Whose Common Good? Racism in the Political Community

Stephen M. Feldman, University of Wyoming
I'm for truth, no matter who tells it. I'm for justice, no matter who it is for or against. I'm a human being first and foremost, and as such I'm for whoever and whatever benefits humanity as a whole.

Malcolm X¹

I have the audacity to believe that peoples everywhere can have three meals a day for their bodies, education and culture for their minds, and dignity, equality and freedom for their spirits. I believe that what self-centered men have torn down men other-centered can build up.

Martin Luther King, Jr.²

Political pluralists and civic republicans have launched constitutional and political theory into a controversy of paradigmatic proportions. Pluralists, who have dominated American political thought since the Second World War, insist that politics is (and should be) no more than a struggle between autonomous and rational individuals or groups who strive to satisfy their preexisting private interests. Because ethical values are relative, according to the pluralists, the only normative standard for resolving any political issue is to determine which viewpoint emerges victorious from the political battleground.³ Civic republicans vehemently disagree with this characterization of

¹. MALCOLM X, THE AUTOBIOGRAPHY OF MALCOLM X 366 (1965) (as told to Alex Haley) (emphasis omitted).


³. This characterization of political pluralism reveals that it is not necessarily related to cultural pluralism (multiculturalism), which would accept, encourage, and celebrate the existence of multiple subcultures in American society. Indeed, this article suggests that cultural pluralism might prosper more in a civic republican political system than a pluralist one. For discussions of cultural pluralism, see generally Thomas F. Pettigrew, Integration and Pluralism, in ELIMINATING RACISM 19-30 (Phyllis A. Katz & Dalmas A. Taylor eds., 1988) [hereinafter ELIMINATING RACISM] (setting cultural pluralism in opposition to integration is counterproductive to society’s uniquely antiblack barriers); Harry C. Triandis, The Future of Pluralism Revisited, in ELIMINATING RACISM 31-50 (cultural pluralism as solution to racial problems). For examples of constitutional theories built on
politics and government; they argue instead that the government should pursue the common good, not preexisting private interests. Politics, according to the republicans, should not be a war, rather it should provide an opportunity for citizens to participate in a communal dialogue that identifies the common good.4


4. For a discussion of the "republican revival" in constitutional jurisprudence and one example of a constitutional theory built on civic republicanism, see Stephen M. Feldman, Republican Revival/Interpretive Turn, 1992 Wis. L. Rev. (forthcoming 1992) [hereinafter Feldman, Republican Revival/Interpretive Turn]. For additional examples of constitutional theories built on civic republicanism, see Bruce Ackerman, Constitutional Politics, Constitutional Law, 99 Yale L.J. 453 (1989) [hereinafter Ackerman, Constitutional Politics] (governing constitutional principles are derived through interaction between constitutional moments—representing higher law which solidifies citizen commitment—and normal politics—representing more pluralistic or self-interested politics); Bruce Ackerman, The Storrs Lectures: Discovering the Constitution, 93 Yale L.J. 1013 (1984) [hereinafter Ackerman, Storrs Lectures] (two "tracks" of higher and lower lawmaking reconcile the tension between liberalism and democracy); Frank Michelman, Foreword: Traces of Self-Government, 100 Harv. L. Rev. 4 (1986) [hereinafter Michelman, Foreword] (civic republicanism advances ideal of personal freedom "realized through politics," because freedom consists of "self-direction by norms cognizant of fellowship with equally self-directed others"); Frank Michelman, Law's Republic, 97 Yale L.J. 1493 (1988) [hereinafter Michelman, Law's Republic] (civic republicanism as dialogic politics that is both normative and pragmatic); Cass Sunstein, Naked Preferences and the Constitution, 84 Colum. L. Rev. 1689 (1984) [hereinafter Sunstein, Naked Preferences] (governmental actions are inappropriate if merely satisfying citizens' "naked preferences" or preexisting private interests; instead government should pursue the common good); Sunstein, Preferences and Politics, 20 Phil. & Pub. Aff. 3 (1991); Cass Sunstein, Beyond the Republican Constitution, 97 Yale L.J. 1539 (1988) [hereinafter Sunstein, Beyond] (civic republicanism's principles are not inconsistent with liberalism, but emphasize a deeper commitment to deliberative politics and citizenship). For a criticism of Sunstein's brand of republican constitutional theory, see Stephen M. Feldman, Exposing Sunstein's Naked Preferences, 1989 Duke L.J. 1335 (private preferences are not "naked" or preexisting, rather they are socially constructed).

among theorists: modern racism denies its own existence by insisting that we already have achieved social equality and justice. Further, racism looms so ominously as to intimidate theorists: it threatens to shatter the premises of both pluralism and civic republicanism. How can pluralists argue that individuals should rationally pursue their preexisting private interests if, at the outset, racist attitudes and beliefs shape perceptions of self-interest? How can civic republicans argue that citizens should participate in a communal dialogue when racism muffles and silences the voices of minorities? Will not the so-called common good that emerges from the communal deliberation advocated by civic republicans merely manifest and reinforce white domination?

When constitutional theorists acknowledge that racism exists, they typically categorize it as a problem for equal protection jurisprudence. Consequently, racism is neatly boxed and placed on the shelf, only occasionally to be opened, examined, discussed, supposedly resolved, and then returned to its proper place—in the box and on the shelf. Then we do not have to observe or consider it until the next time an equal protection problem arises. The purpose of this article is to help remove racism permanently from its constitutional box and place it in a prominent and hence appropriate position in American constitutional and political thought. In the context of American society, no constitutional or political theory can succeed without a comprehensive awareness and understanding of racism. The Constitution—the entire Constitution—must be understood, interpreted, and applied with the goal of reducing (and eliminating) the racism constantly at the forefront of discussion.

Professor Richard Delgado also attempts to remove racism from its constitutional box in his recent article, *Zero-Based Racial Politics: An Evaluation*...
of *Three Best Case Arguments on Behalf of the Nonwhite Underclass,* which focuses on the social and economic position of "the nonwhite poor" in American society. The premise of *Zero-Based Racial Politics* is that since the Civil Rights Movement of the 1950s and 1960s failed to radically transform American society, the nonwhite poor should reconsider their traditional affiliation with political liberals. Delgado considers whether the nonwhite poor are most likely to gain social justice by aligning with either conservatives, liberals, or civic republicans, whom Delgado refers to as "dialogic communitarians." His method is to examine the political theories that underlie each position and to analyze the likelihood that the implementation of each theory would actually produce social justice for the nonwhite poor. The surprising conclusion, Delgado argues, is that the nonwhite poor should turn to the conservatives in their quest for social justice. Conservatism, according to Delgado's description, appears as a form of political pluralism: thus, Del-
gado argues that conservatives will "support social welfare programs for nonwhites because . . . it is in their self-interest to do so."\(^{12}\)

Part I of this article explores Delgado's commitment to political pluralism and then criticizes his argument.\(^ {13}\) In particular, Delgado overlooks or minimizes the way that racism often skews both an individual's perception of self-interest and his or her rational calculation of how to satisfy that interest. Thus, although Delgado attempts to open the constitutional box containing racism by emphasizing the relationship between political theory and the achievement of social justice for the nonwhite poor, even he fails to hold racism consistently at the forefront of discussion. Part II consequently explores the potential of civic republicanism to lead to social justice.\(^ {14}\) Racism, however, again emerges as an obstacle: it threatens the legitimacy and even the possibility of the communal dialogue that is central to any civic republican approach.\(^ {15}\)

Racism runs so deep and wide through American society that it undermines any theory that attempts to marginalize it. Part III thus begins to reconstruct a constitutional and political theory with the goal of reducing racism at its core.\(^ {16}\) I approach this reconstruction from two perspectives.

\(^{12}\) Id. at 1940.

\(^{13}\) See infra notes 21-80 and accompanying text.

\(^{14}\) See infra notes 81-108 and accompanying text. Because I agree with Delgado's conclusion that liberalism is unlikely to lead to social justice for the nonwhite poor, see Delgado, supra note 8, at 1933-37, I do not discuss liberalism in the text. Insofar as liberalism emphasizes individualism, see RONALD DWORKIN, Liberalism, in A MATTER OF PRINCIPLE 182-204 (1985) (according to liberalism, values come from individuals, while government remains neutral), liberalism is subject to many of the same criticisms that I level against political pluralism and the contact theory from social psychology. See infra notes 47-80, 123-141 and accompanying text; cf. infra note 112.

\(^{15}\) In Zero-Based Racial Politics, Delgado relies on social psychological research to argue that racism undermines civic republican. See Delgado, supra note 8, at 1939-40. Moreover, in many previous articles, Delgado, one of the leading critical race theorists, has emphasized that racism is pervasive and cultural. See, e.g., Richard Delgado, Words That Wound: A Tort Action For Racial Insults, Epithets, and Name-calling, 17 HARV. C.R.-C.L. L. REV. 133, 135 (1982) [hereinafter Delgado, Words That Wound]; Richard Delgado, Storytelling For Oppositionists and Others: A Plea For Narrative, 87 MICH. L. REV. 2411, 2412-14 (1989) [hereinafter Delgado, Storytelling]; Delgado, supra note 5, at 574 (on unconscious racism of legal scholars). Delgado thus has written: "It is axiomatic that any social reform program that minorities would find appealing would be based on the express need for understanding and coping with racism." Richard Delgado, The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?, 22 HARV. C.R.-C.L. L. REV. 301, 320 (1987) [hereinafter Delgado, Ethereal Scholar]. When Delgado fails to recognize how racism threatens pluralism, he therefore appears to momentarily forget his own best insight: that in America, racism stands ready to poison the most worthy of intentions.

\(^{16}\) Insofar as Delgado focuses on the nonwhite poor, not only people of color, my emphasis on racism simplifies the problem. Without detracting from the significance of poverty as being an independent source of oppression, however, one can reasonably argue that racism is the predominant problem. For example, outgroups other than African Americans have apparently improved their economic position in American society more consistently than African Americans have been able to do. Cf. Delgado, supra note 8, at 1929 n.1 (poor whites usually outnumber the nonwhite poor, but whites move in and out of poverty in a way that people of color do not) (citing WILLIAM
First, I discuss social psychology research on ways to reduce racism and suggest implications of this research for constitutional and political theory.17 Second, following Mari Matsuda’s recommendation to “look to the bottom,”18 I use the writings of Martin Luther King, Jr. on social and political action as a base for developing a broader theory.19

The social psychology research and King's writings suggest the contours of a reconstructed constitutional and political theory grounded on an understanding of racism. In particular, the civic republican themes of the common good, an open and inclusive political dialogue, and a sense of belonging to a large community (while still identifying with one or more of the various American subcultures) emerge as central components for any approach that might widely and permanently reduce racism. Contrary to Delgado’s argument, political pluralism—because it emphasizes individualism and self-interest—most likely will not lead Americans to any long-term commitments to social justice for the nonwhite poor. On the contrary, pluralism is likely to propagate racism and to weaken efforts made toward social justice. Thus, although the pervasive racism of American society presents an enormous potential pitfall for any civic republican theory, such a theory stands nonetheless as the strongest approach to reducing racism.

I. ON POLITICAL PLURALISM

A. DELGADO’S CONSERVATISM

In Zero-Based Racial Politics,20 Richard Delgado commits to a form of conservatism that strongly resembles public choice theory, the current popular manifestation of political pluralism.21 Public choice theory applies capi-
talist economic theory to political decisionmaking. Individuals (or groups) are viewed as isolated and autonomous subjects who develop and perceive set interests before commencing any political discussion or action. These individuals (or groups) then enter the political marketplace solely to maximize the satisfaction of their preexisting private interests. As Daniel Farber and Phillip Frickey write: "The heart of the economic approach [to political decisionmaking] is the assumption that self-interest is the exclusive causal agent in politics." Moral values, religious beliefs, ideological commitments, and empathetic care for others never significantly motivate citizens.

One engages in political discussion, consequently, only for purely instrumental reasons: to maximize the satisfaction of one's preexisting self-interest. Discussion between citizens never amounts to more than negotiation—an effort to form coalitions by bargaining and exchanging support with others. Political discussion and action, in other words, are neither central to one's existence in a political community nor a means of personal or communal transformation. One does not discuss political issues with others to broaden one's perspective, to question one's assumptions, and potentially to transform one's political viewpoints and interests. Instead, all individuals and groups participate in politics only to fulfill their preexisting self-interest.

This self-interested struggle is largely unprincipled since pluralism condones the exercise of raw political power. The political marketplace thus often becomes a battleground: to garner political power, one can compromise, gosd, and coerce others. Ethical values are relative. At the individual

II 1 (1989) (defining public choice theory). Gary Becker writes: "The economic approach to political behavior assumes that actual political choices are determined by the efforts of individuals and groups to further their own interests." Gary Becker, A Theory of Competition Among Pressure Groups for Political Influence, 98 Q.J. Econ. 371, 371 (1983). Becker adds: "Just as managers of firms are hired to further the interests of owners, so too are politicians and bureaucrats assumed to be hired to further the collective interests of pressure groups, who fire or repudiate them by elections and impeachment when they deviate excessively from these interests." Id. at 396; accord Sam Peltzman, Toward a More General Theory of Regulation, 19 J.L. & Econ. 211, 212 (1976). Delgado writes that conservatives emphasize "self-reliance, the free marketplace, and as little governmental intervention as possible." Delgado, supra note 8, at 1940.

22. See supra note 21.

23. FARBER & FRICKEY, supra note 21, at 23-24; see Tom Tyler, Justice, Self-Interest, and the Legitimacy of Legal and Political Authority, in BEYOND SELF-INTEREST 172 (Jane J. Mansbridge ed., 1990) (public choice theories "assume that people seek to maximize their short-term material self-interest").

