
ACTING WHITE

THE GOOD BLACK/BAD BLACK PROBLEM

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INTRODUCTION

[T]he mountain standing in the way of any true Negro art in America [is] this urge within the race toward whiteness, the desire to pour racial individuality into the mold of American standardization, and to be as little Negro and as much American as possible.

...

The old subconscious 'white is best' runs through [the Philadelphia Negro clubwoman's] mind. Years of study under white teachers, a lifetime of white books, pictures, and papers, and white manners, morals, and puritan standards made her dislike the spirituals. And now she turns up her nose at jazz and all its manifestations—likewise almost anything else distinctly racial. She doesn't care for the Winold Reiss portraits because they are 'too Negro.'

----- Langston Hughes

During the days of slavery and segregation Uncle Tom recognized the cultural superiority of his oppressor, even as he accommodated himself to the system of oppression. Thus Uncle Tom became a figure who could be understood but not admired. Instead, the oppositional culture of the "bad nigger" became normative for the black community. In today's America, where the slavemasters and segregationists are gone and blacks enjoy the same legal status as whites, the "bad nigger" and his oppositional culture have become a menace to African Americans and the larger society. By contrast, the African American reformers who are derided as contemporary Uncle Toms are the true civilizational forces in the black community.

...

For generations, blacks have attempted to straighten their hair, lighten their skin, and pass for white. But what blacks need to do is "act white."

----- Dinesh D'Souza

Just a few years has passed since we celebrated the 50th anniversary of *Brown v. Board of Education*, the Supreme Court case that declared an end to farce that "separate" could be "equal." The occasion of this anniversary generated numerous public gatherings and commentary focusing on whether the promise of *Brown* has been realized. While there is no consensus on how to answer this question, most answers refer either to the state of public education or to the extent to which race continues to determine access to a quality education.

This makes sense because *Brown* was about interracial educational opportunity. The case presented the question of whether black students should have access to integrated schools. Precisely because racial segregation in education today is the de facto norm—which is to say, pre-college, most black students attend segregated schools—it is not surprising that education is the site to which we turn to examine *Brown*'s legacy.

Yet, the focus on educational equality generally and on school segregation specifically obscures another important arena for thinking about *Brown*'s promise—the workplace. Thanks in part to the moral force of *Brown*'s anti-segregation principle, few workplaces today are openly discriminatory. Indeed, it's safe to say that most employers think it illegitimate to maintain racially homogeneous workforces, and most institutions explicitly profess a commitment to diversity, advertising themselves as equal opportunity employers. One might conclude from this that, in the context of the workplace, we have achieved *Brown*'s promise of integration: Whether or not we are living together or attending school together, we are working together—a nation of employees in inter-racial harmony; a workplace of one.

But are we?

True, workplaces today are more diverse than they have ever been. But many professional workplaces remain predominantly white. And even when these workplaces are reasonably integrated, black and other non-whites typically find themselves on the bottom of the hierarchy, unable to climb the corporate ladder. This means that efforts to combat racial discrimination at work have to focus on opening the doors of both access and advancement.

More than fifty years after *Brown*, these doors remain difficult to unlock. This difficulty derives not simply from the fact that employers judge employees by the color of their skin. Unlocking the doors to the corporate suite is difficult for another reason: employers judge employees by the content of their *racial performance*. Put another way, the problem of race in the post-*Brown* workplace derives not only from phenotypic manifestations of difference (or skin-deep racism); it derives as well from performative manifestations of difference. Employers want to know not only whether the prospective employee is black in an identity status sense but whether he is black in an identity conduct sense. For at least some corporations, the ideal black employee for the post-*Brown* firm, a firm that professes a commitment to both racial equality and racial diversity, is one who is identifiably black with respect to phenotype but unconventionally black with respect to conduct or social behavior. From the *employer's* perspective, this employee "looks" black but "acts" white (or at least does not act "too black"). It is precisely this in-between racial identity—that makes a person both recognizable and unrecognizable as a black person—that we employ to ground the story of discrimination this book narrates.

The story is based on a simply yet remarkably overlooked phenomenon: racial identity performances. The notion is that people of color ex-

perience discrimination based not simply on racial phenotype or status (for example, whether a person is discernible as black) but also on racial conduct or performance (for example, whether the black person is perceived to be “too black”).

