This paper was a product of a two-year academic study (2009 – 2011) of race-based policies in the United States through the lens of transitional justice theory. It is unpublished (for now) and is being shared to raise awareness among leaders.

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Author’s Note

This paper was completed in 2011 after two-years of extensive study of the role of the law in creating, sustaining, and exacerbating race-based inequalities in the United States. It was written for a year-long seminar called “Transitional Justice” at NYU School of Law. The seminar was taught by Paul van Zyl, the former Executive Secretary of the Truth & Reconciliation Commission of South Africa.

Though prophetic in many ways, please note that this paper was written before the Movement for Black Lives, Me Too, Standing Rock, and a host of other race-based organizing happening in Latinx, Arab, Muslim, South Asian, East Asian, and the multicultural immigrant communities. I share this paper at this time to raise awareness and help leaders piece together how the lives of all Americans – Black, White, Indigenous, Asian, Middle Eastern, Latinx, Mixed and beyond – have been impacted by the legal construct of race.

Today, having presented my work to over 13,000 professionals and academics nationwide, I would use slightly different language to describe some aspects of my analysis – particularly ensure that my language does not trigger the emotion of shame and/or exclusion. For example, the paper uses the term “Latino” to Americans of Latin American ancestry; a more gender-inclusive term “Latinx” has since entered our verbal and academic parlance. In addition, I would attempt to deepen my analysis of the impact of the hierarchical racial narrative on the rights and privileges of many racialized groups. In particular, I would deepen the analysis on indigenous populations including the Alaskan Natives, Native Hawaiians, the Chamorro people of Guam as well the legal treatment of Latinx Americans, particularly those with mixed and non-European ancestry. I would also include some discussion on the process of white identification of European ethnic groups – such as the Italians and the Jews.

Overall, I acknowledge that a multi-volume series would be required to cover this topic in all of its complexity and depth. I hope the reader would find the paper a helpful beginning in synthesizing our complex legal history of racism and white supremacy, and the transition that is needed to transform our democracy to one that would work for all people.

- Anurag Gupta, New York, 2019
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**INTRODUCTION**

In the United States, the mention of the word “race” almost always brings awkward lulls in conversations. People are hit with painful memories and a range of emotions that are rarely validated and acknowledged, if ever, especially if they are expressed in public settings. Such a pervasive culture of denial of historical fact and truth at a mass-scale has created a culture of self-silencing of all people, irrespective of creed or color. This creates a tremendous problem of the lack of a shared identity and the ability of American society to overcome a history of ruthless and inhumane violence, oppression, and marginalization. Such a culture of denial has paralyzed the nation and prevents it from reconciling its horrific past while sustaining the age-old status quo. The following facts portray the contemporary American social landscape by race.

<table>
<thead>
<tr>
<th>Single Individual</th>
<th>Under 65 years</th>
<th>$11,201</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>65 years &amp; older</td>
<td>$10,326</td>
</tr>
<tr>
<td>Single Parent</td>
<td>One child</td>
<td>$14,840</td>
</tr>
<tr>
<td></td>
<td>Two children</td>
<td>$17,346</td>
</tr>
<tr>
<td>Two Adults</td>
<td>No children</td>
<td>$14,417</td>
</tr>
<tr>
<td></td>
<td>One child</td>
<td>$17,330</td>
</tr>
<tr>
<td></td>
<td>Two children</td>
<td>$21,834</td>
</tr>
<tr>
<td></td>
<td>Three children</td>
<td>$25,694</td>
</tr>
</tbody>
</table>

Poverty: In the United States, poverty is an indicator that measures the annual amount of cash income that the government statisticians and economists believe a family of various sizes needs to support its livelihood. In 2009, according to the American government, a person or a family is “poor” only if they have an income lower than what is listed in the Table.¹

In that same year, with a total population of over 307 million,² America’s poverty rate was 13.2 percent.³ Irrespective of the number in any given year, the overall American poverty rate oscillates around 10 percent, or at least 31 million people, measured solely on the basis of monetary income aforementioned, and not other more robust metrics utilized by international organizations.⁴ With these numbers in mind, in contemporary America, 1 in 4 African-Americans, 1 in 5 Latinos, and 1 in 3 American Indians live in poverty, compared with less than 1 in 10 citizens who self-identify as being “white” (8.2 percent).⁵ In all, African-Americans

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⁴ See discussions of chronic, transitory, intergenerational poverty based on Amartya Sen’s Livelihood and Basic Needs Assessments.
⁵ U.S. Bureau of the Census, Aug. 2008 supplement to the Current Population Survey (CPS). Web: www.census.gov; there are no accurate estimates of the number of Asian Americans in poverty, but various research groups have found that number to be much higher than publicized in the media, see “Asian American Institute Fact Sheet: Asian Americans and Poverty,” available at: http://www.scribd.com/doc/17176701/Asian-Americans-Poverty.
constitute 13 percent of the population; Latinos 16 percent; American Indian 1 percent; Asians 5 percent; and whites the remaining 65.

These same numbers can be viewed from the lens of New York City as listed below.⁶

<table>
<thead>
<tr>
<th></th>
<th>“white” non-Latino</th>
<th>“Black”</th>
<th>Latino</th>
<th>“Asian”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Median family income</td>
<td>$71,148</td>
<td>$40,717</td>
<td>$34,450</td>
<td>$54,180</td>
</tr>
<tr>
<td>Poverty Rate</td>
<td>11.1%</td>
<td>21.2</td>
<td>26</td>
<td>17.3</td>
</tr>
<tr>
<td>No HS Diploma</td>
<td>10%</td>
<td>21.5</td>
<td>38.4</td>
<td>26.8</td>
</tr>
<tr>
<td>Adult Incarceration Rate (per 100,000, 15+ older)</td>
<td>283</td>
<td>2,770</td>
<td>1,382</td>
<td>43</td>
</tr>
<tr>
<td>Life Span</td>
<td>77</td>
<td>65</td>
<td>64</td>
<td>72</td>
</tr>
</tbody>
</table>

**Incarceration⁷:** African Americans represent 12.7% of the US population, 15% of US drug users (72% of all users are white), but they are 36.8% of those arrested for a drug-related crime, 48.2% of American adults in state, and federal prisons and local jails and 42.5% of prisoners under sentence of death. African American children (7.0%) were nearly nine times more likely to have an incarcerated parent in prison than white children (0.8%). Similarly, Latino children (2.6%) were three times as likely as white children to have a parent in prison. American Indians represent less than 1% of the US population, but they compose 4% of individuals under correctional supervision. American Indians are the victims of violent crimes at twice the rate of the general population and 60% of these victims describe the offender as white.⁸

In 2004, the American incarceration rate was 726 per 100,000 residents. When filtered by race, gender, and age, these numbers (per 100,000 people) are:

<table>
<thead>
<tr>
<th>Whites</th>
<th>Blacks</th>
<th>Latinos</th>
<th>All Females</th>
<th>All Males</th>
<th>White Males</th>
<th>Latino Males</th>
<th>Black Males</th>
<th>Black Males ages (25-29)</th>
</tr>
</thead>
<tbody>
<tr>
<td>393</td>
<td>957</td>
<td>2531</td>
<td>123</td>
<td>1,348</td>
<td>717</td>
<td>1,717</td>
<td>4,919</td>
<td>12,603 or 12.6%</td>
</tr>
</tbody>
</table>

To make an international comparison, in 1993 under the apartheid regime of South Africa, 851 per 100,000 black men were in jail; in 2003 in the United States, 4,919 per 100,000

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⁶ In New York City, it was recently found that 3 in 4 black men between the ages of 16 and 24 do not have jobs, see http://economix.blogs.nytimes.com/2010/12/13/study-shows-depth-of-unemployment-for-blacks-in-new-york/?partner=rss&emc=rss.


black men were in jail. With respect to women, about half a million women are incarcerated worldwide, and a third of that population resides in the United States.\(^9\) Within that population, an African American woman is eight times more likely than a white woman is to be imprisoned; they make up nearly half of the nation’s female prison population, with most serving sentences for nonviolent drug or property related offenses. Latina women experience nearly four times the rates of incarceration as white women.\(^10\)

State and federal laws mandate minimum sentences for all drug offenders. This eliminates from judges the option of referring first time non-violent offenders to scarce, financially strapped drug treatment, counseling and education programs. The racial disparity revealed by the crack v. powder cocaine sentences ensures that more African-American women will land in prison. Although 2/3 of crack users are non-black, 84.5% defendants convicted of crack cocaine possession in 1994 were black. Crack is the only drug that carries a mandatory prison sentence for first time possession in the federal system.\(^11\)

These trends have a direct impact on the political rights of non-white Americans as laws in 48 states prohibit people with a current or past felony conviction from voting. For example, such laws have effectively disenfranchised 13.1 percent of voting age African-American males.\(^12\) Similar trends can be seen in who receives death penalty and for what crime\(^13\); and identical statistics can be listed for education, health, nutrition, housing, homelessness, and access to sanitation, water, electricity, technology, nursing services, and other metrics that are collected for the purposes of measuring human development worldwide.

These facts lay bare the extraordinary problem that America faces today. This problem will not go away by wishing it away. It will not go away by cloaking it in abstract theories of “rational actors.” And it will certainly not go away by continuing to deny the history of what America is today and how it became what it is today. Knowledge and expression of truth is a crucial element for the future survival of America as one nation. Violence, conflict, and discriminatory policies have been historically used to silence individuals and groups who

\(^10\) Id.
\(^11\) Id.\(^\text{1}\) Prison Policy, available at: http://www.prisonpolicy.org/scans/women_prison.pdf
challenged America’s state policies to make them more humane and equal for everyone irrespective of her creed or color. Small improvements have been made, but the crux of the problem remains, as illustrated by the state of the nation above. With the widening wealth disparity and the increase of violence and violations of civil, political, economic, cultural, and social rights of historically marginalized groups, America stands on the verge another conflict, which can potentially spiral into another civil war.\textsuperscript{14} With the advent of information and communication technology, it is easier for oppressed groups to collectively organize without the ability of the government to tame or control it.

