Re-Cognizing ‘Race’: An Essay In Defense of Race-Consciousness

Robert L. Hayman
RE-COGNIZING "RACE": AN ESSAY IN DEFENSE OF RACE­
CONSCIOUSNESS

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The following essay was written in response to the remarks of Professor Reginald Leamon
Robinson, presented at the Sixth Annual Mid-Atlantic People of Color Legal Scholarship
Conference. In his remarks—and in the articles on which those remarks were based, "Expert
Knowledge: Introductory Comments on Race Consciousness," and "Organizing Principles of Race
Consciousness: Violence, Oppression, Politics, and Civil Rights"—Professor Robinson urges his
readers and listeners to move beyond "race" by critically re-assessing, and perhaps abandoning,
their "race consciousness."

PROLOGUE

Writing in Dusk of Dawn, Dr. W.E.B. Du Bois lamented the condition of those
"entombed" in race. Professor Reginald Robinson has written insightfully and
passionately about the intellectual and spiritual death suffered by those in the
tomb, and offers the hope of resurrection in a vision that transcends the tomb
of race, a vision that would replace race consciousness with a human
consciousness, a vision of the boundless possibilities suggested by our common
humanity. It is an immensely appealing vision, one that, with one caveat, seems
consistent with Dr. Du Bois' own ceaseless campaign against the caste of race,
and consistent too with my own sense of what needs to be done to truly eradicate
the color line.

This essay will briefly examine this "race" that we are entombed in, and
attempt to situate Professor Robinson's work among the two alternative means
of escape: color blindness, on the one hand, and a keener race consciousness, on
the other. Professor Robinson's work seems to me to suggest something of a
third way, and it harbors, I think, great promise, but also one significant danger.

I. COMPETING VISIONS: CONSTRUCTING RACE

Assuming a commitment to racial equality, and assuming away for the time
being all the vagaries that inhere in the operative terms, the question that

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and invigorating discussion of the enduring dilemma of race.
Huggins, ed. 1986).
2. Reginald Leamon Robinson, "Expert" Knowledge: Introductory Comments on Race Consciousness,
20 B.C. THIRD WORLD L.J. 145, 145-50 (2000). (The views expressed in this article were those also
expressed in the panel discussion of the Enduring Dilemma of Race at the Sixth Mid-Atlantic
People of Color Scholarship Conference).
dominates racial discourse today is: should we retain consciousness of race?³ As we struggle toward that elusive equality, should we, may we, must we continue to take account of race?

On the one hand, there are those who say “no.” The way to make race irrelevant, they say, is by treating it as such, to insist on the irrelevance of race, to refuse to yield to its hold on us. The surer route to racial equality, they tell us, is through race neutrality, through color-blindness.⁴ It is a view with much superficial appeal, and we will return to it at the end of this essay.

On the other hand, there are those who say that we should retain race-consciousness, that we can only get beyond race by taking it into account, can only transcend race by transforming race—both experientially and theoretically.⁵ For them, the way to end race-consciousness is, somewhat ironically, by heightening our consciousness of the significance and the meaning of race. It is a tougher sell than color-blindness: it is more complex, perhaps even paradoxical; more demanding both intellectually and politically; and it challenges some basic conventions in radical ways. But it has, I think, the benefit of being right, and I would like here to offer a brief defense of the position.

The case for continued race-consciousness has to be made at two levels; the difficulty is that it sometimes gets stuck at the first. The first argument—historically if not conceptually—entails a challenge to our conception of equality. It insists that there is a distinction that can be drawn among various race-conscious schemes, a moral and constitutional distinction between schemes that exclude rather than include, oppress rather than assist, subordinate rather than equalize.⁶ The distinctions are all perfectly tenable ones, and are substantial enough to support both moral and constitutional consequences. Nonetheless, the case for race-consciousness tends to get stuck here because, in practice, disputes over the distinctions may appear to devolve into irresolvable questions of perspective. Do set-asides or quotas include or exclude? Does compulsory bussing for desegregation assist or oppress? Do racial preferences consist with equality, or deny it? The answer to each question too often depends on who is asked.⁷

