

## Preface to the Revised and Updated Edition

The son of a White father from the United States and a brown-skinned mother from El Salvador, I grew up in Hawaii, a place that found my mixed identity unproblematic, indeed almost typical. It was not until I arrived in St. Louis, Missouri, for college that I encountered on a sustained basis racial dynamics troubled by my identity. I was struck first, though, not by the question of my own location in mainland racial patterns, but by the patterns themselves. Never had I seen an environment so starkly segregated between White and Black. Even more startling, I could scarcely believe just how natural and commonplace such extreme segregation seemed to virtually all of my White peers and professors. No one ever talked about the overwhelming Whiteness of our academic world, or the Blackness of those doing menial work in our midst or populating the decaying city to the campus's east—our Manichean world was, literally, unremarkable.

It was this seemingly natural order that my identity disturbed, for I moved at the margin between White and non-White. There were some curious incidents, and a few ugly episodes as well—the double-take from professors when they first called roll and I raised my hand, a door slammed in my face to the yell of “go back where you came from” (and believe me, I wanted nothing more than to return to Hawaii). But on the whole I was treated well. Or rather, as I would eventually come to understand, I was treated White.

This understanding that I was being offered a White identity came first not from my peers and teachers but from the police. On half a dozen occasions during my university years, I was stopped and questioned by the police while walking in White areas—on campuses, in adjoining neighborhoods, in a city I was visiting. In each case but one, my educated accent, self-confidence, and university ID cards defused the initial hostility

of the confrontation. With each iteration, though, the basic contours of this treacherous dance became clearer. Stopped for being non-White and hence suspicious and out of place, my exact enunciation and university affiliations combined to re-racialize me in the officers' eyes, rendering me safely White: innocent, entitled to be there, and deserving of deference.

Only figuratively rather than literally policing racialized spaces, the students and professors I encountered in my classes were less aggressive in their initial suspicions of my presence. But many of them too seemed to follow the same script, questioning my identity and then resolving their doubts in favor of a presumption of Whiteness. Most sought to understand and accept me by erasing those parts of me that coded as non-White, and by assuming that in extending to me a White identity they were according me friendship and equal respect. To make my Latino identity less easy to disregard, I changed my name by following Hispanic custom and adding my mother's family name to my own. Though I had grown up as Ian Haney, in graduate school I started to go by Ian Haney López. The first paper I turned in under that new name came back ungraded, with the question: "Is English your first language?" On the cusp between White and non-White, it turned out that achieving a marginalized, suspect identity was surprisingly easy.

One interaction, at the intersection of encounters with the police and responses by my White peers, particularly influenced my intellectual engagement with race and law. In a confrontation that my educated accent and elite bravado did not neutralize, a cop on the University of Virginia campus, where I was visiting a friend, took up the shotgun he had rested on the hood of his patrol car and ordered me to back away when I stepped forward to proffer my Harvard Law School student ID. He ordered me to toss my identification forward; he copied down the particulars; he threatened that if any crimes were reported that evening he would personally come looking for me; and finally he dismissed me with the order to get back to Boston. That episode sticks graphically in my mind, though not principally because of the intense fear-then-anger engendered by the encounter. I know well that I have remained privileged and insulated from the full violence and physical humiliation often inflicted by police on minorities, brutal beat downs that I have seen, heard about from friends, and studied, but to which I have never been subjected. Instead, I remember that stop, in my third year of law school, because my Virginia friend responded skeptically to my outrage. How did I know, she queried, that I had been singled out because I was a Latino? After all, she correctly

pointed out, it was night, I'm not that dark, and (OK, I admit it) I was dressed like a typical preppy college kid, even down to the blue LL Bean windbreaker. My outrage turned against her, her Whiteness and (relatedly) her unwillingness to accept what to me seemed so obviously true. Only later did the question really sink in. How did I know that the police were stopping me because of race?

I took this question with me when I began my academic career. You can see the rudiments of an answer in my first law review article: "The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice."<sup>1</sup> There I explored race as something constructed through social processes, built on physical features, yes, but only superficially; I located the main action instead in the social dynamics that defined everything from racial categories to the criteria used to assign people to putative races to the characteristics supposedly borne by racial groups. And then you can see a more focused effort to grapple with this question in my next major piece, *White by Law: The Legal Construction of Race*. Here I further refined my thinking on the social construction of race, but much more importantly I turned directly to the question of how law participates in racial formation. I argued—and correctly, I still believe—that law constructs race at every level: changing the physical features borne by people in this country, shaping the social meanings that define races, and rendering concrete the privileges and disadvantages justified by racial ideology.

But as I look back on *White by Law* from a decade's remove, I see now that it does not fully respond to how and why police stops should be seen in terms of racial dynamics, rather than, say, merely as affronts to civil liberties, or even the praiseworthy vigilance of a protective police force. *White by Law* addresses what might be termed the *formal* legal construction of race—that is, the way in which law as a formal matter, either through legislation or adjudication, directly engages racial definitions. This has become a burgeoning field, with studies aimed at uncovering legal productions of race in the contexts of slavery, the postbellum South, the census, OMB Directive 15 on federal racial categories, contemporary immigration laws, and so on. But today race is legally constructed principally indirectly by legal institutions that produce and bolster deleterious racial ideologies without forthrightly engaging the categorical debates that so preoccupied race law through the early twentieth century. Like police conduct, the overwhelming bulk of law currently constructs race *informally*, not by directly addressing conceptions of race, but by relying on, promulgating, and giving force (often enough literal physical force) to

particular ideas about the nature of race, races, and racism. It would take a second book, *Racism on Trial: The Chicano Fight for Justice*, for me to fully engage the questions concerning the informal legal construction of race raised for me in Virginia. It is in that volume that I examine directly how the law today relies on and produces racial ideas.<sup>2</sup>

