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Racial Fraud and the American Binary

Abstract:

In response to recent controversies about racial transitioning, I provide an argument that deceptions about ancestry may sometimes constitute fraud. In order to arrive at this conclusion, I criticize the arguments from analogy made famous by Rebecca Tuvel and Christine Overall. My claim is that we should not think of racial transitioning as similar to gender transitioning, because different identity groups possess different kinds of obstacles to entry. I then provide historical surveys of American racial categories and the various types of *passing* common in American history, in order to distinguish the potentially fraudulent from the relatively innocent styles of passing.

Keywords:

race, racial passing, racial fraud, identity transition, social identity, racial identity

September 2020 saw a brief explosion of stories about racial fraud. In the span of just twelve days, three prominent women were revealed to have based their professional identities on deceptions about their ancestry or racial identity.¹ More cases accumulated as the weeks and months passed, and it became clear that we face something of an epidemic for the peculiar phenomenon of racial fraud. The current stories distinguish themselves by occupational as well as demographic commonalities: the perpetrators are mainly white women with

1) Krug, "The Truth," was published on September 3; Anderson, "Faked Life as a Black Woman," outed Cole on September 15; and CV Vitollo-Haddad (see Anonymous, "CV Vitolo,"), was outed at some point between these dates.

academic profiles focused on ethnic studies or Black history, and many have had leadership roles in left-wing activist organizations. We should thus wonder about the specific historical and cultural circumstances that have conditioned the phenomenon. In this essay I examine the problem in light of histories of racial ambiguity in America. My conclusion is that racial fraud by white academics is something of a natural result of our fractional definitions of blackness, when combined with recent emphases on self-identification and epistemic authority. Since fraud in these cases threatens the appropriate distribution of resources and reparative goods, it requires also that we refuse the common emphasis on self-identification and offer a more fine-grained analysis of both identity-transitions and our racial categories.

I. Racial Transition

To the extent that philosophers have considered questions about racial transitions, too often their arguments have been conducted in accordance with a questionable analogy to gender transition. Rebecca Tuvel infamously argued that people who accept gender transitioning should accept racial transitioning.² Her essay met with public outrage, which I do not hope to repeat here except to note that, as Sabrina Hom has since demonstrated, Tuvel's argument followed a pattern preexisting within the discipline.³ Christine Overall⁴ had published a remarkably similar essay thirteen years prior, and others such as Heyes⁵ and even Appiah⁶ have entertained the analogical argument.⁷ In addressing the argument from analogy, then, our focus should lie with the research practices of the discipline, especially our widespread neglect of history and literature in addition to critical race theory, trans theory, and other areas. My aim here is to treat the analogy as part of a larger, flawed argumentative strategy: its defenders seek a single ethical principle, or set of principles, that would apply to all identity transitions. Moreover, they presume that the principle in question should grant authority, epistemic or otherwise, primarily to the transitioners. By contrast, I wish to argue that there should be no unified analysis even of racial transitioning, let alone – what the argument from analogy would require – a single argument or principle that would apply to racial, gendered, and religious transitions. If there is no single principle regulating identity transitions, then *eo ipso* there can be no general rule about first-person authority with regard to them.

Like Overall and Heyes before her, Tuvel sets up the argument as a simple analogy:

1. Gender and race are socially constructed.
2. In the case of gender, we reason from social construction to the permissibility of transitioning.
3. In the case of race, then, we ought also to infer from the fact of its social construction to something like the permissibility of transitioning.

To be sure, neither Overall nor Tuvel straightforwardly argue that the analogy is cogent, and they refrain from direct advocacy for transracialism by instead refuting potential criticisms of the analogy. Overall's entire

2) Tuvel, "In Defense of Transracialism."

3) Hom, "(Dis)Engaging."

4) Overall, "Transsexualism and "Transracialism."

5) Heyes, *Changing Race*.

6) Appiah, "Would that Still Be Me."

7) Heyes rejects the analogy but structures her essay around it. Appiah does not endorse the analogy in any straightforward way, but it seems clear to me that entertaining it in was part of what led him to his theory of collective identity that he defended in Appiah, *The Ethics of Identity*. I lean rather heavily on the latter theory here.

article, and a significant portion of Tuvel's, are spent imagining objections and responding to them. This negative procedure is common in philosophy, and it combines seamlessly with the neglect of empirical sources that caused the public outrage. Tuvel rightly seemed to many readers to be disengaged from the history and realities of race in America, not to mention with trans issues, and she treated racial transitions as if they were a matter of *a priori* rights rather than concrete histories. I do not wish to pile on here, since I agree with Hom that Tuvel's shortcomings reflect endemic problems in philosophical literature rather than unique failings on her part. Only interdisciplinary approaches to these topics, as Hom also advocates, can rescue the philosopher from the shortcomings of the argument from analogy.

As analogies go the argument is extremely simple, and the contestable premises are easy to identify. One might object either to premise 2, namely that social construction is the basis of trans rights, or to the inference from 2 to 3. The former objection would require that we argue that trans-advocacy is not always, or best understood as, a simple inference from social construction. That is probably true, but it would be beside the point here to set out that argument. Of more immediate concern is that an ambiguity in the term "social construction" makes the inference invalid. Tuvel allows that she does not presume race and gender to be "constructed in the same way," but this concession does not lead her away from the analogy.⁸ My argument will be, by contrast, that the way a particular identity is constructed will determine how and whether someone might transition into it. If we are to speak of "becoming black," for instance, we would need to examine the historical constructions of blackness in the relevant contexts.

