Colorblind to the Reality of Race in America

By IAN F. HANEY LÓPEZ

How will race as a social practice evolve in the United States over the next few decades? The American public, and indeed many scholars, increasingly believe that the country is leaving race and racism behind. Some credit Brown v. Board of Education, the revered 1954 U.S. Supreme Court decision pronouncing segregated schools unequal, and the broad civil-rights movement of which the decision was a part, with turning the nation away from segregation and toward equality. Others point to changing demographics, emphasizing the rising number of mixed-race marriages and the increasing Asian and Hispanic populations that are blurring the historic black-white divide.

My sense of our racial future differs. Not only do I fear that race will continue to fundamentally skew American society over the coming decades, but I worry that the belief in the diminished salience of race makes that more likely rather than less. I suspect that the laws supposedly protecting against racial discrimination are partly to blame, for they no longer contribute to racial justice but instead legitimate continued inequality. We find ourselves now in the midst of a racial era marked by what I term "colorblind white dominance," in which a public consensus committed to formal antiracism deters effective remediation of racial inequality, protecting the racial status quo while insulating new forms of racism and xenophobia.

The Jefferson County school district, in Kentucky, covers Louisville and surrounding suburbs. A target of decades of litigation to eradicate Jim Crow school segregation and its vestiges, the district has since 2001 voluntarily pursued efforts to maintain what is now one of the most integrated school systems in the country. But not everyone supports those efforts, especially when they involve taking race into consideration in pupil assignments. In 2004 a white lawyer named Teddy B. Gordon ran for a seat on the Jefferson County School Board, promising to end endeavors to maintain integrated schools. He finished dead last, behind three other candidates. Indifferent to public repudiation, he is back — this time in the courtroom. Gordon's argument is seductively simple: Brown forbids all governmental uses of race, even if designed to achieve or maintain an integrated society.

He has already lost at the trial level and before an appellate court, as have two other sets of plaintiffs challenging similar integration-preserving efforts by school districts in Seattle and in Lynn, Mass. But Gordon and the conservative think tanks and advocacy groups that back him, including the self-styled Center for Equal Opportunity, are not without hope. To begin with, over the past three decades the courts have come ever closer to fully embracing a colorblind Constitution — colorblind in the sense of disfavoring all uses of race, irrespective of whether they are intended to perpetuate or ameliorate racial oppression. More immediately, last June the Supreme Court voted to review the Louisville and Seattle cases — Meredith v. Jefferson County Board of Education and Parents Involved in Community Schools v. Seattle School District.
Roger Clegg, president and general counsel of the Center for Equal Opportunity, is thrilled. As he gleefully noted in *The National Review*, there's an old saw that the court does not hear cases it plans to affirm. The Bush administration, too, supports Gordon and his efforts. The U.S. solicitor general recently submitted a friend-of-the-court brief urging the justices to prevent school districts across the country from paying attention to race.

At issue is a legally backed ideology of colorblindness that could have implications beyond schools — for higher education and the wider society. Yes, in a narrowly tailored decision three years ago, the Supreme Court allowed the University of Michigan to consider race as one factor in law-school admissions. But since then, conservative advocacy groups have used the threat of lawsuits to intimidate many institutions into halting race-based college financial-aid and orientation programs, as well as graduate stipends and fellowships, and those groups are now taking aim at faculty hiring procedures. This month Michigan voters will decide whether to amend the state constitution to ban racial and gender preferences wherever practiced. And looming on the horizon are renewed efforts to enact legislation forbidding the federal and state governments from collecting statistics that track racial disparities, efforts that are themselves part of a broader campaign to expunge race from the national vocabulary.

Gordon predicts that if he prevails, Louisville schools will rapidly resegregate. He is sanguine about the prospect. "We're a diverse society, a multiethnic society, a colorblind society," he told *The New York Times.* "Race is history."

But the past is never really past, especially not when one talks about race and the law in the United States. We remain a racially stratified country, though for some that constitutes an argument for rather than against colorblindness. Given the long and sorry history of racial subordination, there is tremendous rhetorical appeal to Justice John Marshall Harlan's famous dissent in *Plessy v. Ferguson*, the 1896 case upholding segregated railway cars: "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens."

Contemporary proponents of colorblindness almost invariably draw a straight line from that dissent to their own impassioned advocacy for being blind to race today. But in doing so, partisans excise Harlan's acknowledgment of white superiority in the very paragraph in which he extolled colorblindness: "The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth and in power. So, I doubt not, it will continue to be for all time." That omission obscures a more significant elision: Harlan objected not to all governmental uses of race, but to those he thought would unduly oppress black people.

