

# The Fallacy of the (Racial) Solidarity Presumption

L. Song Richardson\*

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Mass incarceration in America is a story of race discrimination. On the one hand, this means our knowledge about discrimination helps explain why our criminal system looks the way it does. On the other hand, mass incarceration can also teach us something profound about the nature of discrimination itself.

In *Locking Up Our Own*, James Forman Jr. does a masterful job excavating, analyzing, and exposing how African Americans are not only the victims of mass incarceration but also its agents.<sup>1</sup> In doing so, he is careful to point out that this does not render mass incarceration racism-neutral: while Black leaders often resorted to “tough on crime” measures that ultimately ended up hurting the very

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\* Dean and Chancellor’s Professor of Law, UC Irvine Law. JD, Yale Law School. AB, Harvard College. I am grateful to Sasha Natapoff for her invaluable and insightful feedback, and to everyone who took the time to provide suggestions and comments including Swethaa Ballakrishnen, Emily Taylor Poppe, Greg Shaffer, Ken Simons, and colleagues who attended the UCI Law Faculty Workshop. Raina Sharma provided excellent research assistance. Finally, I would like to thank Professor James Forman Jr., the organizers of the Brennan Center’s Jorde Symposium, and members of the *California Law Review*, particularly Cristina Mora, Sabrina McGraw, Caroline Mae McKay, Paul von Autenried, Lexi Heller, and Patrick Rubalcava. All errors are my own. This essay is adapted from remarks delivered in November 2018 at the annual Jorde Symposium at UC Berkeley School of Law, in response to a lecture by Professor James Forman Jr.

1. I approach Professor Forman’s work on the agents of mass incarceration through the lens of my own work on the policing of Black civilians by Black police. See generally Devon W. Carbado & L. Song Richardson, *The Black Police: Policing Our Own*, 131 HARV. L. REV. 1979 (2018).

communities they were attempting to protect, they did so because racism constrained their options. Despite this insight, at least one commentator has already advanced the proposition that because African Americans played a significant role in mass incarceration, race played less of a role than liberals and progressives like to admit.<sup>2</sup> I will refer to this problematic supposition—that if African Americans, or members of other subordinated groups, do not act in solidarity with one another, then racism must not have played a role in the policy or practice at issue—as the “solidarity presumption.”

In this Essay, I will sketch out the solidarity presumption, explain why it is a fallacy, and discuss its implications for the fight to achieve civil rights. While I will focus on its specific impact on racial equity in this piece, the solidarity presumption has far-reaching impacts. I will continue to explore and deepen the analysis of the solidarity presumption in future work.

## I.

### THE SOLIDARITY PRESUMPTION

It is often assumed that Black Americans, women, and members of other subordinated groups will voice opinions, support policies, and otherwise favor demographically similar others.<sup>3</sup> In other words, it is assumed that they will act in solidarity with one another. The concern of this Essay is not with the question of whether this assumption is empirically accurate.<sup>4</sup> Rather, the focus is on what happens when this assumption is violated—when members of subordinated groups do not act in solidarity with each other.<sup>5</sup>

The solidarity presumption has two components. The first component is the assumption, accurate or not, that members of subordinated groups will act in

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2. See Darren Lenard Hutchinson, *Who Locked Us Up? Examining the Social Meaning of Black Punitiveness*, 127 YALE L.J. 2388, 2410–12 (2018) (noting how one commentator framed Professor Forman’s work as evidence that the emphasis on race in discussions of mass incarceration is misplaced).

3. See, e.g., INES JURCEVIC ET AL., THEY SAID IT FIRST: THE IRONIC CONSEQUENCES OF NEGATIVE MINORITY GROUP MEMBER OPINIONS ON WHITES’ PREJUDICE EXPRESSION 5 (2017) (on file with author) (“Furthermore, it is likely that most people implementing these policies assume that when minorities do voice an opinion, this opinion will be in support of a minority target or issue. That is, that the minorities and women placed on these decision-making committees will speak up on behalf of other minorities and women, and thus, prevent potential bias.”) (citations omitted).

4. For instance, class differences can affect Black in-group solidarity. See, e.g., James D. Johnson & Cheryl R. Kaiser, *Racial Identity Denied: Are Wealthy Black Victims of Racism Rejected by Their Own Group?*, 4 SOC. PSYCHOL. & PERSONALITY SCI. 376 (2012). Other work complicates the notion of Black solidarity, including sociologist Corey Field’s work on Black Republicans. See COREY D. FIELDS, *BLACK ELEPHANTS IN THE ROOM: THE UNEXPECTED POLITICS OF AFRICAN AMERICAN REPUBLICANS* (2016).

5. In this Essay, I will focus exclusively on situations where Black Americans do not act in solidarity with each other. There is a rich and important literature on inter-ethnic discrimination which I do not engage here. See e.g., ERIC K. YAMAMOTO, *INTERRACIAL JUSTICE: CONFLICT & RECONCILIATION IN POST-CIVIL RIGHTS AMERICA* 38 (1999) (examining conflicts between non-white racial groups); Tanya Kateri Hernandez, *Latino Inter-Ethnic Employment Discrimination and the “Diversity” Defense*, 42 HARV. C.R.-C.L. L. REV. 259 (2007) (examining non-white racial hierarchies).

solidarity with each other. The second, and more important component for purposes of this Essay, is that violation of the presumption is often problematically interpreted as evidence that racism, sexism, or some other manifestation of subordination does not exist. It is in this way that the solidarity presumption can stymie the fight for civil rights.

