
RISK-FREE RACISM: WHITENESS AND SO-CALLED “FREE SPEECH”

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INTRODUCTION

This Article examines the costs of so-called “free speech” in relation to race,¹ particularly with reference to debates about a supposed link between race and intelligence/educability.² Drawing on an analysis of media coverage in the United Kingdom, I show how Whiteness (a regime of beliefs and attitudes that embodies the interests and assumptions of White people) operates to privilege racist³ assumptions and silence minoritized voices despite the

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1. There is no consistent and meaningful biological basis for the group categories that human societies name “race.” Although it masquerades as natural and fixed, “race” is a socially constructed category which changes from one society to another and even varies over time within the same society. See DAVID MASON, RACE AND ETHNICITY IN MODERN BRITAIN 1–2, 5–9 (1995); CHARLES W. MILLS, THE RACIAL CONTRACT (1997); Michael Omi & Howard Winant, *On the Theoretical Status of the Concept of Race*, in THE ROUTLEDGE/FALMER READER IN MULTICULTURAL EDUCATION 7 (Gloria Ladson-Billings & David Gillborn eds., 2004). I use “race,” therefore, in the sense of a socially constructed, dynamic, and contested social category.

2. Intelligence is a hugely controversial and contested concept. As I note later in this Article, many of the most common assumptions about intelligence are factually incorrect. Even among psychologists who specialize in the field, there is no consensus. A task force established by the Board of Scientific Affairs of the American Psychological Association, for example, noted that “when two dozen prominent theorists were recently asked to define intelligence, they gave two dozen somewhat different definitions.” Ulric Neisser et al., *Intelligence: Knowns and Unknowns*, 51 AM. PSYCHOLOGIST 77, 77 (1996).

3. Racism has been defined in numerous ways. Traditionally the term has been associated with a dual belief, first, in the existence of separate biological races as sub-species of the human race, and second, in the innate hierarchical ordering of those races. Although such perspectives still survive in the twenty-first century, they are not common in the policy or political mainstream. Critical theorists have argued that racism is more usefully interpreted as denoting any belief or action that has a disproportionately negative impact on

presence of formal restrictions and editorial controls similar to those once associated with the Fairness Doctrine in the United States. Under the guise of “free speech,” White people are free to engage in speculation about the nature of intelligence, without risk to themselves, in a situation where the costs are borne entirely by minoritized groups. These debates continually reinstate the possibility of a race/educability link (despite its debunking in the natural and social sciences) and reinforce common racist stereotypes that can be seen at work in the racial disparities associated with hierarchical educational grouping practices (such as tracking in the United States and England’s “gifted and talented” initiative) which systematically advantage White young people while disadvantaging their African-American and Black-British counterparts.

This Article has three principal sections. First, I draw on the storytelling tradition of critical race theory⁴ to explore common assumptions about the nature of risk and measures intended to help the fight against crime, such as the use of DNA profiling. Second, I focus on an empirical example to show how the interests, assumptions, and perspectives of White people exert disproportionate weight even in apparently open and democratic contexts, such as an interactive radio call-in show. In this case, the right of “free speech” is mobilized by White callers to give license to racist and pseudoscientific assertions about a supposed link between race and intelligence. Third, I show how the kinds of assumptions that were defended in the call-in show can also be seen at work in the real world of school classrooms and education policy, where

one or more minoritized groups identified socially as a “racial” or “ethnic” entity. This approach has the advantage of focusing on actions and beliefs that have destructive real-world impacts regardless of the protagonists’ stated intent. For discussions, see DAVID GILLBORN, *RACISM AND EDUCATION: COINCIDENCE OR CONSPIRACY?* 2-4 (2008); MASON, *supra* note 1, at 8-11; LES BACK & JOHN SOLOMOS, *Introduction* to *THEORIES OF RACE AND RACISM* 1 (Les Black & John Solomos eds., 2000).

4. The use of storytelling and other narrative techniques is often seen as one of the defining elements of critical race theory, a radical approach that started in U.S. law schools in the 1970s and 1980s but has since become a force in numerous disciplines, including education. See MARI J. MATSUDA ET AL., *WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT* 3-5 (1993); William F. Tate IV, *Critical Race Theory and Education: History, Theory, and Implications*, *REV. RES. EDUC.*, 1997, at 195, 206, 210. Richard Delgado is one of the leading advocates of the need to “name one’s own reality.” Inspired by the scholarship of Derrick Bell and the centuries old traditions of storytelling in minoritized communities, Delgado argues for the use of narrative and counter-storytelling as a means of presenting a different reading of the world, one that questions taken-for-granted assumptions and destabilizes the framework that currently sustains, and masks, racial injustice. See Derrick Bell, *The Supreme Court, 1984 Term—Foreword: The Civil Rights Chronicles*, 99 *HARV. L. REV.* 4 (1985); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 *MICH. L. REV.* 2411 (1989).

Black children are over-represented in low-ranked teaching groups and under-represented in privileged academic programs that trade on notions of academic excellence and “giftedness.” I conclude with a critical race perspective on the operation of so called “free speech” and the problems that arise as a result of the majority White population’s power to define what is viewed as “rational” and “acceptable.”

I. RACE & RISK

Imagine that tomorrow’s newspaper carries the following headline:

Science Helps Fight Against Crime: *DNA Tests Compulsory for “High Risk” Groups.*

In this imagined world the growing popularity of genetic “ancestry” testing has led to calls for more use of DNA profiling as part of the drive against serious crime. Despite expert testimony that popular understanding of the reliability of DNA science is dangerously exaggerated,⁵ a presidential task force was established to examine the issues in detail. The task force took evidence on recent advances in DNA profiling and heard from the different sides of the debate. Police and security forces argued that the technology had allowed them to identify violent criminals who had gone undetected for years, even decades.⁶ The manufacturers of the technology were also quick to reassure that the techniques were well established and the risks were minimal.⁷ In contrast, civil rights campaigners argued that the compilation of large DNA databases was an unwarranted intrusion into people’s private lives and that the very real dangers of faulty storage and data management

5. An article in *Science* recently argued that the DNA ancestry-testing industry poses numerous ethical and political threats, trading as it does on unreliable “recreational genetics.” The authors note that “there is no clear-cut connection between an individual’s DNA and his or her racial or ethnic affiliation.” Deborah A. Bolnick et al., *The Science and Business of Genetic Ancestry Testing*, 318 *SCI.* 399, 400 (2007). An investigation for the *New York Times* found that five leading test companies offered five different conclusions about the author’s African ancestry. See Ron Nixon, *DNA Tests Find Branches but Few Roots*, *N.Y. TIMES*, Nov. 25, 2007, at B1.