Instead of focusing on the differences between race and gender, a defender of the analogy might revise the argument by generalizing to a more abstract premise. Such a principle should codify the desired emphasis on first-person authority, and read something like:

For socially constructed characteristics people may rightly choose which ones they undertake or self-ascribe; and given certain past choices or self-ascriptions, people may freely change their identity or self-ascription and so *transition* to another.

Defense of a general principle like this would be a difficult philosophical task. It would require a specification of what a social identity is and what the attendant ethical issues are. To his credit, Appiah has devised such a theory in his *The Ethics of Identity*.⁹ What he writes there, however, would not support the analogy precisely because he recognizes that identities, in his more technical sense, are not adopted mainly or only by choice. He emphasizes rather that neither the content¹⁰ of identities (man, woman, white, gay, straight, etc.) nor any person's adoption of them¹¹ are exclusively up to that person. Of course, in many cases people do have some choice in the

8) Her first footnote reads: "Importantly, I am not suggesting that race and sex are equivalent. Rather, I intend to show that similar arguments that support transgenderism support transracialism. My thesis relies in no way upon the claim that race and sex are equivalent, or historically constructed in exactly the same way."

9) Appiah, *The Ethics of Identity*.

10) "Now, many people have the idea that the normative content of an identity should be determined essentially by its bearers. Even if that is true – which I doubt, since recognition by people of other identities is often a proper source of their meaning – this would still mean that some people have the content of their identities determined in part by others; namely, those of the same identity" (Appiah, *The Ethics of Identity*, 67).

11) "You can choose whether or not to play a certain conventional role, and, if all there is to an identity is a conventional set of behaviors, and you are capable of them, then you can choose whether to adopt the identity. But when the criteria for ascribing a certain identity include things over which you have no control – as is the case with gender, race, and sexual orientation – then whether you identify with that identity, whether, for example, you think of yourself as gay and act sometimes as a gay person, is not only up to you" (Appiah, *The Ethics of Identity*, 69–70).

matter – for instance converts to Christianity may reject certain aspects of the relevant creed (namely, Appiah’s “content”) – but our choices are limited even in this best case. What Appiah calls the normative content of the identity would be determined in part at least by other Christians, and probably also by non-Christians. There are, moreover, certain criteria of entry that anyone must meet in order for others to recognize them as having a particular social identity, and this is especially so (as Appiah also emphasizes) for the categories of race, class, and nationality.

The fact that different identity groups have different criteria for entry might be gathered from studies of religious conversions as well as racial passing, and this should be enough to discourage any general principles about the ethics of identity transitions.¹² A fuller argument, at the very least, would weigh such general principles against the histories of various social identities, their different authority structures, and different obstacles to entry. Appiah recognizes all this, and he even treats it as a public and negotiable matter whether someone identifies as gay.¹³ He perhaps went a step further than needed on this last point, since even if people have some absolute right to identify – where this term means only “think of themselves as” – with any social category, this will not require that anyone else treat them as such. It is the recognitive, interpersonal aspects of identity that are under dispute in both the racial fraud cases and Appiah’s own analysis. We need not worry that Jessica Krug, for instance, thought of herself as Afro-Caribbean, but rather that she received professional benefits for the imagined identity. To say that identity categories may have obstacles to entry, then, does not entail any regulation about how people think of themselves.

To her credit, however, Tuvel also very smartly shifts her argument onto third parties. She writes: “Generally, we treat people wrongly when we block them from assuming the personal identity they wish to assume.”¹⁴ But this principle would not apply even to her chosen example of conversion to Judaism. That example ought to have led her rather to a deeper recognition of the specificity of social identities, since conversion to Judaism does not operate in a way similar to conversion to, for instance, evangelical Christianity.¹⁵ Conversion to Judaism is not even like conversion to Catholicism, although these two cases distinguish themselves from evangelical Christianity in that there are robust authority structures that decide the matter. There are also specific rituals for the convert to undergo including the mastery of ancient languages, sacred texts, and so forth. If a bishop decides that a catechumen or candidate has not sufficiently learned Catholic dogma, the bishop does not illicitly “block” the person from adopting the identity of a Catholic. He rather employs the authority of the Church, granted to him by exacting rituals and traditions, to determine on its behalf that the candidate may not convert.

Identity groups, in other words, sometimes have the right to be exclusive. This fact alone prevents any inference from social construction to self-identification or choice. Despite this problem, it is probably feasible to assert a variant of Tuvel’s principle in a heavily modified form. She could argue that our default judgments in regard to people’s identity claims should be one of acceptance. This would be a fair ethical principle especially when either (as for all non-clergy in the Catholicism example) we are not members of the relevant authority structure, or there is not exactly a relevant authority structure. We should note, however, that in some ethnic or racial cases that there are such authority structures, as in the case of Native tribal authorities.¹⁶ This has implications for the whole problem of race in America, and Randall Kennedy was right to claim that “ques-

12) Rambo and Farhadian, *The Oxford Handbook of Religious Conversion*.

13) Appiah, *The Ethics of Identity*, 69–70.

14) Tuvel, “In Defense of Transracialism,” 264.

15) Segal, “Conversion to Judaism.”

