor...." *Id.*

[\[FN130\]](#). See Goldfield, *supra* note 11, at 155.

[\[FN131\]](#). See Goldfield, *supra* note 11, at 160.

[\[FN132\]](#). *Id.* at 146.

[\[FN133\]](#). See *id.* at 121.

[\[FN134\]](#). See *id.*

[\[FN135\]](#). Goldfield, *supra* note 11, at 123.

[\[FN136\]](#). *Id.*

[\[FN137\]](#). See Foner *supra* note 98, at 364.

[\[FN138\]](#). Underlying the Impeachment Crisis--History, the way we see it-- Hon. Jesse L. Jackson, Jr., 106 Cong. E19 (Extension of Remarks - Jan. 7, 1999) (statement of Hon. Jesse L. Jackson, Jr.) (explaining that Rutherford B. Hayes, a Republican, was elected President by one vote in the House in exchange for pulling out Federal troops protecting the newly freed slaves in the South, and agreeing to appoint conservative Dixiecrats to the Supreme Court).

[\[FN139\]](#). *Id.*

[\[FN140\]](#). See Foner, *supra* note 98, at 161-2.

[\[FN141\]](#). See *id.* at 126.

[\[FN142\]](#). See *id.*

(Cite as: 25 Law & Ineq. 355)

[FN143]. See Goldfield, *supra* note 11, at 135.

[FN144]. *Id.*

[FN145]. *Id.* at 117.

[FN146]. See *id.* at 137.

[FN147]. See *id.* at 139. We have not approached this level of political activity since these reforms. Participation in national elections was sixty-four percent in the 2004 election. See Press Release, U.S. Census Bureau News, U.S. Voter Turnout Up in 2004, Census Bureau Reports (May 26, 2005), available at <http://www.census.gov/Press-Release/www/releases/archives/voting/004986.html>.

[FN148]. See Goldfield, *supra* note 11, at 141.

[FN149]. See *id.* at 141.

[FN150]. See *id.* at 154.

[FN151]. See *id.* at 156.

[FN152]. See *id.* at 157.

[FN153]. See *id.*

[FN154]. See *id.* at 161.

[FN155]. See Alesina & Glaeser, *supra* note 107, at 158-59.

[FN156]. C. Van Woodward, *The Strange Career of Jim Crow* 64 (Oxford 1955).

[FN157]. See Goldfield, *supra* note 11, at 161.

[FN158]. See *id.*

[FN159]. See [163 U.S. 537 \(1896\)](#).

[FN160]. See Bell, *supra* note 4, at 580.

[FN161]. See *id.*

[FN162]. See *id.* This was done "largely to avoid a political battle and skirt the embarrassing position of asking a good part of the population to vote for their own disenfranchisement." *Id.* "The absence of popular ratification was particularly heinous in Virginia, where the citizens had originally been encouraged to vote for the calling of the convention on the basis of the fact that they would be able to vote on the new Constitution." *Id.*

[FN163]. See *id.* at 187.

[FN164]. See *id.* "Between 1900 and 1908, North Carolina, Texas, and Georgia amended the suffrage clauses of their state constitutions through referenda. Florida, Tennessee, and Arkansas, with a combination of the poll tax and registration, multiple-box or secret ballot rules achieved disenfranchisement by state legislation action." *Id.* at 187-88.

[\[FN165\]](#). See Bell, *supra* note 4, at 187.

[\[FN166\]](#). See *id.*

[\[FN167\]](#). *Id.*

[\[FN168\]](#). See *id.*

[\[FN169\]](#). See *id.*

[\[FN170\]](#). See *id.* at 188.

[\[FN171\]](#). See *id.* at 187.

[\[FN172\]](#). See Goldfield, *supra* note 11, at 138.

[\[FN173\]](#). *Id.* at 164.

[\[FN174\]](#). *Id.*

[\[FN175\]](#). See Amar, *supra* note 33, at 158. Under America's first census and apportionment, Virginia would receive six more House seats, and thus six more electors, than Pennsylvania, although the two commonwealths at that point had roughly comparable free populations. *Id.*

[\[FN176\]](#). See *id.* at 158.

[\[FN177\]](#). Foner, *supra* note 31, at 36.

[\[FN178\]](#). Amar, *supra* note 33, at 98.

[\[FN179\]](#). See *id.* at 158.

[\[FN180\]](#). See *id.*

[\[FN181\]](#). See Alesina & Glaeser, *supra* note 107, at 122.

[\[FN182\]](#). See *id.*

[\[FN183\]](#). See generally *id.* at 110.

[\[FN184\]](#). See *id.*

[\[FN185\]](#). Michael Brown, *Race, Money and the American Welfare State* 358 (1999). As one commentator noted, "[A] middle-class European, thinking about the poor, says to himself, 'There but the grace of God go I.' A middle-class American is all too likely to think, perhaps without admitting it to himself, 'Why should I be taxed to support those people?'" Krugman, *supra* note 25, at A1.

