"Come Up to the Kool Taste": African American Upward Mobility and the Semiotics of Smoking Menthols

Sarah S. Lochlann Jain

Although most often considered with alcohol in policy debates, tobacco more readily compares with sugar or coffee in its ubiquitous and continual availability (and until recently, acceptability) to all classes. The intimate pleasures of the cigarette—from the flip-top box to the smoker's perfected flick of an ash to the excuse to ask a stranger for a light—should not be underestimated. The cigarette's social rituals have made it truly iconic of popular culture throughout the twentieth century. Consider its adaptability: readily slipped into a pocket or behind an ear, it is a means to a private or social moment. Useful as a lift or a sedative, the cigarette stands in as a snack, prop, drug, or coping mechanism. The

commodity achieves its most refined, profitable, and complete incarnation in the cigarette, with its inexpensive, efficient, but short-lived gratification. Consumed nearly completely, literally disappearing into a puff of smoke (the butt easily disposed of under a shoe), the cigarette's solitary fault lies in the fact that, over time, the cumulative effects of its debris slowly and irrevocably sicken and kill its consuming host.

In the legal framing of capitalism in the United States, this one flaw—that cigarettes injure when used as intended—should be enough to not only regulate the cigarette but also ban it outright. In the United States, product liability law is the imperfect but established infrastructure by which Americans can claim their right not to be injured by the objects they purchase. But despite three decades of litigation, it is only since the late 1990s that people have been able to consider themselves injured by cigarettes in the legal sense. This change is due to the work of a recent wave of litigants who have shown successfully that tobacco corporations falsely advertised, defectively designed, and knowingly sold an addictive product. Although dismissed by the United States Court of Appeals for the Third Circuit in 2001, one of the most interesting of the recent spate of lawsuits was brought in Pennsylvania on behalf of black smokers. In this suit, *Brown v. Philip Morris, Inc.*, the Reverend Jesse Brown attempted to highlight the economic racism of cigarette marketing through a civil rights claim. The *Brown* complaint stated that "[the] Defendants have for many years targeted African Americans and their communities with specific advertising to lure them into using mentholated tobacco products."[1] *Brown* raised the issues of niche marketing, discrimination, and the "staggering loss of life, premature disability, disease, illness, and economic loss" that have resulted from "the Tobacco Companies' intentional and racially discriminating fraudulent course of misconduct."[2]

The *Brown* complaint contended that mentholated cigarettes (also known as menthols) contained enhanced dangers over other cigarettes. First, the complaint explained that the ingredient menthol contains compounds such as benzopyrene, which are carcinogenic when smoked. Second, it argued that mentholated cigarettes contain higher nicotine and tar levels than nonmentholated versions. Third, *Brown* claimed that menthol encourages deeper and longer inhalation of tobacco smoke, increasing the addictive properties of the cigarette and decreasing the lung's ability to rid itself of carcinogenic components of smoke. According to evi-

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1. *Brown v. Philip Morris, Inc.*, No. 98-5518, 1999 U.S. Dist LEXIS 14495 (E. D. Pa. Sept. 22 1999), *affirmed*, 250 F. 3d 789 (3d Cir. 2001).

2. *Brown*, Second Amended Class Action Complaint, Section A.5.

dence submitted in *Brown*, mentholated cigarettes account for between 60 and 75 percent of the cigarettes smoked by African Americans—and 90 percent of African American youth who smoke, smoke menthols.[3] Thus, *Brown* claimed, as a result of the increased danger of mentholated cigarettes and "a conspiracy of deception and misrepresentation against the African American public," African Americans have disproportionately suffered the injury, disability, and death that invariably follow from smoking mentholated cigarettes.

It is clear that cigarettes have had a devastating impact on the African American community: tobacco smoking is the number one killer and disabler of African Americans. It results in more deaths among black Americans than homicide, car accidents, drug abuse, and AIDS combined. It intensifies serious health problems that disproportionately affect black Americans: hypertension, diabetes, low birth weight, infant mortality, and hazardous occupational exposures.[4] Blacks have a higher incidence than whites of tobacco-related illnesses, such as cancers of the lung, esophagus, oral cavity, and larynx; heart disease; and cerebrovascular disease. In 1992 lung cancer became the leading cause of cancer mortality among African American women aged fifty-five to seventy-four years.[5] Compared with whites, blacks also tend to be diagnosed when diseases are at a later stage, and they have a significantly lower survival rate after diagnosis.[6]

Reverend Brown brought this injury claim as a civil rights suit, providing a radical departure from product liability approaches to legal retribution for dangerously defective products. By claiming transgression of the Civil Rights Act of 1866, originally written to protect recently freed slaves from a variety of discriminatory practices, the complainants of the *Brown* suit sought to show the unconstitutionality of targeting African Americans with defective products. This strategy sidestepped the problematic way in which product liability law seeks to

3. Michael D. Basil, Caroline Scooler, David G. Altman, Michael Slater, Cheryl L. Albright, and Nathan Maccoby, "How Cigarettes Are Advertised in Magazines: Special Messages for Special Markets," *Health Communication* 3 (1991): 75–91. Menthol has only very recently been studied for potential carcinogenic compounds, and the issue is still controversial.

4. Karen Ahijevych and Ellen Wewers, "Factors Associated with Nicotine Dependence among African American Women Cigarette Smokers," *Research in Nursing and Health* 16 (August 1993): 283–92.

5. Laurie Hoffman-Goetz, Karen K. Gerlach, Christina Marino, and Sherry L. Mills, "Cancer Coverage and Tobacco Advertising in African-American Women's Popular Magazines," *Journal of Community Health* 22 (1997): 261–71. This study, which was conducted on adult women, found that women read popular magazines in order to acquire information rather than from habit.

6. U.S. Department of Health and Human Services, *Health Status of Minorities and Low-Income Groups* (Washington, D.C.: U.S. Department of Health and Human Services, 1991), 17.

reestablish the status quo through compensation and its corollary effect, which is its tendency to *undercompensate* women and minorities—meaning they are both less likely to be compensated (as a group) and more likely to receive less compensation. Furthermore, it sought structural redress by attempting to have advertising directed toward African Americans banned, a remedy that would not be available through product liability law. But although the complainants submitted substantial evidence on target marketing and design defects—including evidence of industry research on the health effects of menthols dating possibly to the 1930s[7]—the structure of civil rights law placed these key issues beyond the court's field of judgment. For example, the complainants needed to show intentional discrimination on the part of the defendants that would impair the plaintiff's ability to "make contractual arrangements for the sale and purchase of tobacco products." In dismissing *Brown*, the court set aside the issue of targeting because the plaintiffs were unable to show that they were offered less-favorable contractual terms than whites were. Essentially, the court determined that the plaintiffs had in fact been free to buy any type of cigarettes, and the mentholated products that many did smoke were "just as defective and dangerous as the mentholated products" that were sold to whites with equal terms of sale.[8] Thus a federal district court dismissed *Brown* in 1999 on narrow but important legal grounds, and the plaintiffs' charge of targeting a dangerous product at racially defined markets was not considered.

Nevertheless, the *Brown* case is one in an important series of attempts by culturally and economically defined groups to mobilize against extreme target marketing. But it is also much more than that. I contend here that the structural issues raised by *Brown* cast into relief the difficulties of demonstrating how social and physical injuries are imbricated—a problem that I believe is central to understanding injury, consumption, and inequality in the United States. It reveals the

7. Brown found documents from the Minnesota lawsuit that led him to conclude that the industry knew that menthol, "even in small doses, destroys mucus membranes." Sabrina Rubin, "Holy Smokes!" *Philadelphia Magazine*, February 1999, 23. Web version is available on-line at www.naaapi.org/documents/justice.asp. The article reports further dangers of mentholated cigarettes.

8. Claims of breach of warranty or fraud and misrepresentation were interpreted by the court as state law claims, not civil rights claims, and were therefore dismissed by the U.S. District Court for the Eastern District of Pennsylvania. *Brown*'s other claims, brought under Section 1983, were dismissed since *Brown* was unable to show that tobacco companies should be understood as "state actors." Similarly, charges brought under Section 1985(3) were dismissed on statutory grounds. Judge John Padova's opinion of 22 September 1999 is posted on the Brown and Williamson Web site, www.brownandwilliamson.com/index_sub2.cfm?Page=/APPS/LitigationArchives/Index.cfm%3FID %3D536.

structural complexity—indeed the impossibility—of articulating in legal, compensatory language, the process through which individuals and communities are socially and physically constituted by the products they own and consume while calling for this understanding. Thus the complaint both points to, and is a symptom of, the complexities of the ever circulating contingent relations among injured communities, niche marketing, and dangerous products. Analysis of *Brown* in context poses radical challenges to articulations of American injury law.

