

Who Is Excellent?

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“Look for the absences.” That was a subversive piece of academic advice women passed on to one another twenty years ago when I started teaching. Who’s not in the canon? What aren’t we writing about? What questions aren’t we asking?

So what have you heard about AIDS lately? Do you know that the HIV infection rate of young, Black gay men is 30 percent,² in contrast to a 12 percent rate in the gay population generally?³ Who will save the life of that silent teenager in baggy jeans who dares not tell anyone that the path of his desire is not straight?

Look for the absences. Listen to the silences. Turn the world upside down by standing in solidarity with the bottom.⁴

Who will save the life of that silent teenager? In my city, at a gay Black Pride event, the brothers from Us Helping Us steer those young men toward the condom table.⁵ Placing a strong Black hand on the shoulder of a man-child in baggy jeans, they fight an epidemic with the only tools they have: a leaflet, a condom, a face, and an attitude that just might, this time, break through.

Every day we open our newspapers and if we have a soul left we find something to weep over. A child abandoned, a school’s scandalous failure, a war raging, a torture revealed, a rape relegated to a tiny paragraph in the third section. School children write earnest essays about homelessness, about the rainforest, and about peace in the Holy Land, but they are told by adults around them that the solutions to the problems they see are complicated and evasive.

A debate swirls around affirmative action in college admissions. A judge here says it is constitutionally permissible, a judge there says it is unconstitutional.⁶ I co-wrote a book arguing that affirmative action is consistent

with meritocracy;⁷ critics respond that affirmative action is a racial spoils system.⁸

Who will save the life of that silent teenager—the one over there edging toward the condom table, the one across town wondering whether to take Daddy’s gun to school, the girl who is too embarrassed to tell anyone her boyfriend hit her, the child picking up a rock in the Gaza Strip?

Affirmative action is about who will save these lives. In all of our institutions, the academy among them, we must make decisions of admission. Who will enter these doors and wield power here? Who will ascend to the position of decision maker? Who will walk off with the credentials that open the next door and the next? Who will land in a spot of influence from which they just might save these lives?

In college admissions we ask, “Who is excellent?” No college looks for average. We want the best, and we define ourselves by the quality of our students. I support affirmative action because it is about getting the best student body we can get. In this post-modern world, however, concepts like “the best” are contested.

I once spoke in support of affirmative action at the University of Colorado.⁹ During the question and answer period, a young white man stood up and said, “I’m an engineering major, and I am entitled to the best teacher, not someone the university was forced to hire because of affirmative action.” I once spoke at Stanford in support of affirmative action, and during the question and answer period, a young Latina stood up and said, “The dean of the law school says he supports diversity in faculty hiring, but he will not compromise academic standards.”

These students are taught that there are two boxes. One is labeled excellent, the best, academic standards. The other is labeled Black, brown, woman, affirmative action, compromise. That engineering major in Colorado has somehow learned that a Black woman could not possibly be the best person to teach him what he needs to know. He is going to leave the university with that assumption, and someday, when he is in a position to hire new engineers for a Fortune 500 company, the human resources director

will ask him why he hasn't interviewed any women or people of color. He will answer: "I don't look for color or gender. I just want good engineers and I can't help it if they are all white men." He will respond with hurt and anger when someone suggests his assumptions are racist and sexist.

It's late in the day to have this conversation for the first time when you are out in the workforce holding a position of power. Ask executives at Texaco, where they paid \$176 million to settle a class action suit brought by a Black woman.¹⁰ Ask executives at Coca-Cola, which just handed over \$113 million in a similar class action suit.¹¹ Ask them whether they would rather their managers had learned the lessons of intercultural competence before they came to work and before worker discontent erupted into front-page litigation. They will tell you that prior learning is preferable to learning it on the job, at company expense, and under court order.

By intercultural competence, I refer to a set of skills necessary to function in a multicultural world. First, an understanding that difference exists—different cultures, religions, world views, and assumptions in the mix of human experience—and that these differences are not fixed. Rather, they change over time and through interaction with other cultures. Second, an understanding of subordination—that difference is used to distribute power, that status can confer unearned privilege, and that a long struggle toward equality marks modern human history. Third, a basic set of practices for effective interaction across cultures—open-mindedness, self-reflection, respectful dealing, anticipation of conflict and misunderstanding, and the ability to receive conflict and misunderstanding with a stance of good faith and an appreciation of historical context. Finally, the tools of a change agent—flexibility in the face of changing circumstances, fearlessness in confronting injustice, refusal to accept the status quo as inevitable, and knowledge of the history of social change.

Throughout my teaching life I have tried to teach these things. It is not easy, because in American universities, if you are teaching about subordination, you inevitably teach students who are underprepared.

I have had white students walk out of the classroom in tears when Black students express their anger about racism. I have had white students stay in the classroom and learn from the anger. They learn from their responses to it and from the bridges they build when they ride out the wave of racial animosity and ask the next question: “Tell me why you feel that way, I want to understand.” At that point it may be the Black student who walks out of the room in tears, “I’m tired of teaching people what they should already know.”¹² Or she may choose to stay and discover that the other’s desire to learn is sincere and that the human will to connect, if given half a chance, always beats out the ignorance and barriers of a racist world. The students who learn to ride out the wave add something to their toolkits that will serve them well in a complex and changing world. More significantly, they take away something that just might save their soul. This, in my view, is what we can give them when we are functioning as quality institutions of higher education.

When I was asked to give this address a title, I chose “Who is Excellent?” knowing that, in one way or another, I would want to respond to the lie that affirmative action is the antithesis of excellence. I now realize that there is a flaw in the title, because “Who is Excellent?” is a question in the tradition of modernist individualism. It asks a static question, “Who is the best individual?” rather than a dynamic question, “What is the best mix of people to spark the interactions from which deep learning emerges?” Excellence, my friends, is a moving, and communal, target.

At one university I visited, a professor told me he teaches a class on race relations. There are few students of color at his university, and no Black students in his class. The students have discussions that proceed like this: “I think if there were a Black person here, this is what they would say and this is why I would disagree.” This might seem like a parody if we didn’t know how representative it is of the standard college experience. The opportunities for critical, probing dialogue about race across racial lines are few. The instructors with the knowledge and the skills to facilitate such discussions are rare and in some departments absent altogether. If no one in

the engineering department has a clue how to encourage students to think about these issues, we will continue to graduate cadres of young engineers who will think race is irrelevant to what they do.

