

DOG WHISTLE POLITICS

HOW CODED RACIAL APPEALS
HAVE REINVENTED RACISM AND
WRECKED THE MIDDLE CLASS

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Getting Away with Racism

A transparently racist statement can spell the end of a political career, so how do politicians get away with racial pandering? Dog whistling has long followed a standard choreography of punch, parry, and kick that tracks moves associated with colorblindness. More recently, rightwing politics has also sought cover by pushing nonwhite faces to the fore.

In the final month of the 2008 presidential campaign, a newsletter distributed by a local California Republican group claimed that if Obama was elected his image would appear on food stamps, instead of on dollar bills like other presidents. The broadside featured a phony \$10 bill, now relabeled as “Ten Dollars Obama Bucks” in seals on each corner. In the middle, superimposed on the body of a donkey, was Obama’s face, eyes twinkling and with a wide grin. Above that, the mock bill read “United States Food Stamps.” Rounding out the racial parody, on the left there was a bucket of Kentucky Fried Chicken and a slab of ribs; on the right, a pitcher of Kool Aid and a large slice of watermelon.¹

In the swirl of controversy that erupted, the group’s president, Diane Fedele, accepted responsibility for circulating the cartoon, which she had received in a number of chain e-mails before she decided to reprint it, and she was quick to apologize: “I absolutely apologize to anyone who was offended. That clearly wasn’t my attempt.” She was, nevertheless, just a little befuddled by the outrage.

In what way could this be construed as racist, she wondered? Nothing about the imagery suggested race, she explained, as fried chicken and ribs, Kool Aid and watermelon were “just food.” “I didn’t see it the way that it’s being taken. I never connected,” she said. “It was just food to me. It didn’t mean anything else.” Fedele also said she was making no effort to connect Obama to welfare,



"It was just food to me. It didn't mean anything else," said the president of a local Republican group in denying that the cartoon, which she reproduced in the group's newsletter, had anything to do with race. © Tim Kastlein

or to food stamps in particular. Yet her text introducing the cartoon said, "If elected, what bill would he be on????? Food Stamps, what else!"

What, then, was the intent behind circulating the cartoon? Fedele claimed she meant to criticize Obama—ironically, for nothing less than injecting race into the presidential campaign. Over the summer Obama had warned an audience in Springfield, Missouri, that John McCain's campaign might stoop to scare tactics, charging: "Nobody really thinks that Bush or McCain have a real answer for the challenges we face, so what they're going to try to do is make you scared of me. You know, he's not patriotic enough. He's got a funny name. You know, he doesn't look like all those other presidents on those dollar bills. You know, he's risky."²

Fedele was incensed. "I thought his statement was outrageous and uncalled for and inappropriate and everything else I can think of to call it." According to a local reporter, Fedele circulated the cartoon "to criticize Obama for saying over the summer that he doesn't look like the presidents whose images are on dollar bills." She said she didn't think it was appropriate for him to draw attention to his race. Fedele also had a trump to play. How could she be a racist, she wondered, if she had once supported a black presidential candidate? "She said she doesn't think in racist terms, pointing out she once supported Republican Alan Keyes, an African-American who previously ran for president."³

One more detail deserves to be mentioned before we step back to assess this contertemp. The cartoon's original creator was a liberal blogger who held a minor position with the Minnesota Democratic Party and who planned to vote for Obama. He created the cartoon and posted it on his website "to lampoon

Republicans who are afraid of government welfare programs and fearful of a Democratic president. He said that 'there's some people that are never going to get it.'" He was more right than he knew, as apparently many of those he sought to lampoon instead embraced and circulated his cartoon as a biting impeachment of Obama.

■ RACE IS EVERYWHERE AND NOWHERE

Even as late as the 1950s, it was commonplace for racial epithets to lace public discourse. Debates carried out on newspaper pages spoke regularly in terms we now regard as derogatory, and politicians routinely employed racial slurs. For instance, in November 1953 the *New York Times* ran a headline that blared "WETBACK INFILUX NEAR THE RECORD; October Figure Second Highest in History—Crime Follows the Illegal Immigrants."⁴ Stimulated by and in turn fueling such fear-mongering, in 1954 the Eisenhower administration launched a mass expulsion campaign forthrightly called "Operation Wetback." Slurs like "wetback" are now entirely absent from public discourse—or rather almost entirely, as Republican senator Don Young demonstrated in 2013.⁵ Young's reminiscences about the golden days when his family "used to hire 50 to 60 wetbacks to pick tomatoes" notwithstanding, today even direct references to race make relatively few appearances. Yet as we've seen, race has hardly disappeared from politics. The once pervasive use of epithets has morphed into the coded transmission of racial messages through references to culture, behavior, and class. We live in a political milieu saturated with ugly racial innuendo.

But if so, why is there so little pushback from liberals? Why is racial pandering allowed to continue virtually unchallenged? As we've seen, partly the answer is that some liberals have themselves adopted dog whistle politics, whether out of sympathy to the underlying stereotypes or as a step toward getting Democrats elected. Beyond this, however, with assistance from colorblindness, conservative race-talk has adopted several strikingly effective strategies to insulate constant race-baiting.

