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Maurice R. Dyson

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# RACIAL FREE-RIDING ON THE COATTAILS OF A DREAM DEFERRED: CAN I BORROW YOUR SOCIAL CAPITAL?

Maurice R. Dyson\*

## INTRODUCTION

With the recent revelation of who actually benefits from affirmative action, the genie is finally out of the bottle and a deep fissure in the bulwark of race relations among West Indians, Africans, African Americans, and biracial persons has emerged. A short time ago, a brow-raising article in the *New York Times* revealed that the descendants of U.S. slaves comprise a minority of West Indian and African immigrants who benefit from affirmative action.<sup>1</sup> These groups, their children and the children of biracial couples represented the largest portion of blacks admitted to the most selective institutions of higher education.<sup>2</sup> Fueling this debate over who should reap the benefits of affirmative action is the notion that West Indians, Africans, and other immigrants continue to free ride on benefits borne out of a legacy of racial struggle fought by African Americans over the past 400 years.

Shortly before this debate ensued, however, the noted comedian and philanthropist Bill Cosby sparked another debate with his controversial remarks regarding the rearing of black youth and the ghettoized nature of the black American family at a NAACP gala dinner.<sup>3</sup> Few have discussed, however, the inherent relationship between these two debates as a matter not merely of differential racialization, but of group social capital. The dialogue in both of these domains does more than perpetuate racial stereotypes that rhetorically justify disparate results for each group. The terms of the debate grossly overlook something more important but which still remains unacknowledged.

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\* Assistant Professor of Law, Southern Methodist University Dedman School of Law; Ph.D. candidate, Keele University, Staffordshire, United Kingdom; J.D., Columbia University School of Law; A.B., Columbia College, Columbia University. The author wishes to thank for their support Roy Anderson, Gregory Crespi, Jane Dolkart, Ndiva Kofele-Kale, George Martinez, Adrien Wing, Victoria Dodd, Dean Attanasio, and the faculty of Southern Methodist University Dedman School of Law. Special thanks to my wife, Mila Davis-Dyson, and my mother, Maryanne Lee.

<sup>1</sup> Sara Rimer & Karen W. Arenson, *Top Colleges Take More Blacks, but Which Ones?*, N.Y. TIMES, June 24, 2004, at A1.

<sup>2</sup> See *id.*

<sup>3</sup> See *Bill Cosby: Poor Blacks Can't Speak English*, [http://www.worldnetdaily.com/news/article.asp?ARTICLE\\_ID=38565](http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=38565) (May 20, 2004).

This essay will discuss a nexus that exists between these two momentous debates with an eye to understanding the nature and shape black social progress must take and the inevitable role social capital must play within it. For example, is there some new light that new arrivals to the United States can shed on what Cosby sees as the demoralization of black youth today? Are such immigrant experiences transferable to the black American experience? What will it take to reclaim black neighborhood schools and the process of affirmative action for black Americans? When does social capital matter and when does it not in this regard? What roles do personal efficacy and self-esteem play in shaping African American academic performance and their ability to take advantage of affirmative action? How does this sense of personal efficacy differ among immigrants, West Indians, Africans, and biracial persons?

### I. WHY "THEM" INSTEAD OF "US"?

Although recently united in favor of affirmative action, new revelations about which minority groups actually benefit from affirmative action have divided the black community. In an article discussing Ward Connerly's Racial Privacy Initiative (RPI) in California, I noted how the proposed measure had caused division within the black community against those white conservatives favoring the proposal.<sup>4</sup> Faced with the proposal's prospect of abolishing racial classifications, African Americans, Africans, and West Indians nearly categorically opposed it primarily on the ground that to do so would attenuate governmental accountability in monitoring and enforcing racial justice concerns, such as racial profiling, consumer discrimination, and a host of other policies with racially disparate impacts.<sup>5</sup> For constituencies of African descent, the choice was ostensibly clear — the obliteration of racial categories meant the elimination of the need to keep the racial data required to challenge and monitor racially discriminatory governmental conduct.<sup>6</sup> Moreover, the consequences of abolishing such classifications pointed to the kind of unaccountability and invidious racial profiling that the sacred covenant of the Fourteenth Amendment's Equal Protection Clause promised to change.

The chorus of dissent from people of color to the RPI proposal was so strong that it seemed that a unity among racial minorities reinvigorated the discourse on racial justice. Perhaps this unity among African Americans, West Indians, Latinos,

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<sup>4</sup> Maurice R. Dyson, *Multiracial Identity, and Monoracial Authenticity and Racial Privacy: Towards an Adequate Theory of Multiracial Resistance*, 9 MICH. J. RACE & L. 387, 400–01 (2004).

<sup>5</sup> *See id.* at 388. Only 36.1% of voters approved the measure. One group that did not previously oppose following racial or ethnic distinctions was biracial persons. They were the primary impetus behind the Multiracial Category Movement, which collectively served as a vocal proponent of either the elimination of racial classifications or the development of a more inclusive classification paradigm in the U.S. Census.

<sup>6</sup> *See id.*

and biracial persons became even stronger when it came to the decision reaffirming affirmative action rendered in *Grutter v. Bollinger*.<sup>7</sup> The devil, however, is always in the details; for it was not too long before the loud, united voice in opposition to the RPI among communities of color against racial and ethnic classification became a fragmented array of divided opinion after the revelation about which ethnicities actually benefit from affirmative action. Perhaps sensing the iron was hot to strike in the aftermath of Bill Cosby's controversial remarks, which met the objection of the African American community as an un-called-for "airing of dirty laundry," Professors Guinier and Gates of Harvard University did just that by bringing to light another sensitive issue.<sup>8</sup> They noted that recent research confirms that, on average, immigrants, children of immigrants, and biracial students account for more than forty-one percent of all "blacks" at twenty-eight selective institutions including Harvard University, Columbia University, Duke University, the University of Pennsylvania, and the University of California at Berkeley.<sup>9</sup> One can argue that colleges have found a way to bypass the civil rights goals of affirmative action first articulated by President Johnson in his speech at Howard University.<sup>10</sup>

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<sup>7</sup> 539 U.S. 306 (2003) (holding that a law school had a compelling interest in attaining a diverse student body and that its admission policy was narrowly tailored, thus not violating the Equal Protection Clause).

<sup>8</sup> See Rimer & Arenson, *supra* note 1. Black intergroup conflict pertaining to affirmative action remains an especially sensitive issue because it is widely held in the black community that demonstrating racial solidarity matters most among black Americans, biracials, and immigrants of African descent. This reasoning requires, for solidarity's sake, that blacks close ranks and speak with one unifying voice about racial justice issues, such as affirmative action. Naturally, this approach has come at the cost of honest debate about critical issues. For a discussion of this topic in relation to the appointment and confirmation of Justice Clarence Thomas, see Cornel West, *Black Leadership and the Pitfalls of Racial Reasoning*, in *RACE-ING JUSTICE, EN-GENDERING POWER: ESSAYS ON ANITA HILL, CLARENCE THOMAS, AND THE CONSTRUCTION OF SOCIAL REALITY* 390 (Toni Morrison ed., 1992).

<sup>9</sup> See Rimer & Arenson, *supra* note 1. These numbers are consistent with other reported findings by sociologists studying this issue:

Douglas S. Massey, a Princeton sociology professor who was one of the researchers, said the black students from immigrant families and the mixed-race students represented a larger proportion of the black students than that in the black population in the United States generally. Andrew A. Beveridge, a sociologist at Queens College, says that among 18- to 25-year-old blacks nationwide, about 9 percent describe themselves as of African or West Indian ancestry. Like the Gates and Guinier numbers, these tallies do not include foreign students.

*Id.*

<sup>10</sup> "You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, 'you are free to compete with all the others,' and still justly believe that you have been completely fair." President Lyndon B. Johnson, To Fulfill These Rights, Commencement Address at Howard University, <http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.com/650604.asp> (June 4, 1965).

The debates have raged in newspaper editorials, chat rooms, and discussion boards around the country about whether we should pay attention to ethnic and racial classification schemes when it comes to which racial minorities actually benefit from affirmative action. In debates with colleagues and friends, opinions have almost invariably split right down ethnic and racial classification lines, with African Americans supporting a look at admissions under each classification rubric while West Indians, Africans, and biracial persons have stressed that looking at such classifications is a betrayal of racial solidarity.

Naturally, the nexus between the lack of attention to racial and ethnic classification and the resulting lack of accountability, was once a concern that united African Americans, Africans, and West Indians. Just four months earlier, the RPI seemed to fall on deaf ears that only heard criticism rather than constructive dialogue about the nuts and bolts concerns of affirmative action. In contrast, “just black” African Americans stressed Guinier’s point that debate was less about personally faulting immigrants as it was about seeking university accountability to all African Americans deserving the same consideration. Nonetheless, most African Americans viewed the racial profiling of West Indians and African immigrants by admissions officers as the natural result of their blurring the racial classification under the diffuse category “black” or “African American.”