After all, calculating bearing loads and programming computers is a matter of formulae and codes. What does race or gender have to do with it?

More than they think. None of the work of engineers is done in a vacuum. They work with and around people. Projects are approved, products are marketed, blueprints are implemented, and programs are used by people who come from a great, wide world of experience. It doesn't take long before the formulae and codes give way to face-to-face human interaction and the need to work and communicate with others.

I have had the privilege of working with Texaco¹³ as part of its Task Force on Equality and Fairness, which was forced upon the company by court order.¹⁴ Engineers abound in the oil industry. They like numbers. They have learned, however, that working with people takes more than numbers. Because their profits depend on it, these engineers have learned a little bit about intercultural competence. They tell me, for example, that they can't make money if everyone in the room thinks the same way. A story they use to illustrate this point is that of the modern C-store. This is the convenience store now located at every major intersection, attached to the filling station. What you may not have realized is that they are making more money selling soda, cigarettes, and bread than they are selling gas. The profit margin on gas is not great. Do you know the markup on soda?

The modern C-store came about when someone asked the question, "Why don't women shop at our C-stores?" They decided to ask women, who said, "They are dirty, cramped, hidden from view, and magnets for crime." So they designed the modern C-store: all glass front, facing the street, flood lit, wide aisles, and a huge daily business in bread and milk. They now have a new customer base of working women *and* men who return more frequently. It turns out that men like clean bathrooms, too. What the oil company executives gained from this experience is a basic lesson: listen to women; they may see things we do not see. Some prescient executives are even

saying, “Some of them should be us. We need women on the executive floor if we are really going to grab that market share.”¹⁵

It’s been interesting for me—a corporate critic—to watch these pragmatic businessmen. While the resisters are there, there are also the innovators. The ones who grasp new marketing ideas quickly are also open to the idea that equality might be good for business, good for the country they love unabashedly, and good fun as well. “Let everybody in, mix it up, and see what we can learn.” There is an almost macho quality to it. “Those lesser men might be afraid of equality, but not me. Let them all in. I’ll still come out on top.”¹⁶

In business, as in sports, there is a finish line, called earnings, where each is measured against the competition. In the academy, it’s more complicated, and that may be the source of the resistance we encounter. Is the finish line the *U.S. News and World Report* ranking, under which the test scores of your students and your school’s estimation in the eyes of the mostly white men who form the opinion cadre of academic excellence fix your school’s position in the hierarchy?¹⁷ Or is it some other internal measure, contested as fiercely as all of knowledge is contested in the cauldron of the post-modern university?

I serve on an admissions committee, and I believe in searching widely for excellence: the student who was the only white kid in his class at a Black, urban high school; the immigrant who watched her parent work three jobs, two under the table at sub-minimum wage; the Mormon missionary from a small town who is the first in his family to apply to the Ivy Leagues; the gay teen who risked taking a date to the senior prom; the Black journalism major who emphatically refuses to cover sports; the one who started an advocacy group—you name the cause, I’m looking for the ones who have enough spark to care about *something*. Of course, I regularly vote to admit the best of the lot from our standard story: “mom’s a lawyer, dad’s a banker, I grew up in the suburbs playing competitive tennis, you will see from my essay that I craft a fine sentence with an appropriate sense of irony and self-deprecation, my numbers are off the charts, you will like me.” That standard application,

by the way, occasionally comes in a race other than white. Who is excellent? None alone. They all have something to learn from one another, and many have something to teach their teachers.

I am particularly interested in the boundary crossers, the translators, those with a self-consciousness about their positioned perspective. Dr. Du Bois, the most brilliant social theorist of the recently closed century, described the dual vision that comes from the Black experience, and he built his life's work upon that duality.¹⁸ Paradoxically, his outsider's vision resulted in work that explains the *mainstream* American experience with the greatest depth and power. You simply cannot understand American history without understanding it along the color line that Dr. Du Bois described. Nothing makes sense, from our Constitution to our most recent presidential election, if it is not examined through the lens the color line provides.

It is one thing to have an experience, but quite another to examine it, describe it, and convey it. We occasionally see students who have worked at this project, who speak more than one language, literally and figuratively, and who regularly grab planets out of their orbits, forcing unknown to encounter unknown. Like the bright-faced neighbor child who will come up and ring the bell to see what's cooking—ignoring the emerging ethos that “play dates” are arranged by adults on calendars—we are blessed by grown ones who simply won't stay behind their fences, who somehow lack the gene that tells them they aren't welcome at the “Black table” or the “Jewish table” or the “jock table,” and who will roam and graze and jostle with them all.

Something, somewhere, gives a few among us that ability. Sometimes it is an extraordinarily confident and outgoing personality. More frequently, it is learned behavior. Some Americans, in this increasingly segregated country, still grow up in settings where, by design or by blessed accident, they encounter difference and learn to approach it unafraid. Still others are immersed in the ways of a separate world, even as they are learning to navigate the dominant one. The child who grew up translating school forms for immigrant parents, the child who watched a single mom struggling to get by on minimum wage—they know a world made invisible by the dominant

one. They see the spaces of mutuality, the failures of connection, the unavoidable conflict, and the places of exploitation. They turn what they see over in their heads and ask if there is another way. We need these types in the mix at our universities, both as teachers and as learners.

Many admissions officers will tell you they are looking for that and more in their mix, although if they are honest they tell you the numbers come first.

