



***Liberating A “Permanent” Underclass: Reforming “We The People”
A White Paper by Myisha Gatson, Founder & CEO of***

“Race” was invented in the United States in 1705. Before the nation had freed itself from the tyranny of King George III, the colony called Virginia crafted an anti-miscegenation law banning interracial marriage--it was the first legislative effort to define “Black” as a term describing human beings. In his book, *White by Law*, Ian F. Lopez details the process by which race was socially constructed through law as a mechanism to keep power in place. At that time, legally defining those of darker skin as “Black” subjected them to slavery, while defining those of lighter skin as “White” reinforced their right to freedom and gave them many other societal privileges. The law established who is a human being, elevating those defined as White and subordinating those called Black--reducing them from human beings to chattel property.¹ To justify the very practice of slavery, Whites had to “make” Black slaves “sub-human” and they used religion to ascribe certain values and characteristics onto people according to race. The early protestant church used religion to classify people of color as “pagan and soulless.”² These beliefs were further reaffirmed through law in 1790, when Congress passed the first naturalization law, which limited citizenship to “free White persons.” This congressional act created the clear legal justification: Whites could enslave Blacks.

Naturalization and immigration law set forth the legal groundwork of White privilege. The concept of race was legitimated in this society by requiring that each person who sought citizenship be assigned a race.³ Ian Lopez puts it this way: “The United States is ideologically a White country not by accident, but by design at least in part affected through naturalization and immigration laws. The naturalization laws governed who was and was not welcome to join the polity, anti-miscegenation laws regulated sexual relations, and segregation laws told people where they could and could not live and work. Together, such laws altered the physical appearances of this country’s people, attached racial identities to certain types of features and ancestry, and established material conditions of belonging and exclusion that code as race.”³ The lasting legacy of the U.S. naturalization and immigration laws is a world seen in White and Not White.

¹ Lopez, Ian F. “White by Law: The Legal Construction of Race.” New York University Press. New York, NY. 1986. Page 82.

² “A History: The Construction of Race and Racism.” Dismantling Racism Project, Western States Center.
<http://www.westernstatescenter.org/resource/ScreenDRHistory.pdf>. Accessed March 10, 2008.

³ Lopez, Ian F. “White by Law: The Legal Construction of Race.” New York University Press. New York, NY. 1986. Page 82.

White privilege was encased through these foundational laws, beginning the process of “racial reification.” Reification simply means to separate something from its original context and place it in another context that grants it powers or attributes which in truth it does not have.⁴ New immigrants fell into this process, as they attempted to gain US citizenship. They were classified as “White” or “Non-White” in America, taken out of the context in which they existed in their home country and placed into the American context. Europeans, no matter their ethnicity, geography, and class before, became White United States citizens. “Whiteness” became a coveted prize granting admission to a world of prosperity and privilege. Legal fights erupted, initiated by people not initially granted the title because the stakes were so high. Whiteness once excluded Irish and Italian, then included them. Whiteness became a “constantly shifting boundary separating those who are entitled to have certain privileges from those whose exploitation and vulnerability is justified by their not being White.”⁵

The lasting legacy of the U.S. naturalization and immigration laws is a world seen in White and Not White; A state of having or of not having privilege in this country. It goes without saying that to being Black in this country was closer to being cursed than it was to having been granted privilege. Naomi Goldstein puts it this way: “The Negro shares with a small group of Orientals the distinction that despite the length of his residence in the United States, and his contributions to the material and spiritual culture, he is forcibly prevented from achieving the American ideal of the melting pot, in which the third generation of the foreign born, are ‘good Americans.’”⁶ Thus the birth of the “American minority” – a loaded term that indicates the fact of disadvantage or inequality of status for those subjected to the Non-White category. The legalization of race and the subsequent racial prejudice that resulted from it is important to note because it is still prevalent today.

After decades of legal and cultural battles, Whiteness was set. But in 1993, two social scientists, Anne Schneider and Helen Ingram, saw the ramifications of these battles in policy. They introduced the idea of social construction of target populations. The social construction of a target population is two-fold: (1) it refers to socially meaningful and recognized shared characteristics that differentiate the target population from the population as a whole and (2) the attribution of specific values, symbols and images of those characteristics. Their research connected sociologists to political scientists to explain how the social construction of target populations shaped policy. They argued that it “has a powerful influence on public

⁴ “Reification.” (Last updated February 13, 2008). In *Wikipedia, The Free Encyclopedia*. Retrieved March 22, 2008, from http://en.wikipedia.org/w/index.php?title=Reification_%28Marxism%29&oldid=191172805.

