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In October 1993, the Asian Law Journal published its inaugural issue, featuring its first article entitled "Toward an Asian American Legal Scholarship: Critical Race Theory, Post-structuralism, and Narrative Space." 1 ASIAN L.J. 1 (1993). With this opening salvo, the Asian Law Journal (now the Asian American Law Journal) launched only the second law journal in the United States dedicated to Asian American Jurisprudence. The author of this landmark article is none other than Professor Robert S. Chang, one of the most recognized figures in Asian American Jurisprudence and Critical Race Theory.

To celebrate the fifteen years since the publication of the inaugural issue and this landmark article, the Asian American Law Journal held its Fifteenth Anniversary Dinner on October 18, 2008. Professor Robert S. Chang was the keynote speaker. What follows is Professor Chang's keynote address, delivered two weeks before the historic 2008 presidential election.

Asian Americans and the Road to the White House: Musings on Being Invisible

Robert S. Chang[†]

Good evening. Let me join in congratulating you on this 15th anniversary. It really marks a testament to the vision and the work of all the editors and all the staff members throughout the years. I am especially thankful for the opportunities that you have given me over the years,¹ and am honored to be with you today to help you celebrate your 15th year.

[†] Professor of Law and Director, Fred T. Korematsu Center for Law and Equality, Seattle University School of Law. Copyright © 2009 Robert S. Chang. These are lightly edited remarks that were delivered as the keynote address at the Asian American Law Journal's 15th Anniversary Dinner on October 18, 2008, in Oakland, California.

1. See Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CAL. L. REV. 1241 (1993); 1 ASIAN L.J. 1 (1994); Robert S. Chang, *Passion and the Asian American Legal Scholar*, 3 ASIAN L.J. 105 (1996); *Dreaming in Black and White: Racial-Sexual Policing in The Birth of a Nation, The Cheat, and Who Killed Vincent Chin?*, 5 ASIAN L.J. 41 (1998); *Teaching Asian Americans and the Law: Struggling with History, Identity, and Politics*, 10 ASIAN L.J. 59 (2003); Symposium, *Asian Americans, Law, and Film*, 5 ASIAN L.J. (1998); Symposium, *In Honor of Neil Gotanda*, 4 ASIAN L.J. (1997); Symposium, *Asian American Law Faculty*, 3 ASIAN L.J. (1996).

We stand on the cusp of a historic election, a moment when we might see the election of our first black president. As a member of a racial minority that has experienced a long history of discrimination and one who has worked in coalition with other racial groups during my entire career, I feel that there's something about this moment that I can share in. There's a feeling of tremendous excitement and hope, a feeling that on the horizon there is change that we need, change we can believe in, a feeling that yes, indeed, we can.

Yet this is also a moment from which I feel excluded. I think my ambivalence stems from the way that racial pride and racial shame operate, along with questions about where Asian Americans fit in the racial and post-racial America. Much of this feeling has to do with a realization that Asian Americans have been largely invisible during this election. When we have been discussed by the mainstream media, much of it has focused on conflict. For instance, *Time* magazine in February had a headline that read: "Does Obama have an Asian problem?"² In this article, Lisa Takeuchi Cullen talks about the exit polls after the primary in California where Senator Clinton got the Asian American vote by a three to one margin over Senator Obama.³ In New York it was even greater than this: she won 87 percent of the Asian American vote.⁴

The *New Republic* in February had a commentary titled, "Asian Alienation: Why Did Asian Americans Vote So Overwhelmingly Against Barack Obama?" suggesting, among other possible reasons, racist views held by Asian Americans.⁵ Meanwhile, in the ethnic press, *Asian Week* had a commentary in January by Emil Guillermo titled, "Nobama: Why Is Obama Snubbing Asian Americans?" exploring the Obama campaign's interactions with the 80-20 Initiative.⁶

To be fair, part of the invisibility has to do with electoral politics. In a country of approximately 304 million, there are 15 million Asian Americans.⁷ Within this very relatively small percentage of the overall population, there is a very high percentage of foreign born and a high

2. Lisa Takeuchi Cullen, *Does Obama Have an Asian Problem?* TIME, Feb. 18, 2008, <http://www.time.com/time/politics/article/0,8599,1714292,00.html>.

3. *Id.*

4. *Id.*

5. Isaac Chotiner, *Asian Alienation: Why Did Asian Americans Vote So Overwhelmingly Against Barack Obama?* THE NEW REPUBLIC, Feb. 7, 2008, <http://www.tnr.com/politics/story.html?id=0e0891ad-466b-4176-919b-16d11a69f069>.

