

Whiteness After 9/11

Thomas Ross

I. INTRODUCTION

Race is not a natural, self-evident, or timeless idea. It exists as a social construction. Its primary work is to express two parallel and intertwined conceptions—the inferiority of the non-White and the always corresponding superiority of the White race. If Blacks are lazy, Whites are implicitly industrious. If Blacks are prone to criminality, Whites are law-abiding. If Blacks are not patriotic, Whites are, and so on. When Whites who hold these racist ideas exercise discretion and power—as judges, police officers, employers, and so on—the Whites in their world receive an illicit boost, a presumption of worthiness and belonging. While many White Americans reject this terrible, unwanted boost, many other Americans, consciously or unconsciously, presume that racial differences are real and that being White makes them inherently superior to those deemed not White. This is why, notwithstanding all their pleas for a “color-blind” society, many Whites would seek to sustain a color-conscious world.

Yet the cultural significance of race has seemingly eroded in the last half century. Through the mid-twentieth century, White Americans could find the very message of their racial superiority in the formal legal structures of apartheid. Fifty years ago, White Americans could look across the cultural spectrum of politics, business, the professions, academics, and even sports and see a nearly unbroken reflection of their own White faces. In political and social discourse, professions of White supremacy remained acceptable, even common in some settings.

Today, things are different. While race remains etched into the face of poverty, prison populations, and mass-media cultural stereotyping, White America has to confront a new world where state

laws no longer convey the reassurance of racial supremacy, where the places of privilege and power are more colorful, and where talk of racial supremacy must be done more carefully and quietly by those in the public eye. While being White is still a source of enormous privilege and advantage, it may seem, from the White perspective, not what it once was.

As White Americans contemplate the erosion of the cultural markers of White supremacy, they must also confront another unsettling prospect—the contemporary demographic trends that show the end of White numerical dominance looming. The White majority in this country on a national level has gone from nearly 90% in 1940¹ to approximately 77% in 2000 and continues to drop.² In particular regions and states, the effects are more dramatic. For example, California has gone from a 92% White majority in 1960 to 63.4% White majority in 2000.³ Demographic studies project that the state will become a White minority state by the middle part of this century.⁴

Yet, even these demographic numbers suggest that White Americans outside several specific states and regions have little reason to contemplate a racial minority status anytime soon. And, after all, these are mere population statistics. The more important numbers are those that reflect wealth, status, and real political power and, one would expect, these numbers would reflect a continuing White dominance.

Still, the very idea of a state or a region where Whites are a racial minority has great symbolic and political resonance within the White community. This is especially true in the context of the rising Latino population in the Southwest. Consider the recent attempted takeover

1. CAMPBELL GIBSON & KAY JUNG, U.S. CENSUS BUREAU, WORKING PAPER NO. 56, HISTORICAL CENSUS STATISTICS ON POPULATION TOTALS BY RACE, 1790 TO 1990, AND BY HISPANIC ORIGIN, 1970 TO 1990, FOR THE UNITED STATES, REGIONS, DIVISIONS, AND STATES tbl. 1 (2002), available at <http://www.census.gov/population/documentation/twps0056/twps0056.pdf>.

2. ELIZABETH M. GREICO, U.S. CENSUS BUREAU, THE WHITE POPULATION: 2000 (2001), available at <http://www.census.gov/prod/2001pubs/c2kbr01-4.pdf>.

3. GIBSON & JUNG, *supra* note 1, tbl. 19.

4. MINORITY BUSINESS DEVELOPMENT AGENCY, U.S. DEP'T OF COMMERCE, MINORITY POPULATION GROWTH: 1995 TO 2050, at 6 (1999), available at <http://www.mbd.gov/documents/mbdacolor.pdf>.

of the Sierra Club by a group that campaigned on the idea that immigration, legal and illegal, was the most important environmental issue of our time.⁵ And whatever the actual demographics, studies show that Whites tend to overestimate the “Browning” of this country.⁶ Looking at the landscape of California politics over the past several years, for example, it is clear that “White minority politics” is a powerful force.⁷

Thus, we live in a time when many White Americans perceive themselves to be living in an increasingly “Brown” America in which they will soon be outnumbered and in which “being White” is given less overt cultural significance. For these White Americans, it is a time of racial anxiety.

In the midst of all this, all of America experienced the events of September 11, 2001. “9/11” changed everything, we are told. Undoubtedly, the wake of that fateful day has washed over this country, as well as the rest of the world. Much is different today. We have become almost used to the intrusive security measures at our airports and the concrete barricades surrounding our public buildings, while the most violent and radical transformations post-9/11 have occurred outside our borders as two nations, so far, have experienced the “shock and awe” of our military assault. The Bush administration, in the name of national security, continues to assault our civil liberties. We have shredded the Geneva Convention and, after Guantanamo Bay and Abu Graib, any serious notion of rules for the treatment of the captured enemy seems lost, perhaps for all time and for all future conflicts. The horrific events of 9/11 triggered these and many more changes, here and abroad. And the ripples and reverberations still spread. Thus, it is surely sensible to speak of a “post 9/11 world.”

