

## NOT NECESSARILY IN CONFLICT: AMERICANS CAN BE BOTH UNITED AND CULTURALLY DIVERSE

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In considering whether identity is freedom-limiting or freedom-enhancing, it is important to focus on the interplay between one's identity as an American and one's identity as a member of a particular racial or ethnic subgroup of Americans. Our collective identity as Americans is based on shared values of individual freedom, political democracy, and a commitment to the rule of law. These ideals transcend racial and ethnic differences.<sup>1</sup> They do not, however, eliminate the cultural differences between Americans, nor should they.

Unfortunately, however, some commentators on both the political right and the political left have suggested that one's identity as an American and one's ethnic or racial identity are contradictory or incompatible, and that in order to celebrate one, it is necessary to suppress the other.<sup>2</sup>

There are some commentators on the political right, for example, who wish to ignore and even eliminate most racial and ethnic differences. These commentators incorrectly believe that the suppression of racial and ethnic pride is necessary for effective assimilation.<sup>3</sup> These critics misinterpret the desire to pre-

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1. See Jennifer C. Bracerias, *E Pluribus Unum: We Must All Be Americans First*, LEGAL TIMES, Dec. 24, 2001, at 50.

2. Compare SAMUEL P. HUNTINGTON, WHO ARE WE?: THE CHALLENGES TO AMERICA'S NATIONAL IDENTITY 339–40 (2004) (arguing for assimilation and acculturation of immigrants in order to save the American national identity) with PETER D. SALINS, ASSIMILATION, AMERICAN STYLE 171–72 (1997) (describing the theory of “ethnic federalism” advocated by Louis Farrakhan and Al Sharpton, which places primacy on one's racial subgroup affiliation).

3. See, e.g., HUNTINGTON, *supra* note 2, at 340 (arguing that, in order to reverse the process of decline in the United States, the American people need to renew their Anglo-Protestant identity); PATRICK J. BUCHANAN, THE DEATH OF THE WEST: HOW DYING POPULATIONS AND IMMIGRANT INVASIONS IMPERIL OUR COUNTRY AND CIVILIZATION (2002) (arguing that the United States needs to reclaim its

serve cultural traditions, celebrate the achievements of other group members, or honor a group's distinctive past as a rejection of our shared American culture. They thus find it difficult to understand why, for example, some immigrant parents want their children to learn their native language as well as English; why some Latinos feel special pride in Alberto Gonzales's service as Attorney General of the United States; or why some African-Americans have lobbied for the placement of a National Museum of Black History on the National Mall.

Many of these conservative commentators fear that an emphasis on differences in the *cultural* arena is a slippery slope that will inevitably lead to different—and ultimately unequal—treatment in the *legal* arena. To preserve the idea of equal treatment under the law and the anti-discrimination principle embodied in the text of the Fourteenth Amendment, these conservatives argue that we should ignore race and ethnicity altogether and reject multiculturalism in any form.<sup>4</sup>

If realized, this desire to suppress identity would limit freedom in at least four ways.

First, it would limit the freedom of individuals to celebrate their culture and history in the ways they see fit.

Second, it would limit the freedom of minority groups to honor members of their community and to highlight successful models of assimilation into the American mainstream.

Third, it would limit academic and intellectual freedom to study various racial or ethnic cultures.

Fourth, it would limit the freedom to engage in democratic politics, which is inherently and necessarily a collection of factions or identity group interests.<sup>5</sup>

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common culture and its Judeo-Christian values in order to prevent the fall of American civilization).

4. This perspective goes well beyond opposition to racial preferences. *See, e.g.*, Brief of Amicus Curiae The Claremont Institute Center for Constitutional Jurisprudence at 23–25, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (Nos. 02-241, 02-516) (arguing that racial distinctions and classifications are fundamentally at odds with the equality principle of the United States Constitution). Indeed, from this perspective, the mere *collection* of sociological racial and ethnic data is considered perverse. *See, e.g.*, Evelyn Nieves, *California Battles over Racial Identification*, WASH. POST, Sept. 13, 2003, at A4 (describing California's Proposition 54, the "Racial Privacy Initiative," which, if passed, would have amended the state constitution to bar "most governmental agencies in California from gathering information on a person's race, ethnicity or national origin").

