

Emerging Through Bias

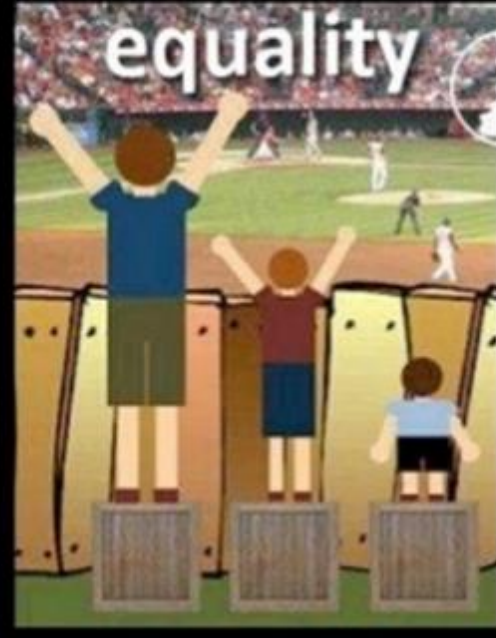
Judge Veronica Galván

Judge Lori K. Smith

Opportunity and Oppression

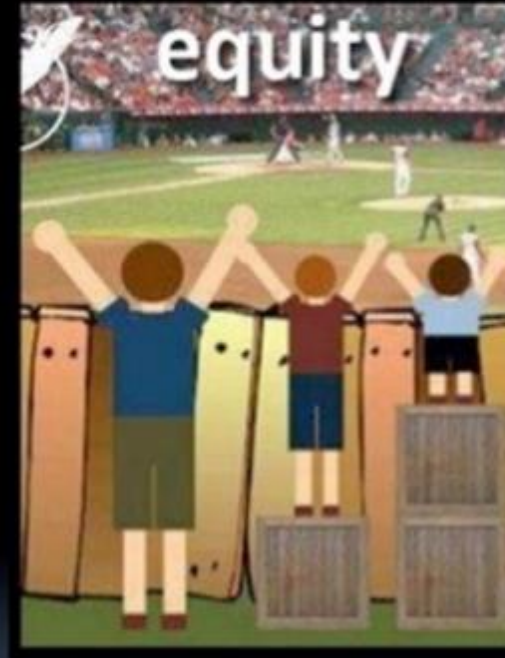
- ❖ Color
- ❖ Religion
- ❖ Gender
- ❖ Sexuality
- ❖ Ability
- ❖ Citizenship
- ❖ Economic

Equality vs. Equity



EQUALITY=**SAMENESS**

GIVING EVERYONE THE SAME
THING → It only works if
everyone starts from the same
place



EQUITY=**FAIRNESS**

ACCESS to SAME
OPPORTUNITIES → We must first
ensure equity before we can
enjoy equality

