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OPENING REMARKS: RECLAIMING YESTERDAY'S FUTURE

Kimberlé Williams Crenshaw*

Good morning colleagues, friends, and special guests of the Symposium. I have the unenviable task of welcoming you to the UCLA School of Law this morning, a task that under current circumstances carries with it for me quite a few mixed emotions.¹ I have struggled mightily over how I might convey to you that although my heart is heavy this morning, I am very pleased to see each of you. It is rather like opening the door to welcome close friends into your home which is in a state of utter disarray. Things are strewn all about, you look harried and preoccupied, and you greet your guests stressing about how obvious it is that all is not well in your home. Yet, you know that if there is anyone you can trust to help straighten up the mess and deal with your crisis, it is your dearest, most trusted friends. In this era, on these issues, at this time, your invited guests *are* those trusted friends, the ones we can hand a bucket and a brush to and know that you will take up the task of helping us straighten out the critical condition of our home. We are so happy to have you here.

I have taught at the UCLA School of Law for fourteen years now, and throughout those years I have been a proud beneficiary of affirmative action. The bittersweet truth, in retrospect, is that those years were apparently our wonder years, a period during which the School, acclaimed for its remarkable level of racial inclusion, was truly a wonderful environment for teaching and learning. Teaching to a racially and culturally diverse student body was both challenging and fulfilling—I have likened the experience of teaching here to conducting a full philharmonic orchestra—each discussion unfolded like

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1. On the day preceding the beginning of the symposium, students held a large rally to bring attention to the diminishing diversity at the UCLA School of Law. The students demanded that the Admissions Committee end its use of an LSAT floor, and urged the committee to use the existing 20 percent discretionary admissions category to promote diversity. Students also demanded that the Law School commit resources to studying how UCLAW admissions policies could be reformed. At the conclusion of the rally, a dozen students took over the records office to press their demands. The students were reacting to the egregious effects of law school admission policies in the wake of the ban on affirmative action at the school in which the first-year class of 290 students includes only 2 African Americans and 17 Latinos. In 1994, while affirmative action policies were still in place, 47 African Americans and 46 Latinos were enrolled in the first-year class. The university police arrested the students after three hours of talks with Dean Jon Varat failed. Their silent protest continued the next day standing with backs turned as the dean opened the Law Review Symposium.

a symphony, the music we made together was like cutting edge jazz, sometimes discordant, sometimes soulfully melodious, and often surprisingly complex. Our extemporaneous performances together always excited me and taught me to cherish the creative possibilities that working in a multiracial context provides. Yet, this delicate balance now is lost, and the music we make in our classrooms today is often flat and monotonous. When I step up to the podium today and pick up my baton, I see that my entire string section is gone—just gone—forget about playing anything that sounds remotely the way it should; the brass section is decimated, and the percussion can barely kick out a beat that can push us along. Surely I try to compensate by playing some of the missing instruments myself; I'll jump in the string section to play a few measures, run over to the horns to blow a note or two, try to kick at the timpani on the way back to the podium, but there is no denying it—what we are creating in our classrooms today is simply subpar.

I wonder whether we here at UCLA are willing to accept that the joy, the beauty, and the excitement of what we once had here is gone? Do we sell all of our orchestral music and confess that we're not in the business anymore? Do we admit that we now produce one-octave, simple melodies suitable for broadcast only on a narrow spectrum AM dial? Are we willing to accept that we will do nothing in the face of this loss but wait until things miraculously get better?