24. Benjamin Barber defines pluralism as follows: "[P]luralist democracy resolves public conflict in the absence of an independent ground through bargaining and exchange among free and equal individuals and groups, which pursue their private interests in a market setting governed by the social contract." BENJAMIN BARBER, STRONG DEMOCRACY 143 (1984) (emphasis omitted).

25. Robert Dahl typifies this pluralistic perspective: "If unrestrained by external checks, any given individual or group of individuals will tyrannize over others." ROBERT DAHL, A PREFACE TO DEMOCRATIC THEORY 6 (1956).
level, the ultimate moral standard is one's personal preferences, while at the communal level, the only legitimate measure for choosing between competing values is the political process itself. In determining the substantive values and goals of the community, no criterion of validity stands higher than acceptance by the people in the political arena.

Delgado follows the lead of Derrick Bell by linking the pluralist emphasis on self-interest with the issue of social justice for racial minorities. Bell's interest-convergence thesis holds that African Americans historically have gained social justice only when their interests happen to converge with the interests of the white majority. For example, Bell argues that the Supreme Court decided Brown v. Board of Education not because it was morally or legally right, but because it coincided with the interests of middle- and upper-class whites. Delgado pushes beyond Bell's thesis by suggesting that the nonwhite poor are most likely to gain social justice if they expressly argue that such social justice will promote white self-interest. The difference between Bell and Delgado, then, is that Bell focuses on self-interest to articulate a largely historical and descriptive thesis—that African Americans historically have gained social justice when black and white interests have converged—while Delgado focuses on self-interest as the primary means to convince and to motivate the white majority to provide social justice in the future. Delgado thus draws more directly than Bell on pluralism and public choice theory. To Delgado, people are motivated primarily by their desire to satisfy their self-interest. Therefore, the best way to convince an individual or group to pursue a particular political goal is to elucidate how pursuit of that goal will maximize the satisfaction of that individual or group's own

26. "'Values' turn out to be the incomprehensible, rationally indefensible thing that the individual chooses when he or she has thrown off the last vestige of external influence and reached pure, contentless freedom." ROBERT BELLAH ET AL., HABITS OF THE HEART 79-80 (1985); see also id. at 75 (defining selfhood as the ability to choose one's own values).

27. Bell writes: "The degree of progress blacks have made away from slavery and toward equality has depended on whether allowing blacks more or less opportunity best served the interests and aims of white society." DERRICK BELL, RACE, RACISM AND AMERICAN LAW 39 (2d ed. 1980). Similarly, Malcolm X states: "Uncle Sam has no conscience. They don't know what morals are. They don't try and eliminate an evil because it's evil, or because it's illegal, or because it's immoral; they eliminate it only when it threatens their existence." Malcolm X, The Ballot or the Bullet, (April 3, 1964) in MALCOLM X SPEAKS 23, 40 (George Breitman ed., 1965).


30. See Delgado, supra note 8, at 1940-45 (arguing specifically that conservative principles are a "better source of succor for the poor" than previously thought). Delgado initially appealed to self-interest in an earlier article: "Tempering romanticism with watchfulness, [any society seeking to promote minority well-being] would instead effect change through appeals to citizens' self-interest by arguing that power and resource realignments benefit everyone." Delgado, Ethereal Scholar, supra note 15, at 321.
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self-interest.\textsuperscript{31}

Delgado consequently proceeds to explain how social justice for the nonwhite poor promotes the self-interest of conservatives. He opens his argument with a brief logical appeal to conservatives. Conservatives are committed to the operation of a free economic marketplace, yet the ability or means to enter the market is, according to Delgado, a "logical precondition"\textsuperscript{32} to the functioning of the market. Since the "abject always-poor"\textsuperscript{33} have never had "the wherewithal to compete"\textsuperscript{34} or even to participate in the marketplace, "conservatives must support a certain minimum level of public services for the poor."\textsuperscript{35} Delgado quickly adds that conservatives are not merely "logically bound"\textsuperscript{36} to provide social justice, but also "should be strongly motivated to do so"\textsuperscript{37} because of their own self-interest. In particular, Delgado asserts that social justice for the nonwhite poor would promote conservative interests in three ways. First, if the nonwhite poor had the resources needed to participate in the economic marketplace, conservatives would be less likely to personally fall victim to violent crime.\textsuperscript{39} Second, on a broader scale, social justice likely would reduce the possibility of a violent revolution.\textsuperscript{40} Finally, if the nonwhite poor were to become employed contributors in the economic marketplace, the United States would be better able to "meet the threat of foreign competition."\textsuperscript{41}

Delgado concedes that a potential weakness in his thesis is that "some on the political right hold a visceral dislike for the poor: their perceived sexuality, high reproductive rate, music, and disinclination to work."\textsuperscript{42} This concession is Delgado's only hint in Zero-Based Racial Politics that racism may undermine his affirmative argument for political pluralism. Interestingly, at the outset, Delgado deflects this criticism by writing that some conservatives "hold a visceral dislike for the poor,"\textsuperscript{43} not the nonwhite poor. He then re-

\textsuperscript{31} Bell occasionally also suggests that his interest-convergence thesis is not merely a historical observation. For example, Bell notes that the briefs of the NAACP and the federal government in \textit{Brown} argued that desegregation would help promote national interests in foreign affairs. See \textit{Bell}, supra note 5, at 62.

\textsuperscript{32} Delgado, supra note 8, at 1941 n.77 (emphasis omitted).

\textsuperscript{33} \textit{Id.} at 1941.

\textsuperscript{34} \textit{Id.}

\textsuperscript{35} Delgado writes: "One who, from birth, lacks a minimum level of acculturation and training will be unable to make exchanges and effectively will be excluded from the marketplace." \textit{Id.}

\textsuperscript{36} \textit{Id.} at 1942.

\textsuperscript{37} \textit{Id.}

\textsuperscript{38} \textit{Id.} at 1942-43.

\textsuperscript{39} \textit{Id.} at 1943.

\textsuperscript{40} \textit{Id.}

\textsuperscript{41} \textit{Id.; see id.} at 1944 (American business needs a well-trained workforce). Delgado next argues that bankruptcy laws, both from a social utility and a humanitarian perspective, are a precedent for providing social justice. See \textit{id.} at 1943-44.

\textsuperscript{42} \textit{Id.} at 1945.

\textsuperscript{43} \textit{Id.} (emphasis added).
sponds to this potential weakness in his approach in two ways. First, he notes that not all conservatives harbor these feelings; “at least some conservatives are eager to help nonwhites who are struggling to rise.”44 Second, he again appeals to conservative self-interest by noting that the interests and values of conservatives and the nonwhite poor converge in several ways. For example, according to Delgado, both groups should oppose environmental protections and cuts in military spending.45 Thus, Delgado concludes, conservatives “should support social welfare programs for nonwhites because . . . it is in their self-interest to do so.”46

B. CRITICIZING DELGADO’S CONSERVATISM

One of the most serious drawbacks to pluralistic theories, such as Delgado’s, is the dubious validity of its central assumption: “that self-interest is the exclusive causal agent in politics.”47 The narrow focus on self-interest represents a misleading and dangerous “[m]otivational reductionism”48 that portrays people, in Amartya Sen’s words, as “rational fools.”49 Sen writes: “The purely economic man [of pluralism] is indeed close to being a social moron.”50 People frequently act for an uncertain mix of reasons, including self-interest but also less egoistic purposes.51 Sen colorfully illustrates the

44. Id.
45. Id. Delgado adds that both groups also oppose the use of drugs, favor strong families, and emphasize religious values. Id. Some of these supposedly overlapping interests and values appear extremely tenuous. For instance, with regard to religion, most conservatives and nonwhite poor are undoubtedly Christians, yet they may have very different phenomenological conceptions of Christian values. Also, with regard to military spending, conservatives might oppose reductions in order to protect their privileged position in the world, while the nonwhite poor might oppose reductions because the military currently provides potential employment. If, however, resources were allocated to create other jobs for the nonwhite poor that did not pose the risk of sacrificing their lives for the rest of American society, I would expect that concerns about military spending would diminish rapidly.
46. Id. at 1940. In a final footnote, Delgado writes: “To be specific: the right should court and recruit minority poor and the nonwhite poor should appeal to principled conservatives for support for social welfare programs essential to equal opportunity and cultural capital, such as school reform, job training, and improved neighborhood services, including sanitation and police protection.” Id. at 1948 n.111.
47. FARBER & FRICKEY, supra note 21, at 23-24.
50. Id. (emphasis omitted).
51. See FARBER & FRICKEY, supra note 21, at 32-33 (discussing varying motives for legislators’ actions); Robyn M. Dawes et al., Cooperation for the Benefit of Us—Not Me, or My Conscience, in BEYOND SELF-INTEREST supra note 48, at 97, 110 (unselfish behavior motivated by joy of doing something well for its own sake); Christopher Jencks, Varieties of Altruism, in BEYOND SELF-INTEREST supra note 48, 53, 53-54 (unselfish behavior motivated by concern for long-term welfare of others); Jane J. Mansbridge, The Rise and Fall of Self-Interest in the Explanation of Political Life, in BEYOND SELF-INTEREST supra note 48, 3, 20-22 [hereinafter Mansbridge, The Rise and Fall] (un-
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absurdities that would follow if people truly acted wholly from self-interest:

[T]he assumption [is] that when asked a question, the individual gives that answer which will maximize his personal gain. How good is this assumption? I doubt that in general it is very good. ("Where is the railway station?" he asks me. "There," I say, pointing at the post office, "and would you please post this letter for me on the way?" "Yes," he says, determined to open the envelope and check whether it contains something valuable.)

Extensive amounts of research suggest that many considerations other than the rational pursuit of self-interest sometimes motivate people to act. For example, the simple act of voting is irrational from an economic standpoint because the costs in time and effort clearly outweigh any potential benefits that are likely to flow from one's single vote, yet many people nonetheless choose to make this economically futile gesture. Moreover, contrary to what many believe, evidence strongly suggests that members of Congress care about the merits of issues and the public interest, not just reelection.

Indeed, studies suggest that ideology, including perception of the public interest, predicts legislative behavior better than self-interest. People act unselfishly for reasons as diverse as honor, justice, and altruism. The Second World War provides a striking example of altruistic actors: the non-Jews who hid and protected Jews during the Nazi occupation of Europe.

selfish behavior motivated by collective welfare). For a discussion of situations where self-interest might play an unusually important role, see David O. Sears & Carolyn L. Funk, Self-Interest in Americans' Political Opinions, in BEYOND SELF-INTEREST supra note 48, 147, 159-61.

52. Sen, supra note 49, at 35.

53. See Jon Elster, Selfishness and Altruism, in BEYOND SELF-INTEREST supra note 48, 44, 45 (discussing forms of behavior not motivated by self-interest); Robert H. Frank, A Theory of Moral Sentiments, in BEYOND SELF-INTEREST supra note 48, 71, 75 (discussing forms of behavior not motivated by material payoffs); Sen, supra note 49, at 41.

54. See Mansbridge, The Rise and Fall, supra note 51, at 14-16 (voters motivated by non-self-interested reasons).


56. FARBER & FRICKEY, supra note 21, at 29-30.

57. See Elster, supra note 53, at 51.

58. See Tyler, supra note 23, at 179 (citing concerns for justice as basis for public behavior).


[A]ltruistic behavior [is] behavior promoting another's welfare that is undertaken for a reason "independent of its effects on [one's] own welfare." That reason can include both duty and love, both commitment to a moral principle regardless of its effects on the welfare of others, and moral or empathetic concern with the welfare of others.

Although most of these “rescuers” risked death, they typically knew that they would receive no material reward for their efforts. Jon Elster comments: “In the state of nature, nobody cares about other people. Fortunately, we do not live in this dismal state.”

Motivations such as altruism usually are considered to be more ennobling than self-interest. Unfortunately, many other factors, far less admirable, also often appear to outweigh or overcome self-interest. As Farber and Frickey note: “There are worse forces in the human psyche than greed.” These forces can range from simple envy, to excessive pride, to a passion for dominating others. But undoubtedly one of the most ignoble forces is racism.

A basic tenet of critical race theory is that America is fundamentally and pervasively racist: many commentators have emphasized that, in America, “we are all racists.” David Sears, a social psychologist, writes: “[I]f there is a single individual in the United States, black, white, red, yellow, or brown, who is not somewhat racist and prejudiced against blacks, this condition strikes me as a remarkable feat of resistance to a quite overwhelming saturation of centuries of cultural socialization.” Even African Americans themselves internalize racist beliefs and attitudes. Roger Wilkins, a black journalist, tersely admits that “America told us we were inferior, and most of

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60. See Oliner & Oliner, supra note 59, at 1 (most rescuers help because of humanitarian considerations alone).
61. Elster, supra note 53, at 44.
63. See Holmes, supra note 48, at 277-80 (discussing various passions); cf. Quirk, supra note 55, at 199 (stressing importance of looking to sources other than self-interest).
64. In this light, the pluralistic appeal to self-interest appears less cynical and borders on romantic hopefulness.

Interests are ignoble, but they also raise the comfort level of social interaction. The self-interested agent is “cool and deliberate.” He is reliable, predictable, calculable, and susceptible to influence by others. An individual who is flushed with a hot passion or in the grip of some abstract principle is more obstinate, less amenable to compromise, and less prone to cooperation than any rational seeker of private advantage. It is much easier to defend oneself against enemies fretting about their interests than against opponents swollen by selfless emotions and inspiring ideals.