It would be a mistake, however, to assume this intellectual schizophrenia is solely limited to debates among racial minorities. For university administrators who also have long felt that it is the individual experience of discrimination and the way in which one chooses to construct one’s racial and ethnic identity that matters more than a phenotypical black face in the classroom, this conundrum may in fact not be seen as a conundrum at all. As Lee C. Bollinger, now president of Columbia University who once laudably defended affirmative action during his tenure as president of the University of Michigan, stated: “The issue is not origin, but social practices. It matters in American society whether you grow up black or white. It’s that differential effect that really is the basis of affirmative action.”<sup>11</sup>

Yet, if this is true, how do we then reconcile the notion that immigrants who “grow up black,” but not “in American society” typically enjoy significant advantages over what I will refer to as “native black Americans.” For instance, “[l]ike their wealthier white counterparts, many first- and second-generation immigrants of color test well because they retain a national identity free of America’s racial caste system and enjoy material and cultural advantages, including professional or well-educated parents.”<sup>12</sup>

Further, the eminent scholar Ronald Takaki suggests that the immigrants who arrive are a self-sorting population: those who have gathered the resources, left their

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<sup>11</sup> See Rimer & Arenson, *supra* note 1 (quoting former University of Michigan President Bollinger).

<sup>12</sup> Lani Guinier, Editorial, *Our Preference for the Privileged*, BOSTON GLOBE, July 9, 2004, at A13.

families, and are able to make the costly trip to the United States are already in a better position to take advantage of its opportunities.<sup>13</sup> Such is the nature of affirmative action discourse. It focuses on race, which elides an honest discussion about class and ethnicity in the context of black student admissions. For instance, do Bollinger's comments encompass the affluent native black American from Beverly Hills, California or Newton, Massachusetts? Surely, the experience of one in the upper-middle income bracket attending Dalton, Stuyvesant, or Phillips Andover must vary significantly from her counterpart who attends a poor public high school in the South Bronx or South Dallas. Admissions officers have long ignored income diversity within these communities of color, despite the feasibility of increasing the viewpoint and background mixture on college campuses. Indeed, in the 146 selective colleges and universities in the United States, approximately seventy-four percent of all students hail from the upper-income quartile whereas only three percent come from the lowest-income quartile.<sup>14</sup>

Accordingly, what commentators often fail to realize is that simply focusing on native black Americans raises similar concerns about truly diversifying the classroom when poor blacks are ignored. Moreover, some of the same observations regarding immigrants also apply to racial minorities from affluent backgrounds who are more likely to have the additional resources of private tutoring and supplemental resources needed to succeed today.<sup>15</sup>

## II. THE OBFUSCATION OF BLACK IDENTITY

It remains unclear how Bollinger's comments about growing up black or white relate to biracial persons who may have the experience of being rejected by both blacks and whites or, alternatively, have the experience of assimilating into white communities — phenotype permitting. And what of those who do not grow up either black or white? What critics fail to realize is that long before the more

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<sup>13</sup> See generally FROM DIFFERENT SHORES: PERSPECTIVES ON RACE AND ETHNICITY IN AMERICA (Ronald Takaki ed., 2d ed. 1994).

<sup>14</sup> See OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., RACE-NEUTRAL ALTERNATIVES IN POSTSECONDARY EDUCATION: INNOVATIVE APPROACHES TO DIVERSITY, <http://www.ed.gov/about/offices/list/ocr/edlite-raceneutralreport2.html> (Feb. 2004) (noting that economically disadvantaged students are twenty-five times less likely to be found on selective college campuses as economically advantaged students); see also Century Foundation, *Should Race Count? A Policy Discussion on the Future of Affirmative Action*, <http://www.tcf.org/Events/03-31-03/transcript.pdf> (Mar. 31, 2003).

<sup>15</sup> While it is true that certain provisions of the No Child Left Behind Act call for students in schools designated as low performing for two consecutive years to have the option to receive tutoring, see Pub. L. No. 107-110, 115 Stat. 1425, 4201 (codified as amended at 20 U.S.C. §§ 6301, 7171 (2000)), the quality of such tutoring, the ability to craft tutoring to the individual student's need, and the frequent unavailability of such services when needed may still not close the resource gap between low-income and more affluent students.

inclusive 1990 and 2000 censuses, the blurring of ethnic and racial distinctions has long operated under the umbrella rubric of the “black” and “African American” nomenclature with little real protest from the descendants of former *American* slaves.

Surely, though, if we can concede that the Afrikaaner Charlize Theron, the Mozambique-born Teresa Heinz Kerry, the mixed-race Kenyan-American Barack Obama, or the naturalized Arabic-Sudanese can all fall within the category “African American,” then the Pandora’s box we confront today can no longer be swept under the conceptual rug. We must also similarly submit that persons from Jamaica, Trinidad, Dominica, Guyana, Barbados, Haiti, St. Lucia, St. Vincent, Grenada, St. Kitts and Nevis, and Antigua are all “blacks” that become fair game to university admissions officials seeking to diversify the classroom. Finally, it must also be acknowledged that whites who reside in predominantly black Compton, South Dallas, the South Bronx, or elsewhere may be dubiously construed as “racial minorities” in their communities. While some admissions offices aware of this scheme have requested photographs of applicants, the practice is both misleading and dangerous as those of African American descent come in all shades and hues, and it is never certain when a photograph might serve as the pretext against minority-complexion discrimination, dark or light.<sup>16</sup>

### III. GRUTTER’S GHOST: A HAUNTING LEGAL BATTLE AWAITS

The schizophrenia is not limited, however, to admissions officers and administrators. Tucker Carlson, a conservative commentator who has long rallied against race-based affirmative action appears to be so downright tickled at the revelation of whom affirmative action helps that he readily sets aside his long-standing objections to racial preferences in admissions by rather incredulously stating “[i]f that’s affirmative action, let’s have more.”<sup>17</sup> Hard work does indeed matter. What Carlson fails to realize, however, is that hard work can be found in African American students in zip codes and schools that often remain overlooked and untapped by Harvard.

The inconsistent stances do not stop here. Of course when one is forced to articulate the purported goal of affirmative action, it quickly becomes clear. For African Americans who find the overrepresentation of their West Indian, African, and biracial counterparts troubling, the assumption remains that affirmative action should be a means to correct historical injustices against African Americans. Naturally, the difficulty with this notion is that the United States Supreme Court has

<sup>16</sup> See Dyson, *supra* note 4, at 405–11.

<sup>17</sup> Tucker Carlson, *Unfiltered, Affirmative Action?*, [http://www.pbs.org/tuckercarlson/unfiltered/unfiltered\\_24.html](http://www.pbs.org/tuckercarlson/unfiltered/unfiltered_24.html) (June 25, 2004).

all but foreclosed the use of race-based admissions for this purpose.<sup>18</sup> Consequently, it remains a legally vulnerable posture to admit more African Americans than West Indians or immigrant groups.

Of course, the reverse is not necessarily true for institutions that wish to err on the side of caution. To be sure, while Title VI of the Civil Rights Act<sup>19</sup> and the Fourteenth Amendment's Equal Protection Clause clearly prohibit discrimination on the basis of race *or ethnicity*, higher education institutions may feel far less political pressure from conservatives who welcome the admission of more immigrants in the hopes of exploiting internal dissension in the black community. In doing so, their aspiration is to gradually render affirmative action less palatable in the eyes of African Americans. Thus, a strategy that seeks to admit more immigrants is the clear path of least resistance for universities until advocates challenge policies on the basis of ethnicity more rigorously under Title IV and the Fourteenth Amendment.

Pushing for greater admission of African Americans on the purported basis of seeking greater on-campus racial and background diversity is still permissible, as opposed to remedying the effects of societal discrimination, which has been held to be an unlawful objective.<sup>20</sup> Thus, in its current admissions policy, the University of Michigan readily states that its law school is committed to diversity, and to "racial and ethnic diversity" in particular.<sup>21</sup> In the microcosm of the law school, despite being the national fishbowl during the media-hyped lawsuit, Michigan managed to accomplish something that the macrocosm of selective universities has yet to do. It is easy to say with some confidence that by choosing the path of more resistance, the University of Michigan became the most conspicuous target for the Center for Individual Rights and conservative critics such as Roger Clegg and Ward Connerly.<sup>22</sup>

However, this approach is also wanting as it is ultimately not likely to yield the desired results for African Americans precisely because their own representation may be called into question by groups such as Native Americans and Latinos whose numbers may fall far short in comparison. In this regard, one can see quite clearly how the words of Justice Scalia in *Grutter* gradually start to take on ominous importance: "Finally, litigation can be expected on behalf of minority groups intentionally short changed in the institution's composition of its generic minority 'critical mass.' I do not look forward to any of these cases."<sup>23</sup> In fact, it is this

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<sup>18</sup> *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 271–72, 305–10 (1978).

<sup>19</sup> 42 U.S.C. § 2000(d) (2000).

<sup>20</sup> *See Bakke*, 438 U.S. at 308–10.

<sup>21</sup> *See Grutter v. Bollinger*, 539 U.S. 306, 316 (2003) (citing Michigan Law School Admissions Policy).

<sup>22</sup> *See generally* Maurice R. Dyson, *In Search of the Talented Tenth: Diversity, Affirmative Access, and University-Driven Reform*, 6 HARV. LATINO L. REV. 41 (2003).

<sup>23</sup> 539 U.S. 306, at 349 (Scalia, J., dissenting).



generic black minority status that can lead to further litigation among native black Americans seeking the same opportunities that West Indians and African immigrants possess.

