Diversity, Distance, and the Delivery of Higher Education

RACHEL F. MORAN[*]

The debate over affirmative action in colleges and universities has focused on race as the critical issue. Certainly, the fate of race-conscious admissions programs rests heavily on society's commitment to correcting past injustice. Yet, the controversy over affirmative action also reflects shifting conceptions of higher education. In Regents of the University of California v. Bakke, Justice Lewis Powell treated racial diversity as part of a pedagogical process in which students draw on their experiences to learn from each other. He characterized this vigorous exchange of ideas as key to creating the environment of "speculation, experiment, and creation" at the heart of higher learning. Today, new technologies are being touted as a way to deliver education without face-to-face contact. The virtual university fundamentally reconceives the pedagogical process in ways that implicate not only the affirmative action debate but also the structure of post-secondary education.

I. INTRODUCTION

In debates about affirmative action, there is a tendency to treat race as *sui generis* and unlinked from larger social pressures and trends. Yet, race is simply one way—albeit a fundamental and important one—that we structure the world around us. In the field of higher education, the reconsideration of affirmative action is integrally connected not only to notions of race but also to images of the university's place in a democratic society. With the rise of new technologies, the very concept of the university is being revisited. Today, educational entrepreneurs tout the benefits of the virtual university, a university without walls that exists largely in cyberspace.

This new way of learning depends less on face-to-face interaction and more on the transfer of information. It unsettles the ties between personal identity, residential education, and the learning process. The futuristic focus on a "brave new world"[1] of higher education and the tendency to forget our history when

[1] ALDOUS L. HUXLEY, BRAVE NEW WORLD (1932).

eliminating affirmative action[2] are not coincidental events but are related in significant ways. New technologies permit substantial amounts of information to be transferred at relatively low cost to a large number of individuals. As a result, the information society seems to be egalitarian: Everyone can log on and participate in the flow of ideas. Yet, logging on is a practice generally undertaken alone, often in the privacy of one's home. The sender and the receiver need not know one another. Each can remain anonymous or even present a wholly false identity. The impersonality of information transfer reduces the salience of personal qualities, like race, that are historically situated. Knowledge is treated as objective and factual, rather than intersubjective and cultural. For this reason, the idea that race or other personal characteristics could be relevant to finding shared truths through the robust exchange of ideas becomes hard to fathom. In all of these ways, then, the debate over affirmative action can be understood as the first battle over the meaning of residential education itself.

In this paper, I will briefly review the justifications for affirmative action in higher education, contrasting a corrective justice rationale with a rationale based on pedagogical diversity. I will then turn to current calls for a colorblind university. The push to eliminate affirmative action turns on narrowly defining past wrongs to discredit the corrective justice rationale. In addition, critics of affirmative action contend that pedagogical diversity is mere camouflage for impermissible quotas. To the extent that critics characterize the beneficiaries of affirmative action as unqualified, they belittle the possibility that these students could contribute to the exchange of ideas. In closing, I will show how the ideology of the information society reinforces these trends by embracing an ethic of deregulation in education, marginalizing the significance of teachers' and learners' identities, and exacerbating the gap between those who have access to the power of technology and those who do not.

II. WHY AFFIRMATIVE ACTION?

Affirmative action in higher education grew out of efforts to desegregate institutions of higher learning. The drive for desegregation in the post-World War II era was rooted in the black experience with slavery and the rise of a Jim Crow caste system after Reconstruction. The most salient marker of social subordination for blacks was the "separate but equal" system, one that generated public facilities and services that were racially segregated and highly

---

[2] *See* MARTIN LUTHER KING, JR., WHERE DO WE GO FROM HERE? CHAOS OR COMMUNITY 109 (1967) (warning of the dangers of obscuring or forgetting ugly periods in American history and thereby failing to pay the debt of justice).

unequal.[3] In the push to desegregate public education, colleges and universities were among the first targets of litigation. The investment in well-appointed residential campuses for white students, who then enjoyed access to distinguished faculty and a network of successful alumni, could not be duplicated for blacks in separate institutions. The inherent inequality of a system of black and white colleges, professional schools, and graduate programs exemplified the ways in which segregation both reflected and reinforced racial stratification.[4]

As with other desegregation efforts, the underlying principle was one of corrective justice: Compensate the victims of past discrimination by giving them access to equal educational opportunity.[5] Yet, even after the United States Supreme Court recognized that "[s]eparate educational facilities are inherently unequal,"[6] litigants found their efforts to equalize access stymied by the demands of having to litigate on a case-by-case basis. Organizations like the National Association for the Advancement of Colored People simply did not have sufficient resources to bring suit against all public colleges and universities to demand equal treatment for blacks. Nor could small, understaffed federal agencies bring protracted lawsuits in an effort to integrate a wide array of American institutions. The civil rights movement created rising expectations, but unrest grew when individuals and organizations waged an uphill battle to break down widespread resistance to integration. To alleviate the tensions, the federal government committed itself to affirmative action as a way to redress growing racial conflict.[7] Under affirmative action, Congress could condition

---

[3] *See* J. HARVIE WILKINSON III, FROM *BROWN* TO *BAKKE*: THE SUPREME COURT AND SCHOOL INTEGRATION: 1954-1978 at 11-23 (1979) (chronicling the legal and social evolution of legally mandated segregation in the South); C. VANN WOODWARD, THE STRANGE CAREER OF JIM CROW 7-10 (1974) (discussing the period following the First Reconstruction in which Jim Crow segregation was institutionalized and the Second Reconstruction beginning in the middle of the twentieth century that undid this racial caste system).

[4] *See* RICHARD KLUGER, SIMPLE JUSTICE 256-84 (1976) (describing cases successfully challenging racially restrictive college and university admissions).

[5] *See* Paul Brest & Miranda Oshige, *Affirmative Action for Whom?*, 47 STAN. L. REV. 855, 865-67 (1994-95) (analyzing corrective justice rationale for affirmative action programs); GERTRUDE EZORSKY, RACISM AND JUSTICE: THE CASE FOR AFFIRMATIVE ACTION 73-75 (1991) (describing racially discriminatory practices and the need not only to dismantle them but to compensate for past injustices); Carl L. Livingston, Jr., *Affirmative Action on Trial: The Retraction of Affirmative Action and the Case for Its Retention*, 40 HOW. L.J. 145, 174-98 (1996) (describing elements of compensatory justice model); WILKINSON, *supra* note 3, at 274-80 (describing and critiquing corrective justice rationale for affirmative action).