[\[FN186\]](#). See Alesina & Glaeser, *supra* note 107, at 133. According to their analysis, about half the gap in welfare spending is due to differences in political institutions, but the other half is directly attributable to racial heterogeneity. See *id.*

[\[FN187\]](#). See *id.* at 159.

[\[FN188\]](#). See *id.* at 121. The Populists pushed for policies that would inflate the money supply to alleviate the debt burden on mortgaged farms. See *id.* at 157.

[\[FN189\]](#). See *id.* at 158.

[\[FN190\]](#). See *id.* at 158-59.

[\[FN191\]](#). See Alesina & Glaeser, *supra* note 107, at 159.

[\[FN192\]](#). See *id.*

[\[FN193\]](#). See generally Foner, *supra* note 98, at 199-202.

[\[FN194\]](#). See Alesina & Glaeser, *supra* note 107, at 256.

[\[FN195\]](#). See Amar, *supra* note 33, at 87-88.

[\[FN196\]](#). See Ira Katznelson, *When Affirmative Action Was White* 20 (Norton 2005).

[\[FN197\]](#). *Id.* at 22.

[\[FN198\]](#). *Id.*

[\[FN199\]](#). See *id.* at 22-23.

[\[FN200\]](#). Andrew Barlow, *Between Fear and Hope: Globalization and Race in the United States* 37 (Rowman & Littlefield 2003).

[\[FN201\]](#). See Katznelson, *supra* note 196, at 36.

[\[FN202\]](#). See *id.* at 43.

[\[FN203\]](#). See *id.*

[\[FN204\]](#). See *id.*

[\[FN205\]](#). See *id.* at 45.

[\[FN206\]](#). See *id.*, at 45.

[\[FN207\]](#). *Id.*

[\[FN208\]](#). See *id.* at 46.

[\[FN209\]](#). See *id.* at 47.

[\[FN210\]](#). See *id.*

[\[FN211\]](#). *Id.* at 48.

[\[FN212\]](#). See *id.*

[\[FN213\]](#). See *id.* at 50.

[\[FN214\]](#). [29 U.S.C. § 151, et. seq. \(2006\)](#).

[\[FN215\]](#). [29 U.S.C. § 201 et. seq. \(2006\)](#).

[\[FN216\]](#). See Katznelson, supra note 196, at 55.

[\[FN217\]](#). See id.

[\[FN218\]](#). [15 U.S.C. § 703 \(1933\)](#) (partially repealed 2002).

[\[FN219\]](#). See Katznelson, supra note 196, at 50.

[\[FN220\]](#). See id. at 56-57.

[\[FN221\]](#). Id. at 55.

[\[FN222\]](#). See id. at 61.

[\[FN223\]](#). Id. at 68.

[\[FN224\]](#). Id. at 68.

[\[FN225\]](#). Patricia Sullivan, Days of Hope 4 (1996).

[\[FN226\]](#). See Katznelson, supra note 196, at 61.

[\[FN227\]](#). See id.

[\[FN228\]](#). See Sullivan, supra note 225, at 60.

[\[FN229\]](#). See id. at 62.

[\[FN230\]](#). See id. at 66.

[\[FN231\]](#). Id.

[\[FN232\]](#). Id. at 65.

[\[FN233\]](#). See id. at 62, 65-66.

[\[FN234\]](#). Id. at 5.

[\[FN235\]](#). Id.

[\[FN236\]](#). Id. at 104.

[\[FN237\]](#). See id.

[\[FN238\]](#). Id.

[\[FN239\]](#). Id.

[\[FN240\]](#). Id.

[\[FN241\]](#). War Labor Disputes Act (Smith-Connally Anti-Strike Act), ch. 144, 57 Stat. 163 (1943).

[\[FN242\]](#). Sullivan, *supra* note 225, at 104; see Katznelson, *supra* note 196, at 62-66.

[\[FN243\]](#). Labor-Management Relations (Taft-Hartley) Act, ch. 120, 61 Stat. 136 (1947).

[\[FN244\]](#). See Katznelson, *supra* note 196, at 62-66.

[\[FN245\]](#). Sean Farhang & Ira Katznelson, The Southern Imposition: Congress and Labor in the New Deal and Fair Deal, 19 *Studies in Am. Pol. Dev.* 1, 5 (Spring 2005).

[\[FN246\]](#). See Katznelson, *supra* note 196, at 77-78.

[\[FN247\]](#). *Id.* at 78.

[\[FN248\]](#). Farhang & Katznelson, *supra* note 245, at 7.

[\[FN249\]](#). Act of June 22, 1944, ch. 268, 58 Stat. 284 (repealed 1958) (provisions contained in [38 U.S.C. § 3701 et. seq.](#)).

