

# Foreword

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The issue of affirmative action represents an attempt to accommodate the diversity that is fundamental to the nature of this nation. In a world plagued by ethnic conflict, this most diverse nation has avoided what *The Economist* characterizes as the “virus of (ethnic) tribalism.”

America, as a nation of immigrants and native Americans, has avoided this virus because it is governed by a Constitution that grants us a democratic process. Winston Churchill once said this process has made the United States the most inefficient—yet, most effective—government in the world. As Americans, since this Country’s inception, we have engaged in a constant struggle with democracy’s cultural inefficiencies. The historical dark side of the struggle is what sociologist Gunner Myrdal called the “American Dilemma,” a racial contradiction integral to what Harvard sociologist Daniel Bell called capitalism’s “cultural contradictions.”

Thus, America’s greatness comes not from a denial of ethnic group diversity, but through efforts to grapple with the disorder it generates. To take Myrdal’s words, through an “expressed system” of ideals America is “continuously struggling for its soul” and at the center of that soulful struggle are social contradictions like race, gender and immigration.

## I.

### COLOR BLINDNESS AND THE COMMON GOOD

The present struggle faces a hostile mindset noted for a hollow colorblind advocacy of benign “ethnic cleansing” policies. It is a twilight zone where ethnic factors in policies, from Jim Crow laws to affirmative action programs, have been conflated into one pernicious whole. Early in the Civil Rights Movement, “color blind” was a proxy for preventing racial subjugation. Today, colorblindness is a tool to avoid government resolution of racial or ethnic disparities in the public spaces of our lives.

Those who wish to avoid racial, ethnic or gender factors in public policy reflect a forgotten or unlearned past. They forget that democracy’s real challenge involves the accommodation of this country’s cultural contradictions in order to come together as Americans in appreciation of our common humanity and destiny. This colorblind philosophy is a clarion call that disconnects individual social responsibility from common good; an ugly form of narcissism that diminishes America’s diversity and is an abomination of the democratic spirit.

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## II.

## HIGHER EDUCATION AND CULTURAL DISORDER

For the University of California and other institutions of higher education, the quality of academia involves questions of economic and social value; the training of young people who will add or create value in the form of a product, service or contribution to society.

This means that the University should not want students simply because they have high grades or test scores. As a public university, our investments in *natural* resources must be complimented with investments in *human* resources that reflect a non-white California, where the needs are greatest and many of our minority students go.

To be sure, society's cultural contradictions can be conflicting, sometimes internecine in nature, and even exclusionary. This form of tribalism, balkanization, or separatism speaks of a human world limited by community attachments and finite conditions. Professor David Walsh of American Catholic University put it best when he recently wrote that:

We see ourselves as members of groups more or less identifiable but definitely limited by excluding other groups. The basis of exclusion can be linguistic, racial, national, or a combination of several such factors. But it is inescapable. We are born in particular place and time, and live our lives within some clear physical limits.

These fundamental features are the stuff of cultural disorder for government to muddle through in our democratic process. A disorder tied to what economist Joseph Schumpeter characterizes as a "creative destruction" for a productive private sector; which requires public policies that are inherently subjective, inefficiently administered, of limited fairness, unavoidably political, fallible and controversial.

## III.

## THE COMMON GOOD, INDIVIDUAL CHARACTER AND ETHNIC CONFLICTS

The real world difference Professor Walsh describes is not necessarily divisive. He writes of "a common human nature that unites us, . . . bonds of sympathy that transcend group boundaries and . . . recognize the common good we share in this larger world" This common good reflects the individual goodness in all of us and is a central part of our character. I think of the words of Adam Smith, who writes in his book entitled, *The Theory of Moral Sentiments*: "[T]here are evidently some principles in the nature of man which interest him in the fortunes of others and renders their happiness necessary to him, though he derives nothing from it, except the pleasure of seeing it."

In times of darkness and despair, one finds wisdom through the awful grace of God. There's that incredible story of how a Latino rugby team survived a plane crash deep in the desolate, snow-covered Andes Mountains. One of the survivors, a young man named Fernando, commented that he was "affronted by solitude without

decadence or a single material thing to prostitute it." This elevated him to a spiritual plane where he "felt the presence of God."

"Now," said Fernando, "there is the God they tell you about in school." Then there is the God that is hidden in our civilized world by social grime, like racism; that's the God he met on that mountain and that is the God that gave them the strength to survive.

My defense of affirmative action is in part attributed to my access to the University of Southern California ("USC"). I was an auto mechanics major at Garfield High School in East Los Angeles, the school depicted in the motion picture "Stand and Deliver." I had a 3.0 GPA, but had not completed all of my college requirements or entrance tests. All that was waived; I went on to receive a B.A., a M.A., and the highest degree of academic distinction—a Ph.D.

