Narratives of mixed-race people bringing claims of racial discrimination in court, illuminating traditional understandings of civil rights law

As the mixed-race population in the United States grows, public fascination with multiracial identity has promoted the belief that racial mixture will destroy racism. However, multiracial people still face discrimination. Many legal scholars hold that this is distinct from the discrimination faced by people of other races, and traditional civil rights laws built on a strict black/white binary need to be reformed to account for cases of discrimination against those identifying as mixed-race.

In Multiracials and Civil Rights, Tanya Katerí Hernández debunks this idea, and draws on a plethora of court cases to demonstrate that multiracials face the same types of discrimination as other racial groups. Hernández argues that multiracial people are primarily targeted for discrimination due to their non-whiteness, and shows how the cases highlight the need to support the existing legal structures instead of a new understanding of civil rights law. The legal and political analysis is enriched with Hernández’s own personal narrative as a mixed-race Afro-Latina.
The Preface deploys the Critical Race Theory use of personal narrative to introduce the origins of the research inquiry. The Author is situated as mixed-race herself but with the experience of observing the fallacy of Latin American presumptions that racial mixture eradicates racism or creates a unique form of racism for mixed-race persons.

Students should be encouraged to explore what their own experiences of race and racism have influenced them to believe.

**Discussion Questions**

1. What is your personal story of race (in how you came to racially identify and any experiences or observations of racism)?

2. What difference do you think racial mixture makes to the nature of racism? To the pursuit of racial equality?

3. Is multiracial discrimination only a problem for mixed-race persons of black ancestry? Why or why not?

**Abstract**

This chapter will describe the social development of people increasingly identifying as multiracial, and introduce the social and legal implications of this. It will then identify the concept of multiracial-identity scholarship and its premise that the multiracial experience of discrimination is exceptional and not well understood or handled by present anti-discrimination law. It will set out the theoretical inquiry of the book as addressing the questions 1) does the increase in the number of individuals who identify as mixed-race present unique challenges to the pursuit of political equality; 2) how should law respond to multiracial racial identity in a manner that enables such persons to protect themselves from domination; and 3) does the advent of multiracial racial identity necessitate a new vision of what racial equality means?
CHAPTER ONE: RACIAL MIXTURE AS A PRESUMED COMPLICATION IN ANTIDISCRIMINATION LAW

Detailed Summary

The chapter opens with an example of multiracial discrimination. MCR at 1. Cleon Brown, a police officer, thought it would be interesting to use Ancestry.com to see if the rumors of his Native American Ancestry were true. Id. Cleon was shocked when the results showed that he was 18% Saharan African. Id. Cleon appeared white and had identified as white his entire life. Id. After Cleon told his peers about his ancestry, his fellow officers began calling him Kunta. Id. Furthermore, he was excluded from police sergeant training, mandatory taser instructor re-certification training, and business meetings. Id. Eventually, he was asked to resign as a sergeant and go back to being a patrol officer. Id. Eighteen years of experience did not matter in the face of his African Ancestry. Id. He filed a lawsuit for discrimination against the police department in 2017. Id. Sadly, Cleon’s experience is not an outlier. Id. According to FBI statistics, in 2015 3.8 percent of hate crime victims were multiracial. Id. at 2.

The chapter then points to the increase in the mixed-race identifying population in the United States and provides census data documenting its growth. Id. at 2. The book then cautions that this explosion in mixed-race identifiers is not indicative of a post racial society. Id. Despite this, the media has celebrated the growth of multiracial identifiers as ‘the end of race as we know it.’ Id. Public fascination with multiracial identity has promoted the belief that mixing of the races will, in isolation, destroy racism. Id.

The chapter then talks about how this fascination with multiracial identity has also permeated the antidiscrimination law legal context. Id. at 3. Some legal scholars believe that civil rights laws need to be reformed because of the complex racial identities of multiracials which do not fit into the black and white binary approach that the laws reflect. Id. at 3-4.

The chapter introduces what multiracial-identity scholars are and their framework, while also indicating the flaws within it. Id. at 4. The idea that the multiracial experience of discrimination is exceptional, and not well understood or handled by present antidiscrimination law, is shared between many multiracial-identity scholars. Id. Multiracial-identity scholars are authors whose scholarship promotes the recognition of the specific issues that multiracial identity poses for civil rights law. Id. The main point of their critique is that judges commonly refer to mixed race claimants as monoracial, most commonly black. Id. at 5. An overwhelming number of the cases the multiracial identity scholars rely on include pointed and derogatory comments about non-whiteness, blackness in particular. Id. at 5-6.
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The overwhelming majority of these cases demonstrate racism in the white-black binary rather than victimization as a consequence of multiracial status. Id. at 6. The claimants may self-identify as multiracial, but the prejudice they experience and describe is rooted in a bias against nonwhiteness. Id.

The chapter cites statistics to bolster the claim that the prejudice experienced by multiracials is rooted in a bias against nonwhiteness, not solely racial mixture. Id. at 6. The Pew Research Center estimates that it is Native Americans with white ancestry who represent the most significant proportion (50 percent) of the US multiracial population. Id. Native Hawaiians and other Pacific Islanders were the group with the highest proportion of its members selecting multiple races on the 2010 and 200 censuses (55.9 percent and 54.4 percent respectively). Id. However, it is multiracials with African American heritage that file the majority of racial discrimination claims, but only 7.4 percent of blacks selected more than one race in the 2010 census and only 4.8 percent in 2000. Id. All this suggests that racial mixture, in isolation, is not the driving force behind the discrimination alleged. Id. Furthermore, the increase in mixed race identifiers does not present novel issues to political equality because many of the cases show the typical nonwhite bias we see in discrimination cases. Id.

The book demonstrates the discriminatory reality of mixed race people, not the idealized space they are presumed to occupy by the public. Id. at 7. The book suggests a “socio-political race” lens for analyzing discrimination, instead of the personal racial identity perspective espoused by multiracial-identity scholars and legal actors. Id. This approach preserves an individual’s ability to assert their personal identity while providing a more effective public mechanism for pursuing equality. Id. The idea of multiracial exceptionalism is deeply flawed because it misses the continuing power of white dominance and poses a real danger to equality. Id. Furthermore, multiracials are being used as a tool to dismantle the protections of civil rights law, in particular, affirmative action, and are not an exception to the white/nonwhite dynamic of racism. Id.

In essence, the book poses three questions. Id. at 7. Does the increase in the number of multiracial identifiers present unique challenges to the pursuit of political equality? Id. How should law respond to multiracial racial identity in a manner that enables such persons to protect themselves from domination? Id. Does the advent of multiracial racial identity necessitate a new vision of what racial equality means? Id. These questions are analyzed through existing civil rights litigation in the context of employment, education, housing, public accommodations, and criminal justice. Id. at 7-8. 25 cases are examined, instead of the commonly used eight employment cases as well as 12 more administrative claims with the Equal Employment Opportunity Commission. Id. at 8.
It is commonly believed that multiracial discrimination is a unique phenomenon, so it is essential to be methodical and exacting in exposing the overwhelming number of cases that demonstrate the contrary. Id. at 8-9.

Each of the following chapters discusses a different kind of antidiscrimination claim. Id. at 9. Chapter 2 begins with an examination of workplace discrimination. Id. Chapter 3 will then assess education discrimination claims. Id. Chapter 4 will examine housing and public accommodations discrimination. Id. Chapter 5 will consider the treatment of multiracials in the criminal justice system. Id. Chapter 6 will then elaborate upon the pursuit by multiracial-identity scholars of “Personal Identity Equality.” Id. at 9. This chapter will also discuss how this approach has been used as a rhetorical aid for the dismantling of affirmative action programs. Id. Chapter 7 concludes by offering a socio-political race perspective as an alternative to the multiracial personal identity approach for assessing multiracial discrimination claims. Id.

An Introduction to the Antidiscrimination Law and Its Perceived Multiracial Failings

The chapter then explains the underpinnings for antidiscrimination law and what counts as a protected class. Id. at 10. The foundation of antidiscrimination law is the 14th amendment of the Constitution. Id. This amendment mandates that the state government not deny any person the equal protection of the laws and has been interpreted to require the same treatment for persons who are similarly situated. Id. For example, a state employer cannot intentionally treat employees different solely based on their race. Id. at 10-11. Only certain kinds of discrimination are protected such as race or gender. Id. at 10. Height, for instance, is not a protected consideration. Id. Courts refer to those traits that are protected by law as “protected classes” or “protected groups.” Id. The court looks at what was done and how the claimant was treated because of his or her racial difference when looking at a racial discrimination case. Id. The same standard applies regardless of the specific race of the claimant. Id.

The chapter then explains what constitutional strict scrutiny is in relation to the 14th Amendment ban on states using race to discriminate, with race treated as a “suspect category” for which the court must apply a strict scrutiny standard of review. Id. at 11. Under the strict scrutiny standard, a state policy challenged under the 14th amendment requires a demonstration of a compelling government interest to authorize the policy’s use of race. Id. Without a compelling government interest, the discriminatory policy is unconstitutional and therefore void. Id. The foundational case for this standard is Brown v. Board of Education; this decision ended separate but equal schools and led to the passage of many laws that were designed to dismantle all forms of Jim Crow segregation. Id.
DISCUSSION QUESTIONS

1. Have you taken an Ancestry.com type of test, and if so what effects did it have on your racial identification if any?

2. In your view is the growing use of genetic ancestry testing a benefit or detriment to the pursuit of racial equality?

3. What is the definition of a multiracial identity scholar and what is the main point of their critique?

   Multiracial-identity scholars are authors whose scholarship promotes the recognition of the specific issues that multiracial identity poses for civil rights law. The main point of their critique is that judges commonly refer to mixed race claimants as monoracial, most commonly black. This does not give proper respect to their personal racial identities. Id. at 4-5.

4. Multiracials with what minority ancestry are most commonly involved in discrimination suits and why is this significant?

   Multiracials with an African ancestry are most commonly involved in discrimination suits. This is significant because they account for only 7 percent of the multiracial population. In addition, this demonstrates that the common theme of a nonwhite/white binary is present for multiracials as well. Id. at 6.