The *Brown* complaint was about the right not to be injured by the products one consumes; in this sense it directly paralleled a product liability claim. Not surprisingly, the significant media attention *Brown* garnered tended to fissure along the same lines as a product liability case would. One side, seemingly allied with tobacco corporations, claimed that African Americans are as capable as anyone of making choices, and that everyone makes choices they regret. The other side consolidated around the position that tobacco corporations have behaved reprehensibly and are unquestionably responsible for injuries resulting from smoking. Neither side portrays African Americans as naive dupes or hapless victims, but, rather, each carries assumptions about human, nonhuman, and institutional accountability, as well as about choice, injury, inequality, agency, and regret.

Product liability law's key assumption is that given adequate product design, human users will be able to make responsible choices. This perspective assumes that consumers and corporations enter contracts (through consumption) as two equal and sovereign subjects. *Brown* deeply questioned this premise by showing that, in fact, products are powerfully produced by factors such as advertising and, furthermore, that choice is a highly social practice. Profoundly implicating the corporation in structural racism on multiple levels, *Brown* claimed that tobacco companies targeted a much more dangerously designed product, through deceptive advertising, to a group of people who are statistically more likely to be influenced by advertising claims. The transparent veracity of *Brown*'s claims of racism and the ease with which the suit was dismissed demand critical attention. The suit's framing of the issue of defective products as one of civil rights rather than product liability interrogates the very core of rationalist injury frameworks and sheds light on the broader structure of capitalism and the always already unequal social terms of consumption.

To place the *Brown* suit in a more textured context, this essay focuses primarily on the growth of black consumerism in the 1950s and 1960s. This period is significant for several reasons. First, the number of black smokers increased dramatically during this twenty-year period, and smoking by everyone was at its

twentieth-century peak: 52.5 percent of Americans were smokers by 1966.[9] Second, during those decades African Americans were "discovered" as a viable market and targeted in innovative (but not necessarily progressive) ways for a slew of new products, including mentholated cigarettes. According to evidence submitted in *Brown*, the tobacco company that produced the Kool brand, Brown and Williamson (B&W), advertised proportionately more to blacks than to whites throughout the 1960s (while 10 percent of the population is black, B&W spent 17 percent of Kool's advertising budget on "black advertising").[10] But this greater spending was not the main factor in the sway of this campaign, nor is it constitutive of race targeting, as I will explain below. Indeed, that cigarette companies led targeted marketing campaigns was not new. Despite awareness of their product's dangers, Phillip Morris and others have been marketing cigarettes to particular ethnic or economic groups with abandon since the earliest years of the century. While *Brown* correctly contends that race targeting, in the absence of information about the hazards of smoking, might have influenced many more African Americans to smoke than might have otherwise, a deeper investigation of the politics and culture of the 1950s and 1960s reveals a more complex and insidious culprit.

The semiotics of marketing menthols and other leisure products to African Americans emerged in the context of the civil rights movement's boycotts against discrimination. Breaking down barriers to consumption, these boycotts aligned blacks' dignity with their right to consume products and services of quality as freely as whites. Tobacco companies also aligned consumption of their product with equality and upward mobility, creating intersecting agendas. During this period, as Michael Omi and Howard Winant argue, the "black movement redefined the meaning of racial identity, and consequently of race itself, in American society."[11] These decades are key to understanding the circulating figurations of race in a semiotics of smoking. Moreover, the links among consumption, race-based marketing, and smoking menthols, claimed in the *Brown* case, crystallized during this period.

9. Gene Borio, "Tobacco Timeline," *Tobacco Bulletin Board System* (Web publication available on-line at www.tobacco.org), 2001.

10. B&W document cited in Times News Service, "Tobacco Industry's Ad Assault on Blacks Is Detailed in Records: Newly Released Documents Disclose Broad Scope of Marketing Campaigns," *St. Louis Post-Dispatch*, 8 February 1998, A14.

11. Michael Omi and Howard Winant, *Racial Formation in the United States: From the 1960s to the 1990s*, 2d ed. (New York: Routledge, 1994), 99.

Tobacco and mint leaves have doubtless been mixed together and smoked since antiquity, and menthol crystals have been added to snuff for hundreds of years. In the age of the contemporary cigarette, however, mentholation, acting as a mild anesthetic, numbs the throat to the harsh elements of tobacco smoke and thus allows a deeper and longer inhalation. In 1926 Axton-Fisher introduced a mentholated cigarette called "Spud," after its original patent-holder.[12] B&W, formed in 1894, launched the mentholated Kool in 1933 and priced it at $.15, 25 percent cheaper than Spud, which it outsold swiftly.[13] The first Kool ads featured a penguin and inaugurated the seventy-year bid to associate menthol cigarettes with refreshment and the outdoors. "Like a week by the sea, this smoke . . . is a tonic to hot, tired throats."[14] The award-winning ad of 1946 focuses on the pharmaceutical value of Kools: "Head stopped up? Got the Sneezes? Switch to Kools . . . the flavor pleases!"[15]

Notwithstanding recent sales taxes, cigarettes have traditionally provided a cheap and accessible indulgence to all classes, and, gaining momentum throughout the century, cigarette companies have ensured that smoking has been introduced to literally hundreds of cross-referenced niche markets. According to contemporary industry documents, sometime in the 1950s or 1960s, mentholated cigarettes came to be identified—at least by black people—as a black product. Sociologists, marketers, and smokers have offered various reasons for this notable association. Industry attorney Jeffrey G. Weil claimed, "The targeting is not because they're African-American—it's because they like menthol cigarettes."[16] Conversely, Charyn Sutton, a plaintiff in the *Brown* class action suit and president of Onyx Group, Philadelphia, testified that B&W "put extra effort into promoting menthol cigarettes to Blacks." She said, further, that "when I was in high school [B&W] made the penguin into a person, and we really thought he was a stand in for African Americans because at that time African Americans really couldn't be

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12. The possibly apocryphal story is that Lloyd "Spud" Hughes's mother insisted he inhale menthol crystals for his asthma. He soon noticed that when he stored his menthol and cigarettes in a tin container, the cigarette was pleasantly flavored.

13. Richard Kluger, *Ashes to Ashes: America's Hundred-Year Cigarette War, the Public Health, and the Unabashed Triumph of Philip Morris* (New York: Knopf, 1996), 93.

14. Kluger, *Ashes to Ashes*, 93.

15. Ad is on file at the Archive of Cigarette Advertising, University of British Columbia, curated by Richard Pollay.

16. Shannon P. Duffy, "Court Urged to Dismiss Menthol Cigarette Class Action," *Law News Network*, 8 April 1999.

portrayed in ads in the general market. . . . The class took that penguin and made him the class mascot—that's how intense the identification was by that kind of advertising."[17]

It has been suggested that African Americans' preference for menthols may be explained culturally as an identification with the vernacular origins of the word *cool* and its manifest attitudes and gestures.[18] Another possibility for the preference lies in the resonance of mentholated cigarettes with menthol's roots in folk medicine and over-the-counter drugs. Menthol is steam distilled from oil of peppermint, which has been used as an ingredient in medicinal mixtures for thousands of years. Peppermint oil's popularity as a home remedy stemmed from its effectiveness, when combined with sodium bicarbonate or powdered rhubarb, as an antacid, an appetite stimulant, and a purgative. Mentholated commercial products, such as lozenges, inhalers, and chest rubs, were common in Britain and North America by the mid–nineteenth century and have remained so, although contemporary evidence suggests that menthol has no positive medical effects.[19] Reports that African Americans have spent two to four times as much as white Americans on over-the-counter medications more generally, likely as a result of restricted access to health care, suggest a reliance on mentholated products.[20] These hypotheses aside, B&W capitalized on many African Americans' positive view of mentholation's purported medicinal properties in its advertisement of Kools.[21]

17. Adam Hochberg, "Menthol Suit," National Public Radio's *All Things Considered*, 2 November 1998.

18. Rick Pollay, personal conversation, University of British Columbia, 21 December 1999.

19. R. Eccles, "Menthol and Related Cooling Compounds," *Journal of Pharmacy and Pharmacology* 46 (1994): 618–30. Menthol can also be extracted or synthesized from other essential oils such as citronella, eucalyptus, and Indian turpentine oils. Eccles cites a number of studies that demonstrate that menthol inhalation causes "a subjective nasal decongestant effect without any objective decongestant action" (622). Thanks to Stuart Anderson of the London School of Hygiene and Tropical Medicine; Katie Eagleton, assistant curator of the London Science Museum; and George Twigg for e-mail communication on the issue of menthol's history and relation to tobacco.

