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Alfred C. Yen

Boston College Law School, alfred.yen@bc.edu

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Unhelpful

Alfred C. Yen*

Professor Jim Chen apparently cares deeply about racial harmony in America and has strong ideas about how to achieve the utopia he imagines. It's a pity, then, that his article *Unloving*¹ contributes so little to honest discourse about that subject.

The backdrop for this negative reaction to *Unloving* is the sorry state of race discourse (and political discourse more generally) in America today. Race is a difficult, complicated problem, and reasonable people of good will disagree passionately over the best ways to end racial injustice. Ideally, those who disagree ought to engage in honest, respectful, and open-minded dialogue in the hope of finding common ground. In this conversation, each participant would treat the others with respect and make a sincere effort to fairly consider all arguments being made.

Unfortunately, the dialogue I envision rarely happens in America, at least not in public. Americans live on sound bites. Too few want to listen to thoughts that take more than ten seconds to express. In this environment, reasoned persuasion often fails. Not surprisingly, those interested in affecting public opinion have started abandoning reasoned persuasion in favor of so-called "attack ads."²

Consider these all too familiar arguments from present day attack politics: Pro-life advocates want to kill women who seek safe abortions by forcing them to "back alley butchers."³ Pro-choice advocates want to murder babies.⁴ Death penalty opponents coddle criminals.⁵ Death

* Associate Professor of Law, Boston College Law School. The author would like to thank Jerry Kang, Avi Soifer, and Karin Yen for their helpful comments. Thanks are also owed to Ellen Majdloch for her able research assistance and to Keith Aoki for organizing this Colloquy.

1. Jim Chen, *Unloving*, 80 Iowa L. Rev. 145 (1994).

2. See Tom Mashberg, *Political soul-searching follows traumatic exits of democratic statesmen*, Boston Herald, Nov. 12, 1995, at 4 (analyzing link between violence and hate in political discourse); see also Robert Reno, *Did Someone Say Politics?*, The Record, Aug. 24 1994, at A24 (describing "a new and pernicious form of partisanship").

3. See, e.g., *Keep Government out of Bedrooms*, Montgomery Advertiser, Mar. 15, 1996, at A10 (characterizing pro life legislation as "a death wish to the very poor, low income teenage girl or woman" and describing a woman as the victim of a "back alley butcher" in an editorial from the local Planned Parenthood chapter).

4. See, e.g., *Letter to the Editor*, St. Louis Post-Dispatch, May 10, 1995, at B6 ("Dr. Henry Foster, with his 39 abortions under his belt, has personally murdered more human beings than Jeffrey Dahmer and probably as many children as Timothy McVeigh, but who gets the positive press?"); Fredrick S. Arnold, *Putting Murder Rate in Perspective*, Nashville Banner, Jan. 3, 1996, at A4 ("Is it somehow horrible if you 'drive by' and shoot an innocent child, but a 'non-event' if you kill thousands of babies by abortion?").

5. See, e.g., *The Truth Test: U.S. Congress*, Austin Am. Statesman, Oct. 20, 1994,

penalty supporters are bloodthirsty savages.⁶ Affirmative action advocates seek handouts for undeserving people at the expense of honest, innocent citizens.⁷ Affirmative action opponents are all racists.⁸

These attack arguments share the perversely effective strategy of persuasion through mischaracterization. Mischaracterization works because it helps the attack advocate avoid fair debate about the issues in dispute. Indeed, a "properly mischaracterized" opponent becomes a distorted, absurd caricature of her true self—a straw person whose ideas can easily be dismissed as bizarre, dangerous, and evil. This makes it easy for the attack advocate to claim that he or she is right. For example, most pro-choice advocates do not want to kill babies. Many sincerely believe that human life has not yet begun at the time abortions occur.⁹ Perhaps they are mistaken in this belief, but there is a big difference between acting on a mistake and callously murdering babies. It is difficult to win an argument about when human life begins, but it is easy to win an argument about whether killing babies is desirable. That is why the "attack" pro-life advocate finds it advantageous to call pro-choice advocates baby killers.

