

“Color Struck”: Intragroup and Cross-Racial Color Discrimination

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*If you is white,
You's alright,
If you's brown,
Stick around,
But if you's black, oh, brother,
Get back, get back, get back.*¹

I. INTRODUCTION

Pop singer Michael Jackson's features changed and the color of his skin lightened dramatically during the final decades of his life.² Jackson denied changing his skin color to improve his appearance and claimed that he suffered from vitiligo, a condition in which the immune system attacks cells that produce melanin, which determines an individual's skin color.³ Jackson said he was not trying to look “White,” but observers wondered, if that were so, what was the motivation for his straightened hair and the many operations to change the shape of his nose,⁴ chin and cheekbones?⁵

In 2010, former Chicago Cubs baseball player Sammy Sosa was photographed at the Latin Grammy Awards in Las Vegas with noticeably whiter skin.⁶ Sosa originally had a very brown complexion but appeared to be nearly White in photographs.⁷ He told reporters that a cosmetic cream

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¹ BIG BILL BROONZY, *Get Back (Black, Brown, and White)*, on THE MERCURY BLUES STORY (1945–1955) (Midwest Blues, Universe, Vol. 2, 2010).

² Madison Park, *In life of mysteries, Jackson's changed color baffled public*, CNN HEALTH (Jul. 8, 2009), <http://perma.cc/07Pnt3EbJ26>.

³ *See id.*

⁴ *See Showbiz Tonight, Michael Jackson's transformation*, CNN (Jul. 9, 2009), <http://www.cnn.com/video/#/video/showbiz/2009/07/09/hammer.michael.jackson.trans.cnn>.

⁵ *See Charlotte Triggs, Inside Story: Michael Jackson's Plastic Surgery*, PEOPLE (Jul. 10, 2009, 1:05 PM), <http://perma.cc/0BT9sANzUYk>.

⁶ *See Christian Red & Isaac Lopez, Former Cubs slugger Sammy Sosa denies suffering from skin condition that plagued Michael Jackson*, NYDAILYNEWS.COM (Nov. 11, 2009, 11:59 PM), <http://perma.cc/0LKaNwKtTsc>.

⁷ *See id.*; *see also Kim LaCapria, Sammy Sosa's skin tone raising questions*, THE INQUISITR (Nov. 7, 2009), <http://perma.cc/0rsTTGrEETK>.

he used to soften his skin caused the lighter tone.⁸ He said he had been using the cream for some time and it made his face look whiter than it actually was, but claimed he was not trying to look like Michael Jackson, nor was he suffering from any skin illness.⁹

“Color Struck” is an old saying among African-Americans that refers to individuals who believe that a lighter complexion and European features represent the epitome of beauty and desirability.¹⁰ Color discrimination is often masked by a combination of subjective notions of attractiveness and unconscious stereotypes.¹¹ Michael Jackson and Sammy Sosa were probably not consciously attempting to look White; it is more likely they were simply color struck.

Racism involves discrimination against individuals based on their racial category.¹² Colorism, in contrast, involves discrimination against dark-complexioned African-Americans on the basis of their color.¹³ The hierarchy employed in colorism is the same as the one that governs racism; a light complexion and European features are considered to be more valuable and attractive than dark skin and African features.¹⁴ Color distinctions among African-Americans have never been recognized in the formal ways they were in the Caribbean and South America.¹⁵ However, among African-Americans, the distinctions are usually unstated but well understood. Lighter complexions and European features are more desirable than darker complexions and African features.¹⁶ A person is considered light-skinned by an application of the “paper bag test,” which looks to whether the person’s complexion is the color of a grocery bag or lighter.¹⁷

⁸ Red & Lopez, *supra* note 7.

⁹ *Id.*

¹⁰ See ZORA N. HURSTON ET AL., *Colorstruck*, in ZORA NEALE HURSTON: COLLECTED PLAYS, 33–34 (2008) (discussing Hurston’s 1925 play, *Color Struck*).

¹¹ See discussion accompanying *infra* notes 17–25.

¹² See Evelyn Nakano Glenn *Countering Colorism*, in SHADES OF DIFFERENCE: WHY SKIN COLOR MATTERS 211, 212 (Evelyn N. Glenn ed., 2009).

¹³ The term “colorism” has been attributed to Alice Walker who defined it as “prejudicial or preferential treatment of same-race people.” Alice Walker, *If the Present Looks Like the Past, What Does the Future Look Like?*, in SEARCH OF OUR MOTHERS’ GARDENS: WOMANIST PROSE 290 (1983).

¹⁴ Angela P. Harris, *From Color Line to Color Chart?: Racism and Colorism in the New Century*, 10 BERKELEY J. AFR.-AM. L. & POL’Y 52, 54 (2008).

¹⁵ See generally Edward Telles, *The Significance of Skin Color*, in SHADES OF DIFFERENCE: WHY SKIN COLOR MATTERS 7, 7–24 (Evelyn N. Glenn ed., 2009) (discussing racial and color distinctions in Brazil); Christina A. Sue, *The Dynamics of Color*, in SHADES OF DIFFERENCE: WHY SKIN COLOR MATTERS 114, 114–28 (Evelyn N. Glenn ed., 2009) (discussing a system based on “a mark of color” rather than origin); Michelle Martin & Frances Robles, *Behind Closed Doors: ‘Colorism’ in the Caribbean*, NPR NEWS (Jul. 16, 2007, 12:00 PM), <http://perma.cc/0j6v74cKPeq> (discussing colorism in the Dominican Republic).

¹⁶ See Harris, *supra* note 14.

¹⁷ AUDREY ELISA KERR, *THE PAPER BAG PRINCIPLE: CLASS, COLORISM, AND RUMOR AND THE*

Although formal racial classifications were developed in the eighteenth and nineteenth centuries,¹⁸ the preference for white skin, blonde hair and European features is rooted in antiquity. Beginning with Greek sculptures of Aphrodite and Roman depictions of Venus, and into the European Renaissance, pale complexions, blue eyes, and flowing blonde hair have been the gold standard for feminine beauty.¹⁹ When Europeans colonized Asia, Africa, and the Americas, they imposed their standards of beauty on the indigenous groups and on the Africans they imported and enslaved.²⁰ Today, the European norm for beauty and attractiveness is ubiquitous and constantly reinforced in movies, magazines, television programs, online and elsewhere.²¹ Young children assimilate these conceptions at an early age, and they remain embedded in their psyches as they mature into adults.²²

African-Americans, South Asians, Latin Americans, and other people of color have, for many generations, internalized this Eurocentric standard of attractiveness.²³ Using hair straighteners and skin-lightening creams, they attempt to look white without consciously realizing they are doing so.²⁴ The evidence indicates that in America, socioeconomic disparities resulting from colorism can be as severe as those traditionally attributed to racism.²⁵ As America becomes a more multi-racial society, old fashioned "Jim Crow" racism has slowly diminished, while color bias persists.²⁶

II. COLOR DISCRIMINATION

Discrimination on the basis of color, rather than race, has long been documented by researchers.²⁷ In *The Philadelphia Negro*, W.E.B. Du Bois

CASE OF BLACK WASHINGTON, D.C. xiv (2006).

¹⁸ *The Story of Race Transcript*, AM. ANTHROPOLOGICAL ASS'N, <http://perma.cc/0yY3iz6VdUN> (last visited Nov. 15, 2013).

¹⁹ See discussion *infra* Section "Importing European Standards of Beauty."

²⁰ DEBORAH GABRIEL, *LAYERS OF BLACKNESS: COLOURISM IN THE AFRICAN DIASPORA* 71 (2007), available at <http://perma.cc/0WZJnybv7F>.

²¹ See *infra* notes 73–74.

²² See *infra* notes 369–79 and accompanying text.

²³ See *infra* Sec. III.

²⁴ See generally Evelyn Nakano Glenn, *SHADES OF DIFFERENCE: WHY SKIN COLOR MATTERS* (2009) (consider Part III: Consuming Lightness: Modernity, Transnationalism, and Commodification).

²⁵ See survey findings *infra* notes 73–74.

²⁶ See Leland Ware & David C. Wilson, *Jim Crow on the "Down Low": Subtle Racial Appeals in Presidential Campaigns*, 24 ST. JOHN'S J. LEGAL COMMENTARY 299, 299–304 (2009), available at <http://perma.cc/C3AE-E76G>.

²⁷ See, e.g., RONALD E. HALL, *AN HISTORICAL ANALYSIS OF SKIN COLOR DISCRIMINATION IN AMERICA: VICTIMISM AMONG VICTIM GROUP POPULATIONS* (2010); RONALD E. HALL, *RACISM IN THE 21ST CENTURY: AN EMPIRICAL ANALYSIS OF SKIN COLOR* (2008); JOANNE L. RONDILLA & PAUL SPICKARD, *IS LIGHTER BETTER?: SKIN-TONE DISCRIMINATION AMONG ASIAN AMERICANS* (2007); MARGARET L. HUNTER, *RACE, GENDER AND THE POLITICS OF SKIN TONE* (2005); EDWARD E. TELLES, *RACE IN ANOTHER AMERICA: THE SIGNIFICANCE OF SKIN COLOR IN BRAZIL* (2004); CEDRIC HERRING

described intra-racial colorism when he commented on that city's "Aristocracy of the Negro population" in the late 1890s.²⁸ Du Bois observed, "[t]hey are largely Philadelphia born, and being descended from the house servant class, contain many mulattoes."²⁹ Du Bois noted that Philadelphia's Black elites did not interact with their less affluent counterparts in ordinary assemblages or promenading places.³⁰ The insular and elitist nature of the group was reflected in Du Bois' observation that "[s]trangers secure entrance to this circle with difficulty and only by introduction."³¹ Decades later in the landmark study, *An American Dilemma*, Gunnar Myrdal wrote: "without a doubt a Negro with light skin and other European features has in the North an advantage with white people."³²

In 1957, Sociologist E. Franklin Frazier made a similar observation in *Black Bourgeoisie*.³³ He wrote: "a light complexion resulting from racial mixture raised a mulatto above the level of an unmixed Negro."³⁴ Frazier explained that "[p]artly because of the differential treatment accorded to the mulattoes, but more especially because of the general degradation of the Negro as a human being, the Negro of mixed ancestry thought of himself as superior to the unmixed Negro. His light complexion became his most precious possession."³⁵

Over the last two decades, a large body of scholarship examining the detrimental effects of color discrimination has been produced by scholars representing a range of academic disciplines.³⁶ In general, the research shows that dark-skinned Blacks are treated differently and less favorably than their lighter-complexioned counterparts.³⁷ Legal scholars have complained about the courts' reluctance to acknowledge color discrimination.³⁸ In *Colorism: A Darker Shade of Pale*, Taunya Banks explored the history of color discrimination in America and analyzed the

ET AL., *SKIN DEEP: HOW RACE AND COMPLEXION MATTER IN THE "COLOR-BLIND" ERA* (2004); KATHY RUSSELL ET AL., *THE COLOR COMPLEX: THE POLITICS OF SKIN COLOR AMONG AFRICAN AMERICANS* (1992).

²⁸ W.E.B. DU BOIS, *THE PHILADELPHIA NEGRO: A SOCIAL STUDY* 316 (1899), available at <http://perma.cc/X52Q-S22J> (last visited Dec. 4, 2013).

²⁹ *Id.* at 318.

³⁰ *Id.*

³¹ *Id.*

³² GUNNAR MYRDAL, *AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY* 697 (20th anniversary ed. 1962).

³³ See E. FRANKLIN FRAZIER, *BLACK BOURGEOISIE: THE BOOK THAT BROUGHT THE SHOCK OF SELF-REVELATION TO MIDDLE-CLASS BLACKS IN AMERICA* (1957).

³⁴ *Id.* at 135.

³⁵ *Id.*

³⁶ See Ware & Wilson, *supra* note 26.

³⁷ See *infra* notes 40–76 and accompanying text.

³⁸ See generally GLENN, *supra* note 24 (consider Part IV: Countering Colorism: Legal Approaches).

problems it has posed in employment discrimination cases.³⁹ Skin tone discrimination, she wrote, is an aspect of employment discrimination that courts have been hesitant to recognize.⁴⁰ She found that judges are more willing to acknowledge color discrimination in cases involving ethnic Whites and Latinos, but are hesitant to do so when Black claimants are involved.⁴¹ Courts are skeptical of claims involving intra-racial discrimination as it does not fit the traditional paradigm of Whites discriminating against Blacks.⁴² Banks concluded that courts possess the legal authority to redress claims under existing antidiscrimination laws and should be more willing to recognize claims of color discrimination when African-Americans assert them.⁴³

Other scholars have made similar observations. In *Shades of Brown: the Law of Skin Color*, Trina Jones examines the history of colorism in America and the discrimination against individuals based on skin color.⁴⁴ She distinguishes intra-group colorism from cross-racial colorism and traditional discrimination: the first involves lighter-skinned African-Americans and Whites disfavoring darker-skinned Blacks; the second involves Whites discriminating against all Blacks.⁴⁵ In both cases, darker-complexioned Blacks are the victims.⁴⁶ Jones complains that courts tend to minimize the significance of this distinction using a flawed interpretation of antidiscrimination laws.⁴⁷ Jones argues that a more nuanced understanding of discrimination is needed to recognize color discrimination.⁴⁸ In *Title VII: What's Hair (and Other Race Based Characteristics) Got to Do With It*,⁴⁹ D. Wendy Greene conducted a similar analysis and reached the same conclusion: color-based discrimination claims made by Black complainants are misunderstood⁵⁰ and should be recognized, given that Title VII of the Civil Rights Act prohibits discrimination on the basis of race *and* color.⁵¹

³⁹ Taunya Lovell Banks, *Colorism: A Darker Shade of Pale*, 47 UCLA L. REV. 1705, 1705–24 (2000).

