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LENGTH: 8593 words**SYMPOSIUM:** IN HONOR OF PROFESSOR TRINA GRILLO: LEGAL EDUCATION FOR A DIVERSE WORLD: ARTICLE:
The Colorblind Multiracial Dilemma: Racial Categories Reconsidered**NAME:** By john a. powell ***BIO:**

* Professor of Law, University of Minnesota; Executive Director of the Institute on Race and Poverty. I would like to thank the University of Minnesota Law Library staff for their wonderful support and the University of San Francisco Law Review for doing this issue for Trina. I appreciate the research assistance of Bonnie Mookherjee. I would like to dedicate this article to Trina Grillo, her children Jeffrey and Luisa, and my children Fon and Saneta. Trina will always inhabit my heart and mind. I miss you.

SUMMARY:

... THIS PAPER WILL briefly touch on some of the ways we think about race and, more particularly, racial categories. ... And finally she was aware that a new multiracial category might both weaken the black community's political position and strengthen the dominance of Whites. ... The attack on the biological model not only demonstrates that the supposed racial difference cannot be sustained based on blood and genetics, but that the majority of white Americans have African blood and the majority of Blacks have white blood and a substantial number have Indian blood. ... While the new right claims that the elimination of racial categories will end racism, multiracial advocates assert that an increase in the number of racial categories will soften, if not completely destabilize, the existing racial hierarchy. ... While the black community has been more accepting than Whites of both lighter skinned Blacks and those designated as mixed race, this acceptance has not always been an easy one. ... This suggests that to destabilize racial hierarchy, we start with whiteness. ... If one wanted to reconstitute blackness, brownness, or any other anti-privileged racial category, one could consider how race is discussed in England. ...

TEXT:

[*789]

THIS PAPER WILL briefly touch on some of the ways we think about race and, more particularly, racial categories. Despite our obsession with race – which sometimes takes the form of race aversion – our national discourse is disturbingly confused, charged, and often unproductive. Our language often seems wooden and rehearsed, and the way that we discuss race is frequently in conflict with our stated ideals. n1 I focus on racial categories not just because of their general interest and importance, but because Trina was very interested in them – both professionally and experientially. n2 The concept of race is hotly contested and deconstructed in literature, law, and politics. Currently, there are several competing theories about race and its meaning and application in the United States. I will focus on two sets of claims about racial categories. I will explore the limitations of these positions and posit some alternative ways to think about racial categories.

The two positions on which I will focus seem to point in opposite directions. n3 The first, the colorblind position, calls for the end of racial categories. The second, the multiracial position, calls for the proliferation of racial categories, with particular attention to expanding multiracial categories. [*790]

I. Colorblind Position

The political history of the colorblind position is more closely associated with traditional liberalism dating from the 1960s. n4 Recently, however, this position has been appropriated by the new right and recast in ways that are often at odds with the traditional liberal position. n5 This raceless position is partly rooted in the view that race is a social construct and not a scientific or biological fact. n6 The proponents of this position argue that since we have learned that race is an illusion, rather than a scientific fact, we should drop racial categories altogether. The minor differences in appearance are irrelevant, and only those who are either racist or badly misinformed would insist that we continue to utilize these pernicious categories. n7

While the currency of these ideals is popular behind the obscure walls of academia, they have also found a voice in law and politics. Much of the conservative rhetoric about colorblindness rests heavily on the insight that the practice of recognizing racial categories is rooted in discredited biology and gene theory. n8 The sooner we remove race from law and politics the better. The proponents of this position argue that we will only solve the race problem by eliminating all racial categories. Race is seen as a bad repetitive illusion, or as a trope.

The Supreme Court has used this reasoning to attack the validity of race conscious programs such as affirmative action, set asides, and redistribution in voting. n9 In the larger political sphere, there has been public musing for months about dropping race as a category from the next census. n10 [*791]

A. Conceptual Position

The new right's colorblind assertion is both a conceptual and a pragmatic position. The conceptual position claims that because race does not have a substantial scientific basis, it is not only an illusion but a problematic illusion. This assertion is based on the assumption that that which cannot be grounded on an objective scientific foundation is not real. This claim, however, suffers from a serious conceptual flaw. n11 While the claim that race is an illusion draws on the work of late- and post-modernists – particularly the work of Omi and Winant, which purports that race is socially constructed – the conclusion that race is not real does not comport with the deeper implication of this insight. Omi and Winant, for example, do not support the position that race can or simply should be dropped. Omi, citing the Journal of Black Higher Education with approval, notes that while race may not be a scientific reality, it is a social fact. n12

While the insight that race is socially constructed is based in part on post-modernist teaching, this assertion alone distorts both the late- and post-modern positions. This colorblind position attempts to apply the late- and post-modernist insight of constructivism, but it wishes to limit this understanding to race. And there lies the error. The constructionist position is that all reality, including all concepts, are socially constructed. n13 This does not mean that this socially constructed world is an illusion, but that it is not pre-given. n14 Indeed, to claim that the socially constructed world is an illusion suggests that there is a more real world behind the illusion. But this belief that the real world is separate from us and our perceptions of it is denied by late- and post-modernists. It is not simply that the real world is unavailable to us and we misunderstand what is real, but instead it is our perceptions and categories that both represent and participate in the constitution of the world. n15 [*792]

Two examples might be useful to help clarify this claim. The first example is the self. While few would claim that the self is simply an illusion, or that the concept of the self should be discarded, post-modernism asserts that the self, like race, is also socially constructed. n16 While the social construction of the self points to an illusion or error, it is not correct to suggest that the self does not exist, but that only the unconstituted and disembodied self that forms the bases of much of liberal thinking does not exist. n17

The second example comes from my experience as a first year student in college. As young college students, we often flexed and stretched our intellectual muscle with discussions of the existence or non-existence of God. As our first year drew to a close, we moved toward a greater consensus and conviction that God did not exist or was dead. As we collectively announced our conclusion, one of the students pointed out a significant error in our examination. She noted that at best, what we had achieved were strong arguments against the existence of the Judeo-Christian representation of God. Our interrogation had been so limited that it was silent on other possible representations of God.