PUNCH, PARRY, KICK

The Obama Bucks controversy crossed the line into forbidden territory. Just as with Ronald Reagan when he first referred to the stereotypical food-stamp recipient as a "strapping young buck" before switching to the more ambiguous "some young fellow," Fedele's reprinted cartoon was too transparently racial.

Even the chair of the California Republican Party conceded Fedele had sinned, saying “any material that invokes issues related to race is absolutely unacceptable,” and adding that the cartoon “inspires nothing but divisiveness and hostility and has absolutely no place in this election, or any public discourse.”

If overly exuberant, however, Fedele was in other respects simply practicing the rhetorical punch, parry, and kick of dog whistle racial jujitsu. Here are the basic moves: (1) punch racism into the conversation through references to culture, behavior, and class; (2) parry claims of race-baiting by insisting that absent a direct reference to biology or the use of a racial epithet, there can be no racism; (3) kick up the racial attack by calling any critics the *real* racists for mentioning race and thereby “playing the race card.”

Punch. The punch is dog whistle’s coded race-talk. In Fedele’s case, it lay in circulating a caricature of a grinning Obama visually linked to food stamps as well as to vicarious stereotypically beloved by African Americans. Here was the “happy coon” from the era of black face minstrelsy, grinning in childish delight over fried chicken and watermelon showered on him by the foolish largess of welfare. *This buffoon could soon be president*, the cartoon chided.

More generally, recall the various bugaboos politicians have mobilized the country against: criminals, welfare cheats, Arab Muslim terrorists, and illegal aliens. All of these invoke a new demonology that looks remarkably like the old one: nonwhites threatening the nation. On one level, the terms have changed: the menace arises from defective cultures and reprehensible behavior, rather than from these as they directly link to biology, as in the past. But the core dynamic remains: punch race into the conversation at every possible turn by bombarding white society with messages about the need to rally together. The colorblind invocation of ethnicity as a coded language for race is indispensable here. It is ethnicity, after all, that facilitates constant insinuations about fundamental group differences.

Parry. Dog whistlers then parry any resulting outrage by playing dumb, refusing to see the supposed connection between their comments and race. This too is pure dog whistle theater. A dog whistle is a *coded* racial appeal—one core point of the code being to foster deniability. The explicit racial appeal of yesterday now invites political suicide. Dog whistle politics trades instead in studied ambiguity, where the lack of a smoking-gun racial epithet allows for proclamations of innocence. Fedele mimics this defense brilliantly when she says “It was just food to me. It didn’t mean anything else.” Fedele didn’t use a slur or directly refer to race; she didn’t say “coons like watermelon.” So how could this be about race? It was just a watermelon—and some fried chicken, ribs, and Kool Aid.

Also reprising these basic jujitsu moves, consider Newt Gingrich’s repeated besmirching of Obama as “the most successful food stamp president in American history.”⁶ In January 2012, during a Republican primary debate, Fox News political analyst Juan Williams challenged Gingrich on this and other racially provocative remarks, asking, “Can’t you see this is viewed, at a minimum, as insulting to all Americans, but particularly to black Americans?” “No, I don’t see that,” Gingrich huffed. When Williams refused to be put off and repeated the question, the audience boomed. Then they cheered when Gingrich bombastically retorted, “First of all, Juan, the fact is that more people have been put on food stamps under Barack Obama than any other president in history.”⁷ Set aside that food stamp use was at an all time high because of economic calamity rather than the president’s policies. Focus instead on Gingrich’s rhetorical steps. First, like Reagan and Fedele and countless others, he used references to food stamps to push the poison of race into the public’s veins. Then, when challenged, he reacted with studied indignation—he was shocked, just shocked that anyone would see race in his comments. But of course the barbed point of those three words—food stamp president—was to link Obama to indolent blacks on welfare, and to communicate that Gingrich would stand with hardworking whites who earn paychecks. “How do I know this is true?” asked the novelist Walter Moseley after making a similar argument. “Because Mr. Gingrich is a political poet and good political poets always have their finger on the jugular vein of the nation. Mr. Gingrich has told me in three words that the battle line will be drawn by fear-stoked hatred.”⁸

Or recall the “Obama Phone Lady,” the gesticulating, overweight, visibly poor black woman shouting her support for Obama in a video that went viral in the months before the 2012 election. Filmed at an Obama rally in Ohio, the woman explained her enthusiasm for the president in terms of his ability to deliver goods to the poor. “Everybody in Cleveland, low minorities, got Obama phones. . . . Keep Obama in president, you know! He gave us a phone, he’s gonna do more,” she yells—and race-baiters loved her for providing a powerful caricature of the black Democratic voter. The video was posted to YouTube by a conservative activist in late September 2012, and within ten days had been viewed over four million times—aided by being featured on the conservative Drudge Report website and by Rush Limbaugh replaying the soundtrack on an endless loop on his radio program.

