I.

Women are not so much fighting for the freedom to be women—as though we all understood exactly what that meant—as for the freedom to be human; but that inevitably abstract humanity can be articulated in the here and now only through their womanhood, since this is the place where their humanity is wounded and refused. Sexual politics, like class or nationalist struggle, will thus necessarily be caught up in the very metaphysical categories it hopes finally to abolish; and any such movement will demand a difficult, perhaps ultimately impossible, double optic, at once fighting on a terrain already mapped out by its antagonists and seeking even now to prefigure within that mundane strategy styles of being and identity for which we have as yet no proper name.

—Terry Eagleton

As the millennium approaches, the United States of America is no longer what Michael Omi and Howard Winant term a “racial dictatorship.”


† Professor of Law, University of California, Berkeley (Boalt Hall). I would like to thank the Stanford Humanities Center and the Rockefeller Fellowship for Legal Humanities for the space and time, respectively, to write this essay.


2 As they put it:

For most of its existence both as European colony and as an independent nation, the U.S. was a racial dictatorship. From 1607 to 1865—258 years—most non-whites were firmly eliminated from the sphere of politics. After the Civil War there was the brief egalitarian experiment of Reconstruction which terminated ignominiously in 1877. In its wake followed almost a century of legally sanctioned segregation and denial of the vote, nearly absolute in the South and much of the Southwest, less effective in the North and far West, but formidable in any case. These barriers fell only in the mid-1960s, a mere quarter-century ago. Nor did the successes of the black movement and its allies mean that all obstacles to their political participation had now been abolished. Patterns of racial inequality have proven, unfortunately, to be quite stubborn and persistent. It is important, therefore, to recognize that in many respects, racial dictatorship is the norm against which all U.S. politics must be measured.
The state no longer excludes people considered nonwhite from political participation. Nor does the state separate the races in public or in private to avoid the political and biological threat of amalgamation. Indeed, the Supreme Court has announced its intention to treat all government racial classifications as suspect. According to Justice O'Connor, writing for the Court last year in Adarand v. Pena, "any person, of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest judicial scrutiny."3

Yet the fall of state-sponsored white supremacy has not ushered us into a world in which “race” no longer matters. Many of the economic, social, and political advantages once explicitly created and defended for whites only are still legally protected, only now under the kinder, gentler, and race-neutral language of “settled expectations.”4 State officials continue to directly participate in racial discrimination in selected areas, family law and criminal justice being the obvious examples.5 Finally, racial discrimination continues to occur in the “private” sphere: a sphere, of course, created and maintained by the law.6 As one of my constitutional law students once provocatively put it, “I have the right to be a racist.” So the state’s participation in white supremacy has not vanished; but it has been dramatically reduced, and the open espousal of racist ideology is now taboo. The Justices of the Supreme Court are now shocked, shocked! to find racial discrimination still occurring.

If race consciousness is increasingly condemned by the state and by white people, it has, ironically, flowered in the hearts of people racialized as nonwhite.7 As the twentieth century began, W.E.B. DuBois attempted in a series of books and articles to take the concept of "race" away from white folks: to transform it from an alibi for subordination into a myth that could

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4 Cheryl Harris writes:

The relative economic, political, and social advantages dispensed to whites under systematic white supremacy in the United States were reinforced through patterns of oppression of Blacks and Native Americans. Materially, these advantages became institutionalized privileges, and ideologically, they became part of the settled expectations of whites—a product of the unalterable original bargain. . . . Although the existing state of inequitable distribution is the product of institutionalized white supremacy and economic exploitation, it is seen by whites as part of the natural order of things that cannot legitimately be disturbed.


5 On the “paradox” of race consciousness in family law coexisting with a norm of colorblindness in equal protection doctrine, see Rachel F. Moran, Interracial Intimacy (forthcoming 1996); on the pervasive use of racist imagery by judges, prosecutors, defense counsel, witnesses, and juries in criminal cases, and a suggestion that these practices violate the equal protection clause, see Sheri L. Johnson, Racial Imagery in Criminal Cases, 67 Tul. L. Rev. 1739 (1993).


7 See Omi & Winant, supra note 2, at 66 (arguing that oppositional race consciousness is one of the legacies of racial dictatorship).
inspire pride and solidarity among African Americans. As the twentieth century ends, not only African Americans but also other “nonwhite” groups have begun to organize their political and social struggles, and their cultural creations, under the banner of race. Thus, at the same moment that the Supreme Court takes an aggressive stance against all government racial classifications, groups identifying themselves now as “people of color” are calling for “race consciousness” instead of “colorblindness.”