Holmes, supra note 48, at 276 (quoting Anthony A. Cooper, Third Earl of Shaftesbury, Characteristicks 116 (1737-1738)) (footnotes omitted).

This more positive view of a politics of self-interest may, in part, explain Delgado’s commitment to conservatism. The world would be a simpler place if the nonwhite poor merely had to demonstrate to conservatives how their interests converged in order to gain social justice. But racism is too pervasive and strong in American society for this happy solution.

us believed it.”

In an influential article on unconscious racism, Charles Lawrence writes:

[R]acism in America is much more complex than either the conscious conspiracy of a power elite or the simple delusion of a few ignorant bigots. It is part of our common historical experience and, therefore, a part of our culture. It arises from the assumptions we have learned to make about the world, ourselves, and others as well as from the patterns of our fundamental social activities.

Racism, in other words, is “so deeply ingrained in our culture” that we, in effect, become racist just by living in America. Thus, Lawrence continues, racism is not manifested only by intentionally discriminatory acts, but also by preconscious or unconscious beliefs and attitudes: “We attach significance to race even when we are not aware that we are doing so.” Sears adds:

[A]ntiblack affect is acquired fairly early in life, according to numerous studies of children’s racial socialization. It is probably acquired nonverbally in many cases, with or without direct interracial contact. It is a spontaneous and direct affect, perhaps without strong cognitive mediation.... It may be experienced subjectively as fear, avoidance and a desire for distance, anger, distaste, disgust, contempt, apprehension, unease, or simply dislike.

Moreover, American racism is an especially pernicious form of prejudice because it entails hierarchical oppression. Racism, by definition, attempts to justify white domination and the subjugation of racial minorities. In the words of Mari Matsuda: “Racism... comprises the ideology of racial supremacy and the mechanisms for keeping selected victim groups in

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68. ROGER W. WILKINS, A MAN’S LIFE: AN AUTOBIOGRAPHY 47 (1982); see id. at 46-47, 183-84; Matsuda, supra note 65, at 2339-40; Albert Ramirez, Racism Toward Hispanics: The Culturally Monolithic Society, in ELIMINATING RACISM supra note 2, 137, 148; Triandis, supra note 3, at 36. Matsuda observes that not only are we all racist, but we are all victims of racism. Matsuda, supra note 18, at 391.
69. Lawrence, supra note 5, at 330.
70. Id. at 323.
71. Id. at 330. Malcolm X states:

Why, here in America, the seeds of racism are so deeply rooted in the white people collectively, their belief that they are ‘superior’ in some way is so deeply rooted, that these things are in the national white subconsciousness. Many whites are even actually unaware of their own racism....

MALCOLM X, supra note 1, at 362-63.
72. Sears, supra note 67, at 70.
73. Derrick Bell writes that racism includes “the inherent sense that white people represent a higher and better order of humanity than do blacks.” BELL, supra note 27, at 42; see R. MILES, RACISM 3, 10 (1989); Phyllis A. Katz & Dalmas A. Taylor, Introduction, in ELIMINATING RACISM supra note 3, 1, 6-7.
subordinated positions.” Matuda, supra note 65, at 2332. Likewise, Matuda adds: “Racism is more than race hatred or prejudice. It is the structural subordination of a group based on an idea of racial inferiority.” Id. at 2358.

75. See Sears, supra note 67, at 62-63; Sears & Funk, supra note 51, at 150-59.


77. See Oliner & Oliner, supra note 59, at 160 ("self-interest is likely to be accentuated under conditions of severe threat").

78. Turner writes:

Where the ingroup-outgroup division is maintained, intergroup cooperation may nevertheless take place and be continued for purely instrumental reasons. However, there is no reason to assume in this case that this will produce lasting improvements in intergroup relations. On the contrary the expected rewards may provide external justifications of the intergroup behavior which make changes in private intergroup attitudes unnecessary. As soon as the immediate goal is achieved, the ingroup-outgroup division may tend to reproduce perceived conflicts of interests and partisan social attitudes between the groups.

Turner, supra note 76, at 99.

The difficulties of developing trust and cooperation and society itself on the sands of self-interested individuals pursuing their own gain are extreme. Contractual society is society perpetually in danger of breaking down. Perhaps what are needed for even adequate levels of social cohesion are persons tied together by relations of concern and caring and empathy and trust rather than merely by contracts it may be in their interests to disregard.80

II. ON CIVIC REPUBLICANISM

Because of the importance of the "republican revival" in constitutionalism destroys the community that is necessary for long-term cooperation. See id. at 593-95. Muzafer Sherif, a social psychologist, writes: "Intergroup conflicts are never resolved so long as the conflicting parties appraise and orient their actions within the confines of their own interests and standards." MUZAFER SHERIF, GROUP CONFLICT AND CO-OPERATION 173 (1966). During the Second World War, people who refused to help Jews often had parents who tended to emphasize economic competence; the criteria of economic usefulness thus dominated social relationships. See OLINER & OLINER, supra note 59, at 160-61.

80. Virginia Held, Mothering versus Contract, in BEYOND SELF-INTEREST supra note 48, 287, 296 (footnote omitted). Delgado's conservatism and political pluralism, in general, are open to many other criticisms. For example, Delgado could be criticized just for being inconsistent and for overlooking his own best insights. In many previous articles, Delgado, one of the leading critical race theorists, has emphasized that racism is pervasive and cultural. See supra note 15 and accompanying text.

One can also strongly argue that political pluralism inevitably leads to a process-based constitutional jurisprudence, such as John Hart Ely's representation-reinforcement theory, see ELY, supra note 3, and that a process-based theory necessarily causes the substantive needs and values of minorities to remain unsatisfied. See Feldman, Weber's Theory of Law, supra note 3, at 229-47 (illustrating significance of Weber's theory in context of modern constitutional law).


To see contractual relations between self-interested or mutually disinterested individuals as constituting a paradigm of human relations is to take a certain historically specific conception of 'economic man' as representative of humanity. And it is, many feminists are beginning to agree, to overlook or to discount in very fundamental ways the experience of women.

Held, supra, at 288. This type of feminist critique stresses the historical contingency of pluralism. Cf. Feldman, Republican Revival/Interpretive Turn, supra note 4 (on the historical development of pluralism); Holmes, supra note 48 (on the historical development of the commitment to self-interest in general).

Some feminists have linked the individualist assumptions of pluralism and capitalism to psychosexual development. Naomi Scheman writes: "[T]he view of a separate, autonomous, sharply individuated self embedded in liberal political and economic ideology and in individualist philosophies of mind can be seen as a defensive reification of the process of ego development in males raised by women in a patriarchal society." Naomi Scheman, Individualism and the Objects of Psychology, in DISCOVERING REALITY: FEMINIST PERSPECTIVES ON EPISTEMOLOGY, METAPHYSICS, METHODOLOGY, AND PHILOSOPHY OF SCIENCE 225, 235 (Sandra Harding & Merrill B. Hintikka eds., 1983); see id. at 235-37 (discussing gender differences in the development of the self).
Delgado considers whether civic republicanism—which he refers to as dialogic communitarianism—would lead to social justice for the nonwhite poor. While many “new republicans” differ on specific details of republican theory, they agree on the importance of several concepts that emerge from classical and Renaissance republican thought. Most new republicans emphasize that citizens should not be envisioned as free and atomistic individuals who merely seek to satisfy their own interests. Rather, citizens must always be understood to exist within political communities. The central political activity within a community is dialogue: politics, for the republicans, becomes a deliberative process, not an unprincipled battle for raw power. Citizens, that is, do not merely negotiate, they attempt to listen and to respond to the concerns of others. And the goal of the political dialogue is to identify the communal or


82. See Delgado, supra note 8, at 19379-40. Delgado cites the following authors as representative of dialogic communitarianism: ALASDAIR MACINTYRE, AFTER VIRTUE (2d ed. 1984); Frank Michelman, Foreword, supra note 3; and MICHAEL SANDEL, LIBERALISM AND THE LIMITS OF JUSTICE (1982). Delgado relies heavily, however, on Joel F. Handler, Dependent People, the State, and the Modern/Postmodern Search for the Dialogic Community, 35 U.C.L.A. L. REV. 999 (1988), as articulating the dialogic communitarian position on social welfare. See Delgado, supra note 8, at 1938-39 (Handler argues aid to the poor is necessary to the idea of community, and necessary to include the poor in social decisionmaking).

In constitutional jurisprudence, the leading new republicans are probably Cass Sunstein, Bruce Ackerman, and Frank Michelman. See supra note 4 (citing articles by these theorists); see also Feldman, Republican Revival/Interpretive Turn, supra note 4 (discussing these theorists). Perhaps, the key books that precipitated the republican revival in constitutional jurisprudence were BERNARD BAILYN, THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION (1967); J.G.A. POCOCK, THE MACHIAVELLIAN MOMENT (1975); and GORDON WOOD, THE CREATION OF THE AMERICAN REPUBLIC, 1776-1787 (1969).

83. Aristotle is the definitive classical republican, while Machiavelli is the definitive Renaissance republican. See POCOCK, supra note 82, at 66-80 (describing Aristotelian republicanism); Feldman, Republican Revival/Interpretive Turn, supra note 4.

84. See, e.g., Ackerman, Storrs Lectures, supra note 4, at 1022. Michelman emphasizes the concept of paideia, which is a community’s “process of collective enlightenment of its members through their reflections on their shared cultural inheritance, and their way of living well through engagement in that process.” Michelman, Foreword, supra note 4, at 13 n.44; see Robert M. Cover, Foreword: Nomos and Narrative, 97 HARV. L. REV. 4 (1983). Sunstein writes that the political process is “one of collective self-determination.” Sunstein, Naked Preferences, supra note 4, at 1694. For a discussion of the importance of community to republican thought, see Paul W. Kahn, Community in Contemporary Constitutional Theory, 99 YALE L.J. 1, 18-43 (1989) (discussing how Ackerman, Michelman, and Sunstein use community to explain constitutional authority). Cf. Sandel, supra note 82 (how the concept of community undermines liberalism); see also Mari J. Matsuda, Liberal Jurisprudence and Abstracted Visions of Human Nature: A Feminist Critique of Rawls’ Theory of Justice, 16 N.M. L. REV. 613, 624-28 (1986) (criticizing Rawls’s individualism from a feminist perspective).

85. See, e.g., Ackerman, Constitutional Politics, supra note 4, at 455, 525; Michelman, Foreword, supra note 4, at 33-36, 75-76; Michelman, Law’s Republic, supra note 4, at 1524; Sunstein, Naked Preferences, supra note 4, at 1694; Sunstein, Beyond, supra note 4, at 1548-51.
common good. Indeed, the overarching distinction between pluralistic and civic republican political theories lies in their respective visions of the purpose of government. For pluralism, the purpose of government is to satisfy private interests, while for republicanism, the purpose is to pursue the common good.

The criticism most often leveled against civic republican theories is that the emphases on community and the common good might lead to oppression. In seeking a consensus on the content of the common good, critics argue, the majority will pressure divergent minorities to conform to majority viewpoints. And if some minorities refuse to conform, they will then be excluded from further participation in the communal dialogue. In short, minorities either must conform or be excluded from the community. In the words of Farber and Frickey, republican theories contain a “potentially totalitarian tendency to subordinate individuals to the public good, as defined by governmental elites.”

Unfortunately, history supplies numerous examples where the republican potential for oppression has been fulfilled. Stephen Holmes provides an especially gruesome illustration:

Think . . . of those Catholic zealots in medieval France, described by Montesquieu, who rushed onto the scaffold where a Jew was about to be executed for having blasphemed the Virgin Mary: they subdued the public executioner and used their knives to peel off the sinner’s skin. They were not acting from egoistic motives, but for the common good—as they saw it.

The framing of the American Constitution itself furnishes another chilling example of how the supposedly communal pursuit of the common good can lead to violent oppression. The framers believed themselves to be deliberating about the common good of America, and how that common good should be embodied and protected in a constitution. Furthermore, they empha-

86. See, e.g., Ackerman, Storrs Lectures, supra note 4, at 1022, 1033; Sunstein, Naked Preferences, supra note 4, at 1689-94.
88. FARBER & FRICKEY, supra note 21, at 47.
90. See THE FEDERALIST No. 37, at 231 (James Madison) (Clinton Rossiter ed., 1961) (framers rose above usual private and partial interests for the public good). Herbert Storing wrote:

The Constitution of the United States was viewed by the founding generation as distinctive, even unique, in the extent to which it was the product of deliberation. Most previous foundings seemed to have been the result of chance or the edict of one all-powerful man.
sized repeatedly that the purpose of government is to pursue the public or common good of the political community. Nonetheless, in a striking and infamous sacrifice of African Americans, the framers legalized the institution of slavery.

Reflecting the firm epistemological belief in objectivity that typified the eighteenth century, the framers conceived of the common good as objective—as the "true interest" of the people that was somehow "out there" yet knowable. Publius, writing in *The Federalist*, reasoned that some groups of people, including African Americans, are so incapable of perceiving the objective common good that they can be justifiably excluded from the

But the United States Constitution was framed by a numerous and diverse body of statesmen, sitting for over three months; it was widely, fully, and vigorously debated in the country at large; and it was adopted by (all things considered) a remarkably open and representative procedure.