One of the foundational roots of the problem is the inability to have a singular definition to the words race, racism, and white supremacy. This permits the constant manipulation of these terms and often to create their polar equals such as “Black Supremacy” or “First Nations Solidarity” or “Yellow Peril.” The subsequent three ideas did not grow out of the communities which they are to represent, but labels that were imposed upon them by dominant white groups that found them threatening. And certainly, these movements, if they can be called that, were obviously not equal to “white supremacy,” for they were movements that arose in direct rebellion to white supremacy to release members of marginalized invisible classes from deep “cognitive dissonance,” a psychiatric condition created by the dissonance between people’s individual and collective memories and experiences with the imagined memories and experiences that have been created for them by the nation’s institutions.\textsuperscript{15} These memories include America’s narrative of being \textit{terra nullius} and being discovered by Christopher Columbus in 1492, its ideals of freedom, equality, and liberty, and the American dream. The fact is that white supremacy runs deep down into the veins of the founding and the sustenance of this nation. This condition has systematically created division within its population by the construction of “us” and “them,” the “familiar” and the “other.”

People of color, who themselves are broken up into multiple socially constructed groups, are traumatized by the memories that the word “racism” and “white supremacy” brings.\textsuperscript{16} For some it means water hoses, batons, and chains; for others, it means forced displacement, genocide, breaking up of families, and “civilizing” through violent cultural obliteration and boarding schools; yet for others, it means being perpetually “foreign,” “dirty” and/or “exotic.” These emotions stir feeling of anger, hate and frustration that they are unable to resolve, especially when they cannot openly and freely talk about them. This forced silencing also compels them to create a struggle between “us” and “them” where the “them” is anyone who is legally defined or perceived as “white,” i.e. of European descent. On their part, this often prevents them to distinguish between “white” individuals who are Klan members from organizers in communities of color or recent immigrants from Europe.\textsuperscript{17}

Conversely, for descendants of “white” Europeans, who have not been “corrupted” by any “colored” blood (or do not have non-white ancestry), the pathology of white supremacy creates feelings of unfathomable guilt and shame; for being sympathetic, yet defenseless on the

\textsuperscript{14} Id.
\textsuperscript{15} Joy Degruy Leary, Post Traumatic Slave Syndrome, at 53 (Uptone Press 2005); see also L. Festinger, Theory of Cognitive Dissonance (Stanford 1957).
\textsuperscript{16} Id.
\textsuperscript{17} Id.
one hand, but also angry and frustrated on the other because they are socialized to believe that they are at a disadvantage, as “their” country is being taken away from them to benefit people of color.  The problem at its root lies in the misunderstanding of the word “racism” and the defensive attitude that one is forced to take given the historical memory of racism in this country. It also perpetuates an environment of psychological dislocation preventing the citizenry as a whole to reconcile collectively, which in turn allows various opportunistic groups to fill the void with all sorts of lies for self benefit. America, as a nation, is still operating within the institutional framework of “white supremacy” as it was historically constructed without acknowledging that this is a problem.

While such a possibility may create a host of other problems of rights violations, the root of the problem goes back to the foundation of the American polity. Any solution would begin with an honest acknowledgement of that problem – the legal construction of inherited “race,” of “whiteness” and thus a culture of “white” supremacy. Alongside, there will have to be a society-wide acknowledgment of the physical, mental, and subconscious trauma that the institution of race has placed upon all people in American society. The initial step for creating an environment for nationwide acknowledgement will have to be the construction of a common historical narrative that reveals the truth about American society, as opposed to glorifying one group of individuals at the exclusion of others. It will have to acknowledge and reflect on what America is today, and how it got there. Once such truth is out, America will have to embark on honest efforts to dismantle the institutions of white supremacy and “race” and address their society wide impacts. This will not be an overnight process, just like the social and legal institutions of race were not constructed overnight. Its deconstruction will take time, a period of transition. The enormity of the task, however, should not intimidate the nation from acting, because the pathologies of America’s past will continue to haunt the nation until they are dealt with fairly and squarely.

Transitional justice theory, which has concentrated primarily on post-conflict nations in the global South, can provide significant guidance on how to initiate such a process of transition in the United States. This paper will be the first of its kind to utilize the literature of transitional justice to apply to the world’s richest and most powerful nation. It is also unique to incorporate the narratives of all of America’s diversity. The usual tendency in the literature is to create a strict dichotomies between black-white or Chicano-white or American Indian-white or Asian-white on the one hand, or to create dichotomies between communities of “color,” as in black-Latino or black-Jewish or black-Asian. I chose to put “color” in apostrophes, because “white”

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19 Id.


too is a color – a color that no person, human, or homo sapien in the world possesses, even individuals who are born with a skin deficiency, i.e. albinos. The construction of colored-ness and a white-ness was deliberately erected for the purposes of conquest and exploitation by ex-European colonizers—whether in the Americas, Africa, Australasia, or Asia. In today’s world, however, where there exist international human rights norms, and there is recognition of equality among all members of the “human family,” such an artificial historical artifact must be disposed of, while dealing with all of the conscious and subconscious deleterious effects it has created worldwide. This paper will specifically initiate that process using the United States as its topical focus. To achieve that goal, it utilizes views from all major identity groups of “color” to understand the root of the problem, the problem of white supremacy, where “white” is defined in a manner that is exclusionary, divisive, and benefits certain members of American society.

The paper’s aim is to present the United States as a nation transitioning from an oppressive past and to highlight the dire need for national reconciliation to allow her people to heal from the unspeakable crimes of the past, to prevent their sustained commission against historically oppressed groups, and to create opportunities for inclusive development. It will make its arguments in the following manner.

Part I demonstrates how law in America has been historically used to construct a racial binary and to exclude people who did not fit within that binary to perpetuate white supremacy in the pre-Civil Rights era. Part II shows how the United States is a nation in transition by reviewing the policy efforts made by the government since the Civil Rights decade of 1960s to deconstruct white supremacy. Part III will discuss the weaknesses of such efforts, and Part IV will offer concluding thoughts and recommendations on how to proceed.

To uncomplicate the incredibly complex historical narrative, the subsequent sections will divide the American populace into four groups of people24 as recognized by the law until the Civil Rights era of 1960s, and perhaps by the imagination of the majority of Americans to this day:

(1) **Whites**: these individuals voluntarily fled to this land to create a haven of “freedom, equality, and liberty”; the government decides who constitutes “white.”

(2) **Blacks**: these individuals were forcibly brought to this land to serve whites; the law has traditionally defined them as anyone with even “one-drop” of African blood.

(3) **Reds**: these individuals already existed here, but their existence was deliberately ignored. Historically, the government has not known how to deal with them outside of forced removal, murder, or attempts to ‘civilize’ them through forced acculturation into European Christian culture.

(4) **Others**: these individuals do not fit into the above three categories. They are not Reds because they were not here before the whites came; they are not blacks because

24 When discussing people, until 1965, we are plainly talking about men, and not women, because equal treatment of women in the face of the law in America is a very recent and incidental phenomenon, i.e. the possibility of providing women equal civil rights was perceived so absurd by Southern Democrats that they believed the insertion of the word “sex” would defeat the Civil Rights Act altogether. See Jo Freeman, “How ‘Sex’ Got Into Title VII: Persistent Opportunism as Maker of Public Policy,” 9 L. & Inequality: J. of Th. & Practice 163 (1991). This does not mean, however, that women – especially “white” women—were not guilty of atrocities committed in American history towards individuals legally considered “non-white.”
the vast majority of them were not forcibly brought here from Africa; and they are also not white because policymakers of the nation have not perceived them to be so. They either voluntarily came or were involuntary brought here from Asia, the Middle East, and/or Latin America

**PART I: ERECTING WHITE SUPREMACY: THE ROOT OF WHAT IT MEANS TO BE AMERICAN**

“We hold as undeniable truths that the governments of the various States, and of the confederacy itself, were established exclusively by the white race, for themselves and their posterity; that the African race had no agency in their establishment; that they were rightfully held and regarded as an inferior and dependent race, and in that condition only could their existence in this country be rendered beneficial or tolerable. That in this free government all white men are and of right ought to be entitled to equal civil and political rights; that the servitude of the African race, as existing in these States, is mutually beneficial to both bond and free, and is abundantly authorized and justified by the experience of mankind, and the revealed will of the Almighty Creator, as recognized by all Christian nations; while the destruction of the existing relations between the two races, as advocated by our sectional enemies, would bring inevitable calamities upon both and desolation upon the fifteen slave-holding states.”

This statement is a reflection of the sentiments shared by lawmakers of confederate states in the mid-nineteenth century that compelled them to secede from the Union of America, ninety years after its self-declared independence. The roots of this sentiment, however, return to the revered founding document of the American nation itself, originally created for the thirteen colonies on the east coast of the continent. Although the words “African,” “negro,” “white,” or “slavery” are not directly used it in the Constitution, several clauses share the identical sentiments of the above quotation. These include:

- **Art. 1, § 2, clause 3**: establishing the 3/5ths rule:
  Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.

- **Art. 1, § 9, clause 1**: permitting the continuation of the slave trade at least until 1808:
  The trade was permitted to continue subsequent to 1808 by Congressional complicity. The clause states: “The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808, but a tax or duty may be imposed on such importations, not exceeding 10 dollars for each person.”

- **Art. 1, § 9, clause 4**: referring to 3/5ths rule with respect to taxes:
  No capitation, or other direct tax shall be laid unless in proportion to the census or enumeration herein before directed to be taken (i.e. Art. 1 § 2, clause 3).

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Art. 4, § 2, clause 2: known as the “extradition clause”:
A person charged in any state with treason, felony, or other crime, who shall flee justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

Art. 4, § 2, clause 3: known as the “fugitive slave clause”:
No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due (superseded by 13th Amendment in 1863).

