

Living Up to Our Ideals: What Race Means in Higher Education Now

By CHANCELLOR FRANK H. WU*

LET ME START WITH A DIGRESSION. You know there is this stereotype, or at least there used to be a stereotype, of Asians as polite and deferential. And whenever someone would say to me, “Oh, you Asians, you’re all so polite,” I would want to give them a very rude gesture.

And you might wonder why that is, because it is after all seemingly positive.¹ It is complimentary. You know, I mean how thin-skinned could you possibly be?

It is just like the people who say, “My, you speak English so well.”

To which my reply is always, “Gee, thanks, so do you.”

The reason that the compliment, “Oh, you’re so polite,” is troubling as well, is that of course it is a racial stereotype. But polite is two-sided, double-edged. To be polite is to know your place. To be polite is not to make a fuss. To be polite when people tell you that you are expected to be polite is just a reminder that there are certain constraints, that there is a certain etiquette, especially about race. That is a lead-in to my premise.

My premise is we are all too polite, that we are simply too nice when we talk about these issues of race.

I am going to make three points bluntly and candidly. The first point is that when we talk about race, in the law especially, we like to talk about it with abstract formalism. We like to portray it symmetrically. There is black, there is white; there are racial classifications. Racial classifications are all more or less the same. They all are subject to strict scrutiny.² They are equally morally reprehensible, with the same

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1. FRANK H. WU, *YELLOW: RACE IN AMERICA BEYOND BLACK AND WHITE* 39–77 (2002) (discussing the problematic aspects of positive stereotypes, such as the model minority myth).

2. The doctrine of strict scrutiny as a level of judicial review has its origins in *Korematsu v. United States*, 323 U.S. 214, 216 (1944) and is furthered in *Adarand Constructors, Inc.*

historical origins, and societal consequences, and so on. I would like to suggest that is the first mistake we make.³ When we abstract and formalize, we deliberately take out everything that shows the real context. That is the whole point of abstract formality. And that is how you end up with symmetry. Race is not symmetrical at all.⁴

Let me tell you a story to make the point.⁵ I know there are social scientists in the room. So this is merely a story, it is just an anecdote. I have not done reams of research to back up anything. It is just my little story. But that is also how we see race. Every one of us sees it through this lens of our own history.⁶

I spent a decade teaching at Howard University.⁷ The nation's leading historically black college/university ("HBCU").⁸ It was life changing for me. That was a profoundly important place for me to have developed as a thinker. I learned about race in ways that I could never have learned about, no matter what books I read. I learned about the privileges I enjoyed, the prejudice that I had. I learned

v. Pena, 515 U.S. 200, 223–24 (1995) (recognizing that all racial classifications are subject to strict scrutiny).

3. See *Pena*, 515 U.S. at 247 (Stevens, J., dissenting) ("When a court becomes preoccupied with abstract standards, it risks sacrificing common sense at the altar of formal consistency.").

4. The data is compelling as to the reality and the perception. As to the reality see ANDREW HACKER, *TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL* (2003) (noting that dividing people into races started as a matter of convenience and recognizing that those divisions have taken on lives of their own), *id.* at 67–199 (Part II) (displaying statistical information about the role race plays in such spheres as education, family life, the economy, politics, and crime), and Sabrina Traversi, *Disparities in Life Spans Narrow, but Remain*, N.Y. TIMES, July 18, 2013, at A13, available at <http://www.nytimes.com/2013/07/18/health/racial-disparities-in-life-spans-narrow-but-persist.html> (discussing that despite rising life expectancy for blacks a disparity still exists between life expectancies for blacks and whites with Whites). As to the perception see *King's Dream Remains an Elusive Goal: Many Americans See Racial Disparities*, PEW RESEARCH: SOCIAL & DEMOGRAPHIC TRENDS (Aug. 22, 2013), <http://www.pewsocialtrends.org/2013/08/22/kings-dream-remains-an-elusive-goal-many-americans-see-racial-disparities>.

5. A more detailed version of this story appears in WU, *supra* note 1, at 301–42.

6. See generally MAHZARIN R. BANAJI & ANTHONY G. GREENWALD, *BLINDSPOT: HIDDEN BIASES OF GOOD PEOPLE* (2013) (discussing the hidden biases people have about social groups and how these biases influence people's behavior toward members of those groups).