Similarly, those who would abandon race because the biological or genetic foundation for race proves to be inadequate, fail to engage seriously other possible ways of understanding race. n18 Even the position that race is socially constructed instead of biologically based underestimates the force of the post-modernist claim that everything is socially constructed. Not only are race and the self socially constructed, but biology and science are as well. n19 This does not mean that all claims are either arbitrary or illusory, but that the way we think of reality as being simply represented by our senses, instead of interactive with our senses and language, is illusory. [*793]

B. Pragmatic Position

The second colorblind position is pragmatic and political. This position errs in assuming that the major race problem in our society is race itself, rather than racism. Many of the proponents of moving to a raceless, colorblind society argue that the categories of race are both irrelevant and politically and racially divisive. n20 Many have appropriated the language of Dr. King and the civil rights movement to give force to the call for colorblindness. n21 The language used by the new right of a raceless, colorblind society is viewed by some not simply as an error, but as a strategy or racial project to maintain white supremacy and racial hierarchy. n22 Whether it is intentional or an error, powerful evidence suggests that the colorblind, race-averse language adopted by the new right has the effect of shoring up racial hierarchy, while masking both the subordination of the racial minority and the enjoyment of white privilege. n23 Indeed, in many respects the focus on race or racelessness not only masks racism but also actively supports it. This move is what Patricia Williams calls racism in drag. n24 The racial project of the new right can be viewed as maintaining the racial order without specific reference to race. n25

If one is to examine the current racial project pragmatically, one must ask how the project impacts the complimentary goals of ending racial hierarchy and moving to racial justice. [*794]

II. Multiracial Position

While the race evasive stance of the new right has misappropriated the significance of race as socially constructed, the error of the multiracial movement is its failure to embrace the socially constructed nature of race altogether. The multiracial movement has become increasingly vocal as the number of "biracial" marriages and children increase. n26 The concern expressed by such groups as Project RACE (Reclassify All Children Equally) is that the current recognized racial categories do not account for the identity or experience of multiracial people. n27

The multiracial position appropriately points out the inconsistency and incoherence of our current racial categories. n28 There is not only a problem between how the government classifies groups racially versus common use of racial categories, but there are also inconsistencies within the official government classification itself. The current government classification is pursuant to Statistical Directive No. 15 (Directive 15), implemented by the U.S. Office of Management and Budget (OMB). n29 The categories employed in Directive 15 are now used by all federal and state agencies that keep statistics on race. But these categories exhibit a number of inconsistencies. Michael Omi points to the incoherence of the present system of government categories:

An investigation of Directive 15 classifications reveals significant problems in their construction and meaning. While most of the categories rely on a concept of "original peoples," only one of the definitions is specifically racial, only one is cultural and only one relies on a notion of affiliation or community recognition. n30

There are few comparable criteria deployed across the categories. For example, Directive 15 defines a black person as one having her or his "origins in any of the black racial groups of Africa," n31 but it does not define a white person with reference to the white racial groups of Europe, North Africa, or the Middle East. Indeed "Black" is the only category which is [*795] defined with an explicit racial designator – one which is quite problematic. What we might ask is what are the "black racial groups of Africa?" n32 It's a small wonder that we think race means black.

Hispanics are not considered and classified as a race but as an ethnic group. The Hispanic category is, in fact, the only ethnicity that the state is interested in explicitly identifying and classifying. The category is defined through cultural designators: a person of "Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin." n33 In this definition, Hispanics can be of any race.

The category of "American Indian or Alaskan Native" reveals another intriguing definitional issue. Individuals who are considered part of this category must not only have their origins in any of the original peoples of North America, but also must maintain "cultural identification" through "tribal" affiliations. n34

The problems are not limited to inconsistencies. Some groups are left out of the classification altogether. n35 Indeed, one of the problems asserted by multiracial advocates is that they are either left out or forced to improperly identify themselves. n36 While this may be right, it is not entirely clear how, as I will try to demonstrate shortly.

The question of how to categorize and think about multiracial groups was of serious concern to Trina. n37 She experienced the difficulty and pain of being multiracial in a society where identity is organized around very limited concepts of race. She experienced being excluded and miscategorized. Yet, she continued to question the wisdom of adopting multiracial categories. She expressed concern that many of the advocates of multiracial categories were white mothers that were particularly interested in distancing their multiracial children from the societal injury of being black in America. n38

Trina never resolved this issue of whether there should be new multiracial categories. But with her subtle and nuanced thinking, she raised many of the questions that are important to consider in embracing these complicated issues. Despite her personal pain with using the existing racial categories, she insisted on investigating this issue at the personal, historical, and [*796] political level. She raised the question of how existing categories, and particularly the black category, could be reconceptualized to make a home for the offspring of black and white parents. n39 If this reconceptualization project did not succeed, these children would have to find another home. But she was also disturbed that the call for a new multiracial category from white mothers might be another form of colorism with a strong, anti-black subtext. n40 And finally she was aware that a new multiracial category might both weaken the black community's political position and strengthen the dominance of Whites. n41 Trina was concerned that if white supremacy is not addressed, the move toward multiracial categories could easily lead to a more entrenched pigmentocracy similar to what exists in many Latin American countries. n42

Trina's position was not that new multiracial categories necessarily entailed anti-black sentiments. She understood the need for family and cultural identification. Her concern was not the categorical problem; rather, she focused on the political and theoretical implications of new racial categories based on the foundation for such categories and the political context in which this project is taking place.