These clauses of the Constitution took effect on March 4, 1789, after the document’s ratification by nine of thirteen colonies. A year later, the Congress of that time passed the Naturalization Act of 1790 that endowed the privilege of American citizenship only to individuals who have resided in the colonies for “two years” and who are “free white persons” of “good moral character.”26 These stipulations from America’s early days reveal two things about the foundation of America. First, among the four groups of people listed above, the initial formation of the Union recognized only two groups – whites and blacks. Second, blacks were not citizens and their servitude (or slavery) was essential to the formation of the nation. These two components of who actually was included in the early American polity are important for how American Indians, East and South Asians, Middle Eastern people, Spanish-speaking immigrants, and other people belonging to the third and fourth categories, were subsequently treated by American law.

The struggle with the question of American Indians within the black-white dichotomy and as “human beings” reached the Supreme Court in 1823. The question was whether American Indians could transfer property rights to Europeans. Chief Justice Marshall, in the celebrated opinion that lays at the foundation of American Property Law, responded by coining the principle of discovery.27 This principle gave superior property rights to European powers based on the notion that Europeans had a system of written laws unlike non-European indigenous populations. Consequently, any land claims traced through American Indians were disregarded when they conflicted with claims traced through European powers. The Court’s reasoning for such disparate treatment was the perceived racial inferiority of American Indians, who the Chief Justice referred to as “fierce savages.”28

The discovery principle gave the United States government, run exclusively by wealthy and educated white men, legal title over all American Indians lands, wherever those lands were located, and the sole right to acquire, regulate, and dispose of such lands. Building upon that principle, the Supremacy Clause of the Constitution was utilized by the federal government to

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28 Id.
govern American Indians. As land became scarce in eastern and southern states of the initial thirteen founding states, state governments encouraged the federal government to relocate American Indians to more isolated areas in the western territories.\textsuperscript{29} Congress passed the Indian Removal Act in 1830 to allow the President to relocate as many American Indians as possible.\textsuperscript{30} Some tribes resisted the federal government’s removal efforts through military force and the courts.\textsuperscript{31} An early example was the Cherokee Nation who refused to give into efforts of the Georgia state legislature to subjugate their tribe members to biased Georgia state laws. Their resistance efforts were heard to no avail in \textit{The Cherokee Nation v. The State of Georgia} (1831). Chief Justice Marshall reasoned that American Indians could not constitute a foreign nation, no matter how independent and established, because they were an inferior people, and thus should be viewed differently than other foreigners of European countries.\textsuperscript{32} This case appropriated and eliminated the possibility of sovereignty of American Indians. Following the judgment, state and federal government received full authority to forcibly displace thousands of American Indians from their lands in Florida, Mississippi, Louisiana, and Georgia to territories in Oklahoma, the tragedy that has since been known as the “Trail of Tears.”

The removal and slaughter of American Indians continued throughout the nineteenth century under the guise of America’s manifest destiny to expand across the North American continent.\textsuperscript{33} While the state governments and the federal executive branch had legal and political carte blanche to access American Indian lands, they executed that authority with medical and military devices such as the elimination of buffalos, the primary source of food for many American Indians in the northwest, by encouraging “hunting” and supplying blankets infested with virus to American Indian villages to cause widespread sickness and death.\textsuperscript{34} The government also fought a bloody war with Mexico for the land between modern day Texas and California.\textsuperscript{35} Some 80,000 Mexicans living in the territories were extended citizenship, but a large number were also forcibly repatriated to Mexico.\textsuperscript{36} Furthermore, numerous American Indian nations, such as the Navajo and the numerous autonomous tribes of California, came under the jurisdiction of the American government.\textsuperscript{37}

As the government acquires the stretch across the nation, there was a high demand for people to work on that land. Qualifying white persons of good moral character, under the 1790 Naturalization Act, rushed to American shores especially fleeing the social turbulence and famine in Germany and Ireland. Approximately 1.7 million immigrants arrive on American

\textsuperscript{29} F. Michael Higginbotham, Race Law: Cases, Commentary, and Questions (Carolina Academic Press 2001), at 248 [\textit{hereinafter} “Race Law”].
\textsuperscript{30} \textit{Id.}, at 212.
\textsuperscript{31} \textit{Id.}, at 248.
\textsuperscript{32} \textit{Id.}, at 256.
\textsuperscript{34} \textit{Id}; \textit{Race Law}, at 242.
\textsuperscript{35} \textit{Id}.
\textsuperscript{36} \textit{Id}.
\textsuperscript{37} \textit{Id.}, at 28.
shores in 1841 – 1850, and another 2.6 million in the following decade. Among them also were large numbers of Chinese, especially in search of gold in California. It was recorded that the Chinese constituted one of the largest groups of immigrants in California in the 1850s.

Initially, the United States desired migration of Chinese labor to construct the transcontinental railroad. Thus, it even signed a treaty with China in 1868 establishing formal relations between the two nations and permitting free migration between the countries, and granting political and religious rights to such immigrants. Individual states, however, strongly resisted arrival of Chinese, the “Others” within the four groups mentioned above, and passed state statutes like the “Anti-Coolie” Act of California, instituted in 1862, to discourage Chinese immigration and to “protect free white labor” by imposing a special tax on employers who hire Chinese workers. Worker demands against Chinese workers who were blamed for declining wages and economic ills and larger prevalent concerns regarding maintain “white purity” led Congress to soon follow by passing the Chinese Exclusion Act in 1882. The law prohibited Chinese immigration for ten years, but it was extended every ten years until 1943.

During this period, when the three branches of federal government were dealing with American Indians and the Chinese (or “Others”), the individual states were struggling with one another on the morality of enslavement of descendants of Africans. Since the adoption of the Constitution, black slavery had become a national issue only once, which resulted in the Missouri Compromise of 1820. In 1819, there were twenty-two states divided evenly between slave and free states. Louisiana had been an organized territory since 1804, and the state of Louisiana was admitted in 1812. Southerners feared that a free Missouri would give anti-slavery Senators the chance to pass legislation hostile to the South. Missouri was thus admitted as a slave state on the condition that slavery would be prohibited on all territory north of 36 30'. Maine was subsequently admitted

42 Even though the Act was repealed in 1943, this did not mean the Chinese could become citizens after then. The Chinese were additionally excluded from becoming naturalized citizens under the Immigration and Naturalization Act of 1924, to be discussed later.
43 Race Law, at 126-7.
44 Id.
45 Id.
as a free state in 1821. The Compromise appeased many northerners and southerners until more land became available after the Mexican War in 1848, stirring pro-slavery hopes of expansion. Tensions mounted across North-South and resulted in the infamously loathed opinion *Dred Scott* in 1857, which held that black people could not be citizens of the United States, though individual states may give them state citizenship, and that banning slavery in territories under the Missouri Compromise of 1820 was unconstitutional.

What happened thereafter is a well-known part of American history: a contested presidential election where the southern ticket for slaveholders lost. Southern slaveholding states declared their own independence, reasons explained in written manifestos as the one aforementioned. The supremacy of “white,” the free permit to subjugate “blacks” and the complete formal non-recognition of “reds” and “others” created the cessation, which was followed by the bloodiest war that the nation has ever seen. With that said, it would be unfair to say that only the confederate states practiced prejudice against what was considered “non-white.” The northern states were just as much culpable for America’s manifest destiny across the continent, for the slaughter and unspeakable crimes of the American Indians, for the exclusion of non-Europeans from immigrating, and most prominently of mistreatment of “blacks.” The latter fact is most clearly visible by the support of the northern abolitionists of the “move to Africa” movement because they believed that Africans and whites could not live together as free people in the United States. This movement led to the creation of modern-day Liberia.

The civil war’s horror and widespread destruction in the slaveholding south was so grave that its memory remains as a deep injustice in the South to this day. The period following the

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46 In a 7-2 decision, the following was Chief Justice Taney’s reasoning. First, black descendants of slaves (slave or free) were not included in the notion of “citizen” because the Declaration of Independence recognizes slavery, anti-miscegenation laws are common across all states (free or slave), conditions of blacks in free states is not significantly better than their conditions in slave states, and because the Constitution explicitly protects the rights to import slaves and provide protection for owners of slaves through the fugitive slave clause. Second, all blacks are excluded from being American citizens (irrespective of their status as free or in servitude) because (1) the framers knew that to grant free blacks full citizenship would be to lay grounds for significant unrest and violence in slave regions, (2) the Constitution explicitly removes power to create citizens from the states and places it in the Congress, (3) in an effort to improve the Articles of Confederation, the Constitution uses the term “citizen” and not “free inhabitants” to ensure blacks are not include, (4) Congressional law consistently assumes that blacks are inferior and are excluded from citizens, (5) all conduct of the Executive assumes that blacks are excluded, and (6) state sovereignty to must be respected. Third, there is a difference between state and federal citizenship, the former does not secure the latter.

47 The reasoning here was that Congress can only regulate territories that were a part of the Union at the time of ratification. Thus, Congress is bound to give citizens in territories full protection of Bill of Rights, including the right to own slaves, and it cannot by itself create colonies; it is up to the new joining states to determine its slave status.