Contemporary identity politics is, in part, the attempt to complete DuBois’ uncompleted argument to turn the cultural artifacts we describe in shorthand as “categories” of race, gender, and sexuality into tools for liberation. The task seems most quixotic, however, when it comes to race. “Race” is becoming a remarkably decrepit concept: even Newsweek magazine recently reported, breathlessly, that there was actually no such thing. Thoughtful intellectuals denounced race as an excuse for eugenic policies after World War II, and since that time its scientific foundations have only grown shakier. How, then, can anti-racists use the term without giving aid and comfort to those who continue to search for scientific proofs of the inferiority of African Americans?

The problem is not just one of avoiding strange bedfellows. Writers spanning the political spectrum have argued that the use of racial categories to stand in for political alliances disserves communities of color seeking adequate representation of their interests. Finally, retaining the notion of

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9 Yen Le Espiritu calls this phenomenon “panethnicity.” Yen Le Espiritu, Asian American Panethnicity: Bridging Institutions and Identities 7 (1992) (“Although it originated in the minds of outsiders, today the panethnic concept is a political resource for insiders, a basis on which to mobilize diverse peoples and to force others to be more responsive to their grievances and agendas.”).

10 For example, Cheryl Harris argues that affirmative action promotes a positive rather than negative race consciousness, by calling attention to and remedying the subordination of African Americans. “Affirmative action is based on principles of antibias, not principles of Black superiority. . . . The assertion of Black identity in the face of the concerted and relentless efforts to degrade and eradicate it is indeed essential to the recovery of Blacks in particular and of the society as a whole.” Harris, supra note 4, at 1785 & n.323.


13 For a recent version of the old argument that “blacks” are inherently less intelligent than “whites” (this time based on comparative IQ scores), see, e.g., Richard Herrnstein & Charles Murray, The Bell Curve: Intelligence and Class Structure in American Life (1994).

14 On the moderate right, Justice O’Connor sees racial classifications as a danger to the American body politic because they are “divisive.” See, e.g., Shaw v. Reno, 113 S. Ct. 2816, 2832 (1993) (“Racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions.”). On the moderate left, Lani Guinier argues that giving African-American voters African-American representatives is not the same as giving them the power to pursue their political interests effectively, and champions a voting system that would allow voters’ interests, not just
race is problematic for anti-racists because at the most subtle, seldom examined level, "race" entrees us in a familiar but dangerous metaphysics: a representational economy in which bodies stand in both for power and for history.

The contributions to this joint issue of the Berkeley Women's Law Journal and the African-American Law and Policy Report reflect both the attractions and the dangers of organizing around identity categories. Mary Coombs explicitly addresses the ironies and contradictions of claiming "race" for oppositional consciousness. Nadine Taub urges readers to see the elimination of the social safety net for poor women with children as part of a backlash against all women. Donna Young shows how categorical thinking can be hurtful as well as helpful to the women of color that it welcomes into the legal academy in the name of "diversity." Finally, Barbara Flagg points us toward an issue with which identity politicians are only just beginning to grapple: what happens to white identity when race consciousness is no longer based on subordination?

II.

Although feminism has opened up a debate about the capabilities and proper roles of women and men, there remains a consensus that there are, still, women and men. But the scandal of race is that both racism and anti-racism are flourishing in a culture in which the concept of "race" itself is increasingly incoherent. Race as ancestry, as color, as politics, as experience: Judy Scales-Trent, in her book Notes of a White Black Woman, elegantly shows how each of these conceptions is widely held yet problematic—how, indeed, they are sometimes mutually contradictory.

Mary Coombs, reviewing Scales-Trent's book in Interrogating Identity, finds support for a number of general propositions about identity. Any identity category is a continuum, not an either/or dichotomy. All human beings exist at the intersection of multiple identity categories. Identity ascription may be performed by the self or by others. And identity is always contextual. As Coombs points out, categorical identities lie at the juncture between structure and agency. Identities evolve and change over time, and individuals move in and out of identity categories. Yet this does not mean that I am free to choose any identity just as I please. Rather, my identity is a complex interplay between what I choose and what is forced upon me.