20. Robert E. Weems, *Desegregating the Dollar: African American Consumerism in the Twentieth Century* (New York: New York University Press, 1998), 34. In 1963 Dave Berkman found forty-nine ads for patent medicines and other health aids in *Ebony* compared to only fourteen in *Life*. He notes that this "was not an unexpected finding in a magazine whose readership contains such a high proportion of people engaged in work demanding heavy physical exertion (and a race whose memberships' deaths occur, on the average, about eight years earlier than among the White population)." Dave Berkman, "Advertising in *Ebony* and *Life*: Negro Aspirations vs. Reality," *Journalism Quarterly* 40 (1963): 43–64, 54–55.

21. "Documents about the Kool brand showed that the company sought to 'capitalize upon the erroneous consumer perception that there is a health benefit to smoking mentholated cigarettes.'" Richard Pollay, "Getting Good and Being Super Bad: Chapters in the Promotion of Cigarettes to Blacks," working paper, History of Advertising Archives, University of British Columbia, 1993, 18.

Market studies attest to a strong preference for mentholated cigarettes among African Americans—both for the qualities of the cigarette as well as for its image. For example, in 1980, Philip Morris (PM), planning its own niche advertising strategy for the cigarette "Merit," had a 166-page document prepared on ethnic marketing.[22] Several pages are dedicated to analyzing the success of Kool cigarettes, and the document quotes African American smokers who focus on taste, style, and loyalty. Black participants in the study considered Kools to be "so smooth and mild you can smoke them all the time," and they work "like an anesthetic." Many of these smokers said they experienced Kools as "relaxing," a means of "escape," and as a way to meditate. Kool style was considered to be the crucial element to Kool's success, and the brand was "heavily" associated with a very positive, often glamorous self-image: "To be cool you smoke Kool"; "Smoking a Kool? Like riding a Rolls Royce." The study concludes, "Kool smokers see themselves as very stylish and apart from other smokers who haven't made it to Kools"; they were separate from the crowd. These reactions to the Kool advertisements recurred in one black smoker's reminiscences in 2000: "I don't know if I smoked because I saw the ads. I do know that they made me feel a certain way, like I was part of that whole glamour thing."[23]

The smokers' testimony collected by Philip Morris suggests an uncritical assimilation of advertising rhetoric and makes clear the extent to which the identity of the Kools smoker was wrapped up in the expression of taste as a measure of class and good breeding. Like Coca-Cola, which is consumed for pleasure, or like other personal embellishments such as Gucci, Victorinox, or Mustangs, which are meant to be seen, cigarette brands are used to express, through their consumption and display, an identity, a style, and a self. Thus, for a large percentage of African American smokers, the Kool cigarette was interpellated as an object with evolving meanings and multiple uses. It is this multiplicity of meanings that the *Brown* complaint poignantly suggests as it defers to the necessity of focusing on the attenuated and quantitative issues of targeting and cigarette design.

One telling place to open this exploration further is through an investigation of

22. This study concludes that "here was a product [menthols] which by some virtue was especially suited to the needs, desires, and tastes of Negro consumers." "Merit Ethnic Research," January 1980. Available on-line at tobaccodocuments.org/pm/2047167333-7497.html. See also Tibor Koeves Associates, "A Pilot Look at the Attitudes of Negro Smokers toward Menthol Cigarettes," September 1968. Available on-line at tobaccodocuments.org/pm/1002483819-3830.html.

23. Warren Mitchell, quoted in Tracey Reeves, "A Targeted Payback: Black Communities in Md. Want More Tobacco Money," *Washington Post*, 16 February 2000, B1.
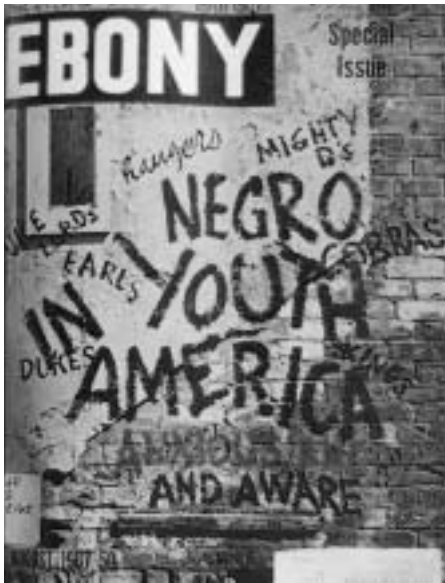
Figures 1 and 2

a 1967 ad for Kools that appeared in *Ebony*'s August special issue on youth. The ad not only appeared at the height of the civil rights movement but itself offers an instance of what might be read as an antiracist procorporate movement on the part of African American marketers, including *Ebony*'s publisher and founding editor John H. Johnson. In his editorial for the youth issue, Johnson explores "the challenging and bewilderingly complex world of the more than eleven million Negroes who are below the age of twenty-five."[24] Although Johnson stresses his concern with youth, the issue is also about civil rights. It features articles on activist movements; the dearth of educational opportunities; Jesse Jackson's views on economics, unemployment, and Vietnam; as well as a protofeminist piece on the successes of a female pool player in Iowa. This content generally fits into the human interest, celebrity, bootstrap rubric under which Johnson had founded *Ebony* twenty-two years prior. As befits the readership of the magazine, the preponderance of its advertisements are women-oriented. Through the 1960s, *Ebony* covered civil rights issues, but as the movement became increasingly radical, the magazine reverted to an orientation of self-help rather than protest.[25] In the early- to mid-1960s, *Ebony* readers were better educated, held more white-collar jobs, had a much higher mean income, and were ten years older than the general black population. Even so, 31 percent of readers earned an annual income of less than $5,000 ($1500 less than the national average), and 41 percent had not completed high school.[26]

The youth issue's editorial content and advertising

24. Editorial, *Ebony*, August 1967.

25. Paul M. Hirsch, "An Analysis of *Ebony*: The Magazine and Its Readers," *Journalism Quarterly* 45 (1968): 267–68. In 1966, circulation was 926,644. *The Negro Handbook*, compiled by the editors of *Ebony* (Chicago: Johnson, 1966), 384.

26. Hirsch, "Analysis of *Ebony*," 261–70, 292. Income and education statistics outlined in detail in *The Negro Handbook*, 167.

offer a conflicting pastiche of preoccupations and priorities. Advertisements portray that summer as one of leisure and luxury. The *Ebony* women of the advertising pages appear to be ecstatic over visiting the manicurist, straightening hair, quaffing Pepsi, lathering down in the shower, and ironing clothes. Meanwhile, articles address a primarily female readership occupied with meetings, day jobs, and childcare. The cover portrays conflict, illustrating a broken-down brick wall, painted with the graffiti sign that provides a title for the issue: "Negro Youth in America: Anxious, Angry, and Aware" (fig. 1). In the midst of this confusion and crisis of identity, the reader turns from the front cover to find an invitation to "Come Up to the Kool Taste" (fig. 2). The moment of calm on the cover's flip side transports the reader to a stream babbling through a forest as the blurred background to a couple relaxing on a quixotic wooden bridge. Although the couple seems to be about the same age as the "youth" featured in the magazine, they are certainly of a different generation.

