

LIFE, LIBERTY, AND THE PURSUIT OF WHITENESS: A REVOLUTION OF IDENTITY POLITICS IN AMERICA

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An enduring motif in American political history reflects the nation's slow progression towards inclusion of a once disenfranchised populace. In the annals of its jurisprudence, the nation recalls a time when citizenship was linked to race: a time when the racial prerequisites for naturalization were not challenged based on its constitutionality, but on who could be professedly "white." President Obama's election ushered in a new chapter to this American narrative. His election and the response to it reveal how far we have come and how far we have left to travel on the path towards equality in citizenship.

This Article frames a longstanding debate concerning race consciousness in the political sphere and how it consequently influences an ever-changing electorate. It explores the impact that our courts and our policymakers have had on shaping what it means to be white in America, and accordingly to possess a majority voice in society. The Article further seeks to explicate how politicized social institutions are sustained from generation to generation by way of an unabashed preservation of the status quo. Those who come to power do so by protracting nostalgic yearnings, summoning persistent lore and mythos about a way of life that has not always benefited an entire electorate, and not threatening or offending the mainstay of the American political complex. Obama's election revealed a model, embossed by a romanticized collective national history and a steadfast commitment to the ideals of American Exceptionalism, for transforming a minority candidate's use of identity politics to garner support, influence and ultimately the ability to govern.

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I. INTRODUCTION

April 12, 2011, marked one hundred and fifty years since the Civil War’s first shots were fired at Fort Sumter.¹ The war pinned brother against brother and forced an infant republic to confront its original sin of slavery. The sesquicentennial of that defining struggle provides this generation of Americans with the opportunity to reflect on how far we have come and how much further we must travel on the curving path toward our more perfect union. Despite undeniable progress, the nation’s wounds of bigoted conflict have not completely healed. Racism, albeit publicly renounced, has persisted and remained the scar that fervently reminds people of a much more divided time.

In the twenty-first century, racism can no longer be classified as a social ill that plagues the ignorant and indifferent. Racism has transmuted from a “creature of habit” that sought to justify the subordination of some to a more nuanced political calculation for preserving the current racial political establishment.² This phenomenon did not occur overnight, but it certainly did find the election of the nation’s first non-white president as the opportune moment to emerge. This new racism has been coupled with centuries-old nativism³ and has disguised itself under the banner of American Exceptionalism.

American Exceptionalism finds its roots in the romanticized emergence of the American democracy.⁴ Horatio Alger⁵ provided this narrative in parables about the American Dream, while John

¹ *Civil War Sesquicentennial*, CIVIL WAR TRUST, <http://www.civilwar.org/150th-anniversary/> (last visited Jan. 11, 2012).

² BENJAMIN P. BOWSER & RAYMOND GEORGE HUNT, *IMPACTS OF RACISM ON WHITE AMERICANS*, 160 (1996).

³ Nativism refers to the historical set of policies that favored native-born inhabitants over the new waves of immigrants. It also encompasses the “revival or perpetuation of an indigenous culture especially in opposition to acculturation.” *Nativism Definition*, MERRIAM WEBSTER’S DICTIONARY, <http://www.merriam-webster.com/dictionary/nativism> (last visited Jan. 12, 2012). Indigenous and native do not refer to autochthonous people of a particular region but rather to the earliest settlers and colonizers. One key example of historical nativist agendas comes from the 1798 Alien and Sedition Act, which President John Adams signed to limit the ability of immigrants to gain full political rights. *See also* JAMES MORTON SMITH, *FREEDOM’S FETTERS: THE ALIEN AND SEDITION LAWS AND AMERICAN CIVIL LIBERTIES* (1967).

⁴ GORDON S. WOOD, *THE IDEA OF AMERICA: REFLECTIONS ON THE BIRTH OF THE UNITED STATES* 2 (2011) (“Our beliefs in liberty, equality, constitutionalism, and the well-being of ordinary people came out of the Revolutionary

Winthrop's famous speech painted America as the shining "city upon a hill."⁶ What is so perplexing is that this idea, which helped form the tide that ushered Barack Obama to the presidency, has become the one that seeks to wash him out. The attack on the president has been one in which the racial epithets of yesteryear have been drowned out by the spewing of political rhetoric that claims to try to "take America back" for its rightful keepers.⁷ A growing sentiment in our political debate is that those who do not blindly accept America as the greatest civilization in history and those who admonish the present conditions as defiling the egalitarian principles enshrined in the Constitution are not true or real Americans. The emergent consequence is that race consciousness and, more specifically, what it means to be white in America is qualified by more politically conservative circles in terms of whether an individual subscribes to notions of American Exceptionalism. Groups enter the fold if they do not condemn, criticize, complain about, or campaign for any sort of fundamental change to the existing order. Essentially, for those once excluded, to now be white in America, they must not offend the structures that perpetuate white majoritarian influence.

The history of what is determinably white in the United States has been dictated by a fluid metric. It is not at all unusual that this redefinition has appeared at a time where Census projections reveal the rapid decline of the white majority in America. The U.S. Census Bureau has reported that, by 2050, minorities will be the majority in America.⁸ Minorities currently constitute one-third of the population in the United States, but according to census figures, they are projected to become the majority population by 2042.⁹ By 2050, minorities will constitute fifty-four percent of the population.¹⁰ The implications of what will come when these projections become reality are grave. With no majority white race, what will become of racialized existence in pluralist America? The prosperity and equality once drawn from the well of acculturation will be dried up. What will emerge in its place? Will a new dominant racial majority emerge or will accepted citizenship occur through enculturation? The answer is

era. So too did our idea that we Americans are a special people with a special destiny to lead the world toward liberty and democracy.”).

⁵ Alan Seaburg, *Horatio Alger, UNITARIAN UNIVERSALIST HISTORICAL SOC'Y*, <http://www25.uua.org/uuhs/duub/articles/horatioalgerjr.html> (last visited Jan. 12, 2012). *See also* HORATIO ALGER, JR., *RAGGED DICK AND STRUGGLING UPWARD (Read A Classic 2011) (1868)* (publisher notes that, although “the days when Horatio Alger was one of the most widely read authors in America have long since passed, his message—that by dint of hard work, decent morals, good manners and a hefty serving of luck, any American boy can rise from rags to riches—was once read and believed by every significant man of business, politics, literature and academia in America in the early decades of this century.”).