Equality vs Equity

➤ Opportunity vs Outcome

THE ULTIMATE GOAL IDENTIFY & REMOVE THE BARRIERS



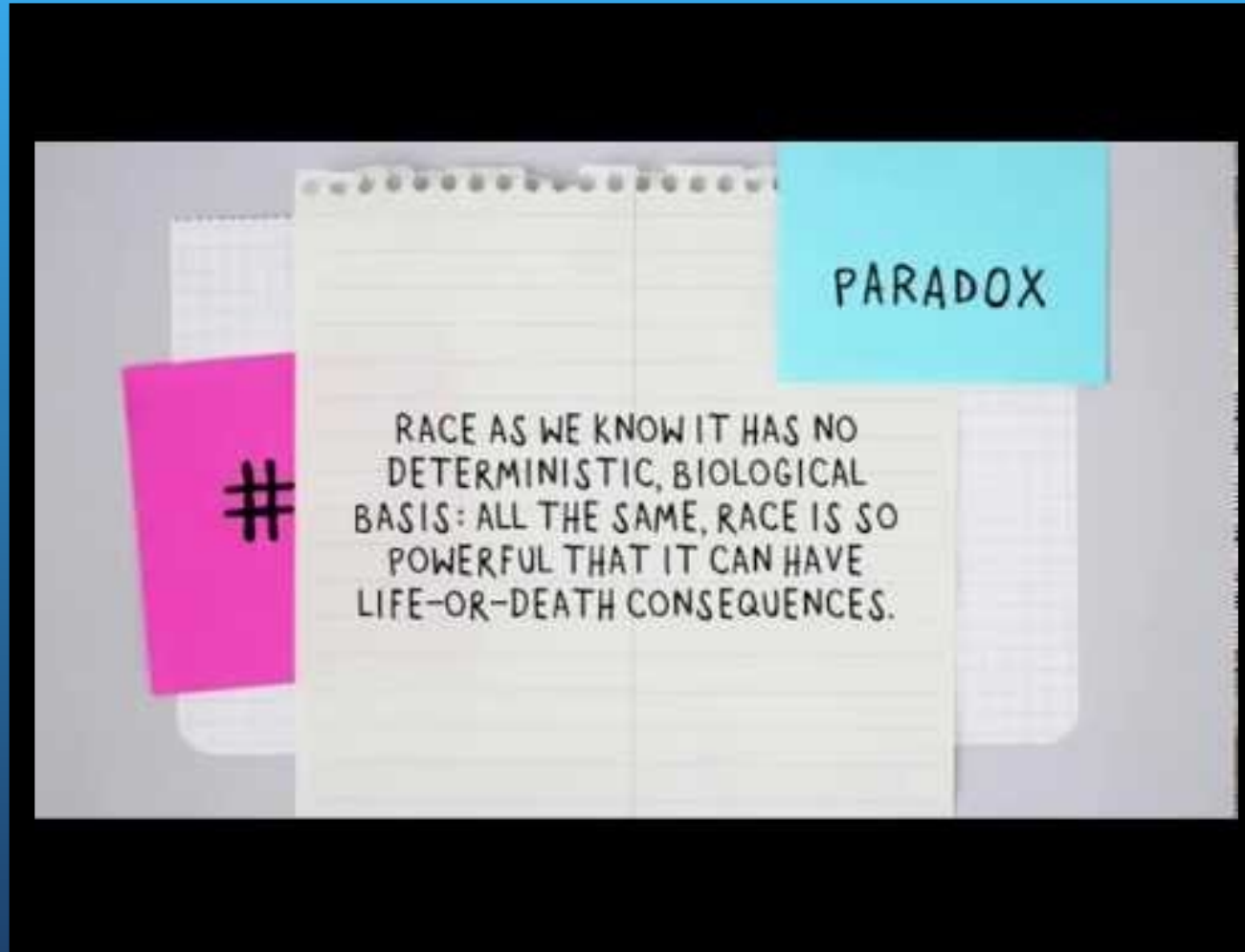
SO THAT ALL CAN PARTICIPATE WITHOUT SUPPORTS

THE P WORD

“You don’t necessarily have to do anything once you acknowledge your privilege. You don’t have to apologize for it. You need to acknowledge the extent and consequences of your privilege and remain aware that people who are different from you move through and experience the world in ways you know nothing about”