With each new challenge, there will also remain the possibility that the espoused support for *Grutter* will be whittled down even further, if that is even possible, without its articulated holding being overturned. As Scalia further predicts, "other suits may claim that the institution's racial preferences have gone below or above the mystical-*Grutter* approved 'critical mass.'"<sup>24</sup> Just as native black Americans will seek recourse for the preferred status of immigrants, so too will the preferred status of blacks in admissions become the predicate on which either Latinos or Native Americans will challenge their status. Further, with Asians, Asian Americans, and Caucasian women being among the greatest beneficiaries of affirmative action, it might be reasonable to believe that another inter-group conflict is inevitable.

#### IV. A BERLIN CONFERENCE FOR BLACKS: THE POLITICS OF DIVIDE AND CONQUER AND INTER-GROUP CONFLICT

A divide-and-conquer strategy cannot be too far away. Accordingly, the prospects for black unity do not look promising, particularly as we are reminded of the divide-and-conquer method of the European colonialists who carved up African peoples and tribes in boundaries determined by European powers at the Berlin Conference of 1885.<sup>25</sup> But should blacks have their own Berlin Conference on affirmative action before outsiders exploit the current divide? Surely the suggestion sounds worse than it actually is, but is it not possible for Pan-African peoples to sit down and determine how to carve up their slices of the American dream in a way that comports with our moral understanding of the purpose of affirmative action? If not, can we learn from each other in ways that advance our shared interests?

I do not suggest that we fight for the master's crumbs that fall underneath the table; but I do suggest a more methodical way in which to collaborate, allocate, and inform each other's perspectives. If we do not do this, I am quite confident that soon we will see a racial division that pits minority against minority at the expense

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<sup>24</sup> *Id.*

<sup>25</sup> It was not until after the mid-nineteenth century that the imperialist great powers of Europe showed renewed interest in the continent of Africa, particularly in the hitherto unexplored central regions comprising modern day Zaire, Zambia, and Zimbabwe. . . . International rivalry and diplomatic infighting such as developed out of this competition for influence prompted France and Germany to suggest the notion of a European conference to resolve contending claims and provide for a more orderly 'carving up' of the continent.

See Joseph V. O'Brien, *The Berlin Conference: The General Act of Feb. 26, 1885*, <http://web.jjay.cuny.edu/~jobrien/reference/ob45.html> (last visited Oct. 7, 2004).

of challenging the power structure itself. Likewise, as each minority group grows in prominence, there will be a greater incentive for the powers that be to divide and conquer these groups. Furthermore, each group will feel an increasing need to leverage its growing numbers or influence for the advantage of its own constituent group at the expense of the whole.

### A. *Differential Racialization*

As Latinos become the largest ethnic minority in the nation, they are poised to assert their various agendas in higher education and affirmative action in ways that lend themselves to easy exploitation by pitting their interests against those of African Americans vis-à-vis differential racialization.<sup>26</sup> Differential racialization occurs when different races are strategically pitted against one another in ways that advance the material agenda of each group at a given time.<sup>27</sup> Differential racialization may be practiced by both the non-Hispanic Caucasian majority and by different racial minority groups and often manifests itself in divisions based upon skin color, accent discrimination, conquest, foreignness, fear of engulfment, immigration status, and the ability to speak English.<sup>28</sup>

For instance, Miami has served as the refuge for Batista Cuba's upper and middle class, which has longstanding clashes with the oft-castigated African Americans there, while Compton blacks marginalize the Chicano majority of the suburbs.<sup>29</sup> In both 1982 and 1989, riots exploded onto the scene amidst suspicious slayings of African Americans by Latin immigrant police.<sup>30</sup> These incidents preceded the contentious 2001 Los Angeles election in which South Central African Americans cooperated with white conservatives to defeat Antonio Villaraigosa's bid to become the first Mexican mayor in recent history.<sup>31</sup> Further, when African American Chief of Police Terrell Bolton was terminated by then Dallas City Manager Theodore Benevides (a Latino), blacks protested with derogatory chants and signs, one of which referenced the age-old derogatory term, "wetbacks."<sup>32</sup> The

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<sup>26</sup> See generally MICHAEL OLMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1980S* (2d. ed. 1994).

<sup>27</sup> Richard Delgado & Jean Stefaniec, *The Racial Double Helix: Watson, Crick, and Brown v. Board of Education (Our No-Bell Prize Award Speech)*, 47 HOW. L.J. 473, 487 (2003).

<sup>28</sup> *Id.* at 489–90.

<sup>29</sup> See generally NICOLÁS C. VACA, *THE PRESUMED ALLIANCE: THE UNSPOKEN CONFLICT BETWEEN LATINOS AND BLACKS AND WHAT IT MEANS FOR AMERICA* (2004).

<sup>30</sup> See *Officer on Trial Cited Self-Defense*, L.A. TIMES, Nov. 18, 1989, at A27.

<sup>31</sup> *Democrat James Hahn Elected Mayor of Los Angeles* (NBC News television broadcast, June 6, 2001); see also Al Martinez, *The Strange Dance That Elects the L.A. Mayor*, L.A. TIMES, June 7, 2001, at 1.

<sup>32</sup> See Sharon Boyd, *Trouble in the Brass Ranks?*, <http://www.dallasarena.com/t040101-spinzone.htm> (Jan. 1, 2003).

flames were only fanned more when Latinos were given the option of being classified as “white Hispanic” or “black Hispanic” on the 1990 Census. Still many more often do not regard themselves as Hispanic, in any case.<sup>33</sup> Consequently, tensions remain in New York between “native” Puerto Ricans and recently-arrived Latino immigrants who nonetheless demonstrate more economic mobility and who are more often courted by the political parties. As the foregoing illustrate, native black Americans exhibit real anxiety that Latinos, West Indians, and Africans will “leap frog” over them in the racial hierarchy that is the American racial caste system.<sup>34</sup>

Here, too, the difficulties do not stop when one considers how Japanese, Korean, Chinese, and Filipinos are factored into the inter-group conflict. Professor Robert S. Chang made the following observations about perceptions among Asian American university applicants that they have to compete with black and Latino students for a limited number of minority seats:

there are only a certain number of seats available for minority students. This is true only if a certain number of seats are reserved for white students. Through negative action against Asian Americans, whiteness becomes a diversity category to show the merit and fairness rationales are a smoke screen for what is really being protected — white entitlement.<sup>35</sup>

Accordingly, racialization accounts not merely for white supremacy, but also for some periodic reordering of an otherwise stayed racial hierarchy among minority groups which nonetheless further perpetuates and preserves white supremacy. By

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<sup>33</sup> See generally Ian Henry Lopez, *White Latinos*, 6 HARV. LATINO L. REV. 1 (2003); Angel R. Oquendo, *Re-imagining the Latino/a Race*, 12 HARV. BLACKLETTER L.J. 93 (1995).

<sup>34</sup> Of course, the notion of an American caste system as a comparison to Hindu society ignores many of the historical differences in the two societies. It is meant merely as a vague reference to the fact there exists some social ordering of persons from distinct racial and ethnic backgrounds. The school of American caste relations, however, does not adequately give expression to the fact that some groups may effectively assimilate, transcend or mediate through different levels of social status, from poor white to upper-class white, and from affluent black to poor black. In a true caste system, this would not be the case given the entrenched stratification people assume throughout the course of their lives as untouchables or as members of higher ranked groups. Even here, however, the unstable equilibrium between white prejudice and Negro standards in Dr. Gunnar Myrdal's thesis of American caste relations is regarded as too simple a formulation of a system that is inconsistently and inversely dependent. See, e.g., HERBERT H. HUNTER & SAMEER Y. ABRAHAM, *RACE, CLASS AND THE WORLD SYSTEM: THE SOCIOLOGY OF OLIVER C. COX* 19–22 (1987). See generally GUNNAR MYRDAL, *1 AN AMERICAN DILEMMA* (1964).

<sup>35</sup> Robert S. Chang, *Reverse Racism!: Affirmative Action, the Family, and the Dream That Is America*, 23 HASTINGS CONST. L.Q. 1115, 1127 (1996).

pointing fingers at one another, the interest-convergence dilemma among people of color takes on a life of its own. Yet, only recently has there been an honest public discussion about the relation of immigrants to native African Americans when it comes to affirmative action, even though it has been discussed in private circles among the latter for over a decade. In short, when it comes to this topic, it has been the worst of both worlds: differential racialization and finger pointing, without the honest dialogue that accompanies it.

Perhaps in the face of the mounting challenges to affirmative action culminating in the *Grutter*<sup>36</sup> and *Gratz*<sup>37</sup> decisions, it was imperative for native blacks, West Indians, and other immigrants to project the air of racial solidarity rather than engage in differential racialization. Now it appears that the strategic interests have changed, and perhaps understandably so. The claims of native African Americans are legitimate and should not be dismissed. In addressing these claim, however, it will undoubtedly be the case that an already uneasy alliance will become even more so.