6. “Police point out that DNA helps solve some of the most serious crimes, including rapes and murders, and that detection rates rise sharply when genetic material is recovered.” Matthew Hickley, *DNA Database Grows by 2,000 Every Day*, *DAILY MAIL* (London), Oct. 11, 2008, at 54, available at <http://www.mailonsunday.co.uk/news/article-1076143/Record-720-000-people-added-Britains-DNA-database--making-worlds-largest.html>.

7. As Bolnick and her colleagues note: “It is unlikely that companies (and the associated scientists) deliberately choose to mislead consumers or misrepresent science. However, market pressures can lead to conflicts of interest, and data may be interpreted differently when financial incentives exist.” Bolnick et al., *supra* note 5, at 400.

procedures were often overlooked by advocates of DNA profiling.⁸ Critics also pointed out that overzealous police and security forces could “plant” DNA evidence, so a match was not automatic proof of guilt, as is popularly assumed. Additionally, evidence considered “scientifically reliable” at one point in time might conceivably be ruled out by later advances.⁹

Eventually the task force decided that the potential benefits to society outweighed the dangers to any specific group of people, so it ordered that police be given extended powers to collect and retain swabs from any suspect where they deemed it appropriate. After all, the task force argued, “if you have nothing to hide, why would you object?” Its response mirrored that of the United Kingdom government when it was challenged on the continued growth of its DNA database: “Those who are innocent have nothing to fear from providing a sample,” a response which immediately (though subtly) casts doubt on the integrity of those who would question the technology or its use.¹⁰

So far, I doubt that this imaginary scenario is very hard to believe. In the United Kingdom, for example, police and security forces strenuously deny the use of racial profiling. But despite official denials, official statistics make it clear that many aspects of the criminal justice system already have a disproportionate impact on particular minoritized groups, especially citizens who trace their family origins to Africa and/or the Caribbean.¹¹ Around three quarters of Black men (aged fifteen to thirty-four) have their DNA profiles logged on the national DNA database for use by police and

8. In November 2008 the British Prime Minister, Gordon Brown, admitted that “it’s important to recognize that we can’t promise that every single item of information will always be safe, because mistakes are made by human beings.” Nicholas Watt, *PM Admits Data Losses May be Inevitable*, GUARDIAN (London), Nov. 3, 2008, at 5, available at <http://www.guardian.co.uk/politics/2008/nov/03/gordon-brown-gateway-data-security>. Between 2007 and 2008 there were 277 known “data breaches” involving officially held records, including the loss of twenty-five million records relating to U.K. citizens in receipt of child benefits. Sam Coates, *Gordon Brown Says Government Cannot Ensure Data Safety*, TIMES ONLINE (London), Nov. 2, 2008, <http://www.timesonline.co.uk/tol/news/politics/article5065795.ece>.

9. In a well-known British case, Barry George was released, after spending seven years in jail, when his murder conviction was quashed in the wake of a ruling that initially damning forensic evidence was now judged inconclusive. *Timeline: Jill Dando Murder*, BBC NEWS (London), Aug. 1, 2008, <http://news.bbc.co.uk/1/hi/uk/7525826.stm>.

10. Hickley, *supra* note 6 (internal quotation marks omitted).

11. There is no universally accepted terminology for different racial or ethnic minority groups in the United Kingdom. Under the general heading “Black,” the official census categories currently include Black Caribbean, Black African, and Black Other. In policy debates, these are frequently collapsed into a single category of “Black” or Black British, especially by the people so labeled. For a historical discussion, see SALLY TOMLINSON, RACE AND EDUCATION: POLICY AND POLITICS IN BRITAIN (2008).

security forces, more than three times the level for White men of the same age. Similarly, Black people are around seven times more likely to be stopped and questioned by police than their White counterparts. The data are summarized in the table below.

DISPROPORTIONALITY IN THE CRIMINAL JUSTICE SYSTEM

National DNA Database Coverage: 2006	Men Aged 15–34¹²
Black (African/Caribbean)	77%
White	22%
“Stop and Search”: 2006–2007	Both Sexes, per 1000 Population¹³
Black	114
White	16

Inequalities such as these are historically persistent and, despite the British government’s rhetorical commitment to removing such disproportionality, the patterns show no sign of changing. In an overview of racism in criminal justice systems internationally, for example, the human rights pressure group Amnesty International notes that systematic inequalities remain a feature of many systems globally, including the United Kingdom:

In the UK, institutional racism in the police as well as racial disparities in the rest of the justice system have been widely documented. Research has shown that police use harsher measures against the black community and target particular practices on it, such as “stop and search” operations. Also, for the same offence, black people face more serious charges than whites, are less likely just to be cautioned and more likely to be imprisoned, and appear to be given longer sentences on average than their white counterparts. Black people are also under-represented among the officials of the criminal justice system.¹⁴

Similarly, the U.S. government has also acknowledged that “[v]arious studies indicate that members of minorities (especially Blacks and Hispanics) may be disproportionately subject to adverse treatment throughout the criminal justice process.”¹⁵ The U.S. and U.K. governments seem also to share a fascination with DNA

12. Ben Taylor, *Police Hold DNA of Three in Four Young Black Men*, DAILY MAIL (London), Nov. 6, 2006, at 32, available at <http://www.dailymail.co.uk/news/article-414667/Police-hold-DNA-young-black-men.html>.

13. In 2006 and 2007, 114 Black people per one thousand population were subject to “stop and search,” compared with 16 per one thousand population for White people. ALEX JONES & LAWRENCE SINGER, MINISTRY OF JUSTICE, STATISTICS ON RACE AND THE CRIMINAL JUSTICE SYSTEM—2006/7, at 28 (2008).