³. Virtually every significant legal dispute over “race” turns on the permissibility of official race-consciousness; this is most obviously true of the “affirmative action” cases, but is also true for disputes over, for example, desegregation and electoral districting. See generally Robert L. Hayman, Jr. & Nancy Levit, The Tales of White Folk: Doctrine, Narrative, and the Reconstruction of Racial Reality (Review Essay), 84 Cal. L. Rev. 377 (1996) (reviewing and critiquing the Supreme Court’s decisions in Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995); Missouri v. Jenkins, 115 S. Ct. 2038 (1995); and Miller v. Johnson, 115 S. Ct. 2475 (1995)).
Which is why the second argument is so important, and perhaps needs to be made first. The second argument entails a challenge to our conception of "race" itself. It insists on recognizing race for what it is, a category of human invention which has assumed, due to our efforts, enormous legal, political, economic, and social significance. And it simultaneously insists that we recognize what race is not: it is not an inherent, immutable trait signifying a group's position in some natural order. The second argument, in other words, is an argument for a constructionist view of race.

The constructionist conception of race typically takes one of two forms. In its weak form, the constructionist conception emphasizes the role of social forces in constructing the salient attributes of racial beings. "Race," in this view, may precede society, but it is society that attaches significance to race, that orders people according to race, and that, in the process of creating and maintaining that racial order, makes race a powerful signifier of social status. Thus, the most significant aspects of "whiteness," for example, are those that have accrued from centuries of a white-dominated hierarchy: to be "white" is to be socially privileged (relative to other "races") that is to say, it is to enjoy the cultural, economic, political, and, yes, legal advantages that constitute the social legacy of "whiteness" in America.

In its strong form, the constructionist conception emphasizes the role of cultural forces in constructing the very concept of race. "Race," in this view, does not precede society, but rather is created and perpetuated to serve socially contingent needs. Thus, "race" does not exist in nature; it exists only in our minds, and in our cultures. In some cultures this "race" is intrinsically hierarchical, having been brought into existence for the very purpose of justifying an otherwise indefensible hierarchy. Thus, the oppression and subordination of a group of people—of a culture, a nation, a continent—is to be legitimated by the idea of "race," an idea constructed to denote the inferiority or superiority of the racialized people.

Both forms of the constructionist view focus on the error of essentialism, the logical or philosophical fallacy characterized by the attempt to deduce the "essence" of an object from some observable feature. Racial essentialism is manifest in the suggestion that, because one race demonstrates "superiority," to another in, for example, educational achievement, that race must be superior in capacity for achievement, superior inherently, intrinsically, immutably. In the weak form of the constructionist view, the error is principally one of logic: racial essentialism ignores alternative social explanations for the perceived superiority of one group to another, and, indeed, the alternative explanations are compelling. In the strong form of the constructionist view, the error is more

10. For an alternative account of racial differences in measured "intelligence," see, for
philosophical: racial essentialism ignores the role of culture in creating the very idea of "race," and, indeed, the concept has been constructed such that "racial superiority" is very nearly redundant.\(^{11}\)

In either form, then, "race" does not signify some natural essence. Rather, "race" is made: the racial condition is the product of human work. But that product is real: for both the weak and strong constructionist "race" is real, in the sense that we recognize it and respond to it, with discriminatory treatment and race-based constraints. And over time, those responses have re-constitutive effects: "race" becomes self-perpetuating, a seemingly "immutable trait," which differentiates us in hierarchical terms, ordering us into superior and inferior, included and excluded. But in fact there is nothing immutable about any of this; in the constructionist view, it is all our doing.\(^{12}\)

And the historical record suggests that we have not been doing it for very long, that we have only been making "race" for a short time. Indeed, "race" appears to be a relatively recent phenomenon; as Du Bois put it, writing in 1920, "[t]he discovery of personal whiteness among the world's peoples is a very modern thing."\(^{13}\)