⁶ John Winthrop, *City Upon a Hill*, MT. HOLYOKE COLLEGE, <http://www.mtholyoke.edu/acad/intrel/winthrop.htm> (last visited Jan. 12, 2012).

⁷ Prudence L. Gourguechon, *Take America Back: A Tea Party Slogan on the Couch*, HUFFINGTON POST (Aug. 19, 2010, 04:24 PM), http://www.huffingtonpost.com/dr-prudence-l-gourguechon/take-back-america-a-tea-p_b_680444.html.

⁸ *An Older and More Diverse Nation by Midcentury*, U.S. CENSUS BUREAU (Aug. 14, 2008), <http://www.census.gov/newsroom/releases/archives/population/cb08-123.html> [hereinafter CENSUS BUREAU, *An Older and More Diverse Nation*]; *Minorities Expected to be Majority in 2050*, CNN (Aug. 13, 2008), http://articles.cnn.com/2008-08-13/us/census.minorities_1_hispanic-population-census-bureau-white-population; *see also* Sam Roberts, *In a Generation, Minorities may be the U.S. Majority*, N.Y. TIMES (Aug. 13, 2008), <http://www.nytimes.com/2008/08/14/washington/14census.html>.

⁹ CENSUS BUREAU, *An Older and More Diverse Nation*, *supra* note 8.

¹⁰ *Id.*

up for debate. However, history and judicial opinions alike reflect the absolute discriminatory intent behind separating citizens into groups of those deemed to belong and those who do not.

This Article proceeds in four parts. Part II explores and discusses the interplay of race and American jurisprudence. The privileges of American citizenship since the nation's founding have been inextricably linked to racial classification. What it means to be white and who is white in America is constantly changing. Accordingly, the acquisition of rights has often been forged by racial reclamation. This section examines the decisions of the United States Supreme Court in *Ozawa v. United States*¹¹ and *United States v. Thind*,¹² where the nation's highest court swiftly legitimized the practice of making whiteness more exclusive, harder to attain, and consequently more desirable. The Article postulates what will become of the remnants of the legacy of racial supremacy when the nation is redefined as a majority-minority electorate.

Part III evaluates President Obama's 2008 election and examines how his pluralistic campaign revealed not just the progress that has been made in America's journey toward racial equality, but also the new affronts to social harmonization. The 2008 presidential election, a transformative moment in American history, was not the watershed moment of racial reconciliation that it has been portrayed to be.¹³ This section offers that the election of the nation's first non-white president established a new paradigm for identity politics in the United States. President Obama's successful campaign revealed that America's racial cacophony had not yet been keyed into melody. At the onset of a new century, with demographic trends envisaging a new racial electoral composition, the pursuit of whiteness has been relegated to romantic notions of American Exceptionalism. An uncertain future has birthed a movement emboldened by nostalgia that threatens that the ushering in of change will threaten the pillars of the republic.

Part IV analyzes the 2010 elections and considers how the Obama model for identity politics was galvanized and successfully used by some of his staunchest detractors. Leading candidates attached their personal narratives to the republic's chronicles. In doing so, acquiescence to the establishment's will promulgated a new sentiment, which reaffirmed the racialized social order. By not simply subscribing to the existence of American Exceptionalism, but instead expressing anguish and disdain for those who not only deny its veracity but seek to weaken its condition, minority candidates have found a way to appeal beyond their immediate base of supporters.

In concluding, Part V of this Article observes that America's demographic shift towards a majority-minority citizenry will make little difference if its politics remain unshaken. In the end, elections will amount to nothing more than isolated victories rather than breakthroughs until the legacy of racial supremacy is eradicated. The law's memorialization of an ethereal demonstration of racial privilege and a modern electorate's hope to garner a pluralist society in which all persons are treated equal are once more pitted against each other at the highest levels of our public discourse. Amidst the demagoguery and rhetoric is the often-overlooked axiom that America's "Exceptionalism" lies in the nation's ability to confront its inequality and maintain that a government of the people, by the people, shall always be for

¹¹ 260 U.S. 178 (1922).

¹² 261 U.S. 204 (1923).

¹³ Daniel Schorr, "A New, 'Post-Racial' Political Era in America," NPR, Jan. 28, 2008, <http://www.npr.org/templates/story/story.php?storyId=18489466> (last visited Jan 28, 2012); see also Mario Van Peebles, "A 'Post-Racial' America," NPR, Jan. 29, 2010, <http://www.npr.org/templates/story/story.php?storyId=123109751> (last visited Jan. 28, 2012).

all the people. Elections that usher in both the face of groups long removed from influence and, more importantly, their voice are only the first step on a long road to redemption.

II. WHITENESS SOUGHT AND DEFINED IN AMERICAN JURISPRUDENCE

Professor Ian F. Haney López writes in *White by Law: The Legal Construction of Race*, that the determination of what it meant to be white in America was not always an “easy question” to answer.¹⁴ He notes that as “immigration reached record highs at the turn of this century, countless people found themselves arguing their racial identity in order to naturalize. From 1907, when the federal government began collecting data on naturalization, until 1920, over one million people gained citizenship under the racially restrictive naturalization laws.”¹⁵

During this period naturalization “rarely involved formal court proceedings and therefore usually generated few if any written records beyond the simple decision.”¹⁶ Soon, however, scores of cases interpreting whiteness as a prerequisite to naturalization came before state and federal courts.¹⁷ The appeals rendered “illuminating published decisions that documented the efforts of would-be citizens from around the world to establish their Whiteness at law.”¹⁸ Citizenship applicants from Hawaii, China, Japan, Burma, the Philippines and countless other “mixed-race applicants” failed in this endeavor.¹⁹ Contrariwise, history recalls a time where “applicant from Mexico and Armenia” were signaled out as “white,” but simultaneously “vacillated over the Whiteness of petitioners from Syria, India, and Arabia.”²⁰ Haney López notes that these jurisprudential accounts served as a “taxonomy of Whiteness” and that they later became illustrative of the “imprecisions and contradictions inherent in the establishment of racial lines between whites and non-whites.”²¹

The United States Supreme Court decided two cases in the 1920s regarding what it meant to be white. The first, *Ozawa v. United States*,²² involved a Japanese man who applied for citizenship under the Naturalization Act of 1906, which only allowed white persons and persons of African descent to naturalize.²³ The Court looked to congressional intent in deciding whether to grant Ozawa citizenship, observing that:

¹⁴ IAN F. HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 1 (2006)

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 163–67 (Appendix A provides a chronological table of the “racial prerequisite cases” annotating the court’s principled reasoning and final dispositions).