Attack ads are troubling because they contribute almost nothing to honest debate. They inflame passion while avoiding the truly relevant issues, thereby damaging the frank and fair dialogue that supports democracy. In my opinion, Professor Chen's *Unloving* is particularly unhelpful because it is an attack ad with scholarly pretensions. People who ignore attack ads obviously look elsewhere for thoughtful analyses of public issues. Presumably, academic scholarship is one of the places to which they look. Academics understand that knowledge and understanding emerge when all relevant arguments are fully and fairly considered. That is why people take scholarly writings seriously. They expect academics to be more careful with the facts than political consultants. Perhaps those who seek

City/State section, at 6 (criticizing a political advertisement which denounced the candidate as someone who "coddles criminals" because of opposition to the death penalty); House Rejects Republican Bid to Revise Crime Bill, Reuters, Apr. 13, 1994 (reporting that Republicans criticized proposed legislation for "coddling criminals" in part because the legislation allowed death penalty appeals).

6. See, e.g., Reno, *supra* note 2, at A24 (describing the crime bill as containing "more death penalties for the bloodthirsty").

7. See, e.g., David Brudnoy, *Affirmative Action Must Go*, Boston Herald, Mar. 8, 1995, at 25. Brudnoy writes:

If we accept the fact that affirmative action functions both to punish the innocent and to reward the undeserving, and if we accept that merit is the one approach to providing rewards and the like that doesn't entangle us in a spider's web of disaster, then any supposed "reform" of affirmative action must avoid all these disabilities.

Id.

8. See, e.g., CNN television broadcast, June 13, 1995 (discussing polarization of affirmative action debate and noting argument that anybody who "oppose[s] affirmative action [is] . . . racist") (transcript on file with Iowa Law Review).

9. See, e.g., Editorial, Chapel Hill Herald, Aug. 9, 1995, at 4 (arguing for a distinction between murder and abortion).

thoughtful analysis will take *Unloving* seriously because a respected academic law review published it. This would be most unfortunate, because *Unloving's* mischaracterization and distortion overwhelm any contributions it might make to debates over race issues.

Professor Chen uses *Unloving* to attack an intellectual movement which he calls "racial fundamentalism."¹⁰ According to Professor Chen, racial fundamentalism "rests on racial 'classifications so directly subversive of the principle of equality at the heart' of the American enterprise that racial fundamentalism must be condemned as an abandonment of multiracial parity and as an endorsement of racial purity."¹¹ These harsh words imply that racial fundamentalism is a dangerous, racist way of thinking. However, Professor Chen never defines racial fundamentalism except to say that it has a single maxim: "Dark skin good, white skin bad."¹² Instead, he proceeds by analyzing specific examples of racial fundamentalism, and it is this analysis which makes *Unloving* an unfair attack on Professor Chen's intellectual opponents.

Professor Chen's primary example of racial fundamentalism is Professor Robert S. Chang's *Towards an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*.¹³ In this article, Professor Chang announces an "Asian American Moment," a time when Asian American scholars will add an Asian American voice to legal scholarship by writing about social and legal problems that affect Asian Americans from a distinct Asian American perspective.¹⁴ According to Professor Chang, this scholarship is important for two reasons. First, the oppression of Asian Americans generally goes unnoticed and cannot be erased until it is recognized.¹⁵ Second, the oppression faced by Asian Americans is different from oppression faced by other groups.¹⁶ Thus, we enrich the understanding of oppression in America by studying the oppression of Asian Americans.¹⁷

Professor Chang's scholarly agenda distresses Professor Chen.¹⁸ This is perfectly understandable—up to a point. If Professor Chang wants to proclaim an Asian American moment, it is fair to doubt if a diverse Asian America shares enough in common to make the effort worthwhile.¹⁹ Also,

10. Chen, *supra* note 1, at 149 (citations omitted).

11. *Id.* (quoting *Loving v. Virginia*, 388 U.S. 1, 12 (1967)).

12. *Id.* at 155.

13. Robert S. Chang, *Towards an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 Cal. L. Rev. 1241 (1993).

14. *Id.* at 1245-46, 1249-50, 1265-68.

15. *Id.* at 1258-65.

16. *Id.* at 1247-50.

17. *Id.* at 1250.

18. Professor Chen "reflexively recoiled" when he read *Towards an Asian American Legal Scholarship*. Chen, *supra* note 1, at 145. And, despite wanting not to address the many issues raised in Professor Chang's article, Professor Chen just could not leave it alone. *Id.* at 149.