5. What is incorrect about the idea that the growth of multiracial identifiers is ‘the end of race as we know it’?
CHAPTER TWO: MULTIRACIAL EMPLOYMENT DISCRIMINATION

Abstract

This chapter will closely examine the context of employment discrimination as it is the arena in which the greatest number of multiracial discrimination claims are filed (as compared to other areas of discrimination law examined in later chapters). It will open with the story of Jill Mitchell, a light-skinned black and white biracial woman who experienced a dramatic change in workplace treatment after her supervisor discovered that his presumption that she was a mixed Hispanic white woman was erroneous. The chapter will delineate how Jill Mitchell’s story and the vast majority of cases filed entail allegations of non-white and specifically anti-black bias rather than prejudice rooted in hostility towards racial mixture itself. Moreover, the existing cases display judicial clarity in the administration of multiracial claimant allegations. The courts treat the claims as viable and apply anti-discrimination law in a conventional manner that permits claims to succeed unless the available evidence fails to meet legal standards. Additional onerous evidentiary burdens are not placed upon multiracial complainants. The chapter thus concludes that the cases do not justify the multiracial-identity scholar conjecture that multiracial claims are inadequately addressed.
The chapter begins with the story of Jill Mitchell’s employment discrimination claim. Id. at 16. Mitchell is a light-skinned biracial woman with a black father and white mother. Id. People often think she is of mixed Hispanic and European descent. Id. She started working at Champs in 1996 in Beaumont Texas and eventually the manager figured out her racial background because her darker relatives often visited the store. Id. The store manager made many discouraging remarks about her race, eventually even demoting her. Id. Her position was given to a white employee who did not go through the program that the company typically used to fill the position. Id. She filed an employment discrimination claim under Title VII of the Civil Rights Act of 1964. Id. at 16-17.

The chapter then gives some background regarding racial discrimination claims in general and in the employment context. Id. at 17. The vast majority of racial discrimination claims are dismissed by courts without trial. Id. From 1979-2006, Federal Claimants only won 15 percent of job-discrimination cases. Id. All other civil cases the win rate is 51 percent. Id. Commentators think this is because of a growing hostility with which courts approach allegations of discrimination. Id. Courts seem to think that the passage of civil rights laws alone has led us to a post racial society in which instances of discrimination are rare. Id.

Multiracial Discrimination within Overarching Nonwhite Discrimination

The chapter then points out that the overwhelming majority of multiracial discrimination stories involve nonwhite or specifically anti-black bias. Id. at 19. This is particularly true in workplace discrimination claims filed under the Civil Rights Act of 1964. Id. This chapter examines cases usually discussed by multiracial-identity scholars but goes further to encompass more recent cases. Id. 88% of claimants in published employment cases involved claimants with African ancestry. Id. This predominance of black ancestry seemingly is viewed as inconsequential by the multiracial-identity scholars. Id. Their critique underemphasizes the significance of public anti-black bias. Id.

The chapter then gives an example of how multiracial-identity scholars underemphasize the significance of public anti-black bias. Id. at 19. In the case of Richmond v. General Nutrition Centers, Inc., Marlon Hattimore was a sales associate in 2004 for GNC. Id. The regional manager visited the store, and after seeing Hattimore, he told the store manager there were too many black employees and that Hattimore should be fired. Id. 19-20. Once the regional manager learned that Hattimore was biracial, he changed his mind about firing Hattimore and began to treat him with more respect. Id. at 20. Hattimore was eventually transferred to another store and promoted to manager. Id. He was still paid less than two subordinate, less experienced employees. Id. Hattimore endured hearing many racially charged statements from the regional manager; the regional manager called a black employee “ghetto black trash” and said, “You can’t take a hoodlum and put him in a business suit.” Id.
Hattimore was eventually terminated and replaced with a white individual without any explanation from the regional manager or GNC headquarters. Id. Hattimore joined three other employees (all black men) in filing a suit for racial discrimination. Id. GNC moved for summary judgment, which court denied because of the evidence of unequal pay and a factual dispute about whether the claimant was officially terminated. Id. Denial of a summary judgment suggests quasi-approval of the complainant’s case and often results in an employer’s offer of favorable settlement for an employee, which is what happened in this case. Id. at 20-21. The survival of the summary judgment is a victory in itself considering the disproportionate early dismissal of the vast majority of racial discrimination cases in the United States. Id. at 21.

The chapter then explains and critiques the multiracial-identity scholars’ analysis of Hattimore’s case. Id. at 21. Multiracial-identity scholars feel this is an example of a multiracial being treated exclusively as black by the legal system. Id. However, this did not hurt his legal case because he claimed he was treated poorly because of his black ancestry, not his biracial identity. Id. If anything, his biracialism was at times a mitigating factor; GNC was a workplace that rewarded whiteness and penalized blackness. Id. Multiracial-identity scholars do not present clearly how Hattimore would have benefited from the court treating him as solely biracial instead of part of a group of black employees. Id.

The chapter then examines the case Smith v. CA, Inc., a hostile work environment claim, and how the court did not question the claimant’s multiracial identity. Id. at 22. The court did not dispute that the claimant, Smith, was part of a black-white protected group, solidifying his discrimination claim. Id. However, the treatment was not sufficiently severe or pervasive “to alter the conditions of his employment,” as required by the legal standard for a hostile work environment claim. Id. An employer can only be held liable if the employer was negligent in controlling the work conditions and responding to the internal complaints of harassment. Id. Since Smith’s employer appropriately responded to each instance of alleged racial harassment, the employer could not be held liable in a court of law for maintaining a hostile work environment. Id. Smith alleged that his employer classified him as African American, but it was never articulated how this harmed him or altered his conditions of employment. Id. Smith admitted to being frequently absent from work, and the court concluded he was terminated for his failure to follow company policies regarding attendance and requesting time off. Id. at 22-23.
The chapter then critiques the multiracial-identity scholar’s position that the record potentially supported animus based on Smith’s biracial background, not his black background. Id. at 23. This idea is impractical, facing the burdensome evidence requirements for employment discrimination cases. Id. It discounts the significance of isolated incidents of discriminatory commentary and expressions of bias. Id. The comments directed at Smith were anti-black rather than a form of multiracial bias. Id. “Boy” is a term used for black men to subordinate them and make them feel like less than. Id. On one occasion Smith’s supervisor made a disparaging comment about African American fathers regarding Smith’s paternity suit saying he was surprised that Smith would fight so hard for his children. Id.

The chapter next examines the case, Watkins v. Hospitality Group Management, Inc. Id. at 23-24. Victoria Watkins alleged racial discrimination when she was fired from position assistant gen man at the Sleep In hotel in Greensboro, NC. Id. at 24. Her coworkers referred to her as black, and she was eventually replaced by a white male with less experience. Id. The court found that the actual cause was her unexplained absence for a week in September of 2001. Id.

The chapter then critiques the multiracial-identity scholar interpretation of this case. In their view, the court oversimplified the issue because it felt she was a member of a different class, mixed-race, so there was more analysis required. Id. However, the legal issue was her employer firing her in favor of a white employee, not on the basis of her mixed-race status but because of her African ancestry. Id. This is not an example of a court avoiding the complexity of multiracial discrimination, but the court drilling down on the nature of the racial discrimination described by Victoria in her testimony. Id. Her status as mixed-race provides context, but she did not indicate that it was central to her experience of discrimination. Id. at 24-25. We see a similar white non-white pattern of hostility in most multiracial discrimination cases. Id. at 25.

Non-black Multiracial Claims

The chapter then gives an example of a case demonstrating that judicial receptivity to multiracial claims is not restricted to allegations of anti-black bias. Id. at 25. In Doner-Hendrick v. New York Institute of Technology, Henrietta Doner-Hendrick, a multiracial Filipina American, brought a discrimination claim which survived the employer’s motion to dismiss. Id. The court found there could be an inference of race discrimination from Doner’s termination because Kouroulis, a Caucasian, was treated more favorably after her comparable demonstration of explicit religious intolerance. Id. This case again illustrates the common theme of nonwhite bias. Id. at 26.
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The Search for Comparators

The chapter next addresses that multi-racial identity scholars are primarily concerned with a judicial overemphasis on blackness and the need for a comparator. Id. at 26. Comparators are not required in anti-discrimination laws, but courts tend to look for proof that members of other races similarly situated to the complainant were treated better than the complainant solely because of race. Id. However, this issue is not unique to multiracials, the requirement for a comparator is a problem shared by all racial groups in all antidiscrimination cases. Id. at 26-27.

The chapter then provides an example of the problem with the need for a comparator. Id. at 27. In Doyle v. Denver Dep’t of Human Services, Celeste Doyle (a biracial African American and Hispanic) probationary employee brought hostile work environment claim against her former employer. Id. Doyle provided evidence of racial incidents and remarks made by her co-workers, for instance, that DDHS only hires “monkeys and niggers.” Id. Other co-workers also referred to Doyle as “nigger”, “hispanigger” and “spic.” Id. This demonstrates a bias against non-whites not necessarily anti-mixture bias per se. Id. The court found she failed to show that similarly situated non-minority employees were treated more favorably because two of Doyle’s white coworkers were fired near when she was. Id. This shows the apparent limitations of the comparator approach because it overlooks the fact that a minority employee could be fired for discriminatory reasons at the same time a white employee was fired for legitimate ones. Id. at 27. This case shows that the that the comparator approach is an issue for all racial discrimination claims and that the outcome was not complicated by her multiracial identity. Id. at 28.

The chapter then gives one rare example of a judge rejecting the comparator analysis. Id. at 28. In 1994, in Walker v. Colorado, a judge categorically objected to limiting the comparator analysis to a white vs. nonwhite comparison. Id. George Walker identified himself as a “multiracial person of black, Native American, Jewish, and Anglo Descent” and alleged that he was not hired at the University of Colorado because of his race. Id. The court decided that multiracial person can be considered as part of each of the protected groups with which they have significant identification because the Court felt that a unique class of multiracial persons would be impracticable and be limiting, especially if someone has a unique racial makeup. Id. at 28-29.