I got into USC because of the color of my skin. But I succeeded because of a self-worth that is God-given and a Chicano ethnicity central to my American identity. The social question, however, is beyond the personal stories of a Latino rugby player or a Chicano U.C. Regent. In the end, California's leaders must resolve whether large numbers of blacks and browns are now ineligible to attend the University because of either inherent factors or socioeconomic circumstances.

The U.C. Board of Regents has decided we can solve this problem through personal goodwill, affection, and points of light. It is an ahistorical policy that overlooks how society's structural inequalities limit Latino and black eligibility, paving the way for "separate but equal" universities. Worst of all, it creates a fertile dark valley for the most sophisticated kinds of extremism. For example, in his best-selling book, *The Bell Curve*, Charles Murray calls for a public policy to establish opportunities based on his conclusions that the genetically-caused IQs of blacks and browns, as a group, are lower than that of Asians and whites. With an unabiding faith in an individual opportunity society stripped of social or historical context, Murray's conclusions support the view that college minority outreach and recruitment programs are wasteful and doomed to failure.

In a book entitled, *The End of Racism*, Dnesh D'Souza suggests that we do not need to be concerned with private sector discrimination in our society because Americans are simply responding to the ghetto conditions that reflect an inferior black culture. Murray and D'Souza both claim to be supporters of Martin Luther King, Jr. and justify their work on the altar of individualism.

In my view, King's ministry was about religion, not some sanitized version of individual responsibilities or rights. It was a religious message that urged us to address our ethnic differences in order to come together as individual human beings. Underlying this acknowledgement of diversity is the unity of the human spirit.

We certainly must seek to master our personal lives. We may not choose the lives we live but, to take that old black spiritual, "you got to walk that lonesome valley by yourself; ain't nobody here gonna walk it for you . . ." But self-help—like self-interest—is limited by social circumstance and our lives are unavoidably tied to others. "We remain bonded to each other and to the fearsome processes of history," emphasized historian Kevin Starr. "History has given us this nation. . . We have nowhere else to go. History has given us each other. We have no one else to turn to."

Most importantly, life's fulfillment ultimately comes when we work to receive and give. Think of that classic motion picture, *It's a Wonderful Life*, where the young bank executive named George Bailey created material value through affordable housing for his small community. Down on his luck and suicidal, a

grateful community comes to his aid. As Bailey holds a basketful of dollar bills from his family, friends, and customers on Christmas Day, he finds a heavenly note from his guardian angel, Clarence: "No one is a failure who has friends." The great poet Yeats asks us to "think where one's greatest glory most begins and ends, then say my greatest glory was that I had such friends."

#### IV.

### THE TRUTH OF ETHNIC CONFLICT

Coming to terms with our differences, seeking a common ground, learning to live with each other as precious individuals. To me, that is what Martin Luther King, Jr. and Cesar Chavez really stood for. There is what his Excellency, Pope John Paul, calls a "universal moral law" that moves us to wrestle with our differences in ways that accepts the humanity of "the other" without the fears, suspicions, and anger that presently plagues us; a truth beyond today's colorblind rhetoric masquerading as high principle.

California's colorblind "movement" seeks to redefine what kind of people we are, what our country stands for, and what it means to be an American. It is an ugly political anomaly that will pass because real social change comes from the edges of life, where character, morality, and the common good are fully exercised and expressed; a place for dreamers to seek out—not ignore or exclude—the significance of our diversity.

It is a philosophy of political know-nothing ignorance. Like prejudice, ignorance is one of life's quickest timesavers. It allows a rush to judgment on what ails us based on false perceptions, empty facts, and little understanding. As playwright Oscar Wilde once put it, "we are all in the gutter." But he also added, "some of us are looking at the stars." The future success of California depends on our ability to move beyond such false notions to a historic truth of complex realities. A truth that deals with our ethnic differences or, as in the past, faces the consequences of a social hell. George Regas, a great preacher and a good friend, recently wrote that:

[O]f all the powerful figures in Michelangelo's work, none is more poignant than the man in the *Last Judgment* being dragged down to hell by demons, his hand over one eye and in the other eye a look of dire recognition. This man understood the tragedy of his truth; but it was too late. Michelangelo is right: Hell is truth seen too late.

To continue California's greatness, we must struggle for truth—or face the hell of our falsehoods. Do what is righteous in God's eyes and we can never do wrong. California's future must be guided by the wholeness of life, not ignorance or political myopia.

So, let us put aside our narrow political agendas and venture forth with hope, faith, and the good wisdom to know that we come to this world because of others, we live a life helped by others, and our lives' greatest glory will come when we leave footprints on the hearts of others.

I leave you with the words of Protestant thinker Reinhold Niebur, who once said that: "Nothing which is worth doing can ever be achieved in a lifetime;

therefore we must be saved by hope. Nothing that is true, beautiful, or good makes complete sense in any immediate context of history; therefore, we must be saved by faith. Nothing we do, however virtuous, can be accomplished *alone*; therefore, we are saved by love."