¹⁸ *Id.* at 1.

¹⁹ *Id.*

²⁰ LÓPEZ, *supra* note 14, at 1.

²¹ *Id.*

²² 260 U.S. 178 (1922).

²³ *Id.* at 190 (Section 2169 of the Naturalization Act of 1906, under the heading “Naturalization,” read as follows: “The provisions of this Title Shall apply to aliens, being free white persons, and to aliens of African nativity and to persons of African descent.”).

In all of the Naturalization Acts from 1790 to 1906 the privilege of naturalization was confined to white persons (with the addition in 1870 of those of African nativity and descent), although the exact wording of the various statutes was not always the same. If Congress in 1906 desired to alter a rule so well and so long established, it may be assumed that its purpose would have been definitely disclosed and its legislation to that end put in unmistakable terms.²⁴

Rather than challenge the constitutionality of the racial restrictions on naturalization, the appellant sought to be granted citizenship by being classified as white.²⁵ The nation's highest court held that the appellant was not white because he was not a member of the Caucasian race.²⁶ The Court opined that the determination of an individual's whiteness should not be based solely on the categorization of skin pigmentation. According to Justice Sutherland:

Manifestly the test [to determine whiteness] afforded by the mere color of the skin of each individual is impracticable, as that differs greatly among persons of the same race, even among Anglo-Saxons, ranging by imperceptible gradations from the fair blond to the swarthy brunette, the latter being darker than many of the lighter hued persons of the brown or yellow races. Hence to adopt the color test alone would result in a confused overlapping of races and a gradual merging of one into the other, without any practical line of separation [T]he words "white person" were meant to indicate only a person of what is popularly known as the Caucasian race.²⁷

The Court recognized that the "determination that the words 'white person' are synonymous with the words 'a person of the Caucasian race'" would indeed simplify the problem of racial classification for the purposes of naturalization, but would never dispose of it.²⁸ The opinion submitted that the inability to clearly classify individuals based on race would present concern and moreover, the "overlapping of races" and their "gradual merging" would be impractical. Justice Sutherland observed that:

[T]he effect of the conclusion that the words 'white person' means a Caucasian is not to establish a sharp line of demarcation between those who are entitled and those who are not entitled to naturalization, but rather a zone of more or less debatable ground outside of which, upon the one hand, are those clearly eligible, and outside of which, upon the other hand, are those clearly ineligible for citizenship.²⁹

The Court in *Ozawa* swiftly legitimized the practice of making whiteness more exclusive, harder to attain, and consequently more desirable. The legislature had linked citizenship eligibility to the white race, but the Court confirmed the exclusivity of the white classification.

²⁴ *Id.* at 193.

²⁵ *Id.* at 195 ("On behalf of the appellant it is urged that we should give to this phrase the meaning which it had in the minds of its original framers in 1790 and that it was employed by them for the sole purpose of excluding the black or African race and the Indians then inhabiting this country.").

²⁶ *Id.*

²⁷ *Id.* at 197.

²⁸ *Ozawa v. United States*, 260 U.S. 178, 197 (1922).

²⁹ *Id.* at 198.

One year later, in 1923, Justice Sutherland and the United States Supreme Court heard the case of *United States v. Thind*.³⁰ The appellant, Bhagat Singh Thind, applied for citizenship in 1920 after having immigrated from the Punjab region of India and living in the United States for the better part of seven years.³¹ Mr. Thind graduated from the University of California at Berkeley and served in the United States military during WWI.³² Thind's initial citizenship application was approved, but a naturalization agent appealed the decision.³³ In light of the *Ozawa* decision, Thind had reason to believe that his claim would be vindicated. The Court in *Ozawa* relied on the alleged science of race to determine that Ozawa was not white. By contrast, Thind provided evidence from alleged race science, a line of recent anthropological studies that had concluded that Indians were white, to support his claim that he was in fact white. The Court disagreed.

Justice Sutherland, writing for the Court, held that the words "free white person" were words of "common speech, to be interpreted in accordance with the understanding of the common man, synonymous with the word 'Caucasian' only as that word [was] popularly understood."³⁴ The Court concluded that the word Caucasian as commonly understood did "not include the body of people to whom the appellee belongs."³⁵ Justice Sutherland reasoned for the Court that:

It is a matter of familiar observation and knowledge that the physical group characteristics of the Hindus render them readily distinguishable from the various groups of persons in this country commonly recognized as white. The children of English, French, German, Italian, Scandinavian, and other European parentage, quickly merge into the mass of our population and lose the distinctive hallmarks of their European origin. On the other hand, it cannot be doubted that the children born in this country of Hindu parents would retain indefinitely the clear evidence of their ancestry. It is very far from our thought to suggest the slightest question of racial superiority or inferiority. What we suggest is merely racial difference, and it is of such character and extent that the great body of our people instinctively recognizes it and rejects the thought of assimilation.³⁶

Here, the Court articulated an opinion that almost too carefully avoided an outright declaration that some could never be white. Instead, the Court professed that common understanding dictated the meaning of "white" and that some could never truly be considered white despite their best efforts. While the Court plainly and clearly asserted that its reasoning did not aim to draw a caste of inferiority over a specific people, that reasoning acknowledged not cultural difference, but racial difference. The Court failed to address the real issue when it essentially advanced the majoritarian view that the concept of race was a biological manifestation. The underlying issue, which the Court neither addressed nor considered,

³⁰ 261 U.S. 204 (1923).

³¹ *Roots in the Sand: Bhagat Singh Thind*, PBS, http://www.pbs.org/rootsinthesand/i_bhagat1.html (last visited Jan. 27, 2012).

³² *Id.*

³³ LÓPEZ, *supra* note 14, at 207.

³⁴ *Id.* at 214–15.

³⁵ *Id.* at 215.

³⁶ *Id.*

was not whether some groups would be incapable of assimilating into the white race, but whether some groups would ever be truly accepted by the white majority.