While affirmative action, as currently practiced, is a clumsy proxy for fulfilling at least the “moral” mandate to target its intended beneficiaries, the temptation to racialize other minority groups in a vicious fight to the top is all too dangerous if past experience is any indication. Here, too, the remarks of Tucker Carlson come to mind. The rationalization that Asians, West Indians, and African immigrants work harder than native African Americans truly shortchanges the simple truth that universities have done a poor job finding those untapped students with academic promise in the same way that the U.S. public school systems have done a poor job of closing the achievement gap. Is it always strategic racialization to outright suggest that one group tends to work harder than another? Professor Skip Gates of Harvard states: “We need to learn what the immigrants’ kids have so we can bottle it and sell it, because many members of the African-American community, particularly among the chronically poor, have lost that sense of purpose and values which produced our generation.”<sup>38</sup>

### *B. Black Racialization or Honest Truth: The Case of Cosby’s Depiction*

Contrast Professor Gates’s racialization of West Indian and African immigrants against Cosby’s racialization of native African American youth — which he has never repudiated — and the affirmative action policy slant toward immigrants suddenly appears to be rhetorically justified. At a NAACP Constitutional Hall gala

<sup>36</sup> 539 U.S. 306 (2003).

<sup>37</sup> 539 U.S. 244 (2003) (holding that a university’s admissions program violated the Equal Protection Clause because its use of race was not narrowly tailored to achieve a compelling interest in attaining a diverse student body).

<sup>38</sup> See Rimer & Arenson, *supra* note 1.

commemorating the fiftieth anniversary of *Brown v. Board of Education*,<sup>39</sup> Cosby engaged in one of the harshest racialized narratives in recent memory:

Ladies and gentlemen, these people set, they opened the doors, they gave us the right, and today, ladies and gentlemen, in our cities and public schools we have fifty drop out. In our own neighborhood, we have men in prison. No longer is a person embarrassed because they're pregnant without a husband. (clapping) No longer is a boy considered an embarrassment if he tries to run away from being the father of the unmarried child (clapping).

Ladies and gentlemen, the lower economic and lower middle economic people are holding their end in this deal. In the neighborhood that most of us grew up in, parenting is not going on. (clapping) In the old days, you couldn't hooky school because every drawn shade was an eye (laughing). . . .

I'm talking about these people who cry when their son is standing there in an orange suit. Where were you when he was two? (clapping) Where were you when he was twelve? (clapping) Where were you when he was eighteen, and how come you don't know he had a pistol? (clapping) And where is his father, and why don't you know where he is? And why doesn't the father show up to talk to this boy?

. . . .

. . . God is tired of you (clapping and laughing). God was there when they won all those cases. 50 in a row. That's where God was because these people were doing something. . . .

We cannot blame white people. White people (clapping) . . . white people don't live over there. They close up the shop early. The Korean ones still don't know us as well . . . they stay open 24 hours (laughter).

. . . .

. . . Isn't it a sign of something when she's got her dress all the way up to the crack . . . and got all kinds of needles and things going through her body. What part of Africa did this come from? (laughter). We are not Africans. Those people are not Africans, they don't know a damned thing about Africa. With names like Shaniqua, Shaligua, Mohammed and all that crap and all of them are in jail. . . .

*Brown Versus the Board of Education* is no longer the white

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<sup>39</sup> 347 U.S. 483 (1954).

person's problem. We've got to take the neighborhood back. (clapping). We've got to go in there. Just forget telling your child to go to the Peace Corps. It's right around the corner. (laughter) . . .

. . . .

I'm telling you Christians, what's wrong with you? Why can't you hit the streets? Why can't you clean it out yourselves? It's our times now, ladies and gentlemen. It is our time (clapping). And I've got good news for you. It's not about money. It's about you doing something ordinarily that we do — get in somebody's else's business. It's time for you to not accept the language that these people are speaking, which will take them nowhere. What the hell good is *Brown v. Board of Education* if nobody wants it?

. . . .

We have to begin to build in the neighborhood, have restaurants, have cleaners, have pharmacies, have real estate, have medical buildings instead of trying to rob them all. And so, ladies and gentlemen, please, Dorothy Height, where ever she's sitting, she didn't do all that stuff so that she could hear somebody say "I can't stand algebra, I can't stand . . . and "what you is." It's horrible.<sup>40</sup>

Although I take issue with many of these comments, interestingly, Cosby's remarks were met with shock, applause, and laughter. Although much flap was made over these unbalanced remarks, a number of sources suggest that African Americans did not wholly disagree.

Many native black Americans find nuggets of truth in an otherwise troubling, unbalanced diatribe. Much of the criticism focuses on the fact that the comments took place in a public forum, or for the reason that these comments were contextual and not properly balanced, which could lead many to think that blacks have only themselves to blame. For instance, syndicated radio talk commentator Joe Madison stated during his morning call-in show: "Cosby went overboard when he absolved white America and the government of any responsibility for the ills of the poor black community."<sup>41</sup> With the exception of Ted Shaw, Associate Director of the

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<sup>40</sup> Dr. Bill Cosby, Speech at the 50th Anniversary Celebration of the *Brown v. Bd. of Educ.* Supreme Court Decision, [http://www.eightcitiesmap.com/transcript\\_bc.htm](http://www.eightcitiesmap.com/transcript_bc.htm) (May 17, 2004) [hereinafter Dr. Bill Cosby Speaks].

<sup>41</sup> Hamil R. Harris, *Some Blacks Find Nuggets of Truth in Cosby's Speech: Other Say D.C. Remarks About Poor Blacks Went Too Far*, WASH. POST, May 26, 2004, at B5 (quoting Joe Madison).

NAACP Legal Defense Fund, who stated that not all these problems were self-inflicted, and Michael Eric Dyson, acclaimed commentator and African American Religious Studies Professor at University of Pennsylvania, who stated that Cosby's remarks "betray classist, elitist viewpoints that are rooted in generational warfare," few others found the comments troubling.<sup>42</sup> Michael Eric Dyson's criticism targeted Cosby's perceived hostility to youth culture — a culture he believes Cosby fails to understand.<sup>43</sup> Kweisi Mfume, the then President of the NAACP, noted that he agreed with Cosby's comments: "Much of what [Cosby] said I've been saying in my speeches."<sup>44</sup> Mfume only took issue with the latter point regarding poor black people not holding up their end of the bargain. Reminiscent of Howard University sociologist E. Franklin Frazier's *Black Bourgeoisie*,<sup>45</sup> Mfume rightfully lamented that: "It is not just the lower socioeconomic groups, it is the new black millionaires, the new wealthy as well. . . . We all need to take more responsibility, not just poor people."<sup>46</sup> In the following poem, I comment on this disconnect:

*My new Black bourgeoisie  
I please victim of your new found liberty*

*Sufferin' your Black flight  
With no relief in sight.*

*Haven't you yet learned money?  
With your Lexis and your shiny rolli  
True freedom is a mansion shared with nobody*

*Poor Bill, why I bet you even think  
You've been upholding the race all on your own.  
Reaping the seeds of opportunity  
That you haven't sown.*

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<sup>42</sup> L. Brent Bozell III, *Bozell's Column: An Ovation for Bill Cosby* (quoting Michael Eric Dyson), <http://www.conservativenews.org/bozellcolumn/archive/2004/col20040527.asp> (May 27, 2004). Ted Shaw was noted as responding that blacks are not on welfare and that the problems of blacks are not entirely self-inflicted. Erin Aubry Kaplan, *No Laughing Matter*, <http://www.laweekly.com/ink/04/27/news-kaplan.php> (May 28–June 3, 2004).

<sup>43</sup> *The Tavis Smiley Show: Interview with Michael Eric Dyson* (NPR radio broadcast, May 27, 2004). Michael Eric Dyson compared Cosby's unbalanced remarks with Kanye West's song, "All Fall Down," which in Dyson's view expressed good criticism with appropriate balance. *Id.*

<sup>44</sup> DeWayne Wickham, *Cosby Isn't Alone in Asking Blacks to Own Up to Problems*, USA TODAY, May 25, 2004 (quoting Kweisi Mfume), [http://www.usatoday.com/news/opinion/columnist/2004-05-24-wickham\\_x.htm](http://www.usatoday.com/news/opinion/columnist/2004-05-24-wickham_x.htm).

<sup>45</sup> See EDWARD FRANKLIN FRAZIER, *BLACK BOURGEOISIE* (Free Press 1965) (1957).

<sup>46</sup> Harris, *supra* note 41 (quoting Kweisi Mfume).

*In the end you told your lies justly,  
We all listened and believed,  
Peddling your bargain basement justice  
That was blind to our need.*<sup>47</sup>

Cosby stands in a long line of upper-class criticism of the so-called black underclass. The black elite perhaps may not wish to be reminded that their former friends and family members are on welfare or that black youth culture has deteriorated beyond recognition so as to fully alienate the elite in ways not previously imaginable. Accordingly, the black elite of Harlem's Strivers Row, for example, created a *cordon sanitaire* around their neighborhood to guard their property and way of life from the "black underclass."<sup>48</sup> As deplorable as this might sound to some, it is an understandable reaction for those who are desperately trying to fight the good fight on behalf of their children against the awesome lure of Black Entertainment Television rump-shaking music videos, gangsta youth culture, and the sad condition Cosby describes in detail. They, like the whites who fled in the aftermath of desegregation, have created a bulwark against some of the more destructive mental influences of this popular black youth culture. The black elite find themselves comfortably segregated, and by extension alienated, more than ever before. This all comes as no surprise, and neither should Cosby's comments. The key problem with this development, however, is that our greatest social capital to be leveraged on behalf of our poor youth can be found in the black bourgeoisie. As much as DuBois's "Talented Tenth"<sup>49</sup> notion has met modern criticism as a condescending classist suggestion, the truth is that we need our own modern day Talented Tenth leaders.