⁴⁰ *Id.* at 1710–11.

⁴¹ *Id.* at 1724–36.

⁴² *See id.* at 1710, 1741–42.

⁴³ *Id.* at 1741, 1743, 1746.

⁴⁴ *See generally* Trina Jones, *Shades of Brown: The Law of Skin Color*, 49 DUKE L.J. 1487 (2000).

⁴⁵ *See id.* at 1493–99.

⁴⁶ *Id.* at 1555.

⁴⁷ *Id.* at 1489–90, 1531–56.

⁴⁸ *Id.* at 1490, 1544, 1555.

⁴⁹ D. Wendy Greene, *Title VII: What's Hair (and Other Race Based Characteristics) Got to Do With It?*, 79 U. COLO. L. REV. 1355 (2008).

⁵⁰ *See id.* at 1370–76.

⁵¹ *See id.* at 1383–93; *see also*, Cynthia E. Nance, *Colorable Claims: The Continuing Significance of Color Under Title VII Forty Years After Its Passage*, 26 BERKELEY J. EMP. & LAB. L. 435 (2005) (examining the history of colorism and cases alleging discrimination on the basis of color rather than

Leonard Baynes examined the “Dark-Light Paradigm” of African-American and Latino colorism.⁵² He determined that an entrenched color hierarchy among non-White ethnic groups operates to the detriment of dark-complexioned Blacks and Latinos.⁵³ Baynes bolstered his analysis with data that showed darker-skinned Blacks and Latinos tend to have smaller incomes, lower levels of educational attainment, and less prestigious employment positions than lighter-skinned Blacks and Latinos.⁵⁴

Colorism has even infected the criminal justice system. Research has shown that dark-skinned Blacks receive longer prison sentences than their lighter-complexioned counterparts.⁵⁵ An article examining racial disparities in the criminal justice system cited a study of 67,000 male felons incarcerated in Georgia for a first offense from 1995 through 2002.⁵⁶ The data showed that dark-skinned Black defendants received longer sentences than light-skinned Blacks.⁵⁷

In another article, the authors examined discrimination on the basis of what they called “Afrocentric” features, which they defined as darker skin color, fuller lips and broader noses.⁵⁸ The authors collected and analyzed data that showed that Black defendants in Florida who had prominent African features tended to receive longer sentences than other Blacks whose racial physiognomy was less distinctive.⁵⁹ Using photographs and other information about inmates, including the offenses for which they were convicted and their criminal records, the authors found that among African-American inmates, those with prominent African features tended

race).

⁵² See Leonard M. Baynes, *If It's Not Black and White Anymore, Why Does Darkness Cast a Longer Discriminatory Shadow than Lightness? An Investigation and Analysis of the Color Hierarchy*, 75 DENV. U. L. REV. 131 (1997).

⁵³ See *id.* at 185–86; see also, John M. Kang, *Deconstructing the Ideology of White Aesthetics*, 2 MICH. J. RACE & L. 283, 283 (1997) (discussing the White beauty paradigm in America); Keith B. Maddox & Stephanie A. Gray, *Cognitive Representations of Black Americans: Reexploring the Role of Skin Tone*, 28 PERSONALITY & SOC. PSYCHOL. BULL. 202 (2002) (reviewing anecdotal and empirical evidence for skin tone bias in stereotyping); Margaret L. Hunter, “*If You're Light You're Alright*” *Light Skin Color as Social Capital for Women of Color*, 16 GENDER & SOC. 175 (2002) (exploring the role of light-skin as a stratifying agent for women on the dimensions of education, income and spousal status); Christopher A. D. Charles, *Skin Bleaching, Self-Hate, and Black Identity in Jamaica*, 33 J. BLACK STUD. 711 (2003) (exploring the interaction between low self-esteem and skin bleaching); Mark E. Hill, *Skin Color and the Perception of Attractiveness Among African Americans: Does Gender Make a Difference?*, 65 SOC. PSYCHOL. Q. 77 (2002) (exploring the perception of fair skin tone as a feminine characteristic).

⁵⁴ See Baynes, *supra* note 52, at 159–62, 185.

⁵⁵ E.g., Michael Tonry, *The Social, Psychological, and Political Causes of Racial Disparities in the American Criminal Justice System*, 39 CRIME & JUST. 273 (2010); William T. Pizzi et al., *Discrimination in Sentencing on the Basis of Afrocentric Features*, 10 MICH. J. RACE & L. 327 (2005).

⁵⁶ Tonry, *supra* note 55, at 284.

⁵⁷ *Id.*

⁵⁸ Pizzi et al., *supra* note 55, at 331.

⁵⁹ *Id.*

to receive longer sentences than others whose African features were not as prominent.⁶⁰ The researchers concluded that Afrocentric features activated an unconscious stereotype of Blacks as dangerous criminals,⁶¹ which influenced the decisionmaking process and caused the imposition of longer sentences when dark-skinned defendants were convicted.⁶²

The disparities are not limited to male defendants. A recent study found that Black female offenders who are light-skinned received shorter prison sentences than darker-complexioned offenders.⁶³ The authors collected data on 12,158 imprisoned Black women in North Carolina between 1995 and 2009.⁶⁴ The study showed that women with light skin were sentenced to approximately 12% less prison time than their darker-skinned counterparts.⁶⁵ The study examined factors such as prior records, conviction dates, misconduct while incarcerated, and having low body weight, as well as whether the women were convicted of homicide or robbery since these crimes carry heavier prison terms.⁶⁶ The authors concluded that colorism demonstrates the complexity of racism in our society⁶⁷ and added that "it is no longer sufficient to understand racial discrimination solely in terms of the relative advantages of Whites compared to non-Whites. Among Blacks, characteristics associated with Whiteness appear to have a significant impact on important life outcomes."⁶⁸

Color discrimination affects a wide range of activities. Using a longitudinal design method that linked a sample of African-American men raised in the South to their census records, Mark Hill examined the influence of skin color on the socioeconomic attainment of African-American men.⁶⁹ His findings showed the importance of skin color in directing the socioeconomic progress of African-American men. Individuals who identified as mulatto in the study had a higher adult socioeconomic status than Blacks with dark complexions.⁷⁰ Hill's analysis indicated that differences in social origins were responsible for only 10 to 20% of the color gap in adult attainment levels.⁷¹ Hill's findings indicated

⁶⁰ *Id.*

⁶¹ *See id.* at 350–52.

⁶² *See id.* at 352.

⁶³ Jill Viglione et al., *The Impact of Light Skin on Prison Time for Black Female Offenders*, 48 SOC. SCI. J. 250, 250–58 (2011).

⁶⁴ *Id.* at 253.

⁶⁵ *Id.* at 255.

⁶⁶ *See id.* at 254–56.

⁶⁷ *Id.* at 257.

⁶⁸ *Id.*

⁶⁹ Mark E. Hill, *Color Differences in the Socioeconomic Status of African American Men: Results of a Longitudinal Study*, 78 SOC. FORCES 1437, 1437–60 (2000).

⁷⁰ *Id.* at 1454.

⁷¹ *Id.*

that color bias, rather than family background, was responsible for most of the color differences in the socioeconomic status of African-American men.⁷²

In *The Skin Color Paradox and the American Racial Order*,⁷³ the authors used surveys to develop an empirical analysis that found:

[D]ark-skinned blacks have lower levels of education, income and job status. They are less likely to own homes or to marry; and dark-skinned blacks' prison sentences are longer. Dark-skin discrimination occurs within as well as across races. Some evidence suggests, in fact, that intra-racial disparities are as detrimental to a person's life chances as are disparities traditionally associated with racial divisions. . . . With some exceptions, most Americans prefer lighter to darker skin aesthetically, normatively and culturally. Film-makers, novelists, advertisers, modeling agencies, matchmaking websites—all demonstrate how much the power of a fair complexion, along with straight hair and Eurocentric facial features, appeals to Americans.⁷⁴

The discussion in this section shows that a large body of theoretical and empirical research demonstrates conclusively that color bias is real and has an adverse effect on the lives of dark-complexioned African-Americans.

III. THE GEOGRAPHY OF COLORISM

Colorism operates on a global scale.⁷⁵ There is a worldwide market for chemicals that lighten skin tones.⁷⁶ Asia has the largest market for skin-whitening creams.⁷⁷ In India and Pakistan, women are socialized to believe that a fair complexion equates to beauty and is the key to success in life, marriage, and work.⁷⁸ During the colonial era, the idea that Indians

⁷² *Id.*

⁷³ Jennifer L. Hochschild & Vesla Weaver, *The Skin Color Paradox and the American Racial Order*, 86 SOC. FORCES 643 (2007).

⁷⁴ *Id.* at 644 (alteration in original) (citations omitted).

⁷⁵ See generally Margaret L. Hunter, *Buying Racial Capital: Skin-Bleaching and Cosmetic Surgery in a Globalized World*, 4 J. PAN AFR. STUD. 142, 142–64 (2011) (examining competing discourses about skin bleaching and cosmetic surgery); Evelyn N. Glenn, *Yearning for Lightness: Transnational Circuits in the Marketing and Consumption of Skin Lighteners*, 22 GENDER & SOC'Y 281, 281–302 (2008) (discussing the marketing of skin lighteners around the world and the global multinational corporations involved in the global skin-lightening trade).

⁷⁶ See generally Glenn, *supra* note 24.

⁷⁷ See Imani Perry, *Buying White Beauty*, 12 CARDOZO J.L. & GENDER 579, 582 (2006).

⁷⁸ Lavina Melwani, *The White Complex: What's Behind the Indian Prejudice for Fair Skin?*,

with fair skin were superior was usually unstated but well understood.⁷⁹ The belief that a light complexion is superior to a darker one is embedded deeply within the Indian psyche, since skin color is an important consideration in marriage.⁸⁰ Research conducted by a matrimonial website in three northern Indian states confirmed that skin tone is the most important criteria when selecting a partner.⁸¹

A journalist wrote: "it is being called 'Snow White syndrome' in India, a market where sales of whitening creams are far outstripping those of Coca-Cola and tea."⁸² According to Imani Perry, this practice exemplifies the perverse objectification of the female body in sexual partnering.⁸³

Colorism is also evident in advertisements. For instance, a television ad for the cream *Fair & Lovely* reinforces the idea that girls seeking a prospective groom should utilize skin-lightening creams in order to become more marketable for marriage.⁸⁴ Beyond the simple advertisement for a flawless skin, it is implied that using this cream is also necessary to advance in all relevant aspects of life.⁸⁵ But the use of lightening creams is not restricted to women. The popularity of these products is increasing among men and the availability of products for male consumers is highly advertised.⁸⁶ A commercial shown on Indian satellite channels featured Bollywood star Shahrukh Khan promoting a skin cream called *Fair and Handsome*.⁸⁷ In it, a glum, dark-skinned Indian man used the skin-lightening cream to become many shades lighter.⁸⁸ At the end of the commercial he is shown smiling and walking confidently with a lovely woman at his side.⁸⁹ L'Oreal hired Bollywood actor John Abraham to pitch its *Garnier for Men* skin-whitening lotion in an effort to challenge the

LITTLE INDIA (Aug. 17, 2007, 11:03 PM), <http://perma.cc/CW7Q-Y2E3>.

⁷⁹ See Anjana Gosai, *India's Myth of Fair-Skinned Beauty*, GUARDIAN.CO.UK (July 19, 2010, 4:00 PM), <http://perma.cc/HQ3T-4B8S>.

⁸⁰ See Glenn, *supra* note 75, at 289; see also Saikat Chatterjee, *Fair-Skin Fashion Boosts Sales of Whitening Creams in India*, BLOOMBERG (Nov. 12, 2009, 5:51 PM), <http://perma.cc/7CT2-3EU2> (exemplifying a mother's motivation to purchase a skin-lightening cream for her 15-year-old daughter).

⁸¹ See Ronda R. Penrice, *Skin Lightening is Serious Business in India*, THEGRIO (Jul. 19, 2010, 9:15 AM), <http://perma.cc/B84F-L83B>.

⁸² Shantanu Guha Ray, *India's Unbearable Lightness of Being*, BBC NEWS (Mar. 23, 2010, 12:09 AM), <http://perma.cc/76BQ-X423>.

⁸³ See Perry, *supra* note 77, at 596.

⁸⁴ See Ivotsna Vaid, *Fair Enough? Color and the Commodification of Self in Indian Matrimonials*, in SHADES OF DIFFERENCE: WHY SKIN COLOR MATTERS 150, 150 (Evelyn N. Glenn ed., 2009).

⁸⁵ See Rebecca Goldstein, *Time for a Reality Check on Skin Lightening Creams*, THE CONVERSATION. (Sep. 11, 2012, 2:29 PM), <http://perma.cc/6RM2-SB56>.

⁸⁶ *Id.*

⁸⁷ See Naresh Puri, *Beyond the Pale?*, BBC NEWS (Sep. 25, 2007, 10:37 AM), <http://perma.cc/5UVH-27A4>.

