

READING A THE SOCIAL CONSTRUCTION OF RACE

Ian F. Haney López

Legal scholar Ian F. Haney López describes the way that biological arguments about race continue to be used in the legal system even though scientific research has concluded that there is no biological basis for race. The concept of race remains powerful and becomes perpetuated through legal, scientific, and political institutions.

Biological Race

There are no genetic characteristics possessed by all Blacks but not by non-Blacks; similarly, there is no gene or cluster of genes common to all Whites but not to non-Whites.¹ One's race is not determined by a single gene or gene cluster, as is, for example, sickle-cell anemia. Nor are races marked by important differences in gene frequencies (the rates of appearance of certain gene types). The data compiled by various scientists demonstrate, contrary to popular opinion, that intragroup differences exceed intergroup differences. That is,

greater genetic variation exists *within* the populations typically labeled Black and White than *between* these populations.² This finding refutes the supposition that racial divisions reflect fundamental genetic differences.

Rather, the notion that humankind can be divided along White, Black, and Yellow lines reveals the social rather than the scientific origin of race. The idea that there exist three races, and that these races are "Caucasoid," "Negroid," and "Mongoloid," is rooted in the European imagination of the Middle Ages, which encompassed only Europe, Africa, and the Near East. This view found its clearest modern expression in Count Arthur de Gobineau's *Essay on the Inequality of Races*, published in France in 1853–55.³ The peoples of the American continents, the Indian subcontinent, East Asia, Southeast Asia, and Oceania—living outside the imagination of Europe and Count Gobineau—are excluded from the three major races for social and political reasons, not for scientific ones. Nevertheless, the history of science has long been the history of failed efforts to justify these social beliefs.⁴ Along the way, various minds tried to fashion practical human typologies along the following physical axes: skin color, hair texture, facial angle, jaw size, cranial

Ian F. Haney López, "The Social Construction of Race," 29 *Harvard Civil Rights—Civil Liberties Law Review* 1 (1994): 11–12, 13–15, 16–17, 27–33.

capacity, brain mass, frontal lobe mass, brain surface fissures and convolutions, and even body lice. As one scholar notes, "[t]he nineteenth century was a period of exhaustive and—as it turned out—futile search for criteria to define and describe race differences."⁵

To appreciate the difficulties of constructing races solely by reference to physical characteristics, consider the attempt to define race by skin color. On the basis of white skin, for example, one can define a race that includes most of the peoples of Western Europe. However, this grouping is threatened by the subtle gradations of skin color as one moves south or east, and becomes untenable when the fair-skinned peoples of Northern China and Japan are considered. In 1922, in *Ozawa v. United States*,⁶ the Supreme Court nicely explained this point. When Japanese-born Takao Ozawa applied for citizenship he asserted, as required by the Naturalization Act, that he was a "white person." Counsel for Ozawa pointedly argued that to reject Ozawa's petition for naturalization would be "to exclude a Japanese who is 'white' in color." This argument did not persuade the Court: "Manifestly, the test [of race] afforded by the mere color of the skin of each individual is impracticable as that differs greatly among persons of the same race, even among Anglo-Saxons, ranging by imperceptible gradations from the fair blond to the swarthy brunette, the latter being darker than many of the lighter hued persons of the brown or yellow races."⁷ In rejecting Ozawa's petition for citizenship, the Court recognized that race is not a function of skin color alone. If it were, some now secure in their White status would have to be excluded, and others firmly characterized as non-Whites would need to be included. As the *Ozawa* Court correctly tells us, "mere color of the skin" does not provide a means to racially divide people. [...]

The rejection of race in science is now almost complete. In the end, we should embrace historian Barbara Fields's succinct conclusion with respect to the plausibility of biological races: "Anyone who continues to believe in race as a physical attribute of individuals, despite the now commonplace disclaimers of biologists and geneticists, might as well also believe that Santa Claus, the Easter Bunny and