In this essay, I explore a particular set of ripples outward from 9/11, namely, the effects on the racial identity we call “being White.” I want to show that these contemporary ripples are part of a historical

5. Felicity Barringer, *Bitter Division for Sierra Club on Immigration*, N.Y. TIMES, Mar. 16, 2004, at A1.

6. Roberto Lovato, *Fear of a Brown Planet*, NATION, Jun. 28, 2004, at 17–18.

7. See *id.*; *Diversity May Soon be Fully Reflected in Politics*, L.A. TIMES (Orange County Edition), Apr. 8, 2001, at B10.

narrative about national identity that runs like a thread through our nation's history. This narrative about "America" expresses the notion of White supremacy through an amalgam of civic and racial nationalism and thus serves to assuage the racial anxiety of White Americans at a time when that reassurance is perhaps most needed.

This will be tricky business. Tracing threads from one historical event to another and then from those events to a cultural conception like "being White" is always a reductive and speculative enterprise. That is, the myriad variables always shroud both the past and the present and make our causal claims suspect. Nonetheless, as we struggle to better understand our contemporary circumstances, what better tools do we possess than to look back as best we can?

Looking back at various historical moments, the idea of America as a White, Christian nation with a special destiny has taken center stage. We seem to live today in such a moment. In this essay, I seek to support that hypothesis and discuss its unsettling implications.

II. RACE AND NATION

We sensibly begin by considering the very ideas of "race" and "nation." In his striking analysis of the genocides of the twentieth century, *A Century of Genocide: Utopias of Race and Nation*, Eric Weitz sketches the development of these two interwoven conceptions, nation and race.⁸ He explains that these conceptions, at least in any recognizable form, are essentially post-Enlightenment ideas. "The categories of race and nation are not, in fact, self-evident; they are not natural, timeless ways of understanding human difference and of organizing political and social systems."⁹ These new categories of thought became the building blocks for conceptions of nationalism and national destiny that drove the machinery of genocide. More precisely, Weitz tells us that the commonalities, and hence the warning signals, of the genocides of the twentieth century in each instance were "ideologies of race and nation, revolutionary regimes with vast utopian ambitions, and

8. ERIC D. WEITZ, *A CENTURY OF GENOCIDE* (2003).

9. *Id.* at 17.

moments of crisis generated by war and domestic upheaval.”¹⁰ Other writers have also noted the dangerous linkage of nationalism and race.¹¹ And our own times are filled with bloody examples. (As I write this essay, the Sudanese government facilitates the genocide in Darfur, and the world stands by.)

Fortunately, it is happily not true that every strong form of nationalism manifests itself in a genocidal program. And nationalism need not be always primarily etched in race, e.g., the former Soviet Union. Yet, the history of the last several centuries shows us that the very ideas of race and nation have been often intertwined and often with great and sometimes horrific loss to the racial “other.”

This country’s history provides a vivid example of the dangers of just such a linkage. Despite the aspects of colonial life that might have suggested the emergence of a less racist regime, the United States of America began as an essentially White nation.¹² The terrible constitutional endorsement of slavery made clear that the Declaration’s “God given” rights had a racial exclusion.¹³ As an early order of business, the new Congress enacted a federal statute limiting naturalized citizenship to “Whites.” (It would not be until the mid-twentieth century that Congress would fully remove the “White” restriction on naturalized citizenship.)¹⁴ However shameful Taney’s work in *Dred Scott*,¹⁵ he nonetheless surely got right the prevailing sense of his forefathers that Blacks, free or enslaved, were not thought of as full citizens of this nation. The nineteenth century is replete with evidence of the United States as a nation that defined itself as White.

10. *Id.* at 15.

11. GEORGE M. FREDRICKSON, *THE COMPARATIVE IMAGINATION* (1997); GLOBAL CONVULSIONS (Winston A. Van Horne ed., 1997); JOHN HIGHAM, *STRANGERS IN THE LAND* 131–57 (1988); REGINALD HORSMAN, *RACE AND MANIFEST DESTINY* (1981). For the special place of America in the bloody history of the twentieth century, see SAMANTHA POWER, *A PROBLEM FROM HELL* (2002).

12. See generally A. LEON HIGGINBOTHAM, JR., *IN THE MATTER OF COLOR* (1978); Thurgood Marshall, *Reflections on the Bicentennial of the United States Constitution*, 101 *HARV. L. REV.* 1 (1987).

13. See DERRICK BELL, *AND WE ARE NOT SAVED* 26–42 (1987).

14. See IAN F. HANEY-LÓPEZ, *WHITE BY LAW* 49 (1996).

15. *Scott v. Sandford*, 60 U.S. 393 (1856).