⁵ Kivel, Paul. “Uprooting Racism: How White People Can Work for Racial Justice.” New Society Publishers. Philadelphia, PA. 1996.

⁶ Goldstein, Naomi F. “The Roots of Prejudice Against the Negro in the United States.” Boston University Press, Boston, MA. 1948. Page 3.

officials and shapes both the policy agenda and the actual design of policy. Policy sends messages about what the government is supposed to do, which citizens are deserving (and which not), and what kinds of attitudes and participatory patterns are appropriate in a democratic society.”⁷

Race was socially constructed to benefit some (Whites) and burden others (non-Whites). Early social categorizations along racial lines still prevail in public policy today. People of color, specifically African Americans, have been reified as socially deviant or dependent to protect Whiteness and its morphing privileges.

Power, History and Policy

The central argument of this paper is that institutional racism developed as a result of the convergence of three factors: the social construction of race (which is illustrated throughout history in the form of racial prejudice (i.e. favoring Whites over Blacks), power (disproportionately controlled by Whites), and policy (ability to control other people’s outcomes through law).

This falls in line with the social construction framework advanced by Ingram and Schneider as a concrete example of how social construction can and does influence the policy process and contributes to subsequent behavior of target populations. The social construction framework provides a crucial link between institutional racism and power. In the framework, the advantaged group has power and a positive social identity. The advantaged are more likely to receive benefits in public policy, are encouraged to remain politically active, and receive benefits for doing so. The advantaged have everything to lose by giving up the power that they have and continue to exert that power in a way that protects the power they have. The dependents are given sympathy and pity and are seen as deserving in some respect but have no political power. Deviants lack political power and have a negative social identity. I am advancing the theory that as a group, Blacks occupy the dependent and deviant places in the social construction framework and tend to have little or no political power which is in itself a self-fulfilling prophecy, in that political participation among this group is low, due to the reinforced belief that they have no voice in government. The connection between race as a socially constructed target group and public policy is very powerful in the sense that law has made race matter, and throughout history has acted to distribute burdens and benefits, rights and lack of rights.

⁷ Schneider, Anne, and Helen Ingram. 1993. “The Social Construction of Target Populations: Implications for Politics and Policy.” *American Political Science Review*. 87 (2): 334 – 346.

Entrenched in its history, Whiteness has the prerogative (a right or privilege exclusive to a particular individual or class). Those who are under its wing enjoy advantages and power, which they preserve and protect. Those not under its wing may get sympathy and pity, perhaps they are seen as deserving in some respect. Whiteness does not share power, however. Non-whites lack political power and have been assigned a negative social identity.

It is important to understand the underlying motives of racial categorization and prejudice in this country. This understanding will serve as a backdrop to the discussion of target populations, their classifications, and how they have been treated in the policy process. Most scholars that write about race (when driven by the preservation of Whiteness) acknowledge four common factors that contribute to prejudice:

1. **Power.** Historically, White people have taken power in this country at the expense of people of color. “Power provides the justification for, and meaning behind, racial differences. Power has guided social history, allowing some groups control over others...granting them the power to develop, and benefit from, race-based hierarchies and ideologies.”⁸
2. **Economic advantage.** This is usually mentioned in one of two ways:
 - The historic economic advantage of exploiting Blacks, who were brought to this country to provide cheap labor, and are still a major source of cheap labor; or
 - A more recent fear that racial equality will be redistributionist in nature, threatening the jobs, economic security and power currently afforded to Whites.
3. **Maintenance of social status.** Being advantaged and privileged, one is afforded society’s respect, dignity, and power. That social status, however, is maintained by condemning the less privileged.
4. **Custom.** This “way of life” is merely the perpetuation of each of the above motives behind racial prejudice--institutionalized and passed down through generations.

These factors allow us to understand how power, prejudice and punishments have been used throughout American history to uplift Whiteness and repress non-Whiteness.