Yet when criticized for racial pandering, the right responded with incredulity. Said the person who posted the video: “I have no idea how it could be construed as racist because it’s simply a woman speaking for herself.”⁹ Said another defender, “the above video is hilarious. It is representative of a group of Obama

voters who feel entitled to handouts from government. It does not matter what the color of the speaker is. . . . Conservatives should not have to shy away from such amusing examples of entitlement mentality simply because the particular proponent of that mentality happens to be black."¹⁰ As Elspeth Reeve correctly retorted in *The Atlantic Wire*, "The point of the video—and the reason Drudge and Limbaugh hyped it—is to say, this is what Obama voters look like: black, poor, stupid, and after your money. The video's subject wasn't picked out because she 'happens to be black,' she was picked out *because* she is black"—or more precisely, because she seemed to embody so many stereotypical attributes of blackness. Reeve continued: "This video, if placed in a Romney ad, would make George H.W. Bush's 1988 Willie Horton ad look subtle by comparison: the other guy is supported by scary black people, vote Republican!"¹¹ Yet by mid-October, the video was indeed featured in a Tea Party-supported ad running in three predominantly white Ohio counties.¹²

How could these provocateurs insist with a straight face that footage of an impoverished black woman as well as jabs about food stamps, stereotypical food stuffs, and entitlement mentalities had nothing to do with race? What made this at all plausible? It's colorblindness that provides crucial cover. Colorblindness allows conservatives to insist that race means blood and nothing more, so that references to culture and behavior cannot be about race. And it's colorblindness that promotes the claim that racism only exists when someone confesses to malice or uses an epithet, so that coded speech is never racism so long as it remains in code. Here then is the essence of the parry: the colorblind avowal that nothing but biology is race and that racism cannot be present until someone utters the wrong term. This is word magic at its most potent: say food stamps and entitlement mentality, and racism is nowhere to be seen; say black and suddenly racism springs into being. Colorblindness transforms the absence of any express reference to race into a broad shield against every charge of racism. As long as dog whistle demagogues stick to racial euphemisms, colorblindness defends them against every charge of racial pandering.

Conservatives now apply the colorblind rule that racism requires the use of an epithet to all rightwing discourse, with one further restriction: if a slur is used it must be electronically recorded, or it never happened. In the spring of 2010, multiple witnesses, including congressional representatives, reported that someone in a Tea Party crowd called Congressman John Lewis a "nigger."¹³ According to the right, though, this testimony was not sufficient to establish what actually happened; rather, conservative partisans demanded electronic proof—a video or at least an audio recording. Absent that, allegations of racial attacks amounted only to self-serving and indeed "racist" propaganda. According to a

rightwing website, "these radical liars will stop at nothing to ram their socialist agenda down America's throat. And, the scare-run media will report their racist filth without question."¹⁴

Kick. Beyond the repeated punch and parry, dog whistle politics almost invariably launches a stinging counterattack. This is the kick: when accused of racism, turn the tables and accuse your accuser of injecting race into the conversation. The retort to John Lewis's allegation of racist abuse was, in keeping with the standard playbook, to label this charge "racist filth." Or return to Fedele. Charged with racial provocation, she followed the dog whistle script and claimed that she was merely responding to Obama's egregious racial pandering. Recall that she explained her cartoon as a response to Obama's having mentioned that Republicans might try to scare voters by pointing out that "he doesn't look like all those other presidents on those dollar bills."

In complaining that Obama outrageously inserted race into the conversation, Fedele followed the McCain camp, which went after Obama as a racial opportunist for implying that the GOP might stoop to scaring voters about race. Obama's warning was hardly far-fetched. Beyond the long history of dog whistling, the 2008 campaign itself was so saturated in racial ugliness—with vice-presidential candidate Sarah Palin accusing Obama of "palling around with terrorists" and campaign crowds yelling "kill him!"—that the *New York Times* editorial page eventually castigated the McCain campaign for "race-baiting and xenophobia."¹⁵ Nevertheless, McCain's people fumed about Obama's summertime warning. A day after Obama's remarks, McCain's campaign charged that "Barack Obama has played the race card, and he played it from the bottom of the deck," adding "it's divisive, negative, shameful and wrong."¹⁶ On the *Today* show, McCain campaign manager Rick Davis indignantly insisted "we are not going to let anybody paint John McCain, who has fought his entire life for equal rights for everyone, to be able to be painted as racist."¹⁷

When the McCain camp went on the racial offensive, how did Obama's team respond? Backpedaling furiously, Obama campaign strategist David Axelrod initially adopted the techniques of the right. Axelrod employed his own parry, responding implausibly that Obama's remarks about presidents on dollar bills had nothing to do with race. Obama, Axelrod claimed, was simply referring "his status as a young, relative newcomer to Washington politics." Then he kicked back, charging that "race became an issue only when the McCain campaign cast a racial slant on Obama's remarks." Axelrod could play the same rhetorical game, denying Obama had invoked race and claiming to be offended by the very insinuation. Or perhaps this wasn't precisely the same game: not an effort to introduce and then avoid race, so much as an effort to recover from

an unscripted slip, Obama probably never intended to mention race in the first place, and once he did, he calculated it was smarter politics to retreat than be dragged into a conversation about race that would only heighten doubts about his own racial identity. Be that as it may, the bottom line is that the Republican kick forced Obama off-balance, prompting him to withdraw his caution to expect race-baiting. Accepting the rightwing frame that Obama's remarks offensively cast McCain as a bigot, Axelrod was quick to clarify on national television that "Barack Obama never called John McCain a racist."⁸

Note how the dog whistle kick parallels the colorblind attack on affirmative action. Under colorblind constitutional law, racism has become any use of race, making "racists" out of those who use affirmative action to foster integration. In conservative discourse, meanwhile, the corollary practice is to malign as racial bombthrowers those who protest continuing racial injustices. Ostensibly, the real racists are those who publicly critique the on-going centrality of race in American society.