Without trying to defend our current problematic typology, I embrace many of Trina's concerns. I will attempt to sketch out in slightly more detail how these concerns play out in the multiracial movement. I will do so by briefly examining some of the descriptive and political issues raised by the call for a new set of multiracial categories. n43 The descriptive position's call for new categories is based on the premise that multiracial subjects [*797] simply are not accurately described by the existing categories. The multiracial advocates, like the conservative colorblind advocates, make a political and pragmatic claim. They maintain that an increase in multiracial categories will weaken racial hierarchy. n44

There are at least two versions of the multiracial descriptive claim. One is that multiracial people are of mixed blood or mixed genetic material. n45 The other is that multiracial people are people with parents of different recognizable races. On examination, both of these positions are problematic. The first position is most blatantly tied to the racist science of the last century. It suggests that a person that is part black blood and part white blood is not adequately or accurately described as black. But this clearly rests on the discredited biological model. To sustain this position, one would have to show not only that blood lines or genes are the appropriate foundations upon which to classify races, but that they are clear as well. Stated more strongly, pure blood would define the different racial categories. But this simply cannot be shown. The attack on the biological model not only demonstrates that the supposed racial difference cannot be sustained based on blood and genetics, n46 but that the majority of white Americans have African blood and the majority of Blacks have white blood and a substantial number have Indian blood. n47 Based on the hypodescent rule, n48 most white Americans are African-American. n49 Based on the multiracial premise, most Americans are multiracial or mixed. But this does not seem to be the conclusion toward which the multiracial movement is drawn. Indeed this conclusion undermines the implicit position that mixed-race people have a different experience and need their own category. The point then is not that we are all genetically mixed, we are, but that this is largely irrelevant for creating racial categories.

Many of the proponents of new multiracial categories are politically left of center and would reject the overt racism of nineteenth century biol- [*798] ogy. Yet, a number of the assumptions adopted by these advocates end up unwittingly relying on this same discredited science. One of the main assertions of this science was that race and racial categories were based on blood or gene. n50 In terms of the black/white distinction one extreme version of this was the assertion that white was pure and, therefore, would be contaminated by one drop of black blood. This is also known as the hypodescent rule. The history of this rule which categorizes anyone with black ancestry as black, emerged from our racist history and a desire to maintain white purity. n51 This nineteenth century science, which was used to both classify races and explain racial difference based on blood and genetics, has been discredited. n52 Below I will argue that many of the more salient justifications advanced by multiracial advocates rely on a version of this discredited racist science. n53

Some multiracial advocates have anticipated this problem of relying on blood or genes. They suggest that instead we label a person multiracial if their parents are of different recognized races. n54 But if this is the designation, how do we categorize the offspring of a multiracial and monoracial union? n55 If we say that the offspring continues to be multiracial, then we are back to the problem that virtually everyone is multiracial. If we say that

the person is the race of the uniracial parent, then we reproduce the problem of forcing the offspring to deny part of her heritage. Despite this difficulty, there is a strong appeal for the offspring being able to claim all the aspects of her parents. But it is not clear that this issue should be resolved based on blood. If we categorize children so that they may claim their parents' heritage, how should we categorize a black child who is raised by white parents in a culturally white environment? Of course, a totally different way of thinking about this is to suggest that the white parent that has children with a black person could be able to cross over and no longer be white. Black could be reconceptualized, once we drop the blood issue, to allow for this move. n56 One might assert that it is the responsibility of society – not heri- [*799] tage – that controls, but this would not be acceptable for the multiracial project.

Another position often advanced by multiracial advocates is that people should be able to define themselves. n57 While this has a great deal of intuitive value, it is probably not workable or desirable. Much of the appeal of this position stems from our ideology of individualism. n58 In our dominant discourse, we embrace the rhetoric that each person is an individual. While this is a truism in what it says, it is false in what it implies. We all may be individuals, but none of us are just individuals. n59 Given the normative structure of whiteness in the United States, the claim of individualism is often a thinly veiled effort to claim the privileges of whiteness. This position again suffers from the failure to embrace the significance of race and identity as socially constructed. n60 This does not mean that we cannot or do not participate in the constitution of our identity. But it is a false claim and a flawed hope that we can define who we are in isolation.