In the nineteenth century, along with the racialized sense of national identity, arose a sense of special national destiny. As we marched across the North American continent in pursuit of our “manifest destiny,” coupled with our genocidal program for the indigenous people encountered along the way, many understood this phenomenon as the White man’s God-given mantle of duty. In his book, *Race and Manifest Destiny*, Reginald Horsman described the sense of destiny held by many eighteenth-century White Americans.¹⁶ “[They understood] the American Anglo-Saxons as a separate, innately superior people who were destined to bring good government, commercial prosperity, and Christianity to the American continent and to the world.”¹⁷ (Hauntingly, if you strike the term “Anglo-Saxons” from the passage, it could easily be part of the President’s next State of the Union address.)

Yet, the historical events that suggest a form of national identity that resonates most powerfully with our post-9/11 world occurred at the end of the nineteenth century. With slavery abolished, *Dred Scott* undone by the Reconstruction Amendments, and the phenomenon of Reconstruction, always far less than promised but, now unraveled, the nation had to sort out this new racial landscape. How was the reality of Black citizenship to be reconciled with the idea of America as an essentially White nation? Two seemingly disconnected narratives were critical to the answer. One narrative is about the Court and the rise of apartheid at the end of the nineteenth century. The other narrative is about the rise of a conception of “America” at the turn of the century that seems eerily contemporary.

In 1896 the Supreme Court issued its opinions in *Plessy v. Ferguson*,¹⁸ the case that came to stand for the principle of “separate but equal.” The majority upheld Louisiana’s racial segregation of passengers traveling by rail. For our purposes, the critical opinion is John Harlan’s dissent. The most often quoted passage from Harlan’s dissent is his phrase, “the Constitution is color-blind.” The following quote taken from a leading Constitutional law hornbook is a typical redaction of the dissent:

16. HORSMAN, *supra* note 11.

17. *Id.* at 2.

18. 163 U.S. 537 (1896).

[I]n view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. . . .¹⁹

The editing is particularly interesting in its ever-so-careful excision of Harlan's racist preface. The first three sentences of the paragraph, absent from most redactions, express an important corollary to Harlan's "color-blind" Constitution:

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, if it remains true to its great heritage and holds fast to the principles of constitutional liberty. But in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens.²⁰

Whatever the motives of the contemporary editor, the fuller passage importantly reveals Harlan's conception of White supremacy. This racist baggage was critical to Harlan's accommodation of a new world in which his America could no longer deny Blacks the formal status of citizenship.

Harlan's lofty talk of a "color-blind Constitution" allowed him to pretend to separate himself from the brute and violent racism that would, in a few more decades, erupt in the rise of the Klan and the epidemic of lynchings.²¹ As with most educated Whites of his time, Harlan surely believed in some form of the post-Enlightenment scientific conception of race. His reference in the *Plessy* dissent to a racial "heritage" and the timeless nature of White racial supremacy resonated with the race science of his time. All the world was divided into races and race was immutable.

Nonetheless, Harlan made clear his real vision for a multi-racial America in a less noted Supreme Court case decided three years after

19. ERWIN CHEMERINSKY, *CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES* 558 (1997).

20. *Plessy*, 163 U.S. at 559 (1896) (Harlan, J., dissenting).

21. See WYN CRAIG WADE, *THE FIERY CROSS* (1987).

Plessy. In *Cumming v. Board of Education*, the Court confronted the question of the constitutionality of a Georgia school district's policy providing a high school for white children but no high school for "colored" children.²² The Court's response was striking. In a brief, unanimous opinion, authored by Justice Harlan, the Court explained that such judgments were properly within the discretion of the local school authorities.²³ The case presented no serious Fourteenth Amendment issue. And for the next half century, the Court would provide no impediment to the construction and maintenance of a system of racial apartheid in this country that mocked the "equal" part of the ridiculous slogan "separate but equal."

Putting Harlan's dissent in *Plessy* together with his opinion for the unanimous Court in *Cumming*, we see a vision emerging of a multi-racial America in which the Court's interpretation of the Constitution facilitated a legal and social structure that rigged the outcome to guarantee Harlan's prediction of White supremacy. While the Court demanded that the race laws, like any law, be "rational," this demand meant almost nothing in a world where the tenets of racism became the implicit premises of any rationality analysis. Thus, the law challenged in *Cumming* was rational, i.e., segregated and inferior schools for black children made sense in a world where those in power saw Black children as lacking the capacity to benefit from anything more than the most basic education.

As Harlan proclaimed in his *Plessy* dissent, the White race would hold its dominance by remaining true to its racial heritage. But this assertion begged the question—what *racial* heritage did Harlan have in mind? We can imagine that he had in mind some abstract conception of a God-given and unbroken line of White supremacy stretching across the millennia. Yet, the racial heritage of nineteenth-century America's institutions of slavery and laws to subordinate even free Blacks is the White heritage that best corresponds with the blunt and devastating racist policies endorsed by Harlan and the rest of the Court in *Cumming*.