91. See, e.g., *The Federalist No. 1*, at 33-35 (Alexander Hamilton) (Clinton Rossiter ed., 1961); No. 10, at 82-84 (James Madison) (Clinton Rossiter ed., 1961); No. 31, at 194 (Alexander Hamilton) (Clinton Rossiter ed., 1961). For example, Madison wrote:

"The public good, the real welfare of the great body of the people, is the supreme object to be pursued; and that no form of government whatever has any other value than as it may be fitted for the attainment of this object. Were the plan of the convention adverse to the public happiness, my voice would be, Reject the plan."


The constitutional text states that the Constitution and the government should promote and provide for the "general welfare." U.S. CONST. pmbl.; U.S. CONST. art. I, § 8, cl. 1; see also *The Declaration of Independence* para. 3 (U.S. 1776) (laws for the "public good").

92. This sacrifice of the interests of African Americans is but one example of what Derrick Bell has summarized in his principle of involuntary sacrifice: "black interests are often sacrificed so that identifiably different groups of whites may settle a dispute and establish or reestablish their relationship." Bell, *supra* note 27, at 30. See, e.g., KARST, *supra* note 7, at 58, 62-63 (discussing white compromises of black interests during the Civil War and Reconstruction); C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* 70-71, 82-83 (3d ed. 1974) (examples of different groups of whites reconciling conflicts at expense of African Americans). For a list of the many constitutional provisions that condoned slavery, see Bell, *supra* note 5, at 34-35.


96. In *The Federalist Number 10*, Madison consequently equates the common good with "the permanent and aggregate interests of the community." THE FEDERALIST No. 10, at 78 (James Madison) (Clinton Rossiter ed., 1961) (emphasis added); accord THE FEDERALIST No. 63, at 383 (probably James Madison) (Clinton Rossiter ed. 1961) (equates public good with the "collective and permanent welfare" of the country); Letter from James Madison to Thomas Jefferson (Oct. 24, 1787) in 1 THE FOUNDER'S CONSTITUTION, at 647 (Philip B. Kurland & Ralph S. Lerner eds., 1987) (contrasts private interests with "the general and permanent good of the whole").
deliberations within the political community.\textsuperscript{97} Once these diverse voices were politically silenced, Publius could observe that the (remaining) American people were unusually homogeneous.\textsuperscript{98} The framers thus envisioned a political community distinguished by consensus among members and closure to all others, and the Constitution enforced this vision by sanctioning the legal subjugation of racial minorities.\textsuperscript{99}

Undoubtedly, then, civic republican theories can be manipulated to rationalize the most heinous and oppressive political acts. Delgado explains and concretely elaborates this criticism of civic republicanism by drawing upon social psychological research on prejudice.\textsuperscript{100} In particular, Delgado draws upon the so-called "contact theory," which Gordon Allport definitively stated in 1954:

\begin{quote}
Prejudice . . . may be reduced by equal status contact between majority and minority groups in the pursuit of common goals. The effect is greatly enhanced if this contact is sanctioned by institutional supports (i.e., by law, custom or local atmosphere), and provided it is of a sort that leads to the perception of common interests and common humanity between members of the two groups.\textsuperscript{101}
\end{quote}

\begin{footnotes}
\item[97.] See The Federalist No. 54, at 336-41 (James Madison) (Clinton Rossiter ed., 1961) (accepting Southerners' argument for characterization of African Americans as both property and persons); cf. White, supra note 95, at 213-17 (elitism was an important element in shaping the Constitution).
\item[98.] See The Federalist No. 2, at 38 (John Jay) (Clinton Rossiter ed., 1961) (describing the cultural and historical unity of the American people).
\item[99.] For a discussion of the historical development of the legal subjugation of the American Indians, see Robert A. Williams, Jr., The American Indian in Western Legal Thought (1990). But cf. Thomas L. Pangle, The Spirit of Modern Republicanism 46-47 (1988) (arguing that Publius rejected the pressure to conform that typified classical republicanism).
\item[100.] See Delgado, supra note 8, at 1939-40. Delgado writes:

\begin{quote}
The dialogue between the poor (or their representatives) and the rest of society can only take place against a background of radical inequality. One group will be largely white, educated, and middle class, while the other group will be largely nonwhite and poorly educated. Social science writing on deinstitutionalized, dialogic arrangements shows that informality increases preexisting power differentials among participants and the risk that outcomes will be affected by biases. Moreover, communitarians are only human; as many of them recognize, dialogue is smoother and more enjoyable when carried on with persons like oneself. When the participants are diverse, they must talk across a chasm of unshared experiences and cultural meanings.
\end{quote}

\end{footnotes}

\textit{Id.} at 1939 (footnotes omitted).\textsuperscript{101}

\begin{footnotes}
\item[101.] Gordon Allport, The Nature of Prejudice 281 (25th Anniversary ed. 1979) (text unchanged from original 1954 ed.). Delgado does not explicitly cite Allport in Zero-Based Racial Politics, but Delgado cites one of his own earlier articles in which he relied extensively upon Allport. Delgado, supra note 8, at 1939 n.67 (citing Delgado et al., Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution, 1985 Wis. L. Rev. 1359 [hereinafter Delgado, Fairness and Formality]). In Fairness and Formality, Delgado discusses Allport's contact theory extensively. See Delgado, Fairness and Formality, supra, at 1382, 1384-86. Although Allport's statement of the contact theory is the one most often cited and quoted, he was not the first

All civic republican theories rely upon a communal dialogue to identify the common good. According to the contact theory, however, contact between different societal groups can reduce prejudice only if they interact on an equal footing. Because of the pervasive racism in American society, however, the communal dialogue of republicanism must take place, in Delgado's words, "against a background of radical inequality." Therefore, according to the contact theory, the social contact and dialogue of political deliberation is unlikely to reduce prejudice, or more specifically, racism; indeed, such unequal contact very well may increase prejudice. Any conception of the common good that might emerge from such a skewed dialogue is likely to manifest the preexisting inequalities of racism. Moreover, Delgado adds, racism calls into question the possibility of even having a communal dialogue. Social science research suggests that people "strongly prefer to associate with those like themselves."

Delgado's relating of racism to civic republican theory helps elucidate the framing of the Constitution. In short, the power of racism permitted and even encouraged the framers to condone slavery despite their supposed commitment to political deliberation and the pursuit of the common good. Many of the framers understood that slavery was immoral, and hence they attempted to buffer themselves against future moral condemnation by omitting the word "slavery" from the constitutional text, as if that omission somehow minimized the institutionalized domination that the new Constitution upheld. Moreover, the framers struggled to justify their immoral act and to assuage their own consciences by characterizing the sacrifice of African-Americans as a necessary political compromise to save the Union. Nevertheless, even the most liberal abolitionists rarely imagined a society where

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102. Delgado, supra note 8, at 1939.

103. See id.; Delgado, Ethereal Scholar, supra note 15, at 312-14 (Critical Legal Studies' utopian community would not serve needs of minorities because minorities are not yet recognized as coequal members of society and there are no safeguards against racism in a utopian community).


106. See Lynd, supra note 105, at 128; see, e.g., U.S. CONST. art. I, § 1, cl. 3; cf. THE FEDERALIST No. 54 (when discussing slavery, Publius attributed views to Southerners, not the framers in general).

107. See BELL, supra note 5, at 26-42 (recreating constitutional convention in which African-American woman from twentieth century attempts to dissuade framers from preserving slavery); Lynd, supra note 105, at 115-31.
blacks and whites would live harmoniously as fellow citizens.108

III. TAKING RACISM SERIOUSLY: TOWARDS A RECONSTRUCTED CONSTITUTIONAL AND POLITICAL THEORY

Racism appears to undercut both pluralism and civic republicanism, the two leading constitutional and political theories. Indeed, the pervasiveness of American racism threatens to cripple any constitutional and political theory that does not, at the outset, focus on reducing and eliminating racism. Moreover, so long as racism continues its prevalent role in America, the non-white poor will fail to achieve social justice. Consequently, the purpose of this Part of the article is to begin developing a theory built upon an understanding of racism and how it can be reduced.109

Two sources are used to initiate the reconstruction of constitutional and political theory grounded on reducing racism. The first source is research from social psychology discussing methods to reduce prejudice and racism. This research is significant in three ways: it shows that the goal of reducing racism is realistic because, under the proper conditions, racism can indeed be diminished;110 it suggests which societal conditions and mechanisms can help achieve that goal; and therefore, it implicitly suggests a framework or structure for a constitutional and political theory that would effectively contribute to reducing racism.111

The second source supporting the reconstruction of constitutional and political theory is the writings of Martin Luther King, Jr. By relying on King, I hope to minimize the likelihood that my reconstructed theory will

108. See Lynd, supra note 105, at 129-30. Many, such as Thomas Jefferson, believed that African Americans lacked the civic virtue necessary for participating in the civic republican dialogue. See Lawrence Bobo, Group Conflict, Prejudice, and the Paradox of Contemporary Racial Attitudes, in ELIMINATING RACISM, supra note 3 at 85, 104-05. Moreover, many framers owned slaves. See, e.g., D. ROBINSON, SLAVERY IN THE STRUCTURE OF AMERICAN POLITICS 1765-1820 209-10 (1970) (Madison as slave owner).


110. Delgado apparently agrees that racism can be reduced. See, e.g., Delgado, Words That Wound, supra note 15, at 148-49 (one reason for recognizing a tort against racism is that such a tort would help to eradicate racism); Richard Delgado & Jean Stefancic, Derrick Bell's Chronicle of the Space Traders: Would the U.S. Sacrifice People of Color if the Price Were Right?, 62 U. COLO. L. REV. 321, 322 (1991) (our culture may yet free itself from racism). But cf. BELL, supra note 5, at 160-61 (first argues that a "common crisis" will help reduce racism, but then questions whether reducing racism is likely to happen at all).

111. Cf. Wilson, TRULY DISADVANTAGED, supra note 9, at 132-33 (changes in societal institutions, including politics, affect race relations); see also Bernard R. Boxill, Wilson on the Truly Disadvantaged, 101 ETHICS 579-80 (1991) (criticizes Wilson for not emphasizing present racism in explaining the predominantly black underclass).
merely manifest my position in society as a white male.\textsuperscript{112} To articulate a constitutional and political theory grounded on reducing racism, I must struggle to understand and empathize with Malcolm X's statement: "I see America through the eyes of the victim. I don't see any American dream, I see an American nightmare."\textsuperscript{113} King's writings, emanating from his work in the Civil Rights Movement, at least partially provide the foundational insights necessary for building a constitutional and political theory from the bottom up.\textsuperscript{114}

One might immediately criticize this project of reconstructing constitutional and political theory because it appears to overlook what arguably should be the single most important source for any such theory—the Constitution itself. I have noted that the theory will be built upon social psychology research and King's writings, but I have not mentioned the Constitution. Nonetheless, this project is rooted deeply in the traditions of American constitutionalism. In particular, Publius, although insisting that Americans are virtuous enough to have self-government,\textsuperscript{115} often characterized humans as base and greedy creatures who tend to band into factions that constantly threaten the ends and security of republican government.\textsuperscript{116} The framers, consequently, emphasized a tension between political order and faction—where a faction was any group, whether a minority or a majority, which

\textsuperscript{112} I realize that some have criticized King for being especially attractive to whites for rather unappealing reasons. For example, Hanes Walton writes: "If [Kenneth] Clark is right, the reason for widespread acceptance of King's philosophy among liberal and moderate whites is that it is consistent with the stereotype of the black man as long-suffering, meek, and more apt to resort to prayer than take decisive action against injustice." HANES WALTON, THE POLITICAL PHILOSOPHY OF MARTIN LUTHER KING, JR. 99 (1971) (footnote omitted); cf. Cook, \textit{supra} note 9, at 74-76 (people in power reinterpret King so that his revolutionary thrust is lost). My argument, however, is based on reading King as more radical than is ordinarily acknowledged. See JAMES H. CONE, MARTIN AND MALCOLM AND AMERICA 253-59 (1991) (late in his life, King moved left politically and closer to Malcolm X); Cook, \textit{Beyond Critical Legal Studies, supra} note 19, at 1039-41 (towards the end of his life, King rejected liberalism and moved left politically; thus critical theory can be grounded on King). And of course, many African Americans also find King to be appealing. See, e.g., Cook, \textit{Beyond Critical Legal Studies, supra} note 19, at 1043; Kennedy, \textit{supra} note 19.

\textsuperscript{113} Malcolm X, \textit{supra} note 27, at 26.

\textsuperscript{114} See \textit{supra} note 18 and accompanying text. Mari Matsuda writes that "those who have experienced discrimination speak with a special voice to which we should listen." Matsuda, \textit{supra} note 18, at 324; accord Robin D. Barnes, \textit{Race Consciousness: The Thematic Content of Racial Distinctiveness in Critical Race Scholarship}, 101 \textit{HARV. L. REV.} 1864 (1990) (emphasizing the development of a different voice based on status as racial minority); Katherine T. Bartlett, \textit{Feminist Legal Methods}, 103 \textit{HARV. L. REV.} 829, 872 (1990) ("The experience of being a victim... reveals truths about reality that non-victims do not see.").


opposed the public or common good. The purpose of the Constitution necessarily became the structuring of a stable government that would act for the common good despite the ignobleness of human nature and the resultant fragility of the republic. Madison, in effect, articulated a realistic civic republicanism: “To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed.”

Hence, the effort to focus constitutional and political theory on the reduction of racism emerges as a manifestation of the framers’ own efforts to control and minimize the effects of factionalism. Racism, in other words, is but one form of factionalism, although racism looms as an especially pernicious and widespread form. Thus, insofar as we find that our constitutional tradition of a realistic civic republicanism encourages us to interpret the Constitution to control factionalism, we should also interpret the Constitution to control and minimize racism. But to minimize racism, we must recognize that it differs from other forms of factionalism and therefore might need to be specifically and uniquely confronted.