[\[FN250\]](#). Katznelson, *supra* note 196, at 113.

[\[FN251\]](#). *Id.*

[\[FN252\]](#). *Id.* at 115.

[\[FN253\]](#). *Id.*

[\[FN254\]](#). See *id.* at 116. From 1945 to 1954, the United States added 13 million new homes. *Id.*

[\[FN255\]](#). *Id.*

[\[FN256\]](#). *Id.*

[\[FN257\]](#). See *id.* at 114.

[\[FN258\]](#). *Id.* at 121.

[\[FN259\]](#). See *id.* at 123.

[\[FN260\]](#). See generally *id.* at 127-29 (discussing the de facto exclusion of Blacks from participation in the GI Bill).

[\[FN261\]](#). See *id.* at 138.

[\[FN262\]](#). See *id.* at 129-33.

[\[FN263\]](#). See *id.* at 135.

[\[FN264\]](#). See *id.* at 128.

[\[FN265\]](#). Barlow, *supra* note 200, at 33.

[\[FN266\]](#). *Id.* at 34.

[FN267]. .Id.

[FN268]. See id.

[FN269]. See Martha Mahoney, [Class and Status in American Law: Race, Interest, and the Anti-Transformation Cases](#), 76 S. Cal. L. Rev. 799, 804-05 (2003) (citing E.P. Thompson, The Making of the English Working Class 13 (1964)) (discussing how class is directly related to economics).

[FN270]. [Id. at 804](#) (quotations omitted).

[FN271]. Guinier & Torres, *supra* note 4, at 103.

[FN272]. See id.

[FN273]. See Barlow, *supra* note 200, at 34.

[FN274]. Guinier & Torres, *supra* note 4, at 147.

[FN275]. Mahoney, *supra* note 269, at 804.

[FN276]. See id.

[FN277]. Martha Mahoney, [Segregation, Whiteness, and Transformation](#), 143 Penn. L. Rev. 1659, 1669 (1995).

[FN278]. See id.

[FN279]. Kevin Fox Gotham, Urban Space, Restrictive Covenants and the Origins of Racial Residential Segregation in a U.S. City, 1900-50, 24.3 Int'l J. of Urban and Regional Res. 616, 625-26 (2000).

[FN280]. The government would rank communities in terms of their eligibility for federally-financed or insured loans. See Mahoney, *supra* note 277, at 1670 (1995).

[FN281]. Id.

[FN282]. Gotham, *supra* note 279, at 626.

[FN283]. See Mahoney, *supra* note 277, at 1671 ("Federal action therefore helped to create racialized housing markets: Once racialized community development through the control of the real estate finance market was institutionalized as federal policy, any private sector actor who went against the segregated norm would have compromised buyers with federally funded or insured mortgages on resale of the property, and the mortgage insurability of nearby properties, rested on maintaining whiteness in suburbia.").

[FN284]. Barlow, *supra* note 200, at 37 (quotations omitted).

[FN285]. See id.

[FN286]. Id.

[FN287]. Gotham, *supra* note 279, at 618 (The Supreme Court struck down restrictive covenants in [Shelley v. Kraemer](#), 334 U.S. 1 (1948)).

[FN288]. [334 U.S. 1 \(1948\)](#).

(Cite as: 25 Law & Ineq. 355)

[FN289]. Gotham, *supra* note 279, at 618.

[FN290]. See *id.* at 629.

[FN291]. In Kansas City during the 19th century, for example, Blacks lived in biracial areas intermixed with both the wealthy and the poor. Before 1900, the average Black person in Kansas City tended to live in a ward that was approximately 13% Black. See *id.* at 618-19.

[FN292]. *Id.* at 617-18.

[FN293]. *Id.* at 618.

[FN294]. The National Association of Real Estate Boards ("NAREB") published pamphlets and periodicals warning "that racial minorities threatened property values and that neighborhoods should be racially homogenous to maintain their desirability." *Id.* at 621 (citations omitted). NAREB "amended its code of ethics in 1924 to read 'a Realtor should never be instrumental in introducing into a neighborhood ... members of any race or nationality...whose presence will clearly be detrimental to the property values in that neighborhood.'" *Id.* (citations omitted). A number of early real estate textbooks also stressed the importance of segregation for maintaining neighborhood value and profitable land sales. See *id.*

[FN295]. *Id.* at 618.

[FN296]. *Id.* at 627.

[FN297]. *Id.*

[FN298]. See *id.* at 628.

[FN299]. *Id.*

[FN300]. See *id.* (describing one poster in Kansas City that read "Danger! Colored people are hereby notified that they will not be allowed to live in this block. This block is white and is going to stay white at any cost.").

[FN301]. This pattern occurred in Washington D.C., Detroit, Los Angeles, Chicago, St. Louis, and Philadelphia, among other places. See *id.*

[FN302]. *Id.* at 629.