I put little stock in the numbers and applaud the growing movement in the academy to abandon the time pressure multiple-choice test as the determining criteria for admission.¹⁹ If you are looking for a doctor, a plumber, a lawyer, a contractor, or a teacher for your child, you don't ask about their test scores. You ask about what they have done. If in every aspect of our real lives we use more functional measures of excellence, why not in college admissions? Surviving the assault on affirmative action will require admissions offices to learn how to measure the whole student, to define the desired range of attributes in our student mix, and to assess ability with a variety of tools.²⁰ This will result not only in more diversity, but also in more fairness to all students who are shut out by the present system. Large numbers of middle class white students of tremendous talent, creativity, and intellect are routinely weeded out by our over-reliance on high stakes tests.²¹ Indeed, all those parents complaining that their child's spot at Favorite U was taken by an affirmative action admit should come on over and reframe their complaint: if their child was robbed of a place at the table, perhaps it was because her talents were overlooked in a system that measures excellence according to absurdly narrow criteria.²²

What I offer here is a restatement of the mission of the university that not only validates affirmative action, but that requires it. We understand, now, in the modern university, that the landscape of human knowledge is so vast that the goal of cabining all knowledge into a list that students can memorize is absurd. We have said for a while that what we are teaching is critical thinking. How do we form questions, posit answers, test propositions, create and dismantle categories, research, read, analyze, and search electronic databases with a stance that not only welcomes ideas, but tests and

challenges them as well? How do we do this in a human community, maintaining both enough criticism to sharpen our thinking and enough respect to keep the conversation going? One by one the disciplines have faced challenges from the perspective of race, gender, class, sexuality, and a range of social positions other than the dominant. This is part of the critical thinking we are teaching. The empirical evidence supports what is intuitively true. Students who learn in a context of interaction with difference, that is, in integrated as opposed to segregated environments, develop stronger skills of cognition and reasoning.²³ Why wouldn't they? How can you learn in a room in which everyone thinks exactly as you do? Where is the challenge in that world of monocultural assumptions and uncontroverted explanatory rules? You don't get many Einsteins in that world, or Du Boises.

If we want to feed the architects of the next paradigm, the doctors for the next plague, the makers of the lasting peace, we have to take them to the place of unheard ideas. We can't predict where that place will be, but I guarantee you it is not a monocultural university.

Resistance is the standard response to each effort, in each discipline, to interject positioned perspective into the established order. That is, to say, "as an Asian American woman, I interpret immigration law in this way," invites attack from the moment of utterance.

I would like to close these remarks by discussing a form of resistance called, in the theory world, the critique of identity politics.

Identity politics refers to forging a movement, developing a perspective, and focusing one's intellectual inquiry and social justice quest around a category of identity—woman, Latina, gay, working class.²⁴ The critics charge that this is a wrongheaded effort.²⁵ It stunts human experience by reducing people to categories, it encourages division, it is intellectually limiting, and—the criticism I find most challenging—it constitutes reactionary politics, because an individual's quest for social status is necessarily at odds with a universal quest for social justice.²⁶ In other words, "I'm Black and I'm proud," will not take you all the way down the road marked "freedom and justice for all."

I have tried to take the critique of identity politics seriously, although, again and again, I encounter versions of it that amount to Jim Crow cross-dressing as po-mo. “We don’t need these categories” can function as “we don’t need your kind.”

I was the first Asian American woman law professor in the United States. I walked into a category of one, and I know what it feels like to stand outside a university door with your heart pounding, take a deep breath, and tell yourself, “you are your mother’s daughter, you have a right to be here, go on in and stand up at the podium where you belong,” when all of nature, it seems, wants you outside that door.

When I, the first like me, was barely through that door, people started acting as though I was everywhere and had been saying the same thing over and over again for years. They were so weary of it—as if all of Asian American history, all of women’s history and women of color feminism was old news to them. “Cant” was a word I heard frequently in my early days of teaching, as in “the tired cant of race, sex, and class.” People who had never read Du Bois, or who could not even guess when the Chinese first arrived in the United States, or Japanese, or Koreans, were convinced that they had heard it all before, or that it was not worth hearing, or both. The idea that the Asian American experience is relevant to understanding the American ideology of race and equality was dismissed by people who never bothered to examine the evidence. When this kind of dismissiveness surfaced in hiring and tenure decisions, it became clear that the end game was exclusion. “Nothing new or exciting in this race work” became code for “your kind need not apply.”

Many of the critics of multiculturalism, of affirmative action, and of identity politics, are true reactionaries. They think inequality is both inevitable and good. They valorize a narrow version of elite, white, male culture as The American Culture, and they lament the opening of the university doors to barbarians like me.

There is another group of critics who do not think of themselves as reactionary. They are self-described as liberal or left. While some share a

gut reaction of disdain for outsiders, I seek common ground with those who express their concerns from a place without Jim Crow impulses.²⁷ So I have tried to respond.

When they say identity is divisive, I ask whether identity groupings—from Asian American Studies to Act Up—necessarily preclude other groupings. You can't have a movement for social change without having a movement for social change. Some sense of a group of kindred spirits engaged in collective action is the historical precursor of progressive politics. If it is not group-ness that is the problem, then why is it assumed that grouping along the lines of race is always a problem? It is only a problem if the group is hard-edged, static, exclusionary, and hell-bent on reconfiguring hierarchy. My own experience in ethnic studies is that positioned perspective is in fact a launching pad for intercultural explorations, for inviting intersectional analysis and cross-critique. Once you accept race as a useful category of analysis it is more difficult to reject gender or sexuality as useful categories of analysis. I have been in some delightfully raucous meetings in which the race men were attempting to singularize race, while one argument after another was pulled out from under. I learned that community is what happens when you sit through one of those meetings with steam coming out of your ears and you can laugh about it with the same men ten years later. Coming to terms with our identity as racial outsiders, testing it against one hundred and one stock stories of the way things are, and have been, and will be, was not a way to dig into the bunker of race. It was a way to dig out of it, into a world in which we question everything, including capitalism.

The left critique of identity politics asks whether it is a good deal to trade cultural nationalism for control of the means of production. Are Blacks better off, they ask rhetorically, now that they can purchase Kente cloth housewares while imprisonment rates of young Black men are approaching genocide?²⁸ I find this kind of question sad. What Black person could possibly think this was a good deal? My Black friends are sadder about it than anyone in the theory world can imagine. Cultural nationalism com-

modified is what you have left when you kill off and Cointelpro²⁹ any Black leader who links Black pride with condemnation of wealth inequality, when you eviscerate the labor movement through the same technique, and when you succeed in the massive and quite miraculous propaganda task—funded at levels the left could never come close to—of convincing an entire generation of Americans that wealth inequality is inevitable, good, and at the same time non-existent.³⁰ We are all middle class, except for a few who are rich, who are just there, like the air, and who are probably richer because they are smarter. Don't blame dashikis for the fact that too many Americans either believe this or feel it is pointless to profess disbelief.