Only the framers’ own racist attitudes and beliefs prevented them from recognizing the need to address racism as a special form of factionalism. Despite their racism, however, the framers’ efforts to battle factionalism provide the seeds of social justice necessary to reduce racism and to transform American society. Martin Luther King, Jr. once wrote: “The American


118. See The Federalist No. 10, at 81-84 (James Madison) (Clinton Rossiter ed., 1961) (discussing how republican government can cure evils of factions); The Federalist No. 51, at 322 (James Madison) (Clinton Rossiter ed., 1961) (“Ambition must be made to counteract ambition.”).

119. The Federalist No. 10, at 80 (James Madison) (Clinton Rossiter ed., 1961); see The Federalist No. 57, at 350 (James Madison) (Clinton Rossiter ed., 1961) (aim of every constitution is to obtain rulers with the most wisdom and virtue to pursue common good and to establish safeguards to keep rulers virtuous); letter from James Madison to Thomas Jefferson (Oct. 24, 1787) in 1 The Founders’ Constitution, at 644 (Philip B. Kurland & Ralph Lerner eds., 1987).

120. See supra text accompanying notes 105-108 (on the framers’ racism). Madison believed that “the most common and durable source of factions [is the] . . . unequal distribution of property.” The Federalist No. 10, at 79 (James Madison) (Clinton Rossiter ed., 1961).

121. Mari Matsuda argues that minorities often adopt mainstream texts and beliefs, which have been tools of oppression, by recognizing the contradictions within those texts and beliefs, and then transforming them to uncover their liberating elements. See Matsuda, supra note 18, at 333-35 (using Frederick Douglass as example); see, e.g., Bell, supra note 5, at 251-54 (suggesting the possibility that the Constitution and American society can be transformed to eliminate economic oppression); Cook, Beyond Critical Legal Studies, supra note 19, at 1015-21 (religion both legitimated and delegitimated authority for African-American slaves). But cf. Bell, supra note 5, at 22 (guarantees of racial equality get transformed into devices to perpetuate the racial status quo).
people are infected with racism—that is the peril. Paradoxically, they are also infected with democratic ideals—that is the hope. While doing wrong, they have the potential to do right. The difficult problem is how to develop and tap that potential to do right. How do we reconstruct political theory and constitutional jurisprudence so that we can begin seriously to reduce racism and to achieve social justice?

A. THE SOCIAL PSYCHOLOGY OF REDUCING RACISM

Although social psychologists have studied and theorized extensively on the causes of prejudice, including racism, there is a surprising dearth of research on how to reduce prejudice. And in the limited number of studies devoted to the reduction of prejudice, one approach—the contact theory or hypothesis—has dominated research for over thirty-five years. The contact theory holds that casual contact between majority and minority groups often increases prejudice against the minority or outgroup. For contact to reduce prejudice, certain conditions must be satisfied. As Allport definitively stated the theory, contact can reduce prejudice only if the social groups have an equal status, pursue a common or superordinate goal, and are supported by institutional sanctions such as legal norms.


125. See Allport, supra note 101, at 263; Triandis, supra note 3, at 41.

126. See supra text accompanying note 101 (quoting Allport's statement of contact hypothesis). Many researchers have elaborated Allport's original statement of the contact hypothesis by suggesting that additional conditions must be satisfied if prejudice is to be reduced. See e.g., Miller & Brewer, supra note 101, at 2; Triandis, supra note 3, at 41. James M. Jones writes:

One of the assumptions of the contact hypothesis is that ignorance and negative inaccurate stereotyping preempt the ability to perceive people as individuals instead of as members of a group that is different. Thus, contact, when properly arranged, can reduce the
For many years, whenever social contact between ingroup and outgroup members failed to reduce prejudice, the ready explanation was that the necessary conditions had not been satisfied. During the last decade, however, some psychologists have begun to question the validity of the contact theory. For example, Turner notes that the mere existence of ingroups and outgroups undermines the possibility of establishing and pursuing a superordinate goal because group membership may independently determine a person's perception of his or her ends. Others have argued that positive interactions between ingroup and outgroup members may reduce prejudice between those individuals, but is unlikely to reduce intergroup prejudice on a broader scale. Indeed, Marilynn Brewer and Norman Miller write: "Ironically, it may be the case that some of the factors that most effectively promote positive intergroup behavior within a given situation actually reduce the probability of generalization to other times and places." Furthermore, researchers have recognized that while the contact theory sometimes successfully reduces prejudice in laboratory-controlled conditions, field studies often yield results contravening the theory. This inconsistency possibly is explained by the tautological nature of the contact theory. For instance, by definition racism entails domination and inequality: in a racist society, therefore, the only way to engender equality is to reduce racism. Yet the contact theory posits that equal status is necessary to reduce racism (as a form of prejudice). If we already had equality, however, then

inaccuracies and, it is apparently implied, can demonstrate that the different group is less different than might have been assumed from a distance.

James M. Jones, Racism in Black and White: A Bicultural Model of Reaction and Evolution, in ELIMINATING RACISM supra note 3, 117, 127.
127. See, e.g., Cook, supra note 124, at 249.
128. See William A. Barnard & Mark S. Benn, Belief Congruence and Prejudice Reduction in an Interracial Contact Setting, 128 J. SOC. PSYCHOL. 125, 125-26 (1987) (evidence supporting contact theory is inconclusive); Michael O'Driscoll et al., Effects of Contact and Perceived Attitude Differences on Social Distance Among Australian, Japanese, and Pakistani Students, 120 J. SOC. PSYCHOL. 163 (1983) (experimental findings fail to support contact theory).
129. See Turner, supra note 76, at 97-98. A superordinate goal is one that is compelling for all in a group and requires cooperative effort. See Allport, supra note 101, at 276-78; DAVID G. MYERS, SOCIAL PSYCHOLOGY 592 (2d ed. 1987).
130. See, e.g., Elliot Aronson & Alex Gonzalez, Desegregation, Jigsaw, and the Mexican-American Experience, in ELIMINATING RACISM supra note 3, 301, 310; Norman Brewer & Marilynn B. Miller, Contact and Cooperation: When Do They Work?, in ELIMINATING RACISM supra note 3, 315, 316-20.
131. Brewer & Miller, supra note 130, at 315 (emphasis in original).
132. Katz & Taylor, supra note 73, at 3-4. Even Allport acknowledged that some individuals resist change despite ideal conditions. Allport, supra note 101, at 279-80.
133. See supra notes 73-74 and accompanying text.
134. Allport did not expressly define equal status, and its definition is still unclear. Allport, supra note 101, at 274-76; see also Aronson & Gonzalez, supra note 130, at 303 (on difficulty of defining equal status); Worchel, supra note 123, at 289-90 (describing study of two possible types of
we would not need to overcome racism—because it would no longer exist.\textsuperscript{135} In short, the contact theory fails to identify a means for reducing racism and instead offers little more than a picture of a nonracist situation or society: members of different social groups would be equal and would together pursue superordinate goals.\textsuperscript{136}

In light of the considerable weaknesses of the contact theory, one may wonder why it has dominated research for so long. One explanation is that white males have largely controlled social psychology, like other academic fields, and that the contact theory therefore reflects a masculine and racist paradigm.\textsuperscript{137} In particular, the equal status component of the contact theory discloses a masculine bias towards individualism and a contractarian view of society. Held writes:

equal status; one in the context of immediate interracial contact and the other in a broader historical context).

135. One might be tempted to respond to this criticism of the contact theory by arguing that we do not need equal status on a societal level in order to establish equal status in a particular contact situation. There are two powerful replies, however, to this argument. First, even if this were true, the contact theory would then be limited to highly controlled laboratory settings and would have little relevance to political theory or action. See \textit{supra} note 132 and accompanying text. Second, research on the contact theory suggests that for contact to reduce prejudice between groups, there must be historical equality and not just equality in the context of the immediate situation. See Worchel, \textit{supra} note 123, at 289-90 (study suggesting importance of historical equality). Thus, Elizabeth Cohen observes that racist expectations and beliefs can prevent equal status interactions even when a laboratory experiment is structured so that whites and African Americans are apparently equal as they begin a cooperative task. Elizabeth G. Cohen, \textit{Interracial Interaction Disability}, 25 \textit{Hum. Rel.}, 23 (1972); Elizabeth G. Cohen & Susan S. Roper, \textit{Modification of Interracial Interaction Disability: An Application of Status Characteristic Theory}, 37 \textit{Am. Soc. Rev.} 643 (1972). Brewer and Kramer write: "[E]qual status at the structural level does not necessarily correspond to equal status at the psychological level . . . . " Brewer & Kramer, \textit{supra} note 123, at 236. Moreover, efforts to redress historical inequality are often perceived as unfair. See Worchel, \textit{supra} note 123, at 289-90.

136. Brewer and Miller write: "True equal status interaction under these conditions is more likely to be a consequence of intergroup acceptance than its cause." Norman Brewer & Marilynn B. Miller, \textit{Beyond the Contact Hypothesis: Theoretical Perspectives on Desegregation}, in \textit{GROUPS IN CONTACT: THE PSYCHOLOGY OF DESEGREGATION} 281, 292 (Norman Miller & Marilynn B. Brewer eds., 1984). See generally Cook, \textit{Beyond Critical Legal Studies}, \textit{supra} note 19, at 1007 ("liberal theory has mistaken the symptoms of the individual's condition for its causes") (emphasis omitted).

137. Katz and Taylor write: "For many years, liberal behavioral scientists developed conceptualizations that may have been more reflective of their own ideologies than of the harsh realities of the problems they were dealing with. Most of these theories were promulgated when psychology was largely an all-white, male discipline." Katz & Taylor, \textit{supra} note 73, at 8; accord Sandra Harding & Merrill B. Hintikka, \textit{Introduction}, in \textit{DISCOVERING REALITY: FEMINIST PERSPECTIVES ON EPISTEMOLOGY, METAPHYSICS, METHODOLOGY, AND PHILOSOPHY OF SCIENCE} ix, xiii (Sandra Harding & Merrill B. Hintikka eds., 1983) (claims to knowledge in the physical and social sciences "are founded on distinctive and often perverse masculine understandings of only masculine social experience"); Ramirez, \textit{supra} note 68, at 153 (racism of social psychologists). See generally THOMAS S. KUHN, \textit{THE STRUCTURE OF SCIENTIFIC REVOLUTIONS} (2d ed. 1970) (on paradigms in natural science); PETER WINCH, \textit{THE IDEA OF A SOCIAL SCIENCE AND ITS RELATION TO PHILOSOPHY} (2d ed. 1990) (emphasizing that social science depends on social context of the investigator).
[Many] persons can imagine human society on the model of "economic man," society built on a contract between rationally self-interested persons, because these are the theories they have been brought up with. But they cannot imagine society resembling a group of persons tied together by ongoing relations of caring and trust between persons in positions such as those of mothers and children where, as adults, we would sometimes be one and sometimes the other.\(^\text{138}\)

The focus on equal status in the contact theory notably mirrors the requirements for a fair contract between individuals: equality of bargaining power is essential to validate agreements as fair and enforceable.\(^\text{139}\) Thus, the contact theory appears to assume a society of isolated and self-interested individuals who interact primarily through contracts. Significantly, this masculine emphasis on the isolated and self-interested individual seriously undermines the supposed purpose of the contact theory: to reduce and eliminate racism and other forms of prejudice. That is, the purpose of the contact theory is to overcome the separatism and conflict inherent in a racist society, but the masculine paradigm underlying the theory reaffirms isolation and competition.\(^\text{140}\) The contact theory, quite simply, is at odds with its own paradigm.\(^\text{141}\)

This critique of the contact theory suggests that a more promising approach to the reduction of racism might arise from a feminist ethic of caring, modeled on the relationship between a mothering parent and child.\(^\text{142}\) An ethic of caring emphasizes an attitude of concern for others: "caring is always characterized by a move away from self."\(^\text{143}\) To maintain such an attitude, one must feel a sense of connection with others and display a

\(^{138}\) Held, supra note 80, at 303-04; cf. Taylor & Katz, supra note 124, at 364 (social psychology has a "strong emphasis on the individual").

\(^{139}\) See Held, supra note 80, at 287, 300.

\(^{140}\) For discussions of how masculine ideology emphasizes separation and competition, see Michael Gross & Mary Beth Averill, Evolution and Patriarchal Myths of Scarcity and Competition, in Discovering Reality: Feminist Perspectives on Epistemology, Metaphysics, Methodology, and Philosophy of Science 71, 71 (Sandra Harding & Merrill B. Hintikka eds., 1983); Harding & Hintikka, supra note 137, at xvi; Evelyn Fox Keller, Gender and Science, in Discovering Reality: Feminist Perspectives on Epistemology, Metaphysics, Methodology, and Philosophy of Science 187, 190-91 (Sandra Harding & Merrill B. Hintikka eds., 1983).

\(^{141}\) "Ethnocentrics are inclined to view relationships primarily in terms of exchanges of goods and material benefits." Oliner & Oliner, supra note 59, at 161 (citing Frenkel-Brunswik, Parents and Childhood, in The Authoritarian Personality 337-89 (T. Adorno et al. eds., 1950)) (footnote omitted). For a discussion linking modern psychology with the political science studies of the 1950s, which emphasized political pluralism, see Sears, supra note 67, at 147-48.

\(^{142}\) See, e.g., Held, supra note 80, at 300.