Harlan's story marked the beginning of a system of racial apartheid that seems, from our contemporary viewpoint, to have been

22. 175 U.S. 528 (1899).

23. *Id.* at 545.

a clear denial of the promise of the Reconstruction Amendments. But Harlan's viewpoint was of course not ours; he held to a brutal racism, however genteel and scientific sounding its expression. His story is a reminder of the lesson embodied in Grant Gilmore's concluding passage in *The Ages of American Law*: "Law reflects but in no sense determines the moral worth of a society."²⁴ In this sense, each generation gets the law it deserves. Harlan's generation and the several that would follow found the law to be a willing companion in their implementation of a racist social structure. It is a shameful chapter in American history.

But as various historians have taught us, the very idea of "America" carried the seed of racism from the start.²⁵ The second important historical narrative exemplifies the nationalist strain of racism and begins with the political ascendancy of Theodore Roosevelt at the turn of the century.

Teddy Roosevelt's political career began years before he stood on San Juan Hill with his Rough Riders in 1898 during the Spanish-American War, a war with its own racialized nature. But in an important sense, San Juan Hill was the catapult of his remarkable political life. Roosevelt would return from war to become governor of New York later that same year, Vice President in 1900, and President in 1901.

Roosevelt would later become the national leader of a Progressive movement that presaged the New Deal and the liberal state. He was a proponent of the social theory expressed in the metaphor of America as a great "melting pot" or "crucible." Roosevelt and others believed that America's strength and unique virtue was a product of the commingling and assimilation of diverse people who thereby became truly "Americans."²⁶ Yet, Roosevelt's vision of diversity and of the proper human ingredients in the melting pot was distinctly racialized.

24. GRANT GILMORE, *THE AGES OF AMERICAN LAW* 110 (1977).

25. See generally Marshall, *supra* note 12. See also Robert M. Cover, *Foreward: Nomos and Narrative*, 97 HARV. L. REV. 4, 35 (1983) (describing the problem of slavery and race as a "fault line in the normative topography of American constitutionalism").

26. On Teddy Roosevelt, see GARY GERSTLE, *AMERICAN CRUCIBLE* 43 (2001) ("Sustaining America's destiny depended on the melting together of Americans and members of other European races."). For a contemporary proponent, see ARTHUR M. SCHLESINGER, JR., *THE DISUNITING OF AMERICA* (1992).

In *American Crucible: Race and Nation in the Twentieth Century*, Gary Gerstle also reveals the powerful symbolic racial significance of the heroic narrative of the Rough Riders and San Juan Hill.²⁷ Consistent with his vision of the “melting pot,” when Roosevelt assembled his Rough Riders, he deliberately sought diversity in the ranks. In fact, he believed that war and combat was the ultimate crucible out of which a unified people would emerge. He assembled a core of men from the West who were the figurative descendants of the backwoodsmen of the earlier times. Roosevelt added to this core group various strands of diversity, including a small group of Ivy League athletes and a smattering of Indians, Jews, and Italians. But he excluded any Blacks or Asians. These people were unfit for service and would taint the crucible, in Roosevelt’s view.²⁸

The Rough Riders became military heroes with Roosevelt himself taking on near mythic status. The climax of the Cuban campaign was the Kettle Hill-San Juan Hill battle. As Roosevelt stood victorious at the top of San Juan Hill, his Rough Riders were joined by the regular regiments who had also fought courageously to take the hill. The problem was that the regulars included the remnants of the Ninth and Tenth Negro Cavalry Regiments, Black soldiers who would have been excluded from the Rough Riders as unfit.²⁹

In the heated aftermath of combat, Roosevelt actually praised the Negro soldiers. But in the months and years following, he would tell a different story. As the historian, Gary Gerstle, explained:

As [Roosevelt] wrote the history of his battles in Cuba, he diminished the black contribution to his victory to the point of insignificance. The nation to which he wanted to give birth and lead had to be a white nation. The greatness of America, he believed, could only lie in the exploits of Euro-Americans forged by battle into a single and superior race. Out of such convictions was the twentieth-century nation born.³⁰

27. GERSTLE, *supra* note 26.

28. *Id.* at 27–29.

29. *Id.* at 31–34.

30. *Id.* at 17.

The twentieth-century Rooseveltian nation was a powerful mix of civic and racial nationalism. It was an ideology that, like Harlan's interpretation of the Constitution, allowed White Americans to accommodate and cement their felt need for racial dominance. But the civic side of this conception was equally powerful and important. It represented a twentieth-century version of a thread of thought running from the founding of this nation, revealed in the idea of Manifest Destiny, and at the heart of the Gettysburg Address, namely, the sense of special God-given destiny to a nation and people uniquely formed for greatness on a global stage.