The chapter then examines the multiracial-identity scholar concern with this case and raises a few of its own. Id. at 29. The multiracial-identity scholar’s express concern because such a claim would be difficult to prove because of the comparator analysis. Id. For example, Walker might have to find an employee who was not either black, Native American, Jewish, or white and show they were treated better than him under similar circumstances. Id. However, the Court was careful to say that a black person being selected instead of Walker would not automatically defeat his claim. Id. In the end, the case was dismissed because the University had limited applications to current employees and this was deemed nondiscriminatory. Id
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The chapter then looks to this court’s subsequent decisions to counter the troubling language of Walker and what caused this shift in thought. Id. at 29. After the original decision, in 2007 Walker applied as President of University and indicated his multi-raceted racial makeup on his application. Id. A Caucasian was hired instead of him. Id. The court in 2010 said there was no dispute that Walker belongs to a protected class. Id. However, Walker failed to provide evidence that he was qualified for the position, so his claim was dismissed. Id. Therefore, this one out of step case appears to have been overruled by a subsequent decision. Id. This shift could have been because of a general trend of exposure to mixed race public figures like Barack Obama. Id. at 30.

Multiracial Discrimination within African American Race and Color Discrimination

The chapter then discusses how discrimination can happen within the African American population, primarily on the basis of skin color. Id. at 30. Skin tone can cause animosity among minorities within a company. Id. Contemporary claims regarding African American agents of Discrimination are rooted in historical anxiety. Id. The resemblance to whiteness will be accompanied by color bias in the African American community. Id. at 30-31. This form of discrimination is in not new, and it is based on the color of skin, which is controlled by many factors outside racial mixing. Id. at 31. Courts have been receptive to this form of discrimination when it is a multiracial versus African American colorism claims. Id. The first case to recognize this was a light skinned mixed race employee alleging bias on the part of her darker-skinned black supervisor. Id. The decision is a reversal of the prevailing trend of bias from light-skinned directed towards dark-skinned employees. Id. Dark skin tone has been documented to be often more determinative of hiring practices for African Americans than academic credentials. Id. When presented with prospective employee profiles that are identical besides pictures showing a difference in skin tone, there is a preference for lighter-skinned candidates. Id. A light-skinned black male can have only a bachelor’s degree and entry-level work experience and still be preferred of a darker skinned black man with an MBA and managerial experience. Id. This same trend is demonstrated in sentencing outcomes; dark-skinned first-time offenders receive longer sentences for the same crimes than their lighter skinned black counterparts. Id. This preference is also demonstrated in the hiring practices for actors, television and news personnel, and tenure-track university professors. Id. at 31-32. Light-skin color preference has all been document in immigrant workforce hiring, and color biases also manifest themselves in the allocation of wages. Id. at 32. Darker skinned labor force participants are even more prone to employment discrimination in some studies. Id.
The chapter then examines an extreme case of a multiracial confronting skin color bias. Id. at 32. In the 2011 case Graves v. District of Columbia, Stephen Graves (Native American, black, and white) filed a hostile work environment claim against the District of Columbia fire and emergency services department. Id. Graves described 81 racially charged incidents that took place during his twenty-year employment. Id. Coworkers called him “High Yellow,” “Light Brown Wanna-be White,” “White Boy,” and “red.” Id. They said he thought he was too good to be black. Id. A fire chief disparaged Graves for being friends with white employees. Id. His coworkers repeatedly commented on the color of his eyes skin and hair. Id. Battalion fire chief told Graves that people disliked him because of his skin color and that he “would not have problems” if he were dark-skinned. Id. Even the workplace equal employment opportunity officer would not help him because Graves “was in with the white boys.” Id. In another incident, Graves told a firefighter he could not wash his car at the fire station while off duty. Id. The firefighter responded, “fuck you faggot mother fucker, fucking white bitch can’t tell me shit” and spat in Graves’ face. Id. An African American EMT questioned Graves’ heritage and verbally abused him eventually culminating in her slapping him in the face. Id. None of this confused the court as to the nature of the discrimination Graves experienced, and he was awarded fifty-thousand dollars in compensation. Id. at 33.

The chapter then focuses on a case that demonstrates a court making a substantive inquiry into colorism allegations. Id. at 33. In Kendall v. Urban League of Flint, Jamie Kendall (biracial black/white) was denied a job as CEO of the Urban League of Flint (ULF) because ULF’s board of directors’ Chairperson Valaria Conorly-Moon “did not believe Kendall was ‘black enough’ for the job.” Id. She lost by a vote of the board 8-6 to a black candidate. Id. Since Moon did not provide the deciding vote, Kendall would have to prove that Moon had influenced at least one other member of the board. Id. at 33-34. Kendall did not provide evidence that Moon influenced the votes of any of the other board members, so the case was dismissed. Id. at 34.

The chapter then contrasts the courts’ clarity with regards to multiracial claims with their confusion concerning race and color claims brought by black ethnics against employers with African American supervisors. Id. at 34. Taunya Lovell Banks’ research shows that black ethnics are treated by courts as the same racial category as African Americans because the courts assume a racial commonality that erases skin color bias. Id. at 34-35. Courts presume that an employer replacing a black ethnic with an African American is not an instance of actionable discrimination; the same for when racial slurs are directed only at black ethnic employees. Id. at 35. When a multiracial status is not claimed, people of any African ancestry are pigeon-holed into the same racial category. Id. Courts treat multiracials as separate from African Americans, which is the very treatment many mixed-identity scholars have indicated is missing from our case law. Id.
Multiracial Discrimination as Genuine Mixed-Race Discrimination

In the 2010 case Nash v. Palm Beach County School District, Che Nash (a black/white biracial) complainant, brought a hostile work environment claim and individual racial discrimination claim against the school district. Nash was a P.E. Teacher at a high school in Boca Raton, Florida. He alleged that the school principal made a racist comment to Bash during a staff Thanksgiving luncheon, asking if Nash wanted “white or dark meat because I know you are a little of both.” Eventually Nash was told he was going to be reassigned, but instead, he decided to resign. The court’s analysis focusing on multiracial discrimination may have worked against Nash by preventing a more robust inquiry into nonwhite discrimination. Nash was the target of this type of discrimination on multiple occasions; with white teachers and athletic staff being given preferential treatment over Nash and his black counterparts. This court did precisely what multiracial-identity scholars want – focused on Nash’s personal multiracial identity, but this resulting in the court overlooking the nonwhite bias in this workplace an eventual dismissal of the case.

The chapter then summarizes this chapter’s findings. The existing cases display no confusion in the administration of multiracial claimant cases. The courts apply the correct antidiscrimination legal standards, and the cases fail to provide support for the idea that multiracial claims are not adequately addressed. The EEOC’s adjudications follow the same trend. Multiracial-identity scholars may still believe there needs to be reform because of a nonrecognition of personal racial identity. This idea is further elaborated upon in chapter 6 and contextually in the following chapters.
DISCUSSION QUESTIONS

1. What do multiracial identity scholars believe is problematic with the current judicial analysis of multiracial discrimination claims?

Ex. Richmond v. General Nutrition Centers, Inc -- Multiracial-identity scholars feel this is an example of a multiracial being treated exclusively as black by the legal system. But this did not hurt his legal case because he claimed he was treated poorly because of his black ancestry, not his biracial identity. If anything, his biracialism was at times a mitigating factor; GNC was a workplace that rewarded whiteness and penalized blackness. Multiracial-identity scholars do not present clearly how Hattimore would have benefited from the court treating him as solely biracial instead of part of a group of black employees. Id. at 21.

2. Should multiracial allegations of discrimination at the hands of other non-whites be treated differently than those originating from white aggressors?

The cases suggest that the cases are still about white supremacy and thus share the same root causes. Id. at 30-33.

3. What may be the disadvantage of courts analyzing multiracial claims as unique and distinct from other nonwhite claims of discrimination?

Courts can be hindered in locating the source of discrimination and wrongly conclude that no discrimination occurred at all. Ex. Nash case Id. at 35

4. What makes workplace harassment claims more challenging to bring?

Example -- In Smith v. CA there was a hostile work environment claim. For an employer to be liable for a hostile work environment the treatment must be sufficiently severe or pervasive “to alter the conditions of his employment” and if the employer was negligent in controlling the work conditions and responding to internal complaints of harassment. Id. at 22.
CHAPTER 3: MULTIRACIAL DISCRIMINATION IN EDUCATION

Abstract

Because the educational context was the site where the movement for multiracial identity recognition was launched, one might expect the school environment to have the clearest articulation of the contours of multiracial discrimination. Yet like all the civil rights areas discussed in the previous chapters, the multiracial complainants of racial discrimination in school settings raise concerns about being treated differently to white students based upon their non-white status rather than their mixed-race status. One paradigmatic case (of the several I will discuss in the chapter) is of a biracial high school student in La Plata, Missouri alleging in 2005 that she was not afforded the same educational opportunities as white students, was disciplined in a discriminatory fashion, and was racially harassed by white students. In short, the educational context is yet another civil rights area where self-identified multiracial complainants give voice to the continued relevance of a white/non-white racial binary of discrimination rather than the development of a unique mixed-race form of discrimination.
Detailed Summary

The chapter starts with the background for discrimination in educational settings and how the same trends as seen in other contexts are present here as well. Id. at 39. Education was where multiracial identity recognition was first launched. Id. In the 1980’s public school were ground zero for the creation of a multiracial identity category which was included in all school data forms. Id. Still, the multiracial complainants of racial discrimination in school settings raise the same concern as in other contexts. Id. The chapter explains the relevant civil rights statute. Id. at 41. Title VI of the Civil Rights Act of 1964 prohibits race and national origin discrimination in any program that receives federal funding; most schools are subject to this because they receive federal funding. Id. at 41-42. A school can be liable when it knows about and ignores the peer harassment of a student. Id. at 42. However, Title VI only provides for legal relief for school racial harassment where school districts have been “Deliberately indifferent” in responding to student reports of harassment. Id.

The chapter also provides an example of how blackness is implicated in cases even when the claimant has not identified any African ancestry. Id. at 39. When Anthony Zeno (biracial white/latino), a 16-year old student, arrived for his freshman year at SMHS in Pine Plains, New York he did not expect that his fellow students would harass him continuously for the next three and a half years because of his perceived African ancestry. Id. at 39-40. SMHS was predominantly white, but it was located in a town where more Latinos and multiracial persons resided than African Americans. Id. at 40. Anthony’s black appearance is what made him vulnerable to discrimination. Id. Anthony was not safe anywhere in the school, and the harassment was not only targeted at him, some students even threatened to rape his sister. Id. at 40-41. Eventually, Anthony chose to receive an alternative diploma, instead of graduating at SMHS. Id. This alternative diploma was not accepted at most traditional colleges. Id. The Court awarded Anthony one million dollars in his discrimination suit against the school and throughout the proceedings there did not appear to be any confusion because of his biracial background. Id.