[6] Brown v. Board of Educ., 347 U.S. 483, 495 (1954).

[7] *See* CHARLES R. LAWRENCE III & MARI J. MATSUDA, WE WON'T GO BACK: MAKING THE CASE FOR AFFIRMATIVE ACTION 11-29 (1997) (asserting that civil unrest prompted government and business to adopt affirmative action as a strategy for containing conflict);

financial assistance on compliance with norms of non-discrimination, and it could ask institutions to adopt voluntary initiatives to increase the representation of non-white faculty, students, and staff even without a proven history of discriminatory acts.[8]

Precisely because affirmative action seemed to be a forward-looking effort to produce an integrated society rather than a backward-looking attempt to correct particular instances of injustice, federal courts struggled to find a new rationale to justify the shift. In *Regents of the University of California v. Bakke*,[9] Justice Lewis Powell offered such an explanation. He contended that affirmative action in admissions could be linked to the pedagogical process: Education, including socialization to a set of community values, was highly dependent on face-to-face interaction among students. Students needed to learn from one another by sharing their varied experiences in a dynamic setting that allowed the free exchange of ideas, regardless of differences in culture, customs, and values.[10] Racial and ethnic diversity in turn was essential to developing the atmosphere of "speculation, experiment, and creation"[11] at the very heart of this learning experience. Educators enjoyed the discretion to use "pluses" in the admissions process to achieve the degree of diversity necessary to promote vigorous intellectual exchange and responsible socialization.[12] By emphasizing the construction of knowledge rather than corrective justice, *Bakke* reframed the rationale for affirmative action in higher education. However, its new justification could not save these programs from harsh criticism and ongoing skepticism.

JOHN DAVID SKRENTNY, THE IRONIES OF AFFIRMATIVE ACTION: POLITICS, CULTURE, AND JUSTICE IN AMERICA 111–44 (1996) (contending that affirmative action was a pragmatic administrative solution to the problems inherent in a colorblind model that required proof of discriminatory intent). *But cf.* Troy Duster, *Individual Fairness, Group Preferences, and the California Strategy, in* RACE AND REPRESENTATION: AFFIRMATIVE ACTION 111–12 (Robert Post & Michael Rogin eds., 1998) (contending that President Nixon institutionalized affirmative action because it was a potential wedge issue that would benefit the Republican party).

[8] For discussions of the origins and nature of affirmative action law, see Livingston, *supra* note 5, at 146–52; James E. Jones, Jr., *The Origins of Affirmative Action*, 21 U.C. DAVIS L. REV. 383, 389–405 (1988).

[9] 438 U.S. 265 (1978).

[10] *See id.* at 312–14 (Powell, J. expressing his views of the case, not the majority); *see also* BARBARA R. BERGMANN, IN DEFENSE OF AFFIRMATIVE ACTION 106–08 (1996) (expanding diversity rationale to cover the workplace as well as higher education and women as well as racial and ethnic minorities); Brest & Oshige, *supra* note 5, at 862–65 (elaborating the diversity rationale for affirmative action in higher education).

[11] *Bakke*, 438 U.S. at 312 (citing Sweezy v. New Hampshire, 354 U.S. 234, 263 (1957)).

[12] *See id.* at 317–18.

III. THE ROOTS OF RETRENCHMENT

Those who demand a principle of colorblindness in university admissions have rejected both corrective justice and pedagogical rationales for affirmative action. Like the United States Supreme Court, these advocates have taken a very narrow view of the relevance of past racial injustice. The Court has defined discrimination as intentional misconduct by individuals, thereby minimizing the importance of past racial ideology in shaping current institutional practices.[13] As a result, the norms of teaching and research that grew out of a segregated history remain unquestioned as a legal matter. Yet, with the diversification of students and faculties at previously all-white universities, these norms have been challenged as an intellectual matter. For example, debates over how to define a literary canon are not concerned with whether a particular humanities professor acts with racial animus in putting together a reading list. Instead, the challenge raises a far more insidious possibility: A non-traditional author's work does not gain recognition as a "great book" because a legacy of racial stratification taints the purportedly objective but, in fact, culturally biased process of evaluation.[14]

The legal focus on individual acts of animus makes institutional reform programs like affirmative action seem anomalous and misguided. Corrective justice is appropriate only when it rectifies a demonstrable wrong inflicted by one individual on another; otherwise, color-conscious remedies are an abuse of discretion. Without proof that officials at a college or university have actively discriminated, there appears to be no reason to employ race-conscious remedies. Indeed, these remedies seem to be little more than acts of hostility toward those who fail to receive a "plus"—the victims of what is popularly referred to as "reverse discrimination."[15] One possible response is to broaden

---

[13] *See, e.g.,* City of Richmond v. J. A. Croson Co., 488 U.S. 469, 498–506 (1989) (government contracting); Freeman v. Pitts, 503 U.S. 467, 495–96 (1992) (school desegregation); Keyes v. School District No. 1, 413 U.S. 189, 198, 208–09 (1973) (school desegregation); Washington v. Davis, 426 U.S. 229, 238–41 (1976) (hiring).

[14] *See* W.B. CARNOCHAN, THE BATTLEGROUND OF THE CURRICULUM 1–7, 112–26 (1993) (describing how the curriculum in higher education in America has responded to changes in the student body over the past 200 years); Troy Duster, *What We Can Learn From Other Experiences in Higher Education, in* PERSPECTIVES ON DIVERSITY: AALS SPECIAL COMMISSION ON MEETING THE CHALLENGES OF DIVERSITY IN AN ACADEMIC DEMOCRACY 33, 35–37 (Rachel F. Moran ed., 1997); Nancy J. Peterson, *Redefining America: Literature, Multiculturalism, Pedagogy, in* TEACHING WHAT YOU'RE NOT: IDENTITY POLITICS IN HIGHER EDUCATION 23, 28–29 (Katherine J. Mayberry ed., 1996) (commenting on her multicultural approach to teaching American Literature).