In this leisurely pose in the woods, the woman in her turquoise-green mint dress with matching shoes and bracelet seems to emerge, genie-like, from the box of cigarettes. Even the twist of her body, highlighted by the folds of her frock, echoes the curling smoke of the fairy-tale genie as it emerges from Aladdin's lamp. But if this is so, it is the only suggestion of smoke, for these white-toothed nonsmokers do not even have their cigarettes lit. The couple is confidently heterosexual, overlapping if not touching; a wedding ring is conspicuously absent. He, dark and handsome, and she, light-skinned with straightened hair, promise a romantic afternoon. Perhaps they are courting; they are certainly upwardly mobile. These charming people wait curiously, invitingly, genuinely, for some sign from the observer, and the cigarette box below reflects this offer. The invitation of this scene, untarnished by the now familiar product warnings, is unabashed in its class and assimilationist aspirations. If the appellation "kool" plays on a real or imagined black vernacular, the enticement is to a middle class. The Kool brand was hailed by *Advertising Age* as a success for its call to upward mobility, and well-dressed couples in outdoor scenes were depicted in the advertisements for Newport and Salem menthols throughout the mid- to late 1960s.[27]

Although this duplicitously slick ad promises a prosaic menu of success, achievement, and pleasure—the standard fare of advertisers everywhere—it can more radically be read as the culmination of the struggles of John Johnson and other black conservatives. These struggle are central to the ethos that lead to the

27. Other 1960s ads for mentholated cigarettes are collected in the Archive of Cigarette Advertising at the University of British Columbia, curated by Richard Pollay.

kinds of claims made by *Brown*, for they bring together the stakes in nonracist advertising for both desegregation and for community building through the cultural production of magazines in the context of civil rights struggles. These battles were underpinned in no small way by the local and institutional power of tobacco companies. Only by tracing each of these forces can we analyze the travels of race and its consolidation in sometimes conflicting ways. This inquiry provides crucial insight into the civil rights claim underpinning *Brown*.

The rise of the lifestyle magazine as a form of popular culture post–World War I also helped to strengthen an ideal of an American middle class—one that was largely racialized as white.[28] The uneasy position of all people identified as and with black Americans in the middle class was clear, however, as the *Ebony* reader in August 1967 turned from the cover image of the graffitied wall to the Kool advertisement on its backside. The cover hints at the violence of the era, in which Martin Luther King and Malcolm X were both shot. Moreover, while he was alive Malcolm X surely frightened black conservatives, many of whom were also readers of *Ebony*, as much as he did whites. The FBI infiltrated the Black Panthers and other political groups as young black men were being drafted for Vietnam. Perhaps readers of *Ebony*, having grown up in the era of Jim Crow when "talking back" could be a capital crime, were terrified for their more radical grown children.[29] The Kool advertisement, in contrast, offered other fantasies based in the history of a civil rights movement that had used law to open new possibilities in education and employment even as it evacuated the energy and potential dangers of black identifications in the more radical wing of the civil rights and other contemporary revolutionary movements of the era.[30] Thus if the contrast between the cover and the inside page of the 1967 issue illustrates the broader ambivalence of the magazine's content and perhaps its readership, then the ad itself exemplifies the values of a long tradition of black conservatism, whose roots in Booker T. Washington's reliance on hard work and self-improvement found voice through twentieth-century women's clubs, black churches, and appeals to the U.S. Supreme Court.

The ad's design and placement in the magazine reflects this social history, but

28. Stuart Ewen, *PR!: A Social History of Spin* (New York: Basic, 1996), 53–54.

29. Hirsch reports that by 1966, "CORE [Congress of Racial Equality], SNCC [Student Nonviolent Coordinating Committee], and the Southern Christian Leadership Conference were out of favor with *Ebony* and its readers." Hirsch, "Analysis of *Ebony*," 267.

30. Purposefully resisting the middle-class assimilationist African American identity that attended the menthol image, professor and activist Angela Y. Davis, for example, told me that she smoked unfiltered Pall Malls in the mid-1960s rather than mentholated cigarettes.

its actual existence in 1967 is emblazoned with Johnson's struggles as an African American editor. His 1989 autobiography, *Succeeding against the Odds*, is diffracted through the lens of a foundational belief in equal opportunity capitalism. Born in 1918, Johnson completed the eighth grade twice because it was the last grade available to blacks in Arkansas. Meanwhile, his mother earned the money to move with her son and daughter to Chicago so that he could attend high school in the growing metropolis. Johnson epitomizes the American Dream, and his autobiography is largely a story of overcoming difficulties, though perhaps not as many as he would have liked. He writes, "If I hadn't operated with the handicap of racial barriers, I could have made billions, instead of millions."[31] To be sure, compelling evidence buoys this observation.

Johnson's initial success with *Negro Digest* (1942), which he initiated with a $500 loan that used his mother's furniture as collateral, led him to found *Ebony* (1945), *Tan* (1950), and *Jet* (1951). *Ebony*'s first issue, launched with nary a subscriber as an oversized monthly of "Negro news and pictures," had by 1966 reached a circulation of close to a million.[32] One of Johnson's main obstacles, after having overcome so many to have *Ebony* published at all, was to find advertisers for the magazine. Even after *Ebony* reached a staggering circulation of 400,000, Johnson still struggled to attract advertisers; the ambitious editor wanted the big four-color ads "that were the staple of white magazines" rather than the inferior black and white small-scale ads typical of black publications.[33] Johnson shares several anecdotes in his autobiography—in a paternal "you can too" guise—of how he was able to reach the offices of a significant number of CEOs and finally convince them to advertise.

As editor of *Ebony*, black middle-class America's premiere magazine, Johnson played an instrumental role in shaping his readership into a lucrative marketing demographic. One of his broader-range strategies involved a two-pronged operation to convince white corporations of the size and profitability of the Negro market and, ultimately, to teach them how to coddle this market. Publishing in the early 1950s, Johnson spearheaded a burgeoning industry of market consultants

31. John H. Johnson with Leone Bennett Jr., *Succeeding against the Odds* (New York: Warner, 1989), 90.

32. As described in *The Negro Handbook*. This compilation of facts and statistics on the African American community was, suggests Robert Weems, possibly a guide to the black community for white corporations—with a distinct bias against black-owned businesses. Weems, *Desegregating the Dollar*, 74–75.

33. Johnson, *Succeeding against the Odds*, 161.

involved in a similar venture. Johnson's goal was clear: "To increase the profits of corporate America and, incidentally, the profits of Johnson Publishing Company, we have to change the perceptions of corporate America."[34] By 1967 *Ebony* had the lion's share of the annual $8 million spent on black-oriented magazine advertising.[35]

The strength of the African American market and the community's positive response to respectful advertising had been demonstrated as early as the mid-1930s. Kellogg Company was among the first U.S. food corporations to pursue this market by broadly advertising cornflakes in a nonderogatory manner in the black press.[36] This invitation to consume must have been powerfully compelling to a group of people that had been so violently disregarded. As historian Grace Elizabeth Hale shows, in the early twentieth century southern segregation enforced systems of consumption that involved brutally suppressing the "uppity" Negro who emulated the white middle class in part by selling only poor-quality goods to blacks.[37] Thus, even wealthy blacks could not access goods and other signifiers of their class, and, when they could, they found that the symbols of oppression went far beyond second-class service and goods. They were met at the county store with not only staggeringly racist advertising and product labels but also sales counters stocked with souvenirs of the latest lynching, including postcards of the event and victims' severed fingers and toes.

Northern and southern blacks relied on brand name products, as they became available, in order to avoid discriminations such as short weights and poor-quality goods. Similarly, the growth of supermarkets and standardized services such as self-serve and mechanized check-outs saved the black shopper from continually being bumped to the back of the line.[38] Nevertheless, the elementary tutorials offered by Johnson and others indicate the egregious baseline of advertisers' racism. He began with such rudiments as: "Don't exaggerate Negro characters, with flat noses, thick lips, kinky hair, and owl eyes. . . . Always avoid the word 'Pickaninny,' or lampooning illustrations of Negro children. They are as dear to their parents as are other children, irrespective of race."[39] The secondary effects

34. Johnson, *Succeeding against the Odds*, 230.
35. "Adman's Guide to Negro Media," *Sponsor (Negro Market Supplement)* 21 (1967): 42–45, 48–51, 44.
36. Weems, *Desegregating the Dollar*, 26.
37. Grace Elizabeth Hale, *Making Whiteness: The Culture of Segregation in the South, 1890–1940*, (New York: Pantheon, 1998), see especially chap. 4.
38. Weems, *Desegregating the Dollar*, 26.
39. David J. Sullivan, "Don't Do This—If You Want to Sell Your Products to Negroes!" *Sales Management* 52 (1943): 46–51.

of racism also needed to be spelled out: "Don't set up contest prizes that a Negro winner could not enjoy, such as a free trip to Miami Beach, or a new suburban house in an area where the Negro might not want to live."[40] Changing the perceptions of corporate America meant nothing less than refiguring popular representations of race in the media, and the latter required a drastic change of race perception.