### EPILOGUE: FEBRUARY, 1999

Much has happened since the U.C. Board of Regents passed a 1995 resolution ending programs that allowed California public universities to a limited account of a person's race, gender and ethnicity in admissions and employment. Reading my March, 1996 presentation at the *La Raza Law Journal* Symposium reminds me of a lengthy dinner conversation I had with U.C. Regent Ward Connerly, the self-described "lightning rod" who supported Governor Pete Wilson in that effort. We found much common ground on the many abuses and inefficiencies in affirmative action. But the line was drawn over Connerly's determination to label such factors as nothing more than crude "racial preferences" of reverse discrimination. Like the U.C.'s President, chancellors, faculty and student associations, I was convinced that eliminating those factors meant chopping in half the number of Latino and black students at U.C. Berkeley and U.C.L.A. Without a viable alternative, my deepest fears were that this "California message" could set the nation's integration endeavor back to a time when only a token number of Latino and black students attended America's elite universities.

With passage of anti-affirmative action policies, these feared consequences are today's results. Mindful of the nationalization of these California policies, the former presidents of Princeton and Harvard, William G. Bowen and Derek Bok, recently published *The Shape of the River*, a comprehensive defense of race as a factor in admissions at 28 of the nation's top colleges and universities. The study provides a convincing case that what has happened at U.C. will happen at these major institutions without affirmative action programs.

As predicted, after Proposition 209 passed in 1996, the number of black, Latino and American Indian students admitted dropped at U.C. Berkeley from 23 to 10 percent and at U.C.L.A. from 20 to 12 percent in 1997. About 750 Latinos and blacks were denied admission to U.C. Berkeley even though they had a GPA of 4.0 and scored a minimum of 1200 on the SAT. To admit them would have triggered charges of racial preferences because 7,000 other students had similar grades and scores. At U.C.L.A., since the 1970's, applications for roughly 3,800 first-year slots has jumped from 7,000 to 33,000. Proposition 209, in short, has turned U.C.'s escalating applications into a zero-sum game that disfavors admitting otherwise qualified minorities. Perhaps, the most devastating impact from the new numbers game has been on what Bowen and Bok call the "societal and academic contributions" from affirmative action's success at seeking excellence through diverse college admissions. It is an affirmative action benefit that speaks to what San Francisco Mayor Willie Brown calls the "broader world," which has enabled leaders like himself and State Assembly Speaker Antonio Villaragoisa (D-Los Angeles) to achieve their present public positions. In the post-209 era, however, the increased narrow emphasis on grades and test scores has made that U.C. public contribution more difficult.

Controversy over preferences aside, the post-209 Connerly has recognized that California's growing diversity indeed requires the U.C. to engage in what he

once characterized as “racial surrogate” outreach efforts. But Governor Wilson remains unconvinced. Before leaving office, he vetoed outreach legislation authored by State Senator Richard Polanco (D-Los Angeles) and supported by prominent Republican Proposition 209 supporters—Attorney General Dan Lungren, State Treasurer Matt Fong, and attorney general candidate Dave Stirling—after concluding that it grants racial preferences.

Similar to other scholars and commentators, Bowen and Bok did not expand their significant affirmative action research to address the increasing Latino racial dilemma. An unease exists among America’s 12 million foreign born Latinos with children certain to express their higher education expectations in the next century. It centers around California’s divisive ballot propositions of the 1990’s—187, 209, and 227—which manifest more than public policies against illegal immigration, racial preferences, and bilingual schooling. These policies reflect a sentiment that more crudely faced European immigrants at the inception of this century. Such a hostile racial sentiment also confronted five million African Americans who migrated from the Deep South to the urban North during the middle of the century.

Affirmative action emerged a generation ago in response to the urban volatility of a massive population seeking a fair opportunity to achieve the American Dream. With America’s growing Latinization, will our national leaders respond to the Bowen and Bok work with calls for integration efforts that once again transcend the narrow world of grades and tests? Will judicial wisdom for a “compelling state interest” soon require it? Will the U.C. Regents heed the call of Governor Gray Davis for an end to “wedge issue” politics with a new conversation on race that buttresses the University’s credibility as an independent public institution responsive to a more diverse Golden State?

We know that the greatness of America’s experiment is a stable democracy, which reaches out to communities isolated and segregated on the margins of life. Using the words to give their work its title, Bowen and Bok quote from Mark Twain’s *Life on the Mississippi* that “you’ve got to know . . . all the million trifling variations of shape in the banks of this interminable river.” To better know America’s more diverse river we must avoid the potential for an overwhelmingly non-black and non-Latino U.C.L.A. and U.C. Berkeley surrounded by an escalating population of ghettos and barrios.