\(^{143}\) Noddings, supra note 80, at 16; see id. at 28, 94-95 (ethic of caring is based on a moral attitude, not moral judgments); cf. Oliner & Oliner, supra note 59, at 161-64 (rescuers of Jews during the Second World War had learned a concern for others from parents).
willingness to listen, share, and respond to them. Thus, the purpose of dialogue is not just to negotiate, rather it is "to come into contact with ideas and to understand, to meet the other and to care." An ethic of caring is not based on equality of power. To the contrary, the nature of a caring relationship entails inequality—"disparities of power are given." This inequality is neither threatening nor relevant, however, because the purpose of the caring relationship is to "empower" and strengthen the cared-for, the inequity of the relationship is never permanent or invariant. Furthermore, the acceptability of at least temporary inequality is crucial for any psychological or political theory directed towards intervening in and changing a racist and thus radically inegalitarian society such as America. A theory, such as the contact theory, that requires preexisting equality in order to reduce racism is bound to fail. All of which is not to say that an approach based on an ethic of caring would minimize the value of equality, but such an approach would nonetheless emphasize empowerment before equality.

Despite the dominance of the contact theory, social psychological research during the last decade reveals a nascent alternative approach to the reduction of racism, more akin to an ethic of caring. This alternative approach arises from "social identity theory," a theory focusing on the cause of prejudice and intergroup conflict. Social identity theory holds that one's membership in significant social groups or categories largely determines personal identity, values, and perceptions: "ingroup favoritism and outgroup hostility are

144. See NODDINGS, supra note 80, at 186.
145. Id. Dialogue in a caring relationship, in other words, is always potentially transformative. "There is always the possibility in this open and good-seeking dialogue that the one-caring will alter her own views and procedures. She is not by status or knowledge a priori right; she is just one-caring—who wants to do what is right and remains willing to explore the possibilities." Id. at 124; see id. at 182-87 (advocating dialogue as a step toward caring).
146. Held, supra note 80, at 303.
147. See id.
148. Id. at 300 (emphasis omitted).
149. See NODDINGS, supra note 80, at 70. Also, the one-caring always respects the freedom of the cared-for. Id. at 72.
150. See Samuel L. Gaertner & John F. Dovidio, Prejudice, Discrimination, and Racism: Problems, Progress, and Promise, in PREJUDICE, DISCRIMINATION, AND RACISM 315, 323 (John F. Dovidio & Samuel L. Gaertner eds., 1986) ("interracial contact situations cannot often realistically be expected to include many of the prerequisite features [of the contact theory]").
151. It is important to recognize that although inequality is a component of racism, it is not true that whenever we have inequality (as in a relationship of caring), we necessarily have racism. The argument can be phrased in a logical form. It is true that if there is racism, then there is inequality. But it is not true that if there is inequality, then there is racism. Additionally, it is true that if there is no inequality (that is, if there is equality), then there is no racism.
seen as consequences of the unit formation between self and other ingroup members and the linking of one's identity to them.”

The key then to reducing prejudice and racism is to alter category or group boundaries primarily by creating a superordinate group identity. Turner writes: “The most effective social psychological approach may be not so much to seek to manipulate intergroup relations as [to] encourage their transformation into intragroup relations through the creation of common or superordinate social identifications perceived as relevant to the given social context.” By increasing the salience of a superordinate grouping, the same forces that ordinarily produce intergroup conflict operate instead to “promote intergroup acceptance and personalized interactions between the memberships.” According to this theory, superordinate group identity or solidarity enhances cooperative behavior between members of the group regardless of the material consequences for individuals, even when group members belong to sub-groups that may otherwise compete or conflict with each other.

Recognizing that a superordinate group identity reduces racism, while significant, does not of course cure the ills of American society. Before we can...

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The [social identity] theory holds that an individual's personal identity is highly differentiated and based in part on membership in significant social categories, along with the value and emotional significance attached to that membership. When a particular social category distinction is highly relevant or salient in a given situation, the individual will respond with respect to that aspect of his or her social identity, acting towards others in terms of their corresponding group membership rather than their personal identity.

Brewer & Miller, supra note 136, at 281-82.


134. See Gaertner & Dovidio, supra note 150, at 322-23; Miller & Brewer, supra note 153, at 228; Worchel, supra note 123, at 299-300.

135. See Robert Boyd & Peter J. Richerson, Culture and Cooperation, in Beyond Self-Interest supra note 48, 111, 126 (superordinate group identity reduces interracial conflict); Dawes, supra note 51, at 99-101; Gaertner & Dovidio, supra note 150, at 323-25 (increasing salience of membership in common group contributes to feelings of unity); Jones, supra note 126, at 127-29; cf. Steven L. Winter, Contingency and Community in Normative Practice. 139 U. Pa. L. Rev. 963 (1991) (normative conflicts are best resolved by agreement and understanding in an already existing community). For a summary of other approaches to reducing the salience of intergroup boundaries, see Gaertner & Dovidio, supra note 150, at 322-23.


137. Gaertner & Dovidio, supra note 150, at 325. Jones writes that if group boundaries are expanded, “then the powerful forces of the cognitive processing of social information, in-group favoritism, and self-enhancement can promote rather than undermine intergroup relations.” Jones, supra note 126, at 129.

138. See Dawes, supra note 51, at 99 (group identity or solidarity in experiment enhanced cooperative responses in absence of expectations of future reciprocity, current rewards, or punishment).

139. See Gaertner & Dovidio, supra note 150, at 325.
even begin to act, we must identify ways to create and support such a superordinate group. Unfortunately, perhaps because of the longstanding dominance of the contact theory, very few psychologists have yet attempted to explore this problem. Researchers, however, have identified one factor that consistently seems to increase superordinate group solidarity: dialogue. The simple opportunity to discuss issues can increase the likelihood of creating a group identity and of caring for and acting cooperatively with other group members. Most important, the dialogue must be open and inclusive. To generate the superordinate group identity throughout the entire political community, the dialogue must include members from ingroups and outgroups. Otherwise, the outgroup members will again be excluded from the superordinate group.

In sum, the social psychological research, while being far from conclusive, suggests certain elements that need to be part of any constitutional and political theory directed towards reducing racism. Any such theory must emphasize superordinate group identity, or in the political context, belonging to a broadly defined community. Moreover, to encourage communal identification and solidarity, extensive and inclusive political discussion or dialogue is a prerequisite. Although the picture is still hazy, the emerging image of a political and constitutional theory is certainly civic republican, not pluralistic, in nature.

160. See Gaertner & Dovidio, supra note 150, at 326 (need for more research); Turner, supra note 76, at 101 (same). See generally Turner, supra note 76, at 88-96 (some possible determinants of group formation).

161. See Dawes, supra note 51, at 101 (allowing discussion in controlled experiment enhances cooperation); Mansbridge, The Rise and Fall, supra note 51, at 17 (discussion can raise the level of cooperative behavior by increasing feelings of group identity).

162. See Dawes, supra note 51, at 103, 109 (discussion elicits caring and cooperation). Jane Mansbridge writes that recent experiments show that about 25% to 35% of people behave cooperatively, not in self-interest, and this amount can increase "to 85 percent by allowing discussion and other procedures that increase feelings of group identity." Mansbridge, The Rise and Fall, supra note 51, at 17 (citation omitted).

163. I believe that we must not expect too much from social science. That is, I do not believe that social psychology will ever identify a mechanistic method that always and unequivocally reduces racism. Cf Katz & Taylor, supra note 73, at 1, 6-7 (most striking characteristic of current research is the controversy over how to eliminate racism; even the definition of racism is now controversial); Jeffrey Z. Rubin, Prologue, in ELIMINATING RACISM ix-x (Phyllis A. Katz & Dalmas A. Taylor eds., 1988) (few simple truths about racism). See generally HANS-GEORG GADAMER, TRUTH AND METHOD (Joel Weinsheimer & Donald G. Marshall trans., 2d rev. ed. 1989) (method does not lead to truth); Feldman, New Metaphysics, supra note 3 (on Gadamer's philosophical hermeneutics); Harold B. Gerard, School Desegregation: The Social Science Role, in ELIMINATING RACISM supra note 3, 225, 233-35 (highly critical of social scientists in general). The authors of The Altruistic Personality underscore the difficulty of reducing prejudice and increasing cooperative behavior by noting how many diverse and unexpected considerations influenced individuals to help Jews during the Second World War. For example, "parents of rescuers depended significantly less on physical punishment and significantly more on reasoning." OLINER & OLINER, supra note 59, at 179.
The picture becomes clearer when we recognize that the concept of the common good can also help reduce racism and discriminatory behavior. First, whereas the pursuit of self-interest appears to propagate racism, a feminist ethic of caring suggests that the discussion and pursuit of the common good would encourage concern for and connection with others within the political community. Second, the existence of public norms discouraging racism can create social pressure to refrain from openly racist expression and conduct, even if individuals nonetheless retain racist attitudes and beliefs. The common good can be viewed, from this perspective, as a public norm with potentially positive effects. If citizens were publicly encouraged to discuss and pursue the common good, not their self-interest, then they might be discouraged from relying and acting upon racist views.

Despite this social psychological evidence, many might justifiably fear that an emphasis on a superordinate group identity would threaten the vitality of subgroups or subcultures within American society. While this fear is legitimate, the creation and maintenance of a superordinate group simply does not necessitate the destruction of subcultures. Individuals can and do belong to many groups at once: a person, for example, can belong simultaneously to a nuclear and an extended family. Moreover, the dialogue needed to generate superordinate group identity does not entail consensus or the oppression of diverse voices or groups. To the contrary, in the context of open discussion, disagreement and divergent views often enrich dialogue and in-

164. See Sherry, supra note 80 (links ethic of caring with civic republican common good); supra notes 78-80 and accompanying text.

165. See Fletcher A. Blanchard et al., Reducing the Expression of Racial Prejudice, 2 PSYCHOL. SCI. 101 (1991); cf. Allport, supra note 101, at 461-77 (law can control outward actions and expressions of prejudice); Irwin Katz, Stigma: A Social Psychological Analysis 108-10 (1981) (a threat to one's self-regard can lead to changes in prejudicial behavior); Brewer & Miller, supra note 136, at 295 (imposing egalitarian values can increase intergroup acceptance). This recognition is also supported by what Delgado has referred to as “confrontation theory.” See Delgado, Ethereal Scholar, supra note 15, at 317-18; Delgado, Fairness and Formality, supra note 101, at 1386-87. Delgado emphasizes that formal legal structures can discourage discriminatory conduct. Moreover, this confrontation theory clearly overlaps with the “institutional supports” component of the contact theory. See supra text accompanying note 101.

166. Cf. Worchel, supra note 123, at 300 (one way to increase superordinate group solidarity is to reduce the salience of previous group boundaries, which may be problematic in that this tends to undermine important cultural differences).

167. Gaertner and Dovidio write:

[S]ubgroup and superordinate group identities can be salient simultaneously. For example, members of a household constitute a family, but they can also categorize themselves as parents and children without losing awareness of their superordinate connection. The formation of a superordinate group thus does not require each constituent subgroup to forego its identity entirely.

Gaertner & Dovidio, supra note 150, at 325; accord Boyd & Richerson, supra note 155, at 122. See generally Pettigrew, supra note 3, at 19 (a proper understanding of integration reveals that it entails the furthering of intergroup relations while maintaining cultural identities).
crease the effectiveness of group decisionmaking.\textsuperscript{168}

Further, feminist and interpretivist insights reinforce the importance of diverse voices in the communal dialogue. Feminism underscores that dialogue always is potentially transformative: the purpose of political discussion is not merely to negotiate but to share with, and to listen and respond to others. An ethic of caring emphasizes concern for and the empowerment of others, not self-aggrandizement. Meanwhile, interpretivism holds that all concepts and practices are interpretive: we are always and already interpreting.\textsuperscript{169} The common good, then, must be understood as an interpretive concept, not as an objective foundation for political decisionmaking or constitutional adjudication.\textsuperscript{170} Consequently, claims, such as that made by Publius, to have special knowledge of an objective common good can no longer theoretically justify excluding individuals or groups from further communal dialogue. Feminism and interpretivism thus suggest that the meaning of the common good constantly changes, always emerging anew from an open and inclusive dialogue within the political community.

B. THE WRITINGS OF MARTIN LUTHER KING, JR.

Martin Luther King's theoretical writings on social and political action provide another potential base for reconstructing constitutional and political theory.\textsuperscript{171} King's works provide an especially rich source for such a project.

\textsuperscript{168} One researcher writes:

[M]ajorities foster convergence of attention, thought, and the number of alternatives considered. Minority viewpoints are important, not because they tend to prevail but because they stimulate divergent attention and thought. As a result, even when they are wrong they contribute to the detection of novel solutions and decisions that, on balance, are qualitatively better. The implications of this are considerable for creativity, problem solving, and decision making, both at the individual and group levels.

Charlan Jeanne Nemeth, \textit{Differential Contributions of Majority and Minority Influence}, 93 PSYCHOL. REV. 23, 23 (1986); accord Jones, \textit{supra} note 126, at 132; Nemeth, \textit{supra}, at 28; cf. Worchel, \textit{supra} note 123, at 300 (cultural differences enrich interactions); see also ROBERT E. SLAVIN, \textit{COOPERATIVE LEARNING: STUDENT TEAMS} 8-9 (2d ed. 1987) (cooperation improves problem solving); Worchel, \textit{supra} note 123, at 304 (conflict is not necessarily bad).