It should go without saying that sometimes, members of subordinated groups may act in solidarity with one another, and that sometimes, they may not.<sup>6</sup> It should also go without saying that when members of stigmatized groups violate the presumption by negatively evaluating one of their own, or by supporting policies that negatively impact their group, their actions are not necessarily race-neutral, gender-neutral, or disconnected to racial or gender subordination. However, evidence of the solidarity presumption is ubiquitous.

One example comes from Professor Forman's book. He explained that many Black civil rights leaders sought to diversify police departments based on the assumption that Black officers would police differently than white officers, *i.e.* that they wouldn't systematically over-police and deploy violence against other Blacks (component one of the presumption). When Black officers ended up acting similarly to their white counterparts, some concluded that race had less to do with policing than previously assumed. After all, if Black officers police other Blacks like white officers do, doesn't that mean that race isn't important?<sup>7</sup> (component two of the presumption). Other examples of the solidarity presumption abound.<sup>8</sup>

The solidarity presumption is a fallacy because racism and sexism structure behaviors, beliefs, and social interactions of *everyone* in society, including racial minorities and other subordinated groups.<sup>9</sup> This means that under the right set of

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6. This Essay focuses on the situations where Blacks may not act in solidarity with other members of their group in the presence of white power-holders for strategic reasons. However, other deviations from the solidarity presumption can occur for other reasons that I do not explore here, such as the impact of implicit racial biases behaviors. For instance, as a result of these implicit biases, black police may racially profile other black citizens or engage in racialized violence. See L. Song Richardson, *Arrest Efficiency and the Fourth Amendment*, 95 MINN. L. REV. 2035 (2011) [hereinafter Richardson, *Arrest Efficiency*]; L. Song Richardson, *Police Racial Violence: Lessons from Social Psychology*, 83 FORDHAM L. REV. 2961 (2015) [hereinafter Richardson, *Police Racial Violence*].

7. See *supra* note 2. See also John F. Dovidio et al., *Racial Attitudes and the Death Penalty*, 27 J. APPLIED SOC. PSYCHOL. 1468 (1997) (study finding that low-prejudice whites are more likely to strongly recommend a death sentence for a Black defendant after a Black juror does so); Cheryl R. Kaiser et al., *Presumed Fair: Ironic Effects of Organizational Diversity Structures*, 104 J. PERSONALITY & SOC. PSYCHOL. 504 (2012) (arguing that when diversity structures exist, dominant groups are less likely to believe discrimination claims despite clear evidence); Richard Pollock, *Numbers Show Most Baltimore Cops are Minorities*, DAILY CALLER (May 14, 2015), <https://dailycaller.com/2015/05/14/most-baltimore-cops-are-minorities> [<https://perma.cc/84UE-D9TP>] (making similar "black officers do it too" argument).

8. See, e.g., *Arrocha v. CUNY*, 2004 WL 594981, at \*7 (E.D.N.Y. Feb. 9, 2004) (cited in Hernandez, *supra* note 5, at 266 (quoting the decision's claim that "[d]iversity in an employer's staff undercuts an inference of discriminatory intent").

9. See L. Song Richardson & Phillip Atiba Goff, *Implicit Racial Bias in Public Defender Triage*, 122 YALE L.J. 2626 (2013) (discussing implicit racial bias) [hereinafter Richardson & Goff,

circumstances, even members of subordinated groups who may ordinarily act in solidarity with demographically similar others may engage in behaviors that disadvantage members of their own group.<sup>10</sup> Thus, when members of stigmatized groups do not support demographically similar others or policies that are favorable to that group, these actions do not mean that racism, sexism, or some other manifestation of subordination are not present. Rather, the existence of racism and sexism is exactly why members of subordinated groups may act contrary to their stigmatized group's interest. Yet the presumption of solidarity can exacerbate discrimination by dominant groups and stymie the ability to enact the institutional, systemic, and structural changes that are the prerequisites for achieving racial and gender equity. My focus here is racial equity. Next, I will explain why the solidarity presumption is a fallacy.

## II.

### THE FALLACY

Race and racism continue to structure American society. As a result, members of subordinated groups and whites often act in accordance with racial stereotypes and pressures to discriminate. In this Essay, I will focus on the racial anxiety that Blacks and whites may experience during and in anticipation of inter-group interactions.<sup>11</sup> Racial anxiety manifests differently depending upon how individuals are situated. Those manifestations may be interpreted as race-neutral when in fact they are impacted by beliefs about and experiences of white racism.