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15 As Mary Coombs notes, however, this consensus is not trouble-free.
Coombs' position is a familiar one; and it seems to me clearly right. Yet it leaves us at the beginning rather than the end of an inquiry. One problem, I think, is Coombs' desire for a theory of identity generally, rather than an investigation of the complex richness of any particular identity. For example, Coombs notes that, "race is . . . overwhelmingly and pervasively important in American law and culture . . ." (p. 239) Yet, she continues to say that it is perhaps not the best identity category through which to examine the contextuality of the significance of identity itself. (p. 239)

The problem is that "identity itself" has little substance. If, as Coombs says, identity is always contextual, and identities are multiple and fluid, there's not much more one can say about identity in general. We can only investigate and evaluate the identity categories Coombs discusses insofar as they exist in historical context, as the source of political and moral claims. Thus, it is only because race matters so much in our society—because its double helix of history and power snakes through every corner of our society—that "race," that dilapidated, incoherent, suspect concept, ought to be retained at all.

Understanding race as a "strategic essentialism" helps us understand its value to anti-racists. For example, Coombs highlights identities that confound our accustomed categories—the white black women, the transgendered people, the "mixed race" people, the bisexuals. Transgressive identities like these are salutary, she suggests, because they reveal the gap between the complexity of lived experience and social attempts to reduce this complexity to a series of neat alternatives. They undermine the complacency we feel when reducing ourselves or someone else to a package of preformed attributes. Again, I agree. Yet, one might ask: if we should train our attention on the breaks and contradictions within and among identities, why engage in identity politics at all? Is there any value in organizing as "women," or "lesbians," or "African Americans," when each of these categories is so hopelessly inadequate, even oppressive? Why, for example, retain the concept of "race"—why not substitute "ethnicity," which is much more fluid, permits a greater range of identities, and has a less poisonous history?

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16 It ought to: I have made this kind of argument myself. Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 STAN. L. REV. 581 (1990). For a theoretically sophisticated statement of the contextuality of identity, see Martha Minow, Identities, 3 YALE J.L. & THE HUMAN. 97 (1991); see also MARTHA MINOW, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW (1990).

17 What Anthony P. Cohen says about "culture" can be applied to "race" as well: In this respect, culture is insubstantial: searching for it is like chasing shadows. It is not so much that it does not exist as that it has no ontology: it does not exist apart from what people do, and therefore what people do cannot be explained as its product. Anthony P. Cohen, Culture As Identity: An Anthropologist's View, 24 New Literary Hist. 195, 207 (1993).

18 See GAYATRI SPIVAK, Subaltern Studies: Deconstructing Historiography, in In Other Worlds, 97, 205-06 (1988) (arguing that academic attempts to speak for "the subaltern" can be useful if they are conscious of the inevitable inadequacy of each attempt).
Coombs hints at the answer when she muses that more individual choice of identity in the context of race is not always a good thing: for example, a “mixed-race” category on the census might simply feed an urge to “secede from blackness,” and complete freedom to choose one’s racial identity would allow “white” people to selectively become “black” in order to claim affirmative action benefits. (pp. 237–38, 243) The larger point is that the anti-racist use of “race” is not primarily about fidelity to an individual’s lived experience, or a personal right to choose one’s own labels; it is about a certain set of political and moral rights and obligations that are argued to arise from a certain history. In the unique circumstances of the United States, “ethnicity” will not do as a substitute for “race,” precisely because its history has been different than that of “race.”

To claim a nonwhite racial identity in the United States in an anti-racist context is to claim that history matters in a very specific way: that white supremacy, with its obsessions, exploitations, and cruelty over the past two and a half centuries, has made us into a people really divided by those imaginary lines. Claiming a nonwhite racial identity in this anti-racist context is to make a moral demand on whites to recognize and redress the injuries caused by white supremacy. And, for African Americans, it also makes a political demand: that the people identified as “black” since American slavery began be treated now as a distinct people with the right to cultural and social, if not political, autonomy.

The substitution of “ethnicity” for “race” on anti-essentialist grounds thus misses the point of anti-racist identity politics. These claims change the concept of race from one that has nothing to do with history to one that has everything to do with history. “Race” when used in this anti-racist context is neither a fixed, mysterious essence that determines personality, nor a meaningless fact about one’s skin or hair; it is the moral marker of wrongs that have been and continue to be done, and in the African American case the political marker of a desire to be treated as a distinct people, even a nation. And these claims suggest that identity can only be investigated in its particulars: in a world where identities are always fluid, dynamic, and multiple, the question must always be “who is defining, how is the definition constructed, and why is the definition being propounded.”

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19 In contrast, in Rwanda and in Bosnia “ethnicity” does all the political work that “race” does here. The point is that such terms are products of history.