16) In the United States, for instance, Native identity involves criteria determined by specific tribes and recognized by the U.S. Department of Interior.

tion of authority over racial affiliation and classification ... reaches back well into American history ... [and] remains a vexing issue in our own day.”¹⁷

The more charitable formulation of Tuvel’s principle would place her argument next to those from Kennedy’s *Interracial Intimacies*, which has the virtue not only of extensive case study but also of refraining from analogies to gender or religion. Kennedy does, however, arrive at a general normative claim regarding the entry- and exit-conditions for racial identities in a multiracial context, which he formulates in the language of individual rights:

A well-ordered multiracial society ought to allow its members free entry into and exit from racial categories, even if the choices they make clash with traditional understandings of who is black and who is white, and even if, despite making such choices in good faith, individuals mislead observers who rely on conventional racial signaling. Rather than seeking to bind people forever to the racial classifications into which they were born, we should try both to eradicate the deprivations that make some want to pass and to protect individuals’ racial self-determination, including their ability to revise stated racial identities.¹⁸

Nonetheless Kennedy’s rights-based approach to racial transitions, I will later argue, is not sufficiently rooted in his analyses of actual cases. Moreover, he neglects to offer a normative defense of the idea of “racial self-determination” by individuals. He does recognize the primary problem undergirding this essay, which is that undue emphasis on choice or self-identity makes it too easy for white-skinned people to exploit reparative justice programs. But he asserts that cases like Dolezal and Krug (he wrote before these stories became so common) would be outweighed by the greater public benefits of free racial self-determination. Why, however, should we think of racial identity in terms of liberal freedoms like speech and association? Why should we think that white people have a right to become Black or Chicana? In the remainder of this essay, I argue that American racial categories do not fit the model that an argument like Kennedy’s would need.

II. Six Theses on the American Racial Binary

My argument above is that we should analyze identity-transitions with specific appeal to the concrete histories of the relevant identity categories, precisely because identity groups are recognitive and thus present obstacles to entry. In the case of our American women engaged in racial fraud, then, we need to examine the peculiar American racial binary of black and white as well as its descendent distinctions between white people and “persons of color.”¹⁹ Race theorists have frequently enough noted that people tend to illicitly globalize what are actually local concepts, obscuring all the issues by imagining that a term like “black” or “white” has similar applications everywhere. In the language of the analytic philosophers of race, we should say that “race concepts do not travel.”²⁰ In analyzing a particular racial problem such as fraud, then, we need to keep in view both the local specificity of the categories just as much as the global contexts of race and racism.

The most common observation about the specificity of the American category “black” is that it includes many people who would be white in other contexts. Puerto Rico is most often mentioned as a place

17) Kennedy, *Interracial Intimacies*, 323.

18) *Ibid.*, 333.

19) Starr, “The Re-Emergence of ‘People of Color’”; Yuen, “Genealogy of the Term”; and Aspinall, “Collective Terminology.”

20) See Mallon, “Passing, Traveling and Reality,” who examines this problem without reaching my conclusion.

where a Black American might count as white, and in most New World contexts there are intermediate categories into which many Black Americans would fall.²¹ This sometimes surprises Yankees abroad, as when the journalist and television commentator Eugene Robinson traveled to Brazil only to discover that he was not “black” in that country.²² Conversely, South Americans are sometimes surprised by American or European racial categorizations, such as when the Brazilian soccer star Neymar dismissed questions about his experiences of racism by refusing the implied racial ascription. The dissonance is so strong on our side that reporters relayed his statement, “It’s not like I’m Black, you know,” with disbelief, wrongly accusing Neymar of racial self-denial.²³

Appiah has emphasized the corresponding point that there is an American sense of “white” that includes some immigrants who were nonwhite prior to arrival. He opened *Color Conscious* with an imagined scenario involving a Sicilian at Ellis Island who is surprised to learn of being white.²⁴ A few decades of influential historical research into white ethnic groups have made this issue more familiar, although it is common also to misconstrue the larger point.²⁵ That larger point is simply that criteria of entry to a given racial category tend to be local, and sometimes are radically so. But we do not often index our concepts in order to reflect the appropriate specificity. The informal boundaries of “white” are not the same today as they were a century ago, and perhaps not the same in the Midwest as on the Pacific Coast. Some historians of Victorian racial dynamics thus warn against examining photographs, since the subjects’ racial identities will not align with our unreflective visual categorizations.²⁶ Our eyes see race in a culturally specific way, though our minds and our language will aim at generalization. Our first thesis is thus:

Thesis 1: Race concepts have strong cultural variability, as may be seen in the American notions of “Black” and “white.”

American race is also binary in a way that makes it unique on the world stage, a fact that one might learn from molecular anthropologists as well as legal historians (although very differently in these two cases). “No other New World nation,” writes Sweet, “has a bimodal scatter diagram, the result of an endogamous color line that has been in place for three centuries.”²⁷ The binary division of Americans into black and white was not, then, a merely legal fiat. It was rather a demographic result of anti-miscegenation practices dating to at least 1691.²⁸ The later American legal history is peculiar in that we eliminated, by about 1920, all notions of a third or intermediate caste. Bernasconi suggests that categories linked to group oppression tend toward binarization, but he also acknowledges the uniqueness of American race concepts in this regard.²⁹ He adds, what is an important qualification here, that making our race concepts less binary would not by itself represent any kind

21) Williamson, *New People*; and Sweet, *Legal History of the Color Line*.

22) Robinson, *Coal to Cream*.

23) de Oliveira, “Is Neymar Black?”

24) Appiah and Gutman, *Color Conscious*.

25) See especially Spickard, *Race in Mind*, for a sophisticated analysis of the “becoming white” historiography.

26) Dineen-Wimberly, *The Allure of Blackness*. Bernasconi, “Crossed Lines,” 218; addresses a similar point when discussing Monticello: “One needs to take into account that looking white in 1795 might not count as looking white two hundred years later, given the changes in the way the races were redefined in the in the intervening period, but this is because race itself, while serving as the largely unnamed organizing principle, was undertheorized.”

27) Sweet, *Legal History of the Color Line*, 9.