Taking it on its own terms, though, I would offer two revisions to *White by Law*. My main concern when I wrote this book was with the constructedness of race, its plasticity and malleability. Thus, the definition I offered focused on race as “the historically contingent social systems of meaning that attach to elements of morphology and ancestry.” Though dissecting the construction of race is crucial to understanding contemporary race relations, today I would shift my emphasis to the instrumental function of race and its material consequences. I noted in *White by Law* the remark of a businessman who in 1909 preferred Chinese over Japanese immigrants because “we find the Chinese fitting much better than the Japanese into the status which the white American prefers them to occupy—that of biped domestic animals in the white man’s service.” I commented as well on how the economic position of immigrants from Armenia and Japan diverged sharply when the former but not the latter were declared legally White. These, it seems to me, are key aspects of the prerequisite cases, and of the legal construction of race, that I failed to sufficiently emphasize in the original volume. Race and racism are centrally about seeking, or contesting, power. They have their origins in efforts to rationalize the expropriation and exploitation of land and labor, and they remain vibrant today only because racial hierarchy remains in the material interest of very many in our society. True, race is not simply, or always, about struggles over group advantage. Instead, race clearly exhibits independent cultural dynamics, informing how people think about and act in the world even when status concerns are not prevalent. Nevertheless, from my current vantage point I think we too often fail to appreciate how important race remains as a system for amassing and defending wealth and privilege. Thus, while I would still define race in terms of morphology, ancestry, and historically contingent social practices, I would add that racial systems use appearances and ancestry as weapons in violent struggles over group position in material and social status.

In a related vein, I would clarify what I meant when I first wrote in *White by Law* that Whites should work to deconstruct White identity. For someone mixed-race like me, “choosing not to be White” might entail assuming a socially intelligible not-White identity (as brown, Latino,

angry minority, or so forth). It may seem that I am asking Whites to do the same, to opt out of Whiteness, which has prompted the rejoinder that this is impossible for a person whose identity is socially constructed consistently and thoroughly as White. For a U.S. citizen of European descent with fair features and an Anglo name, for example, there is no available not-White identity, for she or he cannot simply step outside of race entirely, at least not in our society, not yet, nor for a long time to come. But in calling for Whites to resolve against Whiteness, I did not mean that they should adopt another (non-existent) identity so much as that antiracist Whites should work against White privilege. Connecting this clarification with the shift in emphasis offered above, I would broaden the point further: race remains a social system in which persons from different positions in the racial hierarchy seek, or contest their exclusion from, social and material status. Justice lies, then, not in embracing Whiteness (that is, advantage), but in seeking to dismantle race as a system that correlates to power and privilege.

These clarifications have not prompted me to make revisions to the text in this new edition. These principal points excepted, my earlier arguments do not seem to have suffered too much with time, perhaps because the main focus was on the legal construction of race prior to the civil rights movement. These concerns have, however, led me to add a new concluding chapter in which I consider the future of race in the United States over the next few decades. This may seem principally a demographic question, and indeed immigration and changing intermarriage patterns play a prominent role in the predictions I offer. It is enormously consequential, after all, that Latinos now outnumber Blacks as the largest minority group and that mixed-race persons are reshaping America's racial imagination, especially among the young. Without slighting demography, however, there is a close connection between our racial future and the legal construction of race. That future will turn on the persistence of race in the United States as a system for allocating and preserving social advantage—which is to say, on the shifting contours and meanings of Whiteness. Here, the legal construction of race will be paramount, not so much in redefining White identity, but in shaping the ideological understandings of race and racism that will undergird any racial evolution. The nation's courts, captured by the racial right, for the last quarter century have been elaborating and proselytizing the racial ideology of our immediate future—colorblindness.

In the new chapter I predict that we are headed toward a reign of what

I term “colorblind White dominance.” The era of culturally legitimate expressions of White supremacy is over, defeated by the moral triumph of the civil rights movement. But the dominance of Whites across the range of social, political, and economic spheres continues and indeed over the last couple of decades has intensified. This dominance, in turn, is protected by colorblindness, an ideology that self-righteously wraps itself in the raiment of the civil rights movement and that, while proclaiming a deep fealty to eliminating racism, perversely defines discrimination strictly in terms of explicit references to race. Thus, it is “racism” when society uses affirmative race-conscious means to respond to gross inequalities, but there is no racial harm no matter how strongly disparities in health care, education, residential segregation, or incarceration correlate to race, so long as no one has uttered a racial word. Colorblindness wears its antiracist pretensions boldly but acts overwhelmingly to condemn affirmative action and to condone structural racial inequality. This ideology, which at once claims the mantle of the civil rights movement but preserves the racial status quo, protects the continued privileged position of Whites in our society even as it relegates minorities to continued immiseration, marginalization, and social disdain. I conclude this new edition with the dismal prediction that colorblindness, a legal construction that serves increasingly as the most powerful ideology of race in the United States, will protect continued White racial dominance in the decades to come.<sup>3</sup>