The racial aspects of this nationalism were not static. Through the early decades of the century, southern and eastern European groups increasingly gained standing as full-blooded Americans. Noel Ignatiev's book, *How the Irish Became White*, tells one chapter of this story.³¹ Still, the exclusion of Blacks and Asians from full status as Americans remained a constant. In fact, the assimilation of once excluded groups like the Irish only underscored the racial side of the nationalism of the times. "Becoming White" was the process for full inclusion in the national identity. Anglo-European Whites allowed some into the hallowed status while firmly blocking others on racial grounds. Although the composition of the melting pot evolved, the end product was always the same, an America defined essentially as White.

Gerstle describes the racial aspect of this "Rooseveltian nation" in the following terms:

No aspect of national order mattered more to [Roosevelt] than race. America's destiny lay in sustaining the finest English-speaking race the world had ever known. Sustenance depended on melting together Americans and members of other European races, preferably in circumstances of war. Sustenance involved, too, proscribing the intermingling of white and non-white races. America's future as a nation depended, in other words, on a complex blend of racial

31. See NOEL IGNATIEV, *HOW THE IRISH BECAME WHITE* (1995).

hybridity and purity, of racial inclusion and exclusion. In such ways would race define Roosevelt's nation.³²

In the decades after Roosevelt, this civic and racial nationalism would help shape both national domestic and international policies, ranging from the New Deal to military intervention to immigration laws and policy, and even McCarthyism. This nationalism always possessed a somewhat paradoxical nature, espousing formal equality before the law for all, regardless of race, while embracing the exclusion and segregation of the "racial inferiors."

The civic side of this form of nationalism was quite powerful and real. In Gerstle's words, "[t]he advocates of this nation espoused an expansive civic nationalist creed: political and social equality for all, irrespective of race, ethnicity, or nationality, and a regulated economy that would place economic opportunity and security within the reach of everyone."³³ Thus, Theodore Roosevelt became the great progressive political figure and the nationalism he advanced became the foundation for Franklin Roosevelt's New Deal and the very idea of the liberal welfare state. At the same time, this conception of civic nationalism helped demonize political radicals and dissidents. For Theodore Roosevelt, the great domestic enemy was the anarchist. Decades later, Senator McCarthy would draw on a version of this nationalistic fever to sustain his vicious witch hunt.³⁴

Race and nation thus coalesced in the nationalism that dominated American politics for most of the last century. But this national identity began to unravel in the 1950s. The Court's decision in *Brown v. Board of Education*³⁵ signaled the beginning of the end of the formal system of apartheid. The civic side of the conception started to come apart in the bloody times of the Vietnam War. Many Americans began to express both distrust of government and doubts about the nation's special destiny. Even the elegant hortatory of John F. Kennedy that had moved Americans several years before took on a false and tinny sound in the late 1960s. The War on Poverty collapsed. The slow, non-violent strategy of the mainstream civil

32. GERSTLE, *supra* note 26, at 43.

33. *Id.* at 8-9.

34. RICHARD M. FRIED, NIGHTMARE IN RED 53 (1990).

35. 349 U.S. 294 (1954).

rights movement seemed inadequate to many Blacks and their supporters. The noblest were gunned down. The cities burned. Anger, distrust, cynicism, and doubt displaced the robust optimism and call for self-sacrifice of the Rooseveltian nationalism.

The great question became, what conception of America would fill the void? The decades following the 1960s seem a time of transition and uncertain national identity. America remained without a clear sense of national identity, at least until September 11, 2001.

III. THE POST-9/11 HOMELAND

On September 11, 2001, Muslim men, part of the Al Qaeda terrorist network, hijacked four commercial jetliners, crashing into each of the towers of the World Trade Center in New York City and into the Pentagon in our nation's capital. A group of passengers stormed the cockpit of the fourth airline, causing the highjackers to crash the plane into the southwestern Pennsylvania countryside. More than three thousand persons were killed, many of them New York City police and firefighters. The event came to be known as "9/11" and it changed the face of America forever.

The preceding paragraph seems superfluous. I need only say 9/11 and each reader can fill in the story. In fact, we can barely imagine an American who does not know the basic narrative of that day. And this is perhaps the most important thing about 9/11. The suffering and loss of life that day became a story known to all Americans. It mobilized this nation like no other single event in my lifetime. The closest historical analog is December 7, 1941. Other contemporary writers have explored the disturbing racial parallels in the narratives of 9/11 and 12/7.³⁶ In the aftermath of 9/11, we went to war, a war unlike any other, a war of seemingly ceaseless duration and amorphous scope—the War on Terror. 9/11 changed the nation and the world, forever, at least in the collective imagination of White America.

36. See, e.g., Jerry Kang, *Thinking Through Internment*, 9 ASIAN L.J. 195 (2002); Eric L. Muller, *12/7 and 9/11*, 104 W. VA. L. REV. 571 (2002).