The book next gives a few additional examples of biracial claimants to demonstrate a lack of legal confusion regarding multiracial identity, one example follows. Id. at 42-47. R.L. was identified by his mother as “biracial” but in school records his mother indicated he was “white.” Id. at 46. R.L. himself said that at 16 he identified as white. Id. However, the court gave no weight to the school principal’s assertion that the school did not consider R.L. to be a minority student. Id. R.L. Lost the lawsuit because of a lack of evidence, not because of any judicial resistance to even his biracial identity claims. Id. at 47.
White Privilege:

The chapter then discusses how courts are even more receptive to the assertions of multiracial identity in discrimination cases when the harm being raised is more accurately categorized as a concern with preserving a sense of white privilege. Id. at 47. Feminist scholar Peggy McIntosh has famously described white privilege as “an invisible package of unearned assets which [one] can count on cashing in each day, but about which [one] was meant to remain oblivious.” Id. Whiteness is not a race, but a norm against which other groups are contrasted. Id. Being presumed to be of a particular race immediately reveals that another person views you as that race, but this does not rise to the tangible harm required by antidiscrimination law. Id. at 48-9.

The chapter then gives the example of Bethany Godby (biracial white/black), a student at Cloverdale high school, was barred from running as the white homecoming queen. Id. at 49. The school had both a white and black homecoming queen since the 1960’s to smooth the transition with school integration. Id. The school was 91 percent black and 9 percent non-black. Id. She ran as the white nominee, but she claimed she was not present on the schoolwide ballot because “biracial and multiracial students are not given equal opportunities at Cloverdale.” Id. at 50. It was unclear what exactly she was claiming; Did she want her name back on the ballot? Did she want the system dismantled? Did she want a separate biracial category? Id. at 51. Before this could be clarified, Bethany settled her claim. Id. It is unclear if Bethany was pursuing white privilege or instead was distressed with being discriminated against as nonwhite. Id. As of 2012, segregated homecoming court elections were discontinued in Alabama. Id.

The chapter then points out the prevailing trend of personal identity fluidity and white/nonwhite discrimination in the education context as well. Id. at 51. These cases are not misunderstood by judges as they apply traditional antidiscrimination legal doctrines. Id. The white/nonwhite binary is underscored by the racial isolation felt by many biracial students in predominantly white settings. Id.

The chapter then provides example of Brian Shelton, who was the black father of a biracial daughter with his former white spouse. Id. at 51-52. He filed a lawsuit seeking to prevent his daughter from being the only student of color in an exercise exploring explosive racial issues, including the use of the word “nigger.” Id. at 52. He opposed the enhanced potential for harm to his daughter because she was the only nonwhite student in the classroom during discussions of very contested racial issues. Id. The school refused to let Margaret opt out of the unit, which was the impetus for Brian filing his lawsuit seeking her removal from the class itself. Id. The case was dismissed because Brian did not have custody, and also failed to identify how the school had intended to discriminate. Id. at 53.
DISCUSSION QUESTIONS

1. What is the civil rights statute applicable to an educational setting, and what does it actually cover?

   The Title VI of the Civil Rights Act of 1964 prohibits race and national origin discrimination in any program that receives federal funding. This includes schools because almost all schools receive federal funding. Id. at 41-42.

2. Have you experienced or witnessed discrimination in the school context?

3. Were those experiences distinct in nature from the multiracial claims recounted in the chapter?

4. What apart from freedom of discrimination are some multiracial claimants seemingly seeking?

   White privilege. See example of Godby segregated prom election dispute. Id. at 49.

5. How does the book define white privilege and whiteness?

   White privilege is “an invisible package of unearned assets which [one] can count on cashing in each day, but about which [one] was meant to remain obvious.”. Whiteness is not actually a race, but a norm which other races are contrasts against. Id. at 47.
Abstract

Distinctive from the context of workplace discrimination where multi-racial complainants articulate their own legal complaints, the housing context is characterized by an absence of such direct complaints. The issue of multiraciality in housing discrimination is instead raised by partners in interracial marriages with multiracial children. Yet, like in the employment context discussed in Chapter 2, the content of the complaints are focused on the hostility with non-whiteness and blackness in particular (as all but one case encompassed non-black racial groups). One paradigmatic case (of the several discussed in the chapter) is of a white mother’s challenge to a 2003 eviction in Ohio based upon the landlord’s expressed prejudice against her two biracial sons of white and black ancestry. The landlord expressed concern that “two black boys” lived with the complainant and stated “I don’t want your money, I want your . . . niggers out of my house.” While the mother may have described her sons’ personal racial identities as biracial, the discrimination she described was rooted in societal anti-black bias.
Detailed Summary

The chapter addresses housing discrimination first because it is considered so important. “Public accommodations” are facilities that are open to the public and therefore regulated to ensure equal access by all. Id. at 54. Housing is considered a form of public accommodation so fundamental that it has its own specific laws and enforcement structure. Id.

Housing Discrimination

This section begins by discussing the normative and legal background surrounding housing discrimination claims. Id. at 54. Typically, these claims are raised by the parents of multiracial children. Id. The primary law for this form of discrimination is the Fair Housing Act (FHA) of 1968. Id. It was passed in response to race riots in the 1960s which were rooted in residential segregation and the racial makeup of poverty. Id. at 54-55. The purpose of the FHA was to further “the goal of open, integrated residential housing patterns and to prevent the increase of segregation.” Id. at 55. Section 3604 and 3605 of the act make it unlawful to discriminate against a person in a residential real estate transaction on the basis of that person’s inclusion in a protected class. Id. There are three enforcement methods; administrative enforcement by the U.S. Department of Housing and Urban Development (HUD), federal litigation, or private litigation. Id. There has been an extensive expansion of covered claims, but claims in a multiracial context are typically individual claims of intentional discrimination against families that allege discrimination in the condition of their rental property. Id.

The chapter then goes on to describe the only housing discrimination case with actual anti-mixture bias. Id. at 55. A white supremacist group, ALPHA HQ, harassed a white female fair housing specialist employee, Bonnie Jouhuri, and her biracial daughter, Pilar, from 1998-2000. Id. at 55-56. The Administrative Law Judge (ALJ) ordered ALPHA HQ to pay Bonnie and Pilar combined over 1 million dollars for the disruption of their lives and emotional damage. Id. at 57. The ALJ recognized the white supremacist discrimination Pilar experienced from being targeted as a “mongrel” and authorized that she obtain full compensation, so it is difficult to see the need for law reform in the vein of multiracial recognition. Id.

The chapter then shows that most housing discrimination cases fail to demonstrate any antimixture sentiment; most of these cases are brought by white relatives of multiracial children. Id. at 58. All of the cases in this chapter resulted in a favorable judgment for the claimant, except for one that was time-barred. Id. There is also again the trend of anti-black bias, with courts repeatedly having no issue articulating and recognizing multiracial identity in the way multiracial-identity scholars desire. Id. at 60, 62, 63. This anti-black bias in multiracial exclusion does not shift even in more diverse cities such as Chicago. Id. at 62. Even when nonwhites are the majority in the area, the housing discrimination multiracial claimants describe pertains to the adverse reactions to nonwhiteness rather than racial mixture per se. Id. at 64.
The only reported case in which a multiracial racial discrimination claim did not succeed was one where the claimant failed to offer any evidence of the alleged discrimination. Id. at 65. The other was a case where the court administratively was barred from considering the claim because the complaint was not filed by the statute of limitations deadline. Id.

The chapter concludes that the housing context again shows discrimination focused on the hostility with nonwhiteness and blackness in particular, not the particularities of a distinctive anti-mixture animus and provides a very extreme example. Id. at 65. The housing context shows the great extent to which multiracial claimants experience historic white versus nonwhite discrimination. Id. at 66. In 2006, Nathaniel Reed (biracial black/white) had his mobile home vandalized with extremely offensive graffiti and eventually set on fire. Id. This case had the hallmarks of a white supremacist conspiracy, and the U.S. Department of Justice charged them for the federal crime of conspiring and using threats and intimidation to interfere with the constitutional right to occupy real property without injury. Id. The assailants plead guilty and were sentenced to forty-two months followed by three years of supervised release and had to pay $35,509 in restitution. Id. Nathaniel’s white identity did not matter; the assailants only cared about Nathaniel being nonwhite. Id.

Public Accommodations Discrimination

This section begins by admitting that there are not many examples of multiracial complainants in this area of the law and gives background into the legal standards. Id. at 67. This is possibly because the personal racial identity of the complainant is not known and the bias is typically based solely upon physical perception in ways that diminish the salience of personal identity. Id. All people in this context are targeted in the same way; based on their physical appearance. Id. The Civil Rights Act of 1866 first prohibited discrimination in public accommodations, “all persons . . . shall have the same right in every State and Territory, to make and enforce contracts . . . as is enjoyed by white citizens.” Id. It was passed to bolster the Thirteen amendment to the Constitution, which abolished slavery, by ensuring that newly freed slaves would not be restricted from full engagement in civic society and commerce. Id. A claim in this context is open to claimants of any race because it is based on whether someone was treated differently from those identified solely as white. Id. at 67-68. The Supreme Court has even interpreted the statute to prohibit discrimination against whites as well. Id. at 68.

The chapter then describes Title II of the 1964 Civil Rights Act and its enforcement mechanisms. Id. at 68. Title II guarantees a right “to full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation . . . without discrimination . . . on the ground of race, color, religion, or national origin.” (42 U.S.C. §§ 2000a et seq.). Id. Title II authorizes the US Department of Justice (DOJ) to bring a lawsuit when there is a reason to believe that a person has engaged in a pattern or practice of public accommodations discrimination. Id.
This allows the DOJ to use its resources to address large-scale public accommodation discrimination and therefore allows for greater institutional reforms, but the DOJ has yet to exercise this power in the context of allegations of multiracial discrimination. Id.

The chapter then gives some examples of the few multiracial public accommodation cases. Id. at 68. Walter Jefferson alleged that the municipal Fremont Tennis Center (FTC) in Fremont, California discriminated against him in 2009 because he was a biracial minority and African American tennis captain. Id. The FTC supervisor knew that an employee called him a “Black Bastard” and prohibited him and other minority tennis captains from being able to reserve and use the public tennis courts for their team, “You people are always complaining.” Id. at 68-69. Walter’s claim was dismissed because of a lack of evidence supporting discrimination and also evidence provided by FTC that Walter chronically failed to follow the FTC rules. Id. at 69.