[FN303]. See Katznelson, *supra* note 196, at 115-16.

[FN304]. *Id.* at 163.

[FN305]. *Id.*

[FN306]. *Id.* at 164.

[FN307]. *Id.*

[FN308]. See Lani Guinier, From Racial Liberalism to Racial Literacy: Brown v. Board of Education and the Interest Divergence Dilemma, *J. of Am. Hist.* 106 (June 2004).

[FN309]. See *id.* at 108.

(Cite as: 25 Law & Ineq. 355)

[FN310]. Id. at 106.

[FN311]. See Martha Mahoney, Whiteness and Remedy: Under-Ruling Civil Rights in Walker v. [City of Mesquite](#), 85 Cornell L. Rev. 1309, 1328 (2000).

[FN312]. Guinier, supra note 308, at 106.

[FN313]. Id.

[FN314]. Brown, supra note 185, at 351.

[FN315]. See Guinier, supra note 308, at 105.

[FN316]. See David Theo Goldberg, Racial Americanization P 6 (unpublished article, available at <http://ejournals.library.vanderbilt.edu/ameriquests/viewarticle.php?id=15>). Goldberg writes "segregation emerged as the dominant and formalized modality of racism in the United States as freed slaves moved off the plantations and into the cities." According to Prof. Goldberg, the full effects of this development were already realized in the cities by the 1920s and 1930s. See id. at P 4.

[FN317]. Guinier, supra note 308, at 106.

[FN318]. See id. (citing Thomas J. Sugrue, *The Origins of the Urban Crisis: Race and Inequality and Postwar Detroit* (Princeton, 1996)).

[FN319]. Thomas J. Sugrue, Crabgrass-Roots Politics: Race, Rights, and the Reaction against Liberalism in the Urban North, 1940-1964, *J. of Am. History* 556 (1995). "Among poor and working class whites, 85 percent supported racial segregation, in contrast to 56 percent among middle income and 42 percent among upper-income whites." Id.

[FN320]. Mahoney, supra note 277, at 1674.

[FN321]. Id.

[FN322]. Id. at 1684.

[FN323]. See id. at 1674-75.

[FN324]. Mahoney, supra note 269, at 877.

[FN325]. See Mahoney, supra note 277, at 1684.

[FN326]. Guinier, supra note 308, at 108.

[FN327]. Id. at 108-09.

[FN328]. Mahoney, supra note 269, at 829.

[FN329]. Id.

[FN330]. See generally Martinot, supra note 29.

[FN331]. See generally Glenn Loury, *The Anatomy of Racial Inequality* (2002).

(Cite as: 25 Law & Ineq. 355)

[FN332]. See *id.* at 71.

[FN333]. See Alesina & Glaeser, *supra* note 107, at 134.

[FN334]. See Brown, *supra* note 185, at 166-67.

[FN335]. See *id.*

[FN336]. See John A. Powell, The [Colorblind Multiracial Dilemma: Racial Categories Reconsidered](#), 31 *U.S.F. L. Rev.* 789, 792 (1997). The move to anticlassification is now evident in the claims made before the Supreme Court regarding voluntary school desegregation. See Brief for Solicitor Gen. as Amicus Curiae, Parents Involved in Community Schools v. Seattle School Dist., No. 05-0908 (U.S. filed June 5, 2006); see Reva B. Siegel, [Equality Talk: Antisubordination and Anticlassification Values in Constitutional Struggles Over Brown](#), 117 *Harv. L.Rev.* 1470 (2004) (for an understanding of the origin and staying power of the anti-classification legal argument).

[FN337]. See Powell, *supra* note 336, at 790.

[FN338]. This ad, which ran during the 2006 Senate race between Harold Ford, Jr. and Bob Corker, is available at <http://www.youtube.com/watch?v=cWkrwENN5CQ>. The ad, purportedly mocking Harold Ford, Jr.'s bachelorhood, shows a White woman who claims to have met Harold Ford, Jr. at the Playboy Mansion, thus potentially playing on fears concerning interracial relationships. *Id.*

[FN339]. See Guinier & Torres, *supra* note 4, at 11.

[FN340]. See *id.*

[FN341]. See *id.*

[FN342]. *Id.*

[FN343]. See Maya Wiley & John A. Powell, Structural Racism and Rebuilding Communities, *Clearinghouse Rev. J. of Poverty L. & Pol'y*, 68, 77 (May-June 2006).

[FN344]. See *id.*

[FN345]. See *id.* at 71.

[FN346]. See *id.* at 69.

[FN347]. See *id.* at 70.

[FN348]. Angela Blackwell, et al., Searching for the Uncommon Common Ground 146-47 (2002).

[FN349]. See, e.g., *supra* Part II.F(I) (discussing the Social Security Act).