A. Contemporary Whiteness through Biology and Demographics

Science has proven what millennia of human existence and interaction has successfully covered. The U.S. Energy Department's Human Genome Project has concluded that there is no biological or organic makeup that produces different racial compositions. Scientists have offered as follows:

DNA studies do not indicate that separate classifiable subspecies (races) exist within modern humans. While different genes for physical traits such as skin and hair color can be identified between individuals, no consistent patterns of genes across the human genome exist to distinguish one race from another. There also is no genetic basis for divisions of human ethnicity. People who have lived in the same geographic region for many generations may have some alleles in common, but no allele will be found in all members of one population and in no members of any other. Indeed, it has been proven that there is more genetic variation within races than exists between them.³⁷

Despite these scientific findings and U.S. Census Bureau projections revealing the imminent shift in majority demographics, the American political complex remains unencumbered. Assertions that the end of a white majority would somehow improve race relations, specifically in the United States, are presumptive and poorly imagined. A social structure designed around racial dominance that has survived centuries of modern human civilization will not dissipate in a matter of decades.

Nevertheless, there are some, like Hua Hsu of *The Atlantic*, who contend that today's America is far more complex than the America that had turned on itself over issues of abolition, civil rights, and assimilation.³⁸ Hsu suggests, "[w]hiteness is no longer a precondition for entry into the highest levels of public office."³⁹ He adds that, today, "[t]he son of Indian immigrants doesn't have to become 'white' in order to be elected governor of Louisiana," and a "half-Kenyan, half-Kansan politician can self-identify as black and be elected president of the United States."⁴⁰ Hsu further contends that, while "as a purely demographic matter" the concept of "white America" may cease to exist within as little as three decades, the *cultural influence* of "white America" has already ended.⁴¹ "Instead of the long-standing model of assimilation toward a common center," Hsu observes that, "the culture is being remade in the image of white America's multiethnic, multicolored heirs."⁴² Many see this as a positive prospect. In fact, in 1998, then President Bill Clinton remarked before a gathering of students at Portland State University:

³⁷ *Human Genome Project Information: Genetic Anthropology, Ancestry, and Ancient Human Migration*, U.S. DEP'T OF ENERGY, http://www.ornl.gov/sci/techresources/Human_Genome/elsi/humanmigration.shtml (last modified Feb. 11, 2010).

³⁸ Hua Hsu, *The End of White America?*, THE ATLANTIC, Jan./Feb. 2009, <http://www.theatlantic.com/magazine/archive/2009/01/the-end-of-white-america/7208/>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

Today, largely because of immigration, there is no majority race in Hawaii or Houston or New York City. Within five years, there will be no majority race in our largest state, California. In a little more than 50 years, there will be no majority race in the United States. No other nation in history has gone through demographic change of this magnitude in so short a time [Immigrants] are energizing our culture and broadening our vision of the world. They are renewing our most basic values and reminding us all of what it truly means to be American.⁴³

The face of America has changed and will continue to change. However, demographic shifts will not necessarily alter the nation's politics. White majoritarian influence has molded institutional governance, and for the most part, those who seek to succeed in it must perpetuate the status quo.

III. 2008 PRESIDENTIAL ELECTION REVEALS NEW FORM OF RACISM

Contrary to popular belief, the 2008 presidential election, though a transformative moment in American history, was not the watershed moment of racial reconciliation. While it is indisputable that the nation has made extraordinary progress, it has not turned a corner. It has just finally reached an impasse.

A. The Pursuit of the White Vote

The results of the election, the manner in which President Obama was able to get elected, and the public reaction to the election are all telling of the status quo of American race relations. Marc Ambinder of *The Atlantic* observes that while Obama's top adviser was persistent in publicly contending during the presidential election that "race doesn't matter," behind closed doors, "Obama's campaign worked methodically to woo white voters without alienating black ones—and vice versa."⁴⁴ It would be simple to suggest, as Ambinder points out, that Obama found "a way to break the racial code."⁴⁵ What occurred, however, was a much more nuanced confluence of events. The emergence of "massive economic cross-pressures; the country's slow evolution into a majority-minority polity; the iron grip that Democrats have on younger voters; [and] the aging of the white working class," allowed Obama to enter the political scene just as "demographics were beginning to undo the [racial] code anyway."⁴⁶ Despite his campaign's overtures to white voters, the president did not win a majority of white voters as a whole, white men, or white women, who are particularly known for leaning Democratic on Election Day.⁴⁷

The results are not surprising, certainly not when considering the voting trends of the last forty years and the Democratic Party's consistent inability to win a majority of the white vote. Timothy Noah of *Slate.com* observes that the "stubborn refusal of a majority of whites to vote Democratic is all about race."⁴⁸ For forty years, "whites have made up to seventy-four percent to somewhere north of ninety

⁴³ *Id.*

⁴⁴ Marc Ambinder, *Race Over?*, THE ATLANTIC, Jan./Feb. 2009, <http://www.theatlantic.com/magazine/archive/2009/01/race-over/7215/>.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Timothy Noah, *What We Didn't Overcome*, SLATE (Nov. 10, 2008), <http://www.slate.com/id/2204251/> (President Obama "failed to win a majority of whites (43 percent), or white men (41 percent), or even white women (46 percent).").

⁴⁸ *Id.*

percent of all voters.”⁴⁹ Noah points out that Jimmy Carter was elected by “narrowing to four percentage points the gap between whites voting Republican and whites voting Democratic.”⁵⁰ Bill Clinton managed to narrow the gap even further to two percent.⁵¹ It is not at all unusual that both men, former white Southern governors, “drew some appeal” from the South where the Republican Party dominates the white vote.⁵² Lyndon B. Johnson would be the last Democrat to win a majority of the white vote. After signing the 1964 Civil Rights Act and the 1965 Voting Rights Act into law, Johnson is recalled to have said that, “[Democrats] have lost the South for a generation.”⁵³ The troubling reality, as Noah observes, is that Johnson’s prediction has not only come to fruition, but has persisted for more than a single generation.⁵⁴ Noah adds “what Johnson didn’t allow himself to think was, ‘We have lost the *white vote* for a generation.’”⁵⁵

Presidential candidate Barack Obama may not have won the majority of the white vote to become president, but he did win the election. How he did it offers a model for other minority candidates to follow. The path to national office for minority candidates seems to be one in which the individual must tread lightly: a practice that candidate Obama mastered. Ralph Nader, the 2008 independent candidate for president, accused Barack Obama “of downplaying poverty issues, trying to ‘talk white’” and appealing to ‘white guilt.’”⁵⁶ Nader’s comments, which the Obama campaign denounced as “disappointing,” provide some context for the Obama model of appealing to American Exceptionalism.