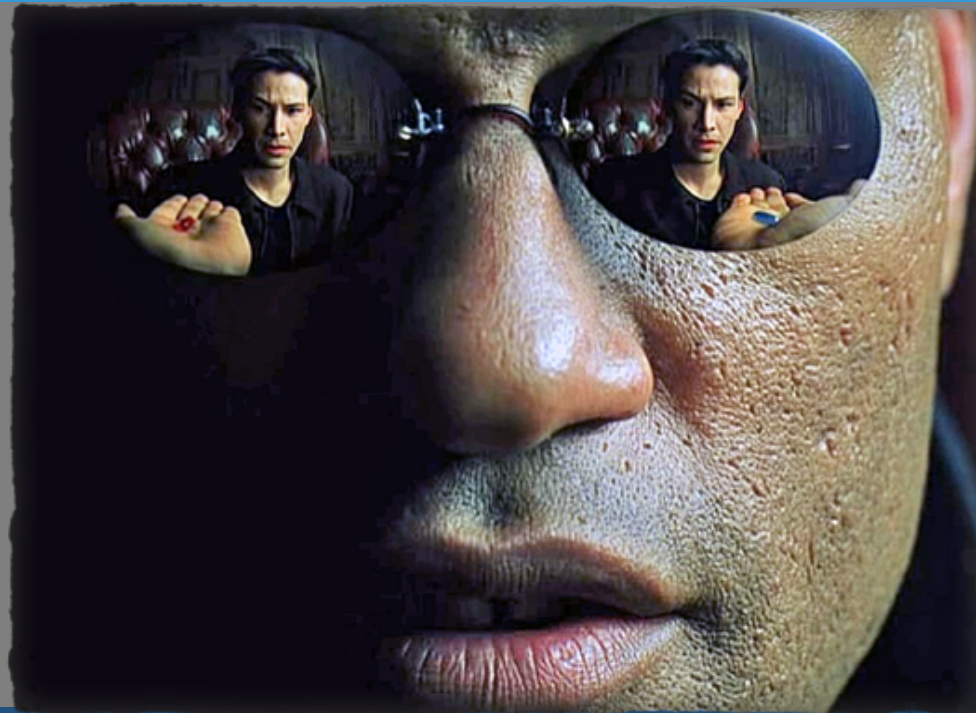
Roxane Gay

Race Constructed



The Matrix

➤ Deconstruction



What is Bias?

- Bias is defined as:
- an unfair preference for or dislike of something

Types of Bias

- ❖ Explicit Bias
- ❖ Implicit Bias
- ❖ Individualized
- ❖ Institutionalized
- ❖ Structural

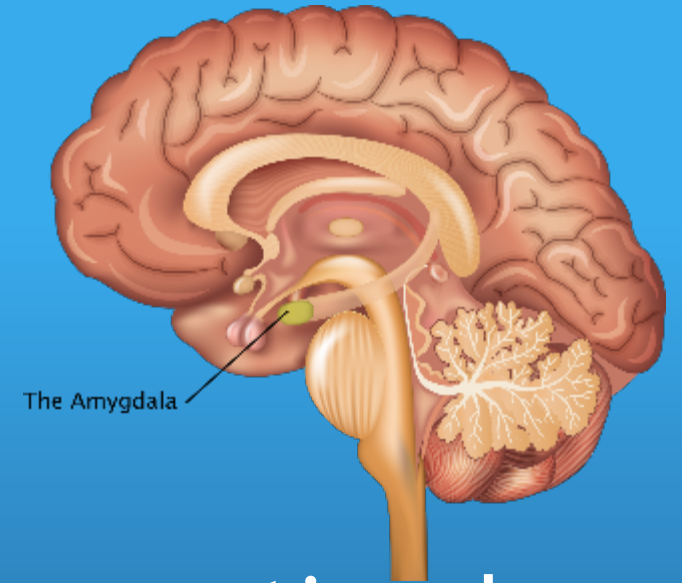
Bias

- Biases are often unconscious, unintended and implicit
- Biases manifest themselves even amongst individuals who at the conscious level reject stereotyping and prejudicial behavior
- Bias impacts our behavior

The Science of Bias

- The Amygdala

the integrative center for emotions, emotional behavior, and motivation.



Whom are we most likely to prejudge?