[FN350]. See Paul M. Siderman, et al., Beyond Race: Social Justice as a Race Neutral Ideal, 40 *Am. J. of Pol. Sci.* 33, 44 (1996).

[FN351]. See The [Slaughterhouse Cases](#), 83 *U.S.* 36, 73 (1873).

[FN352]. [U.S. Const. amend. XIV, § 1](#). The Constitution guarantees that:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the

United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Id.

[FN353]. Jeff Manza, Race and the Underdevelopment of the American Welfare State, 29 *Theory and Society* 819, 820 (2000).

[FN354]. See generally Paul Burestein, "Reverse Discrimination" Cases in the Federal Courts: Legal Mobilization by a Countermovement, 32(4) *The Sociological Q.* (1991) (discussing backlash against federal equal employment opportunity programs).

[FN355]. Brown, *supra* note 185, at 359.

[FN356]. See Pierre Clavel & Wim Wiewel, Introduction, in Harold Washington and the Neighborhoods 1, 14 (Pierre Clavel & Wim Wiewel, eds., Rutgers Univ. Press, 1991).

[FN357]. See *id.*

[FN358]. See *id.*

[FN359]. See *id.*

[FN360]. *Id.*

[FN361]. See Goldfield, *supra* note 11, at 156-63 (providing a good discussion of this history).

[FN362]. See *id.*

[FN363]. See *id.*

[FN364]. See, e.g., *id.* at 146-49 (discussing the anti-Chinese movement in the late nineteenth and early twentieth centuries).

[FN365]. For example, in the coal and New Orleans longshoremen sectors, where unionism was defeated while exhibiting impressive degrees of solidarity, especially for the South, unions were able to rebound quickly. See *id.* at 160.

[FN366]. Guinier & Torres, *supra* note 4, at 101 (discussing labor efforts to unite multiracial communities).

[FN367]. See Clavel & Wiewel, *supra* note 356, at 14.

[FN368]. See generally William Julius Wilson, *The Bridge Over the Racial Divide: Rising Inequality and Coalition Politics* (1999).

[FN369]. See *id.*

[FN370]. Robert Mier & Kari J. Moe, Decentralized Development: From Theory to Practice, in Harold Washington and the Neighborhood, *supra* note 356, at 64, 94.

[FN371]. See Theda Skocpol, Targeting within Universalism: Politically Viable Policies to Combat Poverty in the

(Cite as: 25 Law & Ineq. 355)

United States, in *The Urban Underclass* 411 (C. Jencks & P.E. Peterson eds. 1991) (introducing the idea of "targeting within universalism" for the first time).

[FN372]. Angela Glover Blackwell et al., *supra* note 348, at 147.

[FN373]. *Id.*

[FN374]. *Leandro v. State of North Carolina*, 488 S.E.2d 249, 257-59 (1997).

[FN375]. See *id.*

[FN376]. See *id.*

[FN377]. See Blackwell et al., *supra* note 348, at 147, 157.

[FN378]. See *id.* at 155. Suburbs have tended to create racial separation as the Black and Hispanic populations stay in the inner cities or first ring suburbs. *Id.*

[FN379]. Joe Hallet, *Sprawl Issues Could Give Lift to Democrats*, Columbus Dispatch, Op-ed, Feb. 12, 2006, available at <http://www.greaterohio.org/media/dispatch-op-ed-briefing-book.htm>.

[FN380]. *Id.*

[FN381]. See Blackwell et al., *supra* note 348, at 147.

[FN382]. "[T]he soccer moms who can't get their kids to soccer practice on time because they're sitting in traffic... are pretty ticked off about it." Hallet, *supra* note 379. See also Blackwell et al., *supra* note 348 at 156 (noting that policies that once drove suburbanization and facilitated middle-class exodus from urban communities are now creating "stress and misery even for those in the more distant suburbs").

[FN383]. "Racial avoidance has been one of the factors driving sprawl." See Blackwell et al., *supra* note 348, at 158.

[FN384]. Sheryll D. Cashin, *Shall We Overcome? Transcending Race, Class, and Ideology Through Interest Convergence*, 79 *St. John's L. Rev.* 253, 274 (2005). The Civil Rights Act of 1964, for example, passed by a vote of 73-27 in the Senate. *Id.* at 266.

[FN385]. School boards, for example, are municipal government actors while the Department of Housing and Urban Development operates at the state and federal level.

[FN386]. I recognize the difficulty in attributing success or failure to the movement or the coalition. All of these movements, many of which were successful, have contained coalitions that were failures. See Cashin, *supra* note 384, at 270 (discussing the Black power movement and Black skepticism during the civil rights movement).

[FN387]. See generally Foner, *supra* note 31; Goldfield *supra* note 11.

[FN388]. See Frank Pellegrini, *The Coming of the Minority-Majority*, Time.com, Aug. 31, 2000, available at <http://www.time.com/time/printout/0,8816,53774,00.html> (last visited Mar. 20, 2007).