In her brilliant essay, “The Day the World Did Not Change,” Paula Abood explains that 9/11 was in fact “just another day” for most people.

Do we imagine that ordinary Iraqis were deeply shocked by the collapse of two buildings in downtown New York, when in fact most of their buildings and landscapes have been collaterally damaged by masses of carpet bombs and depleted uranium dropped by none other than the United States and friends? Not to mention the willful starvation of the Iraqi civilian population through a genocidal economic blockade imposed by the so-called civilized West for the past eleven years? Do we imagine that Palestinian women remain deeply affected by this incident when they and their families have been subjected to state terrorism via bombs, U.S. F-16s, Apache helicopters, and an assortment of missiles, rockets, and bullets for decades? Could we imagine that this urban devastation deeply troubled Chechen women when their own city of Grozny has been razed and bombed into a smoking postmodern ruin without an ounce of sympathy from anybody? And what about the Somalis? The Bosnians of Sarajevo? The Sudanese? The South Lebanese? I could go on.³⁷

Abood sees in “the political commodification of September 11 . . . the privileging of white-Western suffering.”³⁸

Although the victims of 9/11 were not all White, the essential face of the victims was White. The bulk of the public attention centered on New York where most of the deaths occurred. Those victims essentially fell into two groups—the heroes, the firefighters and police, and the innocent victims, the business people trapped in the twin towers. No one seemed interested in pointing out that the overwhelmingly White face of those two victim groups may have been in part due to historical patterns of racial discrimination in

37. Paula Abood, *The Day the World Did Not Change*, SIGNS: J. WOMEN CULTURE & SOC'Y, Winter 2003, at 576; see also Catharine A. MacKinnon, *State of Emergency*, in SEPTEMBER 11, 2001: FEMINIST PERSPECTIVES 426 (Susan Hawthorne & Bronwyn Winter eds., 2002) (arguing that 9/11 illuminates and necessitates a gendered analysis of violence worldwide).

38. Abood, *supra* note 37.

hiring by the New York City police and fire departments as well as by the Wall Street firms.³⁹ And in fact the very mention of this possibility still likely invokes in most readers a sense of discomfort, which is of course my point.

Within our own country, the suffering of those outside the narrative of 9/11 has receded even further from the public consciousness. On September 12, 2001, women continued to suffer beatings, rape, and murder. Children starved. The incarceration of most of a generation of Black men proceeded apace. But it was as though 9/11 sucked all the air out of the room. Nothing mattered anymore except helping the victims and avenging the awful slaughter.

The national dialogue regarding racial profiling provides a striking example. Just prior to 9/11, the controversy surrounding racial profiling by the police and the phenomenon called “Driving While Black” were front page news.⁴⁰ Even President Bush and Attorney General Ashcroft had expressed the need to end racial profiling.⁴¹ But in the wake of 9/11, the focus quickly shifted to the need for a new form of racial profiling, namely the profiling of possible terrorists seeking to pass through airport security. We had all seen the videotapes of two of the hijackers blissfully making their way unimpeded through airport security. We knew what the enemy looked like; the array of the photos of the 9/11 hijackers showed us what to look for—brown-skinned “Arab-looking” men.

While the debate over racial profiling of Middle Eastern men raged, the new catch phrase, “Flying While Brown,” displaced its predecessor, “Driving While Black.”⁴² The political and social

39. See Steven A. Ramirez, *Diversity and the Boardroom*, 6 STAN. J.L. BUS. & FIN. 85, 88–89 (2000) (noting that while seventy-five percent of Fortune 500 companies had diversity programs, few linked compensation to the achievement of diversity goals, and that the vast majority of smaller businesses had no diversity programs at all); David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms?* 84 CAL. L. REV. 493 (1996) (documenting the primarily White face of the major law firms). Regarding the New York City Police Department’s racial discrimination, see William M. Slonaker et al., *Discrimination in the Ranks*, POLICE Q., Sept. 2001, at 289–90.

40. Nicole M. Christian, *Reno Is Asked to Investigate Death of Black Man at Mall*, N.Y. TIMES, July 7, 2000, at A10.

41. See generally DAVID A. HARRIS, PROFILES IN INJUSTICE (2002).

42. See Somini Sengupta, *Sept. 11 Attack Narrows the Racial Divide*, N.Y. TIMES, Oct. 10, 2001, at B1; Sherri Sharma, *Beyond “Driving While Black” and “Flying While Brown,”* 12

discourse showed little interest in the old issue, even though no reason existed to suppose that police practices regarding Black men had somehow changed in the wake of 9/11. Moreover, the linkage of racial profiling with national security presumably made the very activity of racial profiling seem now a necessary evil to many, including many so-called liberals. The continued suffering of law-abiding Black men subjected to dangerous and humiliating traffic stops on pretextual grounds was swept away by the more urgent need to protect White Americans from future terrorist acts.