- Ambiguous Stimuli
- Fill in the Blank
- Sesame Street Conditioning

Thoughts



Blue

Red

Green

Black

Green

Black

Blue

Yellow

Black

Red

Black

Blue

Green

Purple

Say the COLOR, not the word:

PURPLE

ORANGE

BLUE

BLUE

RED

PURPLE

BLACK

GREEN

YELLOW

GREEN

BLUE

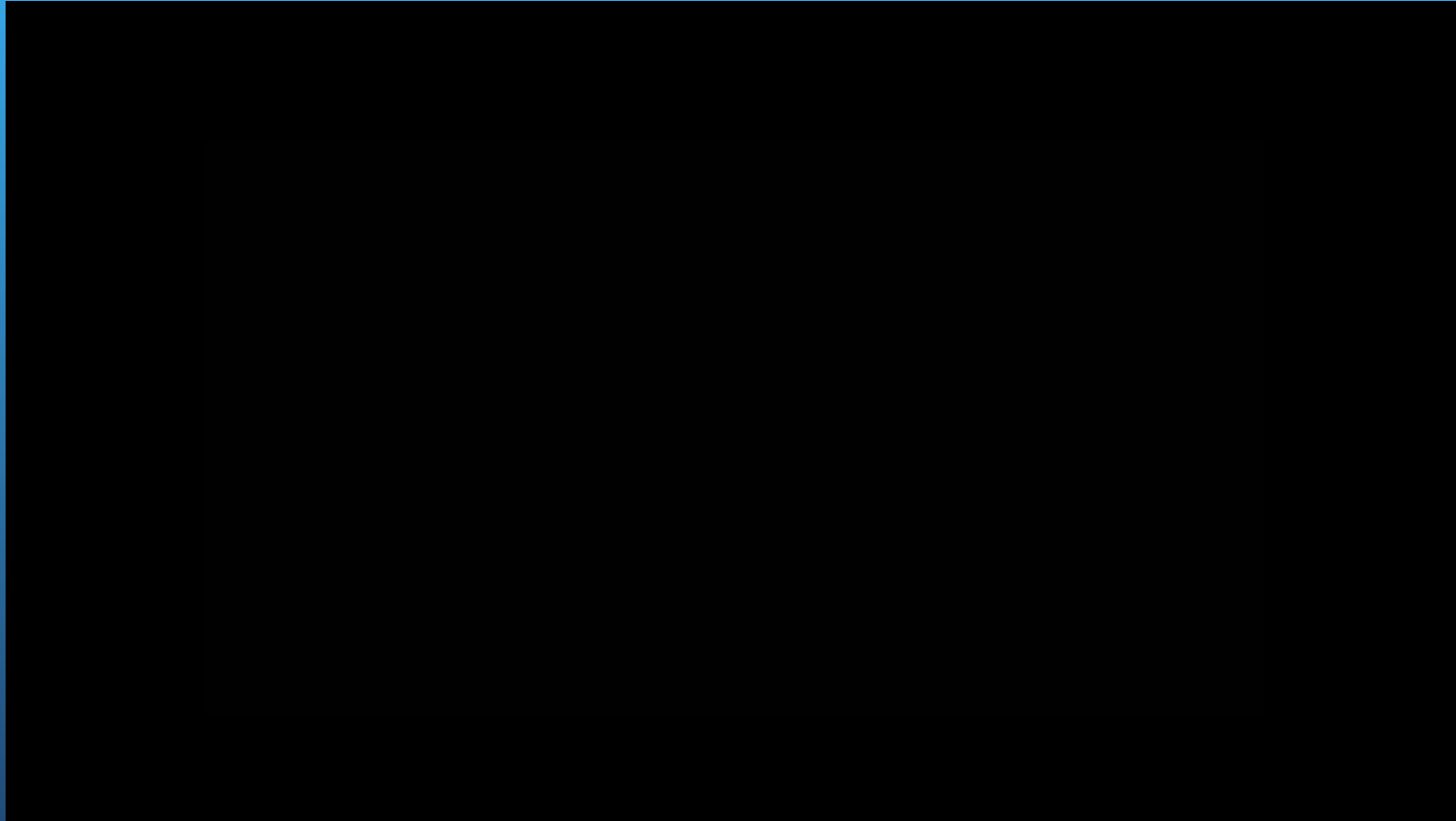
RED

ORANGE

YELLOW

GREEN

Implicit Bias in Action



What are they doing?



