

## In Praise of the Struggle for Diversity on Law School Faculties

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# The University of Chicago LEGAL FORUM

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## ARTICLES

### **In Praise of the Struggle for Diversity on Law School Faculties**

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The central purpose of this Essay is to praise, encourage, and, at the same time, challenge, an important development in American education: the movement to open the faculties of institutions of higher education to persons associated with historically disadvantaged groups. Although the individuals and organizations that constitute this struggle vary considerably in their goals and tactics, they all march under the banner of what has quickly become a key word in the lexicon of contemporary politics. That word is “diversity.” I speak as a participant-observer in the diversity movement and will focus mainly on the aspects of that movement that pertain to race—the social demarcation I have studied most—and to law school faculties—the sector of university life with which I am most familiar.

#### I

The diversity movement is an amalgam of students, professors, administrators and others who are intensely dissatisfied with

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the situation that presently obtains at many law schools, a situation in which members of historically deprived groups are either absent completely or present only in strikingly small numbers.<sup>1</sup> The diversity movement seeks, at base, to widen opportunities for people of color to pursue careers in legal academia.<sup>2</sup> It is part of a longstanding struggle against racial subordination in the educational sphere. Consider the history of Harvard University. Harvard is a little over 350 years old. For two-thirds of that time, Harvard had no black students. That should not be surprising, of course, since the great mass of blacks in the United States were slaves until 1865, living in states in which the criminal law prohibited anyone from teaching them to read or write. Harvard did open its doors a crack in 1850. In that year, Harvard Medical School, led by Dean Oliver Wendell Holmes (the father of Justice Holmes) admitted three blacks. The door, however, soon shut; the medical school ejected the blacks after only a semester because of the protests of white medical students who objected to the blacks' presence. It was not until 1869 that blacks graduated from any division of Harvard University.<sup>3</sup> And it was not until 1969—a century later—that a black academic occupied a tenured position at Harvard.<sup>4</sup> While able white scholars attained positions of prestige and influence at Harvard and similarly distinguished universities, W.E.B. DuBois, Carter G. Woodson, E. Franklin Frazier, St. Clair

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<sup>1</sup> See Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U Pa L Rev 537 (1988). According to Chused, "[i]n 1986-87, a typical law school faculty had thirty-one members . . . . Of these . . . thirty were white and one was black, Hispanic, or other minority." Id at 538. These figures prompt Professor Chused to condemn the hiring record of American law schools. Id at 555. For a more nuanced interpretation of Chused's statistics, see Stephen L. Carter, *The Best Black, and Other Tales*, 1 Reconstruction 26 (1990).

<sup>2</sup> For two excellent articulations of theories animating the diversity movement, see Duncan Kennedy, *A Cultural Pluralist Case for Affirmative Action in Legal Academia*, 1990 Duke L J 705; Ian Haney-Lopez, *Race, Community Ties, and Faculty Hiring: The Case for Professors Who Don't Think White*, 3 Reconstruction \_\_\_\_ (1991) (forthcoming).

<sup>3</sup> In 1869, Harvard University graduated its first black students: one from the medical school, one from the school of dentistry, and one, George L. Ruffin, from the law school. See Emory J. West, *Harvard's First Black Graduates: 1865-1890*, in Werner Sollors, Thomas A. Underwood, and Caldwell Titcomb, eds, *Varieties of Black Experience at Harvard* 6, 10 (Harvard U Dept of Afro-American Studies, 1986).

<sup>4</sup> Martin Kilson, a political scientist, became the first tenured black professor at Harvard University in 1969. He began his career in the Government Department at Harvard in 1962. See Martin Kilson, *Harvard and the Small Townier*, in Sollors, Underwood & Titcomb, eds, *Varieties of Black Experience* at 156. The same year that Professor Kilson was awarded tenure, Harvard Law School appointed Derrick Bell as lecturer, making him the first black member of its faculty. In 1971, Bell became the first black tenured member of the Harvard Law School faculty. See Fox Butterfield, *Old Rights Campaigner Leads a Harvard Battle*, NY Times A18 (May 21, 1990).