Many Americans saw 9/11 as an attack on the very core of the nation, on its basic values, and on its most important institutions. It was no less than an attack on our “way of life.” Our political leaders characterized this War on Terror as nothing less than “a clash of civilizations.”⁴³ The terrorists attacked us because the United States represented goodness and freedom. While wars are typically cast in black and white terms, and often in Black and White terms, this war seemed cast in the most elemental form imaginable: it was a battle of good versus evil.

President Bush expressed the essential nature of the struggle in a speech at the National Cathedral on September 14, 2001.

[O]ur responsibility to history is already clear: to answer these attacks and rid the world of evil. War has been waged against us by stealth and deceit and murder. This nation is peaceful, but fierce when stirred to anger. This conflict was begun on the timing and terms of others. It will end in a way, and at an hour, of our choosing . . . They have attacked America, because we are freedom’s home and defender. And the commitment of our fathers is now the calling of our time.⁴⁴

And a week later in his address to the joint session of Congress, Bush divided the entire world into “us” and “them”: “Every nation, in

COLUM. J. GENDER & L. 275 (2003).

43. See Joel Achenbach, *The Clash: Two Professors, Two Academic Theories, One Big Difference*, WASH. POST, Dec. 16, 2001, at W17. See generally SAMUEL P. HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* (1996).

44. President’s Remarks at National Day of Prayer and Remembrance Service, 2001 PUB. PAPERS 1108–09 (Sept. 14, 2001).

every region, now has a decision to make. Either you are with us, or you are with the terrorists.”⁴⁵

In this way, we justified our war on the Taliban in Afghanistan. And the contrived linkage between Saddam Hussein and Al Qaeda, along with the elusive weapons of mass destruction, became the rationale for a war in Iraq that rages on as a fitful and violent occupation.

In this war, although brown skin and Middle Eastern ethnicity sometimes seem sufficient markers of the other, the archenemy is the brown skinned radical Muslim “terrorist.” This imagery naturally conjures its opposite, the White Christian “warrior.” In the imagination of White America, this is surely a war representing a clash of civilizations, but it is also partially a racial war, and certainly a religious war. It is our God versus their God and our God is bigger, of course.

No doubt rabid nationalism has swept the nation. Everywhere we see the oddly peremptory call, “God Bless America.” (Might we consider at least saying “please”?) The American flag has become ubiquitous. *The Economist* of September 22, 2001, noted:

The whole country is aflutter with flags. They fly at half-mast from federal buildings. They fly from every house and car you pass as you walk down the street. Huge flags decorate sports stadiums, tiny ones dangle from baby carriages. Wal-Mart and K-Mart have sold more than half a million flags in the past week.⁴⁶

Yet, what White America seems to miss is that the display of flags and the expressions of patriotism are not actually so ubiquitous. Most Black neighborhoods and many Latino communities are not so flag-draped. Similarly, we do not seem to notice that the music of contemporary Black artists contains no analog to the “I’m Proud to

45. President’s Address Before a Joint Session of the Congress on the United States Response to the Terrorist Attacks of September 11, 2001 PUB. PAPERS 1140–44.

46. *Getting to Grips with Evil*, *ECONOMIST*, Sept. 22, 2001, at 28.

Be an American” and Arab-bashing tone of country music, a notoriously White form of music in both its artists and its listeners.⁴⁷

At the same time, the role of religion in public and political life has surged. No politician today dare end his speech without the obligatory divine call, “God Bless America.” While President Bush and other political leaders profess respect for other religious traditions, it is the Christian theology and imagery that holds sway.

The nationalism of our time, unlike that of Theodore Roosevelt’s, cannot be explicitly racially carved. Yet, in its demand for unconditional loyalty to country and in its use of the flag and references to our “fathers’ commitment,” this nationalism summons the old stories of what “America” meant. We are all draped in the flag and expected to be simply Americans. This is a form of “patriotism” that brooks no dissent, no whining, no place for the claims of the marginalized, a “melting pot” conception that leaves no doubt that the America that emerges is quintessentially White and Christian and engaged in a contemporary crusade.

IV. EPILOGUE

We seem to be witnessing the emergence of a new form of nationalism that expresses both a civic and racial/religious national identity. This conception of national identity and destiny draws its lineage from the civic and racial nationalism of John Harlan and Theodore Roosevelt, as well as the more recent “Springtime of Hope” of Ronald Reagan. Yet, as with each historical conception of national identity, it is surely a unique product of its own times.

The exceptional resonance of the very idea of “9/11” is perhaps the most significant part of the unique context for our contemporary national identity. This idea has become a lever of political manipulation of a magnitude not known since the fall of communism.