Nader explained that his belief that Obama was trying to “talk white” was evidenced by Obama’s failure to address the plight of the poor, which disproportionately affects African Americans and other minorities. Nader reasoned that:

[T]he number one thing that a black American politician aspiring to the presidency should be is to candidly describe the plight of the poor, especially in the inner cities and the rural areas, and have a very detailed platform about how the poor is going to be defended by the law, is going to be protected by the law, and is going to be liberated by the law.⁵⁷

Furthermore, Nader stated that Obama was attempting to appeal to white guilt by showing the electorate that he was not another “politically threatening African-American politician.”⁵⁸ Nader suggested that:

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Noah, *supra* note 47.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* (emphasis added)

⁵⁶ M.E. Sprengelmeyer, *Nader: Obama Trying to “Talk White,”* ROCKY MOUNTAIN NEWS, Jun. 25, 2008, <http://www.rockymountainnews.com/news/2008/jun/25/nader-critical-of-obama-for-trying-to-talk-white/>.

⁵⁷ *Id.*

⁵⁸ *Id.*

You appeal to white guilt not by coming on as black is beautiful, black is powerful. Basically [Obama is] coming on as someone who is not going to threaten the white power structure, whether it's corporate or whether it's simply oligarchic. And they love it. Whites just eat it up.⁵⁹

If, as Nader suggests, the Obama campaign purposely avoided discussing the plight of the poor because it would seem threatening to the majority, signaling a plan to restructure American society, there is reason to believe that the African American Democratic nominee for the presidency may not have won the general election had he addressed such issues directly.

There has been much written on the implications of Obama's ascendancy to the highest office in the land as providing a model for other minorities and people of color. Scholars Roland Fryer and David Austen-Smith famously argued that one factor in the minority-white achievement gap was the "acting white phenomenon."⁶⁰ According to Fryer and Austen-Smith:

[Some students] have tremendous disincentives to invest in particular behaviors (i.e., education, ballet, etc.) due to the fact that they may be deemed a person who is trying to act like a white person (a.k.a. "selling-out"). Such a label, in some neighborhoods, can carry penalties that range from being deemed a social outcast, to being beaten or killed.⁶¹

Stephen J. Dubner, one half of the critically acclaimed authors of the New York Times bestseller *Freakonomics: A Rogue Economist Explores the Hidden Side of Everything*, has observed that, if one subscribes to a belief in the existence of the "acting white" effect, then they should also believe in the potential of an "acting Obama" effect.⁶² The cultural and societal breakthrough of Obama's election challenges the notion that for non-whites certain achievements are "off-limits," that greatness will inevitably elude them. While at the same time, as Dubner observes, have the potential of reinforcing stereotypes and identity-centered limitations by evidencing that "if you're willing to act really white, you get to run the free world."⁶³

In 2004, Clarence Page contributed a video essay for PBS' NewsHour with Jim Lehrer where he noted the potential effect of then United States Senate candidate Obama:

In African American folklore, the sea crab ranks among the dumbest of creatures who also offers a valuable lesson. When you catch a bucket or a basketful, you never have to put a lid on because when one of the creatures tries to get out, the others will just pull it back in. Some of our fellow human beings aren't much smarter than that. When they see you working hard to achieve your dreams, they'll make fun of you just for trying.

With friends like those, my parents used to say, you don't need enemies. And black people have enough enemies. That message has come back to me a lot lately, like during

⁵⁹ *Id.*

⁶⁰ STEPHEN J. DUBNER & STEVEN D. LEVITI, *FREAKONOMICS: A ROGUE ECONOMIST EXPLORES THE HIDDEN SIDE OF EVERYTHING* 161–62 (2009).

⁶¹*Id.* at 161.

⁶² Stephen J. Dubner, *Will there be an "Acting Obama" Effect?*, N.Y. TIMES BLOG, Nov. 7, 2008, <http://freakonomics.blogs.nytimes.com/2008/11/07/will-there-be-an-acting-obama-effect/> (last visited Feb. 14, 2012).

⁶³ *Id.*

the Democratic National Convention [(DNC)], when Senate candidate Barack Obama, the keynote speaker from Illinois, talked about what people need to do to help themselves.

Yes, today's hip-hop generation has basket crabs of its own, eager to put you down for somehow acting white when you try to get ahead, as if blackness means you have to fail. Obama, the son of a black father from Kenya and a white mother from Kansas, has a more positive view of blackness. He wants the rest of us to pass that message on to our kids.⁶⁴

It was in that year that Obama used his first appearance on a national stage to take on the devastating legacy of discrimination's overwhelming ability to yield self-doubt and self-limitation. Obama's DNC speech revealed the task he foresaw for our most neglected communities:

Go into any inner-city neighborhood, and folks will tell you that government alone can't teach kids to learn. They know that parents have to parent, that children can't achieve unless we raise their expectations and turn off the television sets and eradicate the slander that says a black youth with a book is acting white.⁶⁵

Indeed, Obama's presidency has provided a whole generation with a different perspective on what is possible. Its full effect only time and a thorough historical review will reveal. Nonetheless, there is the potential for set back. It is possible, as some scholars and activist prescribe, that this perceived Obama effect would compromise value for success, that a wholesale adoption of the status quo can lead one to be tasked with the responsibility of steering the free world with out fundamentally embracing changes.

In 1968, presidential candidate Robert F. Kennedy evoked playwright George Bernard Shaw when he confessed "[s]ome men see things as they are and say, 'Why?' I dream of things that never were and say, 'Why not?'"⁶⁶ This sentiment has proven more difficult for President Obama to communicate. He has been accused by some in the black community for not doing enough, for not challenging the institutional limitations they observe. His notable critics include Professor Cornel West, television host Tavis Smiley, and Professor Michael Eric Dyson to a lesser degree.⁶⁷ Recently, Smiley hosted a panel discussion in which one of panelist, Roger A. Clay, president of the Oakland, California-based Insight Center for Community Economic Development channeled a sense of frustration with the president, observed:

I'm extremely disappointed [in Obama], more so than I ever thought I could be. I think part of the reason I'm disappointed is because I had hoped for a lot. . . . Some of my hope was probably based on unrealistic expectations." The audience erupted in applause.