⁸⁸ *Id.*

⁸⁹ *Id.*

market leader, *Fair and Handsome*.⁹⁰ Another skin-lightening cream, Unilever's *Vaseline Healthy White Body*, is currently the most advertised cosmetic brand on Indian television.⁹¹ Unilever's cream created great controversy with its Internet marketing strategy, which appeared to be racist,⁹² because it showed a distinct preference for lighter skin. Recently, further concerns have been raised regarding the dissemination of other desirable physical characteristics for young Indians. The homogeneity of color is becoming a new social expectation in order to overcome self-consciousness.⁹³ Therefore, young Indians are being encouraged to start using deodorants and intimate wash products containing skin-lightening ingredients.⁹⁴

Skin-lightening creams increased \$432 million in sales in South Asia during the first nine months of 2008, and the industry expects to continue growing as the levels of urbanization and affordability augment their target populations⁹⁵ by expanding the market for men in the following decade.⁹⁶ However, this phenomenon is not limited to South Asia. An increasing number of East Asians are using their rising incomes to purchase skin-lightening products.⁹⁷ In Hong Kong, Malaysia, the Philippines, South Korea, and Taiwan, four of every ten women use a whitening cream.⁹⁸ And, as is the case elsewhere, the cosmetics industry is reaping enormous profits.⁹⁹ In Hong Kong, pale Asian models dominate the flat-screens and multimedia billboards of public transit.¹⁰⁰ They appear on the pages of glossy magazines and cinema advertisements promoting such products as *Blanc Expert*, *White-Plus*, *White Light*, *Future White Day*, *Active White*, and *Snow UV*.¹⁰¹ Skin lightening has a long history in Asia. In ancient

⁹⁰ See Rhys Blakely, *Cosmetics Companies Form Queue to Cash in as India's Men Lighten up*, THE TIMES (LONDON) (Dec. 30, 2009, 12:01 AM), <http://perma.cc/VP3Y-23UW>.

⁹¹ Achal Mehra, *Fair and Ugly - Indian Americans and Skin Color Politics*, NEW AM. MEDIA (Mar. 01, 2010), <http://perma.cc/6V4A-Y42T>.

⁹² Internet application that digitally lightens the skin of profile pictures uploaded. See Hilary Whiteman, *Vaseline Skin-Lightening App Stirs Debate*, CNN WORLD (Jul. 16, 2010, 9:24 AM), <http://perma.cc/5C9P-BAVF>.

⁹³ See Dan Morrison, *Has India's Skin-Lightening Obsession Reached the Final Frontier?*, NAT'L GEOGRAPHIC (Apr. 12, 2012), <http://perma.cc/46UE-WPYX>.

⁹⁴ *Id.*

⁹⁵ See Chatterjee, *supra* note 80.

⁹⁶ See Blakely, *supra* note 90.

⁹⁷ See Eric P. H. Li et al., *Skin Lightening and Beauty in Four Asian Cultures*, in 35 ADVANCES IN CONSUMER RESEARCH 444, 444 (2008).

⁹⁸ Thomas Fuller, *A Vision of Pale Beauty Carries Risks for Asia's Women*, N.Y. TIMES (May 14, 2006), <http://perma.cc/RVR6-8DQ4>.

⁹⁹ See Sola Okenla, *Skin Bleaching Creams Linked to Diabetes*, THEGRIO (Oct. 4, 2012, 1:50 PM), <http://perma.cc/HA2P-97PA>.

¹⁰⁰ See Katherine Reedy, *Ads Pressure Hong Kong Women to Whiten Up*, WENEWS (Feb. 12, 2009), <http://perma.cc/BKJ6-9V8M>.

¹⁰¹ See Marianne Bray, *SKIN DEEP: Dying to be White*, CNN.COM (May 15, 2002, 4:14 AM), <http://perma.cc/7LY8-HFYQ>.

China and Japan, a saying, "one white covers up three ugliness," has been passed down through the generations.¹⁰² These attitudes are largely the same among many Asian Americans.¹⁰³

Colorism is also pervasive in Latin America. Unlike America's "one-drop rule" in which any amount of African ancestry classifies an individual as Black, Latin America exhibits a more fluid classification system based on color gradations and appearance.¹⁰⁴ Racial distinctions are based on phenotypes that focus more on physiognomy than ancestry.¹⁰⁵ The flexibility in Latin America's racial designation system is limited to those whose lighter complexions and European phenotypes allow them to distinguish themselves from darker-complexioned Blacks, since Blackness is subjectively perceived as an offensive racial category in the social hierarchy.¹⁰⁶ In Latin America, individuals are valued by how closely their appearances, status, and progeny approach whiteness.

Mexico's colonization illustrates how discrimination on the basis of color influenced the creation of a racialized hierarchy, which continues to affect the socioeconomic and political systems at present.¹⁰⁷ Spanish colonizers imposed a stratified status system in Mexico where Whites were the elites and Native Mexicans the slaves.¹⁰⁸ These groups intermingled creating a large population of mixed-race *mestizos* that resulted in the creation of a color hierarchy.¹⁰⁹ Light-complexioned persons occupied the upper rungs of the social strata.¹¹⁰ The darkest persons were relegated to the lowest levels.¹¹¹

Colorism has concerned the Mexican-American columnist Ruben Navarrette since his childhood, when he realized his skin tone was different compared with the rest of the children in a United States kindergarten.¹¹² Now, as an adult, Navarrette stresses that, a century after the Mexican Revolution, the division between urban and rural Mexico continues, along with the silent wars between the wealthy and poor, and

¹⁰² *Id.*

¹⁰³ See RONDILLA & SPICKARD, *supra* note 27, at 1–9.

¹⁰⁴ See Tanya K. Hernández, *Multiracial Matrix: The Role of Racial Ideology in the Enforcement of Antidiscrimination Laws, a United States-Latin America Comparison*, 87 CORNELL L. REV. 1093, 1101–10 (2002).

¹⁰⁵ *Id.* at 1102.

¹⁰⁶ *Id.* at 1106–07.

¹⁰⁷ *Id.* at 1108; see *infra* text accompanying notes 108–15.

¹⁰⁸ Cynthia E. Nance, *Colorable Claims: The Continuing Significance of Color Under Title VII Forty Years After Its Passage*, 26 BERKELEY J. EMP. & LAB. L. 435, 449 (2005).

¹⁰⁹ See *id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*; see generally Sue, *supra* note 15.

¹¹² See RUBEN NAVARRETTE, JR., *A DARKER SHADE OF CRIMSON: ODYSSEY OF A HARVARD CHICANO* xiii (1994).

the light and dark-skinned individuals.¹¹³ He remarked that it is very common to find light-colored people in television, politics and academia, but it is unlikely to find persons from this racial category working at construction sites or kitchens, where darker-colored people prevail.¹¹⁴

There is a conspicuous absence of dark-skinned Mexicans in *telenovelas*, commercials, and other forms of advertising, which are an inadequate representation of the country's inhabitants.¹¹⁵ A study that examined the content of six Spanish-language telenovelas and a drama on three Spanish-language television networks in the United States (Telemundo, Univision, and Azteca America) found that "lighter skin characters were more likely to play major roles, were more fit and younger, and more likely to be upper class than their darker skin counterparts."¹¹⁶ A promotion for *Televisa's* popular program, "*Destilando Amor*" (Distilling Love), presents an example of how color status is portrayed. In one scene, an upscale woman with blonde hair sits at a dinner table expressing her displeasure with a family member for falling in love with a working-class woman.¹¹⁷ As the fair-skinned woman speaks, a servant with dark, indigenous features stands silently in the background.¹¹⁸

Colorism can be found elsewhere in Latin America. In Brazil, individuals are assigned to racial groups based on physical appearance rather than ancestry.¹¹⁹ This criterion of racial self-identification has resulted in ambiguous and numerous color categories.¹²⁰ Many of the terms Brazilians use to describe racial mixtures are vague, and there is no consistent agreement on their meaning or to whom they should be applied.¹²¹ For instance, a 1976 census collected 135 popular terms, including "purple, dark chocolate, or Pelé colored."¹²²

Given the focus on phenotypical characteristics, some individuals may be identified in varying racial terms at various times by different people, and some parents and full siblings in the same family may be assigned to different racial groups.¹²³ One article explained:

¹¹³ See Ruben Navarrette, Jr., *Opinión: En México el Racismo se Esconde a Plena Vista*, CNN ESPAÑOL (Nov. 21, 2012, 9:53 AM), <http://perma.cc/43PY-GYJM>.

¹¹⁴ *Id.*

¹¹⁵ See John Hecht, *Mexico TV Favors Light-Skinned Actors*, REUTERS (Aug. 13, 2007, 9:48 PM), <http://perma.cc/0yonXXf5JT>.

¹¹⁶ Jack Glascock & Thomas E. Ruggiero, *Representations of Class and Gender on Primetime Spanish-Language Television in the United States*, 52 COMM. Q. 390, 390 (2004).

¹¹⁷ See Hecht, *supra* note 115.

¹¹⁸ *Id.*

¹¹⁹ See TELLES, *supra* note 27, at 1.

¹²⁰ *Id.* at 13.

¹²¹ *Id.*

¹²² *Id.*

¹²³ See Marvin Harries et al., *Who are the Whites?: Imposed Census Categories and the Racial Demography of Brazil*, 72 SOC. FORCES 451, 452 (1993).

Brazilian racial classification schemes defining a person based on the slightest variation of physical characteristics presumably associated with Black ancestry and/or white ancestry could either elevate or demote an individual on the racial ladder. The implementation of such a highly stratified method of categorizing race evidences an extreme effort on behalf of the white minority to preserve their economic, social, and political dominance over masses of people of mixed and unmixed African descent. Additionally, because of its relatively relaxed approach to manumission, which contributed to the rapid growth of free people of color, it was imperative for Brazil to develop a racial taxonomy based on infinite physical distinctions that simultaneously maintained its racial hierarchy and recognized the country's widespread miscegenation.¹²⁴

The current official categories used by the Brazilian census are White (*Branco*), Brown (*Pardo*), Black (*Preto*), Asian/Yellow (*Amarelo*), and Indigenous (*Indígena*).¹²⁵ It is estimated that the first three categories account for 99% of Brazilians.¹²⁶ In 2010, a majority (50.7%) of the population identified themselves as Afro-Brazilians, a classification that includes both Black (7.6%) and mix-raced Brazilians (43.1%).¹²⁷ In a 2010 census, more individuals identified themselves as Black than in 2000.¹²⁸

Despite the Brazilian efforts to project a racially neutral structure through what is known as a racial democracy,¹²⁹ scholars have shown that a racial hierarchy composed of a graduated scale of color persists.¹³⁰ The data shows that Afro-Brazilians are more economically, socially, and politically disadvantaged than their lighter-skinned counterparts.¹³¹

¹²⁴ D. Wendy Greene, *Determining the (In)Determinable: Race in Brazil and the United States*, 14 MICH. J. RACE & L. 143, 153 (2009) (citations omitted).

¹²⁵ See Telles, *supra* note 15, at 12.

¹²⁶ *Id.*

¹²⁷ Tom Phillips, *Brazil Census Shows African-Brazilians in the Majority for the First Time*, THEGUARDIAN, Nov. 17, 2012, <http://perma.cc/9GBH-PV3C>.

¹²⁸ *Id.*

¹²⁹ A racial democracy presupposes that Brazilians live in a nation where racial prejudice, discrimination and preconceptions regarding race are obsolete in light of equal access for all. Antonio D. Tillis, *Blackness and Cultural Tourism in Brazil: The Case of Salvador da Bahia in (RE)CONSIDERING BLACKNESS IN CONTEMPORARY AFRO-BRAZILIAN (CON)TEXTS 1, 4* (Antonio D. Tillis ed., 2011).

¹³⁰ See ELISA L. NASCIMENTO, *THE SORCERY OF COLOR: IDENTITY, RACE, AND GENDER IN BRAZIL 17* (2007).

¹³¹ Seth Racusen, *Making the "Impossible" Determination: Flexible Identity and Targeted Opportunity in Contemporary Brazil*, 36 CONN. L. REV. 787, 788–89 (2004).

According to Seth Racusen, “all key socioeconomic variables demonstrate this wide gap between ‘Whites’ compared to ‘Browns’ and ‘Blacks.’”¹³²

Brazilian media also reinforces the social preference for Whites by portraying them as symbols of “beauty, happiness, and middle-class success.”¹³³ The concept portrayed in television seems consistent with the perception of reality. As indicated by Patricia de Santana Pinho, “the power of whiteness is lived by everyone in Brazil, and it is always operating either in opening or closing doors of opportunity and achievement.”¹³⁴

Given the strong negative stereotypes against dark-colored people¹³⁵ and, on the other hand, the potential incentives that could be derived from affirmative action policies, individuals may have personal motivations to alter the designation of their race.¹³⁶

How individuals are classified does not depend solely on their physical appearance. The saying “money whitens” reminds Brazilians that the apparent wealth and status of a person, as well as the immediate social company, are important considerations for the observer who determines their race.¹³⁷ Therefore, as individuals accumulate wealth they also gain color status. The ambiguity of race categories along with the deficiencies of the self-identification system makes it feasible for individuals to change their racial identities by becoming better educated or more affluent.¹³⁸

These attitudes can be found in other Latin American countries. Tanya Hernández examined racial attitudes in Puerto Rico and Cuba, given the acceptance of race fluidity in the former country and the formal rejection of the concept of race in the latter.¹³⁹ She found that, despite the apparent respect for social fluidity and flexible racial labeling, racial identity and identification are neither completely fluid nor neutral.¹⁴⁰ For example, like in Mexico and Brazil, Cubans and Puerto Ricans also exercised the plasticity of race labeling in order to avoid Black designation in social status and self-identification.¹⁴¹ Today, many Puerto Ricans of mixed ancestry (usually called “trigueños” and “morenos”) prefer to classify

¹³² *Id.* at 793.

¹³³ See Greene, *supra* note 124, at 192.

¹³⁴ Patricia de Santana Pinho, *White but Not Quite: Tones and Overtones of Whiteness in Brazil*, 13 *SMALL AXE* 39, 53 (2009), available at <http://perma.cc/0ndag7LGHB> (last visited Feb. 15, 2013).

¹³⁵ See Harries et al., *supra* note 123, at 452.

¹³⁶ See Racusen, *supra* note 131, at 787.

¹³⁷ THOMAS E. SKIDMORE, *BLACK INTO WHITE: RACE AND NATIONALITY IN BRAZILIAN THOUGHT* 39 (1974).