14. AMNESTY INT’L, RACISM AND THE ADMINISTRATION OF JUSTICE 30 (2001).

15. *Id.* at 10 (quoting U.N. Int’l Convention on Elimination of all Forms of Racial Discrimination, Comm. on Elimination of Racial Discrimination, *Reports Submitted by States Parties Under Article 9 of the Convention*, ¶ 71(j), U.N. Doc. CERD/C/351/Add.1 (Oct. 10, 2000)).

collection and storage. Indeed, they have the largest DNA databases on earth; each holds samples for around 3 million people, covering around one percent of the U.S. population and just over five percent of the U.K. population.¹⁶

My imaginary scenario, therefore, is not very far removed from reality if we view the ideas in relation to the current overrepresentation of Black people in the criminal justice systems of the United States and the United Kingdom, a situation that both governments acknowledge as regrettable but which shows no sign of disappearing. In this sense, we already have racial disproportionality in the collection and storage of DNA in criminal justice systems that exhibit racialized patterns of experience and prosecution—all that is missing is the legal basis to legitimize the situation and enshrine it in law. Would the imaginary scenario be less believable, however, if we changed the identity of the “high risk” groups singled out for attention? What if the headline read:

Public Enemy Number 1: *White Middle-Class Men.*

What would happen if the presidential task force decided that White men with professional training posed the greatest risk to society? For example, they might have considered the cost of so called “white-collar crime” (including tax avoidance, insider trading, and corporate scandals) dominated by White defendants. Perhaps they took note of Richard Delgado’s stunning research showing that the cost of White crime far outweighs that associated with minoritized people in the public consciousness.¹⁷ Indeed, the task force might have been emboldened by the public’s outrage at the sight of wealthy stock brokers, again overwhelmingly White, making money through “short selling” and other forms of glorified gambling that pushed the stock market toward global meltdown in the autumn of 2008.¹⁸

16. Nigel Morris, *More Britons Have DNA Held by Police than Rest of World*, INDEP. (London), Apr. 14, 2006, at 11, available at <http://www.independent.co.uk/news/uk/crime/more-britons-have-dna-held-by-police-than-rest-of-world-474078.html>.

17. Richard Delgado, *Rodrigo’s Eighth Chronicle: Black Crime, White Fears—On the Social Construction of Threat*, 80 VA. L. REV. 503, 518–21 & nn.52–62 (1994).

18. See, for example, press coverage of the traders who profited from the 2008 stock market crash which overwhelmingly used images of White traders. Paul Bracchi, *Spivs, Sharks and Why the Champagne Corks Were Popping on Meltdown Monday*, DAILY MAIL (London), Sept. 17, 2008, available at <http://www.dailymail.co.uk/news/article-1056800/Spivs-sharks-champagne-corks-popping-Meltdown-Monday.html>; *Named: The Trader with a £1bn Bet That British Banks Will Fall*, DAILY MAIL (London), Sept. 24, 2008, available at <http://www.dailymail.co.uk/news/article-1060734/Named-The-trader-1bn-bet-British-banks-fall.html>; *Who’s in the Dock for the Financial Turmoil?*, BBC NEWS (London), Sept. 19, 2008, available at <http://news.bbc.co.uk/1/hi/magazine/7625107.stm>.

The task force might also have been swayed by the public image of serial killers, a group whose crimes are universally repugnant and whose ethnic profile, at least in the public consciousness, tends to be less diverse than the wider population.¹⁹ Civil liberties groups would rightly point out that past trends are no predictor of the future and, in any case, the biological sciences have demonstrated beyond doubt that the things we call “races” have no meaningful scientific basis.²⁰ They could argue that a few high-profile cases are no reason to behave as if “races” are real and subject an entire group of people to systematically greater scrutiny and risk, simply because of their class, race, or gender. But what if the task force were influenced by a series of public campaigns and prominent news stories (funded by well-resourced think tanks),²¹ which played on public fears about serial killers and sought to create a racialized stereotype of the “typical” serial killer?

Taking their lead from the infamous Willie Horton ads that were such a successful part of the Republican Party’s 1988 U.S. presidential campaign, the television slots might parade a succession of police mug shots, each showing a well known White serial killer, overlaid with quotations from neighbors and associates who proclaimed them to be ordinary, “nice” people, though maybe a little shy or reserved. The list would be long, including David Berkowitz, Ted Bundy, Dean Corll, Charles Cullen, John Wayne Gacy, Donald Harvey, Randy Kraft, Peter Sutcliffe, and Robert Lee Yates.

The campaign could play on public fears of violent crime and even deploy statistics to make the case that no matter how caring and well-intentioned a White professional might appear to be, his education and status puts him in the perfect position to hide his deeds from scrutiny: for example, Dr. Harold Shipman, a British medic (seen as a pillar of the community) who murdered in excess of two hundred people.²²

On the basis of such evidence and public opinion, the task force might decide that the “safest” way to proceed would be to immediately begin the routine sampling of all White males graduating from university and to initiate a nationwide sweep of all

19. FBI, SERIAL MURDER: NEW REPORT HIGHLIGHTS VIEWS OF EXPERTS (July 7, 2007), available at http://www.fbi.gov/page2/july08/serialmurder_070708.html.

20. See *supra* note 1.

21. For an exploration of the financial power and cultural impact of “think tanks,” see JEAN STEFANCIC & RICHARD DELGADO, NO MERCY: HOW CONSERVATIVE THINK TANKS AND FOUNDATIONS CHANGED AMERICA’S SOCIAL AGENDA 3–5, 139–54 (1996).

22. Shipman’s crimes and the circumstances by which he evaded detection are detailed in six official reports. See The Shipman Inquiry—Reports, U.K. DEPT’ HEALTH, <http://www.the-shipman-inquiry.org.uk/reports.asp> (last visited Apr. 5, 2009).

White men earning more than twice the national average salary.

I suspect that this imaginary scenario, where White people are the group suffering disproportionately, sounds a lot less likely than the first. Indeed, when I have presented this scenario in class it is usually greeted with *laughter*. And yet most of the necessary ingredients already exist: white collar crime does cost society more than crimes associated with minoritized groups, White traders were the public face of capitalism eating itself in late 2008, and, on both sides of the Atlantic, the best-known (and most prolific) serial killers are White men. But two key conditions in the process are missing: the ability to generalize from individual actions to a whole racial group and the requirement that reforms do not directly threaten the interests of elite members of the dominant racial group.

First, in order to make the White-men-as-public-enemy scenario credible, the campaigns (about Wall Street traders and serial killers) would have to create a racial stereotype where certain White individuals become culturally identified as representative of an entire racial group. But, in the real world, images of White people as criminals and killers do not provide the basis for a racial stereotype. When Peggy McIntosh famously explored White privilege by listing almost fifty “unearned assets” that accrue to White people, several related specifically to the fact that White individuals are just that—*individuals*:

I can talk with my mouth full and not have people put this down to my color.

I can swear, or dress in second hand clothes, or not answer letters, without having people attribute these choices to the bad morals, the poverty, or the illiteracy of my race.

I can speak in public to a powerful male group without putting my race on trial.