28) Williamson, *New People*; and Cashin, *Loving*.

29) Bernasconi, “Crossed Lines,” 211–12.

of remediation of systemic racism. Racial regimes have operated with all sorts of two-, three-, and four-caste arrangements.³⁰

I make the point that American race concepts are uniquely binary, then, only to frame the idiosyncratic structure of passing and transitioning in America as opposed to in other places. There are no easy moral lessons to be drawn on these subjects, but there are many particularities to consider prior to any ethical analysis of fraud or appropriation. It seems sufficiently uncontroversial to summarize the point:

Thesis 2: The binary aspects of American race concepts are a global outlier.

America is also peculiar for its fractional definitions of blackness that culminated in a one-drop rule, as a result of which the upper (privileged) category of white became a kind of purity concept, whereas the lower (underprivileged) category became a broad church that includes people whose ancestry, skin color, and appearance might otherwise have them as white.³¹ Those who write on racial solidarity have emphasized this point.³² The problem for them is that American blackness serves less as a specific racial category in the classical, Enlightenment sense and more as a social or political coalition: while scatter diagrams show that Americans are in fact binary in regard to skin color, they also show that our “black” extends into much lighter browns than that term does in other places.³³ The members of the class do not share many visible characteristics, so that what unity has been achieved in Black communities is political or social much more than even apparently biological or ancestral. Blackness in America is sometimes a matter of commitment, the fact of which is reflected in a distinguished history of light-skinned activists and leaders.³⁴ So we arrive at:

Thesis 3: There is an asymmetry of race categories under the rule of hypodescent, “white” reflecting an unachievable purity and “black” an almost ubiquitous impurity.

A fourth peculiarity of American race concepts is that they are unusually divorced from outward appearance and phenotype. In Central and South America especially, race is very much a matter of how a person appears, or of social status, how they think about themselves, or behave culturally, and so forth.³⁵ American race, however, is a matter of ancestry, a point that some philosophers – not wishing to approve of the emphasis on ancestry – have misunderstood.³⁶ This problem has its roots in some antebellum rules that slave-status be passed from the mother, but it was amplified in the post-Mendel era by the implementation of the one-drop rule. A drop cannot be seen, and so a notion arose that Blackness is an invisible characteristic. Our fourth thesis is thus:

Thesis 4: American race categories are uniquely divorced from phenotype by virtue of our emphasis on genealogy.

30) See Davis, *Who is Black?*, for taxonomy and analysis.

31) There is much debate, of course, about the origin and development of the one-drop rule. Sweet locates its beginning in the 1830's among a Northern panic consequent to stories about Nat Turner. Williamson finds the roots of it at a much earlier point. All agree, however, that as a legal doctrine, the one-drop rule owed its dominance to Mendelian ideas and the politics of Jim Crow.

32) See especially Williamson, *New People*.

33) Sweet, *Legal History of the Color Line*.

34) See White, *A Man Called White*; Spickard, *Race in Mind*; and Dineen-Wimberly, *The Allure of Blackness*.

35) See especially Wade, *Race and Ethnicity in Latin America*.

36) Tuvel, “In Defense of Transracialism.”

I do not wish to overstate the importance of this last idea, which has more to do with white Americans than with Black Americans. For the vast majority of Black Americans, their blackness is in fact a visible characteristic. The notion of an invisible Blackness is nonetheless an important phenomenon under the regime of hypodescent, because a person need not visibly appear as Black in order to suffer the legal and social injustices imposed on the relevant populations. Many of the common themes surrounding Black identity, such as colorism within specific communities, elite capture, differential statuses of particular Black people within white institutions, social or political definitions of Blackness, and so forth, are all deeply related to the ambiguity of the racial border that the one-drop rule causes:

Thesis 5: Blackness may be invisible, due to the phenomena falling under Theses 3 and 4.

The central issue of invisible Blackness entails that, while actual Black people are often all-too certain of their standing, white people cannot be entirely assured of their whiteness. There are interesting historical anecdotes here also, such as George Tillman's declaration at the 1898 South Carolina Constitutional Convention – speaking in criticism of the one-drop rule – that none of the members present would count as white according to the proposal.³⁷ Bernasconi elaborates the same point with reference to its purported biological basis: “under Mendelian laws of heredity ... everyone had to be suspicious of him or herself to the extent that they did not know all the details of their own heritage.”³⁸ And Omi and Winant describe the legal defense of Susie Phipps claiming that “most Louisiana whites have at least 1/20th ‘Negro’ ancestry,”³⁹ though more current genetic research suggests that this was a significant overestimation.⁴⁰

Earlier worries about invisible blackness no doubt reflected a level of racial paranoia on the part of American whites, but it also reflects facts about our history. Our white population is not as black as our Black population is white, but the bimodal nature of the whole has never been a matter of unmixed African or European populations. This point also says nothing about centuries of Indian amalgamation, to which Tillman was likely referring in his speech.⁴¹ The whole binary structure of American racial law operates as if the first crime of American history, namely the Native genocide, may be ignored. But the white population in America has never been entirely European in its ancestry, even if it is a matter of historiographic and philosophical principle that Iberoamerica has been marked by race-mixing whereas Angloamerica is marked by strict anti-miscegenation and segregation.⁴²

The general paranoia involved in whiteness, and acknowledged by both philosophers and historians, may be summarized:

37) Tindall, “The Question of Race.” “The issue of miscegenation also posed the delicate question of defining ‘Negro.’ The committee report spoke of ‘one eighth or more’ of Negro blood. George Johnstone proposed that this be changed to read ‘any’ Negro blood. *George Tillman with rare realism opposed reducing the quota below one-eighth ... he made the astounding claim that there was not one pure-blooded Caucasian on the floor of the convention.* The ‘taint’ was not necessarily Negro, but he maintained that all had ancestors from at least one of the colored races.” (Tindall, “The Question of Race,” 277–303, emphases mine).