[15] *See, e.g.,* Wygant v. Jackson Bd. of Educ., 476 U.S. 267, 273–74 (1986) (lay-offs); Hopwood v. Texas, 78 F.3d 932, 934–35, 939–41 (5th Cir.), *cert. denied,* 518 U.S. 1033

the concept of discrimination to include institutional structures and practices with exclusionary effects. Despite pleas from some legal scholars,[16] the Supreme Court has largely rejected an "effects" test as the constitutional benchmark of wrongdoing and has grown increasingly reluctant to approve remedial legislation that relies on disproportionate adverse impacts on underrepresented groups rather than on discriminatory motives.[17]

As a result, Powell's pedagogical rationale in *Bakke* has become the principal means to defend affirmative action programs that are proactive rather than corrective. By characterizing affirmative action as a way to reconstruct the process of knowing and learning, Powell treats race-conscious measures as proper educational strategies, whether or not individual acts of discrimination have been proved. According to Powell, once students meet a threshold requirement of technical competency, colleges and universities are free to look at non-quantifiable traits that might benefit their peers in the free exchange of ideas. These traits are designed to identify alternative perspectives and values that enable students to develop a cosmopolitan view of the world. One such trait is race, although it is not the only factor to be considered in a diverse system of education.[18]

Opponents of affirmative action have sought to discredit this pedagogical

---

(1996) (law school admissions); Podberesky v. Kirwan, 38 F.3d 147, 152 (4th Cir. 1994) (race-based scholarships); *see also* Jamie B. Raskin, *Affirmative Action and Racial Reaction*, 38 How. L.J. 521, 541 (1995) (reporting on critiques of affirmative action which comment that "'reverse discrimination' causes 'unfairness' to the endangered species of white men"); Kathleen Sullivan, *Sins of Discrimination: Last Term's Affirmative Action Cases*, 100 HARV. L. REV. 78, 91–96 (1986) (commenting that by casting affirmative action as penance for particular acts of past discrimination, the Supreme Court failed to resolve the conflict between arguments that affirmative action creates "windfalls to non-victims and injustice to innocents").

[16] Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 355–76 (1987) (arguing that allegedly racially discriminatory acts resulting from unconscious racism should be subject to strict scrutiny and proposing a test that would "look to the 'cultural meaning' of an allegedly racially discriminatory act as the best available analogue for and evidence of the collective unconscious that we cannot observe directly").

[17] *Compare* Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 218–31 (1995) (refusing to allow federal legislation that aided minority contractors to escape strict scrutiny on the ground that it was benign and remedial), *with* Fullilove v. Klutznick, 448 U.S. 448, 482–89 (1980) (refusing to find that Congress must act in a colorblind fashion in a remedial context, a position rejected by the Court in *Adarand*).

[18] *See Bakke*, 438 U.S. at 314–15. *See generally* JOAN POLINER SHAPIRO ET AL., REFRAMING DIVERSITY IN EDUCATION 1–8, 11–50 (1995) (describing the differences in kind that affect student learning, such as race, ethnicity, gender, social class, and sexual orientation, which should be included in models of diversity).

rationale as well. Apart from asserting that Powell wrote only for himself and that his opinion is, therefore, a largely idiosyncratic exercise,[19] critics of his pedagogy of diversity focus on the fact that black and Latino applicants have lower numerical indicators than whites and Asians. By painting blacks and Latinos as unqualified, advocates of colorblindness question whether they have much to contribute to the intellectual exchange of ideas. Having focused on these shortcomings, critics of Powell's view insist that his diversity rationale is little more than camouflage for racial quotas that presume racial injustice without proof of particular harms.[20] Proponents of colorblindness argue that academic administrators in public colleges and universities, as elite bureaucrats who are largely unaccountable to the electorate, should not be allowed to impose their vision of political correctness on innocent students and their taxpaying parents.[21]

IV. CONTEXTUALIZING THE AFFIRMATIVE ACTION DEBATE

At first glance, the affirmative action debate seems to be wholly about race. Only incidentally does the controversy focus on higher education. In reality, this debate is integrally connected to efforts to transform the delivery of educational services and redefine the terms of access to higher education. In its early years, the desegregation movement focused on colleges and universities because the benefits of those privileged spaces could not be widely duplicated. Today, however, new technologies are being offered as a way to minimize barriers to access to higher education, use free market ideology to make educational markets efficient, and enable individuals to transcend their personal circumstances to participate in a universal learning process. By profoundly

---

[19] *See, e.g.*, Hopwood v. Texas, 78 F.3d at 944–45 (describing Justice Powell's decision as a "lonely opinion" that never received the approval of other members of the Court). For a contemporary critique of the Powell opinion, see Vincent Blasi, *Bakke As Precedent: Does Mr. Justice Powell Have a Theory?*, 67 CAL. L. REV. 21, 23 (1979) (noting that Justice Powell "wrote only for himself").

[20] *See* Hopwood v. Texas, 78 F.3d at 948 n.36; *see also* Dinesh D'Souza & Christopher Edley, Jr., *Affirmative Action Debate: Should Race-Based Affirmative Action Be Abandoned As a National Policy?*, 60 ALB. L. REV. 425, 450–51 (1996) (setting forth D'Souza's view that admissions programs based on diversity considerations are "a camouflage for race" and take on the same undesirable characteristics as quotas).

[21] For example, University of California Regent Ward Connerly demonstrated his alarm about a University of California Provost's "mindless blather" about diversity, which led to a growing conviction that "the administration was lying" about affirmative action to the Board of Regents. Michael W. Lynch, *Racial Preferences Are Dead*, 29 REASON 32 (1998) (interviewing University of California Regent Ward Connerly), *available in* 1998 WL 9948299.

altering ideas about the rationing of educational services, this transformation has obscured corrective justice arguments. By reconstructing images of how people learn, the shift also has undercut pedagogical claims based on the benefits of face-to-face interactions with peers from a range of backgrounds.

A. *Changing the Conception of Public Responsibility*

Recently, a consortium of governors in Western states decided to cooperate in creating a virtual university for their residents. The governors hoped that this "Virtual U" would provide a low-cost means of meeting the burgeoning demand for higher education. With limited tax revenues to build new campuses, a university located primarily in cyberspace appeared to be one of the few ways to keep the promise of widespread access to post-secondary education alive.[22] One governor, Pete Wilson of California, refused to join the consortium. He declined not because California was unprepared to enter the brave new world of virtual universities, but because he believed that California could independently market its own system of education in cyberspace. After all, it could draw on the prestige of its residential campuses, including the University of California at Berkeley and the University of California at Los Angeles. Why settle for the consortium's generic brand when California already had the university equivalent of Coke or Pepsi to sell?[23]

---

[22] *See* Goldie Blumenstyk, *Western Governors Continue to Plan 'Virtual' College*, CHRONICLE OF HIGHER EDUCATION, June 14, 1996, at A30; Debbie Goldberg, *Creating A Virtual University*, WASHINGTON POST, Apr. 5, 1998, at 5 (Education Review/Special Section); Mary Beth Marklein, *Virtually a University: Western Governors Put Higher Education On Line: Distance Learning Takes a Gigantic Leap Forward*, USA TODAY, June 4, 1998, at 1D.