I can do well in a challenging situation without being called a credit to my race.

I am never asked to speak for all the people of my racial group.²³

White people are rarely seen as emblematic of their “race,” unless perhaps they are heroic figures.²⁴

23. Peggy McIntosh, *White Privilege and Male Privilege: A Personal Account of Coming to See Correspondences Through Work in Women's Studies*, in *CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR* 291, 293 (Richard Delgado & Jean Stefancic eds., 1997).

24. See RICHARD DYER, *THE MATTER OF IMAGES: ESSAYS ON REPRESENTATIONS* 132 (1993); KEVIN HYLTON, ‘RACE’ AND SPORT: *CRITICAL RACE THEORY* (2009); ANNE McCLINTOCK, *IMPERIAL LEATHER: RACE, GENDER AND*

The second condition needed to support intrusive and draconian measures, like a racially profiled DNA database, is the absence of risk for elite members of powerful groups. Past experience demonstrates that the interests of White elites have historically been protected even at times when White racial advantage generally is subject to scrutiny. For example, critical race theorists have pointed to the fact that advances in racial justice are usually associated with a perceived *benefit* to White interests. This is known as the “interest-convergence” principle²⁵ and is summed up by Derrick Bell in the following formulation: “Justice for blacks vs. racism = racism”; “[r]acism vs. obvious perceptions of white self-interest = justice for blacks.”²⁶

It is important to note that interest convergence does not imagine that Black people can engage in a rational negotiation with White elites. Rather, advances for racial justice have to be won—through protest and mobilization—so that taking action against racism becomes the lesser of two evils for White power holders. For example, the moves to outlaw segregation in the 1960s are usually thought of as a sign of enlightenment and a landmark civil rights victory. But the changes have to be understood within the context of the Cold War and the fact that the United States was having difficulty recruiting friendly African states when Soviet interests could point to the forms of apartheid that operated in the Southern United States.²⁷ Such reforms are most likely to succeed where the costs are born by working-class Whites rather than White elites.²⁸

The chances of the government ever mandating disproportionate racial profiling of powerful Whites, therefore, are so small as to be literally laughable. The same arguments (about possible mistakes, tainted evidence, and intrusion) that are publicly rejected in current debates about DNA databases (where Black people are over-represented) would likely carry a lot more weight if the risks were borne by the most powerful group in society: White middle-class men. Indeed, this sense of *risk* is vital to a critical understanding of questions about free speech and institutional racism. As the White-men-as-public-enemy scenario clearly highlights, in the real world certain racially identified groups do not

SEXUALITY IN THE COLONIAL CONTEST 4 (1995).

25. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980).

26. DERRICK BELL, SILENT COVENANTS: *BROWN V. BOARD OF EDUCATION* AND THE UNFULFILLED HOPES FOR RACIAL REFORM 59 (2004).

27. See Mary L. Dudziak, *Desegregation as a Cold War Imperative*, 41 STAN. L. REV. 61, 62–63 (1988).

28. See Richard Delgado, *Rodrigo's Fourth Chronicle: Neutrality and Stasis in Antidiscrimination Law*, 45 STAN. L. REV. 1133 (1993); David Gillborn, *Burning Down the House? Refuting the Myths and Recognizing the Promise of Critical Race Theory*, in RACE(ING) FORWARD: TRANSITIONS IN THEORISING 'RACE' IN EDUCATION (Andrew Pilkington et al. eds., forthcoming 2009).

share the same risks as others, because of this, so called “free speech” carries very different levels of threat for people of color. In addition, as I show in the next section, White people enjoy particular advantages because, within the regime of Whiteness²⁹ that operates in societies such as the United States and the United Kingdom, speech carries somewhat different degrees of authority depending on the racialized nature of the speech context (the issues at stake) and the supposed race of the speaker.

II. HATE SPEECH AS “FREE SPEECH”: RACISM & TALK RADIO

In this section, I examine an empirical example of public speech about a controversial issue, namely a supposed link between race and intelligence. I analyze a call-in show which, superficially at least, seems to offer the possibility of a democratic discussion of a popular topic. Beneath the surface, however, all voices are not granted equal authority, even within an editorial system that requires fairness and openness. In practice, White people dominate the discussion while minoritized voices are marginalized. Meanwhile, racist pseudoscientific assertions are treated as if they were legitimate and “scientific” within a context where racist “free speech” carries no risks for Whites but considerable danger for minoritized people, especially Black-British people.

Talk-radio and call-in shows have proven especially successful in the United States, where conservative commentators’ brash attacks on “liberal” campaigners and issues command a nationwide audience. Richard Delgado and Jean Stefancic note, for example, that *The Rush Limbaugh Show* alone plays five days a week on more than six hundred radio stations to an audience in excess of twenty million a week.³⁰ Radio stations in the United States are at liberty to air as much of this material as they wish because of the repeal, in 1987, of the Fairness Doctrine, which had previously obliged stations “to afford reasonable opportunity for discussion of contrasting points of view on controversial issues of public importance.”³¹ During the pursuit of deregulation under the Reagan Presidency, the requirements were withdrawn and successive

29. For a discussion of Whiteness as an ideological, political, and social construction in education, see David Gillborn, *Education Policy as an Act of White Supremacy: Whiteness, Critical Race Theory and Education Reform*, 20 J. EDUC. POL’Y 485, 497–99 (2005); Zeus Leonardo, *The Color of Supremacy: Beyond the Discourse on ‘White Privilege,’* 36 EDUC. PHIL. & THEORY 137, 140–42 (2004). For a discussion of Whiteness in law, see Derrick A. Bell, *Who’s Afraid of Critical Race Theory?*, 1995 U. ILL. L. REV. 893, 898–902; Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1737–44 (1993).

30. RICHARD DELGADO & JEAN STEFANCIC, UNDERSTANDING WORDS THAT WOUND 159 (2004).

31. VAL E. LIMBURG, THE MUSEUM OF BROAD. COMM’N, FAIRNESS DOCTRINE, <http://www.museum.tv/archives/etv/F/htmlF/fairnessdoct/fairnessdoct.htm> (last visited Apr. 5, 2009).

attempts to restore the doctrine have failed in the face of media campaigns that claim the doctrine limits “free speech.”

In contrast, U.K. broadcasters continue to face a much wider range of regulations. The British Broadcasting Corporation (“BBC”) has a particularly stringent set of requirements, reflecting its unique status as a major global broadcaster funded in large part through public money.³² The BBC describes itself as follows:

BBC mission: To enrich people’s lives with programmes and services that inform, educate and entertain.