7. The author taught at Howard University Law School from 1995 to 2004 and again from 2009 to 2010.

8. See generally RAYFORD LOGAN, *HOWARD UNIVERSITY: THE FIRST HUNDRED YEARS 1867–1967* (2004); ZACHERY WILLIAMS, *IN SEARCH OF THE TALENTED TENTH: HOWARD UNIVERSITY PUBLIC INTELLECTUALS AND THE DILEMMAS OF RACE, 1926–1970* (2009) (tracing personal and professional activities of Howard University's most renowned assemblage of black scholars from the 1920s through the 1970s and demonstrating the myriad ways these activities influenced modern African-American, African, and Africana policy studies).

about the life experiences that my colleagues, my students, and my friends who are African American had that I could not have imagined at all.

What I want to tell you about teaching at Howard is just a little something about where the color line is drawn and how it gets exposed. I am not myself black, and I'm not white either. It turns out though that if you are Asian American, if you are a newcomer, or if people think of you as one, you straddle this color line. In the decade that I was at Howard, not quite every day, but almost every day, somebody would ask me, usually somebody white, would ask me what I was doing there.

They would pull me aside, when I was introduced as a speaker at a conference or at a cocktail party, they might be a friend of a friend, and when they found out what I did, or more accurately when they found out where I did what I did, which is profess the law, they would be very puzzled. They would work themselves up to ask me a series of questions.

This is a true story; these questions were all asked of me. They would ask things such as: "Hmm, you're some sort of radical aren't you?"; "Did you, did you, grow up in a black neighborhood, do you like hip-hop?"; "The black students, what are they like?"; "Couldn't you get a job anywhere else?"; and more than once, someone would look me up and down very carefully and then stammer, "Are you . . . are you black?"

Because they were just so puzzled, they expected some sort of story to be told. Now what does this reveal? Well, the people asking these questions are all sincere people. They were not overtly bigots, they were just curious, intensely curious. If you are Asian American, you are expected to assimilate. But we never say to what norm.

Now, as it happens, during the time I taught at Howard, I got married. My wife is also a law professor and also Asian American. For those of you social scientists, I am not even sampling. I could take the entire universe of married Asian American law professors for this little story. My wife taught across town at another law school in Washington, D.C. That school was historically white. Of course, no one called it a historically white school because every school in America that was not historically black was historically white, and it was white in the sense that if you strolled the halls and looked at the oil paintings or the photos on the wall they were all of white people. If you looked at whom the teachers or whom the deans were, until the past genera-

tion, everyone who passed through those halls was white except for the people who cleaned up.

Now, my wife had been teaching for longer than I had. She outranks me, as she likes to point out from time to time. And not once in her entire career as an Asian American teaching at a predominately white institution did anyone ever pull her aside to say, “Wow, that must be quite an experience, what’s it like being around all those white people?”

She, not I, was normal. She was assimilating the way you are supposed to. There is nothing remarkable about that. If anything, she was upwardly mobile. But if you are not black and not white and you make a deliberate choice to affiliate with black people, somehow well-meaning folks, white folks, are just nervous about that and they demand to know what is going on, as if to say, “Why would you do that?”

I just share that story because it informs everything that I do. It showed me again and again and again that this is not symmetrical. That is, I put myself in a certain context (white) that is commendable and I am congratulated. But if I put myself into a different context (black), to the ordinary observer who bears no malice toward me, or toward African Americans presumably, then it is—at least to them—mildly disturbing.

That is my first point. We should call people on this. Race is not just race. It is not an abstraction. It is not formal. It is not symmetrical. It is not as if the institution of chattel slavery in this nation was color-blind or race neutral. The way that these systems have been set up creates a reality in which we continue to function.

Second, there is a common statement. It is made again and again and again every time a symposium like this is held. It was said by advocates on both sides, it was said by every commentator when *Fisher v. Texas*⁹ was argued. Everyone feels it is important to proclaim. It is obligatory that when you stand up to the podium, you declare, “I am in favor of diversity. I’m not a bigot.”¹⁰

There is this desire for us to say, “We all want the same goal.” Well here, too, I think we are being too polite. We need to say to

9. *Fisher v. Univ. of Tex. at Austin*, 133 S. Ct. 2411 (2013).