Drake, Ernest R. Just, and other black academics of outstanding accomplishment were forced to make do in lesser institutions, hemmed in by the color line.<sup>5</sup>

Efforts to break down the color line have taken many forms: articles and books dedicated to subverting the stubborn myth that people of color are, by virtue of their race, inferior intellectually to whites; boycotts, sit-ins, and protest marches aimed at mobilizing public opinion against racially discriminatory educational institutions; and legislation and litigation aimed at bringing public force to bear against racist practices. Some of the most illustrious contributors to our democracy have been part of these efforts. Here I think especially of Thurgood Marshall, who spent much of his career as a civil rights attorney litigating against state-supported segregated law schools.<sup>6</sup>

The diversity movement in law schools is part of this tradition and adds a new chapter to it that is noteworthy in at least three respects. First, the diversity movement has taken to new areas of higher education the struggle against racial subordination. In previous periods, the struggle in law schools was largely centered upon student admissions.<sup>7</sup> Now, at many law schools, the struggle largely focuses upon the composition of faculties.<sup>8</sup> In other words, the diversity movement has extended the range of the insurgent tradition of which it is a part and advanced the demands of this insurgency to the most elite sphere of the educational system. It demands diversity not only in the student body but in the professorate as well.

Second, the diversity movement has persevered and, indeed, advanced in the face of adversity. Challenging power is always daunting. The status quo has on its side the authority of "normalcy" and the weight of inertia. Effective activism imposes upon

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<sup>5</sup> See, generally, Michael Winston, *Through the Back Door: Academic Racism and the Negro Scholar in Historical Perspective*, 100 *Daedalus* 678 (1971); Randall Kennedy, *Racial Critiques of Legal Academia*, 102 *Harv L Rev* 1745, 1752-53 (1989).

<sup>6</sup> See, for example, *Pearson v Murray*, 169 Md 478, 182 A 590 (1936) (ordering admission of Negro student to the only law school in state); *Sweatt v Painter*, 339 US 629 (1950) (ordering admission of Negro law student to the state's "white" law school).

<sup>7</sup> See, generally, *Symposium: Disadvantaged Students and Legal Education—Programs for Affirmative Action*, 1970 *U Toledo L Rev* 277; *DeFunis Symposium*, 75 *Colum L Rev* 483 (1975); *Symposium: Regents of the Univ. of California v Bakke*, 67 *Cal L Rev* 1 (1979).

<sup>8</sup> In the 1970s, student activists pressed for the hiring of blacks to the faculties of colleges, particularly in black studies departments. The diversity movement in legal academia represents, in some ways, a continuation of these earlier struggles. See Kennedy, 102 *Harv L Rev* at 1755.

already demanding schedules additional tasks that must be performed in order to sustain a vibrant pressure group. The diversity movement has largely been student-led so that organizers have had to cope with the problem of transience, a difficulty that besets all student-based activities. Moreover, the past decade has been a particularly difficult period for diversity activists. Twenty-five years ago, it would have received a considerable boost from the heady momentum generated by the Civil Rights Revolution. Now, by contrast, the diversity movement must contend with a social environment that, particularly outside of academia, has become increasingly resistant to demands for racial justice.<sup>9</sup>

A third point about the diversity movement is that, in the face of adversity, it has achieved important, albeit limited, successes. The diversity movement is largely responsible for having kept the race issue squarely on the agenda of hiring committees at the law schools with which I am familiar. These schools are always searching for accomplished scholars or people whom they believe will develop into accomplished scholars. But they are especially attuned to minority candidates with impressive records. At Harvard Law School, for instance, the appointments committee does not simply wait for applications from minority candidates. Rather, it takes the initiative to learn about potential minority candidates who have exhibited talents desired by the School and encourages them to pursue careers in legal academia. The law schools at the University of Wisconsin, Stanford, and Georgetown have created post-graduate fellowship programs devoted largely to the purpose of giving a boost to minority students seriously considering careers in legal academia. Responding to demands asserted by the diversity movement, the Association of American Law Schools has in recent years insistently called attention to the paucity of racial minorities on law school faculties and loudly urged that efforts be undertaken to change the situation. At leading law schools, many administrators and professors see the absence of racial minorities as an embar-