Again, the issue for the court was evidentiary and had nothing to do with Walter’s biracial background. Id. Even when claimants do not have an attorney, and therefore risk a misstep when articulating their legal claim, courts have shown a receptivity to multiracial claims. Id. Aretha Brown filed a pro se claim in 2014 because she felt she was discriminated against because of her biracial background. Id. at 70. The court gave her multiple extensions and treated her claim with the utmost respect, only finally dismissing the case 2 years later. Id. at 70-71.

Furthermore, Courts give due consideration even when multiracial identity is tangential to the discrimination alleged. Id. at 71. Angela and Johnny are parents who filed a claim against the Harrisburg Soccer Club of Harrisburg, Pennsylvania, on behalf of their ten-year-old “mixed race” daughter Johnae Robinson in 2007. Id. The original behavior complained about was that Erik Hicks, the Harrisburg Soccer Club (HSC) president, said, “We’re going to kick those white girls’ butts” when referring to their opponents. Id. Due to the conflict between the parents and the HSC, Johnae was suspended. Id. The Robinsons tried to have the suspension overturned by the HSC and when that failed they filed a discrimination lawsuit that Johnae would not have been suspended but for her mixed race status and the interracial composition of her family. Id. at 73. Hicks comment was not found sufficiently derogatory to qualify as an unlawful treatment based on discrimination, and the case was dismissed. Id. at 73-74. Racial identification without some differential treatment is not legally equivalent to discrimination. Id. at 74.
1. How does the law prohibit housing discrimination?

The primary law for this form of discrimination is the Fair Housing Act of 1968. The two relevant sections are 3604 and 3605, which make it unlawful to discriminate against a person in a residential real estate transaction on the basis of that person’s inclusion in a protected class. The three enforcement methods are administrative enforcement by the U.S. Department of Housing and Urban Development, federal litigation, or private litigation.

2. Who are the people who typically raise multiracial housing discrimination claims and in what context?

The white parents of multiracial children typically raise multiracial housing discrimination claims and these claims are usually for intentional discrimination against families that allege discrimination in the condition of their rental property. Id. at 54.

3. In your view, are the discrimination claims of white relatives of multiracials distinctive in nature than those raised by multiracials themselves?

4. What is the source of the discrimination exemplified in the housing context, for multiracials?

The discrimination in the housing context exemplifies hostility with nonwhiteness and blackness in particular. There does not appear to be anti-mixture discrimination or hostility. Id. at 65.

5. What might account for the minimal number of public accommodations cases filed by multiracial-identified claimants?

People are targeted based off their physical appearance in public accommodations discrimination while their personal identities are usually unknown. Id. at 67.
6. How does the law prohibit public accommodations discrimination?

The Civil Rights Act of 1866 first prohibited discrimination in public accommodations, “all persons . . . shall have the same right in every State and Territory, to make and enforce contracts . . . as is enjoyed by white citizens.” It was passed to bolster the Thirteen amendment, which abolished slavery, by ensuring that newly freed slaves would not be restricted from full engagement in civic society and commerce. A claim in this context is open to any claimants because it is based on whether someone was treated differently from those identified solely as white. The Supreme Court has even interpreted the statute to prohibit discrimination against whites as well.

Title II of the 1964 Civil Rights Act guarantees a right “to full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation . . . without discrimination . . . on the ground of race, color, religion, or national origin.” (42 U.S.C. §§ 2000a et seq.). Title II authorizes the US Department of Justice (DOJ) to bring a lawsuit when there is a reason to believe that a person has engaged in a pattern or practice of public accommodations discrimination. This allows the DOJ to use its resources to address large-scale public accommodation discrimination and therefore allows for greater institutional reforms, but the DOJ has yet to exercise this power in the context of allegations of multiracial discrimination. Id. at 67-68.

7. What do the case studies show with regards to multiracial discrimination in public accommodations?

The courts have shown a receptivity to multiracial claims in this context. There does not appear to be any judicial confusion. Id. at 69.
Abstract

When mixed-race persons are removed from society because they have either been arrested or convicted of a criminal offense, the criminal justice system they enter is not devoid of racial hierarchy. In fact, there are ways in which the criminal justice system is even more explicitly racially stratified with whites as the bulk of law enforcement officers and non-whites as the disproportionate portion of arrestees and inmates. Ninety percent of those admitted to prison for drug offenses in many states are black and/or Latino, and convictions for drug offenses have been identified as the single most important cause of the explosion in incarceration rates in the United States. It is thus noteworthy to observe that mixed-race arrestees and prisoners describe their experiences of discrimination in ways that parallel the white versus non-white binary found in all other multiracial discrimination contexts.
Detailed Summary

The chapter begins by explaining that the criminal justice system treatment of minority or mixed-race individuals parallels the white/nonwhite binary seen in other discriminatory situations as well as the statute used to bring discriminatory claims in this context. Id. at 76. There are ways in which the criminal justice system is more obviously racially stratified since whites make up the bulk of law enforcement officers and nonwhites a disproportionate number of arrestees and inmates. Id. Therefore it is essential to see that mixed-race arrestees and prisoners describe their experiences of discrimination in a way that parallels the white versus nonwhite binary found in all other multiracial discrimination contexts. Id.

The claims in the chapter were brought under Title 42 USC § 1983, which allows claimants to assert civil claims against state actors who deprive them of their constitutional and federal rights. Id. at 76. These rights include the Constitution’s Fourteenth Amendment Equal Protection Clause sanction against racial discrimination, the Fourth Amendment prohibition against unreasonable searches and seizures, and the Eighth Amendment protection against cruel and unusual punishment. Id.

Interactions with Law Enforcement

This section demonstrates how multiracials are subject to the same bias as all nonwhites in interactions with law enforcement. Id. at 77. An example is the excessive force case of Brian and Derek Patterson (biracials of African descent) against five white officers from the city of Akron police department. Id. They went out to a local bar and were out on the sidewalk mingling with several hundred people. Id at 78. Brian was sitting on a police cruiser, told by an officer to get off of the cruiser, which he did but then proceeded to lean on the cruiser a few minutes later. Id. There was conflicting testimony about what happened next, but it was undisputed that the police used force, including tasers, to subdue Brian. Id. When Derek saw this, he attempted to run to his brother but was tackled and was also tased five times after being handcuffed Id. at 78-79. This case demonstrates an inherent police suspicion of nonwhite persons, regardless of their mixed race status as the boys were biracial with African descent. Id. at 79. Eventually, the brothers were able to get a settlement agreement, which is a rare occurrence for excessive force claims against the police. Id.
The chapter then gives another example of a multiracial experience with law enforcement. Id. at 79. On February 5, 2006, Club Retro, a recently opened nightclub in Alexandria, Louisiana was targeting for a preplanned, violent SWAT team raid. Id. at 79-80. This raid was done without a warrant, probable cause, or exigent circumstances. Id. at 80. Many of the patrons and even the club owners suffered physical abuse from the police. Id. They detained the patrons and employees for roughly 5 hours and denied them access to restrooms. Id. They broke into an adjoining apartment and brought in Lyle’s minor child to the bar and took a photo of her there, after which they arrested the child’s mother, Erica for child endangerment. Id. at 81. They also threatened her with sexual assault. Id. Lyle and Dar Doublet (biracials of Creole heritage), the owners of Club Retro, were also taken into custody. Id. Lyle and Dar filed a civil rights action against several officers claiming, among other things, unlawful search and seizure, false arrest, and equal protection violations. Id. Their mixed race, creole, background did not alter how all nonwhite claimants experience antidiscrimination law as imposing unrealistic demands for evidence of explicit statements regarding intent and the necessity of an exacting comparison. Id. at 82. Overall, the mixed-race identity of Lyle and Dar did not confuse the court or lead it to misapply any doctrine. Id. In this instance, again the claimants were able to get a settlement from the police. Id.

The chapter also points out that even when police officers conduct themselves with the best of intentions, the racism of the people reporting crimes can often ensnare innocent nonwhite persons in the criminal justice system. Id. at 83. Harvard University professor Henry Louis Gates Jr. was subjected to this when his neighbor saw Gates struggled to enter his own home. Id. The neighbor reported this to the police and Gates was arrested for disorderly conduct. Id. The chapter provides a case study of a multiracial claimant experiencing the same dynamic. Id. at 83-84.

In summary, multiracial persons can be targeted for police interrogation on the basis of their racial appearance, just as many other nonwhites are on a daily basis. Id. at 84. These findings parallel interviews with multiracial persons regarding treatment by police officers. Id. at 84-85. Mixed-race identity does not seem to impact bias regarding the presumed criminality of those viewed as nonwhite. Id. at 85.
Life inside Correctional Facilities

This section begins by discussing the racialization in many prisons through a few examples. Id. at 85. Many prisons still are racially segregated because of a supposed compelling state interest in the need for proper prison administration. Id. Jared M. Villery, Creole (black/white from Louisiana), was a prison in Kern Valley State Prison in California in 2007. Id. He was attacked by two white prisoners who stabbed him in the back and kicked and punched him in the yard. Id. Only white inmates were allowed in the yard because of previous assaults among the black and Hispanic inmates. Id. Jared had asked not to be classified as white, fearing what the white inmates might do to him because of his mixed heritage. Id. at 85-86. The Prison did not comply with his request. Id. at 86. Jared sued the California Department of Corrections for their deliberate indifference to his safety and thereby exposed him to cruel and unusual punishment in violation of the Eighth Amendment to the Constitution. Id. Despite the situation, Jared’s claim failed because there is a very high standard of proof for cruel and unusual punishment; this single attack in the prison yard was in the court’s view an isolated incident insufficient to meet that standard. Id.

The chapter moves on to explain the legal standard of housing segregation in prison and why it can be a big problem. Id. at 86. The standard of evidence is very low for the administration for imposing housing segregation Id. at 86-87. This segregation extends so far as to put members of rival gangs in the same area based solely on race. Id. at 87. Harvey Byrum Jr. was a victim of just this type of fixation on racial segregation. Id. at 87. Harvey was a mixed race inmate of Hispanic descent at California Rehabilitation Center (CRC) in Norco, California where inmates were housed in sections according to race. Id. He was housed with people of his racial background, but of a rival gang. Id. The first night there, he was jumped and sent to the hospital. Id. The court asked Harvey to file an amended complaint, but he never did, and the case was dismissed after five months. Id. at 87-88.