III. Political Project

While the new right claims that the elimination of racial categories will end racism, multiracial advocates assert that an increase in the number of racial categories will soften, if not completely destabilize, the existing racial hierarchy. The proponents of multiracialism cite the history of anti-miscegenation laws to support their position. Anti-miscegenation laws were used to protect the apparent purity of the white race. States were concerned that race mixing especially between Whites and Blacks would contaminate this white purity. n61 While the law spent a great deal of effort to define the racial "other," Whites are largely defined in opposition to the racial other and as pure. n62 Anti-miscegenation laws, along with the arrangement of the child being the race of the mother, allowed the slave master to produce offspring with his black slaves, thereby enhancing his slave interest in the biracial offspring, and maintaining whiteness as an exclusive club. [*800]

After the emancipation formally freed the slaves, the laws that regulated black/white relations expanded to continue dominance outside of the slave state. Since it was no longer necessary for a slaveholder to classify all the children of slave mothers as slaves, for a brief period, there were many more racial categories. In addition to the black and white categories of today, the 1890 census included Chinese, Japanese, Indian, Mulatto, Quadroon, and Octoroon. n63 Only those with at least three-fourths black blood were classified as black, while those having had at least one drop of black blood but no more than one-eighth were classified as Octoroon. n64 Therefore, Whites were still defined as pure and enjoyed different benefits that were attached to being white than any of the mixed races. n65 But a person half white and half black was neither black nor white. n66

The use of multiracial categories did little to destabilize the white hierarchy. It refined the calibration, but white racial purity remained the prerequisite to being classified as white and obtaining the privileges attendant to that classification. Although every law student knows of Plessy v. Ferguson, few realize that under the 1890 census, Homer Plessy was not black but an Octoroon. It is also important to note that Plessy did not challenge the right of Louisiana to separate Blacks and Whites, but instead argued that as an Octoroon, he was entitled to the same rights and privileges as Whites. n67 Indeed, one of the objections raised by Plessy was that the Louisiana statute in question took away his property interest in his whiteness by classifying him as colored. n68 The court denied Plessy relief. Even if it had granted him relief, it is not clear how this would have benefited those clas- [*801] sified as black instead of Octoroon. But it is not possible to understand Plessy or to understand how race operates in our society without understanding what Homer Plessy knew: that whiteness was a ticket to psychological and economic privilege. n69

Some advocates of multiracialism cite Latin America generally, and Brazil in particular, as examples of how multiracial categories have been used to soften the harshness of United States-style racism. n70 Brazil did not enact the formal anti-miscegenation laws prevalent in the United States, n71 even though Brazil has many more racial categories than the United States. n72 Brazil has often been regarded as an example of a multiracially open and tolerant society. However, recent scholarly work points to pigmentocracies in Brazil and other Latin American countries, in addition to strong anti-black sentiments. n73 A closer examination of these multiracial systems suggests that they leave the extreme poles of whiteness and blackness undisturbed. It also cautions against multiracial backing into the position of Homer Plessy. The current situation in Brazil and our own history demonstrate that an increase in racial categories does not necessitate a movement toward racial justice. n74

Of course in order to avoid the error discussed above about the existence of God, I must concede that even if my argument is right, there still might be a need for a multiracial category. One cannot exhaust all the possi- [*802] ble justifications. But certainly, resting justifications on blood and not considering the implication in

terms of racism is problematic – especially considering our history. n75 What would a socially constructed argument for multiracial categories be? There are obviously several, but one of the strongest is that the life experience of those designated mixed race in our society is qualitatively different than other groups designated as a single race. n76 This argument does not rest on the genetic or blood composition of those designated as mixed race. Nor is this argument weakened by the insight that we are virtually all mixed-raced, based on blood or genetic material. Rather, this argument relies on the socially constructed nature of the experience of people – individually and collectively – in our society.

The experience of those designated multiracial may be very different from those designated as uniraical. From an anti-racist perspective, one could argue that the experience of how multiracial people are treated by other people of color should be more important than how they are treated by Whites. One reason for this is to avoid the house slave situation where Whites can favor some people of color over others, while maintaining their white privilege. Given our racial history and practice, it is not surprising that the white community has been less accepting of designated multiracial people than the black community. n77

While the black community has been more accepting than Whites of both lighter skinned Blacks and those designated as mixed race, this acceptance has not always been an easy one. The acceptance has often been provisional and with qualifications. n78 While the reasons for this are numerous [*803] and complicated, it is clear that if those designated as mixed race cannot find a home in the existing socially constructed categories, there will be a need to either reconstruct the existing categories or add to them.

The point of this article is not to defend our existing racial categories. I share in the sentiment that racial categories are not only incoherent and limiting, but often times oppressive and exclusive. The problem with the new right's position on race and power evasion is that it misappropriates the meaning of social construction. The problem with the multiracial position is that it fails to embrace the insight of social construction and instead falls back on the nineteenth century meaning of biology. And yet the current categories need to be, and undoubtedly will be, reconstructed. One way of thinking about how the categories should be changed is to acknowledge that black does not mean all black blood or possibly any black blood; white does not mean all white blood or any white blood.

Conclusion

A more fruitful way of thinking about these issues is to both acknowledge the implications of the socially constructed nature of race, while simultaneously acknowledging that race operates differently in different spheres. n79 In the larger political sphere, race is not only socially constructed, the meaning and function of race is the site of intense social and political struggle. n80 When people are categorized in ways that disfavor them and favor others, there will be resistance and re-appropriation. The effort then to categorize people is not simply a question of getting it right. The process of racial categorizing is a power struggle implicating structural, cultural, economic, and identity politics.