19. *Id.* at 154 (describing an "illusion" that Asian Americans "respond monolithically to whatever common legacy of discrimination they share").

if Professor Chang wants to suggest that Asian American law professors have a duty to join this movement,²⁰ it is fair to ask why any Asian American professor should feel guilty about pursuing research that he or she finds more interesting or important.²¹

Without question, Professor Chen could have engaged Professor Chang in an interesting and lively debate about the issues over which they disagree. I suspect that Professor Chen could have convinced a number of people that he is right; indeed, I do not agree with everything Professor Chang says. However, Professor Chen lost credibility by failing to engage Professor Chang and his ideas fairly. Instead, in an effort to annihilate (and not merely refute) Professor Chang, Professor Chen adopts the rhetorical tools of attack politics—mischaracterization and distortion.

Consider first Professor Chen's assertion that Asian American legal scholarship (like all "racial fundamentalism") commands all Asian Americans to reflexively shun white culture and white people.²² Professor Chen writes:

Dissent undermines the collective crusade for colored power, for "it is only through solidarity that we will one day be free to express our diversity." Meanwhile, counter-revolutionary thoughts, especially if expressed by recalcitrant "scholars of color," must be suppressed. Speech becomes a linguistic whip by which the lords of racial fundamentalism drive individuals into the appropriate racial herds. Under the prevailing state of siege, any nonwhite who speaks, thinks, does anything defined as "white" suffers from pitiable epidermis envy. Hence the insults "Oreo" and "banana"—appropriately colored on the outside, but white on the inside. Genuine diversity withers in an academic world where it is possible to "look Black" but "think White."

The tenets of racial fundamentalism can thus be reduced to a single maxim: Dark skin good, white skin bad.²³

Like many clever attack arguments, this passage contains a grain of truth. Professor Chang does claim that Asian American law professors have a responsibility to study Asian American issues.²⁴ To the extent that this suggests a mandatory scholarly interest for all Asian American professors, Professor Chen has a point. I don't think that all Asian American professors have a moral responsibility to pursue Asian American issues, although I do think that the area is very worthy of study because it is so interesting and important. Professor Chen, however, does not restrict himself to a fair argument about this issue. Instead, he unfairly attacks Professor Chang as requiring all Asian Americans to think monolithically

20. Chang, *supra* note 13, at 1246, 1300 ("It is our responsibility to bring our forebears back from the silence in which they have been placed. We must recognize that the early Asian immigrants were brave enough to raise their voices. We can do no less.").

21. Chen, *supra* note 1, at 146.

22. *Id.* at 155-56.

23. *Id.* (footnotes omitted) (quoting Chang, *supra* note 13, at 1322).

24. Chang, *supra* note 13, at 1246, 1300.

about race and to scorn whites.

The distortion which supports Professor Chen's attack becomes clear upon reading Professor Chang's words in context. Professor Chen quotes Professor Chang in the following sentence: "Dissent undermines the collective crusade for colored power, for 'it is only through solidarity that we will one day be free to express our diversity.'"²⁵ Professor Chen clearly states that Professor Chang and his ilk will tolerate no dissent from other Asian Americans because it will harm the cause of diversity.²⁶ However, Professor Chang never makes the claim that Professor Chen attributes to him. Instead, Professor Chang's writing recognizes and celebrates diversity in Asian American thinking. Consider first the entire three sentence paragraph from which Professor Chen quotes:

Tremendous diversity exists within the category "Asian American." And tremendous diversity exists among the disempowered. We must remember, though, that it is only through solidarity that we will one day be free to express our diversity.²⁷

Consider further this clear statement in favor of diversity:

A diversity of views exists within Asian American Legal Scholarship. This diversity is inevitable, and it is indeed desirable because diversity, a term not synonymous with divisiveness, serves as a source of strength. This diversity can be seen in the different responses of Asian Americans to oppression. Although these responses may be in conflict, and sometimes may even become hostile, the very existence of a discussion moves Asian American Legal Scholarship forward.²⁸

These words show that, contrary to Professor Chen's assertion, Professor Chang does not want all Asian Americans to think alike. When Professor Chang talks about solidarity, he does not mean that all Asian Americans must dislike white people to further a cause. He simply wants Asian American law professors to think and write about Asian American legal issues, even if they disagree with him about the existence of discrimination against Asian Americans. This is a position far less extreme than the one Professor Chen belittles.