[FN389]. Doug Gills, *Chicago Politics and Community Development: A Social Movement Perspective*, in Harold Washington and the Neighborhood, *supra* note 356, at 57.

[FN390]. Clavel & Wiewel, *supra* note 356, at 22.

[FN391]. Id. at 27.

[FN392]. Id. at 28.

[FN393]. Gills, supra note 389, at 52.

[FN394]. Id. at 52.

[FN395]. Wim Wiewel & Pierre Clavel, Conclusion, in Harold Washington and the Neighborhood, supra note 356, at 271.

[FN396]. See Guinier & Torres, supra note 4, at 232-34.

[FN397]. See id.

[FN398]. See Gills, supra note 389, at 35.

[FN399]. See Alton Miller, Harold Washington: The Mayor, The Man 97 (1989). See also Wiewel & Clavel, supra note 395356, at 271 ("Without the unprecedented mobilization that occurred in 1982/83 in the black and Latino communities, among poor whites and in the community-based organizations, and among white liberals, Washington would not have been elected mayor.").

[FN400]. See id.

[FN401]. See id.

[FN402]. See Guinier & Torres, supra note 4, at 241.

[FN403]. Maria De Los Angeles Torres, The Commission on Latino Affairs: A Case Study of Community Empowerment, in Harold Washington and the Neighborhood, supra note 356 at 167.

[FN404]. Id. at 169.

[FN405]. Wiewel & Clavel, supra note 356 at 283.

[FN406]. Torres, supra note 356, at 179-80.

[FN407]. Wiewel & Clavel, supra note 395356, at 283-84.

[FN408]. Blackwell et al., supra note 348, at 22. The authors of this book suggest that California's demographic changes are a harbinger of demographic changes to come in the United States. They further suggest that the way that California has struggled with these changes may offer a preview of what is in store for the country as a whole. Specifically, the authors point to: "anti-immigrant political campaigns, statewide ballot measures that successfully ended affirmative action and most forms of bilingual education, black-Latino struggles over ethnic succession in political leadership, and countless other tensions." Id. at 23. The authors also note that there is a racial age gap. A greater proportion of the population younger than 18 are people of color, while "nearly 85 percent of those of retirement age are white." Id. at 24. A consequence of this fact is that there is a greater reluctance on the part of the older and Whiter population to invest in the social infrastructure needed by minority youth. Id. As a result, the educational investment has "[d]ropped to the bottom of states in terms of spending per pupil." Id. This is a problem that may face America as a whole and supports the contention, earlier put forward, that racial heterogeneity leads to a decrease in welfare transfers. However, now that thesis applies to basic public services. This is a scary thought. Ironic-

(Cite as: 25 Law & Ineq. 355)

ally, it is the tax revenues that these youth will be generating that will be needed to support these baby boomers in retirement. This shows how we are interconnected. Diminished public support for minorities that would enable them to reach their potential may inadvertently threaten the social safety net of retirees and hurt the future of the American economy as a whole.

[FN409]. Karen M. Kaufman, Cracks in the Rainbow: Group Commonality as a Basis for Latino and African-American Political Coalitions, 52(6) Pol. Res. Q. 199, 199 (2002).

[FN410]. Blackwell et al., supra note 373348, at 190.

[FN411]. Id. at 191-211.

[FN412]. Raphael J. Sonenshein & Susan H. Pinkus, Latino Incorporation Reaches the Urban Summit: How Antonio Villaraigosa Won the 2005 Los Angeles Mayor's Race, 38(4) PS: Pol. Science & Pol. 713, 714 (2005).

[FN413]. Id.

[FN414]. See id. at 714.

[FN415]. See id. at 719-20.

[FN416]. See id.; see also Arian Campo-Flores & Howard Kineman, A Latin Power Surge, Newsweek (2005), available at <http://www.msnbc.msn.com/id/7937184/site/newsweek/page/2/> ("He neither played [his ethnicity] nor downplayed it," says Rodolfo de la Garza of Columbia University. "It was just there.").

[FN417]. See Kaufman, supra note 409, at 201.

[FN418]. Id. at 199.

[FN419]. Id. at 203

[FN420]. Id. at 205-06.

[FN421]. Id. at 204. By contrast, perceived discrimination does not appear to correspond with closeness to African-Americans . Id.

[FN422]. Id. at 201.

[FN423]. See id.

[FN424]. See id. at 203. In particular, Latinos of Puerto Rican, Cuban, and Dominican descent see more in common with each other than with Mexicans, Salvadorans, and Guatemalans. Id.

[FN425]. See id.