This claim that the critics of racial pandering are the real racists has a pedigree going back to the original dog whistle politician himself, George Wallace. As Wallace put it while on the hunt for angry white voters in 1968, "you know who the biggest bigots in the world are—they're the ones who call others bigots." He caviled, "Well, it's a sad day in the country when you can't talk about law and order unless they want to call you a racist."⁹ According to Wallace's logic, protesting racial pandering makes you the biggest bigot in the world—and, presumably, pulling a fire alarm means you set the fire, while dialing 911 means you committed the crime.

Routed by these attacks, most progressives have stopped talking about race and racism, lest they be accused of being "the biggest bigots in the world." Like colorblindness, dog whistling is both a form of race talk and a way to ensure silence about race. Among conservatives it facilitates a constant din of racial insinuation couched in references to culture and behavior, while insisting there's no racism without an epithet or a direct mention of race. And among liberals it enforces a cowed silence, kicking up the racial conflict by accusing any critics of opportunistically injecting race into the conversation.

"I GUESS I'M A RACIST"

When Obama briefly referenced race as one of the ways that the GOP might try to scare voters, in addition to the typical "race card" retort, the McCain camp also struck back with the charge that Obama had sought to "paint John McCain . . . as racist."¹⁰ This assault deserves a bit more attention.

The claim to have been slandered as a racist frequently crops up on the right in response to liberal efforts to focus on troubling racial dynamics, and there may be a fair level of cynical strategizing at work in such conservative carping. By translating the claim that race continues to play a disturbing role in American life into a narrow indictment of mean-spirited bigotry, conservatives are more able to easily dismiss the allegation as absurd. The invented charge of being a closet Klan member is readily repudiated. In addition, because the charge of being a racist is freighted with social opprobrium, alleging they have been so charged allows conservatives to cast themselves as unfairly maligned victims. The claim to have been called a racist sucks all the air out of the room, ending any substantive conversation; the only thing left is for the race critic to apologize and to deny that she intended to call anyone a racist. In short, for conservatives, alleging that they've been called a racist is good strategy.

But what about the emotional affect that often accompanies this particular defensive kick? Typically, those claiming to have been denoted racists exude outrage or distress. The imagined accusation, their emotions communicate, has wounded them personally, deeply bruising their sense of themselves. McCain's spokesperson reacted angrily, not only rejecting the non-charge but vigorously defending McCain as someone who "fought his entire life for equal rights for everyone," as if McCain's whole career had been smeared. Or consider the pained dismay communicated by actors in an ad opposing health care reform. The ad featured perhaps a dozen adults, mostly white and seemingly middle class, including one young woman with a toddler, looking directly into the camera to confess "I guess I'm a racist."¹¹ The ad interspersed these aggrieved confessions with text and a voice-over repeating the allegation made by some outspoken liberals, including Jesse Jackson and Jimmy Carter, that race likely informed some of the opposition to Obama's health care overhaul. These actors were signaling their antagonism to health care reform—and also to the charge that in politics race matters—by facetiously taking upon themselves the "racist" label. Yet when they intoned "I guess I'm a racist," their demeanor communicated not satire but heart sickness.

It's impossible to know whether, coming from a politician's camp or an anti-health care ad, these intonations of wounded feelings were genuine or feigned. Even if the latter, though, they nevertheless track a real sense of distress among many conservatives, including many Tea Party members, who feel that they have been unfairly vilified as racists. Sometimes allegations of having been called a racist constitute a strategic retort, but often they reflect a deeply felt wound.

Some greet this sort of defensiveness as a sign of progress. *At least we've arrived at a place where whites worry about being racists, they say.* But hair-trigger

defensiveness is not a sign of forward movement. On the contrary, it reflects a pattern as old as racism. Racial ideas perpetually adapt to reassure members of the dominant group that, however unjust the social arrangements and whatever the attendant violence, they are good and decent folks. Thus, at virtually every historical juncture, challenges to existing racial structures—whether it be slavery 150 years ago or the inhumanity of racialized mass incarceration today—have often been received as personal affronts. Even in eras now recognized as unquestionably racist, most whites accepted the racial status quo as normal and moral, and internalized challenges to racial injustice as assaults on their integrity. Thus, that whites should continue to feel defensive today should not be taken to indicate racial progress.