38) Bernasconi, “Crossed Lines,” 223.

39) Omi and Winant, *Racial Formation in the United States*, 53.

40) Bryc, Durand, Macpherson, Reich, and Mountain, “The Genetic Ancestry of African Americans.” The authors removed this example from their 2014 revisions, though in the earlier editions it introduces a central chapter.

41) See Nash, “The Hidden History of Mestizo America.”

42) To take just one classical statement of the point from Kicza, “Social and Ethnic Historiography”: “historians of Latin America have generally insisted that the scale and diversity of colonial Latin American societies were augmented by a degree of race mixture and ethnic mobility unrivaled in other parts of the globe where Europeans traded and settled.”

Thesis 6: Whiteness is inherently an uncertain possession, and almost no one is ever fully white.

The genealogical aspect of this problem, namely, that the white American population has significant African and Native admixture, was recognized widely at earlier points in our history, so much so that Tillman's objection to the one-drop rule was understood and accepted by his very white audience.⁴³ White people a hundred years ago tended to know these things, whereas today's white people tend not to know them. Charles Mills exploited both points, namely, the substantively mixed heritage of today's whites and our nearly universal ignorance of the fact, in his brief response to the Dolezal controversy:

Walter White, another blond blue-eyed American, who was the (black) chair of the national NAACP from 1931 to 1955, might have quibbled: "Hate to break it to you folks, but back in the 1890s a whole bunch of octoroons headed up north – I believe some said they were going to Montana – after telling their kin: 'Don't call us, we'll call you ... Actually, then again, we probably won't.'"⁴⁴

Mills's meaning in this passage is that there is a strong chance that Dolezal, like any other blond-haired American from the Midwest, has Black ancestors in the past four or five generations. I presume from the context that Mills intended to imply a further point about the case: whiteness as we in America typically conceive it is something of a lie, in the literal sense that it requires something like "exclusively European ancestry" that white people tend not to have.

One thus might say that we have two sets of binary racial categories, namely, one legal definition and an unofficial pair of folk concepts. But this problem affects the categories "black" and "white" in distinct ways. Legally regarded, whiteness is about ancestral purity in a way that does not correspond to actual characteristics of those people designated as white; legally regarded, blackness is a potentially invisible ancestral impurity that contrasts with the visible blackness, famously symbolized by DuBois as a Badge, of the vast majority of actual Black people.⁴⁵ Those respective dualities in turn frame what it means to pass as either white or black. A Black-to-white passer is simply someone who conceals a characteristic that is defined anyway as potentially invisible. A reverse-passer, however, is someone who deceptively claims not to be something (namely, white as ancestrally pure), that they likely never were in the first place.

The larger legacy of passing is intertwined with all these points, as the effect of some and as the cause of the last: the hundreds of thousands of Black-to-white passers in American history are precisely what infused the degree of African ancestry into the white population.⁴⁶ By contrast, passing has been an effect of hypodescent in a few ways, some obvious and some not. Bernasconi is right to note that the rule "inevitably made it easier for people to pass."⁴⁷ The one-drop rule made it easier for people to pass from Black to white only because it

43) South Carolina settled on a one-eighth barrier. That state is also distinguished in American history by a number of demographic and legal characteristics. For one, it has a much darker and less mixed Black population; secondly, it had, prior to 1898, the most flexible and non-biological criteria for whiteness.

44) Mills, "Philosophers on Rachel Dolezal."

45) DuBois, *The Souls of Black Folk*.

46) Historians tend to locate the key period of passing from about 1880 to 1930, so after Reconstruction and throughout the period in which hypodescent made its way into the legal system. Sweet disputes this history, reasoning on the basis of molecular anthropology that passing has rather been evenly spread from 1880 to the present. If that is true, it would still hold that the traditional passing period is culturally significant, since that is when passing was a primary theme of African American literature and a legitimate worry in the white and Black imaginations respectively.

47) Bernasconi, "Crossed Lines," 221.

defined so many white-appearing individuals as Black. The relevant, for our fraud cases, result of the one-drop rule was rather that it made passing from white to Black even easier.⁴⁸ White-to-Black passing was never, of course, the widespread trend that Black-to-white passing was and perhaps is, but there have frequently been cases of white people adopting Black identities; one of the more legitimate reasons is, for example, in order to marry Black spouses without legal reprimand.⁴⁹ Nothing could be easier as a basis of an identity transition than a nearly unverifiable claim about one's deceased great-grandparent.

My own inspiration to study this topic was the story of Kelly Kean Sharpe's racial fraud.⁵⁰ This white professor had claimed a Chicana identity on the basis of a fictional *abuela*. While others were variously outraged or entertained by the deception, I could not help but think that a white-skinned woman's stories about her grandmother, whether true or not, should not have been the basis of any claims to race-designated benefits. In reparative contexts we have to reckon with, rather than silently preserve, the peculiarities of the American racial binary. Why would a white woman with a Mexican grandmother, even an actual one, be considered a candidate for minority fellowships, grants, and professorships? America's racial binary, which lives on in the folk notion of "persons of color,"⁵¹ made it too easy for white people to pass for something other than white. All the attendant dynamics including racial solidarity, the one-drop rule, and the invisibility of blackness/ POC-ness have made it such that no one is inclined to question another person's claim not to be white. But in reparative justice contexts we will need some nuanced analyses that might mitigate fraud, and to sketch such an analysis is the purpose of my final section.