I am not suggesting, however, that there is no role the other strata of black society can contribute. To some extent, there is greater legitimacy and authenticity for poor blacks who can see black mentors with positive social capital hail from poor black neighborhoods. This particular appeal, after all, was the essential defining difference between streetwise Detroit Red (later known as Malcolm X) and the polished, Boston-educated Martin Luther King, Jr. It is also the impetus behind the celebrated images of some hip-hop icons who boast their authentic origins from hoods across the roughest domains of inner-city America.

Today, our low-income communities of color need our own Talented Tenth, our own peace corps for the ghetto that sees the return of black middle-class elites and

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<sup>47</sup> See Maurice Dyson, *Black Bourgeoisie*, in TRUTH AND TRIBULATION, SELECTED POEMS (Maurice R. Dyson & Terrence B. Page eds., 1999).

<sup>48</sup> See MANNING MARABLE, HOW CAPITALISM UNDERDEVELOPED BLACK AMERICA 65 (1983).

<sup>49</sup> See generally W.E.B. DuBois, *The Talented Tenth*, in THE NEGRO PROBLEM: A SERIES OF ARTICLES BY REPRESENTATIVE AMERICAN NEGROES OF TODAY (1903).



others to assist our students and families to reclaim our neighborhoods. The remarks Cosby made at Constitutional Hall on the fiftieth anniversary of *Brown* are telling because of their nuggets of truth. Yet they are also telling because of their simplistic imagery and characterization of blacks that can easily be misused.

David Chang, a Taiwanese immigrant, made the news when he created and sold a Monopoly-type game called "Ghettopoly" that utilized these caricatures and stereotypes about blacks with such playing cards that read: "You got yo whole neighborhood addicted to crack. Collect \$50."<sup>50</sup> The sale of the board game at Urban Outfitters and other chains met with fierce resistance and criticism and it was pulled from stores which faced potential boycotts — although more board games are promised to come by the creator.<sup>51</sup>

So what is the difference between Chang's Ghettopoly and Cosby's belittling remarks that would warrant such a different reaction? One difference might be that the former was for commercial purposes and the latter was a lesson in "tough love." However, what is also clear is that Cosby himself has commercially benefited from peddling such stereotypical images vis-à-vis his "Fat Albert" cartoon characters in the seventies that have found their way on to FUBU street wear and a full-length movie today.<sup>52</sup> Sadly, his cartoon characters possess many of the traits he disparages today. Further, as Cosby fathered a child out of wedlock, it is all too hypocritical to castigate women and men who sire children outside of marriage.

The other difference (we are told) is that, in the words of Mfume, "[Bill Cosby] has legitimacy [in the larger black community] that the super-ultra white conservative doesn't."<sup>53</sup> To be sure, Dr. Cosby has dedicated millions in philanthropic dollars to black institutions and the positive black family image he created on "The Cosby Show" is at least a basis for some to give the revered actor and comedian the benefit of the doubt. In actuality, he is telling black America what needs to be done to avoid its demise, self-hatred, and the hatred and obloquy of white America. As one who lost his only son to a senseless murder by Michael Markhasev, a Ukranian immigrant who viewed African Americans as anathema, it is all too easy to see how Cosby's views on bettering the moral fabric of the native black community to avoid such racial obloquy rings all the more true for him.<sup>54</sup>

In fact, Cosby has not said anything that black folks have not said privately for years. The call for personal responsibility has also been a public one. The Million

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<sup>50</sup> See "Ghettopoly" Game Causes Outrage, at <http://www.cnn.com> (Oct. 9, 2003).

<sup>51</sup> *Id.* Chang is reported as unapologetic, promising the soon release of "Hoodopoly," "Hiphopopoly," "Thugopoly," and "Redneckopoly."

<sup>52</sup> Tony Norman, *An Icon's Classism Disappointing*, PITTSBURGH POST-GAZETTE, May 25, 2004, <http://www.post-gazette.com/pg/04146/321581.stm>.

<sup>53</sup> C. Stone Brown, *NAACP's Kweisi Mfume Speaks Out on Cosby and Bush* (Jul. 14, 2004), at <http://www.diversityinc.com>.

<sup>54</sup> *NAACP Chairman: Racism Still Has Deadly Consequences*, at <http://www.cnn.com/US/9807/12/naacp> (July 12, 1998).

Man March saw speaker after speaker proclaim the need to actively reclaim our family obligations and to watch over our children doing their homework. Dorothy Height, Malcolm X, Louis Farrakhan, and Jessie Jackson have all called for blacks to straighten out their act, but in much less disparaging terms. Sometimes one has to work at Wal-Mart to make ends meet, and sometimes racial profiling and police brutality are self-induced. Further, the call for personal responsibility is not exclusively pertinent to racial minorities. Vulgar indiscretions shown on a Jerry Springer episode no doubt come to mind.

Nonetheless, the call for personal responsibility is a real one and conscientious readers will acknowledge it, although much of Cosby's remarks are most disturbing given their simplicity and naked contempt. Nonetheless, it is undoubtedly time to confront "oppositional culture" where blacks that perform well academically are frequently socially ostracized by fellow peers as "wannabe whites."<sup>55</sup> Such behavior only serves to shape native black American self-esteem around academic failure rather than success.

Of course, any ultra-conservative, morally-condescending commentator could have easily said what Cosby did; it is his racialized depiction that will most assuredly play into their hands far too easily. Yet assume as he does, for the moment, that we look solely at the black poor community as a place to effect change. Why not with his vast resources and influence take up the policy agenda of Dr. King's unfinished Poor People's Campaign?<sup>56</sup> Why not take up Reverend Abernathy's "Resurrection City" that later collapsed under divided leadership?<sup>57</sup> Mfume is correct, to some extent, in this regard. The disconnect between today's black bourgeoisie and its once-claimed legacy to the civil rights movement, and the black bourgeoisie and the youth of today is more disturbing than Cosby's remarks. To some extent, Cosby's remarks are themselves emblematic of this very disconnect. Nonetheless, the related belief that somehow because native African Americans have endured slavery and prejudice, they sit back in the expectation of entitlement rather than try to push forward and make the most of the land of opportunity and

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<sup>55</sup> See generally James Ainsworth-Darnell & Douglas Downey, *Assessing the Oppositional Culture Explanation for Racial/Ethnic Differences in School Performance*, 63 AM. SOC. REV. 536 (1998); Philip J. Cook & Jens Ludwig, *Weighing the "Burden of 'Acting White'": Are There Race Differences in Attitudes Toward Education?*, 16 J. POL'Y ANALYSIS & MGMT. 256, 256 (1997) ("Because of the history of racial discrimination in the United States, African Americans 'began to doubt their own intellectual ability, began to define academic success as white people's prerogative, and began to discourage their peers, perhaps unconsciously from emulating white people . . .").

<sup>56</sup> Poor People's Campaign, <http://www.stanford.edu/group/Kig/about-king/encyclopedia/poorpeoples.html> (last visited Jan 25, 2005).

<sup>57</sup> See, e.g., HUNTER & ABRAHAM, *supra* note 34 at 102-03 (noting that "A" frames were placed at the reflecting pool in Washington, D.C. to call national attention to the plight of the poor).

affirmative action is simply painting with too broad a brush.

These sweeping generalizations are not only troubling, but they also raise serious questions about the fate of black America, affirmative action, and inter-group race relations. Still, an often-overlooked and ignored empirical trend is that, for some immigrants, academic performance deteriorates the longer they remain in their newly adopted nation.<sup>58</sup> Could it be that the pathology of racism and all its attendant self-esteem issues wrecks havoc on the once-intact self-efficacy of these students as some contend?<sup>59</sup>

I am not merely suggesting the impact of white racism on self-esteem, but that the impact of American public schools on immigrants and native black Americans may ultimately take its toll on one's individual sense of personal efficacy. The lack of human social capital and economic resources make it far more difficult for poor immigrant groups to assimilate (as measured by successful academic performance). It therefore follows that these immigrant groups possess the social standing and family resources necessary to take full advantage of affirmative action because "parents instill in their children high hopes for their future."<sup>60</sup> However, as recent evidence illustrates, there is a generational decline in the math grades among second-generation African/Caribbean and Puerto Ricans that share a darker skin color as compared to mainstream white students.<sup>61</sup> In this case, neither controlling for explanatory variables, such as the adolescents' optimism, family socio-economic status, or school quality, can adequately explain their low academic performance.<sup>62</sup> This pattern suggests that racial discrimination may account for this generational decline. It is wrong, therefore, to engage in such a racialized narrative that blames native blacks' stagnated progress on their own perpetuated cult of mental victimization, or their overly pronounced sense of entitlement. What should emerge from this discussion is the role of adversity and discrimination of which admissions officers need to be mindful in deciding whom to admit under the auspices of affirmative action.