As viewed by Harlan and the court, the central question was where to place limits on government support for the separation of racial groups that were understood to be unequal by nature (hence Harlan's comfortable endorsement of white superiority). He and the majority agreed that the state could enforce racial separation in the "social" but not in the "civil" arenas; they differed on the contours of the spheres. Harlan believed that segregated train cars limited the capacity of black people to participate as full citizens in civic life, while the majority saw such segregation only as a regulation of social relations sanctioned by custom. The scope of the civil arena mattered so greatly precisely because state exclusions from public life threatened to once again reduce the recently emancipated to an inferior caste defined by law.

For the first half of the 20th century, colorblindness represented the radical and wholly unrealized aspiration of dismantling de jure racial subordination. Thus Thurgood Marshall, as counsel to the National Association for the Advancement of Colored People in the late 1940s and early 1950s, cited...
Harlan’s celebration of colorblindness to argue that racial distinctions are "contrary to our Constitution and laws." But neither society nor the courts embraced colorblindness when doing so might have sped the demise of white supremacy. Even during the civil-rights era, colorblindness as a strategy for racial emancipation did not take hold. Congress and the courts dismantled Jim Crow segregation and proscribed egregious forms of private discrimination in a piecemeal manner, banning only the most noxious misuses of race, not any reference to race whatsoever.

In the wake of the civil-rights movement's limited but significant triumphs, the relationship between colorblindness and racial reform changed markedly. The greatest potency of colorblindness came to lie in preserving, rather than challenging, the racial status quo. When the end of explicit race-based subordination did not eradicate stubborn racial inequalities, progressives increasingly recognized the need for state and private actors to intervene along racial lines. Rather than call for colorblindness, they began to insist on the need for affirmative race-conscious remedies. In that new context, colorblindness appealed to those opposing racial integration. Enshrined with the moral raiment of the civil-rights movement, colorblindness provided cover for opposition to racial reform.

Within a year of Brown, Southern school districts and courts had recognized that they could forestall integration by insisting that the Constitution allowed them to use only "race neutral" means to end segregation — school-choice plans that predictably produced virtually no integration whatsoever. In 1965 a federal court in South Carolina put it squarely: "The Constitution is color-blind; it should no more be violated to attempt integration than to preserve segregation."

Wielding the ideal of colorblindness as a sword, in the past three decades racial conservatives on the Supreme Court have increasingly refought the battles lost during the civil-rights era, cutting back on protections against racial discrimination as well as severely limiting race-conscious remedies. In several cases in the 1970s — including North Carolina State Board of Education v. Swann, upholding school-assignment plans, and Regents of the University of California v. Bakke — the court ruled that the need to redress the legacy of segregation made strict colorblindness impossible. But as the 1980s went on, in other cases — McCleskey v. Kemp, which upheld Georgia's death penalty despite uncontroversial statistical evidence that African-Americans convicted of murder were 22 times as likely to be sentenced to death if their victims were white rather than black, and City of Richmond v. Croson, which rejected a city affirmative-action program steering some construction dollars to minority-owned companies despite the fact that otherwise only two-thirds of 1 percent of city contracts went to minority companies in a city 50 percent African-American — the court presented race as a phenomenon called into existence just when someone employed a racial term. Discrimination existed only but every time someone used racial language. Thus the court found no harm in Georgia's penal system, because no evidence surfaced of a specific bad actor muttering racial epithets, while it espied racism in Richmond's affirmative-action program because it set aside contracts for "minorities."

That approach ignores the continuing power of race as a society-altering category. The civil-rights movement changed the racial zeitgeist of the nation by rendering illegitimate all explicit invocations of white supremacy, a shift that surely marked an important step toward a more egalitarian society. But it did not bring into actual existence that ideal, as white people remain dominant across virtually every social, political, and economic domain. In 2003 the poverty rate was 24 percent among African-Americans, 23 percent among Latinos, and 8 percent among white people. That same year, an estimated 20 percent of African-Americans and 33 percent of Latinos had no health insurance, while 11 percent of white people were uninsured. Discrepancies in incarceration rates are particularly staggering, with African-American men vastly more likely to spend time in prison than white men are.
Or forget the numbers and recall for a moment the graphic parade of images from Hurricane Katrina. Or consider access to country clubs and gated communities, in-group preferences for jobs and housing, the moral certainty shared by many white folks regarding their civic belonging and fundamental goodness. Or, to tie back to Louisville, reflect on what you already know about the vast, racially correlated disparities in resources available to public (and still more to private) schools across the country. Racial dominance by white people continues as a central element of our society.

What may be changing, however, is how membership in the white group is defined. The term "white" has a far more complicated — and fluid — history in the United States than people commonly recognize. For most of our history, whiteness stood in contrast to the nonwhite identities imposed upon Africans, American Indians, Mexican peoples of the Southwest, and Asian immigrants, marking one pole in the racial hierarchy. Simultaneously, however, putative "racial" divisions separated Europeans, so that in the United States presumptions of gross racial inferiority were removed from Germans only in the 1840s through 1860s, the Irish in the 1850s through 1880s, and Eastern and Southern Europeans in the 1900s to 1920s. The melding of various European groups into the monolithic, undifferentiated "white" category we recognize today is a recent innovation, only fully consolidated in the mid-20th century. Now white identity may be expanding to include persons and groups with ancestors far beyond Europe.