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<sup>9</sup> That this is true outside of academia should be clear. See, for example, Thomas Byrne Edsall with Mary D. Edsall, *Race*, *Atlantic Monthly* 53 (May 1991); Randall Kennedy, *Persuasion and Distrust: A Comment on the Affirmative Action Debate*, 99 *Harv L Rev* 1327, 1341-45 (1986); Drew S. Days III, *Turning Back the Clock: The Reagan Administration and Civil Rights*, 19 *Harv CR-CL L Rev* 309 (1984). The situation within academia is more complicated. Compare Dinesh D'Souza, *Illiberal Education: The Politics of Race and Sex on Campus* (Free Press, 1991) (arguing that demands for racial justice on campus have been acceded to without sufficient attentiveness to competing concerns), with Charles R. Lawrence, III, *If He Hollers Let Him Go: Regulating Racist Speech on Campus*, 1990 *Duke L J* 431 (arguing in favor of reforms aimed at addressing a perceived resurgence of racism on campus); Note, *Racism and Race Relations in the University*, 76 *Va L Rev* 295 (1990).

rassment to be remedied. This is surely not a unanimous sentiment. There are undoubtedly some people in places of authority who are, or would be, completely untroubled by the existence of an all-white faculty. But the reformist sentiment noted above is widespread and stems, in large part, from the questioning, prodding, and teaching that has been provided, to its great credit, by the diversity movement.

This sentiment has helped to generate concrete results. Between 1981 and 1987, there was a 30 percent increase in the number of minorities appointed to tenured or tenure track positions on law school faculties.<sup>10</sup> One should be careful to avoid exaggerating this development; the increase pushed the proportion of minority professors in legal academia from 2.8 percent to only 3.7 percent.<sup>11</sup> But one should also be careful to avoid trivializing this development, for what it means is that during the period studied, racial minorities represented 13.4 percent of the professors added to the ranks of legal academia, a number that one close observer of these matters has rightly termed "a very respectable figure."<sup>12</sup>

The core aspiration of the diversity movement is morally, politically, and intellectually compelling. That aspiration is to open law school faculties to the talents of those who have historically been excluded on account of race and other traits around which bigotries have gathered. The diversity movement thus demands, at a minimum, that law schools show racial minorities equivalent care when it comes to making judgments about their teaching and scholarship or their future prospects as legal academics. More specifically, the diversity movement demands that minority racial status not be perceived as a disqualification or as a negative attribute in any sense. This is an important point. Because of the tremendous, ongoing controversy over affirmative action, it is easy to believe that the only matter that divides the academic community is competing conceptions of the appropriate means by which to remedy *past* invidious racial discrimination. The diversity movement rightly insists, however, on staying alert to the possibility of discrimination against racial minorities. Because racism *presently* suffuses American culture, it would be extraordinary—indeed virtually inconceivable—if legal academia were free of the scourge of racially invidious practices.<sup>13</sup>

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<sup>10</sup> See Chused, 137 U Pa L Rev at 540 (cited in note 1).

<sup>11</sup> Id at 540 n 19.

<sup>12</sup> Carter, 1 Reconstruction at 26 (cited in note 1).

<sup>13</sup> See Kennedy, 102 Harv L Rev at 1767 (cited in note 5).

The diversity movement also rightly demands that in evaluating candidates for hire or promotion, law school authorities should consider with care indicia of achievement or promise that are often viewed as purely meritocratic but that are actually tainted by informal social practices that, on a racial basis, systematically disadvantage racial minorities. Consider, for instance, Supreme Court clerkships. Such positions bring young attorneys to the attention of hiring committees and typically count in their favor when hiring decisions are made. But based on my experience and observations,<sup>14</sup> it seems that, for reasons that are difficult to determine but that probably have something to do with race, talented blacks encounter peculiar difficulties obtaining these coveted clerkships.

An illustration that provides at least arguable support for my impression comes from an unlikely source: the hiring record of Justice William J. Brennan, Jr. Over the course of his illustrious 34-year career, Justice Brennan chose approximately one hundred clerks to help him research and write the opinions that have made him one of the most important figures in American life since the Second World War. Many of Justice Brennan's clerks, helped to a considerable degree by the prestige associated with their service to him, have gone on to lead impressive careers. Daniel J. O'Hearn is a Justice on the New Jersey Supreme Court. Richard Posner and Richard Arnold sit as judges on the federal courts of appeal. And from among the Brennan clerks in academia, one could create a fine law faculty that would include Frank Michelman of Harvard, Owen Fiss of Yale, and Geoffrey Stone of the University of Chicago. One striking fact about Justice Brennan's extended family of law clerks is that it includes no blacks. (In 1990, he did select a black person, though she never had the opportunity to work with him because of his sudden retirement.)<sup>15</sup>

Justice Brennan's record is by no means unique. Five sitting Justices—William Rehnquist, Sandra Day O'Connor, Antonin Scalia, Anthony Kennedy, and David Souter—have had no black clerks. Justices White and Blackmun have each hired one. Justice Stevens has hired two. Justice Marshall has hired *seven*, which equals the number hired by all the other Justices in the entire his-

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<sup>14</sup> My comments about the race question in Supreme Court clerkships are based upon my experience as a law student seeking a clerkship, as a clerk who helped to select subsequent clerks, as a law school professor engaged in the complex process of seeking to advance the careers of students in competition with one another, and as a law professor who has devoted considerable time to learning about the largely unwritten history of the elite black lawyer.