6. Emil Guillermo, *Nobama: Why Is Obama Snubbing Asian Americans?* ASIANWEEK, Jan. 13, 2008, <http://www.asianweek.com/2008/01/13/why-is-obama-snubbing-asian-americans/#> (discussing the 80-20 Initiative, a "national, nonpartisan, Political Action Committee dedicated to winning equal opportunity and justice for all Asian Americans through a SWING bloc vote, ideally directing 80% of our community's votes and money to the presidential candidate endorsed by the 80-20, who better represents the interests of all APAs," 80-20 Initiative, <http://www.80-20initiative.net/>).

7. Facts for Features: Asian/Pacific American Heritage Month: May 2008, <http://www.census.gov/Press-Release/www/releases/archives/cb08ff-05.pdf>.

percentage non-citizen. In addition, there are differential voter registration rates in the sub-groups, which lead to the following result: only 50 percent of Asian Americans in California are likely voters, while the number shrinks to only 43 percent at the national level.⁸

In addition, there is the coastal concentration of Asian Americans, which means that they live primarily in blue states.⁹ Seventy-five percent of Asian Americans live in only ten states.¹⁰ Given these statistics, does our vote matter? There are recent articles that suggest that it may. For example, in the swing states of Florida, Virginia, Ohio and Pennsylvania, the Asian American population in each of those states ranges between 125,000 and 185,000. Even if one accounts for only 43 percent of the adult population voting, given that the margin of victory could be tens of votes or even a few thousand votes, the Asian American vote could make a difference in these battleground states,¹¹ especially in presidential elections because of the way the winner in almost every state gets all of the state's electoral college votes.¹² National polls seem to indicate that likely Asian American voters are leaning two to one in favor of Obama, but there's a huge proportion, nearly one-third, that remains undecided or uncommitted.¹³ One can compare this with Obama's support among African-Americans. A recent Gallup poll tells us that 91 percent of African-Americans favor Obama, as compared to 3 percent leaning toward John McCain.¹⁴

Jeff Yang, the publisher of the now-defunct *A Magazine*, who now writes the column "Asian Pop" in the *San Francisco Chronicle*, speculated that Barack Obama might be our first Asian American president.¹⁵ If that is the case, why are we not seeing more support in Asian American communities in line with what Obama enjoys in the African-American community, or even similar to that enjoyed by Bill Clinton, our so-called "first black president"? One must keep in mind that Yang is playing off of

8. See Jane Junn et al., *National Asian American Survey: Asian Americans and the 2008 Election*, Table 2. Proportion of Likely Voters by Ethnic Subgroup, at 8, <http://www.naasurvey.com/assets/NAAS-National-report.pdf>.

9. See Keith Aoki & Robert S. Chang, *Half Full, Half Empty? Asian American Electoral "Presence" in 2008*, 86 *DENV. L. REV.* (forthcoming 2009).

10. Jane Junn et al., *National Asian American Survey: Asian Americans and the 2008 Election*, at 4, <http://www.naasurvey.com/assets/NAAS-National-report.pdf>

11. Jim Lobe, *Politics-US: Asian Americans Tilt Heavily Toward Obama*, INTER PRESS SERVICE, Oct. 6, 2008, at <http://ipsnews.net/news.asp?idnews=44144>.

12. See U.S. Electoral College, Frequently Asked Questions, <http://www.archives.gov/federal-register/electoral-college/index.html> (The exception to the winner takes all rule are Maine and Nebraska which employs a district system to allocate electoral college votes).

13. See Tyche Hendricks, *A Third of Asian American Vote Still Undecided*, S.F. CHRON., Oct. 16, 2008, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/10/16/BARK13HLQ8.DTL>.

14. See Gallup Poll, Candidate Support by Race, at <http://www.gallup.com/poll/108040/Candidate-Support-Race.aspx> (numbers from week of October 13-19).