Race being a social construction means that white and black has to be understood in relationship to each other. Social and political power, as well as the implications in social terms, must be identified. There is no black without white; there is no white without black. In this sense we are all multiracial. We are also fractured racially not because of blood, but because we are mutually and continuously defining and constituting our race by what we include and exclude of the racial other. n81 Black and white are not only co-dependent (though in different ways), but black is necessarily a part of white and white is necessarily a part of black in a fluid and destabilizing dance of consternation. [*804]

James Baldwin captures some of the subtlety of the inter and intra connection between different races:

But we are all androgynous, not only because we are all born of a woman impregnated by the seed of a man but because each of us, helplessly and forever, contains the other – male in female, female in male, white in black and black in white. We are a part of each other. Many of my countrymen appear to find this fact exceedingly inconvenient and even unfair, and so very often do I. But none of us can do anything about it. n82

The objections with how the new right and many multiracialists think about race lie not in the categories they propose, but in their theoretical foundations and assumptions. I have tried to suggest some alternative foundations that might be useful in generating socially constructed racial categories.

We are all racially mixed, and there is probably no such thing as racial purity. This is not to take away any special

position that might be produced at the site we call multiracial. Nor does it mean that there are no other unracial categories. What this does suggest is that we need to examine the political and power implications of reconsidering designated categories. Because politics and power operate differently in different spheres, it may be appropriate to have multiple approaches to this issue depending on the site. At the family level we may constitute and define race differently than at the public or group level. Although it is clear that these spheres will continue to bleed into each other, we may want to ask how race functions in a given sphere and how a change might impact racism and power relationships.

While personal identification is and will remain important, for me the pivotal issue is how the new racial project will impact the axis of racism in different sites. At the family or personal level, there may be space for more personal involvement in racial identification. It is important for all people to be able to claim all of their racial and ethnic heritage. This is even more true if collective structures and practices treat people with parents of different races differently than people with parents of the same race. But as we engage in these issues, it is important that we guard against pigmentocracy and against exhausting our efforts on these categories of race, while leaving racism intact and unexamined. It is also important that the white racial category and the privileges associated with being white be part of the project.

The following are a few examples of how we might reexamine racial categories in light of being differently informed by the insight of race as a social construction and an anti-racist project. In undertaking this effort we must always ask how this particular effort impacts racial hierarchy? At the top of that hierarchy is whiteness. David Roediger has stated that the term [*805] white privilege is redundant. n83 This suggests that to destabilize racial hierarchy, we start with whiteness. The race traitors n84 have responded to a similar understanding of whiteness as Roediger, in trying to develop a stance that rejects whiteness. If one wanted to reconstitute blackness, brownness, or any other anti-privileged racial category, one could consider how race is discussed in England. All groups that are not categorized as white could be categorized as black, brown, or some other inclusive term. n85 This non-white group could include those who would have been formally designated as white but have rejected that "privilege."

Some claim that we are all racially mixed, not in terms of blood and genes, but at a deeper, more psychological level. If we are socially constituted, we are also constituted by multiple voices. In the blood sense and at a deeper level, there is no unitary race or even person. We carry many different racial and gendered voices inside of us. While we are not all the same or fungible, we are diverse with parts of each other inside us. From this perspective, diversity is both an internal and external issue. Our differences and similarities are relational, shifting, unstable, and constitutive. If we are willing to drop the claim of racial purity, we may be able to claim our different racial voices. We might be able to think and imagine together in concrete terms.

As we reconstruct racial categories – and this is not just a job for the multiracialists but for all of us who care about a racial democracy – we must do so to dismantle racism, racial hierarchy, and white supremacy. Whites may want to consider the implication of abandoning the property interests associated with whiteness and explore becoming privileged traitors. We may want to seek out our different racial voices and see what structures call forth and repress these voices! The effort requires serious work and play. If our project to rethink racial categories is also about destabilizing racial hierarchy, we will reject the new right's colorblind position. The multiracial supporters need not wait until this effort is complete to seek a home. But it is important that they, and we, not unreflectively use the tools of the master's house or simply move closer to the master's house. n86 Our efforts may have implications beyond their immediate focus. Advocates of the new racial categories should think and feel very carefully, historically, and pragmatically about how we proceed on a multiracial project. [*806] Those who would maintain the existing categories need to subject the status quo to a similar examination. Perhaps the answer is to have only two categories, one supporting racial hierarchy, and the other supporting racial justice and democracy.

If we embark on this project of reconstituting racial categories and challenging racism, I hope we will follow the example of Trina Grillo and use our hearts, minds, and each other to be more expansive in our thinking than the old categories and discredited methods might allow.

FOOTNOTES:

n1. See John A. Powell, "The 'Racing' of American Society: Race Functioning as a Verb Before Signifying as a Noun," 15 *Law & Ineq. J.* 99, 99–118 (1997) [hereinafter Powell, "Racing"]. I will focus on the United States experience of race and racism in this article. I recognize that in other societies and even in the United States, how we discuss race changes both at different historical times and in different sites in our lives.

n2. See Trina Grillo, "Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House," 10 *Berkeley Women's L.J.* 16, 16–19 (1995).

n3. I will try to show in this paper that they in fact make similar mistakes and, more importantly, neither position

seriously challenges racism.

n4. See John O. Calmore, *Critical Race Theory*, Archie Shepp, and *Fire Music: Securing an Authentic Intellectual Life in a Multicultural World*, 65 S. Cal. L. Rev. 2129, 2149–50 (1992). See generally Arthur M. Schlesinger, Jr., *The Disuniting of America* (1992) (asserting that identity politics is problematic and contributes to the disunity of America).