For example, in trying to off-load their racist practices, many corporations claimed that integration in advertising would offend a large portion of the white market, which was ten times larger than the African American market. African American market advisers took several tactics in addressing this concern. One response was to emphasize the sheer size of the market. By the mid-1960s, market researchers were tracking the income levels and spending habits of this demographic, claiming that "Negroes, as a group, represent a purchasing power of around $20 billion, approximately as large as the markets of Belgium, Sweden, Denmark, and Norway combined."[41] Size by population was not in itself the crucial factor, so attempts were also made to diminish the notion that African Americans were poor. Johnson, for example, commissioned a survey on the brand preferences of black families to discredit the "general assumption that this is simply a market for low cost goods."[42]

Other advisers tried to put a positive spin on the particular experiences of African Americans. One claimed that hired domestics "exert a direct influence on the purchase of several commodities in the home."[43] Johnson focused on the fact that some African Americans had "become acquainted with expensive merchandise through working with wealthy white people—as butlers, valets, maids, housekeepers."[44] Inequities were recast as marketing opportunities: since African Americans had far less access to recreation and housing, it was argued that they tended to spend their money on commodities, thus matching and exceeding white disposable income in several categories. The categories most often mentioned concerned looks and "prestige items," such as scotch. This questionable analysis is typical of the marketing literature of this period, with claims such as: "The

40. In a 1952 article in *Advertising Age*, Johnson advised would-be advertisers not to "use the term 'nigger,' 'negress,' 'darky' or 'boy.'" John H. Johnson, "Does Your Sales Force Know How to Sell to the Negro Trade? Some Do's and Don'ts," *Advertising Age*, 17 March 1952, 73–74.

41. Arnold M. Barban and Edward W. Cundiff, "Negro and White Responses to Advertising Stimuli," *Journal of Marketing Research* 1 (November 1964): 53–56.

42. "*Ebony* Survey Reveals Negro Buying Habits," *Advertising Age*, 28 August 1950, 16–17.

43. Marcus Alexis, "Pathways to the Negro Market," *Journal of Negro Education* 28 (1959): 114–27.

44. Johnson, "Negro Trade," 74.

Negro . . . will spend much more money on food, clothing, appliances, automobiles, and other items in order to help overcome his insecurity neurosis. The result has been that Negro standards of living in many categories of goods are a match to white standards."[45] The "insecurity neurosis" and "inferiority complexes"[46] that African Americans purportedly suffered provided an opportunity for advertisers to offer what T. J. Jackson Lears has since called the "therapeutic ethos" of consumption.[47]

Other consultants studied the ways that race exceeded the problems of class and the accessibility of products. For example, African American sociologist Henry Allen Bullock's 1961 two-part study in the *Harvard Business Review* was based on a survey of nearly two thousand people and in-depth interviews with a further three hundred. Bullock's most interesting data have to do with blacks' and whites' approaches to consumer choices, which detail varying moral codes of consumption. Consider the example of credit: to justify its use, black people "felt obliged to display an elaborate system of rationalization." For whites, credit tended to be used more liberally for products that they wanted rather than "needed."[48] Overall, whites tended to be more accepting and even envious of higher consumption levels, whereas blacks held a more traditionally Protestant view of consumption above and beyond financial liberty. In considering air conditioners, for example, a white person said: "[Owners] are spoiled, but I think it's wonderful. I wish I could afford to do it."[49] African Americans tended to feel that air conditioning was an unnecessary luxury. These examples suggest a different approach to class privilege and consumerism that goes beyond a simple ability to buy more; they indicate the ways in which class transformation also required a resocialization about consumption and entitlement.[50] In his 1963 study of advertising in *Ebony* and *Life*, Dave Berkman noted this ambivalence between race and

45. "The Forgotten 15,000,000 . . . Three Years Later," *Sponsor* 6 (1952): 76–77.

46. "Because of the psychological considerations involved, Negroes are extremely desirous of being identified as customers who recognize and demand quality merchandise." "*Ebony* Survey," 17.

47. T. J. Jackson Lears, "From Salvation to Self-Realization: Advertising and the Therapeutic Roots of Consumer Culture, 1880–1930," in *The Culture of Consumption: Critical Essays in American History, 1880–1980*, ed. Richard Wightman Fox and T. J. Jackson Lears (New York: Pantheon, 1983).

48. Henry Allen Bullock, "Consumer Motivations in Black and White—I," *Harvard Business Review* 38 (May/June 1961): 99.

49. Bullock, "Consumer Motivations I," 102.

50. William Leiss, for example, discusses how, in consumer culture, "class" is about learning to consume at a particular level. In *The Limits to Satisfaction: An Essay on the Problem of Needs and Commodities* (Toronto: University of Toronto Press, 1976).

class in consumer decisions in a slightly different way. He concluded that what the black person "does want is to be a middle-class Negro; but for right now, and for as long as the two are, to a large degree, essentially contradictions in terms, he will find most appealing those items whose consumption most clearly say 'white'— but only because they also say 'middle-class.' "[51]

Class, race, desegregation, and entitlement tied in with consumptive behaviors and aspirations in complicated ways. Likewise, motives for altering corporate racism surely ranged from racial integration to career trajectories and personal gain, though certainly many white and African American market consultants genuinely believed in the integrity of their work. One 1961 article claims, "Children, for example, do hear and learn the advertising message. They, too, are destinators. What kind of people they become is determined, at least in part, by the tonal quality of the advertisers' message. When sellers turn communicators, they inevitably become educators."[52] Another African American consultant wrote, "As the Negro becomes freer, he becomes more race conscious. There would be no Negro market in the United States if it weren't for the racial tension."[53] This evidence suggests that consultants believed that the eradication of racism in marketing and advertising would redress the vicious racism of the early part of the century.

The work, however, was not universally celebrated as progressive. Sociologist E. Franklin Frazier cited statistics in his 1957 study of the "black bourgeoisie" indicating that by 1938 blacks already spent about 90 percent of their incomes in white-owned businesses.[54] Frazier wrote that "the myth that Negroes were spending $15 billion in 1951 [nearly three times what could be demonstrated using available statistics] was widely circulated by Whites as well as Negroes in the U.S. and whet the appetites of the black bourgeoisie, both Negro businessmen and Negroes employed by American corporations in their efforts to reap benefits from the increased earnings of Negroes."[55] Indeed, the broadcast advertising trade journal, *Sponsor*, reported, "The growing awareness that understanding is the key to effective advertising has created a boom for 15 or 20 Negro public relations firms. Billings for D. Parke Gibson, for example, are up 40 percent over a

51. Berkman, "Advertising in *Ebony* and *Life*," 62.

52. Henry Allen Bullock, "Consumer Motivations in Black and White—II," *Harvard Business Review* 39 (July/August 1961): 113.

53. "Adman's Guide," 42, quoting Moss H. Kendrix, African American owner of a Washington consulting firm. Italics removed. The article goes on to note that "although the Negro no longer wants to be white, he most certainly wants to have the same things and do the same things as white people."

54. E. Franklin Frazier, *Black Bourgeoisie* (Glencoe, Ill.: Free, 1957), 56.

55. Frazier, *Black Bourgeoisie*, 173.

year ago."[56] It is not at all clear that target marketing overall brought more money to white companies, though it seems to have provided (limited) job opportunities for black consultants and magazine editors. Frazier argues that this misrepresentation of the size of the market served a tripartite purpose. First, it gave an exaggerated sense of worth to bourgeois blacks; second, it strengthened the false notion that the accumulation of wealth could solve African Americans' problems; and third, it presented integration as a possibility for African Americans (an idea he disagreed with).