15. Jeff Yang, *Could Obama Be the First Asian American President?* S.F. CHRON., July 30, 2008, <http://www.sfgate.com/cgi-bin/article.cgi?f=/g/a/2008/07/30/apop.DTL>.

a line by Toni Morrison, who commented during the Monica Lewinsky scandal that

white skin notwithstanding, this is our first black president, blacker than any actual black person who could be elected in our children's lifetime. After all, he displays every trope of blackness: single-parent household, born poor, working class, saxophone playing, McDonald's and junk food loving boy from Arkansas.¹⁶

Yang discusses Obama's childhood years in Hawaii and Indonesia and talks about his multiracial family, eventually distilling his values as traditional Asian American values.¹⁷ These are the values that Jeff Yang tells us Obama shares with Asian Americans: aspiration tempered with pragmatism, strenuous effort and rigorous accountability as the bedrock of success, moderation in all things, humility in times of triumph, patience in periods of tribulation.¹⁸

I hear what Yang is saying, but I am just not feeling it. I also want to note that Toni Morrison's comments were probably not meant to designate or confer onto Bill Clinton an "honorary Negro" status. As Elizabeth Alexander, in a recent piece on salon.com has noted, the phrase that was elided and which would provide a context is this: "The always and already guilty perp is being hunted down not by a prosecutor's obsessive application of law but by a different kind of pursuer, one who makes new laws out of the shards of those he breaks."¹⁹ It is the experience of victimization that is the strongest link, the strongest trope that links him to the experience of black men, and it is something that is completely forgotten in the way that phrase, that "he's our first black president," has gained traction.²⁰ But think about how strongly this phrase, taken out of context, has gained traction so that even Hillary Clinton can make a joke that she is in an interracial marriage.²¹

But back to Obama. Why does Yang's commentary not resonate with me? My friend and mentor, the late Jerome McCristal Culp, Jr., told me a

16. Toni Morrison, *Talk of the Town: Comment*, NEW YORKER, Oct. 5, 1998, http://www.newyorker.com/archive/1998/10/05/1998_10_05_031_TNY_LIBRY_000016504?currentPage=all.

17. Yang, *supra*.

18. *Id.*

19. Elizabeth Alexander, *Our First Black President?* SALON.COM, Jan. 28, 2008, http://www.salon.com/opinion/feature/2008/01/28/first_black_president/print.html

20. See Andrea Sachs, *10 Questions for Toni Morrison*, TIME, May 7, 2008, <http://www.time.com/time/arts/article/0,8599,1738303,00.html> (noting that even Toni Morrison made this clear in an interview in 2008. In response to a question asking whether she regretted referring to Bill Clinton as the first black president, she responded, "People misunderstood that phrase. I was deploring the way in which President Clinton was being treated, vis-à-vis the sex scandal that was surrounding him. I said he was being treated like a black on the street, already guilty, already a perp. I have no idea what his real instincts are, in terms of race.")

21. Marjorie Valbrun, *Will They Play the Race Card?* WASH. POST, Jan. 13, 2008, at B07.

story about his graduation from the University of Chicago, and how after the ceremony an elderly black man, who was a custodian at the university but whom Jerome did not personally know, approached him, congratulated him, and told him how proud he was of him. Jerome was struck by that moment, how a complete stranger felt a connection to him based on race that allowed him to take pride in Jerome's accomplishment.

Consider the difference between being able to take pride in the accomplishment of another and mere congratulations. To be able to take pride requires some kind of connection, and here the connection was based on shared blackness, shared racial community, where one is able to not just celebrate but to share in the success.

Can I take pride in the success of Barack Obama? I think it is a key question of whether or not I am going to feel the kind of solidarity that will allow me to have a kind of ownership stake.

But there is a flip side to racial pride, and it is racial shame. Racial shame is more familiar to me. For instance, I think about the tragedy that took place in Virginia Tech and I think about the Korean American, Seung-Hui Cho, who killed all of the students and then took his own life.²² I was teaching a class about Asian Americans in the law when that incident took place, and after the incident, a Korean American student came to class and apologized to the entire class. Think about what that moment means—he was apologizing because he felt some kind of accountability for what this fellow Korean person did.

This kind of racial shame demonstrates a kind of connection, and this makes me wonder: is there a way to think about and explore this idea of racial shame to then be able to feel more strongly this kind of pride? Can we then transcend our narrow ethnic bounds? I ask myself: why did I follow Chan Ho Park and not Hideo Nomo? Of course, Chan Ho Park is Korean, not even Korean American. That alone makes me reflect on the different ways that we might identify: the narrow, ethnic, nation of origin or imagined nation of origin, then the Korean American, and then the broader Asian American—which carries with it its own question of Asian American solidarity—and, then, maybe people of color and so on.