¹³⁸ Cf. Hernández, *supra* note 104, at 1106–07.

¹³⁹ See *id.* at 1109–10.

¹⁴⁰ *Id.* at 1101.

¹⁴¹ See *id.* at 1104–06 (discussing preference of Puerto Ricans to identify themselves as whites in the 2000 census and the racial category change of the first Cuba’s pre-revolution dictator).

themselves as White rather than Black on census forms.¹⁴² This response, however, underestimates the long history of miscegenation and African ancestry of much of Puerto Rico's population.¹⁴³ Prejudice and discrimination against people of African descent are the principal reasons for this preference, since African ancestry is associated with slavery and extreme poverty.¹⁴⁴

Puerto Ricans perceive that having lighter skin and European features increases an individual's socioeconomic opportunities.¹⁴⁵ Darker complexions and African features severely limit an individual's economic and social mobility.¹⁴⁶ According to Wendy D. Roth, medium skin tones confer upon people a certain amount of status compared to those further toward the dark end of the color spectrum.¹⁴⁷

Research suggests that being discriminated against on the basis of color produces feelings of shame and embarrassment.¹⁴⁸ Many Latin American Blacks harbor internalized attitudes about color and phenotype.¹⁴⁹ Skin color, nose width, lip thickness, and hair texture weigh heavily on the self-esteem of Afro-Latinos, since these are considered racial signifiers of denigrated African ancestry.¹⁵⁰ The belief exists among some Latin Americans that color is something that can be controlled by utilizing whitening creams and to "improve the race" of their children.¹⁵¹

Marrying someone with a lighter complexion¹⁵² is referred to as *adelantando la raza* (improving the race) under the theory of *blanqueamiento*.¹⁵³ The concept of *blanqueamiento* refers to ethnic, cultural, and racial "whitening."¹⁵⁴ It is an ideology and a social practice that places a higher value on White culture while implicitly devaluing non-

¹⁴² See *id.* at 1105.

¹⁴³ Jorge Duany, *Whitening (Blanqueamiento)*, P.R. & THE AM. DREAM (May 13, 2010, 5:37 AM), <http://perma.cc/083hRNgmE75>.

¹⁴⁴ Wendy D. Roth, "There Is No Racism Here" *Understanding Latinos Perception of Color Discrimination Through Sending Receiving Society Comparisons*, in RACISM IN THE 21ST CENTURY: AN EMPIRICAL ANALYSIS OF SKIN COLOR 205, 224 (Ronald E. Hall ed., 2008).

¹⁴⁵ See *id.* at 219–20, 222, 231 (discussing Puerto Ricans' perception of differential treatment for lighter-colored people).

¹⁴⁶ Hernández, *supra* note 104, at 1121.

¹⁴⁷ Roth, *supra* note 144, at 206.

¹⁴⁸ See *id.* at 224.

¹⁴⁹ See Samantha Prado Robledo, *Colorism: The Relationship between Latino/a Self-Perceived Skin Color and Assimilation* (Nov. 1, 2012) (unpublished M.A. thesis, California State University San Marcos) at 7, 14, 19, 41, available at <http://perma.cc/Y78W-AQYF>.

¹⁵⁰ See Tanya K. Hernández, *Latinos at Work*, in SHADES OF DIFFERENCE: WHY SKIN COLOR MATTERS, (Evelyn N. Glenn ed., 2009).

¹⁵¹ Roth, *supra* note 144, at 226.

¹⁵² See Hernández, *supra* note 104, at 1106.

¹⁵³ *Id.* at 1126.

¹⁵⁴ THE OXFORD ENCYCLOPEDIA OF LATINOS AND LATINAS IN THE UNITED STATES 194 (Suzanne Oboler & Deena J. Gonzalez, eds., University Press, vol. 1 2005).

White cultural norms.¹⁵⁵ *Blanqueamiento* perpetuates a social hierarchy based on race¹⁵⁶ by linking whiteness to status, wealth, power, modernity, and development,¹⁵⁷ while implicitly associating blackness with a lack of cultural refinement, ambition, and civilization.¹⁵⁸

Despite the national ideologies of racial democracy, *mestizaje*, and racial blindness¹⁵⁹ in Latin America, skin tone is a major marker of status and a form of symbolic capital.¹⁶⁰ Light complexions and European features are highly valued; the darker, more African an individual appears, the lower that person is likely to be on the socioeconomic scale.¹⁶¹

IV. COLORISM IN AMERICA

In America, skin color is an important signifier of beauty and social status.¹⁶² African-Americans' preference for light complexions and European features¹⁶³ dates back to the antebellum era when skin color determined an enslaved person's work assignments.¹⁶⁴ Dark-skinned slaves worked in the fields, while light-complexioned slaves worked in the slave owner's home.¹⁶⁵ James Stirling, a British writer who visited the American South in 1857, observed conditions on Southern plantations and wrote:

In judging of the welfare of the slaves, it is necessary to distinguish the different conditions of slavery. The most important distinction, both as regards numbers and its influence on the wellbeing of the slave, is that between houseservants and farm or fieldhands. The houseservant is comparatively well off. He is frequently born and bred in the family he belongs to; and even when this is not the case, the constant association of the slave and his master,

¹⁵⁵ See Eduardo Bonilla-Silva & David Dietrich, *The Latin Americanization of Racial Stratification in the U.S.*, in *RACISM IN THE 21ST CENTURY: AN EMPIRICAL ANALYSIS OF SKIN COLOR*, 151, 151 (Ronald E. Hall ed., 2008).

¹⁵⁶ See *id.*

¹⁵⁷ See THE OXFORD ENCYCLOPEDIA OF LATINOS AND LATINAS IN THE UNITED STATES, *supra* note 154.

¹⁵⁸ *Id.*

¹⁵⁹ See Sue, *supra* note 15, at 114.

¹⁶⁰ See Evelyn Nakano Glenn, *Consuming Lightness*, in *SHADES OF DIFFERENCE: WHY SKIN COLOR MATTERS* (Evelyn N. Glenn ed., 2009).

¹⁶¹ Roth, *supra* note 144, at 206–31; de Santana Pinho, *supra* note 134; Glascock & Ruggiero, *supra* note 116; Greene, *supra* note 124, at 153, 192; Hernández, *supra* note 104, at 1121; Racusen, *supra* note 131, at 788, 793; Hecht, *supra* note 115; see Navarrette, *supra* note 113.

¹⁶² See Jones, *supra* note 44, at 1543.

¹⁶³ See Harris, *supra* note 14.

¹⁶⁴ See Jones, *supra* note 44, at 1510.

¹⁶⁵ *Id.*

and master's family, naturally leads to such an attachment as ensures good treatment. There are not wanting instances of devoted attachment on both sides in such cases. . . . The position of the fieldhands is very different; of those, especially, who labour on large plantations. Here there are none of those humanizing influences at work which temper the rigour of the system, nor is there the same check of public opinion to control abuse. The 'force' is worked *en masse*, as a great human mechanism; or, if you will, as a drove of human cattle.¹⁶⁶

The Hemingses of Monticello provides an example of how slaves with familial ties to their owners lived and worked during the antebellum period.¹⁶⁷ Elizabeth Hemings was the daughter of an African woman and a White sea captain.¹⁶⁸ She had 12 children,¹⁶⁹ half of them by her owner, John Wayles¹⁷⁰ whose legitimate daughter, Martha Wayles Skelton, married President Thomas Jefferson in 1772.¹⁷¹ After her father's death, Martha inherited Elizabeth Hemings and her children¹⁷² and brought them to serve at Monticello.¹⁷³ The Hemings were treated differently than other slaves at Monticello plantation. None of them worked in the fields.¹⁷⁴ The women were considered a relatively privileged caste¹⁷⁵ compared to others, and worked as house servants performing chores like sewing, mending clothes, looking after children, and baking cakes.¹⁷⁶ The men served as valets, coach drivers, and butlers.¹⁷⁷ Jefferson paid some of the men wages and gratuities,¹⁷⁸ and others were allowed to hire themselves out to other employers of their choice.¹⁷⁹ Sally Hemings, the young daughter of Elizabeth Hemings and John Wayles,¹⁸⁰ was Martha's half-sister and it was

¹⁶⁶ JAMES STIRLING, Letter XXIII, in *LETTERS FROM THE SLAVE STATES 287–88* (1857). *See also*, JOEL WILLIAMSON, *NEW PEOPLE: MISCEGENATION AND MULATTOES IN THE UNITED STATES 14–24* (1980) (discussing tolerance towards mulattoes in the lower South before 1850).

¹⁶⁷ ANNETTE GORDON-REED, *THE HEMINGSSES OF MONTICELLO: AN AMERICAN FAMILY* (2008).

¹⁶⁸ *Id.* at 49.

¹⁶⁹ *Id.* at 101.

¹⁷⁰ *Id.* at 27, 59, 80.

¹⁷¹ *Id.* at 101.

¹⁷² *Id.* at 109–10.

¹⁷³ GORDON-REED, *supra* note 167, at 54, 92, 110.

¹⁷⁴ *Id.* at 116.

¹⁷⁵ *Id.* at 122.

¹⁷⁶ *Id.* at 110, 114.

¹⁷⁷ *Id.* at 110.

¹⁷⁸ *See id.* at 115.

¹⁷⁹ *See* GORDON-REED, *supra* note 168, at 115.

¹⁸⁰ *Id.* at 101.

said that the two bore a physical resemblance.¹⁸¹ Most historians¹⁸² now agree that Sally Hemings became Jefferson's mistress and bore six of his children.¹⁸³

Lalita Tademy's novel, *Cane River*, describes the intimate relationships among slave owners and female slaves that produced racially-mixed offspring.¹⁸⁴ The characters are based on Tademy's ancestors who she discovered after years of researching her family's history.¹⁸⁵ It is a narrative about four generations of women born into slavery along the Cane River in Louisiana.¹⁸⁶ One character, Great-grandmother Elisabeth, had a daughter, granddaughter and great-granddaughter who bore the offspring of the French planters.¹⁸⁷ In many cases, the children's paternity was widely known and acknowledged by their fathers,¹⁸⁸ but, since Louisiana's laws did not allow slaves to be legally entitled to any property or money,¹⁸⁹ these children were not allowed to inherit anything.¹⁹⁰

Prior to the Civil War, mixed-race Creoles in Louisiana had a social status that set them above enslaved persons.¹⁹¹ After the War, they were subjected to the "one-drop" rule,¹⁹² but they maintained family and community ties that distanced them from darker-skinned African-Americans.¹⁹³ They were, as a Creole documentary put it, "too white to be black and too black to be white."¹⁹⁴

After emancipation, the dark/light division was perpetuated by African-Americans who constructed social classes based on skin color.¹⁹⁵ Blacks created "blue vein societies," social clubs to which individuals were admitted only if their skin tone was light enough to make their veins visible on the underside of their arms.¹⁹⁶ Color differences continued to

¹⁸¹ See Sharon Monteith, *Sally Hemings in Visual Culture: A Radical Act of the Imagination?*, 29 SLAVERY & ABOLITION 233, 238 (2008).

¹⁸² See *Thomas Jefferson and Sally Hemings: A Brief Account*, THOMAS JEFFERSON FOUND., <http://perma.cc/QX43-3GKT> (last visited Dec. 6, 2013).

¹⁸³ Daniel P. Jordan, *Statement on the TJMF Research Committee Report on Thomas Jefferson and Sally Hemings*, THOMAS JEFFERSON FOUND. (Jan. 26, 2000), <http://perma.cc/8QXQ-Z9LL>.

¹⁸⁴ LALITA TADEMY, *CANE RIVER passim* (2001).

¹⁸⁵ *Id.* at vii–xii.

¹⁸⁶ *Id.* at xi–xii.

¹⁸⁷ See *id.* at vi (illustration of descendants).

¹⁸⁸ GARY B. MILLS, *THE FORGOTTEN PEOPLE: CANE RIVER'S CREOLES OF COLOR* 92 (1977).

¹⁸⁹ *Id.* at 44.

¹⁹⁰ *Id.* at 92.

¹⁹¹ See Alice Moore Dunbar-Nelson, *People of Color in Louisiana*, in *CREOLE: THE HISTORY AND LEGACY OF LOUISIANA'S FREE PEOPLE OF COLOR* 3, 3 (Sybil Kein ed., 2000).

¹⁹² See generally *Plessy v. Ferguson*, 163 U.S. 537 (1896) (violation of the Louisiana 1890 Separate Car Act by a non-White man).

¹⁹³ See MILLS, *supra* note 188, at 248 (discussing group solidarity in the cane River colony).

¹⁹⁴ Maurice Martinez, *TOO WHITE TO BE BLACK, TOO BLACK TO BE WHITE: THE NEW ORLEANS CREOLE* YOUTUBE (Mar. 12, 2007), <http://www.youtube.com/watch?v=2tfVpHYyDcY>.

¹⁹⁵ See Banks, *supra* note 39, at 1715.