n5. See Michael Omi & Howard Winant, *Racial Formation in the United States: From the 1960s to the 1990s* 55 (1994). The new right's use of the colorblind and race neutral discourse has allowed them to co-op more of the center and liberal political spectrum. See also John O. Calmore, *Exploring Michael Omi's "Messy" Real World of Race: An Essay for "Naked People Longing to Swim Free,"* 15 Law & Ineq. J. 25, 79 (1997).

n6. See Carol R. Goforth, "What is She?" How Race Matters and Why It Shouldn't, 46 DePaul L. Rev. 1, 9–11 (1996).

n7. See id.

n8. See Neil Gotanda, *A Critique of "Our Constitution is Color Blind,"* 44 Stan. L. Rev. 1, 32 (1991).

n9. See *Shaw v. Reno*, 509 U.S. 630 (1993); *Croson v. United States*, 488 U.S. 469 (1988); *Arlington Heights v. Metropolitan Hous. Dev. Co.*, 429 U.S. 252 (1977).

n10. See Clarence Page, *Racial Consensus, Racial Confusion*, Baltimore Sun, July 29, 1997, at 9A.

n11. See powell, "Racing," supra note 1, at 99–112; see also Richard J. Bernstein, *Beyond Objectivism and Relativism: Science, Hermeneutics, and Praxis* 18 (1983) (referring to dichotomous thinking as the "grand and seductive Either/Or").

n12. See Michael Omi, *Racial Identity and the State: The Dilemmas of Classification*, 15 Law & Ineq. J. 7, 14–21 (1997).

n13. See john a. powell, *Reflections on the Self: Exploring Between and Beyond Modernity and Postmodernity*, 81 Minn. L. Rev. 1481, 1486–90 (1997) [hereinafter powell, *Reflections*]. See generally Anne Klein, *Meeting the Great Bliss Queen* (1995) (discussing the Buddhist concept of no self and stating that this position does not mean that the self does not exist but only that the permanent, unconditional self posited in western thought does not exist).

n14. This is not just a problem for late- and post-modernists. Hume's skepticism was based on the claim that we cannot know the world directly. That is, the world is always filtered through our senses. In his effort to construct a response to Hume, Kant accepted the basic principle that we do not have direct access to the world.

n15. See Nelson Goodman, *Ways of Worldmaking* 91–97 (1978).

n16. See powell, *Reflections*, supra note 13, at 1486–90. See generally Kenneth J. Gergen, *The Saturated Self: Dilemmas of Identity in Contemporary Life* (1991). Gergen discusses the difficulty of choosing between competing voices or claims made upon oneself. He argues that there are multiple selves, each of which makes its own claims and demands. Implicit in this argument is the notion that the unitary self has been fractured. While there are some post-modernists that argue for the decentering of the self, there are still others that have suggested abandoning the self. Most, however, call for a rethinking and resituating of the self.

n17. See powell, *Reflections*, supra note 13, at 1486–90. See generally Klein, supra note 13 (making a similar point in her discussion about the Buddhist concept of no self and stating that this position does not mean that the self does not exist but only that the permanent unconditional self posited in western thought does not exist).

n18. See Gotanda, supra note 8, at 32; see also Ruth Frankenberg, *White Women, Race Matters: The Social Construction of Whiteness* 142–49 (1993); powell, "Racing," supra note 1, at 99–112.

n19. See generally Bernstein, supra note 11.

n20. See Luther Wright, Jr., *Who's Black, Who's White, and Who Cares: Reconceptualizing the United States's Definition of Race and Racial Classifications*, 48 Vand. L. Rev. 513, 56166 (1995).

n21. Dr. King's colorblind language was often used by anti-affirmative action proponents in California. The King family express dismay that Dr. King's words are being misappropriated in this fashion.

n22. See Calmore, supra note 4, at 2149–50; see also Frankenberg, supra note 18, at 142–49; Kimberle Williams

Crenshaw, Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law, 101 Harv L. Rev. 1331, 1346 (1988); John A. Powell, An Agenda for the Post-Civil Rights Era, 29 U.S.F. L. Rev. 889, 892 (1995). See generally Omi & Winant, supra note 5.

n23. See generally Frances Lee Ansley, Stirring the Ashes: Race, Class and the Future of Civil Rights Scholarship, 74 Cornell L. Rev. 993 (1989); Calmore, supra note 4, at 2149–50.

n24. See generally Patricia J. Williams, *The Alchemy of Race and Rights* (1991).

n25. See David Theo Goldberg, *Racist Culture: Philosophy and the Politics of Meaning 2* (1993). While this project tries to avoid specific reference to race, a new coded racial discourse has evolved that allows one to speak of race in apparently race neutral terms such as "welfare," "criminal," "crime victim," "silent majority," "good neighborhood and inner city," and "individual merit." See id.; see also Thomas Byrne Edsall & Mary D. Edsall, *Chain Reaction: The Impact of Race, Rights, and Taxes on American Politics* 116–36 (1991) (discussing the achievements of the Civil Rights Movement and a growing conservatism among Whites during 1964 through 1980).

n26. See Omi, supra note 12, at 14–21 (discussing that there has been a substantial increase in the number of biracial children; currently there are over 2,000,000 children of biracial union). I will use the terms biracial and multiracial, recognizing that the terms are both imprecise and not free of problems. As Omi points out, the term mixed implies that there is a pure race and this has been called into question. Similarly multiracial implies that there is a uniraace. This suffers from the same limitation as mixed raced.

n27. See id. at 18.