10. See LAWRENCE BLUM, I’M NOT A RACIST, BUT . . . : THE MORAL QUANDARY OF RACE 13–15 (2002); TIMUR KURAN, PRIVATE TRUTHS, PUBLIC LIES: THE SOCIAL CONSEQUENCE OF PREFERENCE FALSIFICATION 3–4, 137–50 (1997) (describing this phenomenon as “preference falsification”); see generally THOMAS BYRNE EDSALL & MARY D. EDSALL, CHAIN REACTION: THE IMPACTS OF RACE, RIGHTS, AND TAXES ON AMERICAN POLITICS 3–4 (1992) (discussing race-laden and race-driven conflicts that now structure the nation’s politics and how race and taxes have come to intersect with a wide range of domestic issues).

people, “No you don’t. You’re just saying that because it’s politics. Because you realize you can’t come and stand at an institution of higher education and say I’m a white supremacist.”

That is not a permissible statement today. It was once. Two generations ago, certainly three generations ago, it was not just permissible, it was entirely normal. There was much of the United States, not just the mythical “Deep South,” but the north was explicitly segregated, as was much of the west.¹¹ You could hold high office, you could lead an institution of higher education, a corporation, you could run for any number of official positions and declare yourself to be openly bigoted. Alabama Governor George Wallace could declare in 1963 to tremendous applause: “Segregation now, segregation tomorrow, segregation forever.”¹² That is no longer true.

What everyone feels they must do is say, “Yes, yes. We all want to see a smattering of people, a critical mass. We want African Americans, we want Latinos, not that we look at race. No, I never notice that, but I agree with you. Just not this way.”

What concerns me about this is that when you eliminate the ability to consider race in even the most modest manner, you have eliminated the most effective means of achieving the goal.¹³ Someone who says they are with you on the goal but who then eliminates all of the reasonable means of pursuing that goal is not actually someone who agrees with you on the goal.

And perhaps from time to time, politely, we should note that. People are not naïve about political discourse. They notice insincerity. Duplicity does not always prevail.

As part of this, I think it is important for us to recognize that these things do not happen automatically. They do not happen magically. There is a wonderful naïveté to the way we look at race. We think, well, if I declare myself not to be bigoted, then we are done.

If I teach my children not to use the “N word” then I have carried out my responsibility as a member of the body politic. The problem is that this is not about bigots alone. There is no other societal problem

11. See THOMAS J. SUGRUE, *SWEET LAND OF LIBERTY: THE FORGOTTEN STRUGGLE FOR CIVIL RIGHTS IN THE NORTH*, at xv (2008) (describing segregation in the northern states).

12. George Wallace, Inaugural Address as Governor of Alabama (Jan. 14, 1963), in DAN T. CARTER, *THE POLITICS OF RAGE: GEORGE WALLACE, THE ORIGINS OF THE NEW CONSERVATISM, AND THE TRANSFORMATION OF AMERICAN POLITICS* 11 (2000).

13. See WILLIAM G. BOWEN & DEREK BOK, *THE SHAPE OF THE RIVER: LONG-TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND UNIVERSITY ADMISSIONS* 23–39 (2000).

as to which we suppose a declaration of good intentions takes care of the matter.

Now do not get me wrong. I am not saying there are no bigots out there. There are and we should fight them, and I am committed to that. What I am saying is that when we frame this discussion as if it is about the figurative black and white, we distort the discussion. It is about the villain and the victim. Then all we are doing is looking for hardcore bigotry or its remnants. In that frame, we do ourselves a disservice, because it allows people to say, “Well, I’m not a bigot. And how dare you accuse me of being one.”

I have realized, the way that I do it now when I am called upon to debate, is to concede to whomever I am debating with, “That’s right you’re not a bigot. . . . But you know what, I am. I am a bigot. And indeed almost everyone I know is.” Not because we want to be, but because we have these images rattling around in the back of our heads.