20 In contrast, Indian nations claim a right to political autonomy even more strongly than most African-American communities, but they do so as individual nations, not as “Indians.” “Panethnic” identities have also been slow to emerge in Asian-American and Latino communities. See Le Espiritu, supra note 9, at 172-76.

21 Harris, supra note 4, at 1763; see also Martha Minow & Elizabeth Spelman, In Context, in PRAGMATISM IN LAW AND SOCIETY 247 (M. Brant & W. Weaver eds., 1991).
Nadine Taub’s article, Welfare “Reform”: An Attack on Us All, uses identity politics to provide insight into—and rally action against—the legislative destruction of “welfare as we know it.” Taub argues that women on AFDC are the focus of a moral panic about family values. Congress’s obsession with “illegitimacy” is being acted out on welfare mothers because they are the most vulnerable women available: poor, politically disorganized, popularly stigmatized, and dependent on government benefits. But Taub argues that all women should be concerned about the new restrictions on welfare. The story of the erosion of abortion rights is suggestive: poor women on welfare face the earliest and the most thorough disenfranchisement, but middle and upper-class women’s rights will not be far behind. The attack on welfare reform is really an attack on women who have rejected traditional marriage.

Taub’s argument is persuasive and her narrative compelling. Yet, I wonder whether the common interest of women in resisting patriarchal control is strong enough to overcome racial and, especially, class interests. “Welfare” has been racialized as black, and women on welfare are treated with the kind of suspicion and contempt historically reserved for black women. Thus, the debate about “welfare reform” is in part a debate about the supposedly debased culture of African Americans, who thanks to the welfare state do not want to work for a living and have indiscriminate sex without the benefit of marriage at taxpayers’ expense instead. Are white women willing to see themselves in these stigmatized “welfare queens”?

Even if the solidarity of women proves stronger than the race divide, I wonder if class interests will override gender interests in welfare rights. I am told, for example, that opinion polls show that working-class and lower-middle-class women are quite hostile toward women on welfare. Now that the 1950s family wage is well and truly gone, these women have found it necessary to go out to work, and they don’t see why women on welfare should get to stay home—or get subsidized child care. Indeed, it may be that the ideological underpinnings for the current attack on welfare have

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22 Take, for instance, a recent pair of articles in the San Francisco Chronicle. The first article, reprinted from the Los Angeles Times, reported the claims of four children living on the South Side of Chicago that their parents injected them with cocaine and served them “a diet of fried rats and boiled cockroaches.” The story concluded with the observation that the mother “reportedly spent much of her welfare payments on drugs.” Parents Accused of Sex Abuse, Feeding Kids Rats and Roaches, S.F. CHRON., Feb. 7, 1996, at A4.

The following day, the Chronicle reported that the children had admitted to inventing this story of abuse under pressure from an adult sister-in-law. Sisters Retract Rat, Cockroach Tale, S.F. CHRON., Feb. 8, 1996 at A4. That such an obviously absurd story would even be initially reported as truth, however, says much about a public eager to believe the worst about people who live on the South Side of Chicago and receive welfare.

also been shaped by white, upper-middle-class women—the core constituency of the feminist movement. In a forthcoming book, June Carbone argues that feminist pro-choice discourse in the 1970s and 1980s—in which women argued that one should not have children unless one can provide them with a certain package of emotional and material resources—has helped shape in the 1990s, a new middle-class consensus on the ethics of family-building. The 1990s “family values” feminists are extremely critical of women who choose to become poor, single mothers, particularly young women.\textsuperscript{24} If this is true, then Taub’s call for feminist solidarity against welfare reform tells only part of the story. Indeed, her reliance on the abortion story becomes ironic, for it was in the debate over abortion that solidarity among all women for the right not to bear children gradually gave way to this upper-middle-class women’s critique of poorer women’s choices.

It is a truism that Americans don’t like to talk about class: everyone wants to be considered “middle class,” and class divisions are assumed to be few and easily surmounted with a dose of hard work and optimism. Yet even if class in the United States doesn’t constitute a distinct “identity,” Taub’s analysis and the questions it raises suggest the need for a feminist analysis that explores the class divisions among women. I hope that Taub’s argument will find its audience; but in this time of unprecedented and growing gaps between the haves and the have-nots, I worry that it won’t—that feminist solidarity will continue to founder on the rock of class as the times get harder.

