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Denise Page Hood

United States District Court for Eastern District of Michigan

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AFFIRMATIVE ACTION: WHERE IS IT COMING
FROM AND WHERE IS IT GOING?

CHARLES R. LAWRENCE III & MARI J. MATSUDA,
WE WON'T GO BACK: MAKING THE CASE FOR AFFIRMATIVE ACTION
Boston: Houghton Mifflin Co., 1997. 314 pp.

*Reviewed by The Honorable Denise Page Hood**

Charles R. Lawrence III and Mari J. Matsuda blend their voices to make a legal, moral, and even patriotic case for affirmative action in their book, *We Won't Go Back: Making the Case for Affirmative Action*.¹ To say this is only a book about affirmative action, however, is not enough. Lawrence and Matsuda write to challenge opponents of affirmative action and persuade us all toward equality. They write to take us on a journey from the history that laid the groundwork for affirmative action to the future that they hope for—one where affirmative action has facilitated an America that truly reflects the diversity of its population.

Along this journey they confront each argument or opponent of affirmative action as a mountain not too high to climb. Each justification for affirmative action is a valley of opportunity in which to rally and regroup in preparation for the next onslaught against affirmative action. During this expedition, Matsuda and Lawrence have equipped themselves with cases, statistics, and other persuasive evidence to convince the nonbeliever not only that affirmative action is making a difference, but also that it has not gone far enough; there is still a long road ahead. Throughout the trek, we encounter the stories of some remarkable individuals—interesting, substantial, and heroic examples of Americans achieving at the highest level, thanks to opportunities provided by affirmative action. The women and men profiled by Lawrence and Matsuda are not ashamed, threatened, or insecure about their abilities. They are similarly strong in their beliefs about the importance of the affirmative action programs that opened doors for them and afforded them the opportunity to give back—not only to their own communities, but to the fabric of American life and culture. These are people who, like Lawrence and Matsuda, “won’t go back.”

Lawrence and Matsuda begin their defense of affirmative action by using their diverse personal experiences and family

* Judge, United States District Court for Eastern District of Michigan. B.A. 1974, Yale University; J.D. 1977, Columbia University School of Law.

1. CHARLES R. LAWRENCE III & MARI J. MATSUDA, *WE WON'T GO BACK: MAKING THE CASE FOR AFFIRMATIVE ACTION* (1997).

backgrounds to describe the impact of race in their lives.² Their preface serves to both explain the perspective from which they write and demonstrate the importance of diversity by furthering our ultimate understanding of our similarities and differences. This tableau becomes the background upon which they measure their arguments and test their analyses. We learn by getting to know them and their families, especially because we recognize some of ourselves and our families in their stories. Their disclosures build our trust in Lawrence and Matsuda as writers, scholars, and caring Americans who, though discriminated against, still believe in and support the American dream and any American who chooses to dream it.

I. DEEP RIVER: THE HISTORICAL LINEAGE OF AFFIRMATIVE ACTION

In the first section of their book, Lawrence and Matsuda observe that affirmative action really started with the civil rights movement and the courageous acts of Rosa Parks.³ The authors trace the movement from Mrs. Parks' refusal to give up her bus seat all the way through the sit-ins, the marches, the dismantling of segregation in public accommodations and employment, the Voting Rights Act, and the discovery that "only when the conditions of poverty and the prerogatives of privilege were eliminated would all persons truly belong to America."⁴ They insist that the call for Black power and the riots of 1967 were important to the birth of affirmative action;⁵ an idea that they assert was conceived in the "fire of the urban rebellion."⁶ Lawrence and Matsuda conclude that affirmative action stems from the work of students and community activists who demanded that educational institutions, government agencies, and businesses open their doors to include non-Whites and called for community control of institutions within their communities.⁷

The authors parallel the Black power ideology to the organization of other disenfranchised groups—e.g., Spanish-speaking Americans, American Indians, and Asian Americans.⁸ Citing specific instances of stands for justice by all these groups during the sixties and seventies, they observe that it was in the midst of this unrest

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2. *Id.* at ix-xx.
 3. *Id.* at 12-13.
 4. *Id.* at 13.
 5. *Id.* at 15-18.
 6. *Id.* at 18.
 7. *Id.*
 8. *Id.* at 20-22.

that President Lyndon B. Johnson issued Executive Order 11,246,⁹ the "originating document of federal affirmative action."¹⁰ Yet even President Johnson was aware that "formal equality" is not a substitute for justice.¹¹ The affirmative action programs produced during this era were less than what the activists who sought them envisioned.¹² The programs met the needs of the institutions that felt threatened during this period, but they did not reach those in society who were most needy.¹³

Lawrence and Matsuda discuss three lessons from the civil rights movement that "inform" a truer affirmative action. The first is that "entrenched inequalities" will not just go away, nor will they be driven away by legislation against discrimination and segregation.¹⁴ The second teaches us that "white supremacy injures us as groups and communities."¹⁵ And the last demonstrates that "freedom ain't free." Those in power do not give it up so easily.¹⁶

True affirmative action, they suggest, demands substantive justice and is the only remedy for racial subordination driven by racist