In 1965, the novelist James Baldwin explored white defensiveness in an essay entitled “White Man’s Guilt.”²² Baldwin started by noting how his color seemed to impede human connection with many whites. They saw his color first, and reacting to that, feared an indictment over their own racial position. “And to have to deal with such people can be unutterably exhausting,” Baldwin wrote, “for they, with a really dazzling ingenuity, a tireless agility, are perpetually defending themselves against charges which one, disagreeable mirror though one may be, has not really, for the moment, made.” Baldwin lamented that white defensiveness against possible charges of racism frequently skewed any possible relationship, repeatedly forcing him into exhausting gymnastics meant to reassure whites of their innocence. Just so with contemporary claims of wounded feelings at having been, supposedly, called a “racist.” The actual charge of racial malice is almost never made. And yet, racial justice advocates are time after time pushed to provide exoneration from the fictional accusation of personal bigotry.

But this is only half the dynamic, and indeed, not the important half. Baldwin wrote that he did not need to level any charges, for the proof of white responsibility for racial oppression was everywhere in society. “The record is there for all to read. It resounds all over the world. It might as well be written in the sky. One wishes that Americans—white Americans—would read, for their own sakes, this record and stop defending themselves against it. Only then will they be enabled to change their lives.” The imagined allegation against which many whites aggressively defend themselves today is of personal bigotry. The social indictment written in the sky is rather of a shared responsibility for race’s continued distorting power.

Baldwin’s words go to the larger impact generated when many whites feel implicated as racists. One dynamic is the forced exoneration. But the deeper

result is to forestall desperately needed conversations about race in society. Claims to have been personally attacked take productive conversations about current racial patterns and collapse them into a stultifying ventilation of wounded feelings. It shifts attention from racial dynamics that hurt everyone, and focuses our eyes instead on the bruised egos of those whites who feel themselves personally targeted whenever the conversation turns to race. The imagined charge is of small-minded bigotry. The actual charge, written across society—including, importantly, in the racial politics of the GOP—is that race in various forms continues to harm us all. Historicist distress about supposedly having been called a racist impedes recognizing the truth about race’s continued harmful power.

■ RIGHTWING AFFIRMATIVE ACTION

In addition to the typical punch, patry, and kick of colorblind rhetoric, the local GOP leader behind the Obama Bucks episode also employed another defensive move increasingly typical of conservative race-talk: hiding behind a minority. She couldn’t possibly be racist, Fedele explained, since she had once supported a black conservative for president—namely Alan Keyes, famous among other reasons for opposing sanctions against apartheid South Africa and for filing suit in 2008 to force Obama to prove his US citizenship.²³ Under a rightwing version of affirmative action, conservatives push forward nonwhite spokespersons as a shield against accusations of racism.

After attending a Tea Party rally in 2010, *New York Times* columnist Charles Blow commented wryly on this tactic, noting the “diversity” on the stage, where the black, Asian, and Hispanic speakers looked like “a bizarre spoof of a 1980s Benetton ad,” all while addressing a crowd that was overwhelmingly white. While the Asian speaker upheld God as the Tea Party’s leader, the other two emphasized Tea Party themes treacherously connected to race. The black orator denounced Democrats for crying racism; the Latino excoriated welfare. Indisputably, their racial identities granted superficial legitimacy to their messages—if black and brown people thought this, perfunctory logic seemed to suggest, it could not be racially problematic. “It was a farce,” Blow interjected, well aware that the Tea Party was almost all white, and dismayed by the apparent cynicism behind the composition of the podium.²⁴ Amid the strategies of the new racism, a key symbolic move is to find nonwhites willing to espouse, or at least provide cover for, dog whistle views.

CLINT BOLICK

One of the pioneers of this tactic is Clint Bolick, a central figure in the right-wing legal movement who played an important role in promoting Supreme Court Justice Clarence Thomas, himself an exemplar of this strategy. Their entwined careers epitomize how efforts to modernize dog whistle politics extends to putting nonwhite voices forward. Their duet also strongly reaffirms that such politics aim fundamentally to roll back the New Deal state.

Bolick cut his teeth in the first generation of conservative legal think tanks before moving into government during the Reagan administration, first at the Equal Employment Opportunity Commission and then in the civil rights division of the Department of Justice.⁵⁷ Reagan's decision to install rabid foes of civil rights in positions of authority over civil rights followed the Heritage Foundation's recommendation to pack targeted agencies with ideologues disposed to undercut their missions. Emboldened by his experience dismantling civil rights, Bolick stepped out of government at the end of Reagan's presidency and dedicated himself to developing updated forms of rightwing advocacy. He contributed as a theorist, writing books that outlined strategies for a conservative counterrevolution with a new face, and also as an institution builder putting those plans into practice.