Same Action Different Attributions



(AFP/Getty Images/Chris Graythen)



These stories and pictures both appeared in
YAHOO! NEWS August 30, 2005

<http://news.yahoo.com/photo/050830/480/ladm10208301530>

http://news.yahoo.com/photo/050830/photos_ts_afp/050830071810_shxwama_photo1

What Can We Do

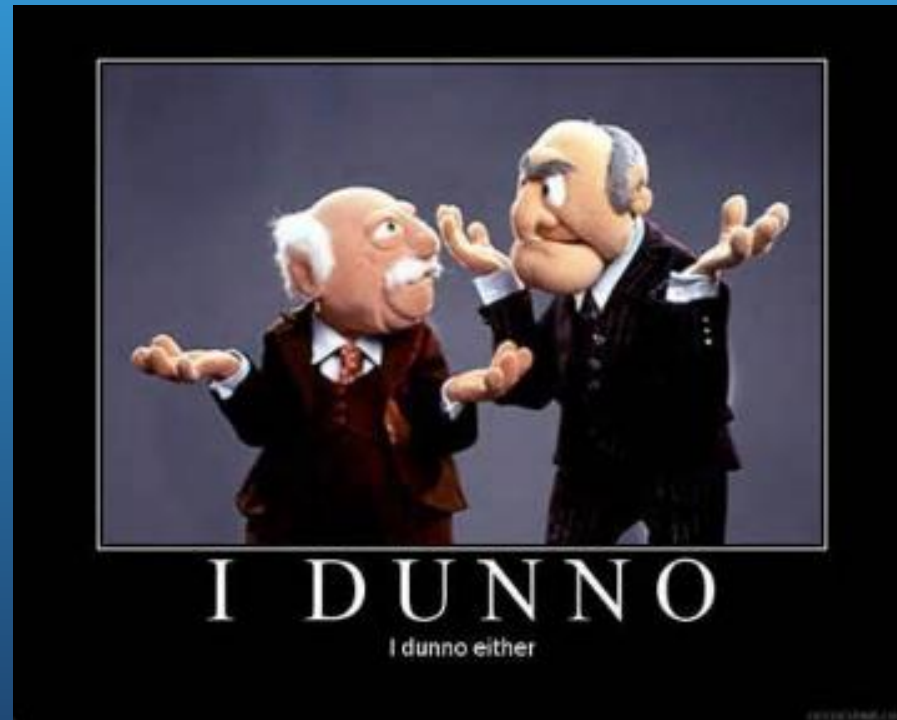
- Stereotype Replacing
- Counter Stereotypic Imaging
- Individuation
- Perspective Taking
- Increasing Opportunities For Contact







Who Is Responsible?

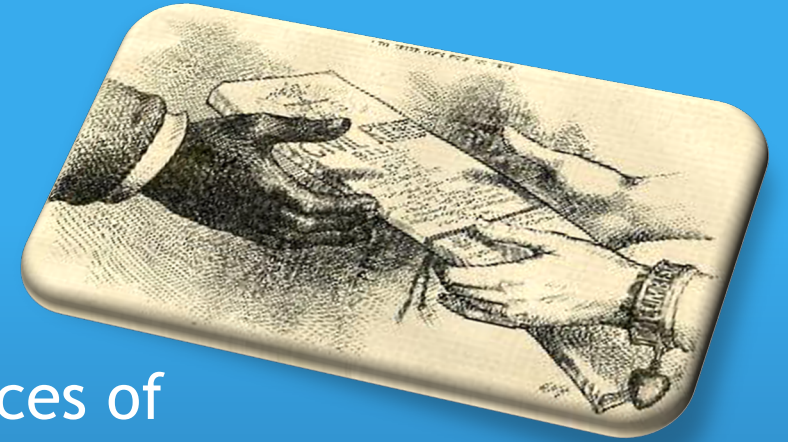


Dred Scott v Sanford



- A free negro of the African race
- Not a ‘citizen’ within the meaning of the Constitution of the United States
- The majority held that “a negro, whose ancestors were imported into [the U.S.], and sold as slaves,” whether enslaved or free, could not be an American citizen and therefore did not have standing to sue in federal court.
- The only two clauses in the Constitution which point to this race treat them as persons whom it was morally lawfully to deal in as articles of property and to hold as slaves.
- Nullified by the Thirteenth and Fourteenth Amendments