American history can thus be broken down into five stages of social construction, each leading to reifications that framed the “race problem” and subsequent policy solutions for it. As these periods came and went, social constructions and policies changed to preserve the power of Whiteness in the “social order.” These five historical stages are an oversimplification of a very complex history but they set the stage for an analysis of how many policies ended up hurting and not helping move people of color toward equality. By breaking America’s complex history down into five stages and examining each stage, we can learn how the construction of race was linked to policy as the linking thread from the past to today. It should be noted that the earlier section on the construction of race is a common thread running through each of the five periods and is the primary frame. I will point out exaggerations and slight changes of the frame and look at how those changes impacted policy making. I will also attempt to address the effect of the socially constructed policies and frames on the behavior of the target populations.

Stage One: Slavery – the “Peculiar Institution”

Slavery was not a new concept when introduced in the United States. But the brand it practiced was; the “peculiar institution” was the first time a group of people was seen as slaves simply for the color of their skin. The process of enslaving Africans set the stage for the near-permanent social construction of race in America. Over 240 years passed from 1619, when the first enslaved Africans were forcibly brought to Virginia, to the formal end of their enslavement in 1865 with the adoption of the thirteenth amendment. By the start of the Civil War, it is estimated that there were over 4 million slaves in the American South.⁹

Enslaved Africans had no rights--not allowed to read or write, they could be bought or sold at any moment, ripped from families and friends. Enslavers beat or killed their enslaved with impunity since the enslaved were treated as chattel property. Enslaving Africans led to the development of biased science--slanted biological, physical and mental theories created to explain and justify slavery.⁵ Enslavers cast the enslaved as deviants, by the trait of their skin color, and as dependents, by treating them as property that needed to be fed, clothed, and housed as a way to protect the financial investment of the enslaver and the return on that investment.

Prior to the founding of the United States as a nation, individual colonies and localities created their own laws. They targeted the enslaved through “slave codes” that defined slaves as chattel property--human beings with no human rights--and how to discipline them. Specifically in the South, slaveholders used the law to justify, regulate and police slave trading, to regulate the activities of slaves off the plantation, and to define

⁹ Davis, Ronald. “Slavery in America Historical Overview.” http://www.slaveryinamerica.org/history/hs_es_overview.htm. Accessed March 15, 2008.

precisely what the enslaved were allowed to do and not to do. These laws governed practically all aspects of human life and activity for the enslaved.

The United States Constitution reflects the inground nature of social construction--while it starts off with "We the people" it does not address the problem of enslavement, referring to Black people only as 3/5ths of a human being. This fractionalizing of a human being was a compromise--the South wanted every one of their enslaved counted for the census but not given rights and the North wanted them not counted at all since they weren't citizens. Though the document speaks of liberty, justice and freedom, in principle it reduced enslaved Africans to sub-humans. Marginalized by law, enslaved Africans did not participate in the political process at all, rather they suffered dehumanizing treatment both under the law and in practice until 1865, when the nation ended the peculiar institution as the Civil War came to a close.

Stage Two: Reconstruction (1865 – 1877)

The Civil War's end led to the release of millions of enslaved Africans, clearing the path for them to become American citizens. The federal government created agencies to resolve the end of slavery and how to treat freedmen and how to reintegrate the South into the Union. The Freedmen's Bureau, formally known as the Bureau of Refugees, Freedmen and Abandoned Lands, was established to assist new citizens secure food, shelter, and employment. The bureau was incredibly successful, most notably creating, between 1863 and 1877, the public education system we still enjoy today. The second Bill of Rights, the 13th, 14th and 15th Amendments abolished slavery, extended citizenship to non-Whites and granted equal protection under the law for all persons and guaranteed Black men, indeed all men, the right to vote. Congress passed the very first Civil Rights Act in 1866.¹⁰ It stated "All persons born in the United States ... are hereby declared to be citizens of the United States; and such citizens of every race and color, without regard to any previous condition of slavery ... shall have the same right in every State..."⁹

No longer excluded by law, Blacks exercised their new rights politically. Blacks were elected to federal, state and local offices in numbers that have not been matched since. Between 1870 – 1876, 633 African Americans served as state legislators, 2 as U. S. Senators and 15 as U.S. Congressmen. Over 1500 African Americans held office during Reconstruction period (1865-1876).¹¹ With action, however, comes reaction. Federal troops enforced measures instituted by Congress to give space and opportunity to America's newest citizens. But a political divide grew between those integrating African Americans into society and those who

¹⁰ "Reconstruction." Wikipedia, the Free Encyclopedia.