49 Id.

50 This is illustrated by the declaration of a statewide holiday as Confederate Memorial Month in seven Southern states, including Alabama, Florida, Georgia, Louisiana, Mississippi, Texas, and Virginia, with on-going discussions at the local and statewide politics level in Arkansas, North Carolina, South Carolina, Kentucky and Tennessee.
Civil War, from 1865 to 1877, is known as the Reconstruction era.\textsuperscript{51} It started with the passage of the thirteenth amendment which abolished involuntary servitude or slavery nationwide, with the exception of prisons.\textsuperscript{52} A major concern during Reconstruction was the condition of the approximately 4 million freedmen (freed slaves). Most had no homes, were desperately poor, and could not read and write. To help the freed slaves and homeless “whites,” Congress established the Bureau of Refugees, Freedmen, and Abandoned Lands or Freedmen's Bureau. The agency operated from 1865 until 1872.\textsuperscript{53} It issued food and supplies to blacks; set up more than 100 hospitals; resettled more than 30,000 people; and founded over 4,300 schools, including what are today known as Historically Black Universities, such as Atlanta University (now Clark Atlanta University), Fisk University, Hampton Institute, and Howard University.\textsuperscript{54}

In spite of its achievements, the underfunded Bureau could not solve the underlining economic marginalization of black people.\textsuperscript{55} Most continued to languish in poverty and suffered from racist threats and violence and from laws restricting their civil rights. The legal restrictions on black civil rights arose the same year as the passage of the 13\textsuperscript{th} Amendment. Many Southern state governments passed laws now known as the black codes. These laws were like the earlier slave codes, prohibiting blacks from owning land, from voting, establishing nightly curfews, and some states even permitted states to jail blacks for being unemployed. The black codes shocked the recent northern victors, who then passed the Civil Rights Act of 1866, which subsequently became the 14\textsuperscript{th} amendment giving any person born or naturalized in the United States, the rights and privileges of full citizenship.\textsuperscript{56} The amendment also overruled the citizenship holding of Dred Scott by stating that born persons became citizens both of American and the state which they reside.\textsuperscript{57}

The Civil Rights Act of 1866 also barred former federal and state officeholders who had supported the Confederacy from holding high political office, the first instance of “vetting” to undo a previous harm in American history.\textsuperscript{58} The thirteenth amendment passed without the participation of the Southern states, and the federal government required Southern states to ratify the 14\textsuperscript{th} Amendment as a condition to be readmitted into the Union. Tennessee was the first of 11 Southern states to be readmitted into the Union, and the Amendment was finally ratified by the required number of states in 1868.\textsuperscript{59}

The initial policies of the federal government enabled blacks to participate in the nation's political system for the first time; black men became voters and new constitutional conventions were held in the defeated states. Many blacks attended the conventions held in 1867 and 1868, among “scholars,” this period is hotly debated and controversial with respect to who did what, and to whom, which has created multiple narratives around the “truth” of this period, which survive to this day. The following paragraphs will not enter territories of controversy but simply mention legal facts that prolonged white supremacy.

\textsuperscript{51} Among “scholars,” this period is hotly debated and controversial with respect to who did what, and to whom, which has created multiple narratives around the “truth” of this period, which survive to this day. The following paragraphs will not enter territories of controversy but simply mention legal facts that prolonged white supremacy.

\textsuperscript{52} § 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. § 2. Congress shall have power to enforce this article by appropriate legislation.


\textsuperscript{54} Id.

\textsuperscript{55} Id.

\textsuperscript{56} Race Law, at 203.

\textsuperscript{57} Id.

\textsuperscript{58} Id.

\textsuperscript{59} Id., 203-8.
and they helped rewrite Southern state constitutions and other basic laws to replace the black codes drawn up by whites in 1865 and 1866. In the legislatures elected under the new constitutions, however, blacks had a majority of seats only in the lower house in South Carolina. Most of the chief legislative and executive positions were held by Northern white Republicans who had moved to the South and by their white Southern allies. Angry white Southerners called the Northerners “carpetbaggers” to suggest that they could carry everything they owned when they came South in a carpetbag, or suitcase. In addition, this period is credited with the formation of the Ku Klux Klan and the White Citizens’ League to intimidate blacks from voting and organizing politically.60

In response, Congress passed the fifteenth amendment to the Constitution declaring that the “right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude” and giving itself powers to enforce this article by appropriate legislation.61 Blacks were elected to important posts during Reconstruction included U.S. Senators Hiram R. Revels and Blanche K. Bruce of Mississippi and U.S. Representatives Joseph H. Rainey of South Carolina and Jefferson Long of Georgia.62 Transition, at least to undo the white-black dichotomy at the level of federal politics, was beginning to take place.

By the early 1870's, however, Northern whites grew tired of hearing of the continued conflict between Southern blacks and whites. They could not offer sufficient protection to blacks from the intimidation and violence of locally grown white supremacist groups. Most Northern whites wanted to put Reconstruction behind them and turn to other things. Federal troops sent to the South to protect blacks were gradually withdrawn. Southern whites who had stayed away from elections to protest black participation started voting again. White Democrats then began to regain control of the state governments from the blacks and their white Republican associates. In 1877, the last federal troops were withdrawn. By the end of that year, the White Democrats held power in all the Southern state governments.

60 Stanley F. Horn, Invisible Empire: The Story of the Ku Klux Klan, 1866–1871 (Patterson Smith 1939), at 9.
61 Race Law, at 163.
62 Others were Oscar J. Dunn, lieutenant governor of Louisiana; Richard Gleaves and Alonzo J. Ransier, lieutenant governors of South Carolina; P. B. S. Pinchback, acting governor of Louisiana; Francis L. Cardozo, secretary of state and state treasurer of South Carolina; and Jonathan Jasper Wright, an associate justice of the South Carolina Supreme Court.
For blacks, what follows remains a part of their collective psychological and emotional memory to this day. There are at least two main features of post-Reconstruction treatment of blacks. First, there was widespread violence, intimidation, and degradation of blacks by home grown “white” groups with full impunity across the country (South and North) in the form of lynchings, burning of homes and churches, minstrel shows, the entertainment industry, and cultural isolation and degrading segregation. Second, there was legal codification and recognition of blacks as second class citizens at the federal level. This started early on with the The Slaughterhouse Cases in 1873. The case arose because Louisiana enacted a law granting a monopoly to the Slaughter-House Company over all butchering to be done in New Orleans. The statute effectively put the remaining vast majority of butchers, many of whom were black, out of business. Butchers challenged the state law as unconstitutional because it curtailed their “freedom to pursue their calling” under the newly ratified Thirteenth and Fourteenth Amendments. The Supreme Court responded by narrowly construing the purposes of both of the amendments and murdering the “Privileges or Immunities” clause of the Fourteenth Amendment altogether. Louisiana was empowered to pass such a statute under its “police powers” to provide for public safety and welfare. Similar state statutes were subsequently created in other states to curtail social, economic, and cultural rights of blacks. It is often argued that such rulings were not racist because (1) they do not specifically exclude blacks, and (2) disadvantaged whites just as much. They fail to recognize, however, that such rulings and statutes, while hurting some poor whites, only benefited whites and had the specific intent of excluding blacks from economic and social arena, while not even recognizing the existence of those who did not fit in the white-black dichotomy. If such acts were not “racist,” a term for which everyone seems to have his own definition, they certainly were white supremacists.

This case was subsequently followed by The Civil Rights Cases (1883) which further limited the reach of the Fourteenth Amendment by declaring the Civil Rights Act of 1875 unconstitutional, and eventually culminating in Plessy v. Ferguson (1896) in an 8-1 vote that legalized segregation of “white and colored races” under the guise of “separate but equal” doctrine. It is true that the Reconstruction Amendments (13th, 14th and 15th) would not have passed with Southern participation, the legalization of segregation and the curtailment of blacks civil, political, economic, and social rights was a result of North-South complicity.

With that said, it is important to recognize that despite the federal government’s legal construction of such a black-white dichotomy, there were two other groups that had always been part of the equation. The 1880s was an important and oft overlooked decade for the treatment of

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63 Post-Traumatic Slave Syndrome  
64 16 U.S. 36 (1873); see also Race Law, at 175-85.  
65 With respect to the 13th Amendment, it refused to recognize the loss of livelihood of butchers as a “badge or incident” of slavery, because it was not slavery; with 14th Amendment, it adopted a narrow read of the “Privileges or Immunities” clause by differentiating it from “privileges and immunities” of citizens in Article IV § 2, and delineating its meaning to be limited to rights that federal government has power to regulate. The livelihood of butchers was not included.  
66 Race Law, at 184-5.  
67 Id.  
68 Provided that all persons, irrespective of color, in the United States will not be denied access to public accommodations on the basis of race.
these two groups. On the one hand, the Chinese became legally excluded from coming to the United States and becoming legal citizens; on the other, shortly thereafter, the Supreme Court gave Congress the exclusive and unlimited authority to govern American Indian tribes and control or limit their sovereignty in *United States v. Kagama* (1886). The rationale of the decision was the same as the previous ones; American Indians could be treated differently and denied their sovereignty because they were members of a racially inferior group.

Additionally, not only was Congress’s power over American Indian tribes exclusive and unlimited, it was also not binding. In *Lone Wolf v. Hitchcock*, the Court ruled that treaties with American Indian tribes could be abrogated at the discretion of Congress, and Congress could take away rights exercised by American Indians under treaties as it deemed appropriate. With such powers, Congress viewed assimilation of American Indians the most effective solution to what they deemed “the Indian problem.” To accomplish this, the government urged American Indians to move out of their traditional dwellings, move into wooden houses and become farmers. The federal government passed laws that forced American Indians to abandon their traditional appearance and way of life. Some laws outlawed traditional religious practices while others ordered Indian men to cut their long hair. Agents on more than two-thirds of American Indian reservations established courts to enforce federal regulations that often prohibited traditional cultural and religious practices. To speed the assimilation process, the government established Indian schools that attempted to quickly and forcefully Americanize Indian children. According to the founder of the Carlisle Indian School in Pennsylvania, the schools were created to “kill the Indian and save the man.” Schools forced students to speak only English, wear proper American clothing and to replace their Indian names with more “American” ones. Countless indigenous cultures of America were lost to such white supremacist attitude of the American government.

In 1887, Congress passed the General Allotment Act to “civilize” American Indians by teaching them to be farmers. To do this, Congress established private ownership of Indian land by dividing reservations, which were collectively owned, and giving each family their own plot of land. By forcing the American Indians onto small plots of land, Congress was also able to permit developers and settlers to purchase the remaining land. The General Allotment Act, also known as the Dawes Act, required that the Indian lands be surveyed and each family be given an

69 118 U.S. 375 (1886).
70 Justice Miller in writing for the Court stated that, “It seems to us that this is within the competency of Congress. These Indian tribes are the wards of the nation. They are communities dependent on the United States—dependent largely for their daily food...their political rights. They owe no allegiance to the states...From their very weakness and helplessness, so largely due to the course of dealing of the federal government with them, and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the executive, and by Congress, and by this court, whenever the question has arisen.” *Id.*, at 379.
71 187 U.S. 553 (1903).
73 *Id.*
75 *Id.*
76 *Id.*
Allotment of between 80 and 160 acres, while unmarried adults received between 40 to 80 acres; the remaining land was to be sold. Congress hoped that the Dawes Act would break up Indian tribes and encourage individual enterprise, while reducing the cost of Indian administration and providing prime land to be sold to white settlers. The Dawes Act proved to be disastrous for the American Indians. Within thirty years, the tribes had lost over two-thirds of the territory, i.e. 93 million acres that they had controlled before. Frequently, Native Americans were cheated out of their allotments or were forced to sell their land to pay bills and feed their families. While the question of slavery and second-class treatment of blacks dominated the collective American imagination, brutal crimes were regularly committed against American Indians too. It is important to remember that the Dawes Act was a result of the inability of American soldiers to forcibly remove and kill all American Indians. The majority of 19th century was a period of unimaginable violence against American Indians. By 1890 the American Indian population was reduced to fewer than 250,000 people.