III. Deception and Fraud in Racial Transitions

In response to Tuvel's argument, Hom claimed that "passing as white cannot be a pretense or lie about one's true being, but rather a repositioning in relation to dominant modes of racial meaning."⁵² I take my conclusion from the last section to be consistent with this, namely that passing as white requires concealing a perceived genealogical impurity that most people will possess anyway. Passing for white is thus not (much of) a lie beyond the sense in which white identity is already a collective lie, and I distinguished several senses above in which passing phenomena are already deeply ingrained in the category "white." Ancestral purity is at best mythical, and at bottom it is probably conceptually incoherent. Some scholars have gone as far as to say that all white people might be regarded as passing,⁵³ though the use of "passing" is metaphorical in that case. Hom more accurately concludes that passing is "a consistent and constitutive part of the racial scene in the United States,"⁵⁴ and she takes this as a reason to disentangle racial passing from deception and fraud. In this section I wish to pull even this conclusion back a step, by showing that "passing" does not denote a single phenomenon. There are rather several common types of racial transition, a few of which indeed constitute not only deception but also fraud.

Even in cases of white-to-Black or white-to-POC passing, however, the troubles rest less with intentional deception itself and more with the thoughtless way in which we sometimes apply one-drop racial binaries:

48) Bernasconi quotes Myrdal on this point: "To cross the caste line from the white side would be a comparatively easy matter, since in America a Negro is not necessarily supposed to have any Negro features at all."

49) See especially Dreisinger, *Near Black*; McBride, *The Color of Water*; and Sandweiss, *Passing Strange*.

50) Flaherty, "Even More White Lies."

51) Starr, "The Re-Emergence of 'People of Color.'"

52) Hom, "(Dis)Engaging," 39.

53) Powell, *Passing for Who You Really Are*.

54) Hom, "(Dis)Engaging," 34.

fabricated stories about an *abuela* (Sharpe) or a *barrio* (Krug) were enough for colleagues to cast these white professors under the broad label of “persons of color.” While people like Sharpe, Krug, and Dolezal were in fact engaging in lies and deception, then, the deeper deception lies in the fact that anyone mistook these stories for racial credentials. Only in a place where one-eighth, or even less, ancestry determined a binary classification could such a problem arise, and in America we unfortunately have endowed with the label “person of color,” anyone with any discernable non-European ancestry (thereby extending the logic of hypodescent).

In order to remedy this situation, we should begin with a broad catalog of racial transitions, and so examine the role of deceit and the possibility of fraud in more specific instances. We should not begin, as Kennedy does, with a definition of passing that too much emphasizes the person-level dynamics of deceiving and concealing:

Passing is a deception that enables a person to adopt specific roles or identities from which he or she would otherwise be barred by prevailing social standards.⁵⁵

Kennedy then makes the mistake of trying to fit his admirably comprehensive survey of racial transitions into his narrow definition of passing as intentional deceit. He begins the analysis with a famous literary case involving genealogical discovery, Gregory Howard Williams’s memoir *Life on the Color Line*.⁵⁶ But he fails to note that he had defined passing too narrowly to count in his very first example. In order to avoid such mistakes, I wish to begin with those types of racial transition that do not involve intentional actions by the transitioners.

The first point to consider is that there are many types of racial transition in which an individual or group may undergo a change in racial identification without deceiving any particular audience. In fact, in some instances the transitioners do not engage in any course of action whatsoever. Racial transitions may result merely from changes to political borders or legal categories. Bernasconi discusses a South African case that led to a reclassification of some populations, and American expansionist history in the west and southwest provide abundant examples of this.⁵⁷ The legal cases are also important in American history: legislative changes around race, such as were common in our post-Reconstruction era, may entail reclassification of various individuals or groups. One immediate effect of the rise of hypodescent, especially the move from the fractional to the one-drop definitions, was that a lot of people suddenly became Black. Anyone familiar with the classic historiography of jazz will be aware of a common myth about this.⁵⁸ In both the political boundary and racial law cases, it is probably the norm that the transition involves displacement into a lower caste. But it also happens that the higher caste sometimes revises criteria in order to retain or re-establish demographic proportions. George Yancey⁵⁹ has claimed that precisely this happened to American “white” between 1925 and 1975, when “Polish, Russians, Ukrainians, and Italians” were racially repositioned.

One example that may include some limited action by the transitioners, without approaching deception, is racial transition by genealogical discovery such as we find in Williams’s story. There are some more harrowing stories about this from American history, such as the tale of Davis Knight, a young Mississippian who discov-

55) Kennedy, *Interracial Intimacies*, 283.

56) See the memoir, Williams’, *Life on the Color Line*.

57) Bernasconi, “Crossed Lines”; and Horrell, *Race Classification in South Africa*.

58) Johnson, “Jim Crow Laws.” The creation myth along these lines has it that jazz owed its origins to the reclassification of Creoles as Black and the subsequent mixing of art-forms. More recently, however, some historians have attacked this story. See Johnson, “Jim Crow Laws.”

59) Yancey, *Who is White?*, 2.

ered in 1948 that his great-grandmother had been enslaved.⁶⁰ The discovery might not have meant much, were it not for the law of hypodescent that placed him thereby, in combination with his having a white spouse, in violation of anti-miscegenation laws. Newly Black, Knight received a sentence of five years for violation of his local anti-miscegenation code. A more recent and much more frequently cited case involves one Susie Phipps, purported to be 3/32 Black, who by Supreme Court ruling could not declare herself white because her deceased parents' birth certificates (unbeknownst to her) had recorded them as "colored."⁶¹ Phipps then became legally Black at a relatively advanced age, though it is not clear from the reports how deeply this affected her.