<http://en.wikipedia.org/w/index.php?title=Reconstruction&oldid=200565657>. Accessed March 23, 2008.

¹¹ Foner, Eric, ed., *Freedom's Lawmakers: A Directory of Black Officeholders During Reconstruction* Revised Edition. Louisiana State University Press, Baton Rouge. 1996.

wanted them subservient again. Former enslavers vehemently opposed the “New Social Order,” finding ways to circumvent the law and portraying Blacks as lazy and dependent on the government, which persists to this day. Turning to pseudo-science as Reconstruction waned, they promoted Social Darwinism and eugenics as a means to reinforce the myth of Black inferiority and justify their genocidal physical and political violence against the freedmen.

The Hayes Compromise ended Reconstruction. In 1876, Rutherford B. Hayes was elected U.S. president by agreeing to withdraw federal troops from the south, allowing “all hell to break loose”--a time referred to as the “Nadir of American Race Relations.” Most scholars agree Reconstruction can be considered a temporary success at best, former enslavers gained the leverage to roll back much of its progress, passing laws reducing Black civil rights, and the attendant political participation. “Despite its overthrow, Reconstruction left an important legacy: commitment to a republican society based on equality...A century later, during the civil rights movement, Americans, both Black and White, would build on that legacy, as they renewed their struggle for equality.”¹²

Stage Three: Reign of Terror (1877 – 1950’s)

White rage follows Black advancement. In a society where Whiteness is valued, Reconstruction was unpalatable to both Northern and Southern Whites leading to racial tension, hatred, and backlash against Blacks. Whites usurped the supreme law of the land, dictating what rights Blacks would exercise and how, institutionalizing segregation through law and terror--Jim Crow, the Ku Klux Klan, and the thousands of laws and customs that cemented “Separate but Equal” from the historic Plessy v. Ferguson decision. This reign of terror was the “re-establishment of White supremacy” which necessitated the re-establishment of “Black inferiority.” Attacking in life, in the courts and in politics, Whites forcefully relegated Blacks to second-class treatment, citizens on paper but with none of the rights, privileges or responsibilities. Whites under-funded Black schools and services and ensured Blacks had no representation on juries or in law enforcement. The academic establishment created new works of pseudo-science working toward “proof” of Black people’s mental and physiological inferiority while the burgeoning entertainment industry created myths and caricatures about Black people reinforced through minstrel shows and portrayals of clownish, cowardly or crass characters in the era’s new moving pictures.

¹² "Reconstruction (U.S. history)," Microsoft Encarta Online Encyclopedia 2007.

[http://encarta.msn.com/encyclopedia_761556642_2/Reconstruction_\(U_S_history\).html](http://encarta.msn.com/encyclopedia_761556642_2/Reconstruction_(U_S_history).html). Accessed March 20, 2008.

Jim Crow laws restricted the rights and liberties of Blacks in the South, requiring segregation across public life (schools, transportation, toilets, water fountains, restaurants, etc.). Whites robbed, murdered (lynched) and raped Blacks with nearly zero legal ramifications (the first White man to be convicted and executed for killing a Black man in Texas happened in 2019 for the murder of James Byrd, Jr. in 1998).¹³ White men would mete out their perverted justice on Black men, lynching them in public for nothing more than an accusation, oftentimes false. Because sheriffs, judges and public officials were openly members of the KKK, Blacks were blocked from voting, they could not appeal to their government or the police for protection, they effectively had no political or civic voice in government.¹⁴ President Woodrow Wilson formally extended segregation to the federal government in 1913. Blacks had no inalienable rights as granted by the Constitution. As Eric Foner points out: "...by the early twentieth century [racism] had become more deeply embedded in the nation's culture and politics than at any time since the beginning of the antislavery crusade and perhaps in our nation's entire history."¹⁵

Stage Four: The Civil Rights Movement (early 1950's – 1969)

White rage was in full-tilt through World War I and entering World War II. But the wars changed Black people. Veterans of both wars had gotten a taste of humane treatment during their service. They came home with ideas of freedom. During the Reign of Terror, the Red Summer of 1919 saw hundreds of Black veterans lynched because of their newfound desire for freedom. World War II would also bring home hundreds of thousands of veterans, but they learned from their history. Lynching didn't happen, as they knew the reaction to their calls for freedom. So they and their families began a nascent civil rights movement that culminated in the 1950s and 60s.