The answer *has* to be no. But to make that answer meaningful, we have to understand that Proposition 209 could not have created this crisis alone. What we are facing is an institutional imperative to rethink our settled practices and beliefs about desserts, to challenge the baseline against which we measure what is a preference and what is discrimination. Here is a home truth: A school that has produced hundreds, if not thousands, of lawyers of color, lawyers who have gone on to make us proud, lawyers who Michael P. Judge, the Los Angeles Public Defender, says are the best prepared and best qualified because they know how to practice with and speak to diverse communities, should not have to relearn the lesson that so-called objective criteria should not overdetermine who we should educate and who we should not. Our own experience tells us that test scores and so-called objective criteria do not measure the potential of our applicants. Given our history, UCLA of *all* institutions should be on the forefront of rethinking how to distribute opportunity in a truly nondiscriminatory way. To continue to lead by example, we should meet today's obstacles with the will and courage to challenge conventional beliefs that limit our vision of what is possible.

Institutional self-reflection has to be the predicate for a fruitful discourse on this crisis, and in this sense, the conversation we are to have today has already begun. Indeed, welcoming you to the symposium at this point is a

little after the fact. The symposium in fact began yesterday, I believe, and our first presenters were sixteen courageous visionaries who took seriously their vision of racial justice in the future and reminded us all of important lessons from our past. Racial justice is not simply a matter of discourse, it is a matter of action. They also reminded us, in case we have forgotten it, that justice delayed is justice denied.

I do not think we generally admit how often it is that we learn something from our students, but as I watched each of them yesterday being escorted out of the building, small in stature, tall in commitment, flanked by a half-dozen uniformed riot police, I was taken back to similar images from the long historic struggle against racial justice. Perhaps because of today's invitation to think about race in the future along with yesterday's flashback from the past, I began to think about the many ways throughout our history that the promise of the future has been used to deflect the demands of racial justice today; how the allure of time has been used to soothe the pains of racial injustice. It was Martin Luther King, Jr. who reminded us that time itself has no inherent value in the struggle for racial justice: It can be as easily mobilized to deny urgent demands as it can be mobilized to achieve those goals. Indeed, time and the promise of the future have had a spotty record in our country's history. It was in 1883—less than 20 years after the end of slavery—when our Supreme Court declared that enough time had passed so that basic civil rights protections constituted unwarranted special treatment for African Americans who now had to learn to be “mere citizens” rather than special wards of the Court.² A decade later, the Court held out to Homer Plessy the remote possibility that time might eventually bring about the social equality that he sought,³ but of course Plessy himself would not live to see it. It was time that was deployed by the Court in *Korematsu v. United States*⁴ to justify the internment of the Japanese as it premised relief on the passing of the military emergency. It was the passage of time that Governors John Patterson and Orval Faubus, and Presidents Dwight D. Eisenhower and John F. Kennedy, urged students and other protesters to patiently await to quell resistance to integration throughout the South. And of course it was the passage of time that moderate Southern clergy urged Martin Luther King, Jr. to look to in order to quench his thirst for racial justice. In each of these instances of racial injustice, people of color have been asked to wait for a remedy, a remedy that was to be found somewhere in the indeterminate future, often even in another lifetime. Yet, in each case of

2. See *The Civil Rights Cases*, 109 U.S. 3 (1883).

3. See *Plessy v. Ferguson*, 163 U.S. 537 (1896).

4. 323 U.S. 214 (1944).

successful protest, people of color have refused to accept the belief that justice is not for us to experience in the here and now, but for some other people somewhere in the future.

So, in the nineteenth century, African Americans pushed on despite *Plessy v. Ferguson*'s⁵ promise that we might find equality in the by and by; in the mid-twentieth century, Japanese Americans pressed their claims for justice beyond the temporal limits of their internment; in the modern civil rights movement, SNCC, Core, and the Little Rock Nine demanded federal protection in pursuit of racial justice despite our presidents' pressing pleas for more time; and in 1963, from his Birmingham cell, Martin Luther King, Jr., perhaps the greatest orator this country has known (despite his abysmal GRE verbal scores), penned his justly famous *Letter from Birmingham City Jail*⁶ explaining why we can't wait.