<sup>15</sup> See David Margolick, *Law: At The Bar*, NY Times B6 (Aug 24, 1990).

tory of the Court. (Justice Frankfurter hired a black clerk in 1948, as did Chief Justice Earl Warren in 1968.)

Some will argue that these numbers merely reflect the fact that relatively small numbers of blacks have graduated from leading law schools with the credentials that Justices have typically looked for in making their selections, including stellar grades, law review membership, and glowing letters of recommendation from figures whom the Justices respect. There is, unfortunately, much strength in that argument.<sup>16</sup> But few is not the same as none. Four blacks selected by Justice Marshall are now on the law faculties at Harvard and Yale. Each served as an editor of the *Harvard Law Review* or the *Yale Law Journal*. I maintain, although I cannot prove, that each was on par with his fellow clerks, including Justice Brennan's, a notably distinguished bunch. Each was available to Justice Brennan; he usually chose his clerks earlier than the other Justices. Yet, none received offers from him.

Justice Brennan's failure to select young black lawyers, who, as students, ascended to the highest circles of legal academia, is both puzzling and disturbing. First, his record may reflect either an unawareness of or apathetic response to the obstacles that black students face, the most insidious of which is lowered expectations on the part of their classmates and professors. It takes an extra measure of talent, fortitude, and self-discipline for black students to engage in all-out competition with their white peers and come out on top.<sup>17</sup> When they do, persons occupying positions of authority should recognize the special quality of such accomplishment, the fact that a black student with an "A" average has likely had to wrestle with difficulties that his or her white colleague with an "A" average never had to confront.<sup>18</sup>

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<sup>16</sup> For an analysis of "the pool problem" as it relates to the crisis in faculty hiring in academia, see Kennedy, 102 Harv L Rev at 1760-70.

<sup>17</sup> On the special difficulties that black students face in elite, predominantly white educational settings see Richard L. Zweigenhaft and G. William Domhoff, *Blacks in the White Establishment* (Yale, 1991); Lorene Cary, *Black Ice* (Alfred A. Knopf, 1991); Jeff Howard and Ray Hammond, *Rumors of Inferiority*, New Republic 17 (Sept 9, 1985); James Alan McPherson, *The Black Law Student: A Problem of Fidelities*, Atlantic Monthly 93 (April 1970).

<sup>18</sup> See also *DuFunis v Odegaard*, 416 US 312, 331 (1974) (Douglas dissenting): A black applicant who pulled himself out of the ghetto into a junior college may thereby demonstrate a level of motivation, perseverance, and ability that would lead a fair-minded admissions committee to conclude that he shows more promise for law study than the son of a rich alumnus who achieved better grades at Harvard. That applicant would be offered admission not because he is black, but because as an individual he has shown he has the potential, while the Harvard

Second, Justice Brennan's record may suggest an unawareness of, or indifference to, the fact that some blacks who lacked some of the credentials he typically relied upon—I think here particularly of glowing letters of recommendation from persons he knew and respected—were outstanding students whose abilities were shrouded by social segregation. Black students generally find it much more difficult than their white peers to attract the attention and support of influential professors—most of whom, of course, are white men. Sometimes this stems from undue defensiveness on the part of black students who, understandably alarmed by the prevalence of racism, adopt a self-protective standoffishness. More frequently, however, it stems from the conduct of white professors who display the familiar tendency of people to identify most with those people who are most like them—an innocent reflex with devastating consequences for those, like blacks, in “out” groups.

Third, the virtual absence of blacks among those whom Justice Brennan hired as law clerks raises a question about his commitment to the race relations jurisprudence that forms a central aspect of his magnificent contribution to American democracy. For over three decades, he eloquently criticized the moral and intellectual laziness that inhibits our society from escaping the grip of its racist past. Yet, the striking racial homogeneity of his law clerks raises the possibility that while Justice Brennan was ever eager to excoriate complacency “out there,” he may have been lamentably complacent in the constitution of his own judicial chambers. The diversity movement rightly maintains that the same may be true about the constitution of legal academia.