[23] *See* Goldie Blumenstyk, *Shunning West's 'Virtual University,' Cal. Will Offer Own Courses OnLine*, CHRONICLE OF HIGHER EDUCATION, Oct. 11, 1996, at A34; Pamela Burdman, *California Wants Own Online University, Wilson Says: He Won't Join 13 States in Group Effort*, S.F. CHRONICLE, Oct. 3, 1996, at A17; Donald E. Coleman, *Wilson Pushes Cyber Education in Budget; Governor Seeks $14 Million For Colleges, Universities*, FRESNO BEE, Jan. 9, 1998, at B1; Brad Hayward, *State Program Fosters 'Virtual' Universities*, SACRAMENTO BEE, Oct. 22, 1997, at C1; Amy Wallace, *Wilson Says State Will Create Its Own Online University*, L.A. TIMES, Oct. 3, 1996, at A21; *see also* Pamela Burdman, *Electronic Education: More Colleges Offering Online Courses, Redefining the Nature of Higher Learning*, S.F. CHRONICLE, July 20, 1998, at A1 (citing expert opinion that virtual classrooms will play a critical role in expanding access to higher education in the future); CALIFORNIA POSTSECONDARY EDUCATION COMMISSION, MOVING FORWARD: A PRELIMINARY DISCUSSION OF TECHNOLOGY AND TRANSFORMATION IN CALIFORNIA HIGHER EDUCATION 6–7 (June 1996) (Commission Report No. 96-6) (concluding that no practical plan for savings or revenue would generate enough resources to meet the needs of a coming enrollment surge in higher education); V. Dion Haynes, *California's Colleges Face Flood of*

The Western governors' initiative illustrates some of the changes in the notion of "public education" that new technologies engender. This movement tends to commodify information, treating it as a product to be packaged and sold. A free market ideology converts citizens into consumers, and government into a service provider. Efficiency becomes the most important objective in transactions between the State and its citizens. Ideally, government should streamline itself to look as much like a business as possible and should be forced to compete with private providers of educational services.[24] Because all citizens will be better off with a largely unimpeded educational market, cumbersome regulations designed to promote fairness or equity are misguided and meddlesome. In this deregulatory regime, affirmative action is little more than a form of price fixing or price discrimination, an unwarranted interference in the marketplace that merely promotes inefficient outcomes.[25]

Students; Boomers' Kids Likely to Push System to Brink, CHICAGO TRIBUNE, Dec. 3, 1996, at § 1, at 6 (describing California's burgeoning demand for higher education, now termed Tidal Wave II, which the state is ill-equipped to meet because of its lack of planning and budgetary resources and reporting that the state is seeking alternative ways to cope with the student surplus, including expanding distance learning offerings through a virtual university).

[24] *See* Pamela Burdman, *Corporations Identify Niche, Create Their Own Classes*, S.F. CHRONICLE, July 20, 1998, at A6; Pamela Burdman, *Firms Boost Online Education*, S.F. CHRONICLE, Jan. 13, 1998, at A15 (reporting that the California Virtual University is funded, in large part, by private corporations enabling it to function as a stand-alone non-profit institution rather than as a state agency). *But cf.* Gary Chapman, *Will Technology Commercialize Higher Learning?*, L.A. TIMES, Jan. 19, 1998, at D1 (reporting on the concerns associated with the negative effects that commercialization and privatization of online learning will have on higher education); Kenneth C. Green & Steven W. Gilbert, *Great Expectations—Content, Communications, Productivity, and the Role of Information Technology in Higher Education*, CHANGE, Mar.–Apr. 1995, at 8, 10 (noting that while educational institutions, like the corporate world, have used information technology both "routinely and effectively" to enhance productivity in administrative and faculty areas, there have been no real gains in "instructional productivity" or any notable significant reductions in instructional costs); Harold T. Shapiro, *The Fiscal Crisis and Higher Education: Current Realities and Future Prospects*, ACADEME, Jan.–Feb. 1993, at 10, 11–13, 16; David F. Noble, *Digital Diploma Mills: The Automation of Higher Education*, FIRST MONDAY: PEER-REVIEWED JOURNAL ON THE INTERNET (1998) (visited Aug. 21, 1998 < http:\\www.firstmonday.dk/issues/issue3_1/noble/ >); Kenneth R. Weiss, *A Wary Academia on Edge of Cyberspace; As Colleges Put More Information Online and Propose Alliances with Firms Like Microsoft, Some Faculty Fear Uncompensated Use of Their Course Materials and Even Loss of Jobs As 'Distance Learning' Expands*, L.A. TIMES, Mar. 31, 1998, at A1.

[25] *Cf.* Kevin P. Reilly & Kate M. Gulliver, *Interstate Authorization of Distance Higher Education via Telecommunications: The Developing National Consensus in Policy and Practice*, 6 AM. J. DISTANCE EDUC. no. 3 (1992) (citing need for interstate cooperation to eliminate artificial barriers to distance learning across state lines); Gerald C. Van Dusen, THE VIRTUAL CAMPUS: TECHNOLOGY AND REFORM IN HIGHER EDUCATION 91–94, 96–98 (1997)

The emphasis on efficiency necessarily reduces the weight given to the equity concerns that are central to a corrective justice rationale. Yet, the altered notion of public space further marginalizes racial concerns. The virtual university is lauded precisely because it transcends barriers of time and space and is not narrowly bound to a particular geographic location.[26] The corrective justice model was rooted in battles over access to privileged physical space, but education in cyberspace pooh-poohs the relevance of bricks and mortar. New technologies divorce education from a particular place with all of its "local color."[27] As a result, the virtual university obscures the relevance of residential education marked by racial segregation. In the disembodied world of cyberspace, intellectual exchange seems unimpeded by the legacy of discrimination inscribed in racially identifiable colleges and universities.