¹⁹⁶ Jones, *supra* note 44, at 1515.

play an important role in the Black community. Mixed race individuals attempted to maintain the privileged status they had acquired during slavery.¹⁹⁷ Separate communities were established in which access was based on skin color.¹⁹⁸ Examples include Chatham and East Hyde Park in Chicago, and the Striver's Row and Sugar Hill neighborhoods of New York.¹⁹⁹

Charles Waddell Chesnutt's 1899 short story, *The Wife of His Youth*, satirized the pretensions of light-skinned African-Americans at the end of the nineteenth century.²⁰⁰ The protagonist of the story, Mr. Ryder, was the leader of the local "Blue Vein Society" who was dating a fair-skinned female member of the organization.²⁰¹ Ryder claimed that he was free born and the product of a respected family, as this was a requirement for Blue Vein membership.²⁰² He was confronted with a dilemma when a woman appeared in the community.²⁰³ She was an illiterate, dark-complexioned former slave who had spent years looking for her husband.²⁰⁴ Ryder initially denied knowing the woman.²⁰⁵ Eventually, his guilty conscious forced him to admit that he had lied about his background.²⁰⁶ Ryder acknowledged his marriage and reunited with the dark-skinned woman who was "the wife of his youth."²⁰⁷

Researchers have documented the ways in which many Black teachers in segregated schools during the pre-*Brown v. Board of Education* era were infected with the attitudes that preferred lighter-skinned children over darker-skinned students.²⁰⁸ Light-skinned students were selected as leads in plays and pageants, called on first in classroom discussions, and visibly favored by teachers.²⁰⁹ An example of this can be found in a recollection published by J. Saunders Redding, a writer and literary critic who was the first African-American to hold a faculty position at an Ivy League

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 1515–16.

¹⁹⁹ *Id.* at 1516.

²⁰⁰ See CHARLES WADDELL CHESNUTT, *THE WIFE OF HIS YOUTH AND OTHER STORIES OF THE COLOR-LINE* (The Gregg Press Inc. 1967) (1899).

²⁰¹ *Id.* at 1–8.

²⁰² *Id.* at 2.

²⁰³ *Id.* at 9–17.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ CHESNUTT, *supra* note 200, at 17–24.

²⁰⁷ *Id.*

²⁰⁸ VIVIAN GUNN MORRIS & CURTIS L. MORRIS, *THE PRICE THEY PAID: DESEGREGATION IN AN AFRICAN AMERICAN COMMUNITY* 80–86 (2002).

²⁰⁹ *E.g.*, J. Saunders Redding, *No Day of Triumph*, in *BLACK VOICES: AN ANTHOLOGY OF AFRO-AMERICAN LITERATURE* 300, 308 (Abraham Chapman ed., 1968) (discussing teacher's special treatments for mulatto children).

university.²¹⁰ Redding was the product of an influential Black family in Wilmington, Delaware.²¹¹ His brother, Louis L. Redding, was the attorney who represented the Delaware students in the consolidated cases remembered as *Brown*.²¹² In *No Day of Triumph*, Saunders Redding describes his experiences with colorism during his childhood.²¹³ Wilmington's Black population grew rapidly during and after the World War I years.²¹⁴ A large number of Black families were moving from the rural South to work in factory jobs that were available in rapidly industrializing northern communities.²¹⁵ The recent arrivals were poorer, less educated and often darker-complexioned than Wilmington's Black middle class.²¹⁶ To Saunders' mother and grandmother, the new neighbors were perceived as a threat.²¹⁷

Redding recalled a public speaking contest in which he competed with a dark-skinned student.²¹⁸ He was so nervous that he mumbled a few words before bursting into tears.²¹⁹ In contrast, the dark-complexioned student's performance was outstanding.²²⁰ Redding, who was lighter-complexioned and socially connected, was awarded first prize despite his dismal performance.²²¹ A few years later, when Redding was in high school, the light-skinned, female principal discouraged him from maintaining a romantic relationship because the girl was poor and dark-skinned.²²²

Wallace Thurman's Harlem Renaissance novel, *The Blacker the Berry: A Novel of Negro Life*, is a satire in which the theme is colorism in the 1920s New York.²²³ The novel's dark-skinned protagonist, Emma Lou Morgan, internalized biases against dark-complexioned people. She grew up in Boise, Idaho,²²⁴ where she experienced discrimination by the lighter-

²¹⁰ Pancho Savery, *Foreword* to JAY SAUNDERS REDDING, *STRANGER AND ALONE: A NOVEL* xiii (Boston: Northeastern University Press, 1989) (1950).

²¹¹ Faith Berry, *Introduction* to J. SAUNDERS REDDING, *A SCHOLAR'S CONSCIENCE: SELECTED WRITINGS OF J. SAUNDERS REDDING, 1942-1977* 1 (Faith Berry ed. Univ. Press Ky. 1992).

²¹² See Savery, *supra* note 210, at xiii.

²¹³ Redding, *supra* note 209, at 300-11.

²¹⁴ *Id.* at 304.

²¹⁵ See *City History*, CITY OF WILMINGTON DEL., <http://perma.cc/0tmw6TUwAKE> (last visited Nov. 15, 2013).

²¹⁶ Cf. Theodore J. Davis Jr., *Socioeconomic Change: A Community in Transition*, UNIV. OF DEL., <http://perma.cc/0UcmXEquHFQ> (last updated Jun. 27, 1997).

²¹⁷ Redding, *supra* note 209, at 307.

²¹⁸ *Id.* at 308.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.* at 309.

²²² *Id.* at 309-10.

²²³ WALLACE THURMAN, *THE BLACKER THE BERRY* (Scribner Paperback Fiction 1996) (1929).

²²⁴ *Id.* at 11.

complexioned African-Americans throughout her childhood.²²⁵ She left Boise to attend to college in Los Angeles.²²⁶ From there, Emma Lou moved to Harlem²²⁷ where she worked as a maid²²⁸ and later as a teacher.²²⁹ Throughout the novel, Emma Lou is plagued by anxieties about her dark complexion.²³⁰ Her obsession with color prevented her from enjoying Harlem's excitement. In New York, Emma Lou encountered discrimination from Blacks and Whites. At a Harlem party, a character explained intra-racial discrimination, stating, "people have to feel superior to something,"²³¹ and expounded that light-complexioned African-Americans who look down on darker-skinned African-Americans were perpetuating a hierarchy of discrimination imposed by the White majority.²³² After some romantic disappointments with light-complexioned men,²³³ Emma Lou finally accepted her appearance.²³⁴ The book's title is derived from an old saying: "the blacker the berry, the sweeter the juice."²³⁵

In the early decades of the twentieth century, colorism fueled conflicts among African-American leaders,²³⁶ including Marcus Garvey, who was the head of the Universal Negro Improvement Organization.²³⁷ The organization attracted at least a half-million members,²³⁸ and it competed for a time with the NAACP for the position of the premier African-American advocacy group.²³⁹ Many of the NAACP's members were educated and middle class.²⁴⁰ Garvey's group appealed to the masses.²⁴¹ Unlike the NAACP, which fought for integration,²⁴² Garvey proposed

²²⁵ *Id.* at 25 (discussing rejection from her lighter-colored relatives).

²²⁶ *Id.* at 34–35.

²²⁷ *Id.* at 74–75.

²²⁸ *Id.* at 104.

²²⁹ THURMAN, *supra* note 223, at 208.

²³⁰ *See id.* at 11.

²³¹ *Id.* at 145.

²³² *Id.* at 143–45.

²³³ *Id.* at 218.

²³⁴ *Id.* at 216–17.

²³⁵ THURMAN, *supra* note 223, at 11–12.

²³⁶ MARY G. ROLINSON, GRASSROOTS GARVEYISM: THE UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION IN THE RURAL SOUTH, 1920–1927 24 (2007).

²³⁷ BRENDA HAUGEN, MARCUS GARVEY: BLACK NATIONALIST CRUSADER AND ENTREPRENEUR 36 (2008).

²³⁸ *See* Gary Peller, *Toward a critical cultural pluralism: progressive alternatives to mainstream civil rights ideology*, in CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT 127, 153 n.20 (Kimberlé Crenshaw ed., 1995).

²³⁹ *Cf. Interference with the Universal Negro Improvement Association*, LIBRARY OF CONG., <http://perma.cc/0JFkEX6Ks1> (last visited Nov. 15, 2013).

²⁴⁰ *E.g.*, JACK GREENBERG, CRUSADERS IN THE COURTS: LEGAL BATTLES OF THE CIVIL RIGHTS MOVEMENT 15 (2004).

²⁴¹ HAUGEN, *supra* note 237, at 39–41.

²⁴² GREENBERG, *supra* note 240, at 15.

migration to Africa as the answer to the “Negro problem.”²⁴³ In 1931, Garvey, who had a very dark complexion and African features, claimed that W.E.B. Du Bois and the NAACP practiced colorism:

It is no wonder that Du Bois seeks the company of white people, because he hates black as being ugly . . . Yet this professor, who sees ugliness in being black, essays to be a leader of the Negro people and has been trying for over fourteen years to deceive them through his connection with the National Association for the Advancement of Colored People. Now what does he mean by advancing colored people if he hates black so much? In what direction must we expect his advancement? We can conclude in no other way than that it is in the direction of losing our black identity and becoming, as nearly as possible, the lowest whites by assimilation and miscegenation.²⁴⁴

Du Bois fervently denied Garvey’s claim,²⁴⁵ but there was some truth to it. Walter White was the head of the NAACP from the mid-1930s until his death in 1955.²⁴⁶ White’s light skin, blonde hair, and blue eyes did not display a hint of his African ancestry.²⁴⁷ He took advantage of his appearance to pass for White while conducting undercover investigations of lynchings and other hate crimes in the South.²⁴⁸ White’s colorism was reflected in the image of African-American women he actively promoted in *Crisis*, a periodical published by the NAACP.²⁴⁹ In the 1940s, *Crisis* was the most important magazine of opinion among African-Americans.²⁵⁰ The editors used photographs of predominantly light-skinned, college-educated women in an effort to displace entrenched notions of Black women as “Jezebels” or sexual victims.²⁵¹ The editors wanted to refashion the image of Black women, but in doing so they promoted colorism. During the World War II years, the light-skinned, African-American actress Lena Horne was featured on two *Crisis* covers to promote a new

²⁴³ Peller, *supra* note 238, at 153 n.20.

²⁴⁴ Marcus Garvey, *W. E. Burghardt Du Bois as Hater of Dark People*, THE NEGRO WORLD, Feb. 13, 1923, reprinted in MARCUS GARVEY & AMY J. GARVEY, THE PHILOSOPHY AND OPINIONS OF MARCUS GARVEY, OR, AFRICA FOR THE AFRICANS 311 (First Majority Press ed. 1986) (1923).

²⁴⁵ Jacob S. Dorman, *Skin Bleach and Civilization: The Racial Formation of Blackness in 1920s Harlem*, 4 J. PAN AFR. STUD. 47, 66 (2011).

²⁴⁶ Gloster B. Current, “Love You Madly”- Duke Ellington, 81 CRISIS 197, 199 (1974).

²⁴⁷ GREENBERG, *supra* note 240, at 16.

²⁴⁸ *Id.* at 15–16.

²⁴⁹ Megan E. Williams, *The Crisis Cover Girl: Lena Horne, the NAACP, and Representations of African American Femininity, 1941–1945*, 16 AM. PERIODICALS 200, 200 (2006).

²⁵⁰ *Id.* at 201.

²⁵¹ *Id.* at 203.

image of Black women.²⁵² As one scholar explained:

The magazine preferred headshots of well-dressed, light-skinned African American women who were college-educated ladies, beauty-contest winners, soldiers' wives, or celebrated entertainers, over photographs of dark-skinned women engaged in war-production work. Jane Cooke Wright (August 1942), Barbara Gonzales (March 1944), and Katheryn M. Davenport (August 1944) represent the *Crisis's* typical war era cover girl. All three women avert their eyes from the photographer; the photograph showcases their upper torsos, shoulders, and faces, highlighting their light skin and carefully coiffed hair.²⁵³

Alluding to the organization's perceived elitism, some Blacks joked that the letters "NAACP" actually stood for the National Association for the Advancement of *Certain People*.²⁵⁴

Colorism lives on. Today, African-American entertainers and actors are far more likely to have light coloring than dark complexions.²⁵⁵ With the exception of an occasional dark-skinned exotic, most Black models can easily pass the "paper bag" test, and many have racially ambiguous coloring and features.²⁵⁶ African-American news anchors and reporters rarely have dark complexions.²⁵⁷ Female entertainers, in particular, tend to have light skin and hair that is dyed blonde and made longer with hair extensions.²⁵⁸ Consider Halle Berry, Rihanna, and Alicia Keys. In her hit song, "Creole," Beyoncé Knowles sings about her Creole heritage and being an attractive combination of "red bone" and "yellow bone"²⁵⁹ (terms that refer to light-skinned Black women).

Pop singer Fantasia Barrino rose to fame as the 2004 winner on the popular television show, *American Idol*.²⁶⁰ She was the object of a barrage

²⁵² *Id.* at 201.

²⁵³ *Id.* at 204.

²⁵⁴ See STEPHEN BIRMINGHAM, *CERTAIN PEOPLE: AMERICA'S BLACK ELITE* vi (1977) (quoting a cabdriver's words in Atlanta).

²⁵⁵ See Jada F. Smith, *Does Hollywood Still Have a Brown Paper Bag Test?*, THE ROOT (Nov. 12, 2009, 7:34 AM), <http://www.theroot.com/views/does-hollywood-still-have-brown-paper-bag-test>.

²⁵⁶ See Siji Jabbar, *Who taught you to hate the colour of your [dark] skin?*, THIS IS AFRICA (Aug. 15, 2012), <http://perma.cc/RR3G-DXT4>.

²⁵⁷ See Nadra Kareem Nittle, *CNN's Don Lemon: "Anchors of Color on Television Are Light-Skinned"*, ABOUT.COM (Jun. 30, 2011), <http://perma.cc/J8KJ-9ENZ>.

²⁵⁸ E.g., Vanessa Walters, *Mighty white*, THE GUARDIAN (Aug. 8, 2008, 8:00 AM), <http://perma.cc/9GBH-PV3C>.

²⁵⁹ BEYONCÉ KNOWLES, *CREOLE*, (SONY BMG Music Entertainment 2006).