## II

Although the diversity movement deserves praise for highlighting race problems in faculty hiring, elements within it have supported various tendencies that need to be rethought. I shall briefly mention two. The first is a tendency to exaggerate the significance of racial discrimination as an explanation for the paucity of minorities on law school faculties.<sup>19</sup> Some diversity movement activists talk as if the main, if not the only, impediment to the hiring or promotion of minority academics is the willful, or perhaps the unconsciously biased, opposition of the white male traditional-

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man may have taken less advantage of the vastly superior opportunities offered him.

<sup>19</sup> For an elaborate discussion of this issue, see Kennedy, 102 Harv L Rev at 1765-70 (cited in note 5).

ists. The problem with this view is that it ignores an important achievement of the diversity movement: the creation within many white male traditionalists of a genuine desire to include minority academics within law school faculties, even to the extent of modifying established patterns of recruitment and evaluation. As should be clear from my comments above, I am *not* suggesting that invidious racial discrimination can be safely dismissed as a potential explanation for disappointing results. I am suggesting, however, that diversity movement activists err to the extent that they neglect other possibilities. When seeking to understand the relatively small numbers of racial minorities in legal academia, one should consider the full range of variables that likely play a role in shaping the situation that the diversity movement rightly seeks to change. One should consider, for instance, the crippling, cyclical, self-perpetuating effects of past discrimination (poverty, inferior schooling, crime, and so on) that yearly consign to oblivion thousands, indeed hundreds of thousands, of bright young people of color who might otherwise be the Charles Lawrences or Anita Allens of the future. One should also consider the forces that impinge upon career choices made by members of racial minorities, including the allure of opportunities that seem more rewarding than those offered by academia. The first of these variables may help to explain why, among people of color, the pool of prospective academics is so disturbingly small. The second may help to explain why, within this small pool, so few decide to pursue academic careers.

I realize that as a matter of argumentative strategy, there is a practical reason for concentrating attention on conduct that one can directly influence—that is, the decisions of one's teachers or colleagues—as opposed to focusing upon conditions that are beyond one's immediate reach. The conduct of law professors is far more vulnerable to protest on law school campuses than the egregious state of urban ghettos. There are neglected costs, however, that likely attend this strategic decision, including the allocation of public attention to marginal as opposed to central problems, the misimpression that legal academia is as pervasively racist as some activists claim it to be (a misimpression that may convince some students of color to forgo seeking academic careers), devaluation of allegations of discrimination, and loss of goodwill from people in authority who, despite allegations to the contrary, are genuinely engaged in vigorous efforts to recruit scholars of color. My impression is that these and other costs often outweigh the benefits gained by advancing exclusively claims of discrimination.

A second tendency of the diversity movement that warrants rethinking is the credentializing of race.<sup>20</sup> One sometimes hears it said, for instance, that racial status itself constitutes an intellectual credential since experiences associated with minority background create a distinctive minority "voice" that is of value to academic communities that prize intellectual pluralism.<sup>21</sup> This tack, too, has a certain strategic value. One of the perceived disadvantages of some of the rationales used to justify race-conscious affirmative action in faculty hiring is that they seem implicitly to concede the scholarly inferiority of affirmative action's beneficiaries.<sup>22</sup> Rationales for affirmative action that are based on notions of reparative justice or hopes for social peace suggest that even though a given minority scholar is less good in comparison with a white scholar, there are overriding reasons *outside the relative merits of their intellectual work* to award the position, prize, or promotion in question to the minority scholar. Making an intellectual credential of race lessens or removes the implication that taking race into account in hiring or promotion decisions means lowering intellectual standards. By crediting minority racial status with a kind of intellectual virtue, some proponents of the diversity movement have tried to enhance the prestige and marketability of minority scholars in terms of the academy's own conventional meritocratic rhetoric. They have attempted to ennoble minority status by making it a source of intellectual authority. They have sought to glamourize scholars of color by endowing them with a "minority mystique." To some extent they have succeeded.