Our vision: To be the most creative organisation in the world.

Our values:

- Trust is the foundation of the BBC: we are independent, impartial and honest.
- Audiences are at the heart of everything we do.
- We take pride in delivering quality and value for money.
- Creativity is the lifeblood of our organisation.
- We respect each other and celebrate our diversity so that everyone can give their best.
- We are one BBC: great things happen when we work together.³³

Note the emphasis on public service and the goal of educating and informing, whilst entertaining. A concern with honesty, impartiality, quality, and diversity is also prominent. Research suggests that the BBC is extraordinarily successful in fostering trust in its audience: a survey for the *Press Gazette* found that “the BBC is still the first place most of the public turn to when they want to find news reports they can trust [The BBC] polled more than five times its nearest rivals.”³⁴

In addition to “trust,” the BBC also has a historic commitment to *involving* its audience, represented (above) in the assertion that “[a]udiences are at the heart of everything we do.” Andrew Tolson has commented on the BBC’s “long-held belief” in “active listening” as opposed to “uncommitted hearing.”³⁵ In the earliest days of BBC radio, for example, schedulers would frequently move programs in order to require listeners actively to seek them out and make a

32. The BBC is established by Royal Charter and funded in part by a license fee required of every UK citizen who owns a radio or TV—regardless of whether they ever tune into any BBC productions.

33. BBC.com, About the BBC, <http://www.bbc.co.uk/info/purpose/> (last visited Apr. 5, 2009).

34. YOUgov, PRESS GAZETTE POLL: THE MOST TRUSTED NEW BRANDS (2005), http://www.yougov.co.uk/extranets/yougovarchives/content/pdf/OMI050101003_2.pdf.

35. ANDREW TOLSON, MEDIA TALK: SPOKEN DISCOURSE ON TV AND RADIO 9 (2006) (internal quotation marks omitted).

deliberate decision to listen.³⁶ Scheduling principles have altered over the years, but a commitment to audience interactivity has grown. Nowhere is this more evident than on Radio Five Live, the BBC's fifth national radio station. The station makes a priority of offering what it calls "interactive opportunities for listeners" by using "phone-ins, live debates and on-air requests for e-mails and text messages,"³⁷ so much so that it has been described as "the BBC's national radio talk show."³⁸ The show that I focus on here was broadcast on March 8, 2006. The presenter, Victoria Derbyshire, is a past nominee for the Sony Radio Academy Award for "Interactive Programme."³⁹ Hence this is a commercially and artistically successful show on a national channel with a strong public service mission. If interactive broadcasting can really deliver on the democratic and empowering vision of its advocates, then this might be expected to be a suitable venue. Unfortunately, the show provides an object lesson in the operation of White racial power. Because of the limits of space, it is not possible to offer an exhaustive analysis of the show here. Nevertheless, it is instructive to briefly consider three of the major themes that emerged in the discussion.

A. *The Assertion that White People are Race Victims*

Each day the Victoria Derbyshire show invites listeners' views on a controversial news story. On the day in question, the topic concerned public reaction to statements by Dr. Frank Ellis, a lecturer in Russian and Slavonic Studies at Leeds University in England, who was in the news because students had called for his dismissal. Ellis had been quoted in the Leeds student newspaper expressing the view that Black people, as a group, are substantially less intelligent than Whites and that this inequality is genetically based and, therefore, resistant to ameliorative action through education and other social programs.⁴⁰

36. *Id.*

37. BBC.com, About the BBC: Policies, Guidelines and Reports: BBC Statements of Programme Policy 2006/2007: BBC Radio Five Live, <http://www.bbc.co.uk/info/statements2006/radio/radio5live.shtml> (last visited Apr. 5, 2009).

38. TOLSON, *supra* note 35, at 94.

39. Sony Radio Academy Awards—Winners 2007, <http://www.radioawards.org/winners/?awid=77&awname=The+Interactive+Programme+Award&year=2007> (last visited Apr. 5, 2009).

40. *Racism Row Lecturer is Suspended*, BBC NEWS (London), Mar. 23, 2006, available at <http://news.bbc.co.uk/1/hi/education/4838498.stm>. The main source invoked as evidence by Ellis was RICHARD J. HERRNSTEIN & CHARLES MURRAY, *THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE* (1994). For refutations of this widely debunked and discredited approach see GILLBORN, *supra* note 3, at 112; LEON J. KAMIN, *THE SCIENCE AND POLITICS OF IQ* (1974); Leon J. Kamin, *Behind the Curve*, in *RACE & IQ EXPANDED EDITION 397* (Ashley Montagu ed., 1999); Charles Lane, *The Tainted Sources of*

The show opened with a twelve minute prerecorded interview with Dr. Ellis, but rather than begin with an assault on his racist beliefs, the first part of the interview was devoted to his complaint that he was a *victim* of racism: “. . . [R]acist basically means anything they don’t like. It’s a *hate* word, calling somebody a racist or a fascist or a neo-Nazi or whatever has become a kind of a racist slur in its own right.”⁴¹

This view of Ellis as a race victim was repeated by numerous White callers who described attacks on his views as attacks on “free speech.” A famous quotation on the value of “free speech” is often attributed (incorrectly) to the eighteenth century French writer Voltaire: “I disapprove of what you say, but I will defend to the death your right to say it.”⁴² Several White callers quoted this, or a version of it, as if its mere recitation was proof of something, from Ellis’s presumed right to say whatever he likes, through to an assumption of the inherent worth of his views as against the assumed negative motives of anyone who would try to silence him. Remember that Ellis faced calls for his dismissal as a racist, but the interview segment of the program began with arguments about “free speech” and not racism.

Similarly, Charles,⁴³ the first caller to be aired after the interview segment, stated:

I agree with *everything* Dr. Ellis has said with regard to colonial legacies I really don’t know enough about the Bell Curve theory to express an opinion but what I *do* support is that gentleman’s right to express his opinion as he sees fit. This is not the Soviet Union; this is a country where free speech has been cherished from time immemorial.

Susan also quoted the Voltaire line and then repeated Ellis’s assertion that the word “racist” was being used to silence free speech: “If he’s just going to be branded a racist, it just *closes down* the discussion.” Some White callers seemed to assume that their commitment to free speech gave them license to wander wherever they pleased. Charles, for example, euphemistically revisited the

The Bell Curve, in RACE & IQ, *supra* at 408.