Civil Rights Cases 1883

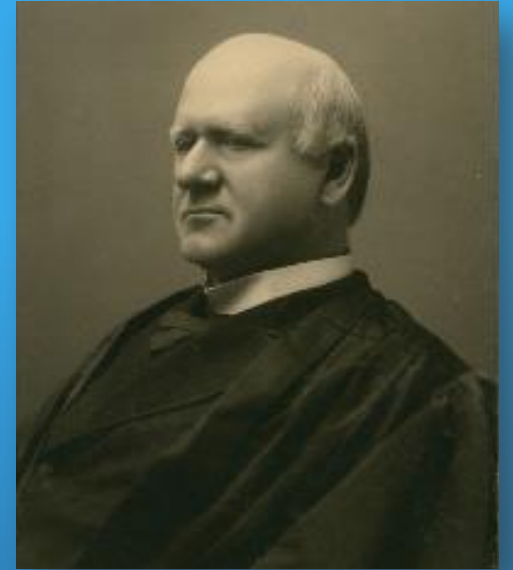


- In five separate cases, African-Americans sued places of public accommodation such as hotels, theaters, and railroads for refusing them admittance or refusing them entry to areas designated as white-only.
- The act declared that all persons born in the United States were now CITIZENS, without regard to race, color, or previous condition
- As citizens they could make and enforce contracts, sue and be sued, give evidence in court, and inherit, purchase, lease, sell, hold, and convey real and personal property.

- Persons who denied these rights to former slaves were guilty of a MISDEMEANOR and upon conviction faced a fine not exceeding \$1,000, or imprisonment not exceeding one year, or both.
- The activities of organizations such as the KKK undermined the workings of this act and it failed to guarantee the civil rights of African Americans.

1883 Dissent - Justice JM Harlan

The statute of 1875, now adjudged to be unconstitutional, is for the benefit of citizens of every race and color. What the nation, through congress, has sought to accomplish in reference to that race is—what had already been done in every State of the Union for the white race—to secure and protect rights belonging to them as freemen and citizens; nothing more ...The difficulty has been to compel a recognition of the legal right of the black race to take that rank of citizens...To-day it is the colored race which is denied, by corporations and individuals wielding public authority, rights fundamental in their freedom and citizenship. At some future time it may be some other race that will fall under the ban of race discrimination.



Plessy v Ferguson (1896)

The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth, and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage, and holds fast to the principles of constitutional liberty. But in view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved.

Dissent Justice JM Harlan



Lum v Rice (1927)

- ‘Separate schools shall be maintained for the white and colored races’
- The court held that this provision of the Constitution divided the educable children into those of the pure white or Caucasian race, on the one hand, and the brown, yellow, and black races, on the other, and therefore that Martha Lum, of the Mongolian or yellow race, could not insist on being classed with the whites under this constitutional division.



Hirabayashi v. U.S (1943)

- There is support for the view that social, economic and political conditions which have prevailed since the close of the last century, when the Japanese began to come to this country in substantial numbers, have intensified their solidarity and have in large measure prevented their assimilation as an integral part of the white population.⁴ In addition, large numbers of children of Japanese parentage *97 are sent to Japanese language schools outside the regular hours of public schools in the locality. Some of these schools are generally believed to be sources of Japanese nationalistic propaganda, cultivating allegiance to Japan.⁵ Considerable numbers, estimated to be approximately 10,000, of American-born children of Japanese parentage have been sent to Japan for all or a part of their education

Korematsu v United States (1944)

- It is said that we are dealing here with the case of imprisonment of a citizen in a concentration camp solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition towards the United States. Our task would be simple, our duty clear, were this a case involving the imprisonment of a loyal citizen in a concentration camp because of racial prejudice. Regardless of the true nature of the assembly and relocation centers—and we deem it unjustifiable to call them concentration camps with all the ugly connotations that term implies—we are dealing specifically with nothing but an exclusion order.