Professor Chen further demonstrates his unwillingness to fairly discuss Professor Chang's views by linking Asian American legal scholarship to biological determinism.²⁹ Professor Chang describes Asian American legal scholarship as a reaction to discrimination and oppression experienced by Asian Americans in America.³⁰ When Asian Americans come to America,

25. Chen, *supra* note 1, at 155 (quoting Chang, *supra* note 13, at 1322).

26. *Id.* at 155-56.

27. Chang, *supra* note 13, at 1322.

28. *Id.* at 1315. For additional examples of Professor Chang's caution, see *id.* at 1245 n.7, 1247 n.13, and 1282-83 n.200.

29. Chen, *supra* note 1, at 159-61. Professor Chen writes, "The popular conception of race persists in treating human ethnic difference as the product of a rigid, static biological mechanism." *Id.* at 159.

30. *See, e.g.*, Chang, *supra* note 13, at 1251-67 ("[O]ne of the tasks of Asian American

they have diverse perspectives as Chinese, Koreans, Japanese, Cambodians, and so on. Many other Americans, however, do not see Asian Americans as Vietnamese, Thai, or any other Asian nationality. They simply see "Asians."³¹ Accordingly, other Americans usually treat all Asians uniformly, especially with regard to discrimination.³² This generally uniform treatment means that Asian Americans who may have shared few common experiences before coming to America share a very powerful, disturbing experience when they get to America.³³ Since experience shapes human perspectives, Asian Americans who share common experiences of discrimination wind up having their perspectives shaped in similar ways. In this specific, limited and important way, a common scholarly perspective emerges.³⁴

From what I can tell, Professor Chen objects to Professor Chang's Asian American legal scholarship because the posited existence of an Asian American scholarly perspective implies that Asian Americans are somehow distinct from other Americans.³⁵ Indeed, Professor Chang's pessimism over the possibility of genuine racial assimilation³⁶ suggests that this distinction may be permanent. This disturbs Professor Chen because he is a firm believer in the value and possibility of a single, non-hyphenated American identity.³⁷ To the extent that Professor Chang despairs of a colorblind society, he rejects the possibility of the racial utopia that Professor Chen envisions.

The differences between Professors Chen and Chang give Professor Chen another opportunity to engage in fair debate with his intellectual

Scholarship is to break the silence that surrounds our oppression."); *id.* at 1286-1314.

31. *Id.* at 1245 n.7, 1312-14.

32. Professor Chang cites the well-publicized case of Vincent Chin, a Chinese man who was beaten to death by two Detroit auto workers who wanted to extract revenge against the Japanese. To those killers, it was enough that Vincent Chin had any Asian ancestry. For them, Asian meant Japanese, and Japanese meant Asian. *Id.* at 1252-53; *see also* Note, Racial Violence Against Asian Americans, 106 *Harv. L. Rev.* 1926, 1932, 1938-39, 1941 (1993) (describing the tendency of many to see Asian Americans as fungible).

33. Chang, *supra* note 13, at 1314:

Upon this realization, I begin to understand that I am not so different from that Filipino man who did not get a job because of his accent or those Asian Americans who do not vote because they cannot read the English-only ballots. I begin to understand that all oppression is connected and that its roots lie in the past.

34. *See id.* at 1314-15:

The time has come to announce once again an Asian American Moment. With it comes an Asian American Legal Scholarship, which includes writing law review articles, writing briefs in the civil rights context, and teaching law school courses. Through these media, we have the opportunity to speak our oppression into existence.

35. Chen, *supra* note 1, at 157-58.

36. Chang, *supra* note 13, at 1318-19 n.403.

37. *See generally* Neil Gotanda, A Critique of Our Constitution as Colorblind, 44 *Stan. L. Rev.* 1 (1991).

opponent. To his credit, Professor Chen does dispute Professor Chang's assertion that a distinct Asian American perspective arises from a shared experience of oppression,³⁸ and he is adamant in his belief that marriage across racial lines will quickly erase any existing racial or ethnic differences which presently exist.³⁹ Unfortunately, Professor Chen does not restrict himself to making these arguments. Instead, he again mischaracterizes Professor Chang's beliefs as far more extreme than those expressed in Professor Chang's article.