41. All quotations from the Victoria Derbyshire Show of March 8, 2006 are my own verbatim transcriptions from an audio recording of the program. I use standard transcription notations:

. . . denotes that speech has been edited out;

italicized text denotes that the speaker stressed this word or phrase;

[square brackets] denote background information or explanation.

42. This is actually a summary of Voltaire’s position by S.G. Tallentyre. See THE OXFORD DICTIONARY OF MODERN QUOTATIONS 212 (Tony Augarde ed., 1991).

43. Caller’s names have been replaced with pseudonyms. It is, of course, impossible to know how all callers would identify their race or ethnicity. Where I give a designation it is based on references in the callers’ own words.

centuries-old stereotype about Black physicality⁴⁴ and, despite the fact that “colored” is widely held to be a racist term in the United Kingdom, the comment went unremarked on by the host:

People *are* different I was a very good runner but when I came up against the colored guys that I used to run with at school [pause] you know, as soon as we started to develop and get into manhood, they were *far* stronger and *far* more superior to me.

B. Hate Speech as Symbolic Violence

Benjamin, a caller who identified himself as Black, raised an issue that highlights one of the fundamental problems with the idea that unregulated speech is in everyone’s interests because it automatically guarantees equal opportunity to state your case.⁴⁵ Quite apart from the fact that certain groups and individuals are granted, or can demand, disproportionate time and status, Benjamin’s call foregrounds the personal distress and anguish caused by racist pseudoscientific rhetoric, which, despite its protagonists’ claim to scientific respectability, operates as symbolic violence, that is, as an aggressive form of hate speech:

[A]s I was driving I started listening to Five Live and my children were asking me questions ‘Dad, what do you think about this?’ And afterwards I had to explain to them that, I mean, comparing your class—even though you *are* Black—you are still one of the top performers in your class, both children.

Ian Hutchby has noted that talk radio has a particular immediacy, a kind of intimacy, which derives from its production and consumption in the domestic sphere: “the voices of ordinary citizens are carried from that domestic sphere into the institutional space of the studio, and then projected back again.”⁴⁶ This degree of intimacy heightens the sense of violent invasion created by Ellis’s

44. For a discussion of how this stereotype is woven through the pseudoscientific “IQist” theory, see DAVID GILLBORN & DEBORAH YOUDELL, *RATIONING EDUCATION: POLICY, PRACTICE, REFORM AND EQUITY* (2000); David Gillborn & Deborah Youdell, *The New IQism: Intelligence, ‘Ability’ and the Rationing of Education*, in *SOCIOLOGY OF EDUCATION TODAY* 65 (Jack Demaine ed., 2001). For a contrary case that presents this stereotype as if it were pioneering journalism, see JON ENTINE, *TABOO: WHY BLACK ATHLETES DOMINATE SPORTS AND WHY WE’RE AFRAID TO TALK ABOUT IT* (2000).

45. See, e.g., Michael Kent Curtis, *Be Careful What You Wish For: Gays, Dueling High School T-Shirts, and the Perils of Suppression*, 44 *WAKE FOREST L. REV.* 431 (2009). For a detailed and powerful critique of absolutist “free speech” arguments, see DELGADO & STEFANCIC, *supra* note 30, at 35–36, and this volume.

46. IAN HUTCHBY, *CONFRONTATION TALK: ARGUMENTS, ASYMMETRIES, AND POWER ON TALK RADIO* 8 (1996).

words, putting Benjamin in a situation where, driving his children to school, he was confronted by their reaction to being told (by a university lecturer on national radio—an apparently authoritative person) that as Black people they are less likely to be intelligent. Benjamin and his children have been assaulted by Ellis's words: Benjamin had to explain to his children that they are *not* inferior "even though [they] *are* Black." This throws into relief the crass absurdity of White callers who stated that Black people were simply overreacting: in Charles' words, "some of the minorities are starting to take all these comments far too offensively"

C. *Rationality Versus Emotion*

As the show progressed, it became clear that minoritized voices were effectively denied legitimacy by their White counterparts. Whatever Black callers said and however they tried to present their case, the overwhelming response by Whites was to reject their criticism as being exaggerated and/or irrational. The host read out the following e-mail from a listener: "Everything Dr. Ellis says is rational, well-founded, and true. . . . It was refreshing to hear him speak his mind. Researched, reasoned, and well put. I found myself standing in my kitchen making a cup of tea and cheering him on."

Several callers made reference to Dr. Ellis's "expert" status. Martin stated: "We've got to assume that Professor Ellis is—has done an amount of study and he's come to the *rational* conclusion and he hasn't just thought it up" The prized status of rationality is clear here but, in fact, there is little that is rational about these contributions. Note, for example, that the host reads out a message from someone who describes himself or herself "standing in my kitchen making a cup of tea and cheering him on." This emotional reaction, turning the discussion into a kind of gladiatorial competition, seems hardly rational. Similarly, Martin assumes that Dr. Ellis (whom he incorrectly promotes to the status of professor) has reached his "rational" conclusions after a process of research. But Ellis's specialty is Russian and Slavonic Studies, not a field known for its focus on the question of IQ and race differences in education: again, the rationality of the assumption is questionable. We can see here the premium placed on a White *assertion* of rationality. Interestingly, White contributors were equally keen to label Ellis's critics as irrational and emotional. Henry, a caller with an African accent, was the first respondent to directly name Ellis as a racist:

You just asked that gentleman, Dr. Ellis, a simple question, *if he is a racist?* The man could not even bring himself to answer the question. . . . *A university should be a place where there is new perspectives to help mankind—not somebody coming up and, and, and—if the man was a*

politician, he's not a politician—he's a racist, a a tool for the far right.

Susan, a White caller, felt that Henry's contribution had simply evidenced her argument: "I think this gentleman [Henry] has just made my point, it's irrational. You have to be allowed to make your point, in public, and defend your view." She was no less dismissive a few minutes later when Joseph, a caller who identified himself as a person of color, made the point—very calmly—that Britain already operates with considerable barriers to "free speech" for certain communities. Despite Joseph's direct appeal to "logic and reason," Susan simply rejected his view. Her reaction suggests that Susan's verdict on Henry was as much a reflection of the speaker as the manner or content of his opinion.

Joseph: "[T]here are problems with other ethnic groups, still exercising this freedom of speech, they're igniting *terrorism* if you like. This has many aspects to it. The same way we apply logic and reason and reasoning on what *should* apply to freedom of speech for the Muslims, equally that should apply to White people."