The differing stakes in corporate capitalism and desegregation in employment, advertising, and selling can be seen in Johnson's outspoken opposition to a Christmas boycott that had been suggested by James Baldwin, Louis Lomax, and Ossie Davis in the wake of the 1963 Birmingham church bombing.[57] Yet despite Johnson's unwillingness to risk antagonizing wealthy corporate sponsors, once companies accepted the importance of black consumers they recognized that civil rights concerns affected consumption patterns. One article, describing black women's purchasing habits, reports, "Further, she is militant in her pursuit of economic and civil rights, and will cross off her shopping list the name of any company she believes or suspects practices discrimination."[58] By 1964, when this article appeared, companies had had ample opportunity to experience the effects of boycotts; the previous year, *Advertising Age* had puzzled over the fine lines of placating, fearing, and bribing angry black boycotters.[59]

A few corporations were willing to capitulate, at least rhetorically, to some civil rights demands. After the lunch counter boycotts in 1963, for example, Woolworth's decided to "really get a very strong, positive program—one which includes employment opportunities and perhaps scholarships—to overcome the bad reputation it acquired."[60] Other corporations, such as Greyhound, acted on African American marketing advice and installed a "total marketing" approach that included hiring black executives and drivers and picturing whites and blacks

56. "Clients Seek Advice on Negro Market," *Sponsor (Negro Market Supplement)* 20 (1966): 40–43. The article notes that R. J. Reynolds Tobacco ranks first and Liggett & Myers seventh for advertisers providing the most business on "Negro-appeal" radio stations.

57. "Yule Boycott Is Senseless, Johnson Says," *Advertising Age*, 21 October 1963, 3, and "No Christmas Boycott," *The Crisis* 70 (1963): 555–56.

58. Ramona Bechtos, "Ads in Negro-Market Media Do Double Duty with Negro Buyers, Zimmer Says," *Advertising Age*, 13 January 1964, 72. Jackie Robinson advocated the use of prominent African Americans who are affiliated with the civil rights movement in advertising. "Be Sure Negroes Featured in Ads Are Identified with Civil Rights Effort: Robinson," *Advertising Age*, 10 April 1967, 12.

59. "Ads Alone Won't Win Negro Market: Russell," *Advertising Age*, 21 October 1963, 3, 130.

60. "Ads Alone," 3, 130.

seated together in commercials.[61] On the other hand, companies were also quick to co-opt black culture, for example, making short films depicting "the Negro in education, entertainment, agriculture, national affairs, and medicine" and illustrating ads with cultural icons such as jazz bands, sports idols, and civil rights activists. One remarkable *Advertising Age* article, "L&M Cigarettes Pitched to Blacks as 'Superbad,'" served as a glossary of advertising's black-targeted lexicon. It describes a Liggett and Myers campaign for its overwhelmingly white readership: "'Super bad' actually means especially good or super excellent in the current black lexicon."

The stakes in systematic racism for cigarette companies were few. Thus, cigarette companies (unlike housing developers, for example)[62] were free to interpellate people of any race, class, and gender without fearing the loss of their other customers, and this liberty enabled them to ally themselves with any cause—from Billie Jean King's demand for an equal tennis purse to desegregation. Cigarette companies were on the leading edge of post–World War II segmented marketing; one of the four earliest color advertisements that graced the pages of *Ebony* promoted Chesterfield cigarettes. This brand had already been advertised in target presses to Jews and Germans earlier in the century, and starting in the early 1950s, Chesterfield's ads featured black models in black magazines and white models in white magazines, often with the same copy. Despite the seemingly progressive race thinking of tobacco companies, the advertising did not come without costs on several levels. First, quantitative evidence has suggested that targeted cigarette advertising can be linked to increased smoking in the targeted group,[63] and tobacco documents have linked the high sales of Kools in the 1960s to the high nicotine and sugar content of the cigarette. The number of African American smokers increased significantly between 1955 and the mid-

61. "Clients Seek Advice," 43.

62. Ironically, the growth of a white middle class and its attendant white flight enabled the high-density inner-city neighborhoods to become crucibles for high-density advertising (billboards, buses, bus stops).

63. See, for example, John H. Pierce, Lora Lee, and Elizabeth Gilpin, "Smoking Initiation by Adolescent Girls, 1944 through 1988: An Association with Targeted Advertising," *Journal of the American Medical Association* 271 (1994): 608–11. The effectiveness of targeting is also linked to education, and smoking rates are about twice as high for adults with less than a high school diploma compared with those with four or more years of college. David Koepke, Brian R. Flay, and C. Anderson Johnson, "Health Behaviors in Minority Families: The Case of Cigarette Smoking," *Family and Community Health* 13 (1990): 35–43. See also Gilbert J. Botvin, Eli Baker, Catherine J. Goldberg, Linda Dusenbury, and Elizabeth M. Botvin, "Correlates and Predictors of Smoking among Black Adolescents," *Addictive Behaviors* 17 (1992): 97–103.

1960s, with the result that lung cancer, which accounts for 25 percent of all cancer cases in black males, increased 220 percent between 1950 and 1985.[64] Studies have shown that advertising works best on uneducated and underprivileged groups, and the *Brown* complaint cites studies showing that African Americans have been more inclined to accept advertisers' claims.

Second, it is no secret that tobacco companies have been tireless in their tentacular struggle to hide tobacco's effect on the public health. This now well-documented united front included scientific obfuscation on a mass scale, tireless political campaigning, and the suppression of information. For example, in 1952 the advertisement-free *Reader's Digest*, the nation's then largest circulating magazine, had published the first widely read popular article on the health effects of smoking, bringing information on the health risks long known in medical communities to the general public. But the independent magazine underestimated the tobacco industry's power. During this period, American Tobacco and *Reader's Digest* shared the same ad agency, Batten, Barton, Durstine & Osborn. In 1957 American Tobacco's public relations employee J. T. Ross pressured Batten, Barton, Durstine & Osborn to drop the magazine's advertising account. Since American Tobacco billed about $30 million annually, compared to *Reader's Digest*'s $2 million, the agency dropped *Reader's Digest*.[65] This action is just one example of hundreds where tobacco corporations have stultified the press by any means necessary. *Ebony* magazine has received a steady 10 percent of its ad revenue from cigarettes since 1947, and as many as one in three color advertisements in some issues are for cigarettes. Quantitative sociological studies find that "in its more than 40-year history, [*Ebony*] has never published a major article on the leading cause of death among Black Americans: tobacco,"[66] even as it has marked the deaths of celebrities, such as Nat King Cole, who died of smoking-related illness.

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64. Tomas E. Novotny, Kenneth E. Warner, Juliette S. Kendrick, and Patrick L. Remington, "Smoking by Blacks and Whites: Socioeconomic and Demographic Differences," *American Journal of Public Health* 78 (1988): 1187–89. These figures compare to: 14 percent of cancers in white males are cancer of the lung, and cancer increased 85 percent in white men between 1950 and 1985. Henry Weinstein and Alissa J. Rubin, "Tobacco Firms Targeted Blacks, Documents Show," *Los Angeles Times*, 6 February 1998, A1.

65. R. C. Smith, "The Magazines' Smoking Habit: Magazines That Have Accepted Growing Amounts of Cigarette Advertising Have Failed to Cover Tobacco's Threat to Health," *Columbia Journalism Review* 16 (1978): 29–31; Philip H. Dougherty, "Advertising; RJR Flap Not the First in Ad History," *New York Times*, 7 April 1988, D19.

66. "Nor did *Ebony* editors express any interest in covering the historic conference on the Realities of Cancer in Minority Communities." Alan Blum, "The Targeting of Minority Groups by the Tobacco Industry," in *Minorities and Cancer*, ed. L. A. Jones (New York: Springer, 1989): 153–62.

Magazine content studies also demonstrate a shift in the focus of marketing demographics as the health effects of smoking emerged in the popular consciousness. Rick Pollay's studies of *Ebony* and *Life* magazines show a steady increase in the percentage of advertising in *Ebony*. In 1950, there were sixteen ads for cigarettes in *Ebony* compared with thirty-one in *Life*, whereas in 1962, these figures were respectively fifty-seven and twenty-eight. During this period the dangers of smoking were becoming more widely recognized. Filter tips were now available, though they were marketed primarily to white consumers and were not advertised in black magazines.[67] As whites were quitting, companies were becoming more conscious about attracting niche groups and young smokers.