Let us be honest with ourselves. I will confess this anecdote to be true of me. How many of us, even the most progressive, have not at some point, walking down the street in the Tenderloin neighborhood,¹⁴ for example where I work, late at night, when you are a little anxious, maybe you have been out maybe you have had a drink, how many of us have not encountered a stranger in the shadows whom we have seen approaching and for just a moment had a look of concern, even panic flicker across our face as we then cross the other side of the street and get our keys out of our pocket and look nervously for our car or someone else who might be nearby for safety in numbers—a sequence of actions all because we caught a glimpse of someone who was, yes, young, black and male? Wearing a baseball cap backwards if that signified anything.

Maybe we meant to cross the street at that moment anyway.

Yet that young man cannot look into our hearts or our minds; he does not know why we looked the way we looked, anxiety-stricken. And we do not know that either, but we jump into our car with great relief and drive home and maybe wonder to ourselves what that was all about. But for that young man it is not the first time—and it will not be the last time—that he sees someone cross the street at precisely the

14. CENTER FOR COURT INNOVATION, COMMUNITY JUSTICE CENTER NEEDS ASSESSMENT REPORT: TENDERLOIN, SOUTH OF MARKET, CIVIC CENTER, AND UNION SQUARE 15–16 (2008), available at http://www.sfsuperiorcourt.org/sites/default/files/pdfs/SF%20NEEDS%20ASSESS%201_31_08.pdf (showing that the Tenderloin neighborhood has among the highest crime rates in San Francisco).

moment that they have spotted him. And how long does it take before a feedback loop is created, where the stereotype is internalized? Where people who were not thugs themselves come to believe that that is how others perceive them, and those perceptions create a reality, it limits their life choices.

That is my second point: We do not all agree. In part because we have been so successful in civil rights, sometimes the people who disagree most vehemently with us realize they cannot take that position openly. And other times because we are just human beings at the end of the day, and we are good natured and we mean well about so many things, but that does not mean that we can control every thought that we have individually.¹⁵ It certainly does not mean that we can control policies and our collective actions.

Third, and finally, I would like to talk about why we have the situation. Why is it that there are angry people who say, “Well, I went to USF, I went to UC Hastings, I went to Cal, I went to whatever school you want to name, Texas, and I’m now older and my child or grandchild can’t get in where I went?” There are, I would suggest four reasons for this that have nothing to do with affirmative action, but it is so easy to blame affirmative action.

A. Things are just more competitive and stratified.¹⁶ The bubble of seemingly endless growth has burst spectacularly. There’s a real feeling that the American dream has lost its luster. There is good reason to feel that. The United States has had a tremendous post-World War II run, and it is coming to an end. We will live and our children and grandchildren certainly will live in a multi-lateral world where the United States is still a beacon of hope and opportunity, but does not enjoy the same material advantage over other nations and other peoples as it once did. Within our own economy, it has become just much more competitive. It is just harder to get a job out there.

15. See BANAJI & GREENWALD, *supra* note 6; Samuel L. Gaertner & John F. Dovidio, *The Aversive Form of Racism*, in PREJUDICE, DISCRIMINATION AND RACISM: THEORY AND RESEARCH 61–89 (Samuel L. Gaertner & John F. Dovidio eds., 1986); John F. Dovidio et al., *On the Nature of Prejudice: Automatic and Controlled Processes*, 33 J. EXPERIMENTAL SOC. PSYCHOL. 510, 510–40 (1997).

16. EMMANUEL SAEZ, UC BERKELEY, STRIKING IT RICHER: THE EVOLUTION OF TOP INCOMES IN THE UNITED STATES (2013), available at <http://elsa.berkeley.edu/~saez/saez-US-topincomes-2012.pdf>.

B. The percentage of people, and the absolute numbers, who go to college has risen dramatically in the past two generations.¹⁷ There are just many more people to compete with.

C. There are many more women to compete with. Women attend college at much higher rates.¹⁸ That is a good thing.

D. There are immigrants and Asian Americans.¹⁹ I have always thought that I would write a little article—maybe, two articles. One would be entitled, *To All You Asian Americans Who Are Mad About Affirmative Action*. And, the article would probably just have one sentence: It is not the blacks, it is the whites.²⁰

Maybe I should elaborate. The reason you are not getting in is not because of “reverse discrimination” or “racial preferences” for African Americans. If you look at virtually every case where Asian Americans are adversely affected it is because whites are held to a lower standard not blacks.