The importance of distinguishing between status identity and conduct identity has been recognized in the context of sex discrimination. It is understood that a woman's vulnerability to discrimination derives both from her sex (her status as a female) and of her gender (roughly, whether her female status is performed or expressed as masculine or feminine).

Similarly, with respect to sexual orientation, there is recognition that homophobia cannot be adequately understood without taking into account both status and conduct. "Don't Ask, Don't Tell," the policy the military employs to regulate gay and lesbian participation in the Armed Forces, is, at least in part, based on this dichotomy. Lesbian and gay men may serve in the military so long as they neither announce nor sexually performed or otherwise express their sexual orientation. Under Don't Ask, Don't Tell, both status and conduct are important.

By contrast, there has been little attempt to understand racial discrimination as a function of both status and conduct. Indeed, although it is fashionable to spout the rhetoric that race is a social construction, there has been virtual no effort to demonstrate how identity performances shape our understanding of race. This book aims to do just that and in the process broaden how we think about both racial identity and racial discrimination.

While a central point we make is that identity performance matters, we do not want to overstate the claim. After all, much of what we think about race is heavily shaped by broader political, social and legal processes. For example, the notion of black inferiority (which, in addition to being manifested in a variety of racial stereotypes about African Americans, is also sometimes expressed as an explicit idea) is a result not of identity performance but of slavery and Jim Crow. And, whether someone is vulnerable to being racially-typed as inferior turns on whether, based on phenotype, that person is perceived to be black. To put this more simply, phenotype and the meanings we attach it play an enormously important role influencing how we think about race.

But phenotype has never been the sole basis upon which we make decisions about a person's race. This helps to explain the phenomenon of passing—people who are “really” black “falsely” claiming white identity. The idea of blacks passing, or as Cheryl Harris puts it, *trespassing*, makes clear that phenotype is not the only criterion Americans have employed to determine a person's racial identity.

More importantly for the purpose of this book: Even when phenotype is the initial evidence we employ to assigned a person to a particular racial category (e.g., black), that person can always engage in identity performances to challenge the social meaning we typically attribute to that category (e.g., criminality). How much so, is up for grabs. Our point is that is

identity performances are a means through which an individual can perform that challenge.

For example, something as simple as one's choice of clothing can shape the social meaning of one's racial identity. A black man in a department store is much more vulnerable to being stereotyped as a criminal if he is wearing baggy jeans and an oversized t-shirt than if he dressed in a suit and tie. His sartorial choices shape the content of his racial identity. As Dinesh D'Souza puts it, commenting on Cornel West's inability to get a cab, "if he [Cornel West] dresses well he is less likely to be mistaken for criminal." The basic insight--that identity performance shapes racial social meaning--is largely missing in contemporary theories of racial identity and anti-discrimination. We continue to treat race as though it were just a status identity with no performative dimensions. We continue to ignore how perceived racial conduct shapes current racial understandings.

This is a problem. Attention to the status/conduct dichotomy is necessary in today's anti-discrimination world. Thanks to *Brown*, and the civil rights reforms it helped to produce, few employers today are likely to deny employment explicitly based on race as status. Moreover, there is public pressure for employers to racially diversify their staff, particularly at the level of management. Paradoxically, it is in precisely because of this anti-discrimination backdrop why we should be concerned about identity performance.

Again, antidiscrimination law and the reputation costs of maintaining all-white work environments substantially diminish the likelihood that employers will discriminate against *all* blacks. To the extent that today's employer has a taste for discrimination, it is likely that at least some of them will satisfy that taste by discriminating against a subset of blacks, those it perceives to be "too" blacks (we call these "bad blacks") in favor of those it perceives as "acting white" (we call these "good blacks"). Good blacks negate racial stereotypes; bad blacks activate them. Good blacks are palatable; bad blacks are not. To the extent that anti-discrimination law focuses on racial status, this good/bad racial line, and its relationship to stereotyping, escapes judicial scrutiny.

We should be clear to point out that we recognize that there are some institutional settings--or specific scenarios--in which it might be disadvantageous for a black person to be perceived as acting white. Thus, the notion of an "uppity negro," a black person who is perceived to transcend some aspect of black conventionality. Recall that Supreme Court Justice Clarence Thomas claimed that his confirmation hearings were a form of punishment because he was an uppity negro--in this instance, a black person who refused to toe the black ideological line with respect to, among other issues, affirmative action. More generally, the notion is that a black person is vulnerable to being viewed as an uppity negro when he crosses or transcends some racial boundary. All of this is to say, while our book focuses on the advantages of being perceived as acting white and disadvantages of being perceived as being too black, we understand that within some institutions, and under some circumstances, acting white could made

a black person a “bad black.” What is significant for our purposes is that identity performances determine whether people are situated on the right side or the left side of this good/bad racial line.