Genealogical surprises by themselves do not require racial transitioning, but rather the phenomenon under consideration highlights how legal and social strictures, combined with our limited knowledge about our own genealogies, supervene on racial identities. There are many more recent cases, for instance, in which people have discovered facts about their parentage that *would*, under other circumstances, occasion a sort of racial transition. Some differences between the white-to-Black and the Black-to-white cases will reveal themselves here: genealogical surprises about white parentage have not had the kind of impact that we find in the Williams, Davis, and Phipps cases. A recent story about Verda Byrd serves as example of a black-to-white transition via genealogical discovery. Byrd lived seventy years as a Black woman only to discover that her biological parents were both white.⁶² She was raised, however, in a Black family, married a Black man, raised Black children, and so forth. In this case the revelation no doubt had some meaning to her, but it did not cause her to transition in any sense worth highlighting. This case also illustrates that there are temporal issues involved in transitions: can racial transitions apply retrospectively? Can it turn out that she had been white without her knowledge, or did she merely become white after the revelation?

The standard stories of passing are very different than these politically, legally, or epistemically induced transitions. They are rather Black-to-white transitions in either a temporary or permanent mode. Here I wish to note that we should probably have different words for the temporary and permanent cases respectively, although they are perhaps ineluctably coupled in American social history under the name "passing." In the temporary case, passing is a contextually specific action that serves a definite purpose. The common examples, which populated midcentury Black media, involve Black women passing as white in order to obtain secretarial or clerical jobs.⁶³ Typically such a passer returned home in the evening and lived with a Black family in a Black community. The verb "to pass" means, in this case, something like "to succeed in appearing as." It is a success term, implying a kind of role-playing that might or might not count as deception. I take it that this is the case that Hom means when she writes that passing is not a lie or deception about one's "true being," but rather a "repositioning in relation to dominant modes of racial meaning."⁶⁴ We should not refer to this as "passing" full stop, however, but rather we should specify it as "temporary intentional passing."

Should we think of the temporary Black-to-white passer as engaging in a deception? It seems to me that some elements of deception and concealment are present, but that they too much resemble analogous cases in which specific actors modify their appearance or behavior to meet public norms. One could argue, and Daniel

60) Davis, *Who is Black?*, 9.

61) See Obi and Winant, *Racial Formation in the United States*; Mallon, "Passing, Traveling and Reality"; Heyes, *Changing Race*; and Wright, "Who's Black, Who's White."

62) Tan, "Adopted Woman Raised as Black."

63) Kennedy, *Interracial Intimacies*. Kennedy cites a 1952 *Ebony* article, "White by day, Negro by night," and he takes most of his relevant anecdotes from similar sources.

64) Hom, "(Dis)Engaging", 39.

Silvermint⁶⁵ has argued, that in this sense people are passing all the time when they are trying to meet standards of public performance. “Concealment” in this sense of passing should not be taken to be a morally loaded term. One might, for instance, work to conceal a foreign accent, but this is effectively the same as trying to learn and acquire the local phonetic norms. Passing so interpreted is, then, a mere assimilation to norms, and it is a separate and unfortunate fact that in employment contexts our norms have been racialized. We should thus conclude that temporary Black-to-white passing may be intentional, typically involves (conscious) concealment, but is not thereby a deception in the more loaded moral sense of this term.

Nonetheless we should not infer from the relative innocence of temporary Black-to-white passing that something similar applies to reverse passing. This point, the possibility of a temporary white-to-Black passing, perhaps requires a further distinction between lying and letting-believe. One of our recent fraud perpetrators, CV Vitolo-Haddad, made such a distinction (though perhaps not in good faith) in their public confession.⁶⁶ On their own telling, at least, Vitolo-Haddad did not deceive anyone actively, in the sense that they did not, as Krug and Keane Sharp had done, relate false stories about their ancestry.⁶⁷ They did admit, however, to letting others draw mistaken inferences about their parentage.

What, then, would be the crucial difference between this case and the standard temporary passing case? Perhaps one could argue that Vitolo-Haddad was adapting their behavior to certain norms in a specific community, and that those norms involved appearing as nonwhite. This would reflect the fact that in activist circles there are certain reparative contexts in which nonwhite identities have some normative valence. The whole argument about racial fraud, however, boils down to this point: Vitolo-Haddad’s story is analogous to the traditional Black-to-white passing narratives only if we think of the reparative context as normative in the same sense in which the norms of hiring (in e.g., midcentury secretarial jobs) were normative. But to prevent such an argument is precisely the reason why I have argued that analysis of passing requires specific inquiry into the relevant identity categories. “Black” and “white” are not, in America at least, categories similar enough to support inferences of the type needed here. The fraud cases in question are instances of fraud precisely because they contain not only deception but also (as our extant legal definitions have it)⁶⁸ “deprivation of rights,” that is to say, the right of Black people to receive reparative goods for past injustices. Neither temporary nor permanent Black-to-white passing, by contrast, deprive anyone of their rights.

We should nonetheless distinguish the Vitolo-Haddad case, in terms of the structure of its intention, from the one in which the passer consciously or intentionally adopts the outward characteristics enabling the pass. In earlier periods passers underwent skin-lightening or hair-straightening tactics with an explicit and sometimes avowed intention to pass for white. That is a different phenomenon than the standard case, again if only with reference to consciousness or intention. Lighter skin and straighter hair belonged to beauty standards that have been imposed on all people in our society. By adopting these standards, then, the would-be clerk or secretary was engaged in a form of passing. The Dolezal cases, by contrast, involve spray-tanning and perms in a manner that seems perhaps too much like the classic cases of Black-to-white passing. And here again we meet with the demand to insist upon asymmetry, and so carefully to distinguish the appropriative (white-to-Black)

65) Silvermint “Passing as Privileged.”