5. *See* Richard Parker, *Five Theses on Identity Politics*, 29 HARV. J.L. & PUB. POL'Y 53, 53–54 (2005).

But, while the suppression of ethnic identity is freedom-limiting in these and other respects, the exaltation of ethnic identity over all else<sup>6</sup> poses an even greater danger to the American polity and to freedom generally.

First, an overemphasis on racial and ethnic identity does, as some conservatives fear, undermine our national identity as Americans. When schools fail to inculcate American values, giving short shrift to the history of the American Revolution, the American Civil War, and the American Civil Rights Movement, while emphasizing the history of Africa, Latin America, or Asia, they are severing the ties that bind Americans together in the name of diversity. This is simply wrong.

Second, an overemphasis on racial or ethnic identity encourages segregation in schools, the workforce, the political sphere, and elsewhere. It encourages school districts to herd Latino students into failed bilingual education programs that reinforce the retention of foreign customs and language at the expense of learning English.<sup>7</sup> It encourages employers to relegate Latinos and African-Americans to ethnic enclaves, requiring them to work primarily on minority issues.<sup>8</sup> And it encourages legislatures to draw up racially gerrymandered political districts that serve only to marginalize minority voters.<sup>9</sup>

Third, an overemphasis on subgroup affiliation can, at times, promote a culture of victimhood. Those who define themselves first and foremost by race or ethnicity often naturally come to view themselves not as active participants in civic society, but as part of a disadvantaged and powerless—even disenfranchised—minority. This perspective not only leads to political apathy, it threatens to prevent many individuals from becom-

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6. See, e.g., HUNTINGTON, *supra* note 2, at 316–24 (noting that some Hispanic activists advocate the rejection of assimilation into America's Anglo-Protestant culture and a separate "cultural citizenship" involving "a distinct space for Latinos") (citations omitted); SALINS, *supra* note 2, at 167–82 (observing the existence of the antiassimilation or "ethnic federalism" movement present in the African-American community).

7. See, e.g., ARTHUR M. SCHLESINGER, JR., THE DISUNITING OF AMERICA 108 (1992); Susan Headden, *Tongue-Tied in the Schools*, U.S. NEWS & WORLD REP., Sept. 25, 1997, at 44; SALINS, *supra* note 2, at 175–76, 188–89.

8. For example, in the name of diversity, a Hispanic reporter might be assigned to cover stories of interest to the Latino community instead of stories related to business and finance; likewise, an African-American law professor might be expected to teach classes on civil rights rather than corporate law.

9. See generally ABIGAIL THERNSTROM, WHOSE VOTES COUNT?: AFFIRMATIVE ACTION AND MINORITY VOTING RIGHTS (1987).

ing part of the American mainstream and reinforces regrettable segregationist impulses.

Fourth, an overemphasis on racial or ethnic identity promotes stereotypes and limits the freedom of individual members of those ethnic and racial groups. When society encourages people to define themselves primarily by racial and ethnic characteristics, a presumption arises that members of those groups share common values. Although this is often true *as a descriptive matter*, particularly in the cultural arena, the danger lies in the assumption that ethnic authenticity can and should be measured *as a normative matter* by a person's adherence to a particular political orthodoxy.

The dangers of this approach can be seen most publicly in the context of nominations to the judiciary and other top governmental posts. Take, for example, the treatment of conservative minorities, such as Supreme Court Justice Clarence Thomas or attorney Miguel Estrada, President Bush's failed nominee to the United States Court of Appeals for the District of Columbia Circuit. Many on the political left have attacked Justice Thomas for being a black conservative, with some critics going so far as to call him an "Uncle Tom" and an "embarrassment to the Court."<sup>10</sup> Likewise, some on the political left have been particularly vitriolic in their criticism of Mr. Estrada, who has been described as Hispanic "in name only."<sup>11</sup>

Make no mistake about it: The public criticism of blacks and Latinos who dissent from the liberal orthodoxy is different in kind than the criticism directed at white conservatives.<sup>12</sup> As

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10. See KEN FOSKETT, *JUDGING THOMAS: THE LIFE AND TIMES OF CLARENCE THOMAS* 270 (2004) (describing vitriolic criticism of Justice Thomas); Michael A. Fletcher, *Reid Says He Could Back Scalia for Chief Justice*, WASH. POST, Dec. 7, 2004, at A4 (reporting Senate Minority Leader Harry Reid's criticisms of Justice Thomas).