Can we get to a notion of racial otherness that transcends the traditional categories occupied by non-whites? Black, Indian, Asian, Latina and Latino? How do we engage in coalition building that moves beyond issue-specific organizing, that would allow for feelings of solidarity, that brings about deep identification with those who are not us so that we can, as Jerome Culp has said, participate in the struggles of those who are not ourselves?²³ Does the answer to this lie in the post-racial?

22. Manny Fernandez & Marc Santora, *Massacre in Virginia: In Words and Silence, Hints of Anger and Isolation*, N.Y. TIMES, Apr. 18, 2007, <http://query.nytimes.com/gst/fullpage.html?sec=health&res=9A0CEEDB1E3FF93BA25757C0A9619C8B63>.

23. Jerome M. Culp, Jr., *Latinos, Blacks, Others, and the New Legal Narrative*, 2 HARV. LATINO

Obama has been said to be running the first post-racial campaign, that his success somehow marks a post-racial moment or ushers in a new post-racial era. If that is so, where do Asian Americans fit within post-racial America? I find this question particularly vexing because I've spent much of my academic career talking about where Asian Americans fit within America's *racial* landscape, a landscape dominated by the black-white racial paradigm.²⁴ I do not feel that this work has been completed, yet here I am, now having to think about it and to retool and say, "Where do we fit in the post-racial landscape?"

Perhaps I am too entrenched in the "racial." Is post-racial something that the younger generation just gets? Speaking of the younger generation, I was watching the second debate with my family, and during the debate my three-year-old asked, "Who's winning?" My brother-in-law, who was watching with us, said, "The black guy." And my three-year old inquired, "Which one?" We had to puzzle about this. What in the world did he mean by "which one"? There is a white guy on stage, John McCain, and a black guy, Barack Obama. Finally, we figured it out. My son was talking about their suits. They were both wearing dark or black suits.

I don't mean to suggest that my three-year-old is part of that younger generation that just "gets" this post-racial thing, because clearly that moment is a *pre-racial* one. It is a time of innocence. What bothers me, though, is that this time of innocence is probably not going to last very long, as he will learn too soon about the original sin that is the stain upon this nation.

What could "post-racial" mean, and how can we get to the post-racial without working through the racial? One concern I have with "post-racial" is that it can be too easily deployed by neo-conservatives, similar to the epistemic violence that has been and continues to be done to Martin Luther King, Jr.'s invocation of his daughters and the content of their character, which became transmogrified into a kind of colorblindness that is used to sweep clean the slate of history to usher in an era of formal equality.²⁵

Obama's speech on race is reassuring to me. There is a lot of nuance there, but I am afraid that he will not be able to control the content of the post-racial. Once it is out there, there will be a struggle over its meaning, a confrontation over it. I worry that "post-racial" was designed to manage race during this election. And by "manage" I mean to push it below the surface: we are not really supposed to talk about it. During the rare moments when we talk about it, it usually ends up turning to the question of affirmative action and, in an even more reductionist move, the primary

L. REV. 479, 481 (1997).

24. See, e.g., Robert S. Chang, *Toward an Asian American Legal Scholarship*, 81 CAL. L. REV. 1241 (1993); 1 ASIAN L.J. 1 (1994).

25. See Ronald Turner, *The Dangers of Misappropriation: Misusing Martin Luther King, Jr.'s Legacy to Prove the Colorblind Thesis*, 2 MICH. J. RACE & L. 101 (1996).

question posed to Obama is, “Do you favor or would you favor affirmative action for your daughters?”

In his speech on race, Obama talks about the legitimate anger that white people feel about race-based affirmative action, and then when he is asked that question, “Would you favor affirmative action for your daughters?”, the answer that he gives, and in some ways the only answer that he can give, is, “No.” In this answer, he seems to indicate a willingness to shift to class-based affirmative action.

But even this discussion of affirmative action is missing so much. I first encountered Obama in 2004 in Illinois, where he spoke at one of the many “Brown at 50” conferences on the fiftieth anniversary of *Brown v. Board of Education*. He was probably a presidential aspirant then, but I certainly didn’t know it then. It was fascinating to hear him and then to think about his words in 2004 and how he has had to march so much to the center in order to become electable.

It’s interesting to compare his perspective now with his perspective when he was in law school. Back then, he gave a strong defense of affirmative action, saying that he undoubtedly benefited from affirmative action in his own career, although he has not provided specifics with regard to which institutions. The narrative also includes how friends recall that he did not list his race when he applied to Harvard Law School. He also says that he has no way of knowing whether race played a factor in his becoming a member of the Harvard Law Review, although he says that he would certainly not be ashamed of that fact if it were to be the case.