B. *Reconstructing the Identity of Learners*

The principal identity of the disembodied learner in cyberspace derives from being a consumer of information, a commodity packaged and sold like other products. The consumer's convenience is paramount: Why should students have to go to the trouble of assembling at a particular time and place to hear a lecture? Why not let them log on at their leisure in the privacy and comfort of their own homes? The information, after all, is just the same, however it is transmitted. It does not change because students sit in a classroom together.[28] Moreover, the mastery of information can easily be measured

---

(describing how federal and state regulations have impeded the spread of technology in higher education).

At the same time, however, there is growing concern about the need to ensure the quality of educational services provided through distance learning programs. *See* Barbara Gellman-Danley, *Who Sets the Standards?: Accreditation and Distance Learning, in* BUILDING A WORKING POLICY FOR DISTANCE EDUCATION 1997, at 73 (New Directions for Community Colleges Series No. 99, Fall 1997). For a preliminary effort to set guidelines to ensure that distance learning is educationally effective, see AMERICAN COUNCIL ON EDUCATION, GUIDING PRINCIPLES FOR DISTANCE LEARNING IN A LEARNING SOCIETY (1996).

[26] *See* Donald I. Barker, *A Technological Revolution in Higher Education,* 23 J. EDUC. TECH. SYSTEMS 155, 166 (1994–1995) (New technologies "will empower students and faculty to work together, share knowledge, and instantly access vast amounts of information. All of this will be accomplished without the restrictions of time or place that characterize traditional higher education.").

[27] *See* Hayward, *supra* note 23, at C1 (quoting observations by Joni Finney of the nonprofit Higher Education Policy Institute that "[w]e finally have a tool that makes the location of where you get an education not very important" and that "[u]ntil you can piece together a program from different universities across the country, we're not going to change education much").

[28] *See* Lisa Gubernick & Ashlea Ebeling, *I Got My Degree Through E-mail,* FORBES,

through competency tests that are standardized, quantifiable, and efficient to administer. Why should learners be measured on any other criteria, particularly non-quantifiable and intangible traits, in a world of information transfer?[29] Why should classroom attendance and participation really matter at all, even if they could be part of a virtual university experience?

What this consumer-oriented approach ignores is that learning is not passive receipt of information, but active participation in the construction of knowledge. As Powell pointed out in *Bakke*, students must react critically to information, seeing it through the prism of their own values and experiences. Moreover, they must have the opportunity to contrast their own reactions with those of their peers. Otherwise, students are likely to succumb to parochialism and insularity, however many facts they may memorize.[30] Information is just a

---

June 16, 1997, at 84, 85 ("Modern technology brings education to the students rather than forcing students to subsidize fancy campuses and featherbedding faculties."); I. Trotter Hardy, *An Experiment with Electronic Mail and Constitutional Theory*, 44 J. LEGAL EDUC. 446, 447 (1994) (Stating that a "decided advantage" of using e-mail was that "no meetings had to be scheduled at all. Students could read and respond to messages at their leisure, night or day."); Marklein, *supra* note 22, at 1D (quoting a student enrolled in Western Governors University who said she "wouldn't miss the parties and football games" because "the most important part of it for me would be the degree, the education"); Elaine Woo, *Virtual College: Latest Entry in Online Education Is Network Offering UCLA Extension Courses to 800 Students in U.S. and Abroad*, L.A. TIMES, July 20, 1997, at 2 (Special Section/Campus & Career Guide) (describing how an online extension course permitted a student to pursue "her active lifestyle—she likes to go kayaking, among other things"). *But see* Diane Reed & Thomas J. Sork, *Ethical Considerations in Distance Education*, 4 AM. J. DISTANCE EDUC. no. 2, at 30, 38 (1990) (warning that "students in distance education programs have greater freedom than students in conventional institutions, but that this freedom can have a high price").

[29] *See* Chapman, *supra* note 24, at D1 (reporting on professors' concerns about the trend toward "competency-based" training rather than a "full, well-rounded liberal arts education"); Green & Gilbert, *supra* note 24, at 16–17 ("What information technology does best . . . is deliver *content* and *provide access* to information" but students continue to need "faculty guidance and intervention"); Marklein, *supra* note 22, at 1D (describing how Western Governors University offers competency-based instruction and how some higher education policy researchers are concerned that "[i]t's going to be hard to take a curriculum and translate it into bite-size pieces with competencies associated with it"); Jeffrey R. Young, *Rethinking the Role of the Professor in an Age of High-Tech Tools*, CHRONICLE OF HIGHER EDUCATION, Oct. 3, 1997, at A26 (reporting on fears that standardized competency-testing could limit the range of material taught in college courses). *But cf.* Lee R. Alley, *An Instructional Epiphany*, CHANGE, Mar.–Apr. 1996, at 49 (chronicling one professor's redesign of a freshman course to account for the introduction of distance education and contending that interactive technologies can precipitate a learner-centered model of education).

[30] *Cf.* Nancy S. Dye, *Virtual College: The End of the Campus?*, CHRISTIAN SCIENCE MONITOR, June 8, 1998, at 11 ("All of us will be on our own. There will be no conflict on

set of random observations until it is put into a framework of values and priorities. This framework for knowledge may be hard to develop in isolation, for it requires intellectual exchange to reach intersubjective truths.[31]

Some have argued that the rise of interactive technologies dispenses with the dangers of passivity and isolation associated with merely logging on to a lecture in cyberspace.[32] Even so, it is not clear that the virtual student is fungible with the living, breathing person in a classroom.[33] Ironically,

---

the virtual campus, for we need never come into contact with one another. Could this be the basic appeal of the virtual university in this time of social and cultural uncertainty?"); Amy Virshup, *Surfing Tidal Wave: Some Educators Think the Internet's Rise Should Change Fundamentally How We Think About Teaching, Learning and Testing*, WASH. POST, Feb. 2, 1997, at W10 (Magazine) (citing computer expert Clifford Stoll's view that the new technologies do not help students "find their way in an increasingly chaotic environment" but instead "send them out to get lost in cyberspace").

[31] *See generally* Robert B. Barr & John Tagg, *From Teaching to Learning—A New Paradigm for Undergraduate Education*, CHANGE, Nov.–Dec. 1995, at 13, 21–23 (contrasting a Learning Paradigm, in which students engage in critical thinking and construct knowledge, with an Instruction Paradigm, in which students passively receive information from teachers); Neil Postman, *Technology as Dazzling Distraction*, 59 EDUC. DIGEST, Apr. 1994, at 25, 27 (criticizing those who treat the transfer of information as the primary object of education and thereby fail to recognize the importance of preparation to participate in a democratic community).