This emphasis on the importance and value of presenting divergent views or voices appears to underlie the burgeoning literature on legal storytelling. See, e.g., BELL, \textit{supra} note 5; Delgado, \textit{Storytelling, supra} note 15; see also Walter G. Stephan & Cookie White Stephan, \textit{The Role of Ignorance in Intergroup Relations, in GROUPS IN CONTACT: THE PSYCHOLOGY OF DESEGREGATION} 229-55 (Norman Miller & Marilyn B. Brewer eds., 1984) (ignorance of outgroup is one cause of prejudice, and therefore an optimal program to reduce prejudice should present both group similarities and differences).

\textsuperscript{169} See Feldman, \textit{New Metaphysics, supra} note 3.

\textsuperscript{170} For an extended discussion of the theoretical consequences of synthesizing civic republicanism with interpretivism, see Feldman, \textit{Republican Revival/Interpretive Turn, supra} note 4.

\textsuperscript{171} By focusing on King, I do not mean to suggest that he represents all nonwhite poor, all African Americans, or even all in the Civil Rights Movement. King's disagreements with other African-American leaders of his time were serious and well-known. See, e.g., Martin Luther King,
because, on the one hand, he had an intellectual’s scholarly bent, reflected in his extensive and erudite publications,\textsuperscript{172} and, on the other hand, he personally experienced life “on the bottom”\textsuperscript{173} in his active struggle to overcome the oppression and subordination of African Americans.\textsuperscript{174} As was true of the research from social psychology, the constitutional and political theory that begins to emerge from King’s writings is civic republican in nature.\textsuperscript{175}

The foundation for King’s philosophy is his complex view of human nature. Although King acknowledged that, early in his life, he was “absolutely convinced of the natural goodness of man and the natural power of human...
reason," he eventually became "aware of the complexity of human motives." Specifically, from historical and personal experiences, he grew to recognize the incredible human potential to commit basic and evil acts—especially "the glaring reality of collective evil." Despite this recognition, King never surrendered to cynicism, rather he asserted that humans are a synthesis of good and evil. A complex or paradoxical ambivalence, consequently, marked much of his writing. He stated, for example, that a strong person "must be a realist as well as an idealist," and that one must be tough-minded, yet have a "tender heart."

King's complex view of human nature strikingly parallels the views of the framers. Hamilton, for instance, wrote: "The supposition of universal venality in human nature is little less an error in political reasoning than the supposition of universal rectitude." Thus, the framers structured a constitutional and political theory that synthesized the hopefulness of civic republicanism with their realistic view of human nature. They intended the Constitution to encourage the pursuit of the common good while also protecting against the propensity of individuals to band into factions and to pursue their self-interest.

The aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust.

King, who often relied explicitly on the traditions of the Constitution,

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176. Martin Luther King, Jr., Pilgrimage to Nonviolence, in A TESTAMENT OF HOPE supra note 2, 35.
177. Id. at 36.
178. Id. Anthony Cook writes: 
"[King] drew on a knowledge of the specific histories and experiences of oppression. This engagement with history guided his theoretical project and informed his struggles to reform American society." Cook, Beyond Critical Legal Studies, supra note 19, at 1012.
179. Id.
180. Martin Luther King, Jr., Playboy Interview (1965), reprinted in A TESTAMENT OF HOPE, supra note 2, at 340, 348.
181. MARTIN LUTHER KING, JR., THE STRENGTH TO LOVE reprinted in A TESTAMENT OF HOPE, supra note 2, at 491, 494.
182. THE FEDERALIST No. 76, at 458 (Alexander Hamilton) (Clinton Rossiter ed., 1961). Likewise, Madison wrote: "As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust, so there are other qualities in human nature which justify a certain portion of esteem and confidence." THE FEDERALIST No. 55, at 346 (James Madison) (Clinton Rossiter ed., 1961).
183. See supra notes 115-119 and accompanying text.
184. See supra note 2, at 99, 103 [hereinafter King, National Press Club] (Black students challenging segregation "have taken the whole nation back to those great wells of democ-
similarly constructed a theory of political action that encourages people to act on their most noble motivations, yet simultaneously remains wary of their penchant for depravity. Consequently, echoing civic republican themes, King repeatedly discouraged individuals from merely pursuing their self-interest, while he urged them to act altruistically and cooperatively. For example, King wrote: "[W]e are challenged to rise above the narrow confines of our individualistic concerns to the broader concerns of all humanity."\textsuperscript{186} Likewise, he added: "Self-concern without other-concern is like a tributary that has no outward flow to the ocean. Stagnant, still, and stale, it lacks both life and freshness."\textsuperscript{187}

Rejecting violence and pure self-interest as means to social justice, King is renowned for encouraging and inspiring nonviolent resistance. To practice nonviolence, according to King, one must first appeal to the moral conscience of oppressors; second, use love to generate social change; and third, seek to establish the "beloved community."\textsuperscript{188} With regard to the first requirement, King insisted that civil rights and social justice are moral issues:\textsuperscript{189} "The primary reason for our uprooting racial discrimination from our society is that it is morally wrong."\textsuperscript{190} Although appeals to self-interest and practical political considerations are not to be disregarded, significant
and lasting social changes depend, according to King, on stirring the "conscience" of oppressors.\footnote{191}

King reasoned that the principal means for appealing to another's moral conscience is "love," which corresponds to the Greek "agape."\footnote{192} "Agape is love seeking to preserve and create community,"\footnote{193} or in other words, a "neighbor-regarding concern for others."\footnote{194} King's concept of love, moreover, is active and powerful, not "sentimental and anemic."\footnote{195} He stressed that love must be understood as empowering: "Power . . . is the ability to achieve purpose. It is the strength required to bring about social, political or economic changes. In this sense power is not only desirable but necessary in order to implement the demands of love and justice."\footnote{196} Thus, King's love appears to share much with the feminist ethic of caring: both emphasize empowerment and concern for others as means to generate connection and community.\footnote{197}

King's ultimate goal was to achieve what he called the "beloved community,"\footnote{198} which essentially represents a community based on his concept of love. King's discussion of the beloved community resonated strongly with the civic republican themes of community, the common good, and political}

\footnote{191. King, supra note 176, at 39. King wrote: "From [the nonviolent] form of struggle more emerges that is permanent and damaging to the enemy than from a few acts of organized violence." Martin Luther King, Jr., The Social Organization of Nonviolence, reprinted in A TESTAMENT OF HOPE supra note 2, at 31, 34 [hereinafter King, Social Organization]. King added: "Hate begets hate; violence begets violence; toughness begets a greater toughness." Martin Luther King, Jr., An Experiment in Love, (1958), reprinted in A TESTAMENT OF HOPE supra note 2, 16, 17 [hereinafter King, An Experiment]. One might add: self-interest begets self-interest.}

\footnote{192. King, The Power, supra note 189, at 13. For a criticism of King's concept of love, see WALTON, supra note 112, at 78-84.}

\footnote{193. King, An Experiment, supra note 191.}

\footnote{194. Id. at 19. King also wrote that love is "understanding, creative, redemptive good will for all men." King, The Power, supra note 189, at 13.}

\footnote{195. KING, WHERE DO WE GO FROM HERE, supra note 174, at 578.}

\footnote{196. Id. at 577-78. Cook notes that King sought to empower the oppressed through politics. See Cook, Beyond Critical Legal Studies, supra note 19, at 1038. Ervin Smith writes:}

\footnote{197. For example, King argued that foreign aid programs should be based on empathy, compassion, and a commitment to eradicate poverty, not on a desire to control others. See KING, WHERE DO WE GO FROM HERE, supra note 174, at 625.}

\footnote{198. King wrote: "[T]he end is the creation of the beloved community." King, supra note 186, at 140; see generally KENNETH L. SMITH & Ira G. ZEPP, JR., SEARCH FOR THE BELOVED COMMUNITY: THE THINKING OF MARTIN LUTHER KING, JR. 119-40 (1974) (on King's beloved community). King's most famous and perhaps most poetic and moving call for community is in his speech, I Have a Dream. King, I Have A Dream, supra note 185.}

\footnote{199. King wrote: "From [the nonviolent] form of struggle more emerges that is permanent and damaging to the enemy than from a few acts of organized violence." Martin Luther King, Jr., The Social Organization of Nonviolence, reprinted in A TESTAMENT OF HOPE supra note 2, at 31, 34 [hereinafter King, Social Organization]. King added: "Hate begets hate; violence begets violence; toughness begets a greater toughness." Martin Luther King, Jr., An Experiment in Love, (1958), reprinted in A TESTAMENT OF HOPE supra note 2, 16, 17 [hereinafter King, An Experiment]. One might add: self-interest begets self-interest.}

\footnote{200. King, The Power, supra note 189, at 13. For a criticism of King's concept of love, see WALTON, supra note 112, at 78-84.}

\footnote{201. King, An Experiment, supra note 191.}

\footnote{202. Id. at 19. King also wrote that love is "understanding, creative, redemptive good will for all men." King, The Power, supra note 189, at 13.}

\footnote{203. KING, WHERE DO WE GO FROM HERE, supra note 174, at 578.}

\footnote{204. Id. at 577-78. Cook notes that King sought to empower the oppressed through politics. See Cook, Beyond Critical Legal Studies, supra note 19, at 1038. Ervin Smith writes:}

\footnote{205. King did not perceive love as an abstract concept, only tangentially related to persons in community. For him, love was concretely relevant to human social action, expressing itself through the practical social principles of respect for human personality, concern for personal and social freedom for all persons, respect for objective moral law, and consistent respect for the social or community good.}

\footnote{206. For example, King argued that foreign aid programs should be based on empathy, compassion, and a commitment to eradicate poverty, not on a desire to control others. See KING, WHERE DO WE GO FROM HERE, supra note 174, at 625.}

\footnote{207. King wrote: "[T]he end is the creation of the beloved community." King, supra note 186, at 140; see generally KENNETH L. SMITH & Ira G. ZEPP, JR., SEARCH FOR THE BELOVED COMMUNITY: THE THINKING OF MARTIN LUTHER KING, JR. 119-40 (1974) (on King's beloved community). King's most famous and perhaps most poetic and moving call for community is in his speech, I Have a Dream. King, I Have A Dream, supra note 185.}
dialogue. He argued that we live in "an inescapable network of mutuality" so that one's "personality can only be fulfilled in the context of community." The community ideally presents the opportunity for mutually cooperative and voluntary behavior that manifests a sense of responsibility for others. Through "collective community action," therefore, we can achieve social justice.

If the heart of the beloved community is love, then its blood is political and social dialogue. King emphasized that the community needs political dialogue to survive: when one is unable to participate in the dialogue, then one loses any sense of responsibility for other citizens, the community, and the common good. Moreover, through political dialogue, the community transforms itself. King wrote:

[O]ur aim is to persuade. We adopt the means of nonviolence because our end is a community at peace with itself. We will try to persuade with our words, but if our words fail, we will try to persuade with our acts. We will always be willing to talk and seek fair compromise, but we are ready to suffer when necessary and even risk our lives to become witnesses to the truth as we see it.

Thus, nonviolent resistance itself is but one form of persuasion or transformative dialogue that generates the "creative tension" often needed for communal growth or improvement.

King's emphasis on the transformative potential of political dialogue reveals that his conceptions of community and dialogue stand opposed to conformity or forced consensus. One must speak and act, according to King, out of a sense of moral conviction, not out of a desire to conform to majority views. Thus, King certainly did not envision the destruction of minority

201. See King, Ethical Demands, supra note 185, at 122.
203. King wrote:

Gargantuan industry and government, woven into an intricate computerized mechanism, leave the person outside. The sense of participation is lost, the feeling that ordinary individuals influence important decisions vanishes, and man becomes separated and diminished.

When an individual is no longer a true participant, when he no longer feels a sense of responsibility to his society, the content of democracy is emptied.

MARTIN LUTHER KING, JR., THE TRUMPET OF CONSCIENCE, reprinted in A TESTAMENT OF HOPE supra note 2, at 644; see King, Letter From Birmingham City Jail, supra note 174, at 292.
204. King, National Press Club, supra note 185, at 103; accord King, The Rising Tide, supra note 187, at 149 (same language).
206. See King, WHERE DO WE GO FROM HERE, supra note 174, at 595 (cannot determine what is right by looking at the trends of the time; a genuine leader does not search for the consensus but rather molds the consensus through his convictions).
cultures in his beloved community. To the contrary, he underscored the im-
portant contributions that minorities can make to the community and its
dialogue. In particular, King asserted that the long oppression of African
Americans gives them "a special spiritual and moral" view of American
society, and that unique perspective helps to generate the creative tension
that unmask social injustices.208

To a great extent, King's beloved community corresponds to the common
good of civic republicanism.209 Both can be envisioned simultaneously as a
moral attitude and as a normative goal.210 One who believes in the beloved
community, as well as one who believes in the common good, will manifest
an attitude of caring for others when focused on public issues.211 At the
same time, the beloved community and the common good provide a standard
for individuals and the community to strive for in political discussion and
action. These parallels between the beloved community and the common
good suggest that King's efforts to substantively define the beloved commu-
nity might provide insight into the content of the common good.212

At the outset, though, one must recognize that neither the beloved com-
munity nor the common good has a static or objective content. The beloved
community always remains an ideal, never fully realized, and indeed never
fully and certainly defined.213 Similarly, the common good should never be

207. Martin Luther King, Jr., A Testament of Hope, reprinted in A TESTAMENT OF HOPE supra
note 2, at 317.

208. See King, Letter From Birmingham City Jail, supra note 174, at 295. King wrote: "We
[African Americans] feel that we are the conscience of America—we are its troubled soul—we will
continue to insist that right be done . . . ." King, supra note 185, at 105. See generally Kennedy,
supra note 19, at 1024, 1066 (nonviolent resistance during the Montgomery bus boycott was in
pursuit of the common good, yet it also crystallized the black community).