²⁶⁰ FANTASIA, *LIFE IS NOT A FAIRY TALE* xi (2005).

of negative publicity surrounding her affair with a married man and the lawsuit his wife filed against her.²⁶¹ Barinno attempted suicide and later told reporters that the media criticism was based on her dark skin and ethnic features.²⁶² She said: “[w]hen I did [*American*] *Idol*, it seemed like everybody there was Barbied out. Slim, long hair, light eyes, light-skinned. And here I come with my dark skin, full nose, short hair and full lips—it was hard.”²⁶³ “Barbied out” referred to the appearance represented by the Barbie doll, one of the most successful toys of the twentieth century.²⁶⁴ Barbies are grown-up looking dolls that allow girls to reflect their personality and dreams in the roles imagined for them.²⁶⁵ Their appearance is an icon of female beauty and the American dream.²⁶⁶ The classic thin figure, blonde hair, and blue eyes reflect the Eurocentric ideal, a look that a dark-skinned person with African features could never achieve. Interestingly, when Barbies were introduced at the 1959 Toy Fair, blonde dolls outnumbered brunettes two to one.²⁶⁷

V. IMPORTING EUROPEAN STANDARDS OF BEAUTY

The modern definition of race did not appear until the middle of the eighteenth century.²⁶⁸ During that century, European publications shifted from identifying groups on the basis of their nationality to a preoccupation with race.²⁶⁹ By the mid-nineteenth century the classification of individuals by race was ubiquitous.²⁷⁰ However, the current standards for beauty, which reflect and perpetuate colorism, can be traced back into antiquity.

A pale complexion,²⁷¹ fine facial features,²⁷² and light-colored hair²⁷³ became the social construct of feminine beauty during the Classical period

²⁶¹ See Luchina Fisher, *Fantasia's Future Could Include Million-Dollar 'Home Wrecker' Lawsuit*, ABC NEWS (Aug. 12, 2010), <http://perma.cc/8FUL-L484>.

²⁶² See Ronke Idowu Reeves, *Fantasia Speaks: How the "Shade Issue" Affected Her Press Coverage*, VIBE (Aug. 26, 2010), <http://perma.cc/4HVW-9ANP>.

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ ROBIN GERBER, *BARBIE AND RUTH: THE STORY OF THE WORLD'S MOST FAMOUS DOLL AND THE WOMAN WHO CREATED HER* 6 (2009).

²⁶⁶ See Genenda Milloy, *Barbie Dolls: Barbie as a Role Model for Young Girls*, HOBBY HUB (Nov. 27, 2007), <http://perma.cc/J2KL-Q6HK>.

²⁶⁷ See GERBER, *supra* note 265, at 5.

²⁶⁸ Nicholas Hudson, “Nation” to “Race”: *The Origin of Racial Classification in Eighteenth-Century Thought*, 29 EIGHTEENTH-CENTURY STUD. 247, 247 (1996).

²⁶⁹ *See id.*

²⁷⁰ *See id.* at 247–48.

²⁷¹ See SHEILA DILLON, *THE FEMALE PORTRAIT STATUE IN THE GREEK WORLD* 23 (2010).

²⁷² *See id.* at 117.

²⁷³ *See id.* at 106.

of Ancient Greece (ca. 480–323 BC).²⁷⁴ For example, a female Greek portrait from the Museum of Fine Arts in Boston is described as possessing finely shaped features: large almond-shaped eyes, beautifully arching eyebrows, a full rounded mouth with a plump and bow-shaped upper lip.²⁷⁵ During this period, Greek artists made a dramatic advance in the execution of their craft. They learned to express the human body in a life-like and naturalistic manner, characterized by a system of proportions.²⁷⁶ Their statues were detailed, and with anatomically accurate forms. Consider the nude Aphrodite of Cnidos, by the Athenian sculptor Praxiteles, as an example.²⁷⁷ Expertly crafted presentations of the human anatomy and musculature were depicted in marble, stone, or bronze.²⁷⁸

Africans, known as Ethiopians by the ancient Greeks, were present in the Hellenic world and were considered exotic.²⁷⁹ African images of athletes and entertainers were displayed in pottery and vases by utilizing an attractive black glaze.²⁸⁰ Noticeably, they were not shown in heroic roles or as aesthetic symbols, since the Classic ideal of beauty was entirely Eurocentric. Angela Harris²⁸¹ articulated with conciseness the perceptions of whiteness and Eurocentrism that have informed both art and history: "more white is more European, and more European is more refined; less European is more primitive, and more primitive is more dark."²⁸²

The Romans adopted the Greek standard of beauty.²⁸³ The goddess Venus represented love and beauty²⁸⁴ and was considered the quintessence of feminine beauty and harmony.²⁸⁵ The famous statue, *Venus de Milo*, is exhibited in Paris at the Louvre.²⁸⁶ Her naked torso has an elongated silhouette and a sensual nudity that contrasts with an impassive expression.²⁸⁷ The nose is a continuation of the forehead forming the

²⁷⁴ Colette Hemingway & Seán Hemingway, *The Art of Classical Greece (ca. 480–323 B.C.)*, HEILBRUNN TIMELINE OF ART HISTORY, <http://perma.cc/DM4S-S5E4>.

²⁷⁵ DILLON, *supra* note 271, at 117.

²⁷⁶ Hemingway & Hemingway, *supra* note 274.

²⁷⁷ See ELAINE FANTHAM ET AL., WOMEN IN THE CLASSICAL WORLD: IMAGE AND TEXT 175 (1994).

²⁷⁸ DILLON, *supra* note 271, at 23–28.

²⁷⁹ Collette Hemingway & Seán Hemingway, *Africans in Ancient Greek Art*, HEILBRUNN TIMELINE OF ART HISTORY, <http://perma.cc/NU2G-FAN9>.

²⁸⁰ *Id.*

²⁸¹ Angela P. Harris, *Introduction: Economies of Color*, in SHADES OF DIFFERENCE: WHY SKIN COLOR MATTERS 1, 1–5 (Evelyn Nakano Glenn ed., 2009).

²⁸² *Id.* at 5.

²⁸³ See Neil Haughton, *Perceptions of Beauty in Renaissance Art*, 3 J. COSM. DERMATOLOGY 229, 229 (2004).

²⁸⁴ FANTHAM ET AL., *supra* note 277, at 370.

²⁸⁵ See Marie-Bénédicte Astier, *Aphrodite, Known as the "Venus de Milo,"* LOUVRE, <http://perma.cc/04fjwm9Gim1> (last visited Nov. 15, 2013).

²⁸⁶ *Id.*

²⁸⁷ See *id.*

classic “Greek profile.”²⁸⁸ Along with other interpretations of Venus, this image sets the standard by which feminine beauty is measured.²⁸⁹

During the Renaissance (ca. 1300–1600), the aesthetics of the Classical period were revived.²⁹⁰ Botticelli’s *Birth of Venus* depicts the goddess emerging from the sea as a full-grown woman.²⁹¹ Her cascading blonde hair accentuates her slender body and alabaster complexion.²⁹² In another Botticelli, *Venus and Mars*, Venus lies opposite her lover Mars, god of war, who has fallen asleep apparently after making love to her.²⁹³ Her alertness, as the goddess of love, represents the triumph of love over war.²⁹⁴ Although it is believed that Simonetta Vespucci inspired the work of Botticelli,²⁹⁵ Venus was the expression of the artist’s ideal perception of beauty. During the Renaissance, realistic interpretation was avoided and positive attributes were highlighted.²⁹⁶ Venus has perfect skin, a high forehead, and a sharply defined chin.²⁹⁷ Her hair is strawberry blonde,²⁹⁸ she has delicate eyebrows, a strong nose, narrow mouth, and full lips.²⁹⁹ This idealized depiction shows the conception of perfect beauty that prevailed during the Italian Renaissance.

Leonardo Da Vinci’s *Mona Lisa*,³⁰⁰ Titian’s *Venus with a Mirror*³⁰¹ and Tintoretto’s *Leda and the Swan*³⁰² are examples of art that celebrate beauty in the “whiteness” of European women. Other Renaissance expressions of feminine beauty were along the same lines: Caucasian women with pale complexions and fine features.³⁰³

²⁸⁸ See *id.*

²⁸⁹ See Haughton, *supra* note 283.

²⁹⁰ See ANDREW GRAHAM-DIXON, *RENAISSANCE* 12 (2000).

²⁹¹ See *The Birth of Venus by Botticelli*, THE UFFIZI GALLERY, <http://perma.cc/05wquz1VEWg> (last visited Nov. 15, 2013).

²⁹² See *id.*

²⁹³ See Haughton, *supra* note 283, at 230.

²⁹⁴ See *Venus and Mars*, THE NAT’L GALLERY, <http://perma.cc/04fjwm9Gim1> (last visited Nov. 15, 2013).

²⁹⁵ See David Bellingham, *Venus and Mars by Sandro Botticelli*, MY DAILY ART DISPLAY (Dec. 30, 2012), <http://perma.cc/0Refs4pdSgD>; See also *Birth of Venus*, ITALIAN RENAISSANCE ART, <http://perma.cc/0SFiBc1wo3F> (last visited Nov. 15, 2013).

²⁹⁶ See Haughton, *supra* note 283.

²⁹⁷ See THE NAT’L GALLERY, *supra* note 294.

²⁹⁸ See *id.*

²⁹⁹ See *id.*

³⁰⁰ See Cécile Scailliérez, *Mona Lisa – Portrait of Lisa Gherardini, Wife of Francesco del Giocondo, known as the Mona Lisa*, LOUVRE, <http://perma.cc/0UjFhWj49js> (last visited Nov. 15, 2013).

³⁰¹ See *From the Tour: Titian and the Late Renaissance in Venice, Object 4 of 7*, NAT’L GALLERY OF ART, <http://perma.cc/0yNQhyNjhnY> (last visited Nov. 15, 2013).

³⁰² See *Leda and the Swan*, VIRTUAL UFFIZI, <http://perma.cc/0rc7uxoxpjH> (last visited Nov. 15, 2013).

³⁰³ Consider *Ginevra de’Benci* and *The Annunciation* by Leonardo Da Vinci; *Danae and Venus of Urbino* by Titian; *Ideal Portrait of a Lady* by Botticelli.

With the advent of the Atlantic slave trade in the fifteenth century and the colonization of the Americas, Asia, and Africa, black skin became the personification of the undesirable.³⁰⁴ By the early nineteenth century, theories of scientific racism were developed and widely accepted.³⁰⁵ Samuel Morton, a professor of medicine at the University of Pennsylvania, published *Crania Americana* in 1839.³⁰⁶ In general, Morton claimed that differences in head shapes could predict a racial group's intelligence and other personality traits.³⁰⁷ An appendix written by George Combe expanded upon the relationship between the natural talents and dispositions of nations and the development of their brains.³⁰⁸ Based on Morton's findings, Combe highlighted the tendency of the Caucasian race to exhibit moral and intellectual improvement, while referring to the African race situation as one unbroken scene of moral and intellectual desolation, with the exception of some tribes.³⁰⁹ Combe's opinion about the Native American race was even more critical: the author could not justify the miserable and savage conditions of these individuals, despite the long-term exposure of natives to European knowledge, enterprise, and energy.³¹⁰

Morton's theory of Polygenesis hypothesized that racial groups did not share a common origin.³¹¹ This provided a "scientific" basis for viewing African-descended people as a different and inferior species, thus requiring interbreeding to improve the race.³¹² A lexicon emerged that equated "blackness" with negative traits. "Black," "dark," and "sinister" are considered adjectives stemming from the word "evil."³¹³ Common examples include "black hearts," "black deeds," and "black magic," as well as referring to Satan as the "Prince of Darkness."³¹⁴

³⁰⁴ See generally GABRIEL, *supra* note 20, at 6; Roth, *supra* note 144; Hernández, *supra* note 104, at 1106–07.

³⁰⁵ Consider the major proponents of polygenism: William F. Edwards, Victor Courtet de l'Isle, Paul Broca, Charles Caldwell, Samuel Horton, Josiah Nott, George Gliddon, Ephraim Squier, Louis Agassiz, Robert Knox and James Hunt. See JOHN P. JACKSON & NADINE M. WEIDMAN, RACE, RACISM, AND SCIENCE: SOCIAL IMPACT AND INTERACTION 39 (2004).

³⁰⁶ See SAMUEL G. MORTON, CRANIA AMERICANA; OR, A COMPARATIVE VIEW OF THE SKULLS OF VARIOUS ABORIGINAL NATIONS OF NORTH AND SOUTH AMERICA: TO WHICH IS PREFIXED AN ESSAY ON THE VARIETIES OF THE HUMAN SPECIES (1839), available at <http://perma.cc/0C8EWDYhVx5>.

³⁰⁷ See *id.*

³⁰⁸ George Combe, Appendix to SAMUEL G. MORTON, CRANIA AMERICANA; OR, A COMPARATIVE VIEW OF THE SKULLS OF VARIOUS ABORIGINAL NATIONS OF NORTH AND SOUTH AMERICA: TO WHICH IS PREFIXED AN ESSAY ON THE VARIETIES OF THE HUMAN SPECIES 269 (1839), available at <http://perma.cc/0C8EWDYhVx5>.

³⁰⁹ *Id.* at 271.

³¹⁰ *Id.* at 272.

³¹¹ See JACKSON & WEIDMAN, *supra* note 305, at 44.

³¹² *Id.*

³¹³ See *Evil*, WORDNET SEARCH, <http://perma.cc/0MSmWdkKdfi> (last visited Nov. 15, 2013).