One implication of our theory of identity performance is that people of color are not passive objects of discrimination. They exercise choices to control the content of their racial character; they shape how people racially see them. People of color understand that to be successful in predominantly white workplaces, they have to negotiate *their* difference (just as gays and lesbians have to negotiate *their* difference (or the closet) to be successful in the military, among other places). An important part of this negotiation involves countering negative racial stereotypes that are often in conflict with institutional norms. Consider, for example, a workplace that takes collegiality seriously. Assume that employees who have difficulty getting along are not promoted. Jason, a black man, wants to get promoted. Like other employees, he will have to demonstrate that he is collegial.

But race complicates things. The stereotype of blacks as non-team-players, complainers and institutional trouble-makers both increases the pressure for Jason to signal that he is collegial and makes it more difficult for his colleagues to experience him in that way. If Jason wants the promotion, he will have to perform his identity to disconfirm the stereotype of the trouble maker black. Why? The short answer is that all of his workplace activities will be evaluated against the background assumption that black people are uncollegial. A hypothetical might help to illustrate this problem more clearly. Let’s say that that Jason believes that that the firm’s hiring policy is bad and that he offers some suggestions as to how the firm might improve it. His colleagues could interpret this institutional behavior positively—as an indication that Jason is engaged in, committed to, and cares about the firm.

However, Jason’s colleagues could also interpret his behavior negatively, as evidencing Jason’s tendency both to go against the grain and to complain about firm practices. Because social psychology tells us that we tend to interpret people’s behavior to confirm our stereotypes about them, the racial stereotype of African Americans as trouble-makers increases the likelihood that Jason’s colleagues will interpret Jason’s behavior negatively. Jason’s awareness of this possibility creates an incentive for him “act white” or at least disidentify with and disassociate from black identity. To the extent that he performs that disassociation and disidentification, he becomes less salient as a black person and he is therefore less likely to activate the trouble-maker/complainer stereotype.

A central claim in this book is that identity performances to disaffirm negative stereotypes can create structural barriers to success in the modern workplace. This is because identity performance is a form of work--shadow work—that, in addition to imposing psychic and emotional costs, limits the employee’s capacity to productively navigate the workplace. Concretely, to the extent that an employee is overly concerned with negating racial stereotypes, he may take on too much work (to prove that he is

not lazy), attend too many social events (to prove that he is "one of the boys"), refuse to ask for help when he needs it (to avoid the impression that he is unqualified), avoid other racial minorities who might mentor him (to diminish his racial salience and to signal that he is colorblind and not committed to racial group association). In short, an employee who is worried about negating racial stereotypes may end up with more work and fewer resources than his white counterparts.

This racial disadvantage is not necessarily the product of conscious racial animus. All of us have implicit biases that shape how we see and think about race.¹ To borrow from Jerry Kang, with respect to race, our perception is far from "immaculate," even when we try to see people as blank racial slates. Thus, the fact that an employer's actions might appear to reflect the notion that blacks are lazy or that Asian Americans are uncreative and disloyal does not mean that the employer's decision was in fact driven by a conscious racial intent.

Nor does the existence of a predominantly white workplace, without more, prove illicit racial motivation. A manager may believe that managing a homogenous workforce is "cheaper" than managing a diverse one. The notion might be that while sameness oils the wheels of an institution, difference causes them to stick. There is a body of empirical scholarship to support this idea. According to this scholarship, employees who believe that they are relatively the same as other employees, trust each other and are more likely to share valuable information and engage in cooperative behavior. From this one reasonably might conclude that, because sameness engenders employee collegiality and cooperation, sameness is more efficient than difference. Assuming this body of work is right, the underrepresentation of people of color in a given workplace need derive from racial animus but from the employer's desire to realize the efficiency gains of sameness or racial homogeneity.

This is not to say that an employer's concerns about efficiency will always result in significant underrepresentation of people of color. Indeed, even to the extent that a firm is interested in efficiency, it will nevertheless hire some people of color. As we explained above, failing to do so could create a public relations problem for the employer. Part of the argument we make is that an employer can avoid this public relations problem by discriminating based on identity performance. To achieve diversity *and* efficiency, the employer simply needs to screen for "but-for" people of color, that is, people of color who but for phenotypic differences, appear to be just like the existing white employees; people of color who look non-white but (appear to) act white.