If conducted properly, affirmative action will duly take into account the hardships and adversity that native blacks suffer more profoundly in the United States than do West Indian or African immigrants. The second notion that emerges from this discussion is that one's sense of self-efficacy can impact academic

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<sup>58</sup> See SUET-LING PONG, IMMIGRANT CHILDREN'S SCHOOL PERFORMANCE (Population Research Inst., Working Paper No. 03-07, 2003) (finding generational decline for second-generation African/Caribbeans and Puerto Ricans, but generational stability for most Asians except the Chinese and most Hispanics), [http://www.pop.psu.edu/general/pubs/working\\_papers/psu-pri/wp0307.pdf](http://www.pop.psu.edu/general/pubs/working_papers/psu-pri/wp0307.pdf) (last visited Feb. 8, 2005).

<sup>59</sup> See Rimer & Arenson, *supra* note 1 (citing the belief that immigrants do not experience discrimination initially as much as native black Americans).

<sup>60</sup> PONG, *supra* note 58, at 21.

<sup>61</sup> *Id.* at 22.

<sup>62</sup> *Id.*

performance. By using the term self-efficacy, I do not suggest merely one's sense of optimism, but rather the realization that one can succeed in adverse circumstances, overcome the unyielding reality of discrimination, and realize a profitable middle-class income through academic success by the early thirties, or effect a significant change in the world from one's own efforts. Personal efficacy, therefore, may exist quite distinctly apart from the sphere of one's self-esteem.

*C. Black Self Esteem and Efficacy: Never the Two Shall Meet, or Do They?*

Unfortunately, in *Plessy v. Ferguson*, the Supreme Court refused to accept the view that segregation creates a "badge of inferiority" on the psyches of African Americans.<sup>63</sup> Rather, the Court held that a state statute mandating the separation of the races did not cause such a harm.<sup>64</sup> However, two psychological effects on white subconsciousness in the South emerged after the Civil War. The first was a fear of potential upward mobility of black society resulting in black infiltration in white public life. The second effect directly resulted from the race's historical second-class status and the simultaneous freeing of blacks during Reconstruction. Rather than looking to the Reconstructionists themselves, Southern psychology conjoined black freedom with white defeat in the Civil War and blamed the newly-freed race for the misdeeds of Reconstructionist misrule.<sup>65</sup> It should be noted that this freedom is not necessarily obtained from assimilation into the majority, and for immigrants that arrived later, the struggle for full participation on equal terms with whites has come at the cost of personal efficacy. Instead, as the pluralists have suggested, equality is defined by the ability and efficacy of the minority to achieve success and happiness like the majority and it is not predicated upon merely normalizing racial differences.<sup>66</sup>

It is perhaps for this reason that, against the backdrop of ghetto riots and black extremists, the non-violent civil rights movement purposely sought a praxis which would admonish the status quo without erupting into violence — an unacceptable alternative which was viewed by the movement as suicidal.<sup>67</sup> However, the Black

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<sup>63</sup> 163 U.S. 537, 551 (1896).

<sup>64</sup> *Id.*

<sup>65</sup> Such psychological assumptions spurred anti-black actions in the South. The non-violent civil rights movement emphasized African American identity as secondary to the development and authentication of the individual identity.

<sup>66</sup> Roy L. Brooks, *Critical Race Theory: A Proposed Structure and Application to Federal Pleading*, 11 HARV. BLACKLETTER L.J. 85, 92–93 (1994).

<sup>67</sup> Stuart Gilman, *An Analysis of American Black Political Thought in the 1960s from a Marxist Perspective: The Phenomenological Approach* 137, 144 (1974) (unpublished Ph.D. dissertation, Miami University) (on file with author). "A riot is at bottom the language of the unheard. It is the desperate, suicidal cry of one who is fed up with the powerlessness of his cave existence that he would rather be dead than ignored." *Id.* at 144. The underlying

Power movement saw its own efficacy empowered and came to believe equality and justice could be achieved through community self-determination and, on occasion, through violence.<sup>68</sup> The Black Rebellion movement sought to place blacks in positions of power, initially in black political organizations, such as the NAACP, and then to use these organizations to create a black identity.<sup>69</sup> After obtaining this power, the movement sought to separate these organizations from associated white groups.<sup>70</sup>

With the rise of Black Nationalism in the 1960s, the fundamental issue of

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fundamental of the movement was spiritual love, where activism was borne through religion. *Id.* at 148. Religion acted as a conduit for educating the masses of the ideals of the movement and focused those same ideals on obtaining justice. Like Ghandi, however, the civil rights movement leaders understood that while non-violence was preferred in obtaining their goals of equality, if those goals were not met, then violence was the only solution. The realization of the political reality of the times kept the non-violent movement from embracing the riots that occurred in the northern ghettos. In order to obtain equality, it was necessary to maintain good relations with the federal government and rely on legal action to effectuate the results that their non-violent activism was unable to accomplish. The concepts of freedom and justice are intertwined in that each is a necessary condition of the other. *Id.* at 160. The central purpose of justice is most easily seen in the movement's view of the law at the time. The law was not just, and as such, by disobeying the law, a just interpretation of the law would result. *Id.* at 162. Where the federal and state laws contradicted each other, justice could not be served. Thus, only by changing the law could the ultimate goal of the civil rights movement be obtained: freedom through justice. The absolute struggle for freedom from oppression drove the non-violent movement in the 1960s. Upon obtaining this freedom — that freedom secured by the Constitution of justice and equality before the law — human rights would subsequently follow. *Id.* at 155. To remedy the general lack of freedom in the United States and the South, the non-violent movement believed in the necessity of pursuing freedom jointly with white activists. *Id.* at 158. By acting jointly with members of the majority, the leaders of the movement believed that freedom could be secured through the creation of organizations that would guard that freedom by supporting political institutions. *Id.* at 159.

<sup>68</sup> *Id.* at 179. Contrary to the views of the non-violent movement, the Black Rebellion movement of the 1960s sought a praxis that would accomplish major changes, which the non-violent movement was unable to do. Their first hurdle was to relegate religion to a secondary role in the black community and then obtain positions of power where their voices could be heard. This movement understood and embraced violence as a necessity to achieve black ideals.

The rage of the disesteemed is personally fruitless, but it is also absolutely inevitable; this rage, so generally discounted, so little understood even among the people whose daily bread it is, is one of the things that makes history. Rage can only with difficulty, and never entirely, be brought under the domination of intelligence and is therefore not susceptible to any arguments whatever.

JAMES BALDWIN, NOTES OF A NATIVE SON 165 (1955).

<sup>69</sup> Gilman, *supra* note 67, at 177.

<sup>70</sup> *See id.*

integrating blacks in education was questioned because of the fear that such integration came at the price of giving up black identity, culture, and values. The Black Power movement suggested “closing ranks” to gain black self-determination and self-identity. By closing into communities where blacks controlled the local governments, smaller communities could offer shelter from oppression. In other words, what they proposed is what many African immigrants faced in their home countries — black leadership in an all-black community. Where the Black Nationalists sought independence of these communities in larger colonies or countries, the Black Power movement sought out these communities in order to encourage the appreciation of the abilities and virtues of the race. Through these communities, the black race could then enter the open society, consolidating with white coalitions seeking equality in order to strengthen the self-identity of the race and further equality. In other words, the Black Power movement sought to achieve a level of independence and self-efficacy before embarking upon integration into white society. They sought self-independence and a sense of self-efficacy analogous to the very status many immigrants in the African diaspora enter into: white American society.

As a central belief, the Black Rebellion movements saw black identity “as a by-product of the fight for one’s liberation.”<sup>71</sup> By affecting the world, one’s ideas of one’s own personhood would evolve, and by affecting the world as a group, black community awareness would also be created.<sup>72</sup> The movements noted that this black awareness was a necessary means to address “the Cult of color-blindness” or the desire by blacks to want to be white instead of understanding the political and psychological aspects of being black.<sup>73</sup> In accepting black history, culture, and their phenotypic appearance, black self-hate, it was thought, would dissolve. It did not.

Interestingly, the underlying beliefs of the Black Rebellion movement would be resurrected several decades later with arguments advanced by critical race theorists debating the separation-assimilation doctrine in education reform. As blacks have entered all tiers of society, arguments have arisen supporting the theory that in order to succeed, minorities must assimilate into majority culture.<sup>74</sup> Indeed, accompanying the desegregation movement was a drive for cultural integration into white society.<sup>75</sup>

Later, the *Brown* Court acknowledged the error of the *Plessy* Court, thereby

<sup>71</sup> *Id.* at 182.

<sup>72</sup> *Id.* at 183.

<sup>73</sup> *Id.*

<sup>74</sup> See generally Michael Blake, *Liberalism and Illiberalism: Diversity, Survival, and Assimilation*, 12 J. CONTEMP. LEGAL ISSUES 637 (2002); Bill Ong Hing, *Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Driven Multiracial Society*, 81 CAL. L. REV. 863 (1993).