³¹⁴ *Id.*

Whites expressed what it meant to be Black by portraying negative stereotypes of Blacks in entertainment and popular culture throughout the nineteenth and twentieth centuries.³¹⁵ In the late nineteenth century, White performers darkened their faces with burnt cork, painted exaggerated White mouths, donned woolly wigs, and performed minstrel shows.³¹⁶ The common themes in these performances were jokes highlighting laziness, ignorance, and other negative traits using crude versions of the Black dialect. Characters such as Jim Crow, a naïve and clumsy slave, exemplify this stereotype.³¹⁷ With the advent of motion pictures in the early twentieth century, negative depictions of African-Americans moved to the screen.³¹⁸ Furthermore, the negative connotation against Blacks became available to children through cartoons. For instance, the 1941 animation, *Scrub Me Mamma with a Boogie Beat*,³¹⁹ depicts the life of a Black river community called Lazytown.³²⁰ With the exception of some Mammies, all men and animals appear sleeping or slacking during the day.³²¹ The crude scenes of laziness and abandonment are suddenly changed when a modern riverboat arrives and the beautiful White ladies from the crew bring their energy and good manners to the town.³²² This cartoon highlights the cultural preferences of Whites and displays many of the negative stereotypes of Blacks described so far.

In *Toms, Coons, Mulattoes, Mammies, and Bucks*,³²³ Donald Bogle identified other stereotypes depicted in popular films. Toms were always loyal, never turning against their White masters or employers.³²⁴ Coons, in contrast, were irresponsible, lazy, and dishonest.³²⁵ The Mammy was depicted as outspoken, overweight, and cantankerous.³²⁶ The Black Buck was a large, fearsome, dark-skinned, and hyper-sexualized male.³²⁷ The

³¹⁵ See SUSAN GUBAR, *RACECHANGES: WHITE SKIN, BLACK FACE IN AMERICAN CULTURE* xiv (Oxford University Press 2000) (1997).

³¹⁶ See Jason D. Ivey, *Blackface Minstrelsy*, UNIV. OF N.C AT PEMBROKE, <http://perma.cc/0Q9TqyRPrHc> (last updated Nov. 12, 2001).

³¹⁷ *Id.*

³¹⁸ Consider the American musical film *Holiday Inn*, in which Bing Crosby impersonated Abraham Lincoln in blackface. *HOLIDAY INN* (Paramount Pictures 1942).

³¹⁹ Jim Crow Museum, *Racist Cartoons*, FERRIS STATE UNIV., <http://perma.cc/7WN6-F9X8> (last visited Nov. 15, 2013).

³²⁰ *SCRUB ME MAMMA WITH A BOOGIE BEAT* (Walter Lantz/Universal 1941), available at <http://www.youtube.com/watch?v=UacUR7bPnMM>.

³²¹ *Id.*

³²² *Id.*

³²³ DONALD BOGLE, *TOMS, COONS, MULATTOES, MAMMIES, AND BUCKS: AN INTERPRETIVE HISTORY OF BLACKS IN AMERICAN FILMS* (3d ed. 1994).

³²⁴ See *id.* at 4–5.

³²⁵ See *id.* at 8.

³²⁶ *Id.*

³²⁷ See *id.* at 13.

Tragic Mulatto was a fair-skinned female attempting to pass for White.³²⁸ She was a sympathetic character confused by a divided racial heritage. More recently, the "Jezebel" was depicted as seductive, promiscuous, and predatory.³²⁹ Racial stereotypes were a staple of films, cartoons, comic books, and novels well into the 1960s.³³⁰

In the 1960s, the Civil Rights movement altered the legal status of African-Americans.³³¹ The official regime of state-sponsored discrimination was eliminated by Civil Rights legislation.³³² For a brief period during the Black Power era, Blacks embraced their African heritage.³³³ A rejection of Eurocentric standards of beauty and the establishment of the politics of representation were encouraged.³³⁴ Women were urged to abandon hair strengtheners³³⁵ and skin-lightening creams.³³⁶ The "Afro" hairstyle became fashionable, and African-inspired clothing communicated the wearer's racial consciousness.³³⁷ The prevailing sentiment was captured in James Brown's popular song, "Say it Loud, I'm Black and I'm Proud."³³⁸

The Black Arts movement introduced a "Black Aesthetic" to art, music, and literature.³³⁹ A revolution took place, which allowed Black artists to look at their social order from their own perspective.³⁴⁰ The 1960s were a time of protests,³⁴¹ demonstrations,³⁴² and urban riots,³⁴³ a

³²⁸ See *id.* at 9.

³²⁹ David Pilgram, *Jezebel Stereotype*, FERRIS STATE UNIV., <http://perma.cc/08paSi4M3Se> (last visited Feb. 14, 2013).

³³⁰ See generally *Jim Crow Museum*, FERRIS STATE UNIV., <http://perma.cc/0nnmuSiHyC> (last visited Feb. 14, 2013).

³³¹ See *Civil Rights Act of 1960 Signed*, AFRICAN AM. REGISTRY, <http://perma.cc/0Wk8A25npNd> (last visited Feb. 19, 2013).

³³² See *Teaching with Documents: The Civil Rights Act of 1964 and the Equal Employment Opportunity Commission*, NAT'L ARCHIVES & RECORDS ADMIN., <http://perma.cc/0J2FxmTep5> (last visited Jan. 28, 2013).

³³³ See Jones, *supra* note 44, at 1518.

³³⁴ See BELL HOOKS, *KILLING RAGE: ENDING RACISM* 119 (1995).

³³⁵ *Id.* at 122.

³³⁶ See Glenn, *supra* note 160, at 173.

³³⁷ *Civil Rights and Fashion in the 60's*, CIVIL RIGHTS, <http://perma.cc/0zegTthM3TU> (last visited Nov. 15, 2013).

³³⁸ JAMES BROWN, *Say It Loud – I'm Black and I'm Proud*, on SAY IT LOUD – I'M BLACK AND I'M PROUD (Vox Studios 1968).

³³⁹ JAMES E. SMETHURST, *THE BLACK ARTS MOVEMENT: LITERARY NATIONALISM IN THE 1960S AND 1970S* 3, 6 (2005).

³⁴⁰ See James T. Stewart, *The Development of the Black Revolutionary Artist*, in *BLACK FIRE: AN ANTHOLOGY OF AFRO-AMERICAN WRITING* 3, 8 (Leroi Jones & Larry Neal eds., 1968).

³⁴¹ See *Civil Rights Movement*, JOHN KENNEDY PRESIDENTIAL LIBRARY AND MUSEUM, <http://perma.cc/0rfQCwaJF9z> (last visited Nov. 15, 2013).

³⁴² See *id.*

³⁴³ See David R. Francis, *How the 1960s' Riots Hurt African-Americans*, NAT'L BUREAU OF ECON. RES., <http://perma.cc/0eDV5MQpWtk> (last visited Nov. 15, 2013).

turning point in the way African-Americans perceived themselves.³⁴⁴ However, their hopes for a permanent transformation were too optimistic. By the late 1970s, the Black Power Movement declined.³⁴⁵ Opposition to Eurocentric standards survives today in the Black Studies Departments at Universities and in some “Afrocentric” organizations and charter schools, but it has largely disappeared from popular culture.

The commercialization of negative stereotypes has re-emerged and the entertainment industry is exploiting them for profit.³⁴⁶ Rap music is a multi-billion dollar industry.³⁴⁷ In the 1990s, “gangster rap” glamorized a ghetto subculture.³⁴⁸ This was reflected in behavior and attitudes that rejected mainstream values and glamorized dangerous and self-destructive behavior.³⁴⁹ Conspicuous consumption, ostentatious displays of jewelry, fast cars, and scantily clad women are the images that still predominate in music videos and magazines.³⁵⁰ *Complexion Obsession: A Hip Hop Documentary* is a two-part documentary created by Joy Daily.³⁵¹ Using filmed interviews of several entertainers, the documentary shows how deeply colorism is embedded in the ethos of hip hop.³⁵²

In a contemporary representation, the “Jezebel” character is the video vixen, a prominent character in gangster rap songs.³⁵³ Lil’ Kim³⁵⁴ and Nicki Minaj³⁵⁵ are current manifestations of this stereotype: they employ exaggerated expressions of femininity and sexuality in their performances; they present images that commodify Black female sexuality; and they are bound by an old stereotype in which Black women are predisposed to

³⁴⁴ See HOWARD SCHUMAN ET AL., RACIAL ATTITUDES IN AMERICA: TRENDS AND INTERPRETATIONS 34 (rev. ed. 1997).

³⁴⁵ See JEFFREY O. G. OGBAR, BLACK POWER: RADICAL POLITICS AND AFRICAN-AMERICAN IDENTITY 157 (2004).

³⁴⁶ See Glen Ford, *Hip Hop Profanity, Misogyny and Violence: Blame the Manufacturer*, ALTERNET (May 6, 2007), <http://perma.cc/0273Kk31BNj>.

³⁴⁷ See Julie Watson, *Rapper’s Delight: A Billion-Dollar Industry*, NBC NEWS (Feb. 18, 2004, 4:14 PM), <http://perma.cc/0asAQx8D3Pe>.

³⁴⁸ See Charis E. Kubrin, *Gangstas, Thugs, and Hustlas: Identity and the Code of the Street in Rap Music*, 52 SOC. PROBS. 360, 360 (2005).

³⁴⁹ See MICHAEL E. DYSON, BETWEEN GOD AND GANGSTA RAP: BEARING WITNESS TO BLACK CULTURE xiii (1996).

³⁵⁰ See Leland Ware & Melva L. Ware, *Brown v. Board of Education, Black Culture, and the American Identity*, 2 F. ON PUB. POL’Y 341, 353–54 (2006).

³⁵¹ Joy Daily, *Complexion Obsession: A Hip Hop Documentary*, YOUTUBE, (Feb. 18, 2010), http://www.youtube.com/watch?v=wW_Vtp-JzV4.

³⁵² See *id.*

³⁵³ See Stephanie Y. Stevenson, *Scholarship and Empowerment in the Age of the Video Vixen: Promoting Black Adolescent Females’ Academic Success*, 2 U. MD. MCNAIR SCHOLARS UNDERGRADUATE RES. J. 269, 273 (2009).

³⁵⁴ See Lil’ Kim, MTV, <http://perma.cc/0WyMYdSpSo2> (last visited Nov. 15, 2013).

³⁵⁵ See Nicki Minaj, MTV, <http://perma.cc/0DrP9W56rzc> (last visited Nov. 15, 2013).

sexual deviance and lewdness.³⁵⁶

Rap's product is an extravagant image of life in inner-city neighborhoods.³⁵⁷ Tough ghetto youths are shown driving luxury cars and wearing oversized shirts and baggy pants³⁵⁸ while displaying a menacing visage. The "thug" image that many rappers project is merely an updated version of the "Buck" character: a large, threatening, and hyper-sexualized Black male.³⁵⁹ The old expression "I don't want nothing black but a Cadillac" conveyed African-American males' preference for light-skinned women.³⁶⁰ This attitude persists in hip-hop culture.³⁶¹ According to Patricia Hill Collins, the values of individualism, personal expression, and material well-being have prevailed in the hip-hop culture, while issues of racial failure have been overlooked.³⁶²

VI. INTERNALIZED STEREOTYPES

In the 1970 novel *The Bluest Eye*, the celebrated author, Toni Morrison, deconstructed Eurocentric standards of beauty.³⁶³ Morrison's novel conveyed the psychic damage that some Black women suffer as a result of the construction of beauty and desirability in a racially coded society.³⁶⁴ The story portrays the tragic lives of an impoverished Black family in 1940s America.³⁶⁵ The eleven-year-old protagonist, Pecola Breedlove, believes she is ugly because her conception of beauty is based on the Eurocentric standard.³⁶⁶ The title, *The Bluest Eye*, is derived from Pecola's intense desire for blue eyes for which she prays every night.³⁶⁷ Pecola's obsession and traumatic experiences eventually drive her insane.³⁶⁸ Pecola's predicament was caused by internalized attitudes about what was considered attractive and desirable in her immediate reality.

³⁵⁶ Maya K. Francis, *Nicki Minaj, Lil' Kim and the Curse of the Alter Ego*, THE ROOT (Jun. 11, 2010, 6:25 PM), <http://www.theroot.com/views/nicki-minaj-lil-kim-and-curse-alter-ego>.

³⁵⁷ See Ware & Ware, *supra* note 350, at 353.

³⁵⁸ *Id.* at 353–54.

³⁵⁹ See BOGLE, *supra* note 323, at 13.

³⁶⁰ See ELDRIDGE CLEAVER, SOUL ON ICE 9 (1968).

³⁶¹ See Daily, *supra* note 351.

³⁶² See PATRICIA HILL COLLINS, FROM BLACK POWER TO HIP HOP: RACISM, NATIONALISM, AND FEMINISM 5 (2006).

³⁶³ TONI MORRISON, THE BLUEST EYE (Alfred A. Knopf ed., 1998).

³⁶⁴ See Rachel Blumenthal, *Morrison's the Bluest Eye*, 65 EXPLICATOR 117, 117–18 (2007).

³⁶⁵ See James Mayo, *Morrison's the Bluest Eye*, 60 EXPLICATOR 231, 231–33 (2002).

³⁶⁶ See Cat Moses, *The Blues Aesthetic in Toni Morrison's The Bluest Eye*, 33 AFR. AM. REV. 623, 623–38 (1999).

³⁶⁷ See MORRISON, *supra* note 363, at 46.

³⁶⁸ See Moses, *supra* note 366.