It was not until the 1930s that Congress would abandon the assimilation policy an attempt to protect American Indian culture and encourage tribal self-government through the passage of Indian Reorganization Act (1946), much after significant physical, psychological, and cultural damage was done to the American Indian people. This Act, however, did not change the forced cultural assimilation policies towards American Indians and forcible removal of Indian children under the guise of “best interest of the child” policies.

With respect to the fourth group of “others” that did not fit on the black-white dichotomy and the systematically ignored red, there is clear indication from American history of their presence on American soil. The Slaughterhouse Cases opinion, which narrowed the understanding of Equal Protection and provided states to uphold discriminatory practices in the name of public welfare, openly recognizes the existence of the practices of “Mexican peonage” and the “Chinese coolie trade.” However, there was the problem on how to fit them on the black-white dichotomy. “Mexicans” and other Spanish-speaking individuals who were not black were recorded as “white,” though it did not guarantee “equal” treatment legally, politically, or socially. With all others, there were systematic efforts made by Congress and the Judiciary to keep them off American shores and/or granting them American citizenship. With the Chinese, following the Chinese Exclusion Act, the reasoning was “there is a race so different from our own that we do not permit those belonging to it to become citizens of the United States.”

Id.
Id.
Id.
Id.
Id, at 170-80.
Id.
83 U.S. 36 (1873).
Plessy v. Ferguson, 163 U.S. 537, 550 (1896) (dissent: There race is so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to it are, with few exceptions, absolutely excluded from our country. I allude to the Chinese race. But by the statute in question, a Chinaman can ride in the same passenger coach with white citizens of the United States, while citizens of the black race in Louisiana, many of whom, perhaps, risked their lives for the preservation of the Union, who are entitled, by law, to participate in the political control of the State and nation, who are not excluded, by law or by reason of their race, from public stations of any kind, and who have all the legal rights that belong to white citizens, are yet...
The end of the nineteenth century, when blacks were legally made second-class citizens, American Indians were placed under the care of Congress, American leaders under guise of manifest destiny fought another war with and acquired several territories worldwide, including Puerto Rico, Cuba, and the Philippines (see image showing the image of Hawaiians, Cubans, and the Filipinos in the American imagination). Simultaneously, labor was needed to work on the land and in growing labor-intensive industries of oil, steel, textile, and other goods. The gap was bridged by immigrants. While the Naturalization Act of 1790, which permitted only “free white persons of good moral character” to be eligible for citizens, remained in effect, in the early twentieth century, in response to large movement of people, congressional efforts standardized naturalization procedures, clarified by some landmark Supreme Court decisions.

First, the Chinese Exclusion Act was renewed in 1902 with no ending date. Second, Congress passes “The Naturalization Act of 1906” standardizing the naturalization procedures requiring some knowledge of English and establishing the Bureau of Immigration and Naturalization in the Commerce Department to oversee national immigration. Among the millions that arrived in America the in late 19th and early 20th century included individuals from Southern and Eastern Europe, Mexico and Latin America, the Arab world and parts of Asia other than China, predominantly Japan, South Asia, and the Philippines. Alongside the anti-black white groups, also arose nativist anti-Italian and anti-Jewish groups on the east coast, and anti-Asian sentiment on the west coast. In 1907, Congress passed the “Expatriation Act” which took away citizenship of American women who married “foreign nationals”

85 For example, “white” American Mary Keating Morse was stripped of her American citizenship for marrying Bengali immigrant Tarak Nath Das, “an alien ineligible for citizenship”; In 1922, the Cable Act partially repeals the Expatriation Act, but declares that an American woman who marries an Asian still loses her citizenship.

http://www.indolink.com/displayArticleS.php?id=111605054006
Commission to study immigration trends in the United States; and under an information “Gentlemen’s Agreement,” the American executive agrees not to restrict Japanese immigration in exchange for Japan’s promise to voluntarily restrict Japanese emigration by not issuing passports to Japanese laborers. Furthermore, with the beginning of the Mexican revolution in 1910, violence and turmoil resulted in large-scale migration of many Mexicans to the United States. Many sought to stay only as long as necessary to improve their economic conditions and then return to Mexico; however, many others were forcibly repatriated to Mexico when their labor was not necessary.

In the subsequent two decades, Congress passed three laws specifically barring all immigration from Asia, and significantly restricting, but not prohibiting, immigration from Southern and Eastern Europe. The first was the Immigration Act of 1917 creating “Asiatic barred zones”; the second was the Immigration Act of 1924, which restricted annual European immigration to two percent of the number of people from that country in 1890 to shrink numbers arriving from eastern and southern Europe; and third, the Oriental Exclusion Act prohibits most immigration from Asia, including foreign-born wives and the children of American citizens of Chinese ancestry. Meanwhile, Jones-Shafroth Act of 1917 grants citizenship to Puerto Ricans, provided that they can be recruited by the US military to serve in World War I.

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86 The Dillingham Commission, established in 1907, publishes a 42-volume report warning that the "new" immigration from Southern and Eastern Europe threatens to subvert American society. The Dillingham Commission's recommendations lay the foundation for the Quota Acts of the 1920s.

87 Followed significant lobbying from American states in the Southwest and the Northwest, because local efforts such as the California's Alien Land Law which made "aliens ineligible for citizenship" (Chinese and Japanese) from owning property in the state, and similar provisions in other states ineffective.
While several efforts were made to exclude people judged to be anarchists, political extremists, and communists, the aforementioned acts, especially the 1924 Immigration Act, prohibited individuals deemed non-white to become American citizens. The passage of the Act was a result of pervasive state laws that deemed Asians as undesirable, and the recognition of the Supreme Court of the legality of such state statutes. While the federal courts allowed people from the Levant (modern day Palestine, Syria, Jordan, Lebanon) and Turkey to be eligible for citizenship because they were “free white persons” within the intent of the Naturalization Act of 1790, where it defined “white” as anything but black, the Supreme Court subsequently clarified its initial stance by holding Japanese and Asian Indians as ineligible.

For the Japanese, the reasoning was that they are not part of the “Caucasian” race, and for Asian Indians, while several states had initially recognized them as “free white persons,” the Supreme Court eventually overturned those decisions on the reasoning that Asian Indians were not white as understood “popularly.” Soon thereafter, the Supreme Court also resolved the unresolved question of the Chinese as “non-white” and thus not entitled privileges to “whites” especially under southern segregation. The 1924 Act characterized the following as not fitting on the white-black dichotomy and “undesirable” immigrants, mostly people who had origins in the Asia-Pacific Triangle, Japan, China, the Philippines (then under U.S. control), Siam (Thailand), French Indochina (modern-day Laos, Vietnam, and Cambodia), Singapore (then a British colony), Korea, Dutch East Indies (Indonesia), Burma (Myanmar), India, Ceylon (Sri Lanka).
The Congress also created “Border Patrol” in 1924 to combat human smuggling and prevent illegal immigration.

In 1929, in the face of the economic crash, the National Origins Formula institutes a quota that caps national immigration at 150,000 and completely bars Asian immigration, though immigration from the Western Hemisphere is still permitted. In 1934, Tydings-McDuffe Act grants the Philippines independence from the United States on July 4, 1946, but strips Filipinos of American citizenship and severely restricts Filipino immigration to the United States.

Furthermore, during the decade of the great depression as many as half a million Mexican Americans were forcibly repatriated to Mexico. As European nations move towards another world war, in an effort to stay out of the conflict and recover from the economic depression, in 1940, Congress passes the Alien Registration Act, which requires the registration and fingerprinting of all “aliens” in the United States over the age of 14.

The table below shows estimates on legal immigrants to America between 1850 – 1940.

<table>
<thead>
<tr>
<th>Time period</th>
<th>Legal Numbers of Immigrant Entrants</th>
</tr>
</thead>
<tbody>
<tr>
<td>1821 – 1830</td>
<td>143,439</td>
</tr>
<tr>
<td>1831 – 1840</td>
<td>599,125</td>
</tr>
<tr>
<td>1841- 1850</td>
<td>1,713,251</td>
</tr>
<tr>
<td>1851-1860</td>
<td>2,598,214</td>
</tr>
<tr>
<td>1861-1870</td>
<td>2,314,825</td>
</tr>
<tr>
<td>1871-1880</td>
<td>2,812,191</td>
</tr>
<tr>
<td>1881-1890</td>
<td>5,246,613 (~ 1 million Germans &amp; Eastern European Jews each)</td>
</tr>
<tr>
<td>1891-1900</td>
<td>3,687,564</td>
</tr>
<tr>
<td>1901-1910</td>
<td>8,795,386</td>
</tr>
<tr>
<td>1911-1920</td>
<td>5,735,811 (2 million Italians)</td>
</tr>
<tr>
<td>1921-1930</td>
<td>4,107,209</td>
</tr>
<tr>
<td>1931-1940</td>
<td>532,431</td>
</tr>
</tbody>
</table>

As illustrated in the aforementioned discussion, there was an extremely high anti-Asian (Chinese, Japanese, “Hindu,” etc.) sentiment across the western frontier with roots returning to the 19th century. After the attack on Pearl Harbor by the Japanese on December 7, 1941, the sentiment only heightened and seen as an opportunity by various farmers lobby groups in west to finally dislocate Japanese from fertile farmland in throughout the continental west. Of the