Illustrating the interweaving of race and big-money politics, in 1990 Bolick published a strategy book entitled *Unfinished Business* that called for recasting anti-government ideology in the language of civil rights. In what he termed "the original civil rights vision," Bolick argued that "an individual's ability to participate in the free market system is the best possible way to promote justice." For Bolick, the defining case of the post-Civil War era was not *Plessy*, blessing segregation, but the *Slaughter-House Cases*, a Supreme Court decision that upheld the right of Louisiana to regulate abattoirs, and thereby confirmed the power of government to regulate the marketplace. "As a long-range strategy," he wrote, "we should establish as our ultimate objective the reversal of the *Slaughter-House Cases*." The audacity of this position is hard to overstate. Not only would it effectively repeal the New Deal, it would undo all of the twentieth-century reforms intended to curb market abuses and prevent great concentrations of power. It is no accident that *Unfinished Business* quoted approvingly from Herbert Spencer, a late-nineteenth century figure renowned for his pitiless endorsement of Social Darwinism, the philosophy of "the survival of the fittest" applied to human society.⁵⁸ Spencer argued against public education, health and safety regulations, and welfare, convinced that these programs artificially buoyed individuals destined to fail, to the long-term detriment of

society.⁵⁷ This is the view Bolick endorsed when he envisioned civil rights as "permeated by the spirit of laissez-faire, with individual autonomy elevated to a moral absolute."⁵⁸ For Bolick, true civil rights lay in the nineteenth century vision of liberty from government, not in New Deal liberalism, and certainly not in government protections against racial discrimination or other marketplace abuses that interfered with the prime directive of maximum freedom for the powerful to do what they please.

This was not, of course, a vision likely to win many adherents among the middle class, a fact that Bolick recognized fully. *Unfinished Business* was written more as an internal movement manifesto than as a public broadside, and its contribution came in outlining the long-range goal as well as in sketching strategies for getting there. Beyond gussying up robber baron interests as a civil rights issue, Bolick advocated two other interrelated innovations: pursuing change through the courts; and putting nonwhite faces at the fore. Regarding the former, Bolick explained that courts should be preferred because democratically elected majorities would never vote for the regressive counterrevolution he had in mind.⁵⁹ We typically trust courts to enforce civil rights to protect powerless groups. Bolick instead urged using a bastardized version of civil rights to protect society's most wealthy against democratic rule. Bolick's 1990 theorizing provides an early indication of the right's long-range strategy to use the courts to war against liberalism. Exemplifying the fruition of this plan, the conservatives on the Court today make this the most conservative Supreme Court—and the most friendly toward big business—in a century.⁶⁰

Bolick also advocated that nonwhites should be pushed forward as "sympathetic plaintiffs." As between "a white firefighter who loses a promotion because of a racial quota" and "a black schoolchild who is turned away from a magnet school in order to preserve racial balance," Bolick favored building a case around the latter.⁶¹ Bolick worried that the aggrieved white might be seen negatively, whereas representing a black schoolchild gave credence to the charade that the right was supporting, rather than opposing, civil rights.⁶² The president of another conservative legal group explained Bolick's reasoning more nakedly: Bolick's group "will never bring a reverse discrimination case on behalf of a white plaintiff," he observed. "It's an article of faith. . . . The reason for this is they don't want to be portrayed in the press as representing disgruntled white people. They want always to be representing racial minorities in these kinds of cases. That's a press strategy that drives their legal strategy."⁶³ From behind the distracting façade of black schoolchildren and other nonwhite plaintiffs, Bolick has made a career of attacking business regulations as well as the public funding of education.

CLARENCE THOMAS

The right slams affirmative action for making distinctions on the basis of race, even as it has developed its own perverse form of affirmative action, consciously selecting nonwhites to front its agenda. Perhaps the right's—and Bolick's—greatest success in this endeavor is Clarence Thomas. When Bolick went to the EEOC in the mid-1980s, he arrived as a special assistant to Thomas, then the chair of the Commission. Bolick helped Thomas win confirmation to a second term as EEOC chair, despite his record of having cut civil rights enforcement dramatically, of having ended almost all group-based claims of discrimination, and of having lambasted civil rights leaders for their proclivity to “bitch, bitch, bitch, moan and whine.”³⁴ Bolick also helped shepherd Thomas's confirmation as an appellate judge in 1990, and was key to his confirmation to the Supreme Court just over a year later.

Following his standard playbook, Bolick helped put Thomas on the highest bench in the land by emphasizing not Thomas's abilities, but his blackness. Most memorably, when Thomas responded to Anita Hill's credible and detailed accounts of sexual harassment with a strident denunciation portraying himself as a victim of a “high tech lynching,” he was trading on race to save his nomination. Race scholar Richard Ford lists Thomas's wail about lynching as a rightrwing instance of playing the “race card”: “Thomas—a corrosive skeptic of accusations of racism during his tenure at the EEOC—cried racism the moment his nomination was in jeopardy. When the chips were down and the stakes were high, this staunch defender of colorblindness shamelessly played the race card.”³⁵

But in fact Thomas did not wait until the chips were down to play up race. Rather, his invocation of lynching was only one episode in a larger confirmation strategy that placed race front and center. Bolick orchestrated a racial narrative from the inception, for example stressing Thomas's up-by-his-bootsstraps personal story of growing up poor and black in Pin Point, Georgia. Bolick also arranged for a busload of poor and black Thomas supporters from his hometown to travel to DC as if on their own initiative, in order to buttress the authenticity of Thomas's Horatio Alger narrative as well as to give the impression of grassroots black support. “The group was entirely stage-managed and recruited, but able, as Bolick put it, to ‘monopolize the media at the time people's impressions were being formed about Thomas.’”³⁶ Thomas's “blackness” was at the heart of his candidacy. This is not to say he was nominated solely because he was black; no doubt his conservatism and his political connections were essential as well. He would not have gained a seat on the Court, though, had he been white. The hollow proterations by George H.W. Bush that he had nominated the most

qualified candidate notwithstanding, Thomas's blackness explains not only his selection to fill the seat vacated by Thurgood Marshall, but the strategy Thomas employed to win confirmation.