[FN426]. See generally Benjamin Marquez, Latino Identity Politics Research: Problems and Opportunities 6, 2004 (unpublished article presented at The Project for Equality, Representation, and Government at Texas A & M University), available at <http://perg.tamu.edu/lpc/Marquez.pdf>. ("More recently, Latinos have created their own professional associations, women's groups, business groups, environmental associations as well as traditional civil rights organizations."). Contra Kaufman, supra note 409, at 201, 208.

[FN427]. Kaufman, supra note 409, at 207.

(Cite as: 25 Law & Ineq. 355)

[\[FN428\]](#). Id.

[\[FN429\]](#). See N.C. Aizenman, Immigration Debate Wakes a "Sleeping Giant", Wash. Post, April 6, 2006, at A1.

[\[FN430\]](#). See Ian Haney Lopez, Colorblind White Dominance 18 (2006) (unpublished article on file with author).

[\[FN431\]](#). 394 U.S. 294 (1955).

[\[FN432\]](#). See Guinier, *supra* note 308, at 103.

[\[FN433\]](#). See Guinier, *supra* note 308, at 102.

[\[FN434\]](#). See *id.*

[\[FN435\]](#). Id. at 114.

[\[FN436\]](#). See Derrick Bell, [Brown v. Board of Education and the Interest-Convergence Dilemma](#), 93 *Harvard L. Rev.* 518 (1980).

[\[FN437\]](#). See *id.*

[\[FN438\]](#). See Roberto Unger, Democracy Realized 11 (1999).

[\[FN439\]](#). Id.

[\[FN440\]](#). See *id.* Although Professor Unger doesn't go on to describe the connection between the definition and defense of interests, it should be clear that it is a reinforcing cycle and neither the definition nor the defense needs to be absolutely clear to each group before tentative positions are taken. If arrangements are seen as rigid, then the definition is likely to be correspondingly rigid and the defense will be more entrenched. A defense of an interest may be exclusive toward certain groups as a starting position. As the definition of that interest becomes increasingly rigid due to institutional rigidity, then the exclusionary defense of those interests may follow suit and harden.

[\[FN441\]](#). Id.

[\[FN442\]](#). See *id.*

[\[FN443\]](#). See, e.g., Sandra E. Black, Do Better Schools Matter?: Parental Valuation of Elementary Education, 114 *Q. J. Econ.* 577 (1999).

[\[FN444\]](#). See Unger, *supra* note 438438, at 24.

[\[FN445\]](#). Id. at 24.

[\[FN446\]](#). See generally Barlow, *supra* note 200, at 66.

[\[FN447\]](#). Id. at 67.

[\[FN448\]](#). See *id.* at 63.

[\[FN449\]](#). See *id.* at 68.

[\[FN450\]](#). See *id.*

[\[FN451\]](#). Goldfield, *supra* note 11, at 7.

[\[FN452\]](#). Barlow, *supra* note 200, at 76-77.

[\[FN453\]](#). *Id.* at 77.

[\[FN454\]](#). See *id.* at 76.

[\[FN455\]](#). *Id.* at 77.

[\[FN456\]](#). Charles Hamilton has suggested that targeted universalism failed in the early stages of the civil rights movement. See Charles Hamilton Houston, Speech to the National YWCA Convention, Philadelphia, May 5, 1934, available at <http://www.law.cornell.edu/houston/ywcatxt.htm>. However, White identity in that era was much more explicitly racialized. Whiteness is no longer explicitly understood in contrast to Blackness. See generally David Roediger, *Working Toward Whiteness* (2005).

[\[FN457\]](#). Guinier & Torres, *supra* note 4, at 242.

[\[FN458\]](#). See *id.* at 245.

[\[FN459\]](#). See *id.* at 247.

[\[FN460\]](#). See *id.*

[\[FN461\]](#). Gills, *supra* note 389, at 56.

[\[FN462\]](#). See *id.* at 50-52.

[\[FN463\]](#). Unger, *supra* note 438, at 14.

[\[FN464\]](#). See Guinier & Torres, *supra* note 4, at 131-34.

[\[FN465\]](#). *Id.*

[\[FN466\]](#). See *id.*

[\[FN467\]](#). See *id.*

[\[FN468\]](#). See *id.*

[\[FN469\]](#). *Id.*

[\[FN470\]](#). *Id.* at 132.

[\[FN471\]](#). See *id.* at 135.

[\[FN472\]](#). . *Id.*

[\[FN473\]](#). See *id.* at 134.

[\[FN474\]](#). *Id.* at 135.

[\[FN475\]](#). See Unger, *supra* note 438, at 11-12.

(Cite as: 25 Law & Ineq. 355)

[FN476]. See Guinier & Torres, *supra* note 4, at 149.

[FN477]. See *id.* at 141.

[FN478]. See *id.*

[FN479]. See Brown, *supra* note 185, at 165. "Martin Luther King Jr. regarded the Great Society as a failure," but only because it was "unequal to the task of significantly diminishing the number of white and black poor, he thought; it failed on its own terms. Many whites have failed to understand Martin Luther King's insight that class and racial inequality are fundamentally linked and cannot be severed." *Id.* at 363.