Note, then, that this screening is not designed to eliminate the *facial* differences of race; the people whom the employer screens in remain, based on phenotype, recognizably non-white. What gets screened out are the perceived performative differences of race—not race per se. Again, what matters to the firm is not whether, for example, the prospective employee looks black, but rather whether he acts too black (or fails to act white). The following hypothetical illuminates what we mean.

Imagine that a firm is interviewing Theresa and Lauren for a job. Stipulate that, in terms of phenotype, both are "equally black." Assume, finally, that the employer perceives Theresa to be Afro-centric and Lauren to be assimilationist. While both hires would further the firm's interest in diversity, the employer could believe that choosing Lauren would allow it meet the demand for diversity without seriously compromising the efficiency of sameness. More particularly, the employer could believe that because Lauren's racial difference is only skin deep, it would not significantly disrupt the homogeneity of the workplace. In this example, Lauren is a good black; Theresa a bad black. Lauren is racially palatable; Theresa is not. Lauren greases the wheels of the institution; Theresa causes them to stick.

A key element of the discrimination story this book narrates is that employment decisions based on intra-group differences ought to be conceptualized as discrimination. By and large, anti-discrimination law focuses on inter-group differences—differences, for example between whites and blacks. Increasingly, however, we are paying attention to intra-group differences—differences, for example, among blacks or among women. Kimberle Crenshaw's work has helped to reveal why this is important. Focusing on black women, Crenshaw demonstrated that, historically, courts took the position that an employer could defeat a black woman's racial discrimination claim by showing that it did not discriminate against black men; similarly, an employer could defeat a black woman's sex discrimination claim by showing that it did not discriminate against white women. The failure on the part of courts to examine the intra-group differences of race and gender (differences among black people based on gender and differences among women based on race) created an anti-discrimination gap through which black women's experiences fell.

Employing the theory of identity performance, this book pushes the intra-group differences insight further. Focusing still on black women, the basic idea is that while it is important to recognize the differences between black women and white women, on the one hand, and black women and black men, on the other, we should not lose sight of the differences that exists among black women based on how they (are perceived to) express or perform their black female identity. The Lauren/Theresa hypothetical reveals how dynamic can play itself out.

A few caveats. Nothing in the above is intended to suggest that there is some authentic way to express identity or that there is some true racial essence. We do not argue, for example, that Theresa is more authentically black than Lauren. Indeed, we are not at all interested in defining the boundaries of authentic racial identities—whatever racial authenticity means.

Nor is it our claim that Theresa has "sold out" but Lauren has not. As Randall Kennedy's recent book demonstrates, there is a real concern within the black community about the practice of labeling people "seel outs." Part of Kennedy's argument is that the widespread employment of the term "sell out" does more harm than good. We do not take a position

this issue. Nor do we make normative judgments about people's self-presentation choices. We do not argue, for example, that some identity performances are good and others are bad. Our concern is with the relationship between identity performances and racial discrimination, not with whether people are "sell outs" (however one defines that).

Finally, in presenting the Theresa and Lauren hypothetical, we do not mean to suggest that people of color are always consciously engaged in identity performances. The fact that incentive exists for black people to "act white" or present their identities in racial palatable ways, does not mean that people are always consciously doing so. Further, apart from whether Theresa or Lauren are intending to perform their identity, how they are racially interpreted by others is going to derive at least in part from the performative aspects of their identity. Peoples' racial impressions of both women are not going to be based entirely on the fact that, in an identity status sense, they are black. In this sense, while Lauren may not intend for her identity to signal racial palatability, relative to Theresa, the employer is likely to experience her in that way based on her self-presentational choices. Lauren does not have to intend to be a "good black" for the employer to perceive her in that way.

The theory of racial identity performance this book develops is grounded in the context of the modern professional workplace. Most of our examples are drawn from the context of a large corporate law firm, but the book is clear that these models are relevant to various other workplaces—e.g., investment banks, management consultancies, and other high level service sector organizations. As will become clear, our aim is not merely to describe the identity performance discrimination problem, but to discuss a variety of solutions—at the level of individual responsibility (what can senior people of color do to help?) institutional reform (how can corporate culture be changed to ameliorate the problem?) and anti-discrimination law (is this a problem anti-discrimination law can and should fix?). Our bottom-line conclusion is that the problem of racial discrimination cannot be adequately addressed unless we begin to see race as a dynamic identity, one that shifts in meaning not simply over time, but from context to context, from personal interaction to personal interaction, from performance to performance.