In this regard, the record lends some considerable support to the strong form of the constructionist critique. The ideology of race did not emerge until after the Enlightenment, and even then, throughout the eighteenth century, the idea of "race" remained tentative, ambiguous, and highly idiosyncratic.\(^{14}\) The political ideology gradually yielded to—or produced—a "science" of race, developed in Western Europe roughly between 1790 and 1840.\(^{15}\) In the United States, the evolution of racial thinking roughly followed the European lead, but it was of course complicated by the extraordinary political developments surrounding the formation and threatened fracture of the union. Here, the evolution of "race" may be divided into four stages:

1. **Color-Consciousness: c. 1619-c. 1662.** Characterized by an as-yet impoverished conception of "race"; whatever "race"-ism may have characterized the early colonies is vague, incomplete, and far from universal.

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11. See also at 245-51, 294.
2. The Formalization of Race: c. 1662-c. 1776. Race emerges as a determinant of legal status, perhaps largely a reflection of demographic realities and economic necessities.

3. The Explication of Race: c. 1776-c. 1835. An ideology of "race" emerges to resolve the contradiction between the ideals of the revolutionary generation and the fact of chattel slavery.

4. The Scientization of Race: c. 1835-?. The nascent "science" of "race" finds a receptive audience in the antebellum South, where a besieged practice is in desperate need of some ideological foundations. "Science," of course, furnishes the very best kind of post-Enlightenment foundations: "truths" that are not merely "self-evident," but "proved." Samuel Morton's *Crania Americana*, an 1839 exercise in racial craniometry, helps launch a tradition that would persist through emancipation, two Reconstructions, and beyond.16

But the science of race could never do what the politics of race demanded: it could not establish a natural hierarchy of racial beings. Johann Friedrich Blumenbach is often considered the founder of physical anthropology; his 1795 text introduced the term "Caucasian" and substantially accelerated the process of scientizing "race."17 But Blumenbach asserted the unity of mankind; insisted that the racial categories he created were overlapping; observed that the defining characteristics were substantially mutable; maintained that individual Africans "differ from other Africans as much as Europeans differ from Europeans, or even more so"; and denied that physical differences could be interpreted as inferiority or superiority.18 Blumenbach's initial insights were often obscured by the nineteenth century politics of "race," but those politics gradually changed and the science of "race" eventually collapsed. By the turn of the century, "race" could be dismissed as, in Oswald Garrison Villard's words, "ethnological claptrap," "humbug pure and simple."19 This critique of race—perhaps best typified by Franz Boas's *Anthropology and Modern Life*20—was carrying the day even before the Second World War.21 In the wake of the Holocaust, the postwar

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16. See Hayman, supra note 10, at 139-42.
18. See id.
21. In the 1920's, for example, Robert E. Park's Chicago school of sociology articulated a distinctively social understanding of race; in 1936, political scientist Ralph J. Bunche observed in *A World View of Race* that "Race is the great American shibboleth." HANNAFORD, supra note 15, at 374-77. A year later, Jacques Barzun published *Race: A Study in Superstition*; "Race theories shift their ground, alter their jargon, and mix their claims," Barzun wrote, "but they cannot obliterate the initial vice of desiring to explain much by little." Id. at 375. And the following year, the English translation of Magnus Hirschfeld's *Racism* offered American readers an extensive critique of Nazi race theory; Hirschfeld's work also popularized the term that comprised its title. See id.
generation completed the task. As anthropologist Ashley Montagu wrote in 1959:

The process of averaging the characters of a given group, knocking the individuals together, giving them a good stirring, and then serving the resulting omelet as a 'race' is essentially the anthropological process of race making. It may be good cooking, but it is not science, since it serves to confuse rather than clarify.22