⁶⁴ Clarence Page, *Acting White*, PBS NEWSHOUR, Sept. 24, 2004, http://www.pbs.org/newshour/bb/entertainment/july-dec04/page_9-27.html (last visited Jan. 28, 2012).

⁶⁵ Barack Obama, Keynote Address at 2004 Democratic National Convention, July 27, 2004, *available at* <http://www.pbs.org/newshour/vote2004/demconvention/speeches/obama.html> (last visited Jan. 28, 2012) [hereinafter 2004 Keynote Address].

⁶⁶ RFK Quotations, JOHN F. KENNEDY PRESIDENTIAL LIBRARY AND MUSEUM, <http://www.jfklibrary.org/Research/Ready-Reference/RFK-Quotations.aspx> (last visited Jan. 28, 2012).

⁶⁷ Corey Dade, *Obama's Most Vocal Black Critics Dial Back Attacks as Election Year Begins*, NPR, Jan. 13, 2012, <http://www.npr.org/blogs/itsallpolitics/2012/01/13/145188135/obamas-most-vocal-black-critics-dial-back-attacks-as-election-year-begins>.

Clay added, "But because he's black, I still have very high expectations. . . . My biggest disappointment is—and it goes back to leadership—I don't see leadership on the [poverty] issue because I don't see [him] speaking out on the issue. I don't think you go around talking about race, but I do think you have to go around talking about issues that affect black people."⁶⁸

However, often overlooked by his critics is the fact that the president's message and often attempts to redefine political accountability and fundamental institutional change is challenged by scores of pundits, politicians, influence peddlers, and citizens.

B. A Message of Change and the Opposition that Fears It

As a model for political maneuvering into national high office, Barack Obama can provide invaluable lessons that show where the country is headed as it enters an era as a majority-minority polity. His candidacy demonstrates that campaigning as a pluralist who champions the idea of American Exceptionalism and touts that in no other country on earth could his story be possible affords one a legitimate chance of winning. His presidency, however, also demonstrates how once the minority candidate becomes the minority executive seeking to institute major reforms that upset the status quo, his favor quickly begins to fade. The emergence of the Tea Party in America is a poignant example. A once dismissed fringe has mobilized and garnered the attention of a nation. While it would be teleological to simply contend that Obama's approval and job performance ratings are linked to the Tea Party's emergence, it is indisputably more than just coincidental. Famed political commentator Andrew Sullivan writing in London's *The Sunday Times* argues, "The demographics tell the basic story: a black man is president and a large majority of white southerners cannot accept that . . . [t]hey grasp conspiracy theories to wish Obama – and the America he represents – away."⁶⁹ Sullivan adds, "White southerners comprise an increasing proportion of the 22% of Americans who still describe themselves as Republican," and accordingly the "GOP can neither dismiss the crankery nor move past it. The fringe defines what's left of the Republican [center]."⁷⁰

On October 30, 2008, before a packed Missouri gathering, Obama proclaimed, "We are five days away from *fundamentally transforming the United States of America*."⁷¹ This message galvanized the opposition in the first two years of his presidency, its been manipulated to suggest that the president thinks ill of the republic—that he is ashamed of it and seeks to reinvent it. Tea Party advocates, like former Fox News

⁶⁸ *Id.*

⁶⁹ Andrew Sullivan, *Obama still isn't President in the South: Denying the leader's American Birth is just another form of Racism*, SUNDAY TIMES, Aug. 9, 2009, at 8.

⁷⁰ *Id.* See also Brian Montopoll, *Who are the Birthers?*, CBS NEWS, July 23, 2009, available at www.cbsnews.com/8301-503544_162-5182746-503544.html (quoting Marc Ambinder who considers the precarious situation in which Obama's challengers find themselves. Ambinder argues that the birther phenomenon goes to the heart of the dilemma now facing the Republican Party, positing that "Republican presidential candidates need to figure out how to diffuse angry birthers who are bound to show up and demand their attention." Ambinder suggests if the candidates "give credence to the birthers, they're not only advancing ignorance but also) betraying the narrowness of their base. If they dismiss this growing movement, they might drive birthers to find more extreme candidates, which will fragment a Republican political coalition.").

⁷¹ *Fundamental Transformation*, PROLETARIAT BLOG: VOICE OF THE AMERICAN PROLETARIAT (Mar. 11, 2009), <http://proletariatblog.com/2009/03/11/fundamental-transformation/>.

commentator Glenn Beck, have even accused the president of trying to right all of the racial wrongs of America's past and that he has revealed his "deep-seated hatred for white people or the white culture."⁷²

IV. "REAL AMERICANS" INCITE RACISM WITH DIVISIVE RHETORIC

For some in the Tea Party, Obama's presidency is illegitimate. Calls for impeachment have been backed by misconceived notions that the president was not born in this country (and therefore not a U.S. citizen) and by accusations that he is not a Christian.⁷³ Relentless racism and xenophobia have been couched with political rhetoric to imply that this president is not just out of touch, but outright does is not one of us. In October of 2010, the National Association for the Advancement of Colored People (NAACP) released a report on the Tea Party movement and its alarming alignment with racist factions. The report entitled *Tea Party Nationalism: A Critical Examination of the Tea Party Movement and the Size, Scope, and Focus of its National Factions*, observes that:

Tea Party protests [have] attracted members of white nationalist organizations and networks. As a movement, white nationalism has projected two slightly different visions of white supremacy. One goal is a United States of America in which white and black and other people of color are all resident, but white domination is complete and uncomplicated by civil rights laws and voting rights for people of color. An alternative white nationalist vision is a whites-only republic carved out of the remains of a collapsed and dissected United States of America. Hard core white nationalists use terms such as "racial realist" and "self-conscious whites" to distinguish themselves from the majority of white people in this country, including those that simply exhibit racist or prejudiced opinions.⁷⁴

The NAACP's report adds that Tea Party nationalism is a "form of American nationalism" that "does not include all Americans, and separates itself from those it regards as insufficiently "real Americans."⁷⁵ As evidence for the aforementioned conclusion, the report points to a Tea Party Nation Newsletter article entitled *Real Americans Did Not Sue Arizona* and hand-drawn Tea Party rally signs that read, "I am an arrogant American, unlike our President, I am proud of my country, our freedom, our generosity, no apology from me."⁷⁶

To be fair, this emergent movement is about much more than just race. For some, there are genuine concerns about excess government spending and philosophical disagreements with what is considered the appropriate size and function of government. What is troubling, however, is that at its base, the Tea Party movement has made it impractical for many Americans to relate to its perhaps nobler intentions. Those with their hands on the reins of the movement are steering it with precise calculations.