[FN480]. See Martinot, *supra* note 29, at 83.

[FN481]. See John Mollenkopf, *New York: The Great Anomaly Racial Politics in American Cities* 123-24 (3d ed. 2001).

[FN482]. See Blackwell et al., *supra* note 348, at 48.

[FN483]. *Id.*

[FN484]. See Roediger, *supra* note 456, at 8.

[FN485]. See generally *id.*

[FN486]. Polls and surveys measuring interracial relationships show that growing numbers of teenagers find interracial dating acceptable, as do parents. See Sharon Jayson, *New Generation Doesn't Blink at Interracial Relationships*, USA Today, Feb. 8, 2006, at 1A, available at http://www.usatoday.com/news/nation/2006-02-07-colorblind_x.htm. In addition, Whites have generally come to support equality and integration. See *id.*

[FN487]. Williams, *supra* note 23, at 2.

[FN488]. *Id.*

[FN489]. See *id.* at 10-12.

[FN490]. See *id.* at 12-14.

[FN491]. See Marcus Funk, *Are Gun Control Laws Discriminatory?*, 3 *Might Mag.* 59 (1994).

[FN492]. See Glenn Feldman, *Before Brown* 295 (2004).

[FN493]. See Mahoney, *supra* note 277, at 1683.

[FN494]. See *id.*

[FN495]. Blackwell et al., *supra* note 348348, at 72.

[FN496]. See Lopez, *supra* note 430, at 3.

[FN497]. *Id.*; See also Betsy Guzman, *US Bureau of the Census, The Hispanic Population, Census Brief 2000*, at 2 (May 2001).

[FN498]. See New Latino Nation, Newsweek, May 30, 2005, at 28-29.

[FN499]. See generally Lopez, *supra* note 430.

[FN500]. See generally Pamela Perry, *Shades of White: White Kids and Racial Identities in High School* (2002). To a great extent, this Article has focused on long-term processes that determine racial meaning. It may be helpful to see these processes as shaping racial formation at the macro-level. However, race is also a matter of individuality, of the formation of identity, which operates at the micro-level. See Michael Omi and Howard Winant, *Racial Formation in the United States* 66-67 (1986). Perry's study provides us insight into the production of racial identity at the micro-level with consequences that shape racial formation generally.

[FN501]. See Perry, *supra* note 500, at 42.

[FN502]. *Id.* at 1.

[FN503]. See *id.* at 14.

[FN504]. See *id.* at 42.

[FN505]. *Id.*

[FN506]. See *id.* at 20.

[FN507]. See *id.*

[FN508]. *Id.* at 63-64.

[FN509]. See Frank Pellegrini, *The Coming of the Minority-Majority*, Time.com, Aug. 31, 2000, <http://www.time.com/time/nation/article/0,8599,53774,00.html>.

[FN510]. See David Halle, *New York and Los Angeles: Politics, Society, and Culture a Comparative View* 158 (2003).

[FN511]. See Mollenkopf, *supra* note 481, at 98.

[FN512]. *Id.* at 115-41.

[FN513]. This is a central point in my thinking and a distinction between institutional racism and structural racism. Institutional racism examines racial disparities within a particular institution - say segregated housing. Structural racism examines cross-institutional linkages and the pattern of institutional arrangements. See John Powell, *Does Racism in Motion Have to Stay in Motion?: Nonprofits as a Force Against Structural Racism*, 9 *Nonprofit Q.* (2002), available at <http://www.nonprofitquarterly.org/section/320.html>; The Aspen Inst., *Structural Racism and Cmty. Bldg., Project on Structural Racism and Cmty. Revitalization* 46 (2004), http://www.aspeninstitute.org/atf/cf/%7BDEB6F227-659b-4EC8-8F848DF23CA704F5%7D/aspen_structural_racism2.pdf.

[FN514]. See generally Rebecca M. Blank, *Tracing the Economic Impact of Cumulative Discrimination*, 95 *Amer. Econ. Rev.* (May 2005).

[FN515]. See Douglas S. Massey, *America's Apartheid and Urban Underclass*, 68 *Service Rev.* 471, 482 (1994).

[FN516]. *Id.* (emphasis added).

[\[FN517\]](#). See U.S. Const. art. 1 § 2.

[\[FN518\]](#). See Harry Frankel, The Jacksonian Period in American History, 7 Fourth Int'l 365-68 (1946), available at <http://www.marxist.org/archive/braverman/1946/12/jackson/htm>.

[\[FN519\]](#). See Email from Kevin Boyle, Professor of History, Ohio State University, to John Powell, Director, Kirwan Institute for the Study of Race & Ethnicity (Jan. 6, 2006).

[\[FN520\]](#). See id.

END OF DOCUMENT