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95 http://ocp.hul.harvard.edu/immigration/timeline.html
127,000 Japanese Americans living on continental America,\(^6\) 110,000 individuals residing in Western states, two-thirds of whom were American citizen despite the xenophobic acts to prevent them from gaining citizens, were relocated to internment camps throughout the southwest for three years. Lt. General John L. DeWitt, head of the Western Command who administered the internment program, repeatedly told the media that “A Jap’s a Jap” and testified in Congress,

“I don't want any of them [persons of Japanese ancestry] here. They are a dangerous element. There is no way to determine their loyalty... It makes no difference whether he is an American citizen, he is still a Japanese. American citizenship does not necessarily determine loyalty... But we must worry about the Japanese all the time until he is wiped off the map.”\(^7\)

In February 1942, Executive Order 9066 signed by President Franklin D. Roosevelt allowed authorized military commanders to designate “military areas” at their discretion, “from which any or all person may be excluded.” Simultaneously, Congress enacted legislation in 1942 making it a crime to violate an order issued by a military commander, and later than year, the commander ordered individual of Japanese descent to leave their homes on the West Coast and report to Assembly Centers. Fred Korematsu, Gordon Hirabayashi, and Minoru Yasui, Americans of Japanese descent, resisted by remaining their home, and were convicted for violating the order. The Supreme Court upheld their conviction in its notorious *Korematsu v. United States* (1944) decision, under the guise of national security and not racial prejudice. It purported that “all legal restrictions which curtail the civil rights of a single racial group are immediately suspect,” but in this instance, the internment of American citizens was legal because of “national security” concerns. The decision held guilty a huge group of individuals for without establishing individual guilt, the purpose of a justice, merely on the fact that they shared common physical features. If the case had been strictly about national security, could not similar disloyal activities for which Japanese Americans were suspected of, be conducted by Americans of German and Italian descent? The anti-Japanese sentiment was about “racial” difference, white supremacy, and the intimidation of a class of individuals who did not qualify as legally “white.”

During the period where Japanese Americans were interned and America was organized to support the wide-scale war effort, America was short on labor. To amend the problem, in 1943, President Roosevelt negotiated a bilateral treaty with Mexico to provide for “temporary farm workers” to the United States. Following the treaty, Congress passed legislation that provided for the importation of agricultural workers from different parts of Latin America,

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\(^6\) About a third of Hawaii’s population was of Japanese ancestry (~150,000).

\(^7\) Testimony of John L. DeWitt, April 13, 1943, House Naval Affairs Subcommittee to Investigate Congested Areas, Part 3, pp. 739-40 (78th Cong., 1st Sess.).
known as the Bracero Program (bracero for “manual labor” in Spanish). Initially, the program operated in California, but it soon spread to prove manual laborers across the country. By 1945, the quota for the agricultural program was more than 75,000 braceros working in railroad system and 50,000 braceros working in U.S. agriculture at any one time. At the behest of U.S. growers, who claimed ongoing labor shortages, the program was extended under a number of acts of congress until 1948. Between 1948 and 1951, the importation of Mexican agricultural laborers continued under negotiated administrative agreements between growers and the Mexican Government. On July 13, 1951, President Truman signed Public Law 78, a two-year program which embodied formalized protections for Mexican laborers, renewed every two years until 1964 when the program was finally discontinued.

Throughout early to mid-twentieth century, there were two other types of laws that furthered the cause of “white supremacy.” These included state-dependent statutes that defined what it meant to be “white” and anti-miscegenation statutes that prohibited certain races from marrying whites. Depending on the states, these included blacks, American Indians, Filipinos, Mongoloids (Chinese or Japanese), Indians (“Hindus”), and Native Hawaiians. These statutes were passed in addition to 1922’s Cable Act which stripped “white” American women of their citizenship upon marriage to those considered “Asians.” However, with the exception of Kentucky, Louisiana, and Oklahoma that banned the marriage of blacks with non-blacks, specifically American Indians, there was no prohibition on intermarriage between the groups that did not constitute “white.” The term miscegenation, or “mixing of blood,” was invented by American journalists during the Civil War to discredit American abolitionist movement by stirring up debate over the prospect of white-black marriage. These statutes made such marriage a felony, and they also prohibited officiating and solemnization of weddings between persons of the white race and those that were considered non-white.

Furthermore, three times during American history (1871, 1912, and 1928), anti-miscegenation amendments to the Constitution were proposed. The constitutionality of anti-miscegenation laws was upheld by the Supreme Court in the 1883 case *Pace v. Alabama.* The constitutionality of this statute was upheld sixty years later when the Supreme Court refused cert to a Virginia Supreme Court case refused to recognize a marriage between a “white” woman and Chinese man. The views expressed in the dissent of *Loving v. Virginia* (1967), which finally declared unconstitutional the anti-miscegenation statutes in effect in sixteen states in 1967, a year after ICERD was established by the United Nations, describe the underlining reasoning for the

99 *Id.*
100 *Id.*
101 *Id.*
102 *Id.*
103 Referred to as “Malays,” Arizona, repealed in 1962; California, repealed in 1948.
104 Led to the interesting creation of a community of Punjabi Mexicans in Arizona, New Mexico, and California, see http://www.sikhpioneers.org/cpma.html.
106 106 U.S. 583 (the Court reasoned that the statute was not discriminatory because it punished person of both races, white and black, equally for the act of fornication and/or marriage with the person of the other race).
justification of such statutes, “Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix.” Only nine of today’s fifty American states never enacted such statutes.\(^{108}\)

In order to punish such marriages, however, states had to define what it meant to be “white.” The legal construction of “white” was defined by what it is not. Between 1910 and 1931, 18 American states passed what are today known as “one drop rule” that made any person with any amount of known African or American Indian ancestry, however small or visible, not white. These laws were passed as a direct consequence of \textit{Plessy v. Ferguson}, which had legalized segregation, where the plaintiff was an “octoroon” or 7/8ths “white,” but legally he was “black.” Interesting some states like Virginia made an exception to this rule, known as the “Pocahontas” exception, for influential who claimed descent from the American Indians of the colonial era by declaring that an individual could be considered white if her or she has no more than one-sixteenth Indian “blood” (the equivalent of one great-great-grandparent). The arbitrary nature, not to mention the sheer absurdity of it, is revealed by recent studies arguing that at some points in American history, the Irish, Jews, Italians, Spaniards, Slavs, Arabs, and Greeks were not considered “white,” as they are today.\(^{109}\)

While astonishing, this artificial construction was a reality in most American states just 40 years ago, and it became a justification for the commission of unspeakable crimes of violence and degradation that no words can describe. It also forced unknown numbers of people, especially blacks, American Indians, Asians, and those who are today considered “Latino,” to “pass” as “white,” at a huge personal, psychological and moral cost.\(^{110}\) Furthermore, it became a causally related justification for the distribution of social and economic rights. For example, contemporary literature is full of examples of various ways banks and economic institutions refused credit and loans to individuals not deemed “white” through practices known as redlining, the refusal of extension of tax and education credits to non-“white” individuals after the Second World War under the G.I. Bill, the impunity with which white groups spread terror across the nation, whether against blacks in the South or Asians in the west, or Mexicans in the southwest, and the deeply biased practices of the judiciary and the security forces.

This section’s non-comprehensive history of America’s tryst and obsession with “whiteness” begs the question whether America is a nation where non-Europeans and thus nonwhites are unwelcome. Is America a nation created for and run by European descendants? The answer to this question is no given the background of the diversity of the nation’s population, and the contribution made to the nation by people of all colors. However, the appearance of America as a “European” nation has been a myth created by the legal construction

\(^{108}\) Connecticut, New Hampshire, New York, New Jersey, Vermont, Wisconsin, Minnesota, Alaska, Hawaii (the last two were admitted into the union in the 1950s).


of “white” and “race.” For example, until 1980, the American Census was conducted manually by employees who went door to door to put people in the white-black dichotomy, racial constructions that in of themselves are extremely problematic. This led to the counting of numerous Mexicans, Latin Americans, Asians and American Indians, who were, for all intensive purposes of the law, not “white,” but for the purposes of accounting for the composition of the population were. Such problematic collection methods and extrapolation methods have not been questioned until the very recent past, and were used to create the perception of America as a “white” nation, a perception that remains to this day, to exclude “others” and oppress “blacks” and American Indians. The changes in American policies towards what its law deemed non-“whites” is a very recent phenomenon, a product of the last three decades, and the following section will show how in order to demonstrate that America today is a transitioning society.

**PART II: UNDOING WHITE SUPREMACY: AMERICA IN A STATE OF TRANSITION**

In the three decades following the Second World War, America entered two additional combat wars (the Korean War and the Vietnam War), one symbolic war (The Cold War), which led its intelligence agencies (CIA and the FBI) to meddle in the affairs of numerous decolonizing and Latin American nations (e.g., Iran, Panama, El Salvador, Egypt, Pakistan, Cambodia, Philippines, Indonesia). While busy expending funds on these operations, the decades following the Second World War saw incredible social upheaval for equal rights from groups that the government labeled “non-white.” The largest and the most prominent of these was the Civil Rights movements that aimed to overturn legalized segregation, and the political and economic marginalization of blacks. However, these movements were supplemented by the National Farm Workers movement led by Cesar Chavez and Dolores Huerta, and the movement of American Indians. With the establishment of the United Nations and several other international financial institutions, such as the World Bank and the International Monetary Fund, these movements were particularly benefited by the adoption of the Universal Declaration of Human Rights by the United Nations General Assembly in 1948; Eleanor Roosevelt, outgoing President Roosevelt’s spouse, was one of the primary authors of the document.

The following decades saw incredible reforms to undo the effects of “white” supremacy deeply engrained in the fabric of the nation. This section will first describe the transition efforts of America from a “white” society to a more inclusive society, and then list the weaknesses and shortcomings of these efforts.