47. See TOBY KEITH, *The Taliban Song*, on SHOCK’N Y’ALL (Dreamworks 2003) (“We’ll bid a fair adieu and flip the finger to the Taliban / Oh oh yea the Taliban, baby”); DARRYL WORLEY, *Have You Forgotten?*, on HAVE YOU FORGOTTEN (Dreamworks Nashville 2003) (“They took all the footage off my T.V. / Said it’s too disturbing for you and me / It’ll just breed anger that’s what they experts say / If it was up to me I’d show it every day”); *Big Mouth*, CHI. TRIB. (RedEye Edition), Oct. 15, 2004, at 46. (KRS-One said he “cheered when 9/11 happened,” calling the attack ‘justice.’”).

As 9/11 lead inexorably to the “War on Terror,” and as the War on Terror drives a pre-emptive unleashing of American military force abroad and an assault on civil liberties at home, the parallel development of a new form of civic, racial, and religious national identity is easily overlooked.

As we witness the construction of our national identity, we ought to remember the lessons of the last century. As Eric Weitz has demonstrated, a strong civic and racial nationalism has been the precursor of the darkest moments of the unhappy century we have just left behind.⁴⁸ This is not to suggest that we stand today at the threshold of an American-driven genocidal program. What is missing from the historical formula is any “vast utopian ambition.” As the great twentieth-century thinker, Isaiah Berlin, so clearly reminded us, when you think you know how to take your people to the Promised Land, you do not mind letting blood along the way.⁴⁹ So far at least, America’s serious contemporary political leaders lack the messianic vision that might complete the formula.

At the same time, we must wonder how all this looks from other perspectives. The calm assurances that America is nowhere near a genocidal program may seem less obviously true from the perspective of a village in Afghanistan or Iraq or a cell in Guantanamo Bay or Abu Ghraib prison. Still, the motivations for our use of violence abroad today seem more driven by miscalculation and corruption than by true utopian vision. The Promised Land of today’s crusade may likely be the oil fields of Iraq.

In trying to imagine what national agenda may emerge from a new conception of “America,” the most relevant historical analogy may come from the late nineteenth and early twentieth century, from the ideas of Harlan and Teddy Roosevelt and the America that they helped to create. Harlan, like so many White men of his time, embraced a genteel and “scientifically grounded” form of racism. Thus, Harlan was able to enact the role of the great dissenter in *Plessy*⁵⁰ while only several years later dismissing the pleas of the

48. WEITZ, *supra* note 8, at 15.

49. See ISAIAH BERLIN, *The Pursuit of the Ideal*, in *THE CROOKED TIMBER OF HUMANITY* 1–19 (Henry Hardy ed., 1991).

50. See *supra* text accompanying notes 19–20.

Black families whose children were denied the high school education afforded to White children.⁵¹ The system of apartheid that followed *Plessy* resonated perfectly with the civic and racial nationalism expressed in Harlan's opinions.

At the same time, the political ascendancy of Theodore Roosevelt was driven in part by his vision of America—a great melting pot out of which emerged a people of destiny. Yet, the pot had no room for Blacks or Asians, although they had to be accommodated as a practical matter. Apartheid was thus the perfect solution for an inferior Black race that could not be sent back “home,” while restrictions on immigration were the answer to the Asian “problem.” Meanwhile, the southern and eastern Europeans thrown into the melting pot would become Americans in the fullest sense, that is, White Americans.

The greatest challenge for our nation, and perhaps any nation, is the maintenance of a coherent sense of national identity that might hold the nation together against the centrifugal forces of difference and dissent, while avoiding the nativistic and racist sense of national identity that can lead to slavery, apartheid, other forms of subordination, and, in the worst instance, domestic genocide. America, post-9/11, is balanced on the tightrope of that very tension. We may witness some new form of nationalism that fuels what may be the last gasps of a White race that feels it is quintessentially American. Such a form of nationalism may in turn drive and legitimate domestic initiatives that seek to thwart what the demographers suggest to be the inescapable twilight of White supremacy.⁵²

These initiatives might come in various forms in different contexts. We may expect the deployment of military force to be shaped in part by the racial tones of our new nationalism and our War on Terror. At home, domestic policy may turn increasingly away from the problems of the marginalized and towards the needs and desires of White Americans. Immigration policies and border security may reflect the “menace” beyond our southern borders. It is, perhaps happily, an unknowable future.

51. See *supra* text accompanying note 23.

52. See *supra* text accompanying notes 2–4.

The White man at the dawn of the twentieth century faced a frightening set of racial circumstances—the former Black slaves in his midst as free men and American citizens. His ideology included a nationalism that was both civic and racial in its central principles. His program was subordination through apartheid.

The White man at the dawn of the twenty-first century faces all the commonly shared perils of his fellow citizens, the lingering horror of 9/11, the uncertain contours of the War on Terror, but also and uniquely, he faces the knowledge that an America that he has always thought of as essentially his seems to be slipping away in an increasingly multi-racial America. If his ideology becomes an invigorated, twenty-first-century form of the racially infected nationalism of Harlan and Roosevelt, what rough beast might emerge in the twilight of a White America?