The remainder of the book is organized as follows. Chapter 1 introduces the identity performance phenomenon by describing the incentives that exist for people of color to work (perform) their identities to disconfirm racial stereotypes. We describe the myriad of strategies an employee might use to respond to these incentives—strategic passing, racial comforting, using stereotypes to one's advantage, and so forth—articulate the costs of these strategies, and explain why the pressure to perform them is racially burdensome.

Chapter 2 explores the subtle ways in which conversations at work are implicated in the identity performance phenomenon. The starting point for the analysis is the claim that negative racial stereotypes constrain the types of conversations people of color can have at work. This is significant be-

cause conversations are crucial to developing a positive workplace identity. Both the quantity and the quality of an employee's work--as well as her overall access to resources--is going to be a function of her workplace conversations, including, her willingness to say yes to employer requests and her capacity to say no.

Chapter 3 makes the point that the identity performance phenomenon does not need to be a product of conscious racial animus. It can derive from the employer's desire to reduce the transaction costs of managing a diverse workplace; difference makes for grit, sameness provides grease. The cost differential between difference and sameness creates an incentive for the employer to screen non-white employees for racial homogeneity and palatability. Here, the employer is looking for people of color who are different in terms of racial status (phenotype) but the same in terms of performance. This chapter identifies the selections mechanisms an employer might utilize to screen these non-whites into the workplace.

Chapter 4 links our theory of identity performance to the theory that inspired it, intersectionality. Intersectionality pushes anti-discrimination law to take account of intra-group differences, differences among people in the same identity group. We work through hypotheticals to demonstrate how the theory of identity performance we develop in the preceding chapters builds on a central insight of intersectionality that intra-group distinctions (and not only inter-group distinctions) are discriminatory.

Chapter 5 focuses more specifically on gender. As mentioned earlier, there is widespread recognition that a women's vulnerability to discrimination is a function of identity performance, or the way she expresses her gender—whether, for example, she is perceived to be masculine or feminine. To demonstrate this point, we focus on a recent case involving a Nevada casino that terminated one its female bartenders because she refused to wear makeup. We illustrate how this case is fundamentally about identity performance, explain how it implicates sex discrimination, and articulate the relationship between this case and the problems of race and identity performance problems this book engages.

Chapters 6 and 7 address solutions. The starting point of Chapter 6 is a critique of the intentional discrimination model that drives current antidiscrimination law. After demonstrating the inadequacy of this model, Chapter 6 offers several approaches the law might take to identify and address intra-racial distinctions based on identity performance. Though each approach would broaden anti-discrimination law, none is completely satisfying.

Thus Chapter 7. It explores whether solutions may lie at the level of the individual. To this end, we ask: How might the presence of people of color in senior management positions ameliorate the discrimination problem detailed in this book? Our answer is pessimistic: the presence of people of color at the top of the corporate hierarchy may do little to help those at the bottom. To put the point more pointedly, incentives exist for people

of color to race to the top of the corporate ladder and lift it up behind them when they get there.

We conclude with a discussion of some of the objections one might reasonably raise with respect to the theoretical positions we stake out. Are we saying that race is mere behavior? Do we mean to articulate a “blame the victim” narrative—that people of color invite discrimination by failing to properly manage and perform their identity? Is it our claim that identity performances are always conscious? Does recognizing the problem of racial identity performance take us down a dangerous slippery slope such that the law would have to recognize all claims to cultural difference? Are we affirmatively advocating a right to difference? Do we believe that identity performances occur solely in the context of the workplace, that outside of the workplace people are free to be their “true” selves (whatever being one’s true self means)? Does the working identity phenomenon apply only to people of color? Are we arguing that people should have a right to be different? Does our focus on identity performance obscure the broader structural problems of race? Are we advancing a normative claim about what race should be? Is our argument an endorsement of multiculturalism? Are we seeking to protect what one might call racial culture? The short answer to each question is no. We elaborate in the conclusion.

¹ For an canvassing of the implicit bias literature, see Jerry Kang, Trojan Horses of Race, [] Havard Law Review. See also Jerry Kang & [], [] (exploring the implication of the implicit bias literature for the affirmative action debate).