\textbf{B.}

Donna Young’s article, \textit{Two Steps Removed: The Paradox of Diversity}, exposes a different risk of identity politics: not that it will be overwhelmed by class politics, but that it will collapse into the very metaphysics that it seeks to escape.

The concept of “race,” as developed by the apologists for white supremacy, encoded relations of power in the seemingly fixed, unalterable, and “natural” human body.\textsuperscript{25} The idea of natural difference clearly served a political purpose: during the period of racial dictatorship in the United States, discussions of the moral rightness of slavery, genocide, and political exclusion could be deferred endlessly by focusing instead on difference: if “they” are naturally different from “us,” then equality might be served by separation, even domination. But the idea of natural difference also served the objective of the emerging human sciences: to place mankind among the animals by connecting a theory of human evolution—both biological and

\textsuperscript{24} I thank June for introducing me to this argument and sharing her thoughts with me.

\textsuperscript{25} See David Theo Goldberg, \textit{The Social Formation of Racist Discourse}, in \textit{Anatomy of Racism} 295, 306 (David Theo Goldberg ed., 1990) (“[R]acial exclusion finds whatever action it has in a discourse of the body, and . . . this ‘body talk’ (so to speak) forges an underlying though abstract unity for the discourse of racism.”).
cultural—with the theories of biological evolution that culminated in Darwin’s work.\(^\text{26}\)

The scientific and political projects of the nineteenth century have become the common sense of the late twentieth. The existence of “racial” differences is a simple fact to most of us; although we may argue about the significance of these differences, we now treat as observable fact the divisions among black, white, yellow, brown, and red people that taxonomists such as Johann Blumenbach invented in the eighteenth century.\(^\text{27}\) And the human body remains the place we look to find the truth about inequality. The public fascination with genetics and the media frenzy that seems to surround each study suggesting the existence of a “gay gene,” or a physical difference between women’s and men’s brains or hormonal structure, seems based on the conviction that if a difference can be found in the body, no social action caused it and no social action can ameliorate it. Even when differences between, say, “blacks” and “whites” are explicitly asserted to be “cultural,” not “biological,” the shadow of the body remains: “blacks” continue to be identified by their physiognomic characteristics and imagined as a distinct breeding population with a specified culture.\(^\text{28}\) Just as in earlier times, the body stands for “immutable traits,” and the mysterious connection between inborn essences and outwardly expressed behaviors, traits, and desires.

Contemporary anti-racists, like everyone else, continue to rely on the concept of race. Race serves as a logical remedial tool: the people who were or would have been formerly excluded because of their race are the people who now must be included. Race also serves, particularly for Afri-

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\(^{26}\) The philosopher Etienne Balibar argues that racism is fundamentally a form of “humanism,” meaning “a doctrine that makes of human beings, qua individuals or qua species, the origin and the end of rights, both declared and instituted.” Etienne Balibar, Paradoxes of Universality, in Anatomy of Racism 283, 288–89 (David Theo Goldberg ed., 1990). In the context of race theory, humanism means a commitment to understanding the course of human history as explained by natural laws. In the twentieth century, this quest to explain human history in terms of natural laws means that formal race science did not disappear with the defeat of biological racism; it merely changed form. Balibar cites Colette Guillaumin: “Indeed the human species is the key notion in relation to which racism has constituted itself and continues daily to constitute itself.” Id. at 289.

\(^{27}\) See Reginald Horrman, Race and Manifest Destiny: The Origins of American Racial Anglo-Saxonism 47 (1981) (Blumenbach, writing in the 1770s, argued for one human species containing five varieties—Caucasian, Mongolian, American, Ethiopian, and Malay.).

A colleague of mine reports that when he tried to introduce the concept of race as a “social construction” at a law faculty workshop, he was met with strong and incredulous objections: “Are you trying to tell us there are no giraffes and elephants?” The comment is revealing: not only has race been so “naturalized” that racial differences appear as stark as the differences between giraffes and elephants, but racial difference is being likened to species difference, just as in the nineteenth century when race theorists debated whether blacks and whites belonged to the same or different species.

\(^{28}\) The racist tract Dinesh D’Souza, The End of Racism (1995) is an example of this kind of argument. Although insisting that the inferiority of blacks is “cultural,” not “biological” (therefore avoiding the moral stigma of “racism”), D’Souza’s argument that antidiscrimination laws should be repealed so that blacks will learn to cultivate white values of hard work and thrift assumes that white color prejudice is rational, that all people physically identifiable as “black” share a defective culture.
can Americans, to define the boundaries of a people, a group that is both a unique "ethnic" group and a target of political oppression. But, as Young’s piece shows, the metaphysics of race can swamp the goals of anti-racist struggle.