It may be true, as Thomas Laqueur argues, that "addiction is not only an attachment to a substance; it is also an attachment to a passion of great spiritual and cultural thickness."[68] But the terms of that cultural thickness are neither homogenous nor simple. Clearly discrimination pervaded the rise of U.S. consumerism in the 1950s and 1960s. Key tensions arose in this period of intensifying popular and corporate activity that influenced the most prominent images in American culture—advertisements—to finally include groups of minority people in seemingly respectful ways. These advertisements embodied promises of the contemporary civil rights struggles—for education, jobs, and housing—not only through the fantasies that they portrayed but also through the economic channels of supporting African American market consultants, publishers, magazines, models, and writers.

Tracing a few of the many actors and institutions on the supply side of the cigarette equation in the 1950s and 1960s leads to an understanding of how a multitude of social and physical injuries constituted blackness—race—in no simple way and through many struggles. The agentive moments of advertisers, consultants, editors, consumers, and commentators were as many as they were complicated, and through these, a group called African Americans was identified in various and contradictory ways. Equality in advertising posed a way out of racist imagery and opportunities for respectable and lucrative jobs. Simultaneously, a movement that defined liberation in terms of cultural expression rose to challenge a model of freedom based in the consumption of sundry Americana. Among these spectra, as with other subcultures, groups of African Americans embraced the

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67. Richard Pollay, "Separate but Not Equal: Racial Segmentation in Cigarette Advertising," *Journal of Advertising*, no. 1 (1992): 52.

68. Thomas W. Laqueur, "Smoking and Nothingness," *New Republic*, 18–25 September 1995, 39–48.

cigarette as a mode of expression, and tobacco companies seemed to know exactly how to guide this process.

Another commodity might have faded into a background of capitalist consumption. But the cigarette became a key actor in the making of blackness through its aggressive and explicit exertion of itself. This power to harm enrolled the industry in the defense of the cigarette, at first by disavowing its dangers altogether and then in *Brown* by claiming that it injures without discrimination. The cigarette's power to harm also led individual smokers to understand and inhabit injured bodies in complicated ways, one of which was to identify as an injured litigant and register a rights claim through law. Law was interpellated by these rights-claiming plaintiffs to arbitrate a new set of subjects (subjects that have been effected through the cigarette and its consolidating infrastructures) that the law will further secure. Law, then, rather than consumption, promises a new version of full citizenship.

Back to *Brown*

Brown, as a claim about racism in product distribution, provides unique insight into how inequalities are constructed through products, law, and capital. My claim is not that products, or the state, or businesses are in themselves racist, but that terms such as *racism* and *injury* circulate in ways that both make visible and obscure structural inequalities that lead to physical injury. For if blackness is not only constituted but also made meaningful through multiple sites of social and physical injury, how can a right not to be injured (and to be compensated) for a specific injury be claimed from that place—race—defined by a preceding injury, whether we take the preceding injury to be lodged in vulnerability to advertising, disenfranchisement from medical advice, or susceptibility to white violence?

The *Brown* claim can be read as an attempt to expand issues typically brought through product liability law claim into a context in which race could be more apparently recognized. Stripped to its bare bones, the complaint would read something like this: "We were injured by this product not only because it is dangerous, but because we—as a disenfranchised group (already considered a less than human group)—were sold a version of the product that was designed to be both more addictive and more carcinogenic. We have suffered a great deal for this and we want you (the state) to stop allowing this to happen." This way of formulating the issue turned out to be remarkably easy to dismiss. As one of the three appellate court judges, Maryanne Trump Berry, said, "I have a very basic

question about how encouraging the sale or even the preference for a legal product is intentional discrimination on the ground of race."[69] So, from a contractual perspective, if a product is legally available for purchase, how can a line be drawn around who gets to be the buyer? In other words, how does a group make a legible claim through stabilizing the meaningful and cross-secting semiotics of "race" and "injury"?

In a way, it is precisely because the law is *not* racist in understanding African Americans as fully sovereign contractual subjects that it addresses the complicated issues raised by *Brown* solely as contractual issues (menthols were offered to whites and blacks for the same price) with very particular sites of potential blame (tobacco corporations). But this formulation renders it unable to recognize—much less compensate—the race-based injuries and their multiple and nefarious physical and social expressions. Civil rights law holds an unfulfilled promise of linking social and physical injuries by going beyond an industry-smoker dialectic in which a liberal chooser-smoker later turns to a legal logic of a potentially repairable harm to gain compensation for a warrantable injury. But terms of difference, such as race, cannot be *added* to the contractual formulations implied by product liability legal frameworks. Race is integral to the form of the injury itself, just as all kinds of differences are always already present in human and nonhuman relations.

The background to this case elucidated above shows that race cannot be considered as an object or category with albeit contingent contents but needs to be traced as a process itself—and in that process, *Brown* is a key element. The consolidation of "race" by *Brown* plaintiffs clearly poses a strategy to make visible the ways that targeting had occurred. The dissenting opinion in the appeal offers a language to understand how civil rights law might have accepted this claim. Judge Milton Shadur wrote, "the reality of racial prejudice has unfortunately long outlived the reality of theory embodied in those [nineteenth-century] statutes." The statutes mandate "an equal playing field that is violated by conduct that imposes different and race-discriminatory conditions (however created) on the exercise of seemingly comparable contractual rights." He considered the deliberate and persuasive targeting as an impairment of the equality of rights, noting par-

69. Joseph A. Slobodzian, "Black Smokers Try to Revive Menthol Targeting Claim," *Fulton County Daily Report*, 9 February 2001. Berry's statement begs the question of the legality of cigarettes, taking that to be the main premise of the contract, whereas *Brown* is trying to point out the extremely disparate results of this already questionable legality.

ticularly that the chances would be only 1.28 in a trillion of such a high proportion of blacks choosing menthols compared to such a low proportion of whites.[70]

But *Brown*'s expressed contention was not only that cigarettes had been targeted to African Americans, but also that a more dangerous cigarette had been target marketed to them. The statistics on race and smoking I offered earlier are startling, but it is shocking to find that while on average African Americans attempt to quit more often than white Americans do, studies have shown their success rate is 34 percent lower than that of whites. A strong case does exist that Kools and other mentholated brands are among the most dangerous cigarettes. By the 1960s, tobacco companies understood the cigarette as a drug delivery device, monitoring and managing the quantity of nicotine in the product. In one case, B&W's legal counsel issued a "challenge [to] those charges [of the Surgeon General that cigarette smoking is extremely dangerous]" when he advised developing a cigarette that would remove the "unattractive side effects of smoking [i.e., cancer]," and still deliver "a nice jolt of nicotine."[71] A Philip Morris (PM) scientist, Al Udow, contended in 1972 that Kool had the highest nicotine delivery of any king-size cigarette on the market. Udow wrote that this was its secret to success and recommended that PM also "pursue this . . . in developing a menthol entry."[72]

In 1994, B&W admitted, after initially denying that it bred plants for specific nicotine levels (and therefore understood the drug delivery nature of the cigarette), that it had developed and imported from Brazil a tobacco plant that contained twice the amount of nicotine that was in regular North American tobaccos.[73] Furthermore, recent studies suggest that menthol smokers have greater addiction rates because of the anesthetic and other physiological effects of menthol. Thus, African Americans, who tend to smoke menthols, would be more at

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70. Shadur wrote: "It is surely unreasonable to ascribe such an enormous disparity to chance rather than to the purposeful steering that has been alleged by Black Smokers—at a minimum, they should be allowed their day in court." *Brown*, 250 F.3d 789 (3d Cir. 2001). Opinion and dissent available on-line at law.findlaw.com/3rd/991931.html.

71. Addison Yeaman, cited in Stanton A. Glantz, *The Cigarette Papers* (Berkeley: University of California Press, 1996), 54. Nicotine was always known to be the central ingredient in cigarettes. In a confidential document released in a 1988 trial, a senior scientist for PM wrote, "Think of the cigarette as a storage container for a day's supply of nicotine." Jerry Carroll, "Killing Us Softly: Women, a Prime Target of Cigarette Advertisers, Are About to Overtake Men As the Tobacco Industry's Best Customer," *San Francisco Chronicle*, 1 September 1996, B4.