the tooth fairy are real, and that the earth stands still while the sun moves."⁸

Racial Illusions

Unfortunately, few in this society seem prepared to relinquish fully their subscription to notions of biological race. This includes Congress and the Supreme Court. Congress's anachronistic understanding of race is exemplified by a 1988 statute that explains that "the term 'racial group' means a set of individuals whose identity as such is distinctive in terms of physical characteristics or biological descent."⁹ The Supreme Court, although purporting to sever race from biology, also seems incapable of doing so. In *Saint Francis College v. Al-Khazraji*,¹⁰ the Court determined that an Arab could recover damages for racial discrimination under 42 U.S.C. § 1981. Writing for the Court, Justice White appeared to abandon biological notions of race in favor of a sociopolitical conception, explaining: "[...] Clear-cut categories do not exist. The particular traits which have generally been chosen to characterize races have been criticized as having little biological significance. It has been found that differences between individuals of the same race are often greater than the differences between the 'average' individuals of different races [...]."¹¹ Despite this seeming rejection of biological race, Justice White continued: "The Court of Appeals was thus quite right in holding that § 1981, 'at a minimum,' reaches discrimination against an individual 'because he or she is genetically part of an ethnically and physiognomically distinctive subgrouping of *homo sapiens*.'"¹² By adopting the lower court's language of genetics and distinctive subgroupings, Justice White demonstrates the Court's continued reliance on blood as a metonym for race. [...] During oral argument in *Metrobroadcasting v. FCC*, Justice Scalia again revealed the Court's understanding of race as a matter of blood. Scalia attacked the argument that granting minorities broadcasting licenses would enhance diversity by blasting "the policy as a matter of 'blood,' at one point charging that the policy reduced to a question of 'blood . . . blood, not background and environment.'"¹³ [...]

Racial Formation

Race must be viewed as a social construction. That is, human interaction rather than natural differentiation must be seen as the source and continued basis for racial categorization. The process by which racial meanings arise has been labeled racial formation.¹⁴ In this formulation, race is not a determinant or a residue of some other social phenomenon, but rather stands on its own as an amalgamation of competing societal forces. Racial formation includes both the rise of racial groups and their constant reification in social thought. I draw upon this theory but use the term "racial fabrication" in order to highlight four important facets of the social construction of race. First, humans rather than abstract social forces produce races. Second, as human constructs, races constitute an integral part of a whole social fabric that includes gender and class relations. Third, the meaning-systems surrounding race change quickly rather than slowly. Finally, races are constructed relationally, against one another, rather than in isolation. Fabrication implies the workings of human hands, and suggests the possible intention to deceive. More than the industrial term "formation," which carries connotations of neutral constructions and processes indifferent to individual intervention, referring to the fabrication of races emphasizes the human element and evokes the plastic and inconstant character of race. An archaeological exploration of the racial identity of Mexicans [...] will illustrate these four elements of race.

In the early 1800s, people in the United States ascribed to Latin Americans nationalities and, separate from these, races. Thus, a Mexican might also be White, Indian, Black, or Asian. By the 1840s and 1850s, however, U.S. Anglos looked with distaste upon Mexicans in terms that conflated and stigmatized their race and nationality. This animus had its source in the Anglo-Mexican conflicts in the Southwest, particularly in Texas and California. In the newly independent Texas, war propaganda from the 1830s and 1840s purporting to chronicle Mexican "atrocities" relied on racial disparagements. Little time elapsed following the U.S. annexation of

Mexican territory in 1848 before laws began to reflect and reify Anglo racial prejudices. Social prejudices quickly became legal ones, highlighting the close ties between race and law. In 1855, for example, the California Legislature targeted Mexicans as a racial group with the so-called Greaser Act. Ostensibly designed to discourage vagrancy, the law specifically applied to "all persons who are commonly known as 'Greasers' or the issue of Spanish and Indian blood . . . and who go armed and are not peaceable and quiet persons."¹⁵

Typifying the arrogant belligerence of the times are the writings of T. J. Farnham:

No one acquainted with the indolent, mixed race of California will ever believe that they will populate, much less, for any length of time, govern the country. The law of Nature which curses the mulatto here with a constitution less robust than that of either race from which he sprang lays a similar penalty upon the mingling of the Indian and white races in California and Mexico. They must fade away; while the mixing of different branches of the Caucasian family in the States will continue to produce a race of men, who will enlarge from period to period the field of their industry and civil domination, until not only the Northern States of Mexico, but the Californias also, will open their glebe to the pressure of its unconquered arm. The old Saxon blood must stride the continent, must command all its northern shores, must here press the grape and the olive, here eat the orange and the fig, and in their own unaided might, erect the altar of civil and religious freedom on the plains of the Californias.¹⁶

Farnham's racist hubris illustrates the four important points about the nature of racial fabrication enumerated earlier.