Whereas the drive for welfare reform identifies women on welfare as in need of moral improvement, affirmative action on law school faculties in the name of “diversity” extols women of color as role models, not failures. Being a law professor entails significant material as well as status benefits: Young’s focus is on a group of women who are highly privileged, both admired and given a real share of power and wealth. Thus, it might seem that the ideology of diversity is an example of the successful use of racial categories for anti-racist ends. Yet Young shows that this success has not been cost-free. Expecting women law professors of color to produce “diversity” when hired in token numbers at majority white and male law schools, she argues, asks them to accomplish something they cannot possibly achieve. It is hopes, not fears, that are being projected onto the bodies of women law professors of color; but the result is nevertheless, just as in the case of welfare reform, a disregard for the actual lives of those being targeted.

Young argues that the language of diversity sets up women law professors of color to fail by outlining unreasonable expectations. Law schools assume that the very presence of women of color on faculties will “demonstrate[] that competence and ability ha[ve] no racial barriers.” (p. 276) In fact, as she powerfully shows, the presence of “diverse” people on law school faculties is likely to mark the beginning, not the end, of a debate over their competence and ability—a debate that is usually painful for the objects of this scrutiny. Moreover, the expectation that women of color will be role models, that they will bring a “different perspective” to the law, and that they will educate their colleagues about racism and sexism privatizes the moral responsibility to ameliorate white supremacy, transforming a collective social obligation into a series of burdens for individual women to carry.

In a sense, the ideology of diversity has been captured by the metaphysics of race. Rather than approaching the aftermath of racial dictatorship as a problem of restructuring and redistributing social power and wealth, the ideology of diversity accepts the substitution of bodies for power relations. Thus, changing the configuration of bodies is the same as dismantling subordination: structural white supremacy vanishes in an emphasis on “race relations,” and the problem of fighting subordination becomes the problem of “educating” individuals, a problem fortunately

much more tractable and conveniently moveable to the backs of diverse people.

This complicity with the metaphysics of race is not unique to the ideology of diversity. Manning Marable has forcefully argued that African Americans have, wrongly, come to take race literally rather than metaphorically: it is a mistake to assume that every visibly "black" person shares one's political commitments and cultural identifications.\(^3\) Young’s diversity advocates are doing something slightly different, but it is a variant on the same theme. Both strategies threaten to reinforce the concept of race as a characteristic of persons rather than as the marker of a relation of power. The first priority of critical race and feminist theory has been to disrupt the economy of the body and make "domination" visible where only "difference" previously existed, making the natural seem suddenly unnatural and hence open to change. But in adopting the categories it tries to disrupt, critical race and feminist theory constantly run the risk of underlining the dominant message that truth lies in the body.

C.

In the first stage of identity theory, scholars chronicle the harms visited on subordinated groups, arguing that they are neither trivial nor inevitable but the result of systemic injustice. In the second stage, scholars bring their critical attention to the source of injustice, showing the bias and nonrepresentativeness of formerly dominant and unquestioned ways of speaking, thinking, and acting. And in the third stage of identity theory, the task becomes reconstruction: imagining a future without these forms of subordination, and inventing ways to get there from here.\(^3\) Barbara Flagg's work has focused on the second and third stages: exposing as "white" legal doctrines and practices formerly thought to be neutral, objective, and colorblind, and beginning the search for an anti-racist white identity.\(^3\)

In her contribution to this issue, Changing the Rules: Some Preliminary Thoughts on Doctrinal Reform, Indeterminacy, and Whiteness, Flagg

\(^{30}\) See Manning Marable, Race, Identity, and Political Culture, in Black Popular Culture 292, 295 (Gina Dent ed., 1992) ("During Jim Crow segregation, a person's color told us much about his or her background, kinships, social behavior, culture and politics. We were isolated as a group from the 'mainstream' of American society by the walls of legal racism. But in the post-civil rights era, this is no longer true. Blackness, in purely racial terms, only means belonging to a group of people who have in common a certain skin color and other physical features. . . . [T]oday, this racial identity doesn't tell us anything significant about a person's political beliefs, voting behavior, or cultural values.").