Perhaps we should distinguish here among three sorts of white identity. Consider first persons who are "fully white," in the sense that, with all of the racially relevant facts about them widely known, they would generally be considered white by the community at large. (Obviously, racial identity is a matter not of biology but of social understandings, although those may give great weight to purportedly salient differences in morphology and ancestry.) In contrast to that group, there have long been those "passing as white" — people whose physical appearance allowed them to claim a white identity when social custom would have assigned them to a nonwhite group had their ancestry been widely known. Of people of Irish and Jewish descent in the United States, for example, one might say that while initially some were able to pass as white, now all are fully white.

Today a new group is emerging, perhaps best described as "honorary whites." Apartheid South Africa first formally crafted this identity: Seeking to engage in trade and commerce with nations cast as inferior by apartheid logic, particularly Japan, South Africa extended to individuals from such countries the status of honorary white people, allowing them to travel, reside, relax, and conduct business in South African venues that were otherwise strictly "whites only." Persons who pass as white hide racially relevant parts of their identity; honorary whites are extended the status of whiteness despite the public recognition that, from a biocultural perspective, they are not fully white.

In the United States, honorary-white status seems increasingly to exist for certain people and groups. The quintessential example is certain Asian-Americans, particularly East Asians. Although Asians have long been racialized as nonwhite as a matter of law and social practice, the model-minority myth and professional success have combined to free some Asian-Americans from the most pernicious negative beliefs regarding their racial character. In part this trend represents a shift toward a socially based, as opposed to biologically based, definition of race. Individuals and communities with the highest levels of acculturation, achievement, and wealth increasingly find themselves functioning as white, at least as measured by professional integration, residential patterns, and intermarriage rates.

Latinos also have access to honorary-white identity, although their situation differs from that of Asian-Americans. Unlike the latter, and also unlike African-Americans, Latinos in the United States have long been on the cusp between white and nonwhite. Despite pervasive and often violent racial prejudice against Mexicans in the Southwest and Puerto Ricans and other Hispanic groups elsewhere,
the most elite Latin Americans in the United States have historically been accepted as fully white. With no clear identity under the continental theory of race (which at its most basic identifies blacks as from Africa, whites from Europe, reds from the Americas, and yellows from Asia), and with a tremendous range of somatic features marking this heterogeneous population, there has long been relatively more room for the use of social rather than strictly biological factors in the imputation of race to particular Hispanic individuals and groups.

It seems likely that an increasing number of Latinos — those who have fair features, material wealth, and high social status, aided also by Anglo surnames — will both claim and be accorded a position in U.S. society as fully white. Simultaneously, many more — similarly situated in terms of material and status position, but perhaps with slightly darker features or a surname or accent suggesting Latin-American origins — will become honorary whites. Meanwhile, the majority of Latinos will continue to be relegated to nonwhite categories.

The continuing evolution in who counts as white is neither particularly startling nor especially felicitous. Not only have racial categories and ideologies always mutated, but race has long turned on questions of wealth, professional attainment, and social position. A developing scholarship now impressively demonstrates that even during and immediately after slavery, at a time when racial identity in the United States was presumably most rigidly fixed in terms of biological difference and descent, and even in the hyperformal legal setting of the courtroom, determinations of racial identity often took place on the basis of social indicia like the nature of one's employment or one's choice of sexual partners.

Nor will categories like black, brown, white, yellow, and red soon disappear. Buttressed by the continued belief in continental racial divisions, physical features those divisions supposedly connote will remain foundational to racial classification. The stain of African ancestry — so central to the elaboration of race in the United States — ensures a persistent special stigma for black people. Honorary-white status will be available only to the most exceptional — and the most light-skinned — African-Americans, and on terms far more restrictive than those on which whiteness will be extended to many Latinos and Asian-Americans.

Those many in our society who are darker, poorer, more identifiably foreign will continue to suffer the poverty, marginalization, immiseration, incarceration, and exclusion historically accorded to those whose skin and other features socially mark them as nonwhite. Even under a redefined white category, racial hierarchy will continue as the links are strengthened between nonwhite identity and social disadvantage on the one hand, and whiteness and privilege on the other. Under antebellum racial logic, those black people with the fairest features were sometimes described as "light, bright, and damn near white." If today we switch out "damn near" for "honorary" and fold in a few other minorities, how much has really changed?