In particular, Professor Chen attacks both the possibility and the permanence of Asian American perspectives by claiming that "[r]acial fundamentalism warmly embraces a static, biologically foreordained vision of race."⁴⁰ The implications of this statement are clear. Professor Chang and his ilk believe that a distinct Asian American perspective exists because Asian ancestry biologically leads to a particular way of thinking.⁴¹ This perspective is permanent because the laws of nature which govern genetic development cannot be changed. Professor Chen then criticizes this view because "biologists have systematically shown that genetic differences *within* racial and ethnic groups overwhelm the genetic differences between such groups."⁴²

Professor Chen's argument would be powerful if it actually responded to Professor Chang's thoughts. Professor Chen is right to note that the mere fact of Asian ancestry does not *biologically* determine a person's thinking. However, Professor Chang never comes close to claiming that biological destiny creates Asian American legal scholarship. As noted earlier, he believes that human reactions to social phenomena create Asian American perspectives, not biology.⁴³

Professor Chen's final tie to attack politics is his argument that "racial fundamentalists," including Asian American scholars, would support the overruling of *Loving v. Virginia*,⁴⁴ the case which declared state laws prohibiting marriage across racial lines unconstitutional.⁴⁵ First, Professor

38. Chen, *supra* note 1, at 155 ("What I have written so far should shatter any illusion that American immigrants from Asia respond monolithically to whatever common legacy of discrimination they may share.")

39. *See id.* at 149-54. On whether this will be effective, see Natsu Saito Jenga, *Unconscious: The "Just Say No" Response to Racism*, 81 *Iowa L. Rev.* 1503, 1518-19 (1996).

40. Chen, *supra* note 1, at 161.

41. *Id.* at 161-62 ("The allied school of multicultural particularism seeks to immerse 'children from minority backgrounds . . . in a positive prideful version of their ancestral culture' on the assumption that 'something in their blood or their race memory or their cultural DNA defines who they are and what they may achieve.'") (quoting Diane Ravitch, *Multiculturalism: E Pluribus Plures*, 1990 *Am. Scholar* 337, 340-41).

42. *Id.* (emphasis added).

43. *See supra* notes 27-31 and accompanying text.

44. 388 U.S. 1 (1967).

45. Chen, *supra* note 1, at 167 ("Would some racialists, if forced to make a yes or no decision, reject *Loving* outright? Perhaps. . . . The fundamentalist vision of race dictates as much.")

Chen creates the impression that some scholars of color actually oppose *Loving* when the contrary is true. Professor Chen writes:

What Robert Chang merely suggests, Derrick Bell articulates: "Reservations about and opposition to mixed marriages and sexual liaisons can be found in black . . . communities. It is also a controversial subject in Asian and Hispanic communities." Buoyed by this opposition and "the testimony of [allied] psychiatrists and social scientists," Bell suggests that "a state might appropriately and legally impose different standards for interracial marriages." Not only does the creationist instinct in racial fundamentalism expect at a descriptive level that like will cleave to like, but it also affirmatively prescribes the practice.⁴⁶

This passage implies that black, Asian, and Hispanic racism is the primary obstacle to racial intermarriage, and that Professor Bell supports this result. However, Professor Chen's assertion rests on a significant distortion of Professor Bell's writing. As an initial matter, Professor Chen's ellipses mark the omission of four important words. The entire sentence reads, "Reservations about and opposition to mixed marriages and sexual liaisons can be found in black *as well as white* communities."⁴⁷ This omission makes it possible for Professor Chen to suggest that Professor Bell endorses racist behavior by people of color when Professor Bell is simply describing behavior common to all racial groups. Additionally, Professor Bell writes, "One would hope that more than two decades after *Loving*, reservations might be limited to family-level matters and no longer manifest themselves in discriminatory public policies."⁴⁸ It makes no sense to interpret such a sentence as opposition to *Loving v. Virginia*, yet Professor Chen does not even acknowledge this sentence in his writing.⁴⁹

Second, Professor Chen contends that racial fundamentalists have to reject *Loving* because their views about race are incompatible with racial intermarriage. Professor Chen begins this line of argument by noting that some scholars of color oppose transracial adoption.⁵⁰ As Professor Chen correctly notes, a major argument against transracial adoption is that a nonwhite child will develop a healthier racial identity and better learn how

46. *Id.* at 163 (citations omitted).