n28. See id. at 14–21 (discussing the inconsistencies and incoherence of our current racial categories). See generally Wright, supra note 20 (suggesting that categories such as Black, White, and Hispanic incorrectly imply that race is the distinguishing factor between these groups).

n29. See Omi, supra note 12, at 14–21.

n30. Id. at 11 (quoting Calvin Trillin, *American Chronicles: Black or White*, New Yorker, Apr. 14, 1986, at 62).

n31. Id.

n32. See id.

n33. Id.

n34. See id. at 11.

n35. See id.

n36. See id. at 14–21; Wright, supra note 20, at 557.

n37. See Grillo, supra note 2, at 16–19.

n38. See id. Trina focused on the black/white multiracial experience in part because it is the one that she knew best. She was also careful not to conflate all minority and multiracial issues under the black/white experience.

n39. See id.

n40. See id. Trina focused on black and white because that was a part of her experience. She was also Latina. What she was not prepared to do was to assume that race and racism operate the same for all racial minorities. This article will focus primarily on the black and white multiracial experience.

n41. See id. at 16–19; see also Howard Winant, *Racial Conditions: Politics, Theory, Comparisons* 22, 31 (1994). Trina was also concerned that the beneficiaries of multiracial categories are likely to have a very strong class dimension. Those of the middle and upper middle class are more likely be able to claim their multiracial status to make them something other than black. It is interesting to note that some of this tracks the Brazilian model of multiracial. And despite a popular misconception, Brazil is a society that is heavily racially stratified and strongly anti-black.

n42. See generally Amy L. Chua, *Privatization–Nationalization Cycle: The Link Between Markets and Ethnicity in Developing Countries*, 95 Colum. L. Rev. 223 (1995); Grillo, supra note 2. Pigmentocracy is similar to colorism, only it extends across racial groups where the lighter the skin color, the more privilege is associated with one's

whiteness. There was also a pigmentocracy in South Africa. It is not that multiracial categories would necessarily lead to pigmentocracy and colorism, but without challenging racial hierarchy and white supremacy the dangers increase. Trina was especially concerned about this because of the history of colorism and pigmentocracy in the United States.

n43. I recognize that many people calling for a change in racial categories are not basing their appeal on the assumption that I consider in the text of this article.

n44. See Wright, *supra* note 20, at 56265.

n45. See Powell, *Reflections*, *supra* note 13, at 1486–90. It is interesting to note for Star Trek fans that Spock in the original Star Trek and now Counselor Troi represent the mixed race subject. Because of their mixed status they are seen as having an internal conflict based on blood or genetics that other unracial species are not supposed to have. I have argued that we are all internally fractured. That is the nature of the self and it is not dependent on biology, and it is important to reject the assumption that there is a pure race or gene pool.

n46. See generally Goldberg, *supra* note 25.

n47. Some anthropologists claim that most white Americans have at least 5% African blood and most African-Americans have at least 25% white blood.

n48. The hypodescent rule asserts that white blood is pure, and therefore is contaminated by one drop of black blood.

n49. See David W. Stowe, *Uncolored People*, *Lingua Franca*, Sept.–Oct. 1996, at 68, 74–75. Without relying on blood or genes, Toni Morrison asserts that all Americans are African American. She is suggesting that the nature of America is a hybrid.

n50. See generally Goldberg, *supra* note 25.

n51. See Wright, *supra* note 20, at 513, 520–23; see also Ian F. Haney Lopez, *White By Law: The Legal Construction of Race* 42–43 (1996).

n52. See generally Goldberg, *supra* note 25.

n53. See discussion *infra* Part III.

n54. See Wright, *supra* note 20, at 557–59, 563.

n55. See *id.*

n56. See generally Jane Lazarre, *Beyond the Whiteness of Whiteness: Memoir of a White Mother of Black Sons* (1996); see also James Baldwin, *The Price of the Ticket* 690 (1985); Noelle Johnson, *Race Traitor: The New Abolitionism*, N.Y. Beacon, Jan. 29, 1997, available in 1997 WL 11706935. In *Race Traitor*, a white mother of black children talks about crossing over the racial divide in her multiracial family. Some have suggested that whiteness is chosen. I am not clear how or if this can be done, especially on an individual level, but it does suggest that there are other ways of thinking about these issues that might reinforce what we think about racial categories.

n57. See generally Nancy A. Denton, *Racial Identity and Census Categories: Can Incorrect Categories Yield Correct Information?*, 15 *Law & Ineq. J.* 83 (1997) (discussing how some advocates of multiracial categories support self-definition).

n58. See Powell, *Reflections*, *supra* note 13, at 1486–90.

n59. See *id.* (discussing the false concept of individualism). See generally Goldberg, *supra* note 25; Michael J. Sandel, *Political Liberalism*, 107 *Harv. L. Rev.* 1765 (1994) (reviewing John Rawls, *Political Liberalism* (1993)).

n60. See Powell, "Racing," *supra* note 1, at 99–112.

n61. See *Loving v. Virginia*, 388 U.S. 1, 12 (1966).

n62. See generally Wright, *supra* note 20.

n63. See Goforth, *supra* note 6, at 9–11. Mulatto describes persons having from three-eighths to five-eighths black blood; Quadroon refers to those persons having one fourth black blood; and Octoroon defines those

persons having one eighth or any trace of black blood.

n64. See *id.* at 14; see also Bijan Gilanshah, *Multiracial Minorities: Erasing the Color Line*, 12 *Law & Ineq. J.* 183 (1993). The 1900 census dropped Octoroon, Mulatto, and Quadroon from the census. The 1940 census by contrast only had two racial categories white and non-white.