Then I would write a little parallel article, which would be called, *To My White Friends About Why Your Grandchild Can't Get into an Elite*

17. In 1970, the United States population was 203.3 million. U.S. CENSUS BUREAU, 1970 CENSUS POPULATION 591 (1970) (TABLE 189. NATIVITY BY AGE, RACE, AND SEX: 1970 AND 1960). In 1971, only 12% of adults over the age of twenty-five had finished college. U.S. CENSUS BUREAU, YEARS OF SCHOOL COMPLETED BY PEOPLE 25 YEARS AND OVER, BY AGE AND SEX: SELECTED YEARS 1940 TO 2012, at cell J:53 (2012) [hereinafter YEARS OF SCHOOL COMPLETED], available at <http://www.census.gov/hhes/socdemo/education/data/cps/historical/>; Richard Fry & Kim Parker, *Record Shares of Young Adults Have Finished Both High School and College*, PEW RESEARCH: SOCIAL & DEMOGRAPHIC TRENDS (Nov. 5, 2012), <http://www.pewsocialtrends.org/2012/11/05/record-shares-of-young-adults-have-finished-both-high-school-and-college/>. In 2010, the United States population was 308.7 million. U.S. CENSUS BUREAU, POPULATION DISTRIBUTION AND CHANGE 2000 TO 2010 (2011), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-01.pdf>. In 2012, 31% of adults over the age of twenty-five had finished college. YEARS OF SCHOOL COMPLETED, *supra*, at cell J:12.

18. YEARS OF SCHOOL COMPLETED, *supra* note 17, at cells D:71–D:186. In 1950, only 5.2% of women aged twenty-five or older had completed four or more years of college; now, 30.6% of such women have. *Id.*

19. *Id.* In 1960, Asian Americans constituted only 0.2% of the population; now, they constitute 5.6%. U.S. CENSUS BUREAU, TABLE 1. UNITED STATES—RACE AND HISPANIC ORIGIN: 1790 TO 1990 (2002), available at <http://www.census.gov/population/www/documentation/twps0056/tab01.pdf>; U.S. CENSUS BUREAU, THE ASIAN POPULATION: 2010 (2012), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf>. Asian American rates of college attendance are 82.2%, compared to White rates of 66.6%. Press Release, U.S. Dep't of Labor, Bureau of Labor Statistics, College Enrollment and Work Activity of 2012 High School Graduates (Apr. 17, 2013), available at <http://www.bls.gov/news.release/pdf/hsgec.pdf>.

20. Jerry Kang, *Negative Action Against Asian Americas: The Internal Instability of Dworkin's Defense of Affirmative Action*, 31 HARV. C.R.-C.L. L. REV. 1, 3 (1996); Gabriel J. Chin, Sumi Cho, Jerry Kang & Frank Wu, *Beyond Self-Interest: Asian Pacific Americans Toward A Community of Justice, A Policy Analysis of Affirmative Action*, 4 ASIAN PAC. AM. L.J. 129, 130, 159 (1996).

School. And this really would have only one simple sentence: “It’s the Asians, stupid.” That is the answer.

When we look at this situation, it is not affirmative action. The dynamics that lead us to be so angry have to do with ratcheting up of a competition in pursuit of scarce resources, a framing that portrays everything as a zero-sum game, and a heightened awareness, ironically enough, of the importance of status. This is why everyone likes *Downton Abbey*²¹ so much, because we in America see that we have an upstairs and a downstairs. For so long we have wanted to cling to a myth of otherwise, we thrill to the revelation of a forbidden sense of class.²²

I will close with just this thought. The way ahead I think is to say to those who would oppose us: “You’ve given speeches in which you’ve declared that you too care about diversity. Let’s see you live up to it.”

Thank you.

21. *Downton Abbey* (Public Broadcasting Service 2010–2013); Jeremy Egner, *A Bit of Britain Where the Sun Still Never Sets*, N.Y. TIMES, Jan. 3, 2013, at AR21, available at <http://www.nytimes.com/2013/01/06/arts/television/downton-abbey-reaches-around-the-world.html>.

22. See generally SEYMOUR M. LIPSET, *AMERICAN EXCEPTIONALISM: A DOUBLE-EDGED SWORD* (1996) (addressing various aspects of American exceptionalism such as status, statism, race relations, and political participation).