<sup>75</sup> See Michelle Adams, Essay, *Shifting Sands: The Jurisprudence of Integration Past, Present, and Future*, 47 HOW. L.J. 795 (2004).

recognizing the psychological harm caused by segregated schools, and embraced the psychological findings of Kenneth Clark.<sup>76</sup> Roy Brooks argues that black personal self-esteem "is relatively unaffected by white attitude," and stems more from support from parents, friends and teachers, and from religious sources.<sup>77</sup> Because self-esteem comes directly from the community in which a student grows up, Brooks argues that forms of racial separation, such as black public schools, could be useful tools in the desegregation process.<sup>78</sup> The main failure in raising generic black self-esteem is not in the personal self-esteem arena, but rather is the low personal efficacy that predominates in separated and integrated schools.<sup>79</sup>

Personal efficacy, according to Brooks, emanates directly from socioeconomic status, educational attainment, and individual income.<sup>80</sup> The debate on black American student achievement has heretofore focused on black self-esteem rather than black self-efficacy, based on the assumption that the two are linked or otherwise the same. In fact, Brooks cites studies supporting the theory that for blacks, personal efficacy, and personal self-esteem are independent variables. Because personal efficacy is based on control and individual success, Brooks finally notes that *Brown* really stands for the goals of achieving higher black efficacy and not higher self-esteem.<sup>81</sup> Seen in this light, the dolls study cited by *Brown* may possibly have been a reflection not of low personal self-esteem but of an unwillingness to be associated with a race with a poor social image.<sup>82</sup>

Perhaps it is this reason why many West Indian, African, Dominican, and black Hispanics refuse to identify themselves in social circles as "black." This poor racial image comes from the "macro system"<sup>83</sup> of society, which permeates to the micro levels<sup>84</sup> of society. Under this social hypothesis, the stigma imposed on blacks by the macro system must be combated through strategies on the micro levels. As such, schools must first be free of racial devaluation, and second, offer support to young blacks attempting to deal with the pressures and negative values of the macro system. In the end, only integration *and*, as I have suggested elsewhere, limited

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<sup>76</sup> *Brown v. Bd. of Educ.*, 347 U.S. 483, 494–95 n.11 (1954).

<sup>77</sup> Roy L. Brooks, *Analyzing Black Self-Esteem in the Post-Brown Era*, 4 TEMP. POL. & CIV. RTS. L. REV. 215, 218 (1995).

<sup>78</sup> *Id.*

<sup>79</sup> *See id.*

<sup>80</sup> *Id.* at 219.

<sup>81</sup> *Id.* at 220.

<sup>82</sup> *Id.* at 223.

<sup>83</sup> Defined by Brooks as the "social or cultural attitudes, values, ideologies, and beliefs." *Id.*

<sup>84</sup> Defined as the continuing sub-levels of society such as schools, churches, and work places which are then subdivided into an individual's own school, church, and place of employment. *Id.*

separation offer a solution to the dual-natured self-esteem problem.<sup>85</sup>

I am increasingly disheartened by some of our law students of color that vehemently deny support for racial justice initiatives and affirmative action but who nonetheless seek to materially benefit from it. It is no less true for some immigrants who have similarly benefited from racial classifications without the longstanding oppression and history of racial subordination that has impacted native black Americans. To be sure, these newcomers bring their own experiences which may entail some form of racialized discrimination, but these are in effect different from, and subsequent to, the longstanding racial subordination of native African Americans whose history in this nation accords them the moral right to declare an accounting from our selective universities, and the same right of consideration and opportunity affirmative action affords to our nation's immigrants and biracial persons such as myself. In this sense, I am fully aware I fall on the other side of the debate than those who share my racial background. There is more to take from the lessons of racialized discrimination and the matter-of-fact differences that genuinely make our respective strategic interests distinct.

First, we must truthfully acknowledge that a racial free-riding of sorts is perceived as occurring on the coattails of affirmative action by West Indian and African immigrants and biracial persons. It might not be intentional on the part of the many beneficiaries or educational institutions that have benefitted. Then again, it just might be intentional for many institutions. In the history of our nation, we cannot put it past the American psyche to select and allocate privilege on the basis of skin color, national origin and/or race. If, in the words of Educational Testing Service Vice President Anthony Carnevale, universities have been seeking "an easy way out,"<sup>86</sup> how much longer can we put off tackling head on the disappointment that is the K-12 public education system in many parts of this nation? As I have written elsewhere, universities need to join the partnership with our public schools and come to adopt an expansive definition of their educational mission — a mission that rewards not past prosperity, but future promise. It is time.

As Cosby correctly pointed out, our dirty laundry has been, for quite sometime, walking down the street calling each other the N-word in plain view for anyone on the subways of Manhattan or the southern suburbs of Dallas to witness each afternoon school day.<sup>87</sup> His remarks are both troubling in their myopic view and yet revealing at the same time. It needed to be said by one of our own and, as nasty as that first gulp of crude cold cough syrup that a mother gives her sick child, so do these words come as tough medicine for a generation of black youth and parents

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<sup>85</sup> See generally Maurice R. Dyson, *Putting Quality Back into Equality: Rethinking the Constitutionality of Charter School Enabling Legislation and Centric School Choice in a Post-Grutter Era*, 36 RUTGERS L.J. 1 (2004).

<sup>86</sup> See Rimer & Arenson, *supra* note 1 (quoting Antony Canevale).

<sup>87</sup> See Dr. Bill Cosby Speaks, *supra* note 40.



who may be lost. No white person could get away with Cosby's indictment of the upbringing of black youth, although it has been gently massaged in the academic literature regarding the achievement gap:

Parenting practices almost certainly have more impact on children's cognitive development than preschool practices. Indeed, changing the way parents deal with their children may be the single most important thing we can do to improve children's cognitive skills. But getting parents to change their habits is even harder than getting teachers to change. Like teachers, parents are usually suspicious of unsolicited suggestions. This is doubly true when the suggestions require fundamental changes in a parent's behavior . . . . As a practical matter, whites cannot tell black parents to change their practices without provoking charges of ethnocentrism, racism, and much else. But black parents are not the only ones who need help. We should be promoting better parenting practices for *all* parents . . . .<sup>88</sup>

Criticize if you will, but all who have ears to hear and eyes to see know all too well this painful truth and the conditions rooted in our psychological and economic subordination.

#### V. IT TAKES A VILLAGE: THE HARLEM CHILDREN'S ZONE PROJECT

Where do we go from here? Where government ends, personal responsibility must begin, however ugly the task appears at first. Our task requires a threefold commitment. First, we must look under that unturned stone and into the untapped resources of talent and intelligence that have always been waiting to be found. This begins with reforming the racial bias in gifted and talented programs around the nation to identify and nurture intellectually gifted children of color.<sup>89</sup>

Second, the K-12 system must be reformed in ways that are sure to exploit social capital wherever it is found. Sometimes it is seen through the avenue of racial and socioeconomic integration. Other times it can be found in some (not all) of the predominantly black settings consisting of Africans, West Indians, and biracial persons. "Bottle it," if you will, in the form of mutual shared after-school programs. No, we may not need new programs either. In my experience as an educator and philanthropic coordinator, the programs like the A Better Chance (ABC) Program

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<sup>88</sup> Christopher Jencks & Meredith Phillips, *The Black-White Test Score Gap: An Introduction*, in *THE BLACK-WHITE TEST SCORE GAP* 46 (Christopher Jencks & Meredith Phillips, eds., 1998).

<sup>89</sup> Dyson, *supra* note 22, at 68-69.

and Prep For Prep are already filled with many immigrants, Caribbean, and mixed race persons taking advantage of the opportunities they afford. Few native blacks ever know of or ever get involved in these programs when they are finally told.

This leads us to our third commitment — to address the bread-and-butter issues of day-to-day survival that hamper greater parental involvement through community empowerment. I am reminded of the old African proverb: “It takes a village to raise a child.” As readers will recall, the proverb assumed policy dimensions under the educational philosophy of the Clintonian era. However, what is often overlooked is that although the educational philosophies are said to have shifted from the Clinton to the Bush administration, the accountability standards of the Improving the American Schools Act were very close predecessors to the No Child Left Behind Act. Likewise, the faith-based community efforts of the Bush Administration resemble the communitarian grass roots philosophical concept of the Clintonian “village.”<sup>90</sup>

In this regard, I was encouraged to see the ambitious community initiative led by Jeffrey Canada of the Harlem Children’s Zone (formerly named the Rheedlen Foundation).<sup>91</sup> His is an endeavor that seeks to address parent needs by door-to-door visits, employment, training, counseling, and student academic preparation. The initiative, which drops a “net” of social service agencies over a sixty-block area of Central Harlem, promises to address the concerns that Guinier, Gates, and Cosby discuss.<sup>92</sup> Currently, 8,000 children benefit annually, as do their parents, from initiatives such as The Baby College, which is a nine-week series of workshops offered to parents of children from birth to three years of age that boasts an attendance between forty-five to sixty parents each semester.<sup>93</sup> Following the class, outreach workers organize monthly gatherings as a support network for graduates to help keep parents informed and accountable.<sup>94</sup> There are several other initiatives that collectively reinforce the sense of personal efficacy that the Black Power movement, while important, failed to accomplish. These initiatives form the basis of a cohesive community that mirrors the nurturing family and community backgrounds from which many successful immigrants and biracial persons hail. In patterning this community on this framework, we learn that in fact “it takes a village” to “leave no child behind.”