#### A. Racial Anxiety Experienced by Blacks

For Blacks, racial anxiety is experienced as the concern that they will be devalued and negatively stereotyped and that they will receive hostile, distant, and discriminatory treatment from whites.<sup>12</sup> This anxiety arises because when Blacks are navigating interactions with whites, they may stereotype whites as

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*Implicit Racial Bias*]. See generally Paulette M. Caldwell, *The Content of Our Characterizations*, 5 MICH. J. RACE & L. 53, 106 (1999) (noting the importance of recognizing intra-ethnic discrimination); Deborah Ramirez, *Multicultural Empowerment: It's Not Just Black and White Anymore*, 47 STAN. L. REV. 957 (1995) (same).

10. See, e.g., Belle Derks et al., *The Queen Bee Phenomenon: Why Women Leaders Distance Themselves from Junior Women*, 27 LEADERSHIP Q. 456 (2016) (reviewing studies finding that women and other stigmatized groups may distance themselves from demographically similar others and legitimize the status quo in response to discrimination of more powerful others); Sameer B. Srivastava & Eliot L. Sherman, *Agents of Change or Cogs in the Machine? Reexamining the Influence of Female Managers on the Gender Wage Gap*, 120 AM. J. SOC. 1778 (2015) (finding that the presence of female managers does not reduce the gender wage gap among male and female subordinates). But see Leah D. Sheppard & Karl Aquino, *Much Ado about Nothing? Observers' Problematization of Women's Same-Sex Conflict at Work*, 27 ACAD. MGMT. PERSP. 52 (2013).

11. For a full discussion of racial anxiety, see Rachel D. Godsil & L. Song Richardson, *Racial Anxiety*, 102 IOWA L. REV. 2235, 2240–42 (2017) [hereinafter Godsil & Richardson, *Racial Anxiety*].

12. *Id.* at 2240.

racist or act on the basis of personal experience and knowledge of discrimination perpetrated by whites.<sup>13</sup> Next, I will highlight two ways that Blacks might respond to that racial anxiety: mirroring racist norms and distancing themselves from demographically similar others. Both of these responses belie the solidarity presumption.

### 1. *Conformity Pressure*

Individuals are highly sensitive to the social norms of their immediate environment. Often, they will attempt to conform, at least publicly, to those norms in order to gain approval and obtain benefits.<sup>14</sup> Importantly, in doing so, individuals may engage in behaviors that are not necessarily indicative of their internal attitudes and beliefs.<sup>15</sup>

One strategy that Black individuals use to respond to racial anxiety and to avoid negative treatment is to publicly mirror the existing norms of their environment, including discrimination norms. When Blacks find themselves in situations, like those in the workplace, where the judgments of white power-holders can negatively affect them, they may engage in a conscious strategy to fit in and avoid negative treatment. Because Blacks have experienced and witnessed discrimination from dominant group members, they often believe that whites condone, rather than condemn, the public expression of prejudice.<sup>16</sup> Thus, they may conform to this discrimination norm by publicly derogating members of their own group or another stigmatized group.

Significantly, these public-facing actions engaged in by Blacks do not necessarily reflect their actual racial attitudes towards members of their own group. Rather, some Blacks employ these short-term pragmatic strategies to decrease the likelihood that they will be the target of prejudice and to increase the likelihood that they will fit in to their environment. These coping mechanisms demonstrate why the solidarity presumption is a fallacy: inferences about white norms of prejudice expression can lead Blacks to act in ways that disadvantage other minority group members.

A series of social psychological studies conducted by Professors Jenessa Shapiro and Steven Neuberg at Arizona State University (ASU) provide evidence that “perceptions of majority group norms regarding the expression of prejudice influence how often-stigmatized individuals judge members of other stigmatizable groups.”<sup>17</sup> First, the researchers conducting the study found that

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13. *Id.* See also Jenessa R. Shapiro & Steven L. Neuberg, *When Do the Stigmatized Stigmatize? The Ironic Effects of Being Accountable to (Perceived) Majority Group Prejudice-Expression Norms*, 95 J. PERSONALITY & SOC. PSYCHOL. 877, 878 (2008) (noting that members of stigmatized groups “tend to be chronically aware of the potential for devaluation and negative treatment”) (citations omitted).

14. *Id.* at 895, 878 (citations omitted).

15. *Id.* at 895.

16. *Id.* at 878.

17. *Id.* at 894.

Black men were more likely than Black women, white women, and white men to believe that whites of their gender would publicly discriminate against Blacks.<sup>18</sup> While Black women believed that some white women would engage in public discrimination, they did not hold the belief as strongly as Black men.<sup>19</sup> Instead, Black women tended to believe that white women would not publicly express negative racial attitudes and beliefs.<sup>20</sup> Of all the groups, white men were least likely to perceive that white men would exhibit pro-white bias in public.<sup>21</sup>

Second, the researchers found that Black participants were more concerned than their white counterparts that white power-holders would evaluate them negatively. When asked how they would respond to those concerns, Black men reported that it would be important for them to match the values of the white male power-holders in order to receive a positive assessment from white men.<sup>22</sup> Black women, on the other hand, reported that being nicer than usual was the strategy that would help them receive a positive appraisal from white women.<sup>23</sup>