Korematsu Dissent

- Justice Murphy: This exclusion of “all persons of Japanese **202 ancestry, both alien and non-alien,” from the Pacific Coast area on a plea of military necessity in the absence of martial law ought not to be approved. Such exclusion goes over “the very brink of constitutional power” and falls into the ugly abyss of racism
- I dissent, therefore, from this legalization of racism. Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life. It is unattractive in any setting but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States. All residents of this nation are kin in some way by blood or culture to a foreign land. Yet they are primarily and necessarily a part of the new and distinct civilization of the United States. They must accordingly be treated at all times as the heirs of the American experiment and as entitled to all the rights and freedoms guaranteed by the Constitution

Shelley v. Kraemer (1948)

A neighborhood in St. Louis, Missouri had enacted a racially restrictive covenant designed to prevent "people of the Negro or Asian Race" from occupying property in the community. The Shelley family ("of the Negro race") moved into the neighborhood without being informed that the covenant existed. Louis Kraemer, a white man who lived several blocks away brought a suit to enforce the covenant and prevent the Shelley's from moving into their house.

Meanwhile, another family named McGhee purchased property in a neighborhood in Detroit, Michigan that also was subject to a racially restrictive covenant. Like the Shelley's, the McGhees were unaware the racially restrictive covenant and a resident, named Sipes brought a case to enforce the covenant.

Both covenants were enforced at the level of the State Supreme Courts because they were private agreements rather than state action and thus did not violate the Fourteenth Amendment.



Shelley v. Kraemer (1948)

Since the decision of this Court in the principle has become firmly embedded in our constitutional law that the action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful.

We conclude, therefore, that the restrictive agreements standing alone cannot be regarded as a violation of any rights guaranteed to petitioners by the Fourteenth Amendment. So long as the purposes of those agreements are effectuated by voluntary adherence to their terms, it would appear clear that there has been no action by the State and the provisions of the Amendment have not been violated.

Price v. Evergreen Cemetery Co. of Seattle (1960)

- The undisputed facts in the instant litigation are that the Evergreen Cemetery has segregated sections restricted to white children, Masons, veterans, Lutherans, and so forth. These restrictions implement the universal desires of religious, racial, and fraternal groups to be associated in death as well as in life. 'Birds of a feather flock together
- This lawsuit is but an incident, the second of a series, in the over-all Negro crusade to judicially deprive white people of their right to choose their associates in their private affairs.

O'Meara v. WA State Bd. Against Discrimination

- Trial Court:
- 'This court is fully cognizant of the evils which flow from discrimination because of race, creed, or color in a free democratic society. The practice of discrimination is utterly inconsistent with the political philosophy upon which our institutions are based and with the moral principles which we inherit from our Judeo-Christian tradition. Its effects, in terms of social, economic and psychological damage to the community, are well known. Segregated housing, in particular, is linked intimately with substandard, unhealthy, unsafe living conditions with resultant fire and health hazards. It undoubtedly contributes to instability in family life, moral laxity, and delinquency. It can and must be eliminated, not only in order that the members of our minority groups may reach their full potential but also in order that the majority may be brought to act in a manner consistent with the principles which they profess. It may be noted also that elimination of discrimination is necessary for the sake of America's relations with the rest of the world. Our standing with the so-called uncommitted peoples of the world suffers seriously because of the continued discrimination and segregation practiced in America.'