\(^{31}\) I do not mean to suggest with this typology that these stages are progressive; work at all three stages can and often does occur simultaneously.

considers the implications for whites of DuBois' project. If white identity has traditionally consisted of unthinkingly protecting one's privilege as not-nonwhite at best, and working consciously to create and increase that privilege through the exploitation and domination of people of color at worst, how can white race consciousness ever be a force for anti-racism? Yet contemporary identity politics defends the conservation of racial identities. Like the editors of Race Traitor magazine, who proclaim on the cover of every issue that "[t]reason to whiteness is loyalty to humanity," Flagg concludes that the solution is to reject the privileges built into white identity. But since privilege, like oppression, is a social creation, it cannot simply be abandoned by well-meaning individuals. Thus, Flagg's version of "treason to whiteness" is using one's white privilege on behalf of people of color. This can be done, she argues, in part by working for anti-racist legal reforms: to "make and keep promises that genuinely provide greater distributive justice." (p. 258)

Flagg rightly anticipates one obvious objection to her argument: it imagines people of color as passive victims of the legal system, dependent on white people's largesse. The fact is that legal doctrine, like the rest of American social, political, and cultural practices, is the product of continuous interaction among whites and nonwhites. The worst fears of nineteenth-century white supremacists have been realized (indeed, were realized before the project of making America a "white" nation even began), this is a mulatto nation, the product of amalgamation, not separation. A second objection to Flagg's characterization is that, as Iris Marion Young has argued, social justice involves not just distributive justice, but issues concerning nonmaterial goods such as power, opportunity, and self-respect. Although the legal system is clearly involved with distributive justice by determining who has a "right" to various material goods, the legal system can also structure decisionmaking power, divisions of labor, and even shape political autonomy. This analysis suggests that justice is not just a matter of who gets what, but who gets to decide. Yet Flagg quickly dismisses Mari

33 For example, in a fascinating study Celeste Condit and John Louis Lucaites argue that the concept of "equality" as used in American political and legal rhetoric is, far from a concept defined and interpreted solely by whites, an "Anglo-African word." They trace the public usage of the term from the American revolution to the present to show that African Americans have always participated energetically in the debate over what equality should mean, and that dominant interpretations of the term in various political, legal, and social contexts were consistently influenced, though not determined, by African-American perspectives. Celeste Michelle Condit & John Louis Lucaites, Creating Equality: America's Anglo-African Word (1993).

34 See, e.g., Harold Cruse, The Crisis of the Negro Intellectual 456 (1967) ("America is an unfinished nation—the product of a badly-bungled process of inter-group cultural fusion. America is a nation that lies to itself about who and what it is. It is a nation of minorities ruled by a minority of one—it thinks and acts as if it were a nation of white Anglo-Saxon Protestants."). For a powerful argument that white American culture does not exist apart from black culture, see Eric Sundquist, To Wake the Nations: Race in the Making of American Literature (1993).

Matsuda's argument that the law should work to make nonwhites the final arbiters of legal outcomes. (p. 258)

But I wonder whether the biggest problem with Flagg's proposal is simply that, like Taub's argument, it is not likely to be heard. Indeed, one of the reasons for this may be the anti-racist reconstruction of race. In championing racialized identities as sites for personal expression, cultural creativity, and political empowerment, people of color have not been able to dismantle the material bases of white supremacy. But they—we—have been able to change the social meaning of race, along the directions DuBois tried to steer it. We are reinventing history, social science, art, music, literature, philosophy, and "culture" itself under the banner of racialized identities. Why should whites want to reject their racial identities just as people of color are claiming theirs with such dramatic results?

Another lure of racial identity is not so positive; and this is the lure that Mary Coombs' formulation of identity is meant to counter. One risk of an intensification of emotional, political, and cultural investments in "identity" is the temptation to "go essentialist": to cling to an imagined inner purity, wholeness, and innocence usually represented by embracing one's utter victimization. People are apt to claim revealed, preformed identities as a substitute for moral and ethical conflict or as a way to avoid personal confusion; and there is evidence to suggest that white people who do become conscious of their whiteness will do just that, seeing themselves as innocent victims to avoid the painful admissions of responsibility and struggles with privilege that Flagg recommends.36 "Critical White Studies," like identity politics more generally, seeks to produce identities that are agonistic in nature: fractured, multiple, aware of their internal contradictions, and always skeptical of claims of purity and wholeness. Indeed, Critical White Studies seeks to make a required part of white identity the recognition that one's sense of well-being comes, at least in part, from others' pain. But though this kind of identity may be the kind that makes us better people, it certainly doesn't feel as good.