To hone in on how perceptions of white norms of discrimination influenced behaviors, the researchers asked participants<sup>24</sup> to evaluate both a Native American and a white job applicant.<sup>25</sup> Some participants were told that their evaluations would be made public to white power-holders of the same gender, while others were told that their evaluations would remain private.<sup>26</sup>

The results varied by race and gender. When white men believed that their evaluations would remain private, they tended to rate the white candidate as more competent than the Native American candidate.<sup>27</sup> However, white men rated the Native American candidate as more competent when they believed their evaluations would be made public, although this result was not statistically significant.<sup>28</sup>

Black men, on the other hand, rated the candidates similarly when they thought the results would remain private. However, when Black men believed that their evaluations would be made public to white men, they showed a bias “heavily favoring the [w]hite candidate . . . over the Native American candidate . . . .”<sup>29</sup> Black men accomplished this by lowering evaluations of the Native American candidate while enhancing evaluations of the white

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18. *Id.* at 881, study 1.

19. *Id.* at 894.

20. *Id.*

21. *Id.* at 881, study 1.

22. *Id.* at 882, study 1.

23. *Id.*

24. The subjects were 213 ASU students: ninety-three Blacks (27 men, 66 female) and 120 white (43 male, 77 female) students participated. *Id.* at 994, study 2.

25. *Id.* at 884, study 2.

26. *See id.* at 885.

27. *See id.* at 887.

28. *See id.* at 888.

29. *See id.* (statistical information omitted).

candidate.<sup>30</sup> Interestingly, the results differed for the female participants. Both Black and white women evaluated both candidates similarly regardless of whether their evaluations were public or private, although both groups of women evaluated both candidates as more competent in the public condition.<sup>31</sup>

What explains these results? The researchers concluded that when the subjects thought their evaluations of the candidates would be made public, white men responded to “normative egalitarian or ‘political correctness’ pressures.”<sup>32</sup> However, because Black men tended to believe whites find it acceptable to publicly express prejudice against minority groups, they strongly derogated the Native American candidate and enhanced their evaluations of the white candidate when they thought their evaluations would be made public to power-holding white men.<sup>33</sup>

Black males’ derogation of the Native American candidate in the public, but not the private, evaluation suggests that the derogation was not motivated by an internalization of prejudicial norms. Instead, their actions represented “a short-term pragmatic strategy of matching the perceived norms of the dominant social context.”<sup>34</sup> Similarly, Black women were nicer in the public evaluations because—as highlighted above—they believed niceness was the way to obtain positive assessments from white women.<sup>35</sup>

The researchers conducted another experiment to confirm that the subjects in the studies were responding to their perceptions of the discrimination norms that were operating in the environment. This time, they gave all the participants<sup>36</sup> information about how others had evaluated the Native American applicant to see if that information would influence their actions.<sup>37</sup> It did. When group norms condemned prejudice expression, all participants gave more positive ratings of the Native American candidate in their public evaluation than they did when the group norms condoned prejudice expression.<sup>38</sup>

The researchers’ final study involved only Black men,<sup>39</sup> who were asked to rate the Native American candidate under conditions where they were accountable to either white or Black male power-holders. When they were accountable to a white male audience, they rated the candidate as less competent.<sup>40</sup> However, the Black subjects rated the Native American candidate

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30. *See id.*

31. *See id.*

32. *See id.*

33. *See id.*

34. *See id.*

35. *See id.*

36. The participants were 152 ASU students: 61 Black (27 male and 34 female) and 90 white (55 male and 35 female). *See id.* at 889.

37. *Id.* at 889, study 3.

38. *Id.* at 890, study 3.

39. Thirty-five Black male students from ASU participated in the study. *See id.* at 892.

40. *Id.* at 894, study 4.

as more competent when the power-holders were Black, although this finding was not statistically significant.<sup>41</sup>

In sum, the researchers found that perceptions of discrimination norms influenced the public and private behaviors of Black and white participants. When Black men believed that white power-holders would favor a white candidate over an equally qualified minority candidate, Black men tended to derogate the minority candidate in front of the white power-holders. This suggests that their actions were a conscious strategy to gain acceptance. The studies performed by Shapiro and her colleagues demonstrate that members of subordinated groups are sensitive to discrimination norms and, for instrumental reasons, might conform their behaviors to fit those of the dominant group.

While it is critical to avoid drawing general conclusions from this series of studies alone, the results of this research are important. First, the study provides empirical evidence of the influence of discrimination norms on behaviors. Reliance on empirical evidence is at least as good as reliance on assumptions about how people behave—assumptions that are often incorrect.<sup>42</sup> Second, the outcomes provide compelling evidence that Black men will derogate another minority individual when they believe that they will be judged by white men.