Today, the practice of putting forward nonwhite faces has penetrated GOP politics. Herman Cain is one example, for “Cain continued the Republican Party's ‘Southern Strategy’ by serving as a mouthpiece for mean-spirited denunciations against blacks and the poor.”³⁷ Others abound, and bid likely to increase. When Jim DeMint resigned from the Senate after the 2012 election to lead the Heritage Foundation, South Carolina's Republican governor appointed a black Tea Party conservative, Tim Scott, to fill his seat. Simultaneously, looking forward to 2016, Republicans immediately began elevating to prominence another nonwhite senator, Florida's Marco Rubio, again a staunch conservative who gained office as a darling of the Tea Party. Scott and Rubio illustrate somewhat distinct dynamics in terms of the strategy behind elevating minority mouthpieces. Scott, like other conservative African Americans in the GOP, holds office with virtually no black support. His blackness probably serves less as a way to appeal to African American voters than as a talisman that allows white conservatives to prove—to others and to themselves—that they could not possibly be racist.³⁸ Rubio's Latino identity likely does double duty, helping both to ward off concerns over racism, and also affirmatively helping the GOP to appeal to Latino voters.³⁹ Despite these slight differences, Scott and Rubio share a core similarity: both benefit from a rightrwing racial politics that has recently learned to push nonwhite faces forward. Criticizing affirmative action, Clarence Thomas once disparaged integration efforts as no more than racial aesthetics, attempts to create pleasing color palettes and nothing more. Ironically, Thomas's own elevation fits that charge, as the right continues to darken its public face without changing its underlying politics.

On the right, colorblindness operates like a weapon, picked up when opportune but set aside when inconvenient. Witness in this respect Bolick's quick aboutface from using race to boost Thomas to condemning race-consciousness to defeat Lani Guinier. Just two years after Bush selected Thomas to sit on the Supreme Court, Clinton nominated Guinier to be the nation's lead civil rights attorney. One of the few African American professors at an elite law school, Guinier had headed the NAACP Legal Defense Fund's voting rights section and had written thoughtfully on democracy and the protection of minorities. But in a *Wall Street Journal* editorial that helped torpedo her nomination, Bolick accused Guinier of promoting “a complex racial spoils system” and described her as “a pro-quota, left-wing extremist.”⁴⁰ Whereas Guinier did advocate race-consciousness, she opposed any fixed

set-asides that resembled actual quotas. Nevertheless the “quota” charge carried heft as a rightwing buzzword long used to mischaracterize race-conscious remedies. Going one better, the *Wall Street Journal* added to the quota falsehood an even more derogatory and ugly term, selecting as a title for Bolick’s editorial “Clinton’s Quota Queens.”⁴¹ Guinier’s nomination staggered under the weight of the “quota queen” obloquy, which conjoined an assault on affirmative action with the stereotype of black women as obnoxious and demanding welfare cheats. In Guinier’s words, “I became Reagan’s welfare queen tooling around the neighborhood in her Cadillac, mocking the hard work of others and the hard labor undertaken to produce this democratic system.”⁴² When Clinton failed to defend Guinier, and refused to allow her to defend herself, her nomination failed. Bolick was only too happy to prosecute Guinier on the charge of race-consciousness—notwithstanding that he himself relied on race to promote Thomas and advised using non-white plaintiffs to front conservative causes.

SHIFTING SYMPATHY

When Bolick wrote in 1990 about using black children as sympathetic plaintiffs, he did so to urge an evolution in conservative strategy. For too long, Bolick argued, insurgent conservative groups had held themselves out as representing aggrieved whites. Instead, he advocated, they could gain ground by pushing to the fore the “black schoolchild” over the “white firefighter who loses a promotion.” More than two decades later, it’s not clear that Bolick’s intuition remains accurate about which of these two figures elicits more public sympathy.

When Obama nominated Judge Sonia Sotomayor for a position on the Supreme Court, she suffered fierce attack from the right. Sotomayor came under greatest fire for having once said that identity matters in how one judges the world. In her words: “I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn’t lived that life.”⁴³ Sotomayor’s poor phrasing opened her up to attack, since it implied a qualitative ranking with Latinas making “better” rather than possibly different decisions than whites. Yet Sotomayor intended to espouse no hierarchy, nor did she mean that one’s race deterministically shapes one’s ideas. Sotomayor was simply arguing that experience and perspective—which are shaped by many things, surely including race, gender, and class—necessarily inform how judges (and everyone else) think about the difficult questions they confront. Because identity matters, this daughter of working-class Puerto Rican

parents argued that judges have an obligation to consider their perspective, drawing from it what they can, while always attempting to transcend its limitations. Eliding these nuances, however, conservatives pounced: Sotomayor had said “Latina” and “white,” and under their version of colorblindness, that made her remarks tantamount to racism.