n65. See, e.g., *Plessy v. Ferguson*, 163 U.S. 537, 549 (1896), overruled by *Brown v. Board of Educ.*, 347 U.S. 483 (1954) (stating that "in any mixed community, the reputation of belonging to the dominant race, in this instance the white race, is property"); Cheryl I. Harris, *Whiteness as Property*, 106 *Harv. L. Rev.* 1709, 175859 (1993) (discussing the material significance of whiteness); see also Harvey M. Applebaum, *Miscegenation Statutes: A Constitutional and Social Problem*, 53 *Geo. L.J.* 49 (1965) (arguing that Whites were only concerned with racial mixing that polluted the white race, and that only a few states applied anti-miscegenation laws to the mixing of non-Whites); Harold L. Hodgkinson, *What Should We Call People? Race, Class, and the Census for 2000*, 77 *Phi Delta Kappan* 173, 174 (1995) (discussing the restrictions on those classified as non-White in the 1890 Census).

n66. See Gilanshah, *supra* note 64, at 183. Some have noted that the anti-miscegenation laws did not stop racial mixing but denied official status to racial mixing. This is clear even under slavery as there was no sanction against the slave owner for producing children with his slaves.

n67. See *Plessy v. Ferguson*, 163 U.S. 537, 549 (1896).

n68. See Harris, *supra* note 65, at 1730-31 (1993). The article observed that:

Property is a legal construct by which selected private interests are protected and upheld ... When the law recognizes, either implicitly or explicitly, the settled expectations of Whites built on the privileges and benefits produced by white supremacy, it acknowledges and reinforces a property interest in whiteness that reproduces black subordination.

Id.

n69. See generally Wright, *supra* note 20. The benefits of whiteness during the "separate but equal" era illuminate the actual and psychological disabilities attached to being black. For many, being white automatically ensured higher economic returns in the short term, as well as greater economic, political, and social security in the long run. Being white meant gaining access to a set of public and private privileges that materially and permanently guaranteed basic subsistence needs and survival. Being white increased the possibility of controlling critical aspects of one's life rather than being the object of another's domination. These societal benefits connected to whiteness were the result of statutes and court holdings that determined who was, and who was not, white. The legislatures and courts were at the center of a system that routinely and purposefully distributed rights and opportunities along racial lines.

n70. See John A. Powell, *Transformative Action: A Strategy for Ending Racial Hierarchy and Achieving True Democracy in Brazil, South Africa, and the United States* (1997) (article is forthcoming) [hereinafter Powell, *Transformative Action*]. See generally I.K. Sundiata, *Late Twentieth Century Patterns of Race Relations in Brazil and the United States*, 48 *Phylon* 65 (1987).

n71. See *Loving v. Virginia*, 388 U.S. 1, 12 (1966).

n72. See Powell, *Transformative Action*, *supra* note 70.

n73. See generally Winant, *supra* note 41.

n74. See generally Powell, *Transformative Action*, *supra* note 70 (discussing the negative aspects of a proliferation of race-based categories).

n75. See Paul R. Spickard, *Mixed Blood: Intermarriage and Ethnic Identity in Twentieth-Century America* 329-31 (1989) (discussing how multiracialism might be used to destabilize racial hierarchy).

n76. See generally Lazarre, *supra* note 56.

n77. See generally Chua, *supra* note 42; Powell, *Transformative Action*, *supra* note 70. Because our racial caste system is also based on pigmentocracy, there has been a history of Whites, and even some Blacks, favoring

lighter color Blacks over darker skinned Blacks. There has also been preference for having mixed race Blacks work in the master's house.

n78. See generally David R. Roediger, *Towards the Abolition of Whiteness: Essays On Race, Politics, and Working Class History* (1994).

The lack of full acceptance has been complicated. There has been a history of mistrust of mixed raced Blacks that is based on the fear that mixed race Blacks have aligned themselves with the white master. There has also been the claim that mixed race Blacks look down on darker skinned Blacks. But it is also clear that some of the approbation toward light skinned and mixed race Blacks was not the internal ambivalence in the uniraced Blacks. There may be other reasons for Blacks with different parents to want a designation that reflects their lineage. But any appropriation of whiteness without an examination of whiteness may easily slide back into our racist practices. What is clear is that if the existing racial categories do not provide for a real home for mixed race people, there will be a need for new categories. There is at least some suggestion that the push for mixed race categories is coming from the white parent of a mixed parentage after there has been a separation. White parents with mixed race children may have less interest in working at raising their children as black. Similar issues may come up in transracial and transnational adoptions.

n79. See Gotanda, *supra* note 8, at 8. See generally Goldberg, *supra* note 25.

n80. See Omi, *supra* note 12. See generally Goldberg, *supra* note 25.

n81. See powell, "Racing," *supra* note 1, at 99–118.

n82. Baldwin, *supra* note 56, at 690.

n83. See generally Roediger, *supra* note 78.

n84. See Noel Ignatiev, *How to Be a Race Traitor: Six Ways to Fight Being White*, *Utne Reader*, Nov.–Dec. 1994, at 85.

n85. See *id.*

n86. See Audre Lorde, *An Open Letter to Mary Daly*, in *This Bridge Called My Back: Writings By Radical Women of Color* 94–97 (Cherrie Moraga & Gloria Anzaldua eds., 1981) (suggesting that the master's tools will never dismantle the master's house).

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