Another reason why the Critical White Studies call for the abandonment or transformation of whiteness is unlikely to be heard, finally, is simple self-interest. Just as the feminist movement did not produce hordes of men longing to stop making so much money and stay at home with the kids, few white people are likely to become race traitors and give up the luxury of innocence, comfort, and a sense of entitlement—particularly at a time when the global economy seems to be speeding in the direction of fewer haves and far more have-nots.37 Rather, the popular turn against affirm-a-

36 See, e.g., Charles A. Gallagher, White Reconstruction in the University, 94 (1 & 2) SOCIALIST REV. 165 (1995) (arguing that white college students are following the model of students of color, seeing their identities as stigmatized and victimized by others and thus in need of celebration and empowerment).

37 Bob Connell, pessimistic about the likelihood that many men will become active feminists, explains:
tive action programs suggests that many people see them as a zero-sum game, and few are willing to give up precious resources to people identified as "Other." The paradox Young's analysis suggests still remains: because the nature of privilege is to be satisfied with the status quo, the burden for change is always on the dominated and excluded, no matter how unjust that burden may feel.  

IV.

Anthony Appiah argues that DuBois ultimately lost his struggle to articulate race as a historical rather than transhistorical concept, and warns that a similar loss may await contemporary anti-racists. Appiah urges us to reject the language of race completely, for where it works it only does so as a metonym for culture. But I would argue, with Terry Eagleton in the quote that began this Foreword, that ceding “race” to the racists is unlikely to mean victory; the metaphysics of race has too powerful a hold on our society. In our best moments, we as anti-racists succeed in disarticulating race, revealing its complex structure as a relation of power under the guise of nature. At the same time, it is too soon to assume we’ve escaped taking on its dismal baggage. The body has given us a way to stabilize the unbearable lightness of identity; and we have to acknowledge the fascina-


The structural problem of counter-sexist politics among men needs to be stated plainly, as it is constantly evaded. The familiar forms of radical politics rely on mobilizing solidarity around a shared interest. That is common to working-class politics, national liberation movements, feminism and gay liberation. This cannot be the main form of counter-sexist politics among men, because the project of social justice in gender relations is directed against the interest they share. Broadly speaking, anti-sexist politics must be a source of disunity among men, not a source of solidarity. There is a rigorous logic to the trends of the 1980s: the more men’s groups and their gurus emphasized solidarity among men (being “positive about men,” seeking the “deep masculine,” etc.), the more willing they became to abandon issues of social justice.


It may be even more difficult for whites to give up white privilege than it is for men to give up male privilege. Men as a class have a set of pushes and pulls that whites as a class do not. Men have mothers, wives, sisters, and daughters whose lives are entwined with theirs; and they have the longing to be better fathers to their children than their own fathers were to them. Few whites have close relatives who are nonwhite; and there is nothing attractive about the social role of a nonwhite person (beyond, perhaps, the lure of being “cool”). For a first-person account of the lure of black identity for a young white man growing up in Chicago in the 1990s, see William Upski Wimsatt, Wigger: Confessions of a White Wannabe, 23 Chicago Reader, July 8, 1994, at 1.

38 For an exhortation therefore to take up the burden, while recognizing its injustice, see Angela P. Harris, On Doing the Right Thing: Education Work in the Academy, 15 Yale L. Rev. 125 (1990).


40 Id. at 45.

41 See Joan Scott, “Experience,” in Feminists Theorize the Political 33 (Judith Butler & Joan Scott eds., 1992) (arguing that it should be possible to “understand the operations of the complex and changing discursive processes by which identities are ascribed, resisted, or embraced and which processes themselves are unremarked, indeed achieve their effect because they aren’t noticed”).
tion it continues to exert on us. It is by no means clear that the "double optic" Eagleton imagines is any more achievable than the complete abandonment of race through "colorblindness."\textsuperscript{42} Similarly, we have to acknowledge that identities built into bodies are not all there is. In the mantra by which we theorize, "class" is the most neglected element of gender-race-class-sexuality. Perhaps in the next wave of alternative legal theory, women of color will retake economics, and the \textit{Berkeley Women's Law Journal} and the \textit{African-American Law and Policy Report} will be there to document the victory.

\textsuperscript{42} Walter Benn Michaels, for example, skeptically calls the attempt "the rescue of racism from racists." Walter Benn Michaels, \textit{Race into Culture: A Critical Genealogy of Cultural Identity}, 18 \textit{Critical Inquiry} 655, 684 n.40 (1992).