O'Meara (Cont)

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Brown v Board of Education (1954)

'Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn



Dollar General v. Miss. Choctaw

- Company signs a lease with tribe agreeing to tribal court jurisdiction over claims arising from the lease
- 13 year old boy (tribal member) assaulted by manager of the store (non-tribal). After US Attorney's Office fails to pursue criminal charges, family sues manager & Dollar General in Tribal Court.
- During oral argument, Dollar General's counsel stated that "a neutral-forum is not available to non-Indians" in tribal courts.
- Justice Sotomayor: "You are assuming that the judges are not neutral."



Pena-Rodriguez v. Colorado

A Colorado jury convicted petitioner Peña-Rodriguez of harassment and unlawful sexual contact. Following the discharge of the jury, two jurors told defense counsel that, during deliberations, Juror H. C. had expressed anti-Hispanic bias toward petitioner and petitioner's alibi witness.

Counsel, with the trial court's supervision, obtained affidavits from the two jurors describing a number of biased statements by H. C. The court acknowledged H. C.'s apparent bias but denied petitioner's motion for a new trial on the ground that Colorado Rule of Evidence 606(b) generally prohibits a juror from testifying as to statements made during deliberations in a proceeding inquiring into the validity of the verdict. The Colorado Court of Appeals and the Colorado Supreme Court affirmed

The Supreme Court held: Where a juror makes a clear statement indicating that he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee.

Pena-Rodriguez v. Colorado

This case lies at the intersection of the Court's decisions endorsing the no-impeachment rule and those seeking to eliminate racial bias in the jury system...Racial bias, implicates unique historical, constitutional, and institutional concerns and, if left unaddressed, would risk systemic injury to the administration of justice."

"But while all forms of improper bias pose challenges to the trial process, there is a sound basis to treat racial bias with added precaution. A constitutional rule that racial bias in the justice system must be addressed—including, in some instances, after a verdict has been entered—is necessary to prevent a systemic loss of confidence in jury verdicts, a confidence that is a central premise of the Sixth Amendment trial right."

Justice Kennedy

Michigan v Schuette

- ...RACE MATTERS for reasons that really are only skin deep, that cannot be discussed any other way, and that cannot be wished away. Race matters to a young man's view of society when he spends his teenage years watching others tense up as he passes, no matter the neighborhood where he grew up. Race matters to a young woman's sense of self when she states her hometown, and then is pressed, “No, where are you really from?”, regardless of how many generations her family has been in the country. Race matters to a young person addressed by a stranger in a foreign language, which he does not understand because only English was spoken at home. Race matters because of the slights, the snickers, the silent judgments that reinforce that most crippling of thoughts: “I do not belong here.”

Michigan v Schuette

- In my colleagues' view, examining the racial impact of legislation only perpetuates racial discrimination. This refusal to accept the stark reality that race matters is regrettable. The way to stop discrimination on the basis of race is to speak openly and candidly on the subject of race, and to apply the Constitution with eyes open to the unfortunate effects of centuries of racial discrimination. As members of the judiciary tasked with intervening to carry out the guarantee of equal protection, we ought not sit back and wish away, rather than confront, the racial inequality that exists in our society. It is this view that works harm, by perpetuating the facile notion that what makes race matter is acknowledging the simple truth that race does matter.

What does it all Mean & Why do we need to be concerned

- Legitimacy
- Integrity
- Respect for the Rule of Law
- Perception Matters

Resources

- <https://implicit.harvard.edu/implicit/>
- <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1691&context=facpub>
- <https://www.courts.wa.gov/committee/pdf/LGBTQ%20Bench%20Guide.pdf>
- <https://static1.squarespace.com/static/5afb1aba4cde7a344d46fd5b/t/5ce82e1ba4222f1f0ce19037/1558720028301/TARP+Legal+Pros+Tip+Sheet.pdf>
- http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf
- <http://www.courts.wa.gov/content/publicUpload/News/Justice%20in%20Washington%20Report.pdf>
- <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3603687/>
- Beyond Inclusion Beyond Empowerment -Dr. Leticia Nieto
- The New Jim Crow - Michelle Alexander