Susan: "I don't think that's happened, I think it's skewed the other way and I think a lot of people in our society feel that they are *not* allowed to speak out in a way that people in the multicultural society are allowed to. It's one rule for one and one rule for another and I think that's what's *really* at the crux of this problem."

Susan's final statements are enormously significant. Although she deploys euphemisms, I think her meaning is clear: "a lot of people in our society feel that they are *not* allowed to speak out" is a claim that suggests *White* people face censorship while people of color ("people in the multicultural society") enjoy additional freedoms. Once again, we have a claim of White victimization. Although this claim is demonstrably false, Susan is correct in stating that the call-in was about more than research on intelligence. As Benjamin's call demonstrated, and Susan hinted at, the core of the discussion was about racial domination, about the presumed and actual right of White people to continue to peddle racist nonsense about Black intellectual inferiority in the name of "free speech."

III. WHITENESS IN THEORY & PRACTICE

"Whiteness at various times signifies and is deployed as identity, status, and property, sometimes singularly, sometimes in tandem. . . . [W]hiteness has been characterized, not by an inherent unifying characteristic, but by the exclusion of others deemed 'not

white.”⁴⁷

A key theme in critical race theory has been to document how White identity has been constituted historically by the law where (even after the formal abolition of slavery) being defined as White meant access to a wide range of freedoms and rights that were withheld from other races.⁴⁸ In one of the most important contributions, Cheryl Harris examines the legal definition of Whiteness and argues that it is a form of property, where property is understood to include rights as well as physical “things”:

Although by popular usage property describes “things” owned by persons, or the rights of persons with respect to a thing . . . property may “consist[] of rights in ‘things’ that are intangible, or whose existence is a matter of legal definition.” . . . Thus, the fact that whiteness is not a “physical” entity does not remove it from the realm of property.⁴⁹

Harris goes on to examine the different characteristics and functions of Whiteness, concluding that the most important characteristic is “*the absolute right to exclude*.”⁵⁰ She states that “whiteness and property share a common premise—a conceptual nucleus—of a right to exclude. This conceptual nucleus has proven to be a powerful center around which whiteness as property has taken shape.”⁵¹ In the English call-in show, we see Whiteness’ ability to set the boundaries for what counts as legitimate debate. Meanwhile, racist pseudoscience gains yet more airtime and is asserted as brave and true in a debate where White people construct a no-risk, win-win situation for themselves.

First, White people remain untouched by the violence of discussions about race and intelligence that construct Black people as automatically deficient. As we saw in the call-in show, many White people see such exchanges as mere debate or discussion; at worst they become a voyeuristic spectacle of insult and assertion. But regardless of how White people experience the discussion, it remains an entirely risk-free environment for them. For example, White listeners to the radio show know that *their* children do not risk losing educational opportunities because of such talk.

Even if teachers mistakenly buy into the nonsense of “IQist” talk, it is highly unlikely that White children will be harmed. White people can listen to debates about IQ, “stop and search,” and DNA

47. Harris, *supra* note 29, at 1725, 1736.

48. See RICHARD DELGADO & JEAN STEFANCIC, CRITICAL RACE THEORY: AN INTRODUCTION (2001); Gloria Ladson-Billings, Foreword, *They’re Trying to Wash Us Away: The Adolescence of Critical Race Theory in Education*, in CRITICAL RACE THEORY IN EDUCATION: ALL GOD’S CHILDREN GOT A SONG, at v (Adrienne D. Dixson & Celia K. Rousseau eds., 2006).

49. Harris, *supra* note 29, at 1724–25.

50. *Id.* at 1736.

51. *Id.* at 1714.

profiling safe in the knowledge that *they* are unlikely to suffer humiliation or wrongful arrest as a result of racial disproportionality. In fact, Whites stand to directly *benefit* from such discussions. After all, it will be White people who gain if other Whites believe the arguments and engage in further racist stereotyping of Black people. In contrast, so-called “debates” about race and IQ can do nothing but harm to Black students: no matter how often the pseudoscience is debunked, the argument provides new fodder for those who wish to explain race inequality by looking anywhere except at the actions and beliefs of White people.

And these are not mere academic debates. These processes have real and direct impacts in schools and classrooms. For example, in 2002 the British government began a concerted focus on ‘gifted’ children, including setting up a National Academy for Gifted and Talented Youth (at a cost of around £20 million).⁵² At the time, antiracists warned that education policies which encourage academic selection are almost always likely to institutionalize further existing inequalities of achievement between different ethnic groups and that notions of giftedness and intelligence had an especially racist past.⁵³ Decades of research, on both sides of the Atlantic, show that whenever teachers are asked to assess their students’ “potential” against some academic or behavioral norm, Black students are typically underrepresented in the highest ranked groups (which benefit from additional resources) and overrepresented in the low-ranked groups that typically experience teaching of lower quality, cover less of the curriculum, and, in the English system of “tiered” examinations, are likely to be entered for tests where the very highest grades are simply not available because they are restricted to a “higher” paper reserved for “more able” students.⁵⁴

52. Julie Henry, *America’s Most Gifted*, TIMES EDUC. SUPPLEMENT (London), Mar. 1, 2002, available at <http://www.tes.co.uk/article.aspx?storycode=360465>; Nicholas Pyke, *Gifted and Talented*, TIMES EDUC. SUPPLEMENT (London), Oct. 10, 2003, available at <http://www.tes.co.uk/article.aspx?storycode=385108>.

53. DAVID GILLBORN, EDUCATION AND INSTITUTIONAL RACISM (2002); Mindy L. Kornhaber, *Assessment, Standards, and Equity*, in HANDBOOK OF RESEARCH ON MULTICULTURAL EDUCATION 91 (James A. Banks & Cherry A. McGee Banks eds., 2d ed. 2004).