The chapter then demonstrates that racial segregation that adversely affects multiracial inmates also occurs in prisoner employment. Id. at 88. John Willis Richard was a “Multiracial, Muslim” inmate of African Descent at Five Points Correctional Facility in Romulus, New York. Id. He was denied employment in a section of the prison outside of his cell block in 2007. Id. Other inmates in his cell block were allowed to have positions outside of the cell block, and when John asked about it, the Correctional Officer (CO) denigrated his Black and Muslim background. Id. John refused to take the grounds position he was assigned to in his cell block and filed an internal grievance to which another CO Tanea issued a disciplinary report, and he was given 90 days solitary confinement. Id. John filed a Fourteenth Amendment equal protection lawsuit and a court validated that he had sufficiently stated a claim based on his mixed-race status and religion. Id.
Furthermore, the chapter shows that even “race neutral” prison spaces can be policed as racially exclusionary by COs. Id. at 89. Michael Cannon (Mixed race African American) was a prison at Stateville Correctional Center in Joliet, Illinois. Id. Michael endured racial discrimination from 1997-98 from many COs, CO Burkybile in particular. Id. Burkybile prevented Michael from using the prison law library and searched Michael once without searching a white inmate entering the law library. Id. He called Michael a half breed on multiple occasions. Id. When Michael filed a grievance against Burkybile, other COs began withholding his mail, not giving him a razor, disrupted his Muslim prayer time, and did not give him toilet paper. Id. The judge found the testimony of Michael and his fellow inmates persuasive in supporting his allegations of mixed race discrimination. Id. The case was settled in 2003 and Michael was transferred to a different correctional facility. Id. This case is held in high regard by multiracial scholars as the kind of explicit mixed-race analysis they prefer, but it expresses the same white/nonwhite binary as the cases they critique. Id. at 90. Especially since the court looked at how a white inmate was treated differently than Michael when entering the law library. Id. The only real difference is a facial one in that the judge referenced Michael’s mixed-race heritage. Id. It appears that multiple-race scholars want courts to recognize individual racial identity as a courtesy, not necessarily that antidiscrimination law needs to be reformed. Id.
1. How does the law prohibit discrimination in the criminal justice context?

The claims in the chapter were brought under Title 42 USC § 1983, which allows claimants to assert civil claims against state actors who deprive them of their constitutional and federal rights. These rights include the Constitution’s Fourteenth Amendment Equal Protection Clause sanction against racial discrimination, the Fourth Amendment prohibition against unreasonable searches and seizures, and the Eighth Amendment protection against cruel and unusual punishment. Id. at 76.

2. What has been the multiracial interaction with law enforcement compared with those of their “monoracial” counterparts?

Example -- the case of Brian and Derek Patterson. This case demonstrates that multiracials are subject to the same bias as their monoracial counterparts in interactions with law enforcement. The case shows an inherent suspicion of all nonwhite persons by law enforcement. Id. at 78-79.

3. How do the experiences of multiracial claimants parallel the racial incident of black Harvard University professor Henry Louis Gates Jr.?

Like with Professor Gates, multiracial experiences show that even when the police are not actively acting in a discriminatory fashion, discrimination can still be a factor because of the bias inherent in society and in the people reporting crimes. Id. at 83.

4. What can be more racially explosive about the prison context compared to outside of prisons?

Prisons are even more racially segregated because of a supposed compelling state interest in the need for proper prison administration. The standard of evidence is very low. Sometimes this racial segregation can lead to members of rival gangs being housed together and have drastic consequences. This is exemplified in the experiences of Harvey Byrum Jr. Id. at 85, 86-87, 87-88.
Abstract

This chapter will delve into the question of what fundamentally concerns multiracial-identity scholars about the discrimination cases despite the fact that the empirical record does not by and large show anti-mixture animus. For multiracial-identity scholars, the primary locus of multiracial discrimination is in any societal resistance to the assertion of multiracial identity. The chapter calls this “Personal Identity Equality” and discusses its dangers. This is because the exotification of racial mixture is something that is now being drawn upon to undermine the pursuit of racial equality public policies. Tracing the challenges to race-based affirmative action over the last ten years, this chapter will demonstrate the ways in which Supreme Court litigation has referred to the growth of mixed-race persons as undercutting the legitimacy of affirmative action policies. The chapter will also demonstrate the ways in which the Supreme Court affirmative action litigation references to mixed-race persons parallels the public discourse notion that the growth of multiracial identified persons signals the decline of racism. The chapter concludes by identifying how the association of multiracial identity with the decline of racism poses challenges to addressing the continuing discrimination against all non-white persons including those who are mixed-race.

Detailed Summary

The chapter begins by focusing on the analytical underpinning of the multiracial-identity scholar’s push for personal identity. Id. at 91. For multiracial-identity scholars, the primary locus of multiracial discrimination is societal resistance to personal multiracial identity. Id. The author refers to this as “Personal Identity Equality.” Id. Some psychologists say that even asking a multiracial person what their racial makeup is inherently racist and that not having a multiracial category is another form of invidious racism. Id.

The chapter explains that multiracial-identity scholars dislike that in many cases multiracial claimants are treated as monoracial as they feel this hides the animus against multiracials. Id. at 91. This stance does not specify how this harms the person’s ability to express a unique identity or the ability for judges to assess discrimination actions. Id. at 91-92. Antidiscrimination law focuses on how claimants are treated, not how they identify. Id. at 92. Even so, the empirical review of cases shows that judges are not only focused on the allegations of how claimants are treated but also are often very solicitous of their claims. Id. This is supported by the judicial record of many extensions in time, and the refusal to dismiss many of the claims in summary judgment. Id.
The book then references explicitly the beliefs of a few multiracial-identity scholars and why they are inconsistent with existing antidiscrimination laws. Id. at 92.

- Nancy Leong expresses concern about courts erasing multiracials’ personal identities when they refer to people as just black or African American. Id.
- Leora Eisenstadt’s thinks the law forces “employees into an unnatural and uncomfortable identity.” Id.
- Camile Gear Rich’s proposal for an “elective Race” ideological framework that provides a legal right to racial self-identification. Id.
- Tina Fernandez and Scott Rivas special “multiracial” category by adding it to the official list of categories protected by antidiscrimination laws. Id. This is a strange request considering that there is no specification of any particular racial groups in antidiscrimination laws. Id.

The chapter then explains that the multiracial-identity scholar focus on personal identity is very intertwined with the lobbying for a separate multiracial identity on data collection forms. Id. at 93. The bill of rights for Racially Mixed People reflects the idea that the right to personal identity defines equality. Id. “I have the right to identify myself differently than strangers expect me to identify. I have the right to identify myself differently than how my parents identify me. To identify myself differently than my brothers and sisters. To identify myself differently in different situations”. Id. Various scholars have noted this movement is about their personal issues and expresses an “individualist theory of justice.” Id. at 93-94.

The chapter then examines “What are you?” as a question that is emblematic of multiracial-specific discrimination and asks why an innocuous question like this is given so much emphasis by multiracial-identity scholars. Id. at 94. This is something that may create discomfort, but it has not been identified as a source of exclusion from opportunity. Id. Heather Dalmage interviewed multiracial-identified people and concluded that personal identity is so important to multiracial communities because “they are not facing life-threatening persecution.” Id. Often, multiracial respondents frequently report minimal experience with multiracial specific discrimination. Id. Surveys of multiracial students indicate that they identify significantly fewer instances of discrimination than monoracial students. Id. The book then cites various studies that suggest that phenotype and known black ancestry are stronger drivers of multiracial discrimination than actual mixed race status. Id.
The chapter then emphasizes how the movement is genuinely focused on the individual. The type of racial discrimination most frequently cited by multiracial people surveyed is that of being called a monoracial slur. Id. at 94. However, in sociologist Kimberly McClain Dacosta’s interviews all of the multiracial activists stated civil rights as the reason for their personal racial identity cause. Id. at 94-95. The agenda of these activists has been limited to vague declarations that multiracial recognition could somehow help reduce racial strife. Id. at 95. Political scientist Kim Williams interviewed every major leader of a multiracial-identity organization; she found that only 30 percent of the leaders reported that combating racism in their local communities was a priority for their group. Id. Jared Sexton further posits that the multiracial-activist dynamic reduces the political to the personal, without regard for defining racism. Id.

The chapter then compares Personal Identity Equality to other civil rights movements. Id. at 95. Personal Identity Equality is lacking because the identity concerns are not related to social hierarchy and group-based disparities. Id. This is in contrast with Feminism, which states that “personal is political” and connects unequal gender treatment across the public and private spheres. Id. Similarly, in the movement for recognition of transgender identity, the individual identity is not isolated from substantive group-based equality. Id. Personal Identity Equality takes an overly narrow view because it focuses on personal identity as the primary goal. Id.

The chapter then notes that Personal Identity Equality views the personal struggle with racial identity as unique to multiracials, which discounts the complexity of monoracial identity formation. Id. at 96. Studies of monoracial identity formation show it can be complicated as well. Id. People are not necessarily born black they become black; parents and the environment are essential in the formation of racial identity. Id. Experiences of systemic racial inequality also promote black identity. Id. Black identity is a social process that is complex and not merely genetically designated. Id. This holds true across other minority identities as well. Id. at 97. Personal Identity Equality overemphasizes the unique nature of multiracial identity because social research demonstrates that racial identity formation is not simple for other nonwhites. Id.

The chapter then elaborates on the Multiracial Category Movement (MCM) and how it accomplished the multiple selections of races we see today on the U.S. Census. Id. at 97. In the past two decades, there has been a move by the MCM to add a “multiracial” category on the U.S. Census. Id. The two aims of the MCM were tallying mixed-race persons acts as a barometer and promoter of racial harmony. Id. at 97-98. The U.S. Office of Management and Budget (OMB) in cooperation with the Minority Advisory Committee of the U.S. Census Bureau of the Census standardized the collection of racial data by all federal government agencies. Id. at 98. Those categories are American Indian or Alaskan Native, Asian or Pacific Islander, Black, White, or Other. Id. Hispanic Origin is an ethnicity question. Id.
These categories were instituted to meet the data collection obligations required by federal civil rights law. Id. Data is used to enforce civil rights laws against discrimination in employment, in selling and renting homes, and in the allocation of mortgages. Id. HUD also uses racial data to decide where to put low-income and public housing. Id. The census also can detect patterns of exclusion of specific racial groups. Id. at 98. The MCM was unsuccessful in adding a multiracial category, but it had significant support from conservative politicians like Newt Gingrich. Id. Eventually, on October 29, 1997, the OMB rejected the multiracial category in favor of allowing individuals to check more than one racial category. Id. at 99.