First, the transformation of "Mexican" from a nationality to a race came about through the dynamic interplay of myriad social forces. As the various strains in this passage indicate, Farnham's racialization of Mexicans does not occur in a vacuum but in the context of dominant ideology, perceived economic interests, and psychological necessity. In unabashedly proclaiming the virtue of raising industry and harnessing nature, Farnham trumpeted the

dominant Lockean ideology of the time, an ideology which served to confirm the superiority of the industrialized Yankees and the inferiority of the pastoral Mexicans and Indians, and to justify the expropriation of their lands.¹⁷ By lauding the commercial and economic interests of colonial expansion, Farnham also appealed to the freebooting capitalist spirit of America, recounting to his East Coast readers the riches which lay for their taking in a California populated only by mixed-breed Mexicans. Finally, Farnham's assertions regarding the racial character of these Mexicans reflected the psychological need to justify conquest: the people already in California, Farnham assured his readers, would "fade away" under Nature's curse, and in any event, were as a race "unfit" to govern their own land. As suggested, racial fabrication must be viewed as a complex process subject to manifold social forces.

Second, because races are constructed, ideas about race form part of a whole social fabric into which other relations, among them gender and class, are also woven. Farnham's choice of martial and masculine imagery is not accident but a reflection of the close symbiosis in the construction of racial and gender hierarchies during the nineteenth century.¹⁸ This close symbiosis was reflected, for example, in distinct patterns of gender racialization during the era of frontier expansion—the native men of the Southwest were depicted as indolent, slothful, cruel, and cowardly Mexicans, while the women were described as fair, virtuous, and lonely Spanish maidens. Consider the following leaden verse:

*The Spanish maid, with eye of fire,
At balmy evening turns her lyre
And, looking to the Eastern sky,
Awaits our Yankee chivalry
Whose purer blood and valiant arms,
Are fit to clasp her budding charms.*

*The man, her mate, is sunk in sloth—
To love, his senseless heart is loth:
The pipe and glass and tinkling lute,
A sofa, and a dish of fruit;
A nap, some dozen times by day;
Somber and sad, and never gay.¹⁹*

This doggerel depicts the Mexican women as Spanish, linking their sexual desirability to European origins, while concurrently comparing the purportedly slothful Mexican man to the ostensibly virile Yankee. Social renditions of masculinity and femininity are inseverably a part of racial constructs, just as racial stereotypes invariably embody some elements of sexual identity. The archaeology of race soon becomes the excavation of gender and sexual identity.

Farnham's appeal to industry also reveals the close interconnection between racial and class structures. The observations of Arizona mine owner Sylvester Mowry reflect this linkage: "The question of [resident Mexican] labor is one which commends itself to the attention of the capitalist: cheap, and under proper management, efficient and permanent. [...] They have been peons for generations. They will remain so, as it is their natural condition."²⁰ When Farnham wrote in 1840 before U.S. expansion into the Southwest, Yankee industry stood in counterpoint to Mexican indolence. When Mowry wrote in 1863, after fifteen years of U.S. regional control, Anglo capitalism stood in a fruitful managerial relationship to cheap, efficient Mexican labor. The nearly diametric change in the conception of Mexicans held by Anglos, from indolent to industrious, reflects the emergence of an Anglo economic elite in the Southwest and illustrates the close connection between class relations and ideas about race. [...] The syncretic nature of racial, gender, and class constructs suggests that a global approach to oppression is not only desirable, it is *necessary* if the amelioration of these destructive social hierarchies is to be achieved.

Third, comparing the stereotypes of Mexicans propounded by Farnham and Mowry demonstrates the relatively rapid rate at which racial systems of meaning can change. In 1821, when Mexico gained its independence, its residents were not generally considered a race. Twenty years later, as Farnham's writing shows, Mexicans were denigrated in explicitly racial terms as indolent cowards. And twenty years after that, Mowry lauds Mexicans as naturally industrious and faithful. The

rapid emergence of Mexicans as a race, and the equally quick transformations wrought in their perceived racial character, exemplify the plasticity of race. Accretions of racial meaning are not sedimentary products which once deposited remain

solid and unchanged, or subject only to a slow process of abrasion, erosion, and buildup. Instead, the processes of racial fabrication continuously melt down, mold, twist, and recast races: races are not rocks, they are plastics.

KEY TERM

reify/reification To make something into an object, especially an object that can be traded or sold at a market.