Of course, then as well as now there are those who will condemn the work of direct action taken to dramatize racial injustice. Dr. King's lesson to us in the *Letter* is that bringing to the surface the tension that is already there is part of the work of the resister. "[T]here is a kind of constructive, non-violent tension that is necessary for growth."⁷ Indeed, Dr. King's lesson seems particularly appropriate to us here in the law school, for he notes that "[j]ust as Socrates felt it was necessary to create tension in the mind so that individuals could rise . . . to the unfettered realm of creative appraisal" so too was tension necessary to lift us as a society "to the majestic heights of understanding and brotherhood."⁸

Of course, Dr. King's argument presumes that the state of affairs in question is in fact racially unjust, a proposition that is surprisingly contested even in the face of the tragic decline of African American and Latino students in U.C. schools. For some the unfortunate consequences of our post-209 admissions policies bespeak no clear racial injury; they can see no principled basis for rejecting our current policies as discriminatory. This moral paralysis in the face of racial injustice is of course not without precedent even among erstwhile allies of the racially excluded. Who can forget Herbert Weschler's anguish when he could find no neutral principle for *Brown* even as he claimed to suffer as much as his Black colleague, Charles Hamilton Houston, when racial segregation prevented them from dining together in the Nation's capitol.

5. 163 U.S. 537 (1896), *overruled by* *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

6. Martin Luther King, Jr., *Letter from Birmingham City Jail*, in *THE EYES ON THE PRIZE: CIVIL RIGHTS READER* 153 (Clayborne Carson et. al. eds., 1991).

7. MARTIN LUTHER KING, JR., *WHY WE CAN'T WAIT* 81 (1963).

8. *Id.*

Charles Black's simple answer⁹ to Weschler's contorted search¹⁰ for a neutral principle cut straight to the reality that Weschler elided; racial segregation constituted a systematic disadvantaging of African Americans that the Fourteenth Amendment prohibited. And no amount of democratic posturing could whitewash it. My answer to those who struggle to see the injustice of this current crisis is similarly inelegant but direct: When an admissions policy operates to exclude in a racially disproportionate manner applicants who can succeed in law school and go on to become effective and productive lawyers, then it is racially unjust. Such a policy constitutes a systematic disadvantaging of Black and Latino students and should be rejected. And no amount of meritocratic whitewashing can legitimize it.

The students yesterday brought these historical lessons to our table for today's consideration. They know that the complacency that sets in once we settle into a crisis and get comfortable with it is difficult to overcome. Waiting to deal with a crisis today turns into tomorrow, tomorrow turns into next year, next year turns into next decade, and next decade turns into the next century. And of course, that is exactly what we have done at the end of this century, we have pushed our racial problems into the next century in hopes that the magic of time will reveal a solution. Surely I am not alone in being impressed with the professed desire of most in our society to reach a world that is racially equitable. I see a sincere desire for it in the images of our future that we routinely invoke: In politics and in fiction the image of the future we readily embrace is one in which the race problem has fallen into history. As a science fiction buff, I am often amused by our fictions about race in the future. In *Star Trek* alone, for example, the entire fleet is completely integrated—not just by humans, but by other species as well. There are no patterns of power, no structures built on difference, no systematic disadvantages based on race, gender, or species. A woman captains one Star Fleet ship, an Asian captains another, while a Black commands the most strategic outpost in the galaxy, and of course no one seems to notice. What I notice is the total absence of a narrative that gets us there. Of course little is required of science fiction; it is, after all, fanciful story telling. Yet trouble awaits when science fiction gets caught up in real world social problems. Right now in California we are caught up in a futuristic discourse that, like science fiction, has no clear trajectory, no mapping of how to get there from here. We say we want a future that values our diversity, that is racially equitable, but

9. See Charles L. Black, Jr., *The Lawfulness of the Segregation Decisions*, 69 *Yale L.J.* 421 (1960).

10. See Herbert Weschler, *Toward Neutral Principles of Constitutional Law*, 73 *HARV. L. REV.* 1 (1959). For a compelling critique of the conservative underpinnings of "Neutral Principles" and process theory more broadly, see Gary Peller, *Neutral Principles in the 1950's*, 21 *U. MICH. J.L. REFORM* 561 (1988).

we refuse to jettison values and practices that clearly will not take us there. It is as though we believe that the future we want will happen in the by and by, over the long haul by some invisible racial hand. But the future isn't made up of what we do in the future, it is made up of what we do and fail to do right now, today.