The chapter then discusses how some MCM proponents, such as project RACE president Susan Graham, do not support this decision because it does not directly promote a literal multiracial category. Id. at 99. These proponents continue to lobby for a multiracial category, and an OMB official indicated that the issue might be reconsidered as the mixed race population increases. Id. The MCM has successfully lobbied for a multiracial category on local data-collection forms in Florida, Georgia, Illinois, Indiana, Michigan, and Ohio. Id. Harvard’s applications for admission had a multiracial category for the 1992-93 academic year. Id. MCM’s efforts have most importantly fostered a discourse about personal racial identity and that this is in and of itself a civil rights issue, without any mixed-race-specific material inequality alleged. Id.

The chapter concludes that there is a severe disconnect between the multiracial-identity scholar critique of antidiscrimination law and that the laws seemingly effective address of multiracial discrimination. Id. at 100. The vast majority of multiracial discrimination claimants articulate a white/nonwhite binary discrimination rather than allegations rooted in actual anti-mixture bias. Id. Courts appropriately administer antidiscrimination law and courts appear to have no problem administering a few claims with actual anti-mixture allegations. Id. These points refute the multiracial-identity scholar critique of the judicial confusion about anti-mixture bias and the inadequacy of antidiscrimination law. Id. The emphasis on personal identity does not belong in a legal context because the type of discrimination experienced is demonstrative of the typical white/non-white binary we see in also all discrimination cases, regardless the personal racial identity. Id.
Rhetoric Has Consequences: Supreme Court Considerations of Personal Racial Identity Equality

The section begins by demonstrating an unwanted consequence of the Personal Identity Movement. Id. at 101. Opponents of affirmative action have drawn upon the lobby for multiracial identity as a justification for invalidating policies of racial inclusion. Id. In Gratz v. Bollinger and Grutter v. Bollinger, there was a challenge to the University of Michigan’s affirmative action policy. Id. The petitioner’s attorney articulated that because the nation is so diverse and increasingly interracial and multiracial, the government should treat everyone equally without preference; that the mere existence of mixed-race applicants underscores how “standardless” and, therefore, this form of affirmative action is unconstitutional. Id. The Supreme Court rejected the University of Michigan’s point-system version of affirmative action because it amounted to a quota. Id. at 101-102. The Court decided that affirmative action is constitutional when race was only one factor among many in holistic consideration of the applicant’s qualifications. Id. at 102.

The chapter then discusses how this trend has only gained momentum since this decision. Id. at 102. In Fisher v. Texas (Fisher I), the Court affirmed the process of considering race as a factor in school admissions but also narrowed the ability to use affirmative action by stating that whether a particular admission policy is narrowly tailored in pursuit of the goal of diversity. Id. In oral arguments, Chief Justice Roberts questioned how the admissions system accounts for an applicant of mixed race lineage who only checks the box for one of their races and that mixed-race applicants are a cause for generating skepticism about the integrity and ability of affirmative action to indeed achieve racial diversity. Id. at 102-103. In Fisher v. Texas (Fisher II), two other Supreme Court Justices joined Roberts in raising concerns about affirmative action in light of multiracial-identified applicants. Id. Justices Alito, Roberts, and Thomas dissented and declared the affirmative action program as faulty because of the emergence and growth of mixed-race persons. Id.

The chapter then provides some consequences of this attack on affirmative action. Id. at 104. Seven states have now banned race-based affirmative action at all public universities; California, Washington, Michigan, Nebraska, Arizona, and Oklahoma, Florida by executive order from Jeb Bush. Id. at 104. Both Justice Kennedy and Scalia leveraged multiracial identity to question race-conscious admissions programs. Id. at 104-105. However, they overlooked two factors; biracial attitudes about race policies issues are often influenced by their own experiences with racism and there is a group-based racial viewpoint that doesn’t disappear by virtue of a racially mixed background. Id. at 105-106.
The book then discusses why multiracial applicants are vulnerable to being harmed by affirmative action bans. Id. at 106. Rice University has almost as many mixed-race students as other minority groups. Id. On a national level, multiracials of African ancestry, in particular, are significantly overrepresented at selective higher education institutions. Id. Some universities stand out in particular; at Yale University about 54% of the black students in the freshman class of 2014 were multiracial. Id. at 107. Interview data with admissions officers at very selective schools shows that they view multiracial applicants as helpful at addressing the lack of diversity for whichever portion of their ancestry is most underrepresented. Id. Multiracial-identity scholars are concerned by this because this focus “minoritizes” multiracial students and forces them into a specific racial category. Id. at 107-108. However, this conflates the civil rights integration objectives of affirmative action with an individual’s freedom to form a personal identity. Id. at 108. The cases examined in this book illustrate the reality that mixed race persons are treated as basically nonwhite, regardless of their personal identity. Id. These findings are corroborated by related studies of identity and discrimination. Id. In a recent psychological study, respondents categorized individuals with mixed-race ancestry as nonwhite. Id. A sociological study found that nonwhite appearance was more predictive of discrimination than the respondents’ different personal mixed-race racial identities. Id.
DISCUSSION QUESTIONS

1. What is the primary equality question focus for multiracial-identity scholars and what is this called?

The primary focus is societal resistance to personal multiracial identity. This is called “Personal Identity Equality.” Id. at 91.

2. Is personal racial equality important for you? Why or why not? If so, when?

3. What is the book’s main criticism of Personal Identity Equality?

This focus on personal racial identity does not reflect the focus of antidiscrimination law, which is the treatment experienced by the claimants, not how they identify. Id. at 91.

4. What is the book’s criticism of some multiracial-identity scholars’ proposition of a multiracial category in antidiscrimination laws?

This is a strange request because antidiscrimination law does not operate with or for a specific list of racial groups. The laws are available for any person of any race that has been discriminated against “because of race” but not because of any particular racial affiliation. Id. at 92.

5. In your view, is being asked “what race are you or what are you” problematic or hurtful?

6. Is the question more charged for mixed-race individuals than those who do not personally identify with multiple races?

7. Should the concern with the question be relevant for antidiscrimination law?

Absence of material inequality from the posing the question makes it an inappropriate subject for anti-discrimination law.
8. What does the comparison between Personal Identity Equality and other civil rights movements reveal?

It reveals that Personal Identity Equality is purely focused on the individual, and not focused at all on social hierarchy and group-based disparities. Heather Dalmage interviewed multiracial-identified people and concluded that personal identity is so important to multiracial communities because “they are not facing life-threatening persecution.” Often, multiracial respondents frequently report minimal experience with multiracial specific discrimination. Surveys of multiracial students indicate that they identify significantly fewer instances of discrimination than monoracial students. This is a problem because this is something that may create discomfort, but it has not been identified as a source of exclusion from opportunity. Id. at 94-95.

9. Is the struggle with racial identity unique to multiracials? Can you recall ever searching for ways to racially identify or express your racial identity in ways that felt authentic to you but also signaled to others what that identity was?

The book critiques that Personal Identity Equality views personal struggle with racial identity as unique to multiracials, which discounts the complexity of monoracial identity formation. Studies of monoracial identity formation show it can be complicated as well. People are not necessarily born black they become black; parents and the environment are essential in the formation of racial identity. Experiences of systemic racial inequality also promote black identity. Black identity is a social process that is complex and not merely genetically designated. This holds true across other minority identities as well. Personal Identity Equality overemphasizes the unique nature of multiracial identity because social research demonstrates that racial identity formation is not simple for other nonwhites. Id. at 96

10. What is the disconnect between the multiracial-identity scholar Personal Racial Identity critique of antidiscrimination law and how the law actually operates for multiracials in the cases?

The vast majority of multiracial discrimination claimants articulate a white/non-white binary discrimination rather than allegations rooted in actual anti-mixture bias. Courts appropriately administer antidiscrimination law and courts appear to have no problem administering a few claims with actual anti-mixture allegations. Id. at 100.

11. What might be some of the unintended effects of the Personal Racial Identity movement upon the pursuit of racial equality?

Opponents of affirmative action have drawn upon the lobby for multiracial identity as a justification for invalidating policies of racial inclusion. This had led to the supreme court focusing on a more individual racial identity which has led to many states now removing affirmative action from state college admissions. Id. at 104
Abstract

This chapter will first summarize how the book’s review of multiracial discrimination cases reveals the enduring power of white privilege and the continued societal problem with non-whiteness in any form. Specifically, the cases illustrate the perspective that non-whiteness taints rather than the concern that racial mixture itself is worrisome. Yet this insight is lost in the midst of the multiracial-identity scholars’ singular focus on promoting mixed-race identity. Multiracial victims of discrimination will be better served by legal analyses that seek to elucidate the continued operation of white supremacy. Such a focus will also better serve all Equality Law and public policies. But this can only be done by shifting away from a focus on personal individual identity recognition to a focus on group based racial realities. The chapter concludes with a proposal for an explicit “socio-political race” lens for analyzing matters of discrimination rather than the Personal Identity Equality perspective that misapprehends the social significance of race in the assessment of equality problems. The book’s emphasis on a socio-political race perspective meaningfully preserves an individual’s ability to assert a varied personal identity, while providing a more effective tool for addressing racism and pursuing equality.
Detailed Summary

The chapter begins by observing that the cases reveal that multiracial claimants are not disadvantaged when raising claims of discrimination. Id. at 111. The cases also demonstrate the enduring power of white privilege and the continued societal problem with nonwhiteness. Id. In rare cases where racial mixture is directly targeted, traditional civil rights law has been applied without confusion. Id. All of this seems to be ignored by the singular focus of multiracial-identity scholars on personal racial identity. Id.