Credentializing racial status is, of course, by no means novel; members of every group have sought to use the group's experience as the grounds for claiming that they have special insight—a kind of group-based knowledge—that is worthy of deference and recognition.<sup>23</sup> And given the way that people of color have long been

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<sup>20</sup> For an elaborate discussion of this issue, see Kennedy, 102 Harv L Rev at 1788-1807.

<sup>21</sup> See, for example, Ruth Marcus, *Black Law Group Supports Boycott of Harvard Course*, Washington Post A3 (Aug 18, 1982); Derrick Bell, Jr., *A Question of Credentials*, Harv L Rec 6, 14 (Sept 17, 1982); Mari Matsuda, *Affirmative Action and Legal Knowledge: Planting Seeds in Plowed Up Ground*, 11 Harv Women's L J 1 (1988); Duncan Kennedy, 1990 Duke L J 705 (cited in note 2).

<sup>22</sup> See, for example, Derrick A. Bell Jr., *Racism and American Law* § 7.12.2 at 449 (Little, Brown & Co., 2d ed 1980): "Simply recognizing minority exceptions to traditional admissions standards . . . has served to validate and reinforce traditional values while enveloping minority applicants in a cloud of suspected incompetency."

<sup>23</sup> See Robert K. Merton, *Insiders and Outsiders: A Chapter in the Sociology of Knowledge*, 78 Am J Soc 9 (1972); Kennedy, 102 Harv L Rev at 1789-90 n 197 (discussing claims of "insider" knowledge on the basis of Jewish identity and female identity).

marginalized on a racial basis intellectually, one can certainly understand a desire to turn the tables.

Despite its short-term advantages, however, the diversity movement should eschew the strategy of credentializing race. This strategy is filled with problems, the most important of which is that it powerfully reinforces the baneful belief that race is destiny, that knowing a person's race can properly lead to assumptions or conclusions about the worthiness of that person or her knowledge or her ability to accomplish a certain task. Thus, we hear people claim that, because of race—or more precisely, because of the first-hand experience of being oppressed as a person of color in a predominantly white society—a black scholar will presumptively teach a better course or write a better article about certain subjects—for example, Afro-American culture or race relations—than a white scholar.<sup>24</sup> Such beliefs are antithetical to what should be fundamental precepts of academic life, and cultural life in general. In academic life, there should be no *a priori* judgments made about a person's work based merely on his or her racial background. Just as a black scholar's work on the Holocaust should be evaluated without positive or negative prejudgment, so, too, should a white scholar's work on African-American slavery be evaluated without any sort of racial prejudgment. To bring to fruition such a community, scholars and institutions will have to do all that they can to inculcate what Gordon Allport referred to as "habitual open-mindedness,"<sup>25</sup> a skeptical attitude towards 'all labels and categories that obscure appreciation of the unique features of specific persons and their work. Since credentializing race generates habits of mind that lock *all* intellectuals, including intellectuals of color, into new but nonetheless confining sets of racially-classified

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<sup>24</sup> A long line of distinguished figures have made such claims. Carter G. Woodson, the founder of the Association of Negro Lives and History, declared, for instance, that "if the study of the Negro is ever told it must be done by scientifically trained Negroes . . . . [M]en of other races cannot function efficiently because they do not think black." August Meier and Elliot Rudwick, *Black History and the Historical Profession: 1915-1980* 289 (U of Illinois Press, 1986). More recently, the Pulitzer Prize-winning playwright August Wilson has advanced the same idea. Explaining why, in his view, only a black movie director can suitably translate his plays to film, Wilson writes that "[w]hite directors are not qualified for the job. The job requires someone who shares the specifics of the culture of black Americans." August Wilson, *I Want a Black Director*, NY Times A25 (Sept 26, 1990). For an expression of similar views in the context of legal academia, see Richard Delgado, *The Imperial Scholar*, 132 U Pa L Rev 561 (1984). For an extended rebuttal, see Kennedy, 102 Harv L Rev 1745 (cited in note 5).

<sup>25</sup> See *The Nature of Prejudice* 24 (Doubleday, 25th Anniversary ed 1988).

boxes, it is a strategy that undermines rather than supports the best aspirations of the diversity movement.

### III

By insistently pushing the race question into the forefront of discussions about legal theory, practice, and education, proponents of the diversity movement are shining light on important issues that had heretofore been neglected. They are also generating concrete reforms that are long overdue. Although there is much that remains to be done, and although some parts of the diversity movement have pursued mistaken paths, its overall influence has been remarkably productive, an achievement that warrants respect and invites praise.