[32] *See* Bruce O. Barker et al., *Broadening the Definition of Distance Education in Light of the New Telecommunications Technologies*, 3 AM. J. DISTANCE EDUC. no. 1, at 20, 25 (1989) (describing use of new technologies to promote interaction among students and faculty); Michael Beaudoin, *The Instructor's Changing Role in Distance Education*, 4 AM. J. DISTANCE EDUC. no. 2, at 21, 23–24 (1990) (questioning "myth" that distance learning is "too impersonal" and offering means to foster "dialogue and direction" through satellite mentoring and teaching programs); Michael G. Moore, Editorial, *Three Types of Interaction*, 3 AM. J. DISTANCE EDUC. no. 2, at 1, 6 (1989) (noting the vital importance of planning for learner-content, learner-instructor, and learner-learner interaction if distance education is to be effective); Vicky Phillips, *Just What Plato Ordered—The Virtual University*, SACRAMENTO BEE, Mar. 1, 1998, at F3 (contending that the virtual university combats passivity in the learning process); James C. Taylor, *Technology, Distance Education and the Tyranny of Proximity*, 6 HIGHER EDUC. MGMT. 179, 181–82 (1994) (arguing that properly done, distance learning can enhance interaction by rethinking its role in the educational process). For a description of the new technologies available, see Barker, *supra* note 26, at 158–66.

[33] *See* Mark Clayton, *Professors Peer Doubtfully Into a Digital Future*, CHRISTIAN SCIENCE MONITOR, June 30, 1998, at B7 (reporting on faculty members' fears that some efforts to "equat[e] online 'campuses' with real ones" is "pedagogically irresponsible"); Steven W. Gilbert, *Making the Most of a Slow Revolution*, CHANGE, Mar.–Apr. 1996, at 10, 14 (anticipating that while face-to-face discussions may be absolutely essential for some kinds of learning, a mixture of information technology, face-to-face discussions and other pedagogical methods will usually be the best approach); Robert E. Jensen, *The Technology of the Future Is Already Here*, ACADEME, July–Aug. 1993, at 8, 13 (contending that face-to-face

technologies that characterize students as self-actualizing consumers of information simultaneously tend to abstract away the very identities that give rise to all-important consumer preferences. The selfish consumer becomes oddly selfless. Or as the Chinese sage Wu Wei Wu explained when addressing the sense of personal emptiness in a consumer age: "99.9% of what you think, and everything you do, is for your self, and there isn't one."[34] In cyberspace, a student can create a virtual identity, one that has little to do with his or her actual self. A man can become a virtual woman; a shy person can become a virtual extrovert; and a non-white can become a virtual white.[35] In the virtual community, colorblindness is an artifact of transcending the self: Indeed, one ad for Internet services tells viewers that they will have "no race."[36]

---

interaction can be superior to interactive technologies in certain respects); Kimberly Kindy, *Wilson Proposes More Online College Classes; Education: The Governor Wants to Expand the State's Virtual University*, ORANGE COUNTY REGISTER, Jan. 8, 1998, at A6, *available in* 1998 WL 2606569 (noting that although classroom participation is not a feature of online courses, there can be interactive chat rooms; however, some professors believe that only personal interactions in a classroom can provide the highest quality of education); Noble, *supra* note 24, at ¶ 28 (insisting that students want "the genuine face-to-face education they paid for not a cyber-counterfeit"); Reed & Sork, *supra* note 28, at 39–40 (noting differences between face-to-face learning and interactive technologies and describing the special ethical obligations that arise as a result); Ronald W. Staudt, *Does the Grandmother Come With It?: Teaching and Practicing Law in the 21st Century*, 44 CASE W. RES. L. REV. 499, 524–25 (1994) (arguing that those who believe that new technologies will supplant traditional campuses "underestimate[ ] the importance of the grandmother effect. Students will always find stimulation in the careful educational nurturing of the human teacher.").

[34] DAVID WHYTE, THE HEART AROUSED: POETRY AND THE PRESERVATION OF THE SOUL IN CORPORATE AMERICA 294 (1994).

[35] *See* Christopher J. Dede, *The Evolution of Distance Learning: Technology-Mediated Interactive Learning*, 22 J. RES. ON COMPUTING IN EDUC. 247, 260 (1990) (concluding that technology-mediated interactive learning can help the less socially adept, the shy, and the unassertive student to participate more effectively in the educational process); Jensen, *supra* note 33, at 10 (describing how "people affected by shyness, fear, and low self-esteem sometimes become different in social interactions void of physical contact"); Robert H. Thomas, *"Hey, Did You Get My E-Mail?" Reflections of a Retro-Grouch in the Computer Age of Legal Education*, 44 J. LEGAL EDUC. 233, 240 (1994) (arguing that "[e]-mail may reach those students who are otherwise uncommunicative simply because of the oppressive physical or social climate of the law classroom, since 'electronic communication is blind with respect to the vertical hierarchy in social relationships and organizations.'"). *See generally* SHERRY TURKLE, LIFE ON THE SCREEN: IDENTITY IN THE AGE OF THE INTERNET 268–69 (1995) (warning that the Internet can offer the opportunity to explore multiple selves but that "[w]ithout a deep understanding of the many selves that we express in the virtual we cannot use our experiences there to enrich the real").

[36] *How Being Online Has Changed My Life—Readers Describe How Computers Have Connected Them to Others With Shared Interests and Concerns*, SEATTLE TIMES, July 27, 1997, at C1, *available in* WL 3245402 (reporting an Internet user's claim that "[o]n the

Yet, if we are more than the sum of our consumer preferences, our real selves will demand their due, no matter how we present ourselves in cyberspace. Face-to-face interactions can provide a reality check that unmasks hidden value judgments. Some black Internet users, for example, have reported that they assumed that some correspondents also were black based on their familiarity with black culture. Later, when they met in person, they were surprised to learn that the other users were in fact white. This element of surprise reveals an important racial truth: People regularly assume that blacks and whites live in separate worlds and are largely unfamiliar with one another's way of life. Face to face, the correspondents realize that race matters, even if its significance can sometimes be masked in cyberspace.[37]

C. *Reshaping Social Stratification*

Advertising that touts cyberspace as raceless reveals another facet of the ideology of technological transformation: New technologies are presumed to be great equalizers because everyone will have free-ranging access to information.