NOTES

1. See generally Leon Kamin et al., *Not in Our Genes: Biology, Ideology, and Human Nature* (1984); Alan Almquist and John Cronin, "Fact, Fancy and Myth on Human Evolution," 29 *Current Anthropology* 520 (1988); and Bruce Bower, "Race Falls from Grace," 140 *Science News* 380 (1991).
2. See Richard C. Lewontin, "The Apportionment of Human Diversity," 6 *Evolutionary Biology* 381, 397 (1972). See generally L. L. Cavalli-Sforza, "The Genetics of Human Populations," 231 *Scientific American* 80 (Sept. 1974).
3. Thomas F. Gossett, *Race: The History of an Idea in America* 342-47 (1975).
4. See generally Stephen Jay Gould, *The Mismeasure of Man* (1981); William Stanton, *The Leopard's Spots: Scientific Attitudes toward Race in America 1815-59* (1960); and Nancy Stepan, *The Idea of Race in Science: Great Britain, 1800-1960* (1982).
5. Gossett, *supra* note 3, at 65-83. Charles Darwin proposed several of these axes, arguing at one point that "[w]ith civilized nations, the reduced size of the jaws from lessened use, the habitual play of different muscles serving to express different emotions, and the increased size of the brain from greater intellectual activity, have together produced a considerable effect on their general appearance in comparison with savages." *Id.* at 78 (quoted without attribution to a specific source). Darwin also supposed that the body lice of some races could not live on the bodies of members of other races, thus prompting him to suggest that "a racial scale might be worked out by exposing doubtful cases to different varieties of lice." *Id.* at 81. Leonardo da Vinci is another icon of intellectual greatness guilty of harboring ridiculous ideas regarding race. Da Vinci attributed racial differences to the environment in a novel manner, arguing that those who lived in hotter climates worked at night and so absorbed dark pigments, while those in cooler climates were active during the day and correspondingly absorbed light pigments. *Id.* at 16.
6. 260 U.S. 178 (1922).
7. *Id.* at 197.
8. See Barbara Jeanne Fields, "Slavery, Race and Ideology in the United States of America," 181 *New Left Review* 95-96 (1990).
9. Genocide Convention Implementation Act of 1987, 18 U.S.C. § 1093 (1988).
10. 481 U.S. 604 (1987).
11. *Id.* at 610, n.4.
12. *Id.* at 613.
13. Neil Gotanda, "A Critique of 'Our Constitution Is Color-Blind,'" 44 *Stanford Law Review* 1, 32 (1991) (citing Ruth Marcus, "FCC Defends Minority License Policies: Case before High Court Could Shape Future of Affirmative Action," *Washington Post*, Mar. 29, 1990, at A8).
14. Omi & Winant, at 61. Michael Omi and Howard Winant, *Racial Formation in the United States: From the 1960's to the 1980's*, New York: Routledge 1986.
15. Cal. Stat. 175 (1855), excerpted in Robert F. Heizer and Alan J. Almquist, *The Other Californians: Prejudice and Discrimination under Spain, Mexico, and the United States to 1920*, at 151 (1971). The recollections of "Dame Shirley," who resided in a California mining camp between 1851 and 1852, record efforts by the ascendant Anglos to racially denigrate Mexicans. "It is very common to hear vulgar Yankees say of the

- Spaniards, 'Oh, they are half-civilized black men!' These unjust expressions naturally irritate the latter, many of whom are highly educated gentlemen of the most refined and cultivated manner." L. A. K. S. Clappe, *The Shirley Letters from the California Mines, 1851-1852*, at 158 (1922), quoted in Heizer and Almquist, *supra* at 141.
16. T. J. Farnham, *Life, Adventures, and Travel in California* 413 (1840), quoted in Heizer and Almquist, *supra* note 15, at 140.
 17. See generally Robert A. Williams, "The Algebra of Federal Indian Law: The Hard Trail of Decolonizing and Americanizing the White Man's Indian Jurisprudence," 1986 *Wisconsin Law Review* 219.
 18. See Nancy Leys Stepan, "Race and Gender: The Role of Analogy in Science," in *Anatomy of Racism* 38 (David Theo Goldberg ed., 1990).
 19. Reginald Horsman, *Race and Manifest Destiny: The Origins of American Racial Anglo-Saxonism* 233 (1981) (citation omitted).
 20. Sylvester Mowry, *The Geography of Arizona and Sonora* 67 (1863), quoted in Ronald Takaki, *Iron Cages: Race and Class in Nineteenth Century America* 163 (1990).