More recent work has tended to confirm the critique: there is very little support for a naturally occurring "race." Analyses of race differences are instantly confounded by the obvious conflation of the "racial" gene pools.23 And those "racial" genes do not amount to much: only a very small proportion of genetic variation—just seven percent (of the polymorphic genes, which are in turn just 25 percent of the overall pool)—is between groups that have conventionally been considered "races," and significantly, no polymorphic gene perfectly discriminates among the traditionally classified racial groups.24 The anthropological case for racial classifications is also quite weak; Stephen Jay Gould follows nearly a century's worth of anthropological tradition when he suggests that racial classifications have no discernable scientific value: "Human variation exists," Gould concludes: "the formal designation of races is passé."25

22. HANNAFORD, supra note 15, at 391.

23. In the United States, the ancestry of the current "black" population is generally estimated to be between 20 and 31 percent "white"; between 75 and 90 percent of the "black" population has some "white" ancestry. See F. JAMES DAVIS, WHO IS BLACK? ONE NATION’S DEFINITION 21 (1991). Meanwhile, the ancestry of the current "white" population is estimated to be between 1 and 5 percent "black." See id. But, of course, these numbers assume the existence of demarcations of "white" and "black" that have—or at some point had—some biological integrity. See id. at 21-22.

24. R. C. Lewontin, Steven Rose, and Leon J. Kamin report that there are about 150 different genetically coded proteins that have been identified and examined; 75 percent of these are monomorphic, that is, they are identical in all individuals. See R. C. LEWONTIN, ET AL., NOT IN OUR GENES: BIOLOGY, IDEOLOGY, AND HUMAN NATURE 121-22 (1984). Just 25 percent, then, are polymorphic, that is, they vary among individuals. A full 85 percent of the variation among these polymorphic genes occurs between individuals within local populations, groupings typically identified as "tribes" or "nations." See id. at 125-26. Only eight percent of the genetic variation is between the "tribes" or "nationalities" that collectively constitute the conventionally described "races." See id. at 126. The research leads the authors to conclude that "[t]he remarkable feature of human evolution and history has been the very small degree of divergence between geographical populations as compared with the genetic variation among individuals." Id. at 127.

25. STEPHEN JAY GOULD, THE FLAMINGO'S SMILE: REFLECTIONS IN NATURAL HISTORY 193 (1985). As a general proposition, Gould notes, subspecies "are categories of convenience only and need never be designated." Id. Typically, "[s]ubspecies represent a taxonomist's personal decision about the best way to report geographic variation." With modern quantitative methods permitting the numerical description of geographical variation, Gould observes, "we need no longer construct names to describe differences that are, by definition, fleeting and changeable. Therefore, the practice of naming subspecies has largely fallen into disfavor, and few taxonomists use the category any more." STEPHEN JAY GOULD, THE FLAMINGOS SMILE: REFLECTIONS IN NATURAL
Indeed, among the sciences, only psychology seems not to have rejected a naturalistic "race." In a recent essay in *American Psychologist*, psychologists Albert H. Yee, Halford H. Fairchild, Fredric Weizmann, and Gail E. Wyatt called on their colleagues to follow the lead of other disciplines and to re-assess the utility of the "race" construct. They noted that there was much to question in the definitions and applications of race by several of its exponents and their allies. It was psychologists, they observed, who were arguing for the "natural" intellectual differences between "races," but the "natural" sciences were not cooperating. Surveying the evidence, they concluded that "[n]ot only do the pertinent scholarly groups and experts ... indicate no consensual support for the genetic deficit hypothesis, their comments are highly critical toward the spurious use of and tolerance for the term race in psychology."

II. COMPETING VISIONS: RACE-ISM

In the final analysis, what constructionist theories offer is a new conception of race and, importantly, of race-ism. Race-ist uses of "race" treat race like something it is in fact not: an immutable signifier of a group's position in the natural order. But it is not race-ist to use "race" to acknowledge what race truly is: a wholly contingent signifier of a group's position in a socially constructed hierarchy. Indeed, I am of the view that race-ism fairly embraces not only the affirmative act of assigning to "race" its wrongful meaning, but also the more negative act of denying to "race" its rightful meaning: it is race-ist, then, to pretend that this socially constructed race does not exist.