Am I a cultural nationalist? I love my identities, which include feminist, critical race theorist, Okinawan, Sansei, Asian American, Third World, mother, leftist, and intellectual worker. From each of these places I am someone standing on the shoulder of ancestors who were reaching for a better world for themselves and those who follow. I don't see that claiming one identity diminishes another, and from digging deep into each I think I am better able to understand the human condition. Each has a political meaning for me—it means fighting for something, sometimes something quite specific, such as the demilitarization of the Island of Okinawa, and sometimes something quite universal, such as a welcoming world for all children.

I find much of my political knowledge about how to move the world comes from these identities: from the work I did from these positions, from the historical struggles others have engaged in from these positions, and most significantly from the intersections. What does getting the military bases out of Okinawa have to do with the quest for decent public schools in my community? Quite a bit, it turns out, as Congress enacts Bush tax cuts that will force us to choose between funding the military and funding education. When I stand outside the White House gates demanding that they put the schools first, I will stand in all my identities.³¹ That is only a contradiction in the world of either/or, the world that my sisters and brothers around the world are exploding through their coalitions.

I don't mean to suggest that identity critics have nothing useful to say. They are obviously right to the extent that they criticize any form of cultural nationalism or identity politics that presumes identity grouping as an end in itself or that promotes ignorance over critical thought. Critics tend to pull out a cast of characters who make hateful comments about other groups, who make claims to culture that are over-determined, or just silly. It is a cheap rhetorical trick to pick such examples as representative. I would like to delve deeper. Were these things really said? In what context? Who hired this professor with the wacko melanin theory? Who tenured him? If he is really incompetent, what form of racism is this that allows him to represent Black intellectuals? Why was no Black feminist hired at the same time so that students could see a range of views emanating from the Black community? What happens at this university to white professors who are incompetent? Why was the media so eager to publicize these comments when the wise and probing writings of so many scholars of color are largely unknown to the mainstream press? Who wants us to think that Leonard Jeffries is representative, while Mary Helen Washington remains largely unknown?³² And why are people of color called upon to disown someone they don't claim, when whites are not asked to do the same?

Meanwhile, back on the ground, quiet debates go on within identity communities, where progressives understand that nationalism has its limits. They empathize with the young people, told all their lives that they are worthless, who come alive when someone tells them to grab on to what others hate and claim it with pride. Sometimes that stance can pull you out of a dying place and into a living one, a place from which you can join the fragile and beleaguered worldwide movement for peace and equality for all human beings. And sometimes it's just more separatist claptrap, or hours and hours put into ethnic dance practice, or Brazilian martial arts, or some revival of something that will give your life meaning but won't get you to read Frantz Fanon.³³

It's not either/or, which is the first lesson I learned in Anti-Subordination 101. If those young brown skinned children are putting all their energy into picking ferns for the hula halau at least they aren't at the back of the school

parking lot sniffing glue, which is what some young Native Hawaiians I went to school with did with their pain before cultural nationalism hit the islands. Hula is not the revolution, but it might save someone's life.

Who is excellent? Who will save this child? The brothers in *Us Helping Us* are the identity critic's nightmare, a splinter off a splinter: gay Black men in Southeast D.C. Who else will go up to that teenager, understanding that behind his refusal to smile and his practiced posture of indifference there is a human soul, scared, longing for love, filled with passions for sex and more than sex. Who will break through? We joke about it in my neighborhood, about the sweet, huggable boys who hit puberty and suddenly have to pretend they never smile, never talk, never strike any pose other than cool. If they show weakness, in Black urban neighborhoods, they are targets. If they show toughness, they are targets, too. We joke about it—"I saw him waiting for the bus and I said helloooo, I said, c'mon, can't you just say hello? You know me!" We laugh, but we also know it's a deadly serious negotiation these young men maneuver through.

Who will go up to that boy and convince him to use a condom? Maybe someone who once held that pose, who has a feel for how much persistence to use, when to back off, how to leave the door open—who knows how it feels to be both scared and fearless at the same time. I'm gonna live forever. What if nobody loves me? I'm not afraid—there's a cure for AIDS. What if he thinks I'm stupid? Someone has to save this child and every other one out there at risk of harm. Who will do it? Who is excellent? Who will come to our universities? What will we teach them?

Those of us who came to the universities on the wings of conflict, after the demonstrations and the riots and the sit-ins and the assassinations, after the message to the academy to accede a bit to difference in order to maintain itself, arrived in a position of contradiction. They need us but they don't want us. We can only change our institutional homes so much before we are asked to leave, and sometimes it's the best we can do just to ask questions.

I try to remember that there is a woman sitting at a bus stop somewhere, getting off a long shift cleaning rooms in a hotel like this one. She pays

taxes that fund the university. Will her children go there? Will the lives and thoughts of women like her be taken seriously there? Will someone there learn something that might make them feel a connection to her, so that when they go out in the world they feel accountable for the conditions of her life and for their own privilege? I try to remember her, when it feels hard to keep asking the questions that others perceive as hostile.

I work for her, so I will keep asking of the university, for her and with her, who is excellent? Who will save this child?

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² A study conducted in six major cities from 1998 through 2000, by the Centers for Disease Control and Prevention ("CDC"), found that gay Black men in their twenties had an HIV infection rate of 30%—the highest of any group in that age range. See, e.g., Lawrence K. Altman, *Study in 6 Cities Finds H.I.V. in 30% of Young Black Gays*, N.Y. TIMES, Feb. 6, 2001, at A17. The CDC's most comprehensive national survey found an infection rate of 29% among young Black gay males. CTRS. FOR DISEASE CONTROL & PREVENTION, DEP'T OF HEALTH & HUMAN SERVS., HIV PREVALENCE TRENDS IN SELECTED POPULATIONS IN THE UNITED STATES 11 (2001). In a survey of several major metropolitan areas, the CDC reported that the infection rate was more than four times higher among gay Black men than white men. Ctrs. for Disease Control and Prevention, Dep't of Health and Human Servs., *HIV Incidence Among Young Men Who Have Sex With Men—Seven U.S. Cities, 1994–2000*, 50 MORBIDITY & MORTALITY WEEKLY REPORT 440 (2001) (Table 1).