Fighting in courtrooms, on streets and even on buses, Black people began demanding their full Constitutional rights. They began attacking laws and customs that did not allow them to exercise the fullness of their citizenship. Discrimination and segregation slowly lost their grip, going from simply immoral to illegal. The movement deconstructed the elaborate laws suffocating their freedom of expression. As a result of gains made during the Civil Rights Movement, Blacks have greater access to political, social and economic opportunities than at any other time in American history.¹⁶

¹³ <https://www.telegraph.co.uk/news/2019/04/25/white-supremacist-executed-texas/>

¹⁴ "Nadir of American Race Relations, *Wikipedia, the Free Encyclopedia*.

http://en.wikipedia.org/w/index.php?title=Nadir_of_American_race_relations&oldid=198868505. Accessed March 23, 2008.

¹⁵ Foner, Eric. *Reconstruction: America's Unfinished Revolution*, New York: Harper and Row, 1988.

¹⁶ Dovidio, John and Samuel Gaertner. "On the Nature of Contemporary Prejudice." In Jennifer Eberhardt and Susan Fiske (eds), *Confronting Racism: The Problem and the Response*, pp. 3 – 32. Sage Publications. Thousand Oaks, CA. 1998.

Using large marches for equality, civil disobedience, non-violence, and a culture loudly promoting change, civil rights leaders used media, especially television, to capture the imagery and spirit behind the movement. Leaders trained ordinary Black citizens in the tactics of non-violence then strategically placed them in the “line of battle.” Whites responded to these tactics through ridicule, hitting, spitting, and even killing these heroic volunteers. Graphic images of violence and hate captured the sympathy of the nation. Progressive politicians and determined private citizens reclaimed full citizenship for Blacks after the traumatic losses during the reign of terror including the Civil Rights Act of 1964, the Voting Rights Act of 1965 and the Housing Rights Act of 1968 and the landmark *Brown v. Board of Education* decision in 1954 that dismantled “Separate But Equal.” Blacks increasingly became engaged in policy and participated more in the political process of the United States.

An overlooked element of all of this activity was the lack of reframing the social construction of Blacks as a target population. During this time, Whites still cast Blacks as dependent and deviant. Civil Rights legislation did not effectively challenge the imbalance of power that had been created and reinforced throughout the nation’s history. Although policies like Affirmative Action sought to “level the playing field,” Whites resisted being monitored and short-circuited changes, relegating much of the change to symbolism, a charge that persists. Whites let go of power reluctantly, Blacks had not gained substantial political power --much of this progress was (and still is) largely at the whim of congress, the U.S. president and the judiciary. Eroding these gains, the “New Conservative” movement sought to retain the long-standing social construction of Blacks, with new forms and names.

Stage Five: The New Conservative Movement (1970 – present)

With the fast-moving change ushered in by the civil rights movement, policies corrected many injustices – desegregating public places, schools and improving equality in hiring practices. Fast-moving change, just as with the reign of terror after Reconstruction, initiated a backlash among Whites, who saw these policies as redistributionist. Richard Nixon was the herald of this pushback, campaigning against housing and busing laws that codified equality.¹⁷ Conservatives cast the problem of racial inequality in derogatory terms--lack of individual self-reliance and wasteful, unfair liberal policies. White resentment became a palpable launchpad for a major political counter to the civil rights victories of the 1960’s.¹⁸

Because the law had changed so significantly, target groups, benefits, and burdens could not be framed by race alone. The conservative movement redefined race using code words and moral characterizations leading

¹⁷ Foner, Eric, ed. *The Struggle for Black Equality 1954 – 1992*. New York: The Noonday Press. 1993.

¹⁸ Pride, Richard. 1999. “Redefining the Problem of Racial Inequality.” *Political Communication*. 16: 147 – 167.

to commonly accepted notions of Blacks as socially deviant or dependent: “the urban poor,” “welfare recipients,” “minorities,” “low socio-economic status,” “lazy,” “criminal,” “juvenile,” “section 8 recipients,” “liberal,” and “big government.” Using loaded and code words to frame the issues and circumstances surrounding policy choices significantly impacted Blacks through policies that are either overly restrictive or bare-bones and don’t accomplish the goals for which they were created.