This finding indicates one reason that the solidarity presumption is a fallacy. There are circumstances under which Black individuals may act in ways that disadvantage other minorities. However, these studies demonstrate that when they do so, it is not because racism does not exist (the second component of the solidarity presumption). Rather, Black male subjects acted the way they did precisely because they believed that white men would discriminate.<sup>43</sup>

## 2. Value Threat

While there is the need for more empirical work, organizational behavior theorists like Professor Michelle Duguid and colleagues have theorized additional reasons based on sociological and psychological concepts for why stigmatized minorities may not support other minorities. They refer to these reasons under the rubric of “value threat.”<sup>44</sup> Value threat denotes concerns that one will not be viewed as a valued member of a group. People experiencing value threat may distance themselves from their stigmatized or disfavored identities as

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41. *Id.*

42. Richardson, *Arrest Efficiency*, *supra* note 6, at 2035–36 (explaining behavioral realism).

43. Importantly, I am not arguing that every time Black individuals derogate a non-white individual, it is because of their beliefs about discrimination norms. Their actions may simply reflect their preferences. My point here is that regardless of whether they are acting out of personal preference or based upon their interpretation of operative discrimination norms, the violation of the solidarity principle can have pernicious consequences for the fight for racial equity.

44. Michelle M. Duguid et al., *The Impact of Categorical Status, Numeric Representation, and Work Group Prestige on Preference for Demographically Similar Others: A Value Threat Approach*, 23 ORG. SCI. 386, 388 (2012).



a way of combatting the threat to their value within the prized group.<sup>45</sup> Duguid and her colleagues argue that value threat is particularly likely to influence behaviors of stigmatized individuals in high-prestige work groups, when they are in the numeric minority.<sup>46</sup> These circumstances can “negatively affect individuals’ propensity to show preference for demographically similar others” for a number of reasons.<sup>47</sup>

First, members of low-status groups are often stereotyped negatively in ways that raise questions about the legitimacy of their membership in the high-prestige work group. For instance, “women are often believed to be highly emotional and lacking in business acumen, and African Americans and Hispanic Americans are stereotyped as generally unintelligent, lazy, and deficient in managerial capacity.”<sup>48</sup> Since members of subordinated groups are aware of these negative stereotypes, they may be concerned that white members will view them as less legitimate and less valuable to the group.<sup>49</sup> These feelings are not unreasonable. There is a “common propensity to assume that low-status individuals have been given preferential treatment when they occupy roles that are normally not associated with their demographic characteristic.”<sup>50</sup>

Second, research shows that when there is a demographic imbalance within a group, people are more likely to be conscious of it and use demographic status as a basis for evaluation.<sup>51</sup> “[B]eing a low-status numeric minority in a group that is numerically dominated by individuals with high status may make one’s low-status category and the negative stereotypes associated with it more salient.”<sup>52</sup> Thus, being in the numeric minority is likely to exacerbate concerns among stigmatized groups that they will not be viewed as valuable members of the work group.<sup>53</sup>

Finally, a member of a subordinate group might feel it is necessary to blend in as much as possible in order to be perceived as a valued member of a team. High-status work groups are typically associated with qualities such as “competence, intelligence, professionalism, and hard work”—qualities not typically associated with members of subordinated groups.<sup>54</sup> Because of “the negative stereotypes associated with low-status categories and their dearth in most high-prestige work groups, low-status numeric minorities are particularly likely to feel that they will not be seen as valuable group members even when

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45. *Id.* at 388 (citations omitted).

46. *Id.* at 387.

47. *Id.* at 388.

48. *Id.* at 389.

49. *Id.*

50. *Id.* at 391. The experience of value threat can be mitigated by expertise and tenure within the work group, for example, “acknowledgment of the specialized knowledge or unique skills that they bring to the group (i.e., expertise).” *Id.* at 392.

51. *Id.* at 390 (citations omitted).

52. *Id.*

53. *Id.*

54. *Id.* at 391 (citations omitted).

their membership in a group is based on exceptional performance and accomplishments.”<sup>55</sup> Thus, they may seek to be seen solely as a member of the high-prestige group, without reference to their racial status.<sup>56</sup>

For all these reasons, individuals experiencing value threat are more likely to view demographically similar others as threatening to their status in the work group, making them less prone to support those who are similar to themselves.<sup>57</sup> They may worry that those who are demographically similar will confirm negative stereotypes about their shared group category, which, in turn, will affect their own standing within the group.<sup>58</sup> Or they may worry that their support of a demographically similar other will be viewed as favoritism.<sup>59</sup> Finally, because demographically similar individuals are more likely to be compared to each other,<sup>60</sup> individuals may be more competitive with demographically similar others, and worry that the demographically similar other is more qualified.<sup>61</sup> Therefore, they may not support their membership within a work group.<sup>62</sup> For instance, one study showed that “women were more likely to sanction other women who outperformed them on a . . . task than men who outperformed them on the same task.”<sup>63</sup>

Importantly, Duguid and her colleagues also theorize that value threat will not influence all minority group members in a high-prestige work group. They hypothesize that those who identify strongly with their social category may experience higher morale and other positive benefits around demographically similar others.<sup>64</sup> Thus, they will “be more likely to align themselves with members of that category and promote them . . . . [H]igh identifiers will be prone to enact changes within the work group that they perceive will benefit their demographic group.”<sup>65</sup> However, as indicated at the beginning of this Essay, the solidarity presumption is a separate matter from whether Black individuals will act in solidarity with each other as an empirical matter. Rather, the important point is that the presumption of solidarity, and its violation, can have pernicious effects when people surmise that the violation tells us something about whether race is operating in a particular context.