³ See Altman, *supra* note 2. Overall, the CDC Study found that 12.3% of gay and bisexual men from age twenty-three to twenty-nine were infected with HIV.

⁴ Cf. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C. R.-C. L. L. REV. 323, 324 (1987) (arguing that critical responses to liberalism would benefit from the perspective of groups subordinated by racism).

⁵ Us Helping Us is a nonprofit, community-based AIDS/HIV education, outreach, support and care agency, organized by and for Black gay, bisexual, and transgendered persons. See US HELPING US, CONDOM CRUSADE: BROTHERS PROTECT EACH OTHER (2002) (brochure on file with the Seattle Journal for Social Justice). For more information on Us Helping US, go to <http://www.ushelpingus.com>. Black Pride is a major four-day event during Memorial Day weekend in Washington, D.C. For more information on Black Pride, go to <http://www.dcblackpride.org>.

⁶ Compare *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996) (holding that the University of Texas may not consider race as a factor in admission decisions), and *Johnson v. Bd. of Regents of Univ. Sys. of Georgia*, 106 F. Supp. 2d 1362 (S.D. Ga. 2000) (holding that the University of Georgia may not consider race and gender as factors in admission decisions), with *Gratz v. Bollinger*, 122 F. Supp. 2d 811 (E.D. Mich. 2000) (holding that the University of Michigan may consider race as a factor in admission decisions because diversity constitutes a compelling governmental interest), and *Smith v. Univ. of Wash.*,

Law Sch., 233 F.3d 1188 (9th Cir. 2000) (holding that the University of Washington Law School could consider race as a factor in admission decisions provided that race is not the only thing considered), and *Grutter v. Bollinger*, 137 F. Supp. 2d 821 (E.D. Mich. 2000), (holding that the University of Michigan's admission policy was not sufficiently tailored or supported by a compelling government interest), *rev'd en banc*, 2002 FED App. 0170P (6th Cir.).

⁷ CHARLES R. LAWRENCE III & MARI J. MATSUDA, *WE WON'T GO BACK: MAKING THE CASE FOR AFFIRMATIVE ACTION* (1997). See also Charles R. Lawrence III, *Two Views of the River: A Critique of the Liberal Defense of Affirmative Action*, 101 COLUM. L. REV. 928 (2001) (arguing that liberal defenses of affirmative action, as opposed to progressive or anti-subordination defenses, undercut the goals of true equality and excellence in education).

⁸ See, e.g., WARD CONNERLY, *CREATING EQUAL: MY FIGHT AGAINST RACE PREFERENCES 3* (2000) ("As the brilliant writer Shelby Steele once noted, affirmative action is a *white man's notion of what a black man wants*—at its best, a Tammany of grievances; at its worst, a form of racial racketeering.").

⁹ Mari J. Matsuda, Address at the University of Colorado Multiculture Lecture Series (Nov. 1997).

¹⁰ In the settlement agreement monetary and programmatic relief was estimated to be worth approximately \$176 million, including \$115 million in cash, \$26 million in salary increases over five years, and \$35 million over five years to implement changes recommended by the Task Force on Equality and Fairness. *Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 191–92 (S.D.N.Y. 1997). See also BARI-ELLEN ROBERTS, *ROBERTS VS. TEXACO: A TRUE STORY OF RACE AND CORPORATE AMERICA* (1998) (presenting the named plaintiff's perspective on the litigation).

¹¹ Under the settlement agreement Coca-Cola agreed to a total cash settlement of \$113 million, not including either the cost of programmatic relief, which was estimated to total \$36 million over a four-year term, or the pay equity adjustments, which were estimated at approximately \$43.5 million over ten years. *Abdallah v. Coca-Cola Co.*, 133 F. Supp. 2d 1364 (N.D. Ga. 2001).

¹² Audre Lorde protested the notion that it is the responsibility of the oppressed to educate the oppressor. She writes:

Women of today are still being called upon to stretch across the gap of male ignorance, and to educate men as to our existence and our needs. This is an old and primary tool of all oppressors to keep the oppressed occupied with the master's concerns. Now we hear it is the task of black and third world women to educate white women, in the face of tremendous resistance, as to our existence, our differences, our relative roles in our joint survival. This is a diversion of energies and a tragic repetition of racist patriarchal thought.

Audre Lorde, *The Master's Tools Will Never Dismantle the Master's House*, in *THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR* 98, 100 (Cherríe Moraga & Gloria Anzaldúa eds., 2d ed. 1983).

¹³ Now known as ChevronTexaco, Inc.

¹⁴ The Task Force on Equality and Fairness was established as part of the Texaco settlement agreement. See ROBERTS, *supra* note 10.

¹⁵ Cf. Judy B. Rosener, *Women: a Competitive Secret*, UNIV. W. ONT. BUS. Q., Winter 1995, at 79, 88 ("Professional women are the biggest untapped vein of human assets in the world. As organizations struggle to adapt to a rapidly changing global environment, they would be well-advised to recognize the link between management strategy, human resources and the underutilization of women."). Kevin Wallsten notes:

If you're not recruiting on a diverse basis, you're missing a lot of talent. When you try to solve problems at any organization, you look for diverse perspectives, and that's certainly a great strength of ours. Also, I think our customers feel comfortable because it's obvious we encourage diversity. As opposed to walking into an environment where everyone is of the same culture and the customer may feel awkward, our diversity helps the customer relax.

Kevin Wallsten, *Diversity Pays off in Big Sales for Toyota Dealership*, WORKFORCE, Sept. 1998, at 91, 92.

¹⁶ See, e.g., Steven A. Ramirez, *Diversity and the Boardroom*, 6 STAN. J.L. BUS. & FIN. 85 (2000). Ramirez concludes:

In sum, the business world has built a powerful case that if cultural and ethnic diversity is properly managed it can lead to a variety of benefits ranging from improved recruitment and retention to more insightful marketing and superior group interaction. All of these benefits ultimately lead to increased profits. The case enjoys support from leading business professionals, trade groups and publications, as well as psychological studies and empirically based business studies. The early returns indicate that businesses that are the most aggressive in moving to diversify their workforces are out-performing the companies that are laggards.