**A. Judicial Efforts**

Civil Rights advocates utilized two arguments to dismantle the institution of segregation of blacks from public life in the south. First, “equalization”; second, the “commerce clause.” The argument for equalization cases went as the following: (1) to establish that separate but equal was not actually equal because it created inferior services and

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111 “Introduction,” in God is Red.
facilities for blacks, and (2) even if separate but equal had been equal, it is an immense economic waste. These efforts to chip away at *Plessy* was accomplished in *Brown v. Board of Education* in 1954 which held that “separate educational facilities are inherently unequal” and thereby they are a violation of the Equal Protection Clause. While this was a huge symbolic victory, the following year, the Supreme Court refused to grant cert to *Naim v. Naim*, a Virginia Supreme Court case challenging its anti-miscegenation statutes.

The aftermath of *Brown* led to incredible amounts of violence against blacks in the south at the hands of white mobs and by the police. Rallies, protests, sit-ins, and other means of non-violent resistance were utilized by black Americans to protest the horrific institutions of Jim Crow Laws. The situation was so bad that the federal government had to send the national guard to accompany school children to attend “white” schools. While daily oppression and violence against blacks continued, the Court overturned the effect of, not the reasoning, *The Civil Rights Cases* by using the “commerce clause” to enforce desegregation of restaurants and inns, establishments that reached “commerce” and were arguably not-“public.” Additionally, three years later, the Court made inter-“racial” marriages legal nationwide by declaring Virginia’s anti-miscegenation statute, the "Racial Integrity Act of 1924", unconstitutional, thereby overturning * Pace v. Alabama* (1883) and ending all race-based legal restrictions on marriage.

In a unanimous decision, the Court wrote, “Marriage is one of the basic civil rights of man, fundamental to our very existence and survival…To deny this fundamental freedom on so unsupportable a basis … is to surely deprive all the State’s citizens of liberty without due process of law.” Further, for perhaps the first time in history, the Court recognized that there was no legitimate purpose of such other than “to maintain White Supremacy.”

Moreover, even after the heated and political controversies surrounding affirmative action programs in educational institutions, the Supreme Court upheld their constitutionality in *Grutter v. Bollinger* (2003). While narrowly tailoring the processes by which universities can institute such programs, Justice Sandra Day O’Connor wrote for the court that educational diversity was a compelling governmental interest.

**B. Legislative Efforts**

While the Court made such overtures, Congress too passed legislation to undo the damage of “white” supremacy based legal restrictions on the country’s non-white citizens by passing the Civil Rights Act of 1964. Some of the major features of the Act included the following:

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112 See Missouri ex rel. Gaines v. Canada (1938) (the stipulation by University of Missouri to prohibit attendance by blacks and permitted them to attend law school in neighboring state did not satisfy separate but equal); Sweatt v. Painter (1950) (separate but equal did not satisfy hastily constructed law school that mimicked University of Texas Law School); *McLaurin v. Oklahoma State Regents* (1950) (separate but equal was not satisfied by segregating blacks from whites in the classroom, library, and cafeteria at the graduate level).

113 The argument was that racial discrimination discourage “commerce” on the part of a substantial portion of the black community, and that such discrimination could thus be regulated by Congress in the aggregate. The moral arguments about the invidiousness of racial segregation did not need to be established. See *Heart of Atlanta Motel* (1964); *Katzenbach v. McClung* (1964).


115 *Id.*

- Title I: Barred unequal application of voter registration requirements, which were historically used to exclude blacks and other non-“whites” from voting.
- Title II: outlawed discrimination in hotels, motels, restaurants, theaters, and all other public accommodations engaged in interstate commerce.
- Title III: prohibited state and municipal governments from denying access to public facilities on grounds of race, religion, gender, or ethnicity.
- Title IV: encouraged desegregation of public schools and authorized the U.S. Attorney General to file suits to enforce the said act.
- Title VI: prohibited discrimination by government agencies that receive federal funding, and if it is found in violation of the act, it can lose its funding.
- Title VII: prohibited discrimination by covered employers on the basis of race, color, religion, sex or national origin, or the person’s association with another person with those qualities.
- Title IX: prohibited sex discrimination in institutions receiving federal funds.

Community Reinvestment Act

The Civil Rights Act was supplemented with the Immigration and Nationality Act of 1965, which eliminated the national origins quotas of the 1924 Act that specifically barred “Asians” from immigrating to the United States and becoming naturalized American citizens. It set the annual maximum level of immigration at 300,000 visas and placed a per-country limit for immigrants from the Eastern Hemisphere at 20,000. No per-country limits were placed on immigrants from the Western Hemisphere. This Act permitted large numbers of immigrants to come from recently decolonized nations, especially skilled and educated workers. This year also saw the end of the Bracero program to create “more jobs” for Americans, but mostly to cover for the national shame resulting from the release of Edward R. Murrow’s documentary Harvest of Shame, which detailed the deplorable conditions faced by Mexican laborers.

Subsequent to 1965, several amendments were made to the Immigration and Naturalization Act, such as extending per-country limitations on immigration from non-Western Hemisphere nations (1976); the removed “hemisphere” specific quotas altogether, and set a single world quota of 290,000 immigrants, and eliminated the ability of children born in the U.S. to petition for the legal entry of their parents until the age of 21 (1978); passing the Refugee Act (1980) to comply with the 1951 United Nations Convention relating to the Status of Refugees permitting the executive in consultation with Congress to set a ceiling on the number of refugees admitted each year and establishing the modern asylum system.117

Further in 1986, Congress passed the Immigration Reform and Control Act (IRCA), which (1) legalized aliens who had resided in the United States in an unlawful status since January 1, 1982, (2) established sanctions prohibiting employers from hiring, recruiting, or referring for a fee aliens known to be unauthorized to work in the United States, (3) created a new classification of temporary agricultural worker and provided for the legalization of certain such workers; and (4) established a visa waiver pilot program allowing the admission of certain

117 It defined refugees as “an individual unable or unwilling to return to his or her country based on a well-founded fear of persecution on account of race, religion, nationality, membership of a particular social group, or political affiliation.”
non-immigrants without visas; and finally the Immigration Act of 1990, which raised the quota ceiling to 700,000 and creating various modern day programs such as the lottery program to increase “diversity” for citizens of countries where the U.S. did not usually grant large numbers of visas. The Civil Rights Act and the Immigration Acts were a major force in overcoming America’s shameful legacy of permitting only “whites” to become American citizens and construction of a more “diverse” modern-day America.

Moreover, in 1977, Congress passed the Community Reinvestment act to encourage commercial banks and savings associations to meet the needs of borrowers in all segments of their communities, particularly in low-income communities and communities of color. The act was passed to combat the process of redlining that discriminated credit practices against people of color. Congress established regulatory agencies to examine banking practices for CRA compliance, which it takes into account when approving applications for new branches and mergers or acquisitions.

C. Efforts of Administrative Agencies in the Executive Agencies

Since the passage of the Civil Rights Act of 1965, many administrative agencies have adopted its non-discrimination language in its own procedural regulations and rulings, especially with respect to hiring practices and impact of their activities. Some examples include the Internal Revenue Service, the Environmental Protection Agency, The Federal Election Commission, the Federal Communications Commission, the National Labor Relations Board, and the Small Business Administration. A celebrated court case that demonstrated the impact of such is *Bob Jones University v. United States* (1983), which held that the I.R.S. could revoke the tax-exempt status of organizations that operate contrary to established public policy, i.e. discriminate on the basis of race.

D. Symbolic Acts

In the last few decades, the American Congress has made efforts to apologize for its historical complicity in slavery, lynchings, the internment of Japanese Americans, and the violence, mistreatment and neglect of the Native Peoples by American citizens. Furthermore, symbolic monetary reparations have been made to Japanese Americans, and to black and American Indian farmers. Furthermore, in recent years the racial composition of the American Congress has diversified from being completely “white” and male during the era of segregation and Jim Crow, to overwhelmingly “white” and male. Furthermore, America today has non-“white” President, who runs a Cabinet that is inclusive, if not representative, of America’s diversity. These symbolic acts assist the efforts of the government to transition from its hateful and odious past of oppression and violence to one that is inclusive of its populations.

PART III: WEAKNESSES OF PUBLIC EFFORTS SINCE THE CIVIL RIGHTS ERA

A. Judicial Acts

While there have been some symbolic victories in civil rights litigation with respect to the securing “equality” for all racial groups in the United States, these minor victories remain distant from the overall goal of substantive equality of all people in the United States. The Supreme Court has created extremely demanding evidentiary requirements to prove color-based discrimination, i.e. “specific intent” to discriminate against a person. Not only is this impossible
to prove in most cases, the creation of such a requirement has given individuals, especially who are considered “white” to erect various inane narratives that go unpunished in the face of the justice system, the media, and the broader American society. A recent glaring example includes the recent e-mail leak from a white third-year Harvard Law Student who sincerely believes that African-Americans are genetically predisposed to be intellectually inferior,\textsuperscript{118} picking up traces of the bogus theory proposed by Richard J. Herrnstein and Charles Murray in their 1994 best-selling (among “whites”) “study” \textit{The Bell Curve}.\textsuperscript{119} The example is glaring not because of the opinion that it reveals, but whose opinion it reveals—a privileged and very educated individual who is bound to have a successful career in the law, after all she will be clerking in a Circuit Court in California. How will such firm beliefs affect her ability to advise her judge on cases with respect to overpolicing and overharrassment of communities of color? Of any challenge brought on schools to prison pipelines? On schools to military pipelines? The disparities in sentencing? Of jury prejudice? Of the State taking away children from their parents? It will surely affect her ability because the truth of America’s construction continues to be denied for an unrealistic fanciful idea that there is a level playing field, without appreciation for the fact that all structures given to America today are products of its past.

Other examples include the complete absence of American Indian affairs from mainstream media, when their communities continue to languish in the most horrific poverty seen across the continent on the one hand, and repeatedly fighting battles in American courts to preserve their economic, political, social, and cultural rights in the courts. However, can justice be done by courts and an administrative system that remains in the hands of the previous ruling elites? Where there has been little vetting and demand by the government to understand the pain and horror of the marginalization and violence committed against the culture of these communities?