The elements of value threat still require study. However, for present purposes, the theory is important to consider because if it can be empirically

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55. *Id.* at 392 (citations omitted); *see also id.* 390–39 (explaining work group prestige).

56. *Id.* at 390 (citations omitted).

57. *Id.* at 393.

58. *Id.*

59. *Id.*; *see also id.* at 395 (noting that “[w]hen a numeric minority in a group supports a similar other, this is much more readily interpreted as an exhibition of in-group favoritism than when a numeric majority supports someone with similar demographic characteristics”).

60. *Id.* at 395.

61. *Id.* at 388.

62. *Id.* at 395.

63. *Id.*

64. *Id.* at 396.

65. *Id.* (citations omitted).

supported, it provides a compelling additional explanation for why the solidarity presumption is a fallacy. Violation of the solidarity presumption occurs precisely *because* of beliefs about how racism operates, rather than because racism is irrelevant.

In addition to conformity pressure and value threat, there are other reasons to believe that the presumption of solidarity is incorrect. For instance, racial minorities often worry that whites expect them to favor other racial minorities.<sup>66</sup> Thus, they may make a conscious effort to appear impartial by responding negatively toward other racial minorities.<sup>67</sup> Additionally, there is evidence that when members of minority groups find themselves in groups that are majority white, they often feel pressure to share negative opinions about other minorities.<sup>68</sup> As I discuss next, minority group members may even perceive engagement in diversity-enhancing efforts as endangering their standing with white colleagues.

### 3. *Lower Performance Ratings for Diversity-Valuing Behavior*

Racial minorities may not support demographically similar others because they are aware that they may be penalized for engaging in diversity-enhancing behaviors such as hiring and promoting diverse candidates. A group of organizational and social psychological researchers explored this hypothesis in a field study.<sup>69</sup>

The field study involved 350 executives from a variety of industries who were chosen by their bosses to participate in a year-long executive development program.<sup>70</sup> Using a confidential online survey, peers and bosses rated the executives on a variety of measures, including the executives' diversity-valuing behavior, competence, and performance. The results of the survey revealed a relationship between negative competence ratings and pro-diversity behaviors, but only when the executives being evaluated were either non-white or female.<sup>71</sup> There was no relationship between negative competence ratings and pro-diversity behaviors when the executives being rated were white men.<sup>72</sup>

The researchers hypothesized that this occurred because when women and non-whites engaged in diversity-enhancing behaviors, these actions activated unconscious stereotypes about women and non-whites being less competent.<sup>73</sup>

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66. JURCEVIC, *supra* note 3, at 5 (citations omitted).

67. Shapiro, *supra* note 13, at 895; *see also* JURCEVIC, *supra* note 3, at 5–6 (citations omitted).

68. JURCEVIC, *supra* note 3, at 5 (citing Michelle M. Duguid, *Female Tokens in High-Prestige Work Groups: Catalysts or Inhibitors of Group Diversification?*, 116 *ORG. BEHAV. & HUM. DECISION PROCESSES*, 104 (2011)).

69. David R. Hekman et al., *Does Diversity-Valuing Behavior Result in Diminished Performance Ratings for Non-White and Female Leaders?*, 60 *ACAD. MGMT. J.* 771 (2017).

70. *Id.* at 775.

71. *Id.*

72. *Id.* at 777–78.

73. *Id.*

The link exists because when demographic minorities engage in pro-diversity behaviors, they are viewed as threatening existing hierarchies and violating the expectation that they should play supporting versus leading roles.<sup>74</sup> Therefore, in order to preserve the prevailing power dynamics, majority group members will negatively stereotype women and racial minorities who engage in diversity-enhancing behaviors.<sup>75</sup>

To further test their hypothesis, the researchers conducted a study to determine whether advocating for the hiring of a non-white or female manager would lead to negative stereotyping and lower performance evaluations for non-white and female managers.<sup>76</sup> The results backed up their hypothesis. When women or non-whites supported a female or non-white candidate, their performance ratings were significantly lower than when they did not.<sup>77</sup> In contrast, the performance ratings of white male managers were unaffected by their decision to either support diversity or not.<sup>78</sup> Additionally, non-white and female managers were also rated as less competent when they advocated for the diverse candidate, whereas white male managers' competence ratings were unaffected by their behaviors.<sup>79</sup>

In sum, these researchers found that non-whites and women were penalized for engaging in diversity-promoting behaviors, both in ratings of competence, and in reviews of their performance. These findings provide another reason why the solidarity presumption is fallacious. To the extent that members of subordinated groups believe that their support of non-whites may affect them negatively in the workplace, they may be less likely to do so.

Thus far, this Essay has highlighted how racial anxiety can influence Black individuals to act in ways that violate the solidarity presumption. Next, I will explore how whites experience racial anxiety.

### *B. Racial Anxiety Experienced by Whites*

For many whites, racial anxiety is experienced as the worry that they will be perceived as racist.<sup>80</sup> This label is extremely aversive.<sup>81</sup> Whites often respond to this concern by looking for evidence that they are not racist, including by finding non-racial explanations for their actions.<sup>82</sup> Observing a racial minority

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74. *Id.* at 772.