New Conservatism, unlike the reign of terror, hid its racism under “traditional American values”--work ethic, traditional morality, and respect for traditional authority.¹⁹ Ian Lopez puts it this way: “Because race is an unstable identity, its deployment depends on a symbolic connection between the characteristics that code as race but to which race cannot be reduced (skin color, facial features, etc.) and some stable referent...The maintaining technologies of race are primarily economic and spatial.”²³ Coded as “new paternalism,” it promotes directive and supervisory public policy to enforce civic obligations and to provide “moral” teaching to the poor. Using policies passed during this period, including the welfare reform of 1996, the re-segregation of neighborhoods, and the attack on Affirmative Action, Whites attacked the very tools needed to reduce disparities between Blacks and Whites. In this period, Civil Rights are under attack. Blacks are still unaware of their power, responding with decreasing voter turnout and disengagement in the political process--more self-fulfilling prophecies preserving the current power structure.

Conclusion

America, from its inception, has been socially constructed. The artificial nature of race has kept one group in power at the expense of another. Though millions of Americans symbolically support the notion of equality, race, and the policies that define and perpetuate it continues to threaten significant progress toward “a more perfect union.” By acknowledging the existence of social construction and its effects over the course of the nation’s history, activists can rethink how to improve the nation. Understanding and resolving three centuries of policies designed to benefit Whites and burden Blacks will take a new vision of our future, where the gap between the promise and the reality of equality in America is finally closed.

That vision of “We The People” starts with three points that will help the nation undo the burden created by the social construct of race. First, we must employ and embrace the curricula created by Black and Brown educators for every walk of life that talks about race in stark terms. From pre-kindergarten to post-graduate and in every facet of our culture, race is an issue. Rather than reinvent the wheel, educators have developed

¹⁹ Sears, David O. “Racism and Politics in the United States.” In Jennifer Eberhardt and Susan Fiske (eds), *Confronting Racism: The Problem and the Response*, pp. 76 – 100. Sage Publications. Thousand Oaks, CA. 1998.

lesson plans to address these issues. Things as simple as Sesame Street and as advanced as the treatises from scholars like Henry Louis Gates, Jr. have all the information people need at their developmental level to learn the ill effects of race as a social construct. But those lessons are a start in addressing the long-standing effects of how Black and White have been defined and used to burden one and benefit the other.

Second, at every level of government--federal, state and local--America will need to come to grips with its collective role in this system. Governments will need a truth and reconciliation commission whose goal is to account for their official role in supporting the system. Every law, ordinance, regulation, punishment and unfair judgement needs to be accounted for. This will not only take time, but take great will. This is not to assign blame. Far from it, indeed, it is important to unravel the systemic effects of racism in the legal and justice systems. The will to do that will only be emboldened by people who are willing to acknowledge the accumulated effect on our society through the preceding education and then commit to rectifying those systemic effects. Knowing this will be a long-term and challenging endeavor that will take stamina in a society more comfortable with sound bites and twitter feeds, we must engage ourselves at the deepest levels of empathy, patience and compassion. I understand this will not be easy.

Third, we will need to correct our systemic errors. This will likely be the hardest path of the three. Because removing the old barriers and burdens created by a wretched system will cause people to see old injustices anew. Old wounds will open, emotions will run high. But if we follow the steps above and look at things from a perspective that although history cannot change, we can begin to understand and heal from its effects. We can reform or rebuild police departments, we can look at creating more rehabilitation vs. incarceration for nonviolent drug offenders, we can review the systemic effects of unfair banking, hiring and education practices and create new systems. We may not be able to counteract every injustice one for one, but we can create a nation where "We the people" can prosper without race as a social construct, obstacle and burden.

Our nation is at its most important inflection point since the 1960s. We can embrace the energy of this time and begin looking at ourselves with a clear lens and educate ourselves or we can hide from the challenge. Either way, America is going to be a nation where Black and White will have to solve this problem created by our founders. We will decide with our energy and attention: is the old social construct the one we want or is the unknown, with all its untold potential, our future?