⁷² Fox News Host Says Obama Is 'a Racist', ASSOCIATED PRESS, Aug. 3, 2009, <http://www.msnbc.msn.com/id/32197648/>.

⁷³ See David Weigel, *Change They Can Litigate*, SLATE (Dec. 4, 2008, 4:25 PM), http://www.slate.com/articles/news_and_politics/politics/2008/12/change_they_can_litigate.html.

⁷⁴ Devin Burghart & Leonard Zeskind, *Tea Party Nationalism: A Critical Examination of the Tea Party Movement and the Size, Scope, and Focus of its National Factions*, INST. FOR RESEARCH & EDUC. ON HUMAN RIGHTS 59 (2010), <http://www.irehr.org/images/pdf/TeaPartyNationalism.pdf>.

⁷⁵ *Id.* at 68.

⁷⁶ *Id.*

In an America where it is no longer left to the imagination to wonder what it would be like to have an African American president and where a dramatic shift in demographics is more of a question of when than if, the solution to maintaining the status quo is to thrust forward minority candidates that will not alter or even threaten the establishment.

A. 2010 Candidates Followed Obama's Example to Distinguish Themselves From Him

The 2010 elections demonstrated that certain candidates have used Obama's strategy to get elected while simultaneously trying to differentiate themselves from him and his politics. Beyond the headlines of a Republican resurgence is the sudden breakthrough of minority Republican candidates who followed the Obama model for getting elected, but have convinced the majority that they will not govern or legislate like he does. In South Carolina, Nikki Haley became the first Indian American woman elected governor of in the United States.⁷⁷ In New Mexico, Susana Martinez became the first female Hispanic governor in the state and in the country.⁷⁸ In Nevada, Brian Sandoval became that state's first Hispanic governor.⁷⁹ In Florida, Marco Rubio rode on the Tea Party express to become the state's next United States Senator.⁸⁰ All of these candidates won office thanks to Tea Party support and the GOP party label next to their names.⁸¹ This slate of candidates ran on platforms that centered on a pro-life position, small government, opposition to entitlement spending, and strong opposition to illegal immigration.⁸² They all ran on rejecting President Obama's proposed reforms or, as their supporters put it, the Obama administration's plan to "fundamentally transform the United States of America," words from the president that struck fear in the hearts of many Tea Partiers.⁸³ They all, however, put forth their life stories within the context of a larger American narrative, just as Obama had done so successfully in his 2008 presidential campaign. Unlike Obama, they emphasized their belief in the ideal of American Exceptionalism, leading the electorate to conclude that these candidates would not dream of attempting to fundamentally change a system that made their candidacies—and personal success stories—possible.

The most popular of the 2010 crop of candidates was now-senator Marco Rubio. The thirty-nine-year-old self-proclaimed son of Cuban exiles⁸⁴ has been called the "Republican Obama."⁸⁵ His

⁷⁷ Luisita Lopez Torregrosa, *Susana Martinez, Marco Rubio and the New Latino Leadership*, POLITICS DAILY, <http://www.politicsdaily.com/2010/11/19/susana-martinez-marco-rubio-and-the-new-latino-leadership/> (last visited Jan. 12, 2012).

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ See Michael R. Blood, *Tea Partiers Ascend in Many States*, SALON (July 3, 2010, 1:45 PM), http://www.salon.com/2010/07/03/us_tea_party_next_up/. Governor Haley was elected with fifty-one percent of the vote. See also Jason Evans, *Nikki Haley to be State's First Female Governor*, PICKENS SENTINEL, http://www.pickenssentinel.com/view/full_story/10145728/article-Nikki-Haley-to-be-state%E2%80%99s-first-female-governor-?instance=home_news_lead (last visited Jan. 12, 2012).

⁸² Blood, *supra* note 81; Evans, *supra* note 81.

⁸³ See, 2004 Keynote Address, *supra* note 65.

⁸⁴ According to Manuel Roig-Franzia of the *Washington Post*, during his senate campaign, Rubio appealed to a key constituency in Southern Florida by proclaiming that he was the "son of exiles." Roig-Franzia, however, contends that "a review of documents—including naturalization papers and other official records—reveals that the Florida Republican's account embellishes the facts. The documents show that Rubio's parents came to the United States and were admitted for permanent residence more than two-and-a-half years before Castro's forces overthrew the Cuban

name is already circulating as a potential vice presidential nominee in 2012.⁸⁶ Like Obama, Rubio successfully wove together biography and political vision to win his party's nomination and then the general election. Rubio, undoubtedly, not only took a page from the Obama campaign playbook, but used the pushback on Obama's presidency to mold his own political rhetoric.⁸⁷ Rubio became an overnight sensation after delivering a stunning speech at the American Conservative Union's annual Conservative Political Action Conference ("CPAC").