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<sup>90</sup> See generally Improving America’s Schools Act of 1994, Pub. L. No. 103-382, 108 Stat. 3518.

<sup>91</sup> See *The Harlem Children’s Zone Project*, <http://www.hcz.org/hczproject/index.html> (last visited Jan. 26, 2005).

<sup>92</sup> See *id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

## CONCLUSION: CAN I BORROW YOUR SOCIAL CAPITAL?

If racial diversity vis-à-vis inclusive considerations of racial classifications matter for the Supreme Court and our nation's legitimacy and security, then affirmative action, as practiced, does not bode well for the legitimacy of our republic's future black American leaders when racial classification is obscured to elide accountability. In a world of scarce resources and robust discriminatory practices, a sort of "racial free riding" may only exacerbate inequality in the lives of low-income people of color, particularly native blacks. However, if one is in favor of racial classifications, then their boundaries ought to be shaped around past experiences of American hardship and racial subordination.

Racial free-riding, however, can be a two way street. Many West Indians, Africans, and biracial persons have voluntarily stated, and even insisted, that they are not "black." If that is true, then it seems fair to say that they should also acknowledge they have hitched a free ride on a black American legacy of racial struggle, social progress, and affirmative action that is not their own. Reaping the seeds of opportunity they have not sown must come with reciprocal obligations. Affirmative action for these groups should mean sharing their social capital with native black youth. But this only sounds nice in theory.

True, there is a real opportunity to share family resources, higher family income, and parents with greater educational attainment for native black children that exists quite distinctly apart among the beneficiaries. In suggesting these distinct differences I do not merely attempt to substitute one form of differential racialization for another form. We need to finally recognize the real differences in family support and monetary resources that explain why native blacks and immigrants perform worlds apart in our nation's schools. It is to the benefit of the African diaspora, rather than exploitation of it, to find our common interest that may serve as the basis of future racial collaboration. Moreover, it is likely that this family resource differential between native blacks, immigrants, and biracial persons may indeed account for the current denigrated state of our black youth, as Cosby describes.

The truth is that we are a generation without mentors, and we are sons and daughters without fathers. Thus, what I cynically suggest is the utilization of a comparative advantage that leads us to ask — can I borrow your social capital? It is not as novel a question as it may at first appear, for the transfer of social capital has been the bedrock underlying American educational policy for the last fifty years. This policy envisioned native black Americans borrowing valuable social capital from their white counterparts in the aftermath of the Jim Crow legacy.<sup>95</sup> The only

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<sup>95</sup> See JACK GREENBERG, *CRUSADERS IN THE COURT: HOW A DEDICATED BAND OF LAWYERS FOUGHT FOR THE CIVIL RIGHTS REVOLUTION* (1994). The list of cases "building" social capital include: *Missouri v. Jenkins*, 515 U.S. 70 (1995); *Milliken v. Bradley* (Milliken II), 433 U.S. 267 (1977); *Milliken v. Bradley* (Milliken I), 418 U.S. 717 (1974); *Lau v. Nichols*,

problem, however, was that we tried to borrow this critical social capital from whites who soon took flight and wanted little to do with intermingling in the black community. Though the idea of social capital transfer may have been right, it is clear that the implementation failed because of its most unwilling but influential guinea pigs — white Americans and the mobile black bourgeoisie. So instead of seeking the critical social capital needed to succeed from those who do not want to be in our midst, one must then ask why not try to borrow it from both our fellow black immigrants who must share our neighborhoods and schools when they arrive in the United States and our native black graduates who have much to offer.

For reasons that I explain below, this too is not feasible. However, the black immigrants' parental education, family income, and monetary resources will make for a socioeconomic mixture that could yield promising results if we simply permit it. Indeed, all of the evidence suggests that exposure to social capital is the defining difference between those who perform well academically and those who do not; between those who benefit from affirmative action and those who do not; and between those who carry their generation's torch from the legacy of the civil rights movement and those who squander it.<sup>96</sup>

Whether it is socioeconomic desegregation in education in Wisconsin or Cambridge, socioeconomic desegregation in housing in Texas, or racial desegregation throughout the nation, the benefits of such exposure are now manifest.<sup>97</sup> It need not be the case, as some have previously suggested, that a black child must sit with a white child in the classroom to academically and socially benefit. Nor should "we bottle up" whatever immigrants have for the partaking of black children, as Gates has cynically suggested, because not only have we yet to discover its exact "ingredients," but also because it belittles the fact that the potential to succeed can be harnessed within non-immigrant native blacks. Nor is it solely the case, as Guinier suggests, that Harvard seek the untapped "Talented Tenth," because far too many black children are falling through the cracks to make this approach effect a real change in hierarchy.

Finally, we need not use the social capital of immigrants or devise our own

414 U.S. 563 (1974); *Keyes v. Denver Sch. Dist. No. 1*, 413 U.S. 189 (1973); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971); *Green v. New Kent County Sch. Bd.*, 391 U.S. 430 (1968); *Brown v. Bd. of Educ. (Brown II)*, 349 U.S. 294 (1955).

<sup>96</sup> See generally James E. Ryan, *Schools, Race, and Money*, 109 *YALE L.J.* 249 (1999) (arguing that equalizing spending between poor minority schools and wealthier schools without integration is not effective reform).

<sup>97</sup> See generally Richard D. Kahlenberg, *Socioeconomic School Integration Through Public School Choice: A Progressive Alternative to Vouchers*, 45 *HOW. L.J.* 247 (2002) (discussing positive effects of placing low-income children in middle-class schools); Molly S. McUsic, *The Future of Brown v. Board of Education: Economic Integration of the Public Schools*, 117 *HARV. L. REV.* 1334 (2004) (arguing that integration rather than equal funding is the only way to achieve equal opportunity).

Berlin Conference with immigrants in order to more civilly agree how to divide the spoils and crumbs of affirmative action. These new arrivals have shaped their own priorities, values, and identities around their former lives in their native countries; naturally, it is not likely that such uniquely shaped priorities and values of immigrants will translate to the native black American child who has her own experiences that might even contradict the former. Rather, what is required is exposure to those who have the imagination that comes with living in a different experience, and exposure to a world view of self-determination that does not necessarily need to be free from American racial repression. Rather, it simply requires interaction with the bright and talented African American male and female mentors who have demonstrated academic and personal success. In other words, I suggest borrowing social capital from other successful native black Americans, whether lower-economic or middle-class elites, in order to foster our own community-wide social capital in our inner cities.

This appears even more necessary given that cross-fertilization and exploitation of black immigrant social capital is also less likely over time. As I discussed earlier, the longer immigrants remain in the United States, the more likely their academic performance will suffer from generation to generation as they realize the limitations of their personal efficacy against mounting discrimination and become too settled into the many conveniences of American life.<sup>98</sup> Further, this notion may also fail for the reason that it is not clear whether Africans, West Indians, and African Americans would stop looking down on each other enough to work with and learn from each other. Assuming, then, that we could somehow elicit such inter-group collaboration between successful immigrants and native blacks, and that somehow such social capital could be meaningfully transferred to the black experience, there remains the issue of the poor native black American's sense of efficacy and self-esteem, which undeniably needs to be independently harnessed in ways that the Black Power movement and the Civil Rights movement only attempted. Martin Luther King, Jr. died before his Poor People's Campaign and the Black Panthers met their early demise in the midst of COINTELPRO.<sup>99</sup> Further, while Martin Luther King, Jr. taught us to love thy white neighbor, he failed to teach us to first love thy black self. For this reason alone, immigrants' social capital is not likely to translate to the particular experiences of our human condition. So how do native blacks claim some measure of success, some sense of personal efficacy that recent black immigrants have enjoyed, without still losing their sense of self? If we can truly accomplish what initiatives such as the Harlem Children Zone Project promise to achieve, then

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<sup>98</sup> See *supra* note 58 and accompanying text.

<sup>99</sup> See *COINTELPRO Again?*, NOW with Bill Moyers ("COINTELPRO was a secret FBI program designed to monitor and 'neutralize' domestic groups deemed by the FBI to be a danger to national security."), <http://www.pbs.org/now/politics/cointelpro.html> (last visited Jan. 25, 2005).

we can most assuredly harness our own social capital among African American mentors and transfer it from generation to generation proudly. Social capital alone is not enough, however, as many conservatives argue. Nor is money alone the magic bullet, as many other commentators argue, for closing the achievement gap. Rather, it is social capital combined with targeted fiscal resources and strict educational and financial accountability that make the difference.

To know the importance of seeing beyond a child's own neighborhood in despair is to know the essential ingredient in raising that child's standards and expectations in school and beyond. It is only when one cannot see beyond one's circumstance that the legacy of *Brown* cannot be fully enjoyed. Accordingly, there is perhaps no better mentor to the native black child than another native black peer. To reclaim our neighborhoods, as Cosby demands, requires the same element that Guinier and Gates find missing in the current operation of affirmative action policy — greater self-determination and personal efficacy among native American blacks. It requires that, in order for us to build healthy black neighborhoods and truly diverse affirmative action policies, our lower-economic blacks and black middle-class elites must finally band together in a common effort to put our dirty laundry in the wash.