Since 1939, Kenneth and Mamie Clark developed research about self-identification in young children.³⁶⁹ In the late 1940s and early 1950s, they conducted a series of studies that became known as the “doll tests.”³⁷⁰ Their studies found differences among children attending segregated schools in Washington D.C. compared to those in integrated schools in New York City.³⁷¹ They found that Black children often preferred to play with White dolls over Black ones.³⁷² When asked to fill in a human figure with the color of their own skin, they frequently chose a lighter shade than was accurate.³⁷³ The children gave the color “White” attributes such as good and pretty, but “Black” was seen bad and ugly.³⁷⁴ The test was used to show the harm that segregation inflicted on young children, contributing to a sense of inferiority and self-hatred.³⁷⁵ The Clarks testified as expert witnesses in several of the NAACP’s school desegregation cases and their studies were relied on by the Supreme Court in *Brown v. Board of Education*.³⁷⁶

Over the last two decades, a substantial body of empirical and theoretical work in cognitive psychology has confirmed that the causes of discriminatory actions often operate at an unconscious level without the individual’s awareness of the source.³⁷⁷ Discrimination is an interaction of social cognitions about race and behavioral outlets that bring congruence to a person’s racial preferences and social settings.³⁷⁸ Many of these beliefs are formed during the early childhood years, and they serve as a basis for judgments about events, groups, and ideas during their adult years.³⁷⁹ Socialized beliefs can provoke negative sentiments when individuals make judgments about issues that activate stereotypes.³⁸⁰

³⁶⁹ See Marie Koesterer, *Dr. Mamie Phipps Clark: Segregation & Self-Esteem*, WEBSTER UNIV., <http://perma.cc/0npMFc2ii5b> (last visited Nov. 15, 2013).

³⁷⁰ See Interview by Blackside, Inc. with Kenneth Clark (Nov. 4, 1985), available at <http://perma.cc/0oNDmeh1Y7j>.

³⁷¹ *Stereotypes and the Clark Doll Test*, EXPLORABLE.COM (Nov. 6, 2011), <http://perma.cc/0XLjHEj76ui>.

³⁷² See Interview by Blackside, Inc. with Kenneth Clark, *supra* note 370.

³⁷³ *Id.*

³⁷⁴ *Id.*

³⁷⁵ *Brown v. Board at Fifty: “With an Even Hand”*, LIBR. OF CONG., <http://perma.cc/0mWAS1cbWB5> (last visited Nov. 15, 2013).

³⁷⁶ See Leland Ware, *The Story of Brown v. Board of Education: The Long Road Racial Equality*, in *EDUCATION LAW STORIES* 37–38 (Michael A. Olivas & Ronna Greff Schneider eds., 2007).

³⁷⁷ Robert L. Hayman Jr. & Leland Ware, *The Geography of Discrimination: The Seattle and Louisiana Cases and the Legacy of Brown vs. Board of Education*, in *CHOOSING EQUALITY: ESSAYS AND NARRATIVES ON THE DESEGREGATION EXPERIENCE* 326 (Robert L. Hayman Jr. & Leland Ware eds., 2009).

³⁷⁸ JAMES M. JONES, *PREJUDICE AND RACISM* 10–11 (McGraw-Hill 2nd ed. 1997).

³⁷⁹ See Jody Armour, *Stereotypes and Prejudice: Helping Legal Decisionmakers Break the Prejudice Habit*, 83 CALIF. L. REV. 733, 741–55 (1995).

³⁸⁰ See JONES, *supra* note 378, at 169–70.

Overt racism has diminished considerably in the years since the Civil Rights laws were enacted,³⁸¹ but unconscious stereotypes about color persist,³⁸² and they are triggered by the ways in which the brain processes information. "Categorization" allows the brain to quickly process large amounts of information.³⁸³ It operates at a level independent of conscious attitudes, beliefs, and perceptions.³⁸⁴ Categorization is an essential cognitive activity enabling individuals to reduce the enormous diversity in the world to a manageable level.³⁸⁵ Categorization is the process of understanding something based on an individual's knowledge of that which is similar and that which is different.³⁸⁶ It allows individuals to relate new experiences to old experiences; the unfamiliar becomes familiar. Each object and event in the world is perceived, remembered, and utilized for predicting the future, inferring the existence of unobservable traits or properties, and attributing the causation of events.³⁸⁷ The process is spontaneous and measured in milliseconds.³⁸⁸

According to Frances Aboud, who conducted research on prejudice in young children, categorization develops at an early age.³⁸⁹ In one of her studies with young children aged 3 to 5, volunteers were given a half-dozen positive adjectives such as "good," "kind," and "clean" and an equal number of negative adjectives such as "mean," "cruel" and "bad."³⁹⁰ They asked children to match each adjective to one of the two drawings.³⁹¹ One drawing depicted a White person; the other showed a Black person.³⁹² The

³⁸¹ See Tristin K. Green, *Discrimination in Workplace Dynamics: Toward a Structural Account of Disparate Treatment Theory*, 38 HARV. C.R.-C.L. L. REV. 91, 93 (2003).

³⁸² See JONES, *supra* note 378, at 198–202.

³⁸³ See generally JOHN L. JACKSON JR., RACIAL PARANOIA: THE UNINTENDED CONSEQUENCES OF POLITICAL CORRECTNESS 81–110 (2008) (discussing the manifestations of racial distrust in American society); Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161 (1995) (examining the assumptions about human inference embedded in current disparate treatment theory and questioning the premise that discrimination necessarily manifests intent or motive); Linda Hamilton Krieger & Susan T. Fiske, *Behavioral Realism in Employment Discrimination Law: Implicit Bias and Disparate Treatment*, 94 CALIF. L. REV. 997, 1034 (2006) (discussing behavioral theory change in law); Antony Page, *Batson's Blind Spot: Unconscious Stereotyping and the Peremptory Challenge*, 85 B.U. L. REV. 155, 161, 180–235 (2005) (discussing the processes of categorizing and stereotyping).

³⁸⁴ See Page, *supra* note 383, at 190.

³⁸⁵ Cf. Eleanor Rosch, *Human Categorization*, in STUDIES IN CROSS CULTURAL PSYCHOLOGY 1, 1–2 (Neil Warren ed., 1977).

³⁸⁶ See Page, *supra* note 383, at 185–86.

³⁸⁷ See Krieger, *supra* note 383, at 1189.

³⁸⁸ *Snap Judgments: Psychological Test Reveals Hidden Bias*, THE UNIV. OF VA. MAGAZINE, <http://perma.cc/0TpjSuZUFF1> (last visited Nov. 15, 2013).

³⁸⁹ See Frances E. Aboud & Maria Amato, *Developmental and Socialization Influence on Intergroup Bias*, in INTERGROUP PROCESSES 65, 65–89 (Rupert Brown & Samuel Gaertner eds., 2003).

³⁹⁰ See SHANKAR VEDANTAM, THE HIDDEN BRAIN: HOW OUR UNCONSCIOUS MINDS ELECT PRESIDENTS CONTROL MARKETS, WAGE WARS AND SAVE OUR LIVES 66–67 (2010).

³⁹¹ *Id.* at 67.

³⁹² *Id.*

results showed that 70% of the children assigned nearly every positive adjective to the White faces and nearly every negative adjective to the Black faces.³⁹³ A subsequent study, also conducted by Aboud, demonstrated that these attitudes were not taught by the children's parents or teachers.³⁹⁴ Commenting on Aboud's research, Shankar Vedantam explained that children's racial attitudes are the products of unspoken messages emanating from the environments in which they reside.³⁹⁵ Young children experience a world in which most people who live in nice houses are White.³⁹⁶ Most people on television are White, especially the people who are shown in positions of authority, dignity, and power.³⁹⁷ Most of the storybook characters they see are White, and it is the White children who perform heroic, clever, and generous things.³⁹⁸ Young children conclude that there must be an unspoken rule in society that forces Whites to marry Whites because everywhere they look White husbands are be married to White wives.³⁹⁹ Young children who are trying rapidly to orient themselves in their environments receive messages about race and color, not once or twice, but thousands of times.⁴⁰⁰ Everywhere a child looks, whether it is on television, in movies, in books, or online, their inferences are confirmed. As they grow older, these messages remain in their unconscious psyches and can be triggered by the categorization process.

Unconscious stereotyping is associated with the categorization process.⁴⁰¹ According to Quadflieg and Macrae, upon the perception of a target, social categorization is expected to occur, which in turn activates stereotypical knowledge that is then used to evaluate, judge, or predict a person's personality or behavior.⁴⁰² Attitudes about African-Americans are internalized at an early age and retained into adulthood.⁴⁰³ This may explain why dark-skinned Black defendants get longer prison sentences than their lighter-complexioned counterparts⁴⁰⁴ and why most Americans prefer lighter to darker skin tones.⁴⁰⁵

³⁹³ *Id.*

³⁹⁴ *Id.* at 68.

³⁹⁵ *Id.*

³⁹⁶ VEDANTAM, *supra* note 390, at 72.

³⁹⁷ *Id.*

³⁹⁸ *Id.*

³⁹⁹ *Id.*

⁴⁰⁰ *Id.* at 72–73.

⁴⁰¹ See Susanne Quadflieg & C. Neil Macrae, *Stereotypes and Stereotyping: What's the Brain Got to Do With it?*, EUR. REV. SOC. PSYCHOL. 222, 225 (2011).

⁴⁰² *Id.* at 215, 225.

⁴⁰³ See RUPERT BROWN, *PREJUDICE: IT'S SOCIAL PSYCHOLOGY* 136 (Wiley-Blackwell 2nd ed. 2010).

⁴⁰⁴ See Baynes, *supra* note 52, at 159–62, 185; see also Pizzi et al., *supra* note 55, at 350–52.

⁴⁰⁵ See Hochschild & Weaver, *supra* note 73, at 644.

Title VII of the Civil Rights Act of 1964 and other laws protect against discrimination based on color,⁴⁰⁶ but courts have been less receptive to claims alleging intra-racial discrimination.⁴⁰⁷ Legal scholars have argued that courts should be more receptive to cases alleging discrimination based on color.⁴⁰⁸ These are accurate conclusions and important recommendations, but the color problem is much larger. Successful employment claims will not stop individuals from straightening their hair, donning blonde wigs, or wearing blue contact lenses. Laws will not diminish the worldwide, multi-million dollar market for skin-lightening creams. Court cases will not end the preference for light-complexioned models and entertainers. Regulations will not change the images we see in television, movies, magazines, online, and elsewhere that reinforce colorism every day.

VII. CONCLUSION

In the classic jazz song *What Did I Do To Be So Black and Blue*, composed by Fats Waller in 1929⁴⁰⁹ and interpreted by Louis Armstrong,⁴¹⁰ a lonely, dark-skinned woman laments her inability to attract male attention:

Cold empty bed . . . springs hurt my head
 Feels like ole ned . . . wished I was dead
 What did I do . . . to be so black and blue
 Even the mouse . . . ran from my house
 They laugh at you . . . and all that you do
 What did I do . . . to be so black and blue
 I'm white . . . inside . . . but, that don't help my case
 That's life . . . can't hide . . . what is in my face
 How would it end . . . ain't got a friend
 My only sin . . . is in my skin
 What did I do . . . to be so black and blue.⁴¹¹

⁴⁰⁶ See Greene, *supra* note 49, at 1383–85, 1392–93.

⁴⁰⁷ See Banks, *supra* note 39, at 1724–36.

⁴⁰⁸ See Trina Jones, *The Case for Legal Recognition of Colorism Claims*, in SHADES OF DIFFERENCE: WHY SKIN COLOR MATTERS, 223, 223 (Evelyn N. Glenn ed., 2009); see also Taunya L. Banks, *Multilayered Racism*, in SHADES OF DIFFERENCE: WHY SKIN COLOR MATTERS, 213, 222 (Evelyn N. Glenn ed., 2009).

⁴⁰⁹ See *Black and Blue* (Fats Waller song), WIKIPEDIA, <http://perma.cc/0Akfwy3nus3> (last modified Feb. 17, 2013).

⁴¹⁰ LOUIS ARMSTRONG, *Black and Blue*, on ESSENTIAL LOUIS ARMSTRONG [ORIGINAL RECORDING REMASTERED] (Columbia/Legacy 2004).

⁴¹¹ *Id.*

Colorism is a vestige of the colonial era when European countries invaded Africa, Asia, and the Americas and imposed their standards on the indigenous populations along with the Africans they imported and enslaved.⁴¹² Perhaps unconsciously, Michael Jackson and Sammy Sosa wanted to make themselves more physically attractive, which to them meant having a light complexion, European features, and straightened hair.

Colorism is well documented in academic research but largely ignored by policymakers.⁴¹³ It is as alive today as it was a century ago. Dark-skinned African-Americans and other minorities do not have the same opportunities for advancement as those with light complexions.⁴¹⁴ This form of discrimination is as injurious as invidious racism. Colorism is a combination of overt and unconscious discrimination that places a high value on light complexions and European features while devaluing dark skin and African phenotypes.⁴¹⁵ As America becomes a more multi-racial society, old-fashioned racism is declining, but colorism and unconscious bias persist.⁴¹⁶ If this trend does not change, it will mean that the darkest-complexioned, most African-looking people will continue to receive the worst treatment.

⁴¹² Cf. GABRIEL, *supra* note 21, at 5–12.

⁴¹³ Cf. Trina Jones, *Intra-Group Preferencing: Proving Skin Color and Identity Performance Discrimination*, 34 N.Y.U. REV. L. & SOC. CHANGE 660 (forthcoming 2011), available at <http://perma.cc/0tujAadtgaH> (last visited Nov. 15, 2013).

⁴¹⁴ See generally Banks, *supra* note 39; Baynes, *supra* note 52; Greene, *supra* note 49; Hill, *supra* note 69; Hochschild & Weaver, *supra* note 73; Jones, *supra* note 44; Pizzi et al., *supra* note 55; Tonry, *supra* note 55; Viglione et al., *supra* note 63.

⁴¹⁵ See Harris, *supra* note 14; Jones, *supra* note 44, at 1489–90, 1531–56; Walker, *supra* note 13.

⁴¹⁶ See Ware & Wilson, *supra* note 26.