Id. at 109. Ramirez has also recognized that

[a]nother area where the value of diversity is unleashed is the ability to achieve greater market penetration. Obviously, if there are different "world views" among traditionally excluded cultures, then there are real insights that can be provided by a culturally diverse workforce. Indeed, researchers theorize that cultural background plays a major role in [c]onsumer behavior.

Steven A. Ramirez, *The New Cultural Diversity and Title VII*, 6 MICH. J. RACE & L. 127, 136–37 (2000). See also JOHN P. FERNANDEZ, *THE DIVERSITY ADVANTAGE: HOW AMERICAN BUSINESS CAN OUT-PERFORM JAPANESE AND EUROPEAN COMPANIES IN THE GLOBAL MARKETPLACE* 14–15 (1993) (arguing that America's ethnic diversity affords its businesses a unique advantage in international markets). See generally KATHRYN H. ANTHONY, *DESIGNING FOR DIVERSITY: GENDER, RACE, AND ETHNICITY IN THE ARCHITECTURAL PROFESSION* (2001) (arguing that the field of architecture is stagnating because of an artificial lack of diversity).

¹⁷ Exploring the process behind the *U.S. News and World Report* (*US News*) rankings, Terry Carter explains:

The reputation surveys are the most subjective aspect of the *U.S. News* rankings, and the most criticized. They are heavily weighted, with the combined academic survey and the survey of lawyers and judges counting 40% in the overall rankings. The surveys go to four people at each law school—the dean, academic dean, chair of the faculty hiring committee, and the most recently tenured professor. They also go to 1310 non-academics—senior judges and lawyers involved in hiring recent law school graduates.

Terry Carter, *Rankled by the Rankings*, A.B.A. J., Mar. 1998, at 46, 49. In a 1998 report commissioned by the Association of American Law Schools, Stephen P. Klein and Laura Hamilton discuss this process as well.

US News also sent a survey to a sample of "1,310 practicing lawyers, hiring partners, and senior judges." No information is given about how this sample was chosen or how many people were surveyed in each of the three job categories, but we do know that only 33% of those surveyed returned their questionnaires.

Stephen P. Klein & Laura Hamilton, *The Validity of the U.S. News and World Report Ranking of ABA Law Schools*, at <http://www.aals.org/validity.html> (Feb. 18, 1998) (on file with the Seattle Journal for Social Justice). Nancy B. Rapoport, Dean of the University of Nebraska College of Law, labeled the reputational surveys a “dartboard” approach, no better than a “glorified coin toss.” Nancy B. Rapoport, *Ratings, Not Rankings: Why U.S. News & World Report Shouldn't Want to be Compared to Time and Newsweek—or The New Yorker*, 60 OHIO ST. L.J. 1097, 1099 (1999). Inflationary pressures for law schools to admit numerically top students increased in 1990, when *U.S. News* began publishing law school rankings. Abiel Wong, Note, “Boalt-ing” Opportunity? Deconstructing Elite Norms in Law School Admissions, 6 GEO. J. ON POVERTY L. & POL’Y 199, 239 (1999). As part of its rankings methodology, *U.S. News* assigns considerable weight to each school’s median Law School Admissions Test (LSAT) of accepted students, and publishes the median LSAT of each school it ranks. *Id.* at 239–40. Elite lawyers pressure their alma maters to admit students with high numerical data so that they will not be known for easy admission and low rankings. *Id.* at 240. In fact, the *U.S. News* graduate school rankings issue is one of its top-selling magazines, and it is even available as a separately marked paperback book and CD-ROM. *Id.* “So dire is the situation that law school deans themselves are now coming forward to beg relief from the rankings war, conceding publicly that it forces them to turn away qualified minorities.” *Id.* at 242.

¹⁸ Dr. Du Bois writes:

It is a peculiar sensation, this double-consciousness, this sense of always looking at one’s self through the eyes of others, of measuring one’s soul by the tape of a world that looks on in amused contempt and pity. One ever feels his two-ness—an American, a Negro; two souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder.

W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* 45 (Signet Classic 1995) (1903). *See also* W.E.B. DU BOIS, *THE PHILADELPHIA NEGRO: A SOCIAL STUDY* (Schocken Books 1967) (1899); W.E.B. DU BOIS, *THE EDUCATION OF BLACK PEOPLE: TEN CRITIQUES 1906–1960* (Herbert Aptheker ed., 1973); W.E.B. DU BOIS, *WRITINGS* (Nathan I. Huggins ed., 1986). For a biography, see DAVID LEVERING LEWIS, *W.E.B. DU BOIS: THE FIGHT FOR EQUALITY AND THE AMERICAN CENTURY 1919–1963* (2000).

¹⁹ There is a growing body of empirical evidence that supports the argument that standardized test scores are not predictive of academic or professional success. DERRICK BELL, *RACE, RACISM, AND AMERICAN LAW* 265–70 (4th ed. 2000). In 1997, the Texas legislature adopted a “10 percent plan” to counterbalance the negative effects of the Fifth Circuit’s decision in *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996) (banning the use of race in the University of Texas Law School’s admissions process). This attempt by the Texas legislature to ensure continuing diversity in higher education requires the state’s public undergraduate institutions to admit all applicants whose grade point averages place them in the top ten percent of their high schools’ graduating classes. BELL, *supra* at 265. *See generally* Susan Sturm & Lani Guinier, *The Future of Affirmative Action: Reclaiming the Innovative Ideal*, 84 CAL. L. REV. 953 (1996). The SAT, used similarly by undergraduate institutions, was pioneered for the exclusion of those who were not rich whites. *See* Richard Delgado, 1998 *Hugo L. Black Lecture: Ten Arguments Against Affirmative Action—How Valid?* 50 ALA. L. REV. 135, 143–44 (1998). The LSAT sounds an alarm in the academy, because of the stark differences in scores between minorities and whites, even when there are no significant differences in Undergraduate Grade Point Averages (“UGPA’s”). *See* Wong, *supra* note 17, at 235. Yet, minority students with lower LSAT scores than other students often graduate at the same rate, find jobs quicker than the

students with higher LSAT scores, and earn a slightly higher entering salary than their classmates as a group. See Delgado, *supra* at 137–38; Wong, *supra* note 17, at 231. In fact, the Law School Admissions Council (“LSAC”), which administers the LSAT, even warns that “the LSAT does not measure every discipline-related skill necessary for academic work, nor does it measure other factors important to academic success.” Wong, *supra* note 17, at 228. See also LANI GUINIER & GERALD TORRES, *THE MINER’S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* 267–74 (2002); Ben Gose & Jeffrey Selingo, *The SAT’s Greatest Test*, CHRON. OF HIGHER EDUC., Oct. 26, 2001, at A10 (providing an overview of some of the more modern criticisms of the SAT); Rebecca Trounson, *UC Faculty Panel Urges New Admissions Test*, L.A. TIMES, Jan. 31, 2002, at B8 (“A key faculty committee of the University of California has recommended that the university drop the SAT I college admissions test in favor of developing an exam more closely aligned with high school course work.”).