The year 2050—that's the middle of this century—sounds distant, but consider that is just fifty years from today. Some of us might well still be around by then. It is only a decade shy of how much time has passed between the civil rights movement and today. I say this to show that when we are talking about the future, we are not talking about generations far removed from us. For some of us, the future is *about us*, for others, we are talking about our sons and daughters, and for still others, our grandchildren; we are talking about the immediate future. The decisions and policies of today, therefore, have everything to do with that future.

Now let us put this into sharper perspective: Those doctors, lawyers, and other skilled professionals who will just be retiring in 2050 are in college *now*. Those who will be senior in their fields are in junior high school and college *today*; those who will be in the height of their careers are being born *as we speak*. If the doors of opportunity are closed to current Latino and African American college and high school students seeking to become the professionals of the future, as they are now in Texas, California, Washington, and if certain members of Congress get their way, the entire United States, then the number of people of color who will be doctors, lawyers, and other professionals in the twenty-first century has obviously declined. And it has declined not by some future historical forces; the number of doctors and lawyers has declined in the future by actions that were taken two to four years ago. Let me stress this—it is not simply that the minuscule pace of full integration will still be inching along, it is that decisions made yesterday, and right here and now, have altered the future relative to what it would have been were we to have projected it four years ago. The future is constantly changing based in part on the things that we have done today. And just to put a head on the point, the class of 2002 that will be in retirement in 2050 will *still* only have two African Americans and seventeen Latinos. The effects of what we did last year will reach far into the next century and beyond.

So what is the trajectory that leads to the future that we say we want, one in which old patterns of racial exclusion no longer scar the social landscape? How do we go about bridging the radical disconnects between our broad aspirations of racial equity and our stubborn reality racial exclusion? How do we not only reclaim yesterday's future, but make it even brighter? Some would say that whatever it is we do, it has to be colorblind. It strikes

me that the task at hand is to confront precisely why it is that so many Americans of obvious good will seem to equate colorblindness with racial justice, and fail to see colorblindness itself as a mere preference for the racially privileged. As my colleague Luke Harris often says, colorblindness may work as a racial justice policy in the Kingdom of Heaven, but certainly not in a post-apartheid society such as our own.

In this postapartheid society, one in which people of color have been urged to tarry and wait, one in which every attempt to achieve racial justice at some point has been framed as a preference, one in which backward movement is as likely as forward progress, and one in which the real meaning of race has yet to be fully understood before the urgent quest to set it aside is heeded, it might be understandable that there is a collective failure of imagination in a crisis. Institutions such as UCLA, and others that have a rich history from which to draw in refashioning themselves in the face of crisis might be forgiven if in their initial moment of shock they rest on past achievements. But I hope that history will not be kind to any institution that takes more than a momentary delay in confronting the present demands for racial justice squarely and without apology.

So, friends and guests, this is part of the disarray you are here to help us straighten out. We in this institution, in this state, indeed in this society, are urged to be blind to something we really do not well understand. The wealth of expertise and the range of topics we are about to be treated to today cannot possibly be regarded as beside the point. What you have gathered to talk about today is the point and will continue to be, until we get it, incorporate it, and deal with it. *Race* in its many ideological constructions, its historical contestations, its material dimensions, its gendered and class resonances, and its genealogy and trajectory—these are the topics we are primed to look at and to hear today.

So to our colleagues and friends, we're ready to roll up our sleeves and get down to business. Yesterday's future awaits. Welcome.