The connection between the modern American judiciary and racial justice is massively related—whether in context of death penalty, policing practices, gerrymandering, voter disenfranchisement, prison conditions, high-recruitment of minorities in the military, providing educational facilities and resources in poor communities, among many others.\textsuperscript{120} This system, however, is not incorrigible. It requires an honest introspection of America as a nation, and to utilize means made available by transitional justice theory to create society-wide healing.

\textbf{B. Symbolic Acts}

While the United States has attempted correct his historical oppression of non-“white” people by symbolic acts such as acknowledgment, and apology, these acts have been poorly envisioned and administrated, and thus have failed to promote reconciliation. The problems are as follows. First, they have not been done in consultation with communities, i.e. American Indians or African Americans. The recent farmers bill passed by Congress is not a commitment social justice and preventing such horrific land grab practices and discrimination in the future,

\begin{itemize}
\item \textsuperscript{119} Richard J. Herrnstein & Charles Murray, \textit{The Bell Curve: Intelligence and Class Structure in American Life} (Free Press 1994).
\item \textsuperscript{120} See supra note 12.
\end{itemize}
but a way for Congress to placate long-standing animosity among certain sections of populations by throwing some money at the community. Such acts trivialize the emotional and psychological experience of oppression, and fail to create reconciliation and justice in society, presumably the intention and objective of such acts.\textsuperscript{121}

Second, they are not publicized to the entire population, and the people of America do not feel ownership over these symbolic acts, and thus their effect remains unrealized. For example, these apologies are not placed in the educational curriculum of schools and universities; they are not discussed on television or by the media; and they are not realized in the day to day lives of American citizens. Third, the apologies are made on behalf of “America” which includes all of its current population, as opposed to speaking the truth about who should apologize, i.e. the ruling “whites” who took unilateral decisions that created massive dislocations in various communities of “color.” Rather they tend to glorify the same people who committed genocide and horrific acts of violence against their own countrymen—people who continue to be seen as “foreign,” which justifies their oppression.

C. Executive & Federalism

The executive branch is perhaps most to blame for the on-going injustices that are felt by all people in America. Some examples include the most horrific Southern plantation type state prison Angola in Louisiana, the privatization of the prison industry and permitting corporations from profiting from the suffering of the imprisoned, the educational curriculum reform in states like Texas that makes the history of American Indians, Mexican Americans, and African Americans obsolete at the expense of glorifying the victories and successes of “whites,” etc. All of these acts basically create a society-wide culture of blaming the victims for their conditions, as opposed to understanding the institutional surroundings of the victim that makes him the way he or she is. Such a system creates indifference in economically well-off groups, because people fail to acknowledge the pain that their fellow country men and women are carrying with them on a daily basis. The crux of the problem is the continued denial of the underlying dialectic of the nation, white supremacy, as demonstrated by the lack of repeal of the Naturalization Act of 1790. Its repercussions are phenomenal. For example, the Census 2010 form, which instead of attempting to dismantle the white-black binary of the nation, strengthens it, while introducing another faction in the mix, which was historically malleable across white, black, red, other, i.e. Latino. Furthermore, while it begins to give formal recognition of “others” who were previously unaccounted for given Census practices, but in at least 17 categories. When did national origin of individuals become a racial category, or ethnic identification?\textsuperscript{122}

\textsuperscript{122} Form available at: http://www.census.gov/schools/pdf/2010form_info.pdf
Is it fair for a fourth or fifth generation Japanese American to check off a box that says “Japanese,” but a recent immigrant from Latvia who does not speak English or feel any allegiance to America to check off “white”? What is this form really doing? It is perpetuating the artificially created “white supremacy.” Every “white” person in the United States also has ancestry somewhere—whether in Germany, Ireland, Lebanon, or Russia. However, why is it that every Asian person’s national origin, i.e. “Pakistani” or “Cambodian,” becomes a racial category, but those of European descent are purely “white”? Similarly, why are tenth or eleventh generation black Americans who carry with them the trauma of slavery, Jim Crow, lynchings, and continued forms of massive injustice put in the same category as recent immigrants of African descent from all over the world who were not victims of that similar oppression? Furthermore, there is something incredibly malevolent about the collection of these forms as it attempts to carve out a new racial category—“Latino,” irrespective of color, national origin, or creed. If this is how the future America sees to divide itself, there are significant conflicts in store for it.

PART IV: CONCLUDING THOUGHTS & RECOMMENDATIONS

America has had an incredibly oppressive and tumultuous history; what lies at its heart is the divisions of its citizens along the lines of race-categories for the advantage of those who were legally benighted “white” at the expense of all others. The very difficult problem in America is its inability to see itself as a transitioning nation with some, if not many, serious flaws in its legal framework. Transitional justice has not been taken to heart. After the passage of the Civil Rights Act of 1964 and the American Indian Religious Freedom Resolution Act of 1978, among various other legislations, it has been generally accepted that transition has been accomplished and very little has to be done for institutional reforms. Such a widespread understanding fails to appreciate that the current structures have vestiges of its past, and that unlike transitioning societies worldwide, America has not undertaken any comprehensive measure of vetting its racist judges, state and federal legislators, police officers, attorney generals, prosecutors, immigration officers, etc. It has been presumed that after the passage of laws, people will go through a change of heart, and those privileged by law, i.e. “whites,” will suddenly able to give up their privilege and white supremacist core beliefs.

123 Including Africa, Caribbean, South America, and Asia.
Alongside vetting, there has not been any significant judicial reform, security sector reform, and the administrative legal reform. Such failures have a very real day to impact on the lives of American people. For example for reasons purportedly related to public safety, African-American, Hispanic and Asian males are disproportionately stopped and frisked by law enforcement officers on American streets and highways. Recent news stories have focused on the creation of a database from the 600,000 police detentions in New York each year. As the New York Times has reported from analysis of the data, frisks or pat-down searches occur in almost 60 percent of the stops and at a rate that is disproportionately higher for minorities. The rate of frisks for blacks and Latinos in New York is nine times that of whites who are stopped.\footnote{124 Al Baker, New York Minorities More Likely to be Frisked, NYT (May 12, 2010), http://www.nytimes.com/2010/05/13/nyregion/13frisk.html?_r=1.} More recently, a Pace University student was shot and killed by the police recently because he refused stop when asked by the police for parking in an “all-white” neighborhood.\footnote{125 Trymaine Lee, Family of Pace University Student Killed Seeks Answers Amid Grief, NYT (Oct 24, 2010), http://www.nytimes.com/2010/10/25/nyregion/25pace.html.} The recent financial crisis was also brought about by banking practices that found it ethical to scam uneducated people of color nationwide by offering them mortgages that they could possibly not afford.\footnote{126 See Center for Responsible Lending, “Foreclosures by Race and Ethnicity: The Demographics of a Crisis” (2010), available at: http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf} How can a nation heal and move forward where such stories are commonplace? Where injustice is so massive that no justice system in the world can handle its scale?\footnote{127 For heartbreaking stories of realities of communities of color in the United States from the lens of Louisiana, see Jordan Flaherty, Floodlines: Community and Resistance from Katrina to the Jena Six (Haymarket Books 2010).} Where the meaning behind justice is retribution, and not restoration and transformation?

These social experiences create widespread “cognitive dissonance” among all people which prevents the society to truly heal itself from the past traumas.\footnote{128 Joy Degruy Leary, Post Traumatic Slave Syndrome.} The solution, however hard emotionally or psychologically, will arrive by sticking to the truth. This will occur by stating the truth and acknowledging the horrors of the past to prevent their repetition in the future. For example, before writing this paper, I had no idea France gifted the Statue of Liberty to the United States not to welcome European immigrants to its shores, but for releasing her black people from the shackles of slavery. However, that narrative was intentionally high-jacked by the powers of that time who could not permit mass-knowledge of such a reality.\footnote{129 Id.} There has been re-writing of history and of events in order to keep the status quo of “white supremacy” in all aspect of the nation, at the tremendous cost to all of America’s people. Scholars and academics can truly assist the nation in salvaging the historical discourse towards truth to lead America on the path of reconciliation.

Policymakers have a fundamental role to play in actualizing reconciliation, not only by acknowledging and spreading the truth about the nation through their words and deeds, but also through funding programs at the local levels nationwide that promote celebration of difference and dismantle the lies of superiority that perpetuate the farce of white supremacy and racism. This is instrumental to making America live up to its promise of being a diverse and inclusive
society. Its execution will require input from all stakeholders of society to collectively heal the deeply entrenched wounds in the American society to create the possibility of interpretation of the Constitution that is favorable to all members of society, not “white” over “non-white” or “rich” over “poor,” and for American institutions to adhere to the principles of laid out in the Constitution for all people on its territories.

State governments too have a role, not only by providing monetary reparations, but by acknowledging the truth in history books and by discussing the pain openly in order to create the space for recognition, acknowledgement, and forgiveness. Unfortunately, some states are embarking on the opposite path of crystallizing divisions and tensions among “whites” and “nonwhites” by promoting a history that glorifies the former and neglects the historical pain and marginalization of the latter.130

Instead, both State and Federal should create Commissions like the Slave Narratives created under the Roosevelt era to collect stories and lived experiences of people that have lived under American oppression and then share them with the American population. If such an endeavor is pursued, it is important to share that knowledge with the people, instead of having such valuable information sit in a corner of the Library of Congress.

In conclusion, everyone has a stake in making the American Transition successful. In the past, just like the media and the ruling power structures demonized blacks, the Japanese, the Vietnamese, and the Jews, we witness that same dialectic, whether intentional or not, by the demonization of Arabs, Muslims, and Mexicans – as if every person who identifies oneself as such is one and the same. Unless a national environment can be created that respects the international charter of human rights and respects the humanity that lay within people – there can be no peace, and such violence will continue to be perpetuated. In the past it was against the Vietnamese and the Japanese, and now it is against the Muslims and Mexicans. Tomorrow it may be against the Tatars and the Aboriginal Australians.

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