Internet there is no race, no sex (the gender type!), no minorities or disabled persons. We are all one and the same—equal."); *Mecklermedia's Fourth Annual Internet World Industry Awards Announced*, Business Wire, Mar. 14, 1997, *available in* WESTLAW, AllNewsPlus Database (reporting on award to MCI for its "There is no race, there is no gender" campaign); *see also* Leslie Savan, *The Sell*, VILLAGE VOICE, Feb. 18, 1997, at 28 (noting that MCI Internet's claim that "[p]eople can communicate mind to mind. Not black to white" was not supported by research but by an anecdotal experience of the advertising campaign's creative director); Doug Stanley, *Hooked on the Net; Is the Internet Addictive or Are Addicts Using the Internet?*, TAMPA TRIBUNE, Nov. 10, 1997, at 1, *available in* 1997 WL 13842188 (reporting pseudonymous Internet user's claim that "There's no gender gap. There's no race gap. There's nothing there."); *cf.* Dede, *supra* note 35, at 261 (noting users' resistance to picture-phones because they did not want their dress, facial expressions, or simultaneously conducted activities revealed while conversing on the telephone).

[37] *See* David Nicholson, *Cyberspace Isn't Colorblind After All*, GREENSBORO NEWS AND RECORD, Aug. 14, 1995, at D3, *available in* 1995 WL 9439256; *see also* Stephen Lynch, *Colorblind?; On the Internet, No One Knows Your Race, Your Age, Your Gender. Will It Change the Way We Communicate?*, ORANGE COUNTY REGISTER, Aug. 10, 1997, at K7, *available in* 1997 WL 7437535 (questioning the simplistic claim that race is irrelevant on the Internet); Michel Marriott, *Frank Racial Dialogue Thrives on the Web*, N.Y. TIMES, Mar. 8, 1998, § 1, at 1 (reporting that individuals are willing to make statements about race on the Internet that they would not make in a face-to-face meeting, in part because they feel anonymous); Jane Zemel, *Technology Has Its Place, But Let's Face It: On-Line Life Is Not Living*, PITTSBURGH POST-GAZETTE, Mar. 8, 1997, at A9, *available in* 1997 WL 4511342 (questioning the desirability of a world of faceless relationships and purely mind-to-mind contact because "[y]our race, your gender, your infirmities, your talents, your flat feet, your pierced navel—they're all part of you. And no one can really know you without knowing all your parts.").

In fact, however, the information age threatens to exacerbate rather than alleviate social stratification. Most obviously, of course, there are the technologically barefoot who lack the resources to log on to a computer and surf the Net. So far, studies indicate that those left by the wayside of the information highway are disproportionately non-white.[38] Yet, the dangers are even more pervasive and reach all the way to the cyberhalls of the virtual university. As states face declining revenues and growing demand for affordable higher education, residential education is increasingly being depicted as a luxury for the few. For the rest, "distance learning" will be the realistic alternative.[39]

The "distance" in distance learning should not be understood in purely physical terms. In addition to being far away from the teacher, the student is removed from other pupils both physically and socially. This social distance creates dangers of insularity when lessons are discussed face-to-face with friends and family rather than with students from different walks of life. There is also a distance from the site where the production of information occurs. Somewhere, a fortunate few hear the "real" lecture in the luxury of a residential setting. These elites shape the production of knowledge through face-to-face interaction, while the masses of students are bystanders in cyberspace.[40]

---

[38] *See* Donna L. Hoffman & Thomas P. Novak, *Bridging the Racial Divide on the Internet*, 280 SCIENCE 390 (1998); Lynch, *supra* note 37, at K7 (noting a 1995 U.S. Department of Commerce study finding that only 11.8% of black urban households and 13.2% of Latino households own a computer compared to 30.3% of white households); Thomas P. Novak & Donna L. Hoffman, *Bridging the Digital Divide: The Impact of Race on Computer Access and Internet Use* (Project 2000 Working Paper) (last modified Apr. 19, 1998) <http://www.2000.ogsm.vanderbilt.edu/papers/race/science.html>; Solomon D. Trujillo, *Opportunity in the New Information Economy: Technology, the Great Equalizer*, 64 VITAL SPEECHES 490, 491 (1998) (remarks of Solomon D. Trujillo, President of U.S. West Communication) ("[t]echnology has the potential to create a dangerous world of 'haves and have nots' in terms of cyberliteracy."); Virshup, *supra* note 30, at W10 (noting that only half of the nation's public schools have Internet connections, that wealthy, suburban districts are much more likely to have access than rural or urban ones, and that schools populated mostly by minorities lag behind in access).

[39] *See* Cynthia Barnett, *Virtual Professor May Find a Home at UNC*, RALEIGH NEWS AND OBSERVER, Mar. 29, 1998, at A1 (reporting that some professors wonder "whether a Virtual U could result in a two-tiered system, where the privileged study the canon on campus while the middle-class masses hunker down at home for on-screen training"); Julianne Malveaux, *Does Education Rationing Have Racial Undertones?*, 14 BLACK ISSUES IN HIGHER EDUC. 30 (1997), *available in* 1997 WL 11571975; Weiss, *supra* note 24, at A1 (citing San Diego sociologist James L. Woods's view that "[d]own the ladder, when you get to community colleges, where there are poorer students of ethnic minority backgrounds, this is the group ticketed for distance learning education because it is good enough for them").

[40] *See* Kathleen J. M. Haynes & Connie Dillon, *Distance Education: Learning Outcomes, Interaction, and Attitudes*, 33 J. EDUC. FOR LIBRARY AND INFO. SCI. 35, 41

Even interactive technologies are not likely to rectify completely this marginalization of the distance learner. Students in residential settings will be marked as "special" by their very presence there, and having a conversation with a professor in a classroom or office is probably more effective than sending an e-mail missive as one of a number of faceless pupils.[41]

The gap between consumers and producers of information will grow in the information age. Because of the potential profitability of mass producing education for distance learners, there will be strong incentives to create a "star" system in higher education. Stars can be commodified, packaged, and sold to large numbers of consumers.[42] California already has learned this lesson: Its system of higher education is clearly stratified with the much-coveted University of California system at the pinnacle. Its elite status can be used to pull even further away from public school competitors into the heady stratosphere of educational cyberspace. The University of California can market its star power, and like other top-tier schools, it will become an even bigger star if it wins a substantial market share in the information society.[43]

The debate over affirmative action is arguably the "first wave" in the battle over growing stratification in higher education. If residential education is a luxury for the privileged few, it must be rationed. A colorblind admissions policy that effectively excludes blacks and Latinos from elite campuses forces them to become passive consumers of information rather than active

---

(1992) (surveying students at off-campus sites who reported believing "the on-campus class to be the primary focus of attention").