Attracting slightly less attention, though more relevant to Bolick’s sense of who most elicits public sympathy, conservatives also attacked Sotomayor for ruling against white firefighters in a high profile case. The firemen had alleged that the decision of New Haven, Connecticut, to set aside a poorly designed promotion exam, rather than to promote those who had done well under it, reflected racial discrimination. New Haven responded that the exam, which was only loosely connected to firefighting, produced racially skewed results that would lead to the almost exclusive promotion of whites. This outcome was not only racially divisive in a municipality with a large nonwhite population, New Haven argued, but it would expose the city to a lawsuit for racial discrimination against minority firefighters. Sotomayor agreed with New Haven, only to be overturned when the Supreme Court’s five-justice conservative bloc sided with the complainants.⁴⁴

Bringing this fight to Sotomayor’s confirmation hearing, conservative senators elicited testimony from the lead plaintiff in the case, white firefighter Frank Ricci. Speaking before banks of microphones and cameras taking his tale to a national audience, Ricci related his narrative as one of vile discrimination and vindicated civil rights: “My colleagues and I have faced numerous discriminatory practices and policies that have been imposed by our department which has sadly and repeatedly succumbed to racial agendas and political pressure. . . . It was only through resort to the courts that our rights have been vindicated and that we gained what we were entitled to but previously were denied because of the color of our skin.”⁴⁵

Ricci’s rendition of the conflict betrays many of the hallmarks of conservative racial discourse. Pressure to integrate the New Haven fire department emerged as “racial agendas and political pressure.” Race itself reduced to “the color of our skin.” Missing was any context, especially the long, bitter history of racial exclusion that has kept many fire departments, including New Haven’s, disproportionately white. Instead, whites became the real victims of racial discrimination, and liberal government loomed as their greatest enemy.

Yet Ricci’s testimony also warns of new lows to come. First, Ricci was not complaining about affirmative action, so long a target of conservative

ie. Instead, Ricci sued—and at the Supreme Court won—because he felt that laws preventing racial discrimination had in fact discriminated against him. New Haven argued that civil rights laws required it to consider the racial impact of its promotion practices, and to review those practices carefully. Since the problematic promotion exam only roughly related to the jobs in question, New Haven concluded that it should set aside the results. But the conservative justices disagreed. Instead, they ruled that considering racial impact in order to avoid potential discrimination itself constituted racial discrimination. That bears repeating, though the logic induces vertigo: to consider race, even in order to *avoid* discrimination, is discrimination. The Supreme Court's long battle against affirmative action has almost been won. But the war will not stop. Instead, it seems likely to widen, broadening to an effort to gut laws that address racial discrimination. The Court's 2013 decision striking a crippling blow against the Voting Rights Act further exemplifies this developing campaign.⁴⁶

Beyond legal doctrine, Ricci's well-received Senate testimony also seems to herald an important shift over the last few decades in how the public views whites who claim to be victims of reverse racism. Bolick in 1990 had a sense that whites who challenged racial remedies were viewed with disfavor by many, coming across as disgruntled at best and bigoted at worst. In contrast, plaintiffs like Frank Ricci are now feted as courageous heroes. To be sure, Ricci's narrative is not troubling because he's a bigot. It's disconcerting because, rather than seeing himself as harmed by a test and promotion procedure that ill-served everyone, he cast himself in the role of a racial victim.⁴⁷ Rather than give credence to New Haven's professed desire to fashion a fair promotion procedure, Ricci claimed to have been betrayed by a government knuckling under to self-serving pressure from minorities. It's disheartening that this story of white victimization, long part of the narrative of resistance to racial integration, has now attained sufficient cultural credibility to be accepted—and in turn sanctified and broadcast—by the highest court of the land as well as by the US Senate.

Dog whistle politics currently trails innovations in rightwing litigation strategy, only recently fully embracing techniques proposed in the 1990s of pushing nonwhite faces forward. When dog whistling catches up to the newest trend in colorblind litigation, it will find that the next evolution has gone back to putting whites at the forefront of racial complaints. The public seems long past the point of seeing white opponents of integration efforts as disgruntled and maybe even biased, and seems instead inclined to see them as sympathetic figures victimized by liberal racism.

Certainly, the solicitous treatment given to Abigail Fisher fit this pattern; she was the young white woman selected as the lead plaintiff in the 2013 University

of Texas affirmative action case. It did not seem to matter that an aggressive conservative money machine backed her and that she herself lacked the grades and test scores to have gotten into UT Austin, whether or not that institution practiced affirmative action.⁴⁸ Instead, her plain face, seemingly bare of makeup, her strawberry blonde bangs, and her heartfelt tale of a dream shattered by unfair racial quotas, seemed to tug at the nation's heartstrings. Affirmative action was just wrong, the emotional narrative insisted, if it harms an innocent young person like Fisher. There seemed little appetite for stories showing she was not in fact harmed, and even less for explorations of the many young Americans helped by affirmative action. The nonwhite faces, and the white faces too, of those who have benefitted from integration remedies were never seen. Instead, a rightwing advocacy organization launched Fisher's story as one of racial discrimination against an innocent white, and a conservative majority—on and off the Court—accepted it at face value.