75. *Id.*

76. *Id.* at 782.

77. *Id.* at 785.

78. *Id.*

79. *Id.* at 786.

80. Godsil & Richardson, *supra* note 11, at 2240; *see also* JURCEVIC, *supra* note 3, at 51 (“White Americans tend to be chronically concerned about appearing prejudiced and these concerns can affect their thoughts, feelings, and behaviors in interracial contexts.”) (citation omitted).

81. *See* Godsil & Richardson, *supra* note 11, at 2240.

82. *See, e.g.*, Jill C. Bradley-Geist et al., *Moral Credentialing by Association: The Importance of Choice and Relationship Closeness*, 36 PERSONALITY & SOC. PSYCHOL. BULL. 1564 (2010); Daniel A. Effron et al., *Endorsing Obama Licenses Favoring Whites*, 45 J. EXPERIMENTAL SOC. PSYCHOL. 590

violate the solidarity presumption can provide that explanation. For example, if a Black person validates the allegedly racist action, so the reasoning goes, then the action or decision cannot be discriminatory.

Let me give a concrete example. Imagine a diverse hiring committee considering two equally qualified candidates—one Black and one white. If a Black member of the committee provides a negative evaluation of the Black candidate, it is less likely to be categorized as discriminatory than if a white member provides a similar evaluation. The ability to cast the Black member's negative evaluation as non-discriminatory reduces whites' concerns that they will be seen as racist if they also express a preference for the white candidate. In other words, the violation of the solidarity presumption gives whites the evidence they need to allay their concerns that they will be perceived as racist if they choose the equally qualified white candidate over the Black candidate. Thus, the violation of the solidarity presumption can provide whites with the cover they need to engage in discriminatory behavior. Even if whites' preferences for other white candidates is implicit rather than explicit, it is likely that violation of the solidarity presumption makes preferencing the white candidate feel more comfortable. The violation of the solidarity presumption can also influence egalitarian whites, causing them to question their own positive evaluations of a minority candidate. As one researcher observed, if a dominant group member expects minorities to support other minorities, then "the lack of support could signal that the candidate must truly be unworthy . . ."<sup>83</sup>

A series of social psychological studies by Professor Ines Jurcevic and colleagues confirmed the hypothesis that when racial minorities respond negatively to another minority, these actions reduce whites' concerns that their own negative evaluations of the minority individual will be perceived as prejudiced, and thus, increases the likelihood that whites will also derogate the minority individual.<sup>84</sup> In the first study, white subjects concluded that a Black job applicant was less competent, and were less likely to hire him, after that candidate received a negative evaluation from a Black evaluator versus a white evaluator.<sup>85</sup> In their follow-up study, the same results occurred when a Black evaluator negatively appraised a Latino job candidate.<sup>86</sup>

The researchers conducted a third study to determine whether these findings arose out of whites' concerns about being seen as prejudiced or whether they were the result of whites believing that Black evaluators had some special

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(2009); Daniel A. Effron et al., *Inventing Racist Roads Not Taken: The Licensing Effect of Immoral Counterfactual Behaviors*, 103 J. PERSONALITY & SOC. PSYCHOL. 916 (2012); Anna C. Merritt et al., *The Strategic Pursuit of Moral Credentials*, 48 J. EXPERIMENTAL SOC. PSYCHOL. 774 (2012); Beniot Monin & Dale T. Miller, *Moral Credentials and the Expression of Prejudice*, 81 J. PERSONALITY & SOC. PSYCHOL. 33 (2001).

83. Duguid, *supra* note 44, at 397.

84. JURCEVIC, *supra* note 3, at 8–9.

85. *Id.* at 16.

86. *Id.* at 21.

expertise in judging minority candidates.<sup>87</sup> If Black evaluators were seen as possessing special expertise, then white subjects should give both negative and positive evaluations of Black evaluators more weight. Researchers found this was not the case. Instead, the white participants were only influenced by the Black evaluators' negative appraisals of other minorities.<sup>88</sup>

In their final study, the researchers determined that it was whites' concerns about appearing prejudiced that influenced their responses to a Black evaluator's negative assessments of Black candidates. They found that "[w]hite participants derogated a Black job candidate following a Black, compared to a [w]hite, evaluator's negative evaluation of th[e] candidate."<sup>89</sup> Furthermore, the white subjects also reported reduced concerns about appearing racist when the Black evaluator, as opposed to the white evaluator, gave a negative appraisal of a Black candidate.<sup>90</sup> In fact, it was only whites' reduced concerns about appearing racist that "statistically accounted for [w]hite participants' lowered desire to hire the Black candidate."<sup>91</sup>

In sum, racism and discrimination influence both Black and white individuals in ways that disadvantage subordinated groups. Conformity pressure,<sup>92</sup> value threat,<sup>93</sup> and concerns about performing diversity-promoting acts<sup>94</sup> all can cause members of stigmatized groups to negatively evaluate another subordinated group member. Then, as Jurcevic's research illustrates, this violation of the solidarity presumption may reduce whites' concerns about appearing prejudiced, making them more comfortable judging the subordinated individual negatively also. Why? Because negative evaluations by one subordinated group member of another creates ambiguity about whether or not a similarly negative evaluation by a white individual is rooted in racism. The ambiguity arises because discrimination typically is not considered an intragroup phenomenon.<sup>95</sup> The negative evaluation of one subordinated individual by another is unlikely to be considered discriminatory. Then, the stigmatized group member's negative evaluation "can create a plausible, justifiable reason for [] negative or harmful behavior toward a member of a minority group that is not rooted in prejudice."<sup>96</sup> Because whites are often concerned with appearing

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87. *Id.* at 22.