11. *A Setback for Schumer*, N.Y. POST, Feb. 1, 2003, at 16 (reporting Senator Charles Schumer's description of Estrada as Latino "in name only"). See also Jennifer Braceras, *Misguided Judicial Politics*, WASH. TIMES, Feb. 14, 2003, at A21 (describing the mistreatment of Estrada by Democratic senators); Kathryn Jean Lopez, *Power Struggle: Hispanic Republicans in Congress Have Banded Together to Challenge the Powerful Congressional Hispanic Caucus*, HISP. MAG., Aug. 2003, at 21-22 (discussing the response of Republican Latinos in Congress to the Democratic attack on Estrada).

12. For example, people often criticize Justice Thomas while, virtually in the same breath, praising Thomas's colleague and fellow conservative Justice Antonin Scalia. See, e.g., Fletcher, *supra* note 10 (reporting comments of Senate Minority Leader Harry Reid praising the intelligence of Justice Scalia and criticizing Justice Thomas as "an embarrassment to the Court").

Professor Stephen Carter of the Yale Law School has written of the difference in the treatment of white and black conservatives, "To be white and conservative is to be a part of the American mainstream. To be black and conservative is to be a part of the lunatic fringe."<sup>13</sup>

For many on the political left, then, identity has become a means of control, a tool for enforcing conformity. Only those Latinos or African-Americans who genuflect to the liberal establishment are considered "authentic." Those whom the left cannot control are considered "self-haters" or "race-traitors" who should be blocked from public service. In this sense, racial and ethnic identity, as defined by the liberal political elite, has become not only a freedom-limiting concept, but a discriminatory one as well.

Racial and ethnic identity is not irrelevant. As Americans, we cannot ignore our roots. But, although racial and ethnic identity can be something to celebrate, we must be careful to prevent cultural appreciation from evolving into cultural stereotypes that marginalize individuals or become weapons of political control.

What is the best way to strike the balance between multiculturalism, on the one hand, and national unity, on the other?

First, our laws must remain color-blind. To avoid creating resentment between racial and ethnic groups, the legal system must treat all similarly situated Americans the same. This is necessary not only to preserve freedom, but to preserve the rule of law.

Second, it is essential that as a society, we take steps to reinforce the ties that bind citizens together. This can be done by teaching and honoring America's history, government, and the principles of participatory democracy.<sup>14</sup>

Third, we must recognize that although America's laws and social policies must be color-blind, our culture need not be. Individuals do not threaten national unity by celebrating and sharing their distinct cultural traditions or establishing organi-

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13. STEPHEN L. CARTER, REFLECTIONS OF AN AFFIRMATIVE ACTION BABY 154 (1991).

14. See SCHLESINGER, *supra* note 7, at 134 ("The genius of America lies in its capacity to forge a single nation from peoples of remarkably diverse racial, religious, and ethnic origins. It has done so because democratic principles provide both the philosophical bond of union and practical experience in civic participation.").

zations aimed at advancing the interests of one ethnic community or another. To the contrary, as the great liberal historian Arthur Schlesinger has written, “[w]ithin the overarching political commitment, people are free to live as they choose, ethnically and otherwise.”<sup>15</sup> This is the very essence of freedom.

Striking the balance between multiculturalism and national unity is not easy.<sup>16</sup> Despite the difficulty of the task, the best way to preserve freedom for all Americans is to maintain a neutral legal system and honor our common culture while simultaneously encouraging all citizens to treasure their distinctive traditions.

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15. *Id.* at 135.

16. *See id.* at 138 (“The question America confronts as a pluralistic society is how to vindicate cherished cultures and traditions without breaking the bonds of cohesion . . .”).