72. Borio, "Tobacco Timeline."

73. *Brown*, Section 170. At that time, four million pounds of the imported high-nicotine tobacco, which was used in five brands, were found in B&W's warehouses. Tobacco companies also add several ammonia compounds to cigarettes in order to increase the efficiency of nicotine transfer.

risk, though they average fewer cigarettes (fifteen versus nineteen) per day. These facts on design predict a higher level of addiction for smokers of menthols, particularly B&W's Kool brand, than for smokers of other cigarettes.

Besides the obvious dangers of mentholated cigarettes, there are various reasons for the seemingly greater injuries suffered by African Americans smokers, according to medical researchers. For example, studies show that minority smokers are both less likely to participate in potentially expensive smoking cessation programs than the general population and less likely to receive cessation advice from health care providers.[74] Other studies suggest that African Americans metabolize carcinogens and nicotine more slowly than white Americans do.[75] The class- and race-based explanations are at odds with the focus specifically on cigarette design and point to a broader corroborative effect that results in injury while they suggest a potential complication in bringing a "clean" case of proximate cause.

This difficulty hints at the deeper structural problems that *Brown* encountered. Claiming a right from the state conceals the ways in which African Americans

74. "Appendix: A Brief History of Tobacco Advertising Targeting African Americans," in *Tobacco Use among U.S. Racial/Ethnic Minority Groups: African Americans, American Indians and Alaska Natives, Asian Americans and Pacific Islanders, and Hispanics: A Report of the Surgeon General: Executive Summary* (Atlanta, Ga.: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, U.S. Department of Health and Human Services, Ga., 1998), 240–44.

75. For studies that show a possible genetic difference between African Americans and whites in the metabolism of nicotine, indicating that black smokers have a higher exposure to cigarettes' carcinogenic components even when they smoke fewer cigarettes, see Edward M. Sellers, "Pharmacogenics and Ethnoracial Differences in Smoking," *JAMA* 280 (1998): 170–80 (editorial); Ralph S. Caraballo, Gary A. Giovino, Terry F. Pechacek, Paul D. Mowery, Patricia A. Richter, Warren J. Strauss, Donald J. Sharp, Michael P. Eriksen, James L. Pirkle, and Kurt R. Maurer, "Racial and Ethnic Differences in Serum Cotinine Levels of Cigarette Smokers," *JAMA* 280 (1998): 135–39; J. Eliseo Perez-Stable, Brenda Herrera, Peyton Jacob III, and Neal L. Benowitz, "Nicotine Metabolism and Intake in Black and White Smokers," *JAMA* 280 (1998): 152–56; and Karen Ahijevych and Lea Ann Parsley, "Smoke Constituent Exposure and Stage of Change in Black and White Women Cigarette Smokers," *Addictive Behaviors* 24 (1999): 115–20. None of these studies questions a generic use of genetic categories as "black" or "white." William Feigelman and Bernard Gorman found that class and stress differences, rather than race, account for variations in smoking behavior and that race is primarily a correlate of other demographic features. See William Feigelman and Bernard Gorman, "Toward Explaining the Higher Incidence of Cigarette Smoking among Black Americans," *Journal of Psychoactive Drugs* 21 (1989): 299–305. For the importance of "cultural" as opposed to "socioeconomic" factors, see Geoffrey C. Kabat, Alfredo Morabia, and Ernst L. Wydner, "Comparison of Smoking Habits of Blacks and Whites in a Case-Control Study," *American Journal of Public Health* 81 (1991): 1483–86.

were produced as a racialized group through the interacting forces of corporations, marketers, activists, and governments—and furthermore, how they are produced through the making of the claim. In a different context, Wendy Brown argues that developing "a righteous critique of power from the perspective of the injured . . . delimits a specific site of blame for suffering by constituting sovereign subjects and events as responsible for the 'injury' of social subordination." Such claims, she contends, cast "the law in particular and the state more generally as neutral arbiters of injury rather than as themselves invested with the power to injure."[76] The *Brown* claim enables us to unpack several densely layered points here, given the multiple factors of education, medical access, targeting, and class that influence smoking practice. The heart of the issue here is that cigarettes are legal—in virtually any articulation of product liability law—in their designed-commodity-product form only because of intense industry and state collaboration since the 1950s. The simple fact is that when the health effects of smoking emerged in the 1950s, very few state actors took a stand against cigarettes, while many aggressively lobbied to have them separated from the grids that regulated other consumer products. Thus, tobacco companies have been able to successfully plead that the congressional intent has been to preempt them from civil injury claims.

The issues raised in *Brown* both reflect consumer culture more generally and zero in on the specificity of the cigarette. The *Brown* court could interrogate neither the nature of the product nor the contents of the choice (rather than the *act* of choosing). But beyond that, the claims in *Brown* extend so far beyond the specific dangers of menthol it is hard to know where they would end. The so-called rights that the group might claim, if they could, surely would include the right to equal access to education about products that are not advertised directly to them and the consequences of which are not written about in their magazines. It would include the "right" not to have inner-city African American communities plastered with billboard advertisements for alcohol and tobacco products. It would include the "right" to medical resources and access to research on smoking behavior and cessation that has not "been conducted almost exclusively in white, middle-class populations," as it has to date.[77] It would include the recognition that a genetic pool as diverse as that which has been socially consolidated as "African

76. Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton, N.J.: Princeton University Press, 1995), 27.

77. Kolawole S. Okuyemi, Jasjit S. Ahluwalia, and Kari J. Harris, "Pharmacotherapy of Smoking Cessation," *Archives of Family Medicine* 9 (2000): 270–81.

American" presents serious difficulties to race-based genetic research, as biologists such as Joseph Graves and Stephen Jay Gould have shown.[78] All of these factors not only funneled the enhanced dangers of smoking toward African Americans, but through them, an injured and racialized class was produced.

But even the analytic of making a claim breaks down as it carries further down the path of racial discrimination in tobacco use. For there might also be a right to have the cultural respect and self-esteem to . . . well, to not have started smoking in the first place. And then we are back full circle to three irresolvable aspects of the case. First, the basic fact remains that cigarettes seriously injure and kill people, and all kinds of people, and the state has corroborated for decades in these injuries. In the context of racialized injury, the dissenting appellate judge Milton Shadur pointed out that "it just will not do for the tobacco companies to argue that they are somehow equal opportunity deceivers—that they have betrayed Whites and Blacks alike by their deception."[79]

Second, African Americans were undeniably vulnerable (though perhaps no more so than other overlapping niche groups such as teens and women) throughout the 1950s and 1960s. The complexity of the social and physical injuries neither started nor ended with cigarette design, targeting, lack of access to medical resources, or poverty. Third, the claims of enfranchisement for legal equality necessitate cultural or social equality, and yet these have to be made from a seemingly bad faith position. They have to be made from a position that claims an injured subjectivity and buys into a promise of repairable harm—one that can only be the flip side of the proposed liberal subject that "decided" to smoke in the first place.

Put most simply, I am developing two linked arguments, the first of which I have introduced in this essay and the second of which lives through it in ghostly form. I argue that making rights claims, specifically, the right to consume on an equal basis and the right not to be injured in consumption, blots out an understanding of the ways that mentholated cigarettes circulate in economies, which cannot be satisfactorily traced solely to relations among aberrant corporations, a neutral government, and sovereign choosers. Further, we see how race, among agentive moments separated by time (liberal chooser, injured litigant, juridical subject), is mutually produced through the actions of humans and nonhumans, from advertisements to models, from advertising companies to civil rights claims,

78. Joseph L. Graves Jr., *The Emperor's New Clothes: Biological Theories of Race at the Millennium* (New Brunswick, N.J.: Rutgers University Press, 2001).

79. *Brown*, 250 F.3d 789 (3d Cir. 2001).

from nicotine to cancer. These mutual productions make the process of selecting a compensable point of injured status difficult indeed, as the failure of *Brown* demonstrates.

The continuing fascination of the cigarette lies precisely in the way that it has so completely flaunted any question of responsibility or accountability to anything but itself. In that sense, at least, the twentieth-century history of this product demonstrates that the cigarette has been a truly American icon.

Sarah S. Lochlann Jain is an assistant professor of cultural anthropology at Stanford University. Recent publications include "Urban Errands: The Meaning of Mobility" (*Journal of Consumer Culture*, November 2002). Currently she is writing a book on the problem of injury, product design, and social inequality in the United States.