King's view on the value of diversity in communal dialogue once again parallels the views of
the framers. Hamilton wrote that "differences of opinion, and the jarring of parties in . . . [the legisla-
tive] department . . . often promote deliberation." THE FEDERALIST No. 70, at 426-27 (Alexander

209. One can, of course, also parallel the beloved community with the political community of
civic republicanism. See supra notes 198-208 and accompanying text.

(1982) (even if the beloved community cannot be fully achieved in history, it can serve as an active
and normative goal).

211. Nel Noddings writes that an ethic of caring is concerned more with a moral attitude than
with moral judgments. NODDINGS, supra note 80, at 28, 94-95.

212. Mari Matsuda writes: "When notions of right and wrong, justice and injustice, are ex-
amined not from an abstract position but from the position of groups who have suffered through
history, moral relativism recedes and identifiable normative priorities emerge." Matsuda, supra
note 18, at 325. See generally Cook, Beyond Critical Legal Studies, supra note 19, at 1033-37 (spe-
cific rights and duties that King envisioned for his beloved community).

213. King wrote: "Agape says you must go on with wise restraint and calm reasonableness but
you must keep moving." King, The Power, supra note 189, at 14; see ANSBRO, supra note 210, at
187-97 (beloved community as a normative goal); Cook, Beyond Critical Legal Studies, supra note
19, at 1030 (beloved community as an ideal never fully realized, but in struggle to achieve it, social
understood as having a fixed or objective meaning. As already discussed, the common good is best conceived as an interpretive concept whose meaning constantly emerges anew depending upon the changing historical circumstances. Therefore, King and civic republicans should not be criticized for failing to specify definitively the content of the beloved community or the common good. Those meanings can only emerge in concrete historical contexts, and even then, the meanings must be open and tentative. Despite this caveat, King’s efforts to define the beloved community can inform our understanding of the common good. Although King wrote over twenty years ago, the unfortunate reality is that the nonwhite poor have not significantly improved their position relative to the rest of American society. Thus, many of King’s observations and recommendations remain as true today as they were during King’s life.

King insisted that we must radically restructure “the whole of American society” in order to move towards the beloved community. The two pillars of the reconstructed America must be racial and economic justice. King stated that “the largest portion of white America is still poisoned by racism, which is as native to our soil as pine trees, sagebrush and buffalo grass.” Thus, in America, the eradication of racism is a moral imperative: our goal, ultimately, must be to “respect the dignity and worth of all relations can be transformed). I do not mean to suggest, however, that the beloved community cannot be at least partially and significantly realized. See generally SMITH & ZEPP, supra note 198, at 81.

214. See supra notes 169-170 and accompanying text.


216. See Feldman, New Metaphysics, supra note 3; Feldman, Republican Revival/Interpretive Turn, supra note 4.


218. Martin Luther King, Jr., Where Do We Go From Here, in A TESTAMENT OF HOPE, supra note 2, at 250; accord King, supra note 207, at 315.

219. Cf. King, supra note 176, at 37 (“inseparable twin of racial injustice is economic injustice”).

220. King, supra note 207, at 316; see CONE, supra note 112, at 244-59 (both King and Malcolm X saw racism as the major social problem in America); see also Pettigrew, supra note 217, at 686-700 (reviews changing patterns of racism between 1964 and 1984 at both individual and institutional levels).

221. See KING, WHERE DO WE GO FROM HERE, supra note 174, at 621 (racism is world-wide and must be fought with “unshakable determination”); cf. Martin Luther King, Jr., The Most Durable Power, reprinted in A TESTAMENT OF HOPE supra note 2, at 10 (segregation debilitates both whites and African Americans).
human personality.”

With regard to economic justice, King argued for “an economic bill of rights.” To eliminate poverty, we must “guarantee a job to all people who want to work and are able to work,” and “also guarantee an income for all who are not able to work.” These economic reforms, according to King, would help alleviate the needs for improved housing and education for the nonwhite poor, but society must also directly allocate more resources to satisfy those latter needs. Finally, King insisted that economic reforms should not be diluted or delayed because of any perceived costs to whites: quite simply, the justice of the beloved community is not subject to a cost-benefit analysis.

King's personal experiences of social injustice and racism prevented him from being naive in his quest for the beloved community. He understood the complexity of human nature, and he realized that the privileged usually

223. King, supra note 122, at 67; accord King, WHERE DO WE GO FROM HERE, supra note 174, at 586, 614-17 (economic problems of African Americans cannot be solved unless American society as a whole adopts greater economic justice as a goal). King notes that the elimination of poverty would benefit all poor people, including the many poor whites. See id. at 614, 616; see also Delgado, supra note 8, at 1929 n.1 (poor whites usually outnumber the nonwhite poor, but whites move in and out of poverty in a way that people of color do not) (citing Wilson, TRULY DISADVANTAGED, supra note 9, at 174-77).
224. King, supra note 122, at 67.
225. Id.; accord King, WHERE DO WE GO FROM HERE, supra note 174, at 615 (the solution to poverty is guaranteed income through the creation of full employment).
226. See King, supra note 122, at 67 (housing and educational demands are closely tied to the employment problem); King, WHERE DO WE GO FROM HERE, supra note 174, at 609-11; King, supra, note 218, at 248.
227. King wrote:

The practical cost of change for the nation up to this point has been cheap. The limited reforms have been obtained at bargain rates. . . .

The real cost lies ahead. The stiffening of white resistance is a recognition of that fact. The discount education given Negroes will in the future have to be purchased at full price if quality education is to be realized. Jobs are harder and costlier to create than voting rolls. The eradication of slums housing millions is complex far beyond integrating buses and lunch counters.

King, WHERE DO WE GO FROM HERE, supra note 174, at 558; see King, Letter From Birmingham City Jail, supra note 174, at 292-93 (insistence that the oppressed must demand justice from their oppressors).

Malcolm X, of course, even more forcefully demanded immediate justice: “Our objective is complete freedom, complete justice, complete equality, by any means necessary. That never changes. Complete and immediate recognition and respect as human beings, that doesn’t change, that is what all of us want.” Malcolm X, Speech At the Audubon, (New York, Dec. 20, 1964) in MALCOLM X SPEAKS 115, 116 (George Breitman ed., 1965); accord Malcolm X, supra note 1, at 367.
228. See Cook, Beyond Critical Legal Studies, supra note 19, at 1039 (King's experiences with racism, poverty, and segregation led to a realistic view of the possibility of creation of a just community).
resist threats to their power. He remained eternally wary of the human propensities for depravity and for greedy pursuit of self-interest, and consequently, as a matter of political tactics, he was not above advertising to convergencies between the interests of whites and African Americans. For example, King argued that the economic growth of the South required the eradication of racial discrimination and that discrimination deflated the nation in world opinion. But King emphasized: "These are practical considerations all dictating one road. Yet above it all, a greater imperative demands fulfillment. Throughout our history, the moral decision has always been the correct decision." 231

Thus, the constitutional and political theory that emerges from King strongly resembles the realistic civic republicanism of the framers. The framers always remained committed to a government that pursues the common good, despite their recognition that factions would inevitably arise in a democracy. Likewise, King always remained committed to the beloved community, despite recognizing the human penchant for evil. 232 The framers believed that through political dialogue, the community can arrive at the common good, while King believed that through various forms of political dialogue, the community can push itself towards the ideal of the beloved community. The framers were not above using factionalism to preserve the republic: they structured the government so that the ever-present potential for factionalism would actually encourage governmental officials to pursue the common good. King, meanwhile, was not above occasionally using white self-interest if it would help build the beloved community, but he realized that pure self-interest ultimately is corrupt and therefore must be subordinated to morality and love. 233

King not only echoed the framers, however, but also elaborated their civic republican vision. He understood the divisiveness of racism as well as the need to take special steps to eradicate it. He recognized the necessity of empowering all individuals and groups throughout American society so that they could participate in the political dialogue that is the lifeblood of the community. And he realized that social justice and political equality de-

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229. See King, supra note 10, at 7; King, Letter From Birmingham City Jail, supra note 174, at 292.

230. See King, supra note 185, at 100; Martin Luther King, Jr., Bold Design For a New South, reprinted in A TESTAMENT OF HOPE supra note 2, at 114-15 [hereinafter King, Bold Design] (economic growth will not come to cities where racism creates social tension and second-rate educational and cultural institutions; persistent denial of human rights weakens our nation before the rest of the world).


232. King explicitly rejected "a crass utilitarianism which values other people mainly according to their usefulness to him." King, supra note 181, at 494.

233. See SMITH & ZEPP, supra note 198, at 79, 90. See generally BELLAH, supra note 26, at 249-52.
mand profound economic reforms, not minor or piecemeal remedies. In sum, King's personal experiences of racism and oppression imbued his civic republicanism with a realism far more stark than any known to the framers.

CONCLUSION

Racism is a debilitating sickness in the heart and blood of American society. It is the institutionalized subjugation of people of color. It is the unconscious yet nauseating images that infect every American mind. It is the concrete obstacle to economic prosperity, inhibiting the rational pursuit of material interests. It mortgages the future by undermining support for public education. Racism is pervasive, oppressive, and tenacious: it will not cure itself and just disappear.

We must take racism seriously if we are to remedy this ultimate blight on America. To reduce racism, we must consistently hold it at the forefront of political discussion and constitutional theory. Social psychology research and Martin Luther King, Jr.'s writings suggest that we should support a constitutional and political theory that is civic republican in nature. Such a theory would emphasize the elements necessary to reduce racism: belonging to a superordinate political community, dialogue among citizens, and the pursuit of the common good, not pure self-interest. Most important, the dialogue must be open and inclusive: to generate concern for others and solidarity within a broad community, different subgroups must be empowered to participate in political discussions. A civic republican approach thus neither entails forced consensus and conformity nor the destruction of minority cultures. To the contrary, King and the social psychologists emphasize that participation in a larger political community is consistent with belonging to a vital subgroup or subculture. Moreover, subgroups provide divergent views or voices that potentially enrich and improve the communal dialogue.234

The nonwhite poor, consequently, might consider a dual strategy in their efforts to overcome racism and to achieve social justice. The primary approach would be to support a civic republican constitutional and political theory. In the long run, such a theory is most likely to reduce racism, a prerequisite to social justice. Nonetheless, the nonwhite poor might secondarily advert to white self-interest at especially opportune times. The social

234. Roger Wilkins writes: "It may be true that homogeneity promotes a comfortable and civilized discourse, but it does not, I believe, promote those rasping and sometimes painful encounters that can lead us closer to the truth about our country and about the world." WILKINS, supra note 68, at 303. Mari Matsuda writes: "Black Americans, because of their experiences, are quick to detect racism, to distrust official claims of necessity and to sense a threat to freedom. These intuitions generated from the bottom are useful in making normative choices." Matsuda, supra note 18, at 360; accord JEAN-FRANCOIS LYOTARD, THE POSTMODERN CONDITION: A REPORT ON KNOWLEDGE xXV (Geoff Bennington & Brian Massumi trans., 1984) ("invention is always born of dissension").
psychology evidence that suggests people act on an uncertain mixture of motivations, including self-interest, and King's tactical use of white self-interest support the appropriateness of this approach. But, both King and social psychologists underscore that appeals to self-interest should not become the primary means to social justice; such a misconceived strategy would ultimately propagate racism and injustice. Political pluralism (or conservatism), as recommended by Delgado, would eventually defeat the quest of the nonwhite poor for social justice. Thus, on any particular issue, the ideal political program would be one that appeals to the moral conscience of the entire political community by pursuing the common good, but that also coincides with the material interests of the white majority.

One might wonder why Delgado, a leading critical race scholar, recommends turning to self-interest and conservatism when racism is so likely to prevent the nonwhite poor from achieving social justice. Perhaps, he intends to become the “Conservative Crusader”—a Machiavellian radical. The Crusader vigorously opposes any social programs that might aid the nonwhite poor and thus appears to be “militantly conservative.” Gaining political favor, the Crusader eventually is appointed to the Supreme Court, where he or she continues to press a conservative agenda. All along, however, the Crusader’s true intent is to drive the nonwhite poor into such a desperate position that they inevitably will rebel, thus finally forcing meaningful societal change. Is Richard Delgado the Conservative Crusader? Will Dan Quayle become president? If he does, will President Quayle, ten years hence, be introducing his latest conservative nominee for the Supreme Court? If he is, will that nominee be Richard Delgado?

235. See supra note 51 and accompanying text (people act for an uncertain mix of reasons). Turner notes that material interests affect group identity and conflict, but clearly are not determinative. See Turner, supra note 76, at 100.

236. King wrote: "In a real sense, the means represent the ideal in the making and the end in process. So in the long run destructive means cannot bring about constructive ends, because the end is preexistent in the means." King, supra note 185, at 102; see supra notes 78-80 and accompanying text (the pursuit of self-interest is likely to propagate racism).

237. Cf. Wilson, Truly Disadvantaged, supra note 9, at 120-24, 149-64 (recommends universal programs involving fundamental economic reform that are designed to benefit all segments of society, but especially the truly disadvantaged in the long run).

238. Bell, supra note 5, at 54. An alternative explanation for Delgado's turn to conservatism is that it may temporarily allow him to avoid despair. The world would be a simpler place if people truly were coldly rational in their pursuit of self-interest. See supra note 64 and accompanying text.

239. Id. at 54.

240. Id. A less radical story of the Crusader would be the following. Once on the Court, the Crusader reveals and pursues his or her true intentions: to accomplish the radical reconstruction of society needed to attain social justice for the nonwhite poor.