Rubio found a way to appeal to both the Tea Party and traditional conservative bases' adoration of American Exceptionalism by avowing that he subscribes to its existence and shares their anguish and disdain for those who not only deny its reality, but also weaken its condition. At CPAC, Rubio explained:

Simply put, there's nothing like America in all the world. And even today with the problems that we face, who would you rather be? Which country would you trade places with? Just remember, an afterthought, when was the last time that you heard news accounts about a boatload of American refugees arriving on the shores of another country? And yet there have always been those who haven't seen it this way. There have always been those that don't recognize this. They think that we need a guardian class in American government to protect us from ourselves. They think that the free-enterprise system is unfair, that a few people make a lot of money, and the rest of us get left behind. They believe that the only way business can make its money is by exploiting its workers and its customers. And they think that America's enemies exist because of something America did to earn their enmity.⁸⁸

Rubio would go on to assert that we face problems today because, in 2008, leaders who professed their belief in American Exceptionalism won elections.⁸⁹ He adds that Obama and those who were elected with him in 2008 know that the American people would never endorse their vision of America.⁹⁰ Rubio professed:

government and took power on New Year's Day 1959." Manuel Roig-Franzia, *Marco Rubio's Compelling Family Story Embellishes Facts, Documents Show*, WASH. POST, Oct. 20, 2011, http://www.washingtonpost.com/politics/marco-rubios-compelling-family-story-embellishes-facts-documents-show/2011/10/20/gIQAaVHD1L_print.html. Rubio vehemently disagrees with the charge that he has embellished his family history. See Luke Johnson, *Marco Rubio Says Parents' Cuba Emigration Story Not Embellished: It's Outrageous*, HUFFINGTON POST, http://www.huffingtonpost.com/2011/10/25/marco-rubio-cuba-exiles-parents-castro_n_1030333.html? (last updated Dec. 25, 2011).

⁸⁵ John B. Judis, *The Republican Obama*, THE NEW REPUBLIC (Feb. 23, 2010, 12:00 AM), <http://www.tnr.com/article/politics/the-republican-obama?page=0,1>.

⁸⁶ John Swaine, *Marco Rubio Follows the Barack Obama Script. So What Happens Next?*, THE TELEGRAPH, <http://blogs.telegraph.co.uk/news/jonswaine/100062054/marco-rubio-follows-the-barack-obama-script-so-what-happens-next/> (last updated Nov. 3, 2010).

⁸⁷ *The Anti-Crist: The Newest Republican Star is following Obama's Playbook*, THE ECONOMIST (Mar. 31, 2010), <http://www.economist.com/node/15816852>.

⁸⁸ *Marco Rubio's CPAC Speech Transcript*, WASH. POST, <http://voices.washingtonpost.com/44/2010/02/marco-rubios-cpac-speech-the-t.html> (last visited Jan. 12, 2012).

⁸⁹ *Id.*

⁹⁰ *Id.*

[O]ver the last 12 months [the Obama Administration and the Democratic Congress] have used a severe economic downturn, a severe recession as an excuse to implement the statist policies that they have longed for all this time. In essence, they are using this downturn as cover not to fix America, but to try to change America to fundamentally redefine the role of government in our lives and the role of America in the world.⁹¹

Marco Rubio has managed to learn from the Obama model of high-stakes identity politics—not just in how to win elections, but in how to garner support from the white majority without seeming to pose a threat.

The impetus behind Obama's opposition fostered Rubio's and his contemporaries' national political emergence. The Rubio campaign was able to appeal to the white nationalist component of the Tea Party movement while still gaining support from Hispanic voters because his story served as a model of inspiration. His non-threatening agenda (the preservation of the status quo) eased anxiety for many who fear a majority-minority America. As John B. Judis of *The New Republic* has observed, Rubio concludes his speeches with an appealing thought that carries an "implicit" "incendiary message" that is "softened by the insertion of his biography."⁹² That is, "Do I want my children to grow up in the country that I grew up in or do I want them to grow up in a country like the one my parents grew up in?"⁹³ That message managed to quell the inevitable anxiety that proffered change produces. A time in where our social ills and inequalities were not the subject of public discourse, a time where those who held the benefit of social political order were not decried or their firm influence threatened, is nostalgically longed for.

V. AMERICAN EXCEPTIONALISM STIFLED BY NOSTALGIA FOR A MORE DIVISIVE ERA

Today, America is longing for better days, but in doing so, it fails to ask a critical question: Whose better days are we longing for? Indeed, America has experienced hardships greater than those we face today and has overcome much, but the time has come to become a truly forward-looking people, a people that seek to improve opportunity for all. Barack Obama's rise to the presidency has provided proof that America is still a place where all things are possible. What we must fear is that we will become a nation that perpetuates the status quo in the name of American Exceptionalism, an America where those who wish to have their voices heard must acquiesce to the current political order. The America that once forced those seeking her liberty, her promise, her citizenship to shed their self-identity and pursue acceptance into the ranks of majority status-holder. The republic's demographic shift towards a majority-minority population will make little difference if its politics remains unshaken.

What is truly exceptional about America is not just that the son of a Kenyan farmer named Barack Hussein Obama can become president of the United States or that the self-proclaimed son of Cuban exiles can become a United States Senator, but that the nation strives towards inclusion and a rejection of its past practices of alienation. America's "Exceptionalism" lies in her ability to confront her inequalities and maintain that a government of the people, by the people, shall always be for *all* of the people. The nation should find guidance in the words of the last man to win a presidential election with a

⁹¹ *Id.*

⁹² Judis, *supra* note 85.

⁹³ *Id.*

majority of the white vote⁹⁴ as it navigates a path forward that reconciles contrasting ideas of American Exceptionalism and racial equality. In 2003, President George W. Bush gave a speech at Goree Island in Senegal where he observed:

By a plan known only to Providence, the stolen sons and daughters of Africa helped to awaken the conscience of America. The very people traded into slavery helped to set America free. . . . My nation's journey toward justice has not been easy and it is not over. The racial bigotry fed by slavery did not end with slavery or with segregation. And many of the issues that still trouble America have roots in the bitter experience of other times. But however long the journey, our destination is set: liberty and justice for all.⁹⁵

America's journey towards racial equality indeed is not yet over. Solace, nonetheless, must be found in her chartering declaration that her purpose will not be abandoned and our collective protection of life, liberty, and the pursuit of happiness will be shouldered from generation to generation. In the early years of this this infant century, discourse, albeit to often overwhelmed by vitriol, remains firmly linked to our most basic promise that we will strive to make our union more inclusive and thus more perfect.

⁹⁴ 2004 *Presidential National Exit Polls*, CNN, <http://www.cnn.com/ELECTION/2004/pages/results/states/US/P/00/epolls.0.html> (last visited Jan. 12, 2012) (President George W. Bush won the 2004 election with 58% of the white vote.).

⁹⁵ President George W. Bush, *Speech at Goree Island* (July 8, 2003), *available at* <http://teachingamericanhistory.org/library/index.asp?document=1900>.