66) Anonymous, “CV Vitolo.”

67) Vitolo-Haddad deleted the *Medium* article in which the apology originally appeared.

68) “Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. *Maher v. Hibernia Ins. Co.*, 67 N. Y. 292; *Alexander v. Church*, 53 Conn. 501, 4 Atl. 103; *Studer v. Bleistein*. 115 N.Y. 31G, 22 X. E. 243, 7 L. R. A. 702; *Moore v. Crawford*, 130 U. S. 122, 9 Sup. Ct. 447, 32 L. Ed. 878; *Fechheimer v. Baum* (C. C.) 37 Fed. 167; *U. S. v. Beach* (D. C.) 71 Fed. 160; *Gardner v. Ileartt*, 3 Denio (N. Y.) 232; *Monroe Mercantile Co. v. Arnold*, 108 Ga. 449, 34 S. E. 176.” <https://thelawdictionary.org/fraud/>

from the basic normative (Black-to-white) context. Only the former may be fraudulent, because only those cases cause undeserved injury to others.

There are many additional contexts in which people have transitioned temporarily, such as curiosity-based transitions. Perhaps these cases work similarly in both directions. Kennedy relates stories about Black diners who visited all-white restaurants or attended theaters.⁶⁹ They were engaged in a sort of test of the boundaries, and in some instances, the restaurants had hired experts – namely, Black people – in order to spot the intruders. These cases, which are perhaps otherwise less noteworthy, best mirror the classic instances of white-to-Black passing: its classic literary representations are in memoirs such as *Black Like Me*⁷⁰ and *Soul Sister*.⁷¹ Both Griffin and Halsell pass experimentally. Here the sense of “to pass” accords with the first sense above, but the purpose is to acquire knowledge about what it is like to live in a Black position. This whole species of investigative passing would not be fraudulent, though it entails something of a research ethic that is no doubt questionable.

The distinction between temporary, or otherwise contextually specific passing, and permanent passing is more important than are distinctions such as intentional versus unintentional. Here there seems to be something of an exploitation of the polysemous English verb “to pass.” Passing now means *passing over* or *into*, taking dative instead of ablative valence. This is the sense of passing that is perhaps better described as *transitioning*. And it is a very different phenomenon historically than the above. Permanent Black-to-white transitioning is, namely, more a familial than a personal phenomenon. Possibly we should consider permanent passing in America to move only in one direction, which is into whiteness. And the history of whiteness in America is one of steady assimilation, in the case of European ethnic groups like the Irish and Jews, and even amalgamation of the Native population.⁷²

On these themes we might examine another class of memoirs about white women who mothered nonwhite children, sometimes in the process even denying their own whiteness. James McBride’s *The Color of Water*,⁷³ for instance, relates the story of a woman who not only bore Black children but also never admitted to them that she was white (not that they failed to notice). This impressive woman raised twelve Black children who became activists, doctors, musicians, teachers, and so forth, so that her dubious claim to be “light-skinned” might be overshadowed by her actual contributions to her community of choice. Historically, she belongs to a Black rather than to her native Orthodox lineage, although even her son ascribes to her the category of “white.” Among our fraud cases, the analogous story is Dolezal. Rachel has, namely, raised Black children and denied being white. Nonetheless our stories differ in that Dolezal has also sought public benefits from her purported Black identity, whereas in the McBride case there is no similar fraud.

Permanent transitioning deserves detailed study of its own in many respects, but here we will make only a few final conceptual markers. Permanent transitioning might reflect progressive lightening of skin, due to mate selection along these lines. This is certainly what took place in the post-Civil War era. It might also reflect, however, changing conceptions of the racial borders between time and place. The most illuminating historical antecedents for our current fraud cases may be found among Reconstruction politicians such as Pinchback.⁷⁴

69) Kennedy, *Interracial Intimacies*, 290.

70) Griffin, *Black Like Me*.

71) Halsell, *Soul Sister*.

72) See Jacobson, *Whiteness of a Different Color*, for a long view of this process.

73) McBride, *The Color of Water*.

74) Dineen Wimberly, *The Allure of Blackness*; and Spickard, *Race in Mind*. This is not to say that Pinchback was a passer, but that his choice to identify publicly as Black was a political choice for which he rightly foresaw great benefits for himself. See Dineen-Wimberly, *The Allure of Blackness*, 1–40.

These men (the women in the class have different stories)⁷⁵ were white-appearing individuals who became Black as a political career choice, much as our fraud cases but without the same level of dishonesty. They recognized a new political context, namely, the short-lived Radical Republicanism of the 1870s, to endow benefits to educated, light-skinned, or white-appearing activists who would assume a Black identity.

By making this series of distinctions – between temporary and permanent passing, intentional and unintentional, and so forth – I mean to emphasize that racial passing does not admit of any simplified analysis such that we should characterize the whole as either deceptive or not. Moreover, if we cannot so characterize passing in order to determine its permissibility, then questions like the one that inspired Tuvel’s argument never get off the ground. There is no single philosophical question, in other words, about whether people may change races, precisely because changing races may mean so many different things. In specific response to the recent fraud stories, however, I wish to conclude that such problems may only be corrected by divorcing race categories from self-identification and choice as well as lending each category a more specific analysis.

75) Ibid., 42–87.

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