47. Derrick Bell, *Race, Racism and American Law*, § 2.1, at 65 (3d ed. 1992) (emphasis added).

48. *Id.*

49. For a more in depth analysis of this section of Professor Chen's writing, see Peter Kwan, *Unconvincing*, 81 *Iowa L. Rev.* 1557, 1559-61 (1996).

50. The normative desirability of transracial adoption is controversial, and I do not take a position on the merits of the debate. For arguments on both sides of the debate, compare Elizabeth Bartholet, *Where do Black Children Belong? The Politics of Race Matching in Adoption*, 139 *U. Pa. L. Rev.* 1163 (1991) (supporting transracial adoption) with Ruth-Arlene W. Howe, *Redefining the Transracial Adoption Controversy*, 2 *Duke J. of Gender L. & Pol'y* 131 (1995) (opposing transracial adoption) and Twila Perry, *The Transracial Adoption Controversy: An Analysis of Discourse and Subordination*, 21 *N.Y.U. Rev. L. & Soc. Change* 33 (1994) (opposing transracial adoption).

to cope with racial discrimination if raised by parents of the same race.⁵¹ For better or worse, America generally resists assimilation by nonwhite people. Nonwhite children must therefore establish healthy identities as outsiders. Race-matching between adoptive parents and child is therefore desirable because social conditions give race-matched parents a better chance of being successful parents. Parents who have faced discrimination will more likely be able to teach their children how to cope with discrimination than parents who have not.⁵²

The arguments made by those opposed to transracial adoption may or may not be persuasive, but their intellectual premise is clear. Race-matching is a desirable response to social conditions that presently exist.⁵³ Thus, it makes sense for Professor Chen to make his points by analyzing whether the same reasoning requires the rejection of *Loving*. Professor Chen, however, does not restrict himself to the analysis of desirable responses to social conditions.⁵⁴ Instead, he also suggests that his intellectual opponents support race-matched adoptions because these adoptions follow some "natural" biological order.⁵⁵ He then extends this

51. Chen, *supra* note 1, at 167-69.

52. See Howe, *supra* note 50, at 133 (noting race is considered in adoption); Perry, *supra* note 50, 61-65 (arguing that African American children need African American parents to teach them to survive in a racist society). Howe writes:

Thus, to promote and protect a child's 'best interests,' race is an important factor to be considered when evaluating the appropriateness of prospective adoptive parents. Does the person have the awareness, capacity, and sensitivity to prepare the nonwhite child to handle the challenges that will be encountered because of the child's racial appearance?

Howe, *supra* note 50, at 133.

53. Howe, *supra* note 50, at 133.

54. In other parts of his article, Professor Chen states his apparent belief that racism is not a serious problem in America. For example, he writes that "we Americans have achieved the minimal, formal prerequisites for egalitarian colorblindness." Chen, *supra* note 1, at 150. Similarly, he writes that "multicultural America must surely venerate the 'half-breed' survivors who endured and eventually conquered racism." *Id.* at 153. However, Professor Chen does not repeat this belief nor explicitly refer to it in his argument in favor of transracial adoption. See *id.* at 168.

55. *Id.* at 168 ("[P]roponents of race-matching in child placement have glorified and legitimated the primitive instinct that a child must physically resemble his or her parents."); see also Bartholet, *supra* note 50, at 1172 (stating that racial matching policies reflect "biologism"—the idea that what is 'natural' in the context of the biological family is what is normal and desirable in the context of adoption"). Professor Chen provides no citation to an opponent of transracial adoption who states that a child "must physically resemble his or her parents." Chen, *supra* note 1, at 168. Instead, he offers a quote from Wagner's *Siegfried*. *Id.* at 168 n.155. The "best" support that I have been able to find for any glorification of a "primitive instinct" is the statement of the National Association of Black Social Workers which asserted that black children "belong physically, psychologically and culturally" in black families. Joan Mahoney, *The Black Baby Doll: Transracial Adoption and Cultural Preservation*, 59 UMKC L. Rev. 487, 489 (1991) (quoting National Ass'n of Black Social Workers, Inc., *Preserving Black Families: Research and Action Beyond the Rhetoric* 31 (1986)); National Association of Black Social Workers, *Position Paper* (April 1972), in Bartholet, *supra* note 50, at 1180 n.29 (1991). At best, this statement faintly suggests a biological argument against