²⁰ For example, minority students are more apt, by a large margin, to take an active role in civic activities. See Wong, *supra* note 17, at 231.

²¹ Consider that students of the highest socioeconomic status, or upper class, make up the highest proportion of those attending top law schools, followed by those of *upper-middle* socioeconomic class. *Id.* at 248 n.178.

²² As Derrick Bell notes:

Cheryl Hopwood, for example, the white plaintiff who successfully challenged the University of Texas Law School admissions process, complained that she was rejected even though she had a higher Texas Index (TI) score (a composite of the student’s undergraduate grade-point average and LSAT score) than some black and Mexican American applicants who were admitted, [sic] she was thus, she argued, more deserving of admission than they. She also scored higher than more than one hundred white applicants who were admitted, a fact of evidently little concern to either Ms. Hopwood or the courts. In fact, Hopwood’s rejection was likely more socioeconomic than racial. In accordance with a practice followed by many graduate schools, her application was downgraded because she attended a community college and a state school rather than an elite undergraduate college, the primary feeder schools for postgraduate and professional institutions.

BELL, *supra* note 19, at 267.

²³ See Mari J. Matsuda, *Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-Up Ground*, 11 HARV. WOMEN’S L.J. 1 (1988) (arguing that monocultural legal knowledge is intellectually limiting). For its legal defense in two reverse discrimination lawsuits, the University of Michigan marshaled an inordinate amount of information about the pedagogical imperative of diversity in an educational institution. Patricia Gurin, Professor of Psychology and Women’s Studies at the University of Michigan, prepared an expert report on behalf of the University of Michigan in which she noted the following:

Taken together, the results of these original analyses are compelling. There is a consistent pattern of positive relationships between diversity in higher education and both learning and democracy outcomes. This pattern holds across racial and ethnic groups and across a broad range of outcomes. And the benefits of diversity are evident at the national level, after four years of college and five years after leaving college, and in the studies of Michigan students. This consistency is unusual in my experience as a social scientist. These analyses, which are supported by the research literature, provide strong evidence of the compelling benefits to our society of racial diversity in higher education.

Patricia Gurin, *Expert Report*, 5 MICH. J. RACE & L. 363, 366 (1999). See also WILLIAM BOWEN & DEREK BOK, *THE SHAPE OF THE RIVER* (1998). An advertisement that appeared in the *Chronicle of Higher Education*, and which was endorsed by forty-nine education organizations, affirmed the need for diversity in higher education:

[M]any colleges and universities share a common belief, born of experience, that diversity in their student bodies, faculties and staff is important for them to fulfill their primary mission: providing a quality education. . . .

Diversity enriches the educational experience. We learn from those whose experiences, beliefs, and perspectives are different from our own, and these lessons can be taught best in a richly diverse intellectual and social environment.

. . . Diversity challenges stereotyped preconceptions; it encourages critical thinking; and it helps students learn to communicate effectively with people of varied backgrounds.

On the Importance of Diversity in Higher Education, CHRON. OF HIGHER EDUC., Feb. 13, 1998, at A48. See Elizabeth Whitt et al., *Influences on Students' Openness to Diversity and Challenge in the Second and Third Years of College*, 72 J. HIGHER EDUC. 172 (2001); Patrick T. Terenzini et al., *Racial and Ethnic Diversity in the Classroom: Does it Promote Student Learning?* 72 J. HIGHER EDUC. 509 (2001). Terenzini explains:

"Diversity" in its various forms has been linked to such outcomes as higher minority student retention (e.g., Bowen & Bok, 1998; Chang, 1996, 1999a), greater cognitive development (e.g., Adams & Zhou-McGovern, 1994; Cohen, 1994; Cohen, et al., 1997; Hurtado, 1999; MacPhee et al., 1994; Sax, 1996), and positive gains on a wide-range of measures of interpersonal and psychosocial developmental changes, including increased openness to diversity and challenge (Pascarella, et al. 1996), greater racial/cultural knowledge and understanding and commitment to social justice (Antonio, 1998; Astin, 1993; Chang, 1999b; Milem, 1994; Palmer, 1999; Springer, et al., 1996), more positive academic and social self-concepts (Astin, 1993; Chang, 1996; Sax, 1996), more complex civic-related attitudes and values, and greater involvement in civic and community-service behaviors (Astin, 1993; Milem, 1994; Hurtado, 1999)

Terenzini et al., *supra* at 511.

²⁴ For a general discussion of identity politics in legal thought, see MARI J. MATSUDA, *WHERE IS YOUR BODY?* 13–20 (1996) and Mari J. Matsuda, *Beyond and Not Beyond Black and White: Deconstruction has a Politics*, in *CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY* (Francisco Valdes et al. eds., forthcoming 2002).