At any rate, the critical difference between acceptable and unacceptable uses of "race" is, under the constructionist approach, essentially epistemological: it depends on how race is conceived. Race must be conceived and portrayed in an authentic fashion: consistent with history, consistent with science, consistent, that is to say, with human experience. The moral questions about the use of this
"race" are subsequent, which is to say, the problem of defining "equality" remains. But the task is at least simplified: affirmative action, for example, might still be bad because, at a formal level, it treats the racial majority and racial minorities unequally; but it is not bad because it is indistinguishable from Jim Crow. Epistemologically, affirmative action is the direct opposite of Jim Crow; one does not need a refined sense of morality to perceive the difference.\footnote{Compare Plessy v. Ferguson, 163 U.S. 537, 551 (1896) (insisting that law cannot supplant "natural affinities" or eradicate "racial instincts" or abolish "distinctions based upon physical differences"), with City of Richmond v. J.A. Croson Co., 488 U.S. 469, 552 (1989) (Marshall, J., dissenting) (defending laws designed to remedy "the effects of discrimination that itself was race based").}

Professor Robinson writes, I believe, in this constructionist tradition. He explicates the hideous falsehoods that inhere in the naturalistic understanding of race, and simultaneously urges an appreciation of the fact that people today live in a social context where race plays a major role.\footnote{See id, see also Reginald Leamon Robinson, The Organizing Principle of Race Consciousness: Violence, Oppression, Politics, and Civil Rights in the Post-Slavery Era of the 1900s and the New Millennium. (unpublished manuscript, on file with The Widener Law Symposium Journal).} He has sought to elaborate the cognitive features of race, the ways in which the mind is entombed in race, our imaginations crippled by the schema of race.\footnote{See Robinson, supra note 2, at 175.} He has urged deconstruction of the text of race as nature as a means of breaking down this schema, as a way to transcend race.\footnote{See Robinson, supra note 2, at 145-150.} It is a noble, vital project.

But in writings that seem directed primarily at black audiences, Professor Robinson suggests that race-consciousness is so crippling that it cannot be its own cure; that perhaps the schema of race is too rigid or comprehensive to be deconstructed; the cumulative harms of race so great that we cannot suffer its presence any longer, or at least, not long enough to reveal and remake it, to reconstruct it as something authentic and benign. He urges a rejection of race consciousness: only by ignoring race can we transcend its limits; we escape the tomb, by denying it.\footnote{See Anthony Appiah, The Uncompleted Argument: DuBois and the Illusion of Race, RACE, WRITING, AND DIFFERENCE 21, 35-36 (Henry Louis Gates, Jr., ed., 1985).}

On the one hand, Professor Robinson's work here seems principally a reminder of the dangers inhering in the conventional conception of "race" and of the difficulties confronting those who would re-make it. As a cautionary tale, it is a lesson worth heeding. It also invokes the spirit of rebellion that seems to animate every great egalitarian project: we will not yield to race, because we must not surrender to inequality.\footnote{See Anthony Appiah, The Uncompleted Argument: DuBois and the Illusion of Race, RACE, WRITING, AND DIFFERENCE 21, 35-36 (Henry Louis Gates, Jr., ed., 1985).} As prophecy, it is a message worth hearing.

But I worry what some ears will perceive in this message, and it is the one reservation I have about his project. In urging a rejection of race consciousness, Professor Robinson aims principally to empower the black community, a
community which, in his view, is crippled by the learned helplessness of centuries of racial victimization. It is time to stop being victims, he suggests, and time to start assuming responsibility; it is time to stop being the subordinated race, and to start being superior human beings. Regarding both the extent of this problem in the black community, and the role of race-consciousness in either its perpetuation or solution, I must confess to being mostly agnostic: I just do not know. But I worry very much that the effort to create a sense of responsibility in the black community through this rejection of race will have the simultaneous effect of encouraging an abdication of responsibility among those Americans who constructed, maintained, and profited from race. Maybe African Americans, Asian Americans, Latinos, and Native Americans need to stop thinking about race: but white Americans, and official America, should not be afforded that choice, not until they have done their part to set things right.