54. See COMM’N FOR RACIAL EQUAL., SET TO FAIL? SETTING AND BANDING IN SECONDARY SCHOOLS (1992); GILLBORN, *supra* note 3, at 91; DAVID GILLBORN & CAROLINE GIPPS, RECENT RESEARCH ON THE ACHIEVEMENTS OF ETHNIC MINORITY PUPILS (1996); GILLBORN & YODELL, *supra* note 44; SUSAN HALLAM, ABILITY GROUPING IN SCHOOLS: A LITERATURE REVIEW (2002); SUSAN HALLAM & INJI TOUTOUNJI, WHAT DO WE KNOW ABOUT THE GROUPING OF PUPILS BY ABILITY? A RESEARCH REVIEW (1996); JEANNIE OAKES, MULTIPLYING INEQUALITIES: THE EFFECTS OF RACE, SOCIAL CLASS, AND TRACKING ON OPPORTUNITIES TO LEARN MATHEMATICS AND SCIENCE (1990), available at <http://www.rand.org/pubs/reports/2006/R3928.pdf>; LAURA SUKHNANDAN & BARBARA LEE, STREAMING, SETTING AND GROUPING BY ABILITY (1998); JOAN E. TALBERT & MICHELE ENNIS, TEACHER TRACKING: EXACERBATING INEQUALITIES IN THE HIGH SCHOOL (1990),

Despite these clear, evidence-based warnings, the British government pursued its gifted and talented initiative with no formal safeguards to ensure that familiar patterns of race inequality were not further entrenched. Indeed, the Education Department took the unusual step of issuing a public rebuttal when my own warnings were reproduced in a national newspaper. An official statement was quoted as arguing: “The gifted and talented scheme will identify children by looking at ability, rather than attainment, to capitalise on the talents of the individual child, regardless of ethnic background.”⁵⁵ Incredibly this formal rebuttal demonstrated clearly that the Education Department was working under the common, but misguided, belief that “ability” and “attainment” are somehow different, as if ability were some inner quality or potential while attainment were merely a score on a test. In fact, the American Psychological Association had already rejected precisely this view some twenty years earlier: “A distinction is drawn traditionally between intelligence and achievement tests. A naive statement of the difference is that the intelligence test measures capacity to learn and the achievement test measures what has been learned. But items in all psychological and educational tests measure acquired behavior.”⁵⁶

Contrary to popular belief, therefore, there is no test of capacity to learn or academic potential: *every* test so far conceived measures only what a person has learned to that point. Despite the “scientific” façade that surrounds the industry of standardized testing, we must remember that tests—*all tests*—measure only whether a person can perform well on that particular test at that particular time. If a student is given suitable tuition for a test, including so called “cognitive ability tests” (the preferred term for contemporary IQ tests among those constructing and selling them),

available at http://www.stanford.edu/group/CRC/publications_files/Teacher_Tracking.pdf; LEON TIKLY ET AL., EVALUATION OF AIMING HIGH: AFRICAN CARIBBEAN ACHIEVEMENT PROJECT (2006); Marta Araujo, *Modernising the Comprehensive Principle*, 28 BRIT. J. SOC. EDUC. 241 (2007); Jomills H. Braddock, II & Marvin P. Dawkins, *Ability Grouping, Aspirations, and Attainments: Evidence from the National Educational Longitudinal Study of 1988*, 62 J. NEGRO EDUC. 324 (1993); Jeannie Oakes, Rebecca Joseph & Kate Muir, *Access and Achievement in Mathematics and Science: Inequalities that Endure and Change*, in HANDBOOK OF RESEARCH, *supra* note 53, at 69.

55. This rebuttal was reported as part of press coverage of a public lecture I gave on institutional racism. See Rebecca Smithers, *Racism Rife Says School Expert*, THE GUARDIAN (London), Mar. 12, 2002, *available at* <http://www.politics.guardian.co.uk/publicservices/story/0,11032,665805,00.html>; see also *Racism Warning Over Curriculum Plans*, BBC NEWS (London), Mar. 12, 2002, *available at* <http://news.bbc.co.uk/1/hi/education/1867639.stm>.

56. LEON J. KAMIN, INTELLIGENCE: THE BATTLE FOR THE MIND 94 (1981) (quoting the Cleary Committee of the American Psychological Association, Board of Scientific Affairs).

then on average their performance improves significantly.⁵⁷

Previous research has clearly demonstrated that, regardless of the form of assessment used (whether relying on teachers' judgments or on formal IQ/cognitive ability tests) in selective hierarchical contexts, the odds are stacked against Black children; predictably the Education Department's confidence in their approach was ill-founded. Its assumptions were demonstrably inaccurate and, three years after the official rebuttal, the department released data that confirmed antiracists' fears. In the first national data to offer an ethnic breakdown of the "gifted and talented" figures, it emerged that White students were most likely to be identified for inclusion in the initiative: one in ten White students were selected compared with one in twenty-five students identified as "Black Caribbean" and one in fifty of their peers with family heritage identified as "Black African."⁵⁸

CONCLUSION

Despite the numerous critiques that have debunked a belief in general intelligence, and especially the spurious link between "race" and intelligence, in the twenty-first century it remains the case that education policy (like radio call-in shows) continues to trade in racist assumptions that place disproportionate numbers of Black students in low-ranked teaching groups where they cover less of the curriculum and achieve systematically lower results. This is true of "tracking" systems in the United States and "setting" in the United Kingdom. At the other end of the educational spectrum, on both sides of the Atlantic, measures to reward so-called "gifted" youth systematically advantage children from the majority ethnic group. Despite claims that "free speech" never hurt anyone, we can see that, as Mahoney argues,⁵⁹ unregulated racist talk (that is, speech that systematically denigrates a "racial" group) is part of a wider network of beliefs and practices that has real-world impacts on the educational and life chances of minoritized groups in general, and Black people in particular.

In this Article, I have explored the element of "risk" involved in certain forms of speech and, drawing on the traditions of critical race theory, I have shown that risk is racially structured. White people do not generally risk demonization and stereotyping as a result of criminal or other negative acts by other White individuals.

57. Robert J. Sternberg, *Giftedness as Developing Expertise: A Theory of the Interface Between High Abilities and Achieved Excellence*, 12 HIGH ABILITY STUD. 159 (2001).

58. The relative rates of selection were ten percent White, four percent Black Caribbean, and two percent Black African. DEP'T FOR EDUC. & SKILLS, ETHNICITY & EDUC., THE EVIDENCE ON MINORITY ETHNIC PUPILS 36 (2005).

59. See Kathleen E. Mahoney, *Hate Speech, Equality, and the State of Canadian Law*, 44 WAKE FOREST L. REV. 321 (2009).

In addition, Whiteness operates to invest speech with different degrees of legitimacy, such that already debunked racist beliefs can enjoy repeated public airings where they are lauded as scientific and rational by many White listeners, who simultaneously define as irrational, emotional, or exaggerated the opposing views of people of color. In the call-in show that I analyzed, White callers were no more eloquent than their minoritized counterparts; rather, they were already and always in an advantaged position because of the regime of Whiteness that operates in the United Kingdom (like the United States). The fundamental problem here is not the absence or presence of a Fairness Doctrine; the problem is that genuinely *free* speech is an impossibility in a context where “common sense” (what is rational and irrational) is determined by, and for, White people.