reasoning into child custody and marriage. According to Professor Chen, "the logic underlying race-matching in adoptions dictates awarding custody to the darker parent" when a mixed-race couple with children divorces.⁵⁶ After that, Professor Chen claims that a person of color who favors race matching in adoption and child custody cannot in good conscience marry outside his or her own race!⁵⁷ If you are a person of color and marry a white person, you run an unacceptable risk that your children (who are not white) will be raised by whites if you pass away.⁵⁸ This is unacceptable under the principles of race-matched adoptions because nonwhite children owe a "blood-borne cultural allegiance"⁵⁹ to their nonwhite roots. In short, a person cannot consistently support race-matched adoptions and racial intermarriage because the former requires a biological law of destiny which the latter violates.⁶⁰

Of course, the problem for Professor Chen is that no "racial fundamentalist" actually takes the improbable logical leaps that Professor Chen performs. Moreover, it is unfair for Professor Chen to argue that his intellectual opponents necessarily oppose interracial marriage when it is easy to distinguish transracial adoption from interracial marriage and biracial families. As Professor Ruth-Arlene Howe—a clear opponent of transracial adoption—states in her article:

[I]t is one thing for an adult to choose to enter into an interracial or interreligious marriage or relationship, or even to elect deliberately not to identify with one's racial or ethnic group. Those are adult decisions. The biracial child of an intact family has the opportunity to be connected through each parent to her mixed heritage without any cloud of uncertainty or feelings of abandonment so frequently a part of the adoptive experience. The question I find most troubling is whether it is appropriate, fair, and equitable virtually to eliminate a full range of future choices and to create difficult obstacles for the Black child adoptee who, as an adult, may have to cope with a social experience and psychic incongruity similar to that described by [a black man raised by white parents].⁶¹

Professor Chen finishes his article with a stinging, but unwarranted, rebuke. All "racial fundamentalists," including Professor Chang, are wrong because they oppose interracial marriage. Professor Chen "def[ies] racial fundamentalists to defend an attitude that does not suffer interracial

transracial adoption. To me, that possibility is overwhelmed by the use of the words "psychologically and culturally."

56. Chen, *supra* note 1, at 169.

57. *Id.* at 170.

58. *See id.* ("In fact unless you wish to risk casting your child entirely outside your own ethnic heritage, you simply can't marry outside your own race.")

59. *See id.* ("The biological offspring of an Asian American and a black will owe a blood-borne cultural allegiance to Africa, not Asia.")

60. *Id.*

61. Howe, *supra* note 50, at 160.

families to form.”⁶² Moreover, his intellectual opponents are horrible people for thinking as he claims they do. “[T]here can be no apology for the losing side. . . . Suffocating love, marriage, and childrearing . . . in the name of racial solidarity is one of the most grotesque forms of tyranny imaginable.”⁶³

The foregoing shows how Professor Chen has built his entire article on the kind of factual mischaracterization and distortion that typify attack ads. His arguments are superficially persuasive because he “crushes” a series of absurd arguments that no one makes. He demonizes those who disagree as racist tyrants. It is easy to defeat straw arguments like “biological destiny implies the existence of Asian American legal scholarship,” “dark skin good, white skin bad,” or “interracial marriage is wrong,” especially when those arguments are made by racist tyrants. By contrast, think how much harder it would have been for Professor Chen to refute Professor Chang’s actual contention that Asian American legal scholarship expresses the various reactions of Asian Americans to shared experiences of discrimination. It is genuinely unfortunate that Professor Chen chose not to take on this task, for a careful, fair response could have been a real contribution to the discourse about Asian American legal scholarship and race in America.

Regrettably, Americans have come to expect Professor Chen’s unfair and deceptive style of argument from politicians. Politicians often seem eager to mischaracterize an opponent’s record if it will help win an election. Of course, Americans have also learned that a politician who distorts an opponent’s record may fear that the opponent’s record is too good to effectively attack on its merits. Perhaps this is what has happened in *Unloving*. For whatever reason, Professor Chen commits himself to colorblindness as the route to racial equality. He proclaims with certainty that those who disagree are very wrong. Perhaps he is right. Yet when one considers Professor Chen’s reluctance to engage opposing views fairly, another possibility emerges. Perhaps Professor Chen believes that his opponents are right.

62. Chen, *supra* note 1, at 172.

63. *Id.*