Which brings us back to the conventional alternative to race-consciousness: color-blindness. It offers a simple prescription: ignore race, and it will go away.

There once was a time, and there again will come a time, when this prescription would suffice, when race was alive only in our minds and in our words and could be banished with no more than the rhetorical command, "no more race." But this is not that time; race is, as Professor Robinson acknowledges, a social, legal, political, and economic reality, and its grip on us can't be loosened by words alone. The roots of race are now too deep.

It seems to me that the surer way to make race truly irrelevant is by prying loose its grip on our social fabric: eliminate the lived realities of race—the social, political, and economic inequalities of race—and race loses its cultural salience. When there is racial equality—real equality, lived equality—race no longer has a purpose; it becomes an empty vessel, an anachronism, a signifier without significance. Then we can cease to speak of race.

But if we make the move to color-blindness prematurely, if we reject the opportunity—indeed, the responsibility—to first re-make race, then we are only living in denial. Or dying in denial, in the tomb of race.

And what we deny above all is our power over "race." What I fear most about the call to reject race-consciousness is this sub-text: that we will not attempt to re-make race because we cannot re-make race. That race, as race, exists outside our control, that it can be neither deconstructed nor reconstructed. That, I think, is precisely the view taken by one leading exponent of color-blindness, Supreme Court Justice Clarence Thomas. In explaining his opposition to race-conscious affirmative action, Justice Thomas articulated something of a credo for the color-blind movement: "Government," he wrote, "cannot make us equal."39

In my mind, the declaration begs two questions. First, who is the "us" to whom he refers? Some commentators, I think Professor Robinson may be among them, think Justice Thomas is writing principally to black audiences, and

they see here a fresh, original voice urging self-reliance and self-empowerment. On this score, again, I am agnostic, for my principal concern is the message he sends to—and about—official America.

"Government cannot make us equal."

Here is the second question: how does Justice Thomas think we were made unequal in the first place? The color-blind credo seems utterly indifferent to, or ignorant of, the role of government in forging racial inequality. Consider one familiar rhetorical exchange. The favorite metaphor of self-help advocates remains the boot-strap: “pull yourself up.” And the favored response of those who appreciate the realities of disadvantage is: “I can’t pull myself up by my boot straps unless you at least give me some boots.” But that response, I think, slightly misses the mark, at least as a metaphor for the history of race. Because it is not so much that government did not give black Americans boots; it is rather more like government took them away. Everybody started out with boots, but in the process of American racial formation, government—pretty much all American governments—elected to shine the boots for some races, and steal them off the feet of others.

"Government cannot make us equal."

But if government is not responsible for racial inequality, then who or what is? The presumption, I think, is unmistakable, and in this sense there is nothing at all original about Justice Thomas’ message, but much that is frighteningly familiar. At its core is the same basic premise relied upon by slaveholders, by the Democratic opponents of Reconstruction, by the defenders of Jim Crow, and by the noisy crowd of racial pseudo-scientists who occasionally pollute our public discourse with claptrap like The Bell Curve. government cannot make us equal because we are, by nature, unequal. That is the core premise of American racism, and it is simply false. Government manifestly can make us equal; it is racist, as I conceive the term, to think otherwise.

III. CONCLUSION

This, in summary, is my one reservation about Professor Robinson’s courageous project: that it might be misread and misused by people who do not


share his willingness to confront the realities of race, and the responsibilities of race. Race, as Professor Robinson notes, acts as a filter, of what we see, and of what we hear. And white innocence is among the distorting racial schema, and so too is official impotence. It has been far too easy to abdicate responsibility for race; it still is too easy. But the problem of the twenty-first century remains the color line, and it is everybody's problem.

We are all of us, after all, entombed in race.