It would be nice if we were able to know with certainty how race has helped and hurt us. It is peculiar that we seem so unable to acknowledge the times when affirmative action has helped us. For example, I am a beneficiary of affirmative action. I know very concretely that being Asian American was something that was looked upon favorably with regard to at least two of my teaching jobs. It was very much a plus factor. But I also know, as someone who went to college in the mid-1980, that I was probably harmed by what Jerry Kang calls negative action,²⁶ informal caps on Asian American admissions, similar to what Ivy League schools did to Jews in the early to middle parts of the 20th century.²⁷

It is strange that we are so unable to talk about this, and I wonder about the space that might have been opened up if people like George W. Bush had gotten up and said, “Hi, I am an affirmative action baby.” Think about the effect his family legacy had on his admission to both Yale and Harvard—there is an affirmative action baby. He could be the poster child for affirmative action: “Look at what affirmative action can do for you!

26. Jerry Kang, *Negative Action against Asian Americans: The Internal Instability of Dworkin’s Defense of Affirmative Action*, 31 HARV. C.R.-C.L. L. REV. 1 (1996).

27. John D. Lamb, *The Real Affirmative Action Babies: Legacy Preferences at Harvard and Yale*, 26 COLUM. J.L. & SOC. PROBS. 491, 503 (1993).

You can become President of the United States.” Although it’s also quite possible that with the mess that he has wrought upon this country, he might actually become the poster child for the other side: “Here is the problem with affirmative action.”

So where am I at the end of the day? When Obama announced his candidacy, I have to confess that I did not hold out much hope. I did not have “the audacity.” It is not that I favored any of the other candidates—I simply did not hold out much hope. I am old. I am tired. I was a freshman in college when Jesse Jackson first ran for president. At the beginning of Obama’s candidacy, the best that I hoped for was that he would run strongly enough to influence the Democratic platform to ensure that black interests were not taken for granted by the Democratic Party.

In the beginning, perhaps I was not listening closely enough, because clearly he is someone who thinks beyond and cares for more than the black community. As he said in his major speech on race, echoing the authors of the Constitution, he really is searching for a more perfect union.

And so we find ourselves at this juncture in history. I wish that Asian Americans were more visible during this election. Paul Ong, a professor of Urban Planning, Social Welfare and Asian American Studies at UCLA, suggested that Asian Americans are sleeping giants during this election.²⁸ That may be so, but if it is, it is time for us to wake up. It is time to wake our communities. I want us to matter, because unless we make our voices heard through our votes, then being invisible will ultimately be something that we do to ourselves. But remember, that our work doesn’t end with the election. Whoever wins, we must continue to raise our voices.

Thank you.

Postscript. January 9, 2009.

As the new year begins, we find ourselves near the beginning of a historic presidency. A black man will soon be sitting in the oval office. As powerful and inspiring as that image may be, the new year also brought us the images of a brother lying face down in an Oakland BART station, shot in the back at close range by a transit police officer even as other officers were holding the brother down.²⁹ I find myself haunted by the two images in juxtaposition: Barack Obama sitting in the oval office; and Oscar Grant being held face down in Oakland.³⁰

28. Deanna Lee, *The Sleeping Giant in American Politics*, HUFFINGTON POST, Sept. 30, 2008, http://www.huffingtonpost.com/deanna-lee/the-sleeping-giant-in-ame_b_130399.html (quoting Paul Ong).

29. Matthew B. Stannard & Demian Bulwa, *BART Shooting Captured on Video*, S.F. CHRON., Jan. 7, 2009, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/01/07/MNOV154P0R.DTL>.

30. *Id.*

It's a new year. And it's not.

The new year finds millions losing their homes, with people of color being particularly hard hit by the mortgage meltdown and ensuing financial crisis. Yet a bank is soon going to put cash in my pocket to refinance my mortgage at a lower rate where I'll end up saving even more money. In the midst of this economic crisis, contradictions abound.

The challenges are daunting. Despite what the Obama victory symbolizes, I find myself more and more believing what Derrick Bell told us years ago of the permanence of racism.³¹ But as Derrick Bell reminds us, we need not despair. We simply go on as we always have, finding meaning in the struggle, working to make a difference where we can, and not losing hope because we seem unable to secure that elusive victory of eradicating racism once and for all. We keep going.

It's a new year.

31. DERRICK A. BELL, JR., *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM*, Basic Books (1993).