The chapter then argues that multiracial victims of discrimination would benefit from a focus on the binary between whiteness and nonwhiteness. Id. at 111. This focus will also preserve all antidiscrimination law and public policy, which is being challenged on the premise of multiracial exceptionality. Id. The focus must shift from personal recognition to a focus on the group. Id. Personal racial identity loses sight of the foundation of antidiscrimination law’s distinction between the personal and private. Id. at 111-112. Antidiscrimination law focuses on public entities because of their power to provide opportunities, essential goods, and social mobility. Id. at 112. Private individuals outside of public spheres do not have the same power to influence social opportunity. Id. Antidiscrimination law’s primary concern is with public effects, not personal expression. Id. Lauren Sudeall Lucas also concludes that conflating the personal need for identity with laws designed to prevent group-based discrimination risks harming the U.S. equal protection enforcement. Id.

The chapter then criticizes the stances of a few prominent multiracial-identity scholars as misinterpreting the real purpose of antidiscrimination law. For example, Camille Gear Rich’s desire to privilege a “right to self definition “is well intentioned, but misunderstands the purpose of antidiscrimination law.” Id. at 112-113. This does not mean that personal identity is irrelevant to antidiscrimination law. Id. at 113. It is important when personal racial identity is associated with access to a public good. Id. In Devon Carbado and Mitu Gulati’s work on distinct “racial performances”, they demonstrate that how those performances in the workplace elicit different responses is directly tied to an employee who suffers disparate treatment. Id. Racial performance focuses on things like how one speaks, personal style, choice of music and dance all influence the way others perceive one’s racial appearance and react to it. Id. Multiracial-identity scholars often cite to this proposition to support their focus on personal racial identity expression, but they often lose sight of the theoretical grounding in public differential treatment. Id. 113-114. For Carbado and Gulati, racial performance only matters to the law as it is used to deny a racialized group member access to opportunity and services. Id. at 114. Multiracial-identity scholars want to isolate a claimant’s personal identity concern with a perceived harm to dignity from the question of material inequality. Id.
The chapter then questions the multiracial-identity singular scholar focus on dignity. Id. at 114. Camille Gear Rich urges that U.S. antidiscrimination law “attend to the dignity concerns of individuals as they attempt to control the terms on which their bodies are assigned racial meaning.” Id. However, this demand for a focus on dignity overlooks how inequality includes indignity, but cannot be reduced to it. Id. Catharine MacKinnon proposes that inequality is always undignified. Id. Discrimination also has real repercussions beyond just the indignity. Id. For example, the harm of unequal pay is not only that it deprives one of dignity, but that it deprives one of money. Id. A dignity-focused approach is not concerned with material inequality, which is an effective mechanism for addressing racial discrimination because inequality is always about material hierarchy. Id. at 114-115. Inequality exists regardless of a loss of dignity or not. Id. at 155. MacKinnon’s substantive equality theory about the weakness of a focus on only dignity illuminates the mistake of equating the feeling of being disgruntled by any resistance to multiracial identity with antidiscrimination law’s fundamental concern with material inequality. Id. Even in Brown v. Board of Education, the concern for generating inferiority within the minds of schoolchildren was rooted in the material inequality of racially segregated public education, not the harm to dignity. Id. The premium placed by multi-racial identity scholars on the pursuit of a dignity claim for recognition of a personal racial identity overlooks the concern with material inequality that is fundamental to antidiscrimination law. Id.

The chapter then moves to the unintended consequences of the Judicial focus on protecting personal dignity, which endangers the enforcement of antidiscrimination law. Id. at 115. The Supreme Court has even decided to forbid K-12 schools from pursuing racial diversity by directly employing a racial balancing policy when selecting students. Id. In 2007, the Court in Parents Involved in Community Schools v. Seattle School District No. 1 held that voluntary integration programs that are not seeking to address historical intentional discrimination could not use race in a mechanistic way to determine where pupils are assigned to public schools. Id. at 116. The court stressed that race is treated as a forbidden classification because it demeans the dignity and worth of a person. Id. The court seemingly ignored the material harms that come from racially exclusive schools because we are in a society that still has a hierarchical understanding of racial groups. Id. This is an example of a focus on personal dignity stymieing the pursuit of greater racial equality that multiracial-identity scholars seek. Id.

The chapter then shows how the personal racial identity focus has also influenced legislative threats to the continuation of antidiscrimination enforcement through a vehicle known as the racial privacy initiative. Id. at 116. The premise of the racial privacy initiative is that racial and ethnic identity is a personal matter that should not be infringed upon by the government, regardless of the motivation. Id. However, gathering racial information allows the government and social justice activists to better enforce antidiscrimination laws by being able to identify groupwide patterns of racism. Id. Social justice activists from countries that do not collect racial, ethnic statistic report that it hinders their ability to monitor and address racial discrimination. Id. A large number of multiracial advocacy organization publicly endorse the “racial privacy” initiatives. Id. Its proponents have most recently been attempting to abolish the collection of racial data on the decennial U.S. Census, which would greatly impede civil rights laws. Id. at 117.
This chapter thus proposes an explicit “socio-political race” lens for analyzing discrimination. Id. at 117. This process preserves the dignity of personal racial identity while providing a more useful tool for analyzing and addressing racism and pursuing equality. Id. The socio-political race concept of race views racial categories as neither a biological nor a cultural construction but rather as a group-based social status informed by historical and current hierarchies and privileges. Id. It gets rid of the focus on personal identity in favor of a focus on the societal and political factors that structure opportunity by privileging and penalizing particular phenotypes and familial connections viewed as raced across groups. Id. at 117-118. This approach does not view personal racial identity in a vacuum, but rather the context of how the claimant was treated within existing racial hierarchies. Id. at 118.

The chapter then argues that the socio-political race lens is especially salient because of the societal trend of dismissing the relevance of race. Id. at 118. This creates a need for specificity and transparency in the articulation of how the racialization of individuals is salient to the manner in which systemic discrimination occurs. Id. Without that specificity and transparency, the public impulse is to treat discrimination as a dynamic caused by the deviance of aberrant individuals unconnected to group-based hierarchies and structures of exclusion. Id. Operating without this approach has led multiracial-identity scholars to reduce inequality to a concern with the judicial and public recognition of personal racial identity that overlooks the issues of material inequality that are actually being raised in discrimination cases. Id.

This book’s socio-political race perspective directs attention to the ways that racial differences are created and maintained for the social imposition of inferiority even today. Id. at 119. The socio-political race perspective incorporates the sociological understanding that individuals are not born with a race, society racializes an individual. Id. The chapter then discusses theories that undergird this book’s socio-political approach to the analysis of discrimination issues. Id. at 120.

The book’s survey of the cases themselves illustrates that the socio-political race lens can be useful to avoid judicial confusion. Id. at 121. For instance, in Nash v. Palm Beach County School District, Che Nash, a multiracial black and white teacher, brought an employment discrimination claim against his employer school district in Boca Raton, Florida. Id. By looking for mixed-race-specific animus, the court missed the larger pattern of nonwhite workplace discrimination. Id. If Nash’s lawyer had litigated within the socio-political race lens understanding of racism, his claim of discrimination would have been viewed as more persuasive. Id. at 122.
The chapter then explains that the socio-political race analytical lens is meant to act as a corrective to the influence of Personal Identity Equality platforms that have inclined the judiciary to discount the legitimacy of policies of inclusion like affirmative action on the basis of the presumed distinct racial position of multiracials. Id. at 123. The socio-political race analytical lens could help to fight against the discounting of the discrimination that multiracials experience. Id. An example from the jury selection process context is used to illustrate this. Id. at 123-125. The chapter argues that socio-political race lens would examine the context of the exclusion instead of permitting a prosecutor’s claim of nonrecognition of race to be examined in isolation. Id. at 125.

The book concludes that multiracial victims of discrimination will be better served if we continue to stress the white/nonwhite binary and racial hierarchy. Id. at 126. This focus can only be accomplished by shifting the focus from personal identity to group-based racial realities. Id. The socio-political lens is one path for doing so. Id.
1. What is the author’s socio-political race lens view on racial categories?

The socio-political race concept views racial categories as neither a biological nor a cultural construction but rather as a group-based social status informed by historical and current hierarchies and privileges. Id. at 117.

2. What is the socio-political race lens interaction with the multiracial-identity scholar’s focus on personal identity?

It gets rid of the focus on personal identity in favor of a focus on the societal and political factors that structure opportunity by privileging and penalizing particular phenotypes and familial connections viewed as raced across groups. This approach does not view personal racial identity in a vacuum, but rather the context of how the claimant was treated within existing racial hierarchies. Id. at 117-118.

3. Why might the socio-political race lens be especially important today?

The socio-political race lens is especially important today because of the societal trend of dismissing the relevance of race. This creates a need for specificity and transparency in the articulation of how the racialization of individuals is salient to the manner in which systemic discrimination occurs. Id. at 118.

4. What theories undergird the book’s socio-political approach to the analysis of discrimination issues?

All of the following theories undergird the socio-political approach to the analysis of discrimination issues. Legal Scholar Ian Haney Lopez states, “Race is not hereditary; our parents do not impart to us our race. Instead, society attaches specific significance to our ancestry.” Sociologists Omi and Winant state that racial formation is a “sociohistorical process by which racial categories are created inhabited, transformed, and destroyed.” Eduardo Bonilla-Silva refines the concept further with his idea of “racialized social systems” whereby societies structure economic, political, social, and ideological levels by the placement of actors in racial categories or races. Id. at 119-120.
5. How would the socio-political lens alter the analysis in multiracial discrimination claims?

In Nash v. Palm Beach County School District, Che Nash, a multiracial black and white teacher, brought an employment discrimination claim against his employer school district in Boca Raton, Florida. By looking for mixed-race-specific animus, the court missed the larger pattern of nonwhite workplace discrimination. Id. If Nash’s lawyer had litigated within the socio-political race lens understanding of racism, his claim of discrimination would have been viewed as more persuasive. The most significant difference would have been that Nash’s experiences would be considered part of a pattern that his nonwhite peers were also experiencing, but his personal racial identity would be preserved. In Nash, the socio-political race perspective would have highlighted the multiple instances when Nash and the African American teachers at the school were treated poorly in contrast to the white teachers. Id. Expanding the judicial inquiry into whether a broader pattern of nonwhite versus white differential treatment existed would have permitted the court to recognize how Nash was harmed by a workplace seemingly entrenched in a white over nonwhite hierarchy. Id. at 122-123.