²⁵ See RICHARD RORTY, *ACHIEVING OUR COUNTRY* 14 (1998) ("Leftists in the academy have permitted cultural politics to supplant real politics, and have collaborated with the Right in making cultural issues central to public debate."); Todd Gitlin, *THE TWILIGHT OF COMMON DREAMS: WHY AMERICA IS WRACKED BY CULTURE WARS* (Henry Holt & Co. 1996) (1995) (tracing the fracture of the left to the development of identity politics in the anti-war movement); Michael Tomasky, *LEFT FOR DEAD* 16 (1996) (using the left's positions on welfare, immigration, affirmative action, and health care to demonstrate how "solidarity based on race or ethnicity or any other such category always produces war, factionalism, fundamentalism"). Ralph Nader used the term "gonadal politics" to criticize identity politics. See Dana Milbank, *Nader's Politics of the Disconnect*, WASH. POST, Sept. 5, 2000, at C1 (quoting Nader: "The left has become heavily concentrated on identity politics—gender, race and homophobia It's devolved itself into

grievances. Slightings are magnified, and they tend to implode on themselves. It's a real dilemma.") See also Eric Hobsbawm, *Identity Politics and the Left*, NEW LEFT REVIEW, May/June 1996, at 38. Hobsbawm states:

First, let me repeat: identity politics are about themselves, for themselves, and nobody else. A coalition of such groups that is not held together by a single common set of aims or values, has only an ad hoc unity, rather like states temporarily allied in war against a common enemy.

Id. at 44.

²⁶ While identity politics arose in part as a critique of essentialized categories, such as "woman," that were typically defined from an exclusionary perspective (i.e., white middle-class women), the debate over identity politics has raised the mirror critique that identity politics are divisive and regressive, blocking coalition. For example, Amy Allen writes:

Although identity politics may represent an advance over assimilationist approaches, as Jodi Dean puts it, that advance seems to come "at the cost of difference and reflection: those aspects of our identities that differ from those designated by our identity categories, those aspects that remain unique and particular to us as individuals, have to be suppressed or denied."

Amy Allen, *Solidarity after Identity Politics: Hannah Arendt and the Power of Feminist Theory*, PHIL. & SOC. CRITICISM, Jan. 1999, at 97, 100–101.

²⁷ Several authors have engaged in the identity debate in a constructive manner. Judith Butler argues that accepting false categories for the purpose of mobilization allow reactionary forces a point of entry. See JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* (1990); Judith Butler, *Merely Cultural*, NEW LEFT REV., Jan./Feb. 1998, at 33. Nancy Fraser has argued that there is some inherent tension between a politics of redistribution and a politics of recognition. See Nancy Fraser, *From Redistribution to Recognition? Dilemmas of Justice in a 'Post-Socialist Age'*, NEW LEFT REV., July/Aug. 1995, at 68, 74. Iris Marion Young has criticized this characterization, emphasizing that recognition and redistribution are often fundamentally interrelated. See Iris Marion Young, *Unruly Categories: A Critique of Nancy Fraser's Dual Systems Theory*, NEW LEFT REV., Mar./Apr. 1997, at 147, 148 ("Many who promote the cultivation of African-American identity, for example, do so on the grounds that self-organization and solidarity in predominately African-American neighborhoods will improve the material lives of those who live there by providing services and jobs."). See also Nancy Fraser, *A Rejoinder to Iris Young*, NEW LEFT REV., May/June 1997, at 126, 129. Finally, Seyla Benhabib notes:

The politics of identity/difference which have dominated the eighties have begun to show ugly developments in the nineteen-nineties. The clash of multiple identities as well as of the allegiances which surround them have come out into the public; the continuous and inevitable fragmentation of identities has made it almost impossible to develop a common vision of radical transformation.

Seyla Benhabib, *From Identity Politics to Social Feminism: A Plea for the Nineties*, in PHILOSOPHY OF EDUCATION 1994 22, 24 (1995). Lani Guinier and Gerald Torres have recently offered some constructive criticism of identity politics. See GUINIER & TORRES, *supra* note 19.

²⁸ By 1994, one in four Black men in the United States age twenty to twenty-nine was under the control of the criminal justice system in prison or jail, on probation or parole. Consider that Black men represent 48% of all individuals arrested for drug violations and 40% of individuals on death row, and that more young Black men are incarcerated than enrolled in college. Floyd D. Weatherspoon, *The Devastating Impact of the Justice System on African-American Males: An Overview Perspective*, 23 CAP. U.L. REV. 23, 25

(1994). *See also* GUINIER & TORRES, *supra* note 19, at 267 (“In 1984 California spent 2.5 times as much money on higher education as it spent on prisons. Eleven years later, California . . . was spending more on prisons than on higher education.”). *See id.* at chapter eight, for an analysis of racist imprisonment rates as an attack on public education.

²⁹ COINTELPRO is the acronym for the FBI’s domestic counterintelligence program exposed in 1971.

³⁰ *See* JEAN STEFANCIC & RICHARD DELGADO, NO MERCY: HOW CONSERVATIVE THINK TANKS AND FOUNDATIONS CHANGED AMERICA’S SOCIAL AGENDA (1996).

³¹ Some four months after this talk, deadly terrorist attacks pushed the United States into a state of war. My words proclaiming the imperative of peace are printed elsewhere. *See* Mari J. Matsuda, *Asian Americans and the Peace Imperative*, AMERASIA J., 2001/2002, at 141; Mari J. Matsuda, *Among the Mourners Who Mourn, Why Should I Among Them Be*, 28 SIGNS (forthcoming 2002). As predicted, we are now facing a budget that is moving funds from domestic, human needs to the military. What I could not have known was how hard it would become to challenge militarism in a climate of quite-justified fear. Nonetheless, on January 20, 2002, DC Asians For Peace and Justice joined several hundred peaceful protesters to stand outside the Executive Office Building—as close to the White House gates as the police would allow—to engage in non-violent opposition to the bombing of Afghanistan. Among the chants raised that day was “Money for schools, not for bombs.”

³² Professor Leonard Jeffries, Jr., is regarded as a Black supremacist and is widely known for his anti-Semitic remarks. *See* Kenneth Lasson, *Controversial Speakers on Campus: Liberties, Limitations, and Common-Sense Guidelines*, 12 ST. THOMAS L. REV. 39, 53–55, 94 n.91 (1999). Mary Helen Washington is a professor at the University of Maryland, and author of many probing publications on race and culture. *See, e.g.*, MARY HELEN WASHINGTON, *INVENTED LIVES* (Doubleday 1988) (1987).

³³ *See generally* FRANTZ FANON, *BLACK SKIN, WHITE MASKS* (Grove Press 1982) (1967); FRANTZ FANON, *THE WRETCHED OF THE EARTH* (Grove Press 1963) (1961). Both books are considered basic texts for those engaged in anti-colonial analysis and struggle.