88. *Id.* at 30–31.

89. *Id.* at 41.

90. *Id.*

91. *Id.*

92. *See supra* Part II.A.1.

93. *See supra* Part II.A.2.

94. *See supra* Part II.A.3.

95. *See, e.g.,* Robert S. Baron et al., *Detecting and Labeling Prejudice: Do Female Perpetrators Go Undetected?*, 17 PERSONALITY & SOC. PSYCHOL. BULL. 115, 116–17 (1991).

96. JURCEVIC, *supra* note 3, at 7 (citing William T. L. Cox & Patricia G. Devine, *Stereotyping to Infer Group Membership Creates Plausible Deniability for Prejudice-Based Aggression*, 25 PSYCHOL. SCI. 340 (2013); Christian S. Crandall, & Amy Eshleman, *A Justification-Suppression Model of the Expression and Experience of Prejudice*, 129 PSYCHOL. BULL. 414 (2003)).

prejudiced, the actions of the stigmatized group member assuages whites concerns about appearing prejudiced, making whites feel freer to engage in discriminatory acts.<sup>97</sup>

So here's the rub: studies demonstrate that the presence of minority group members can help to reduce the likelihood that whites will express prejudice.<sup>98</sup> This occurs, in part, because "racial minority group members elicit [w]hites' concerns about being seen as prejudiced."<sup>99</sup> However, the concomitant reduction of prejudice expression by whites may only occur if the minority group member either remains silent or supports the other minority individual. But, as discussed earlier, minority group members are under heavy social and psychological pressure to distance themselves from other members of their group in order to mirror, appease, and otherwise succeed in the majority-dominated group. When they react to those pressures and do not express support for another minority, whites may feel freer to engage in discriminatory acts.

#### CONCLUSION

Although the solidarity presumption is a fallacy, its existence can make the fight for civil rights more difficult because it creates a feedback loop that undermines anti-discrimination norms. Blacks may violate the presumption and derogate members of their own or other subordinated groups, or they may support policies that hurt members of their own or other subordinated groups. They may do so for reasons that reflect their own experiences of racism and bias. Then, Blacks' violation of the presumption makes whites more comfortable doing the same thing because they will worry less that their actions will be perceived as racist. Their actions then confirm for members of minority groups that majority group members do indeed discriminate, reaffirming their racial injuries and starting the entire process anew.



This is why the solidarity presumption can negatively impact the ability to make the institutional, systemic, and structural changes that are necessary to address the impacts of discrimination and racism (unconscious or not).

This brings us back to *Locking Up Our Own*. Professor Forman's compelling book and the responses to it tell us something powerful about the

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97. *Id.* (citing J.N. Shelton, *Interpersonal Concerns in Social Encounters between Majority and Minority Group Members*, 6 GROUP PROCESSES & INTERGROUP RELATIONS 171 (2003); J.N. Shelton, et al., *Ironic Effects of Racial Bias During Interracial Interactions*, 16 PSYCHOL. SCI. 397 (2005)).

98. *Id.* at 3–4 (citations omitted).

99. *Id.* at 5.

nature of discrimination itself. While today we recognize that race is a social construct, we do not often recognize that discrimination is also a social practice that is shaped and driven by power dynamics, hierarchies, social norms, and culture in the very same way that race is. This social practice affects both Blacks and whites and shapes their responses to race in complex ways.

Furthermore, the solidarity presumption highlights why diversity and anti-discrimination are not the same thing.<sup>100</sup> Diversity does not do the same work as anti-discrimination. The irony is that diversity, when not coupled with an anti-discrimination mandate, can perversely authorize discrimination. Once we understand, as set forth in this Essay, that discrimination is a social practice that is deeply embedded in the power hierarchies to which everyone is subject, then we can understand why the solidarity presumption is a fallacy.

In sum, Professor Forman's important work highlights that Black individuals can act in ways that belie the solidarity presumption. The fact that they do, however, should not be taken as evidence that systemic, institutional, and structural racism had no impact in their behaviors. For this reason, the evidence provided in Professor Forman's work should not be understood as proof that mass incarceration is rational or non-discriminatory simply because some Black leaders helped to create it. Rather, their actions should be understood to express the very nature of discrimination itself.

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100. I have explored these complexities throughout my work. *See, e.g.*, Richardson & Goff, *Implicit Racial Bias*, *supra* note 9; Godsil & Richardson, *Racial Anxiety*, *supra* note 11; Richardson, *Systemic Triage: Implicit Racial Bias in the Criminal Courtroom*, 126 *YALE L.J.* 862 (2017).