[41] *See* Randal C. Archibold, *Online Class at O.C. College Offers Lesson About Future Education: Saddleback's Oceanography Via Internet Is Regarded as a Preview of Tomorrow's 'Virtual University'*, L.A. TIMES, Mar. 17, 1997, at A1, *available in* WL 1997 2192192 (noting educator's concerns about "the depersonalizing of education" as face-to-face interaction is replaced by electronic chat rooms and e-mail); Thomas, *supra* note 35, at 242–45 (expressing concern about the depersonalizing impact of exclusive reliance on e-mail and the need for human interaction to prepare law students for the real world of practice in which nuanced communication is critical).

[42] *See* Chapman, *supra* note 24, at D1 ("The ultimate realization of 'virtual universities' would be a market-driven panoply of courses offered by 'stars' in each respective field"); Gubernick & Ebeling, *supra* note 28, at 85–86 (asserting that modern technology "makes it possible for all students—not just those at the fanciest colleges—to have access to the best lecturers and the best teachers" and "to study at prestigious schools without leaving their homes"). *But cf.* Weiss, *supra* note 24, at A1 (presenting the question, "Will professors who teach, say, Biology 101 find they are no longer needed if such introductory courses can be taught online by star professors on other campuses?");Young, *supra* note 29, at A26 (noting concerns that "a handful of well-known scholars" could market their courses resulting in an erosion of the quality of education and displacement of a range of approaches to education).

[43] *See* Gubernick & Ebeling, *supra* note 28, at 85 (referring to "prestige brand" universities); Young, *supra* note 29, at A26 (referring to "brand-name universities").

participants in the construction of knowledge. They are bystanders who must watch the stars build ways of understanding the world, ways that may incorporate little of their perspective. Already, changes in admissions policy at the University of California are having this effect: There are increasing concerns about the fate of ethnic studies, student-run journals devoted to black and Latino issues, and student-supported programs to assist disadvantaged communities.[44] Yet, these are dilemmas only for those who expect to shape their education in a residential setting. For those who expect to learn only at a distance, these lost opportunities to participate in the construction of knowledge are unrecognized because everyone has the same chance to log on at Virtual U.

V. CONCLUSION

New technologies are being offered as a solution to the problem of a shrinking public fisc and a growing demand for higher education. The shift to a free market model of virtual education is held up as a relatively costless way to escape the squeeze on resources for post-secondary schooling. Technological transformation is characterized as a mere change in methods to promote efficiency, a shift otherwise deemed neutral and value-free. Yet, as I have tried to demonstrate, this shift challenges the very core of higher learning. Because education is being redefined as mere transfer of information, it is easy to commodify the exchange and overlook the role of colleges and universities in the socialization process. Law schools, for instance, are designed not only to transmit doctrinal rules but to get students to "think like a lawyer." Whatever else this amorphous phrase means, it must at least include the ability to think critically about whether doctrinal rules are just as well as efficient. This

---

[44] *See* Frank Bruni, *California Regent's New Focus: Ethnic Studies*, N.Y. TIMES, June 18, 1998, at A20 (describing Regent Ward Connerly's concern that ethnic studies may be "something people can learn from their parents, at home, without the taxpayers paying for it" and questioning whether the courses "have academic value or whether they were created largely because of political pressures that came about in the 1970's and 1980's"); Julie Chao, *Ethnic Studies Profs Mount Defense; Questioned by Ward Connerly, They Insist It's Valuable Discipline*, S.F. EXAMINER, June 18, 1998, at A4 (characterizing the unwillingness to criticize ethnic studies as a form of "political correctness" while the programs' defenders describe the criticisms as "political intimidation"); Michael Dougan, *Cal's Minority Profs Consider Leaving; Ask, 'Why Am I Here?' as Fewer Blacks, Latinos Enroll*, S.F. EXAMINER, May 7, 1998, at A1, *available in* 1998 WL 5184142 (noting that black and Latino professors, especially those who devote their research to ethnic issues, are contemplating departure from the Berkeley campus as they become increasingly isolated); Edward W. Lempinen, *Connerly Calls for Review of UC Ethnic Studies*, S.F. CHRONICLE, June 17, 1998, at A17, *available in* 1998 WL 3916390 (noting Regent Connerly's belief that ethnic studies courses are racially divisive and that "the only students in them are black and brown—in African American studies, mostly black people, mostly brown people in Latin studies").

capacity for critical reflection is key to a good legal education precisely because law practice is seen as part of a system that aspires to social responsibility, not just formulaic application of rules.

Law schools are not unique in this regard. Students in colleges and universities are being educated for citizenship, not just careers. They are expected to use the privilege of higher education to better society not only through productive jobs but also thoughtful participation in their communities. Powell's opinion in *Bakke* makes clear that diversity in higher education is key to understanding one's place in society and developing a sense of personal obligation in a country still deeply divided by race. Without vigorous exchange anchored in the concrete reality of individual identities, students can come to confuse the accretion of facts with knowledge. They may mistakenly take comfort in objective certainties when, in reality, we all must struggle constantly to find provisional, collective truths. Passive consumers of information can wrongly equate the receipt of encyclopedic amounts of information with wisdom, when, in fact, this hard-won combination of knowledge, experience, and character can be neither bought nor sold.

Indeed, the truly well-educated know that there are few straightforward paths to understanding the world and perfecting the self. There is no way to commodify the quest to reconcile conflicting images of a complex society and contradictory visions of a life well-lived. In the words of Irene Claremont de Castillejo:

> Only a few achieve the colossal task of holding together, without being split asunder, the clarity of their vision alongside an ability to take their place in a materialistic world. They are the modern heroes. . . . Artists at least have a form within which they can hold their own conflicting opposites together. But there are some who have no recognized artistic form to serve this purpose, they are artists of the living. To my mind these last are the supreme heroes in our soulless society.[45]

However much we may deny complexities and contradictions in the frenzy of consumerism, we need our heroes, and each generation must create them anew. As we situate ourselves in an information age, the dialectic between educational entrepreneurs and artists of the living over the meaning of higher education will continue. The affirmative action debate is part of this contested terrain, as America struggles to decide whether diversity is irrelevant to the transmission of information or integral to the construction of knowledge.

---

[45] WHYTE, *supra* note 34 (epigraph).