In the face of continued racial hierarchy, it is crucial that we understand the colorblind ideology at issue in the school cases before the Supreme Court. "In the eyes of government, we are just one race here," Justice Antonin Scalia intoned in 1995. "It is American." That sentiment is stirring as an aspiration, but disheartening as a description of reality, and even more so as a prescription for racial policies. All persons of good will aspire to a society free from racial hierarchy. We should embrace colorblindness — in the sense of holding it up as an ideal. But however far the civil-rights struggle has moved us, we remain far from a racially egalitarian utopia.

In this context, the value of repudiating all governmental uses of race must depend on a demonstrated ability to remedy racial hierarchy. Colorblindness as a policy prescription merits neither fealty nor moral
stature by virtue of the attractiveness of colorblindness as an ideal. In the hands of a Thurgood Marshall, who sought to end Jim Crow segregation and to foster an integrated society, colorblindness was a transformative, progressive practice. But when Teddy Gordon, Roger Clegg, the Bush administration, and the conservative justices on the Supreme Court call for banning governmental uses of race, they aim to end the efforts of local majorities to respond constructively to racial inequality. In so doing, they are making their version of colorblindness a reactionary doctrine.

Contemporary colorblindness is a set of understandings — buttressed by law and the courts, and reinforcing racial patterns of white dominance — that define how people comprehend, rationalize, and act on race. As applied, however much some people genuinely believe that the best way to get beyond racism is to get beyond race, colorblindness continues to retard racial progress. It does so for a simple reason: It focuses on the surface, on the bare fact of racial classification, rather than looking down into the nature of social practices. It gets racism and racial remediation exactly backward, and insulates new forms of race baiting.

White dominance continues with few open appeals to race. Consider the harms wrought by segregated schools today. Schools in predominantly white suburbs are far more likely to have adequate buildings, teachers, and books, while the schools serving mainly minority children are more commonly underfinanced, unsafe, and in a state of disrepair. Such harms accumulate, encouraging white flight to avoid the expected deterioration in schools and the violence that is supposedly second nature to "them," only to precipitate the collapse in the tax base that in fact ensures a decline not only in schools but also in a range of social services. Such material differences in turn buttress seemingly commonsense ideas about disparate groups, so that we tend to see pristine schools and suburbs as a testament to white accomplishment and values. When violence does erupt, it is laid at the feet of alienated and troubled teenagers, not a dysfunctional culture. Yet we see the metal detectors guarding entrances to minority schoolhouses (harbingers of the prison bars to come) as evidence not of the social dynamics of exclusion and privilege, but of innate pathologies. No one need talk about the dynamics of privilege and exclusion. No one need cite white-supremacist arguments nor openly refer to race — race exists in the concrete of our gated communities and barrios, in government policies and programs, in cultural norms and beliefs, and in the way Americans lead their lives.

Colorblindness badly errs when it excuses racially correlated inequality in our society as unproblematic so long as no one uses a racial epithet. It also egregiously fails when it tars every explicit reference to race. To break the interlocking patterns of racial hierarchy, there is no other way but to focus on, talk about, and put into effect constructive policies explicitly engaged with race. To be sure, inequality in wealth is a major and increasing challenge for our society, but class is not a substitute for a racial analysis — though, likewise, racial oppression cannot be lessened without sustained attention to poverty. It's no accident that the poorest schools in the country warehouse minorities, while the richest serve whites; the national education crisis reflects deeply intertwined racial and class politics. One does not deny the imbrication of race and class by insisting on the importance of race-conscious remedies: The best strategies for social repair will give explicit attention to race as well as to other sources of inequality, and to their complex interrelationship.

The claim that race and racism exist only when specifically mentioned allows colorblindness to protect a new racial politics from criticism. The mobilization of public fears along racial lines has continued over the past several decades under the guise of interlinked panics about criminals, welfare cheats, terrorists, and — most immediately in this political season — illegal immigrants. Attacks ostensibly targeting "culture" or "behavior" rather than "race" now define the diatribes of today's racial reactionaries. Samuel P. Huntington's jeremiad against Latino immigration in his book Who Are We?: The Challenges to
America's National Identity rejects older forms of white supremacy, but it promotes the idea of a superior Anglo-Protestant culture. Patrick J. Buchanan defends his latest screed attacking "illegal immigrants," State of Emergency: The Third World Invasion and Conquest of America, against the charge of racism by insisting that he's indifferent to race but outraged by those with different cultures who violate our laws. My point is not simply that culture and behavior provide coded language for old prejudices, but that colorblindness excuses and insulates this recrudescence of xenophobia by insisting that only the explicit use of racial nomenclature counts as racism.

Contemporary colorblindness loudly proclaims its antiracist pretensions. To actually move toward a racially egalitarian society, however, requires that we forthrightly respond to racial inequality today. The alternative is the continuation of colorblind white dominance. As Justice Harry Blackmun enjoined in defending affirmative action in Bakke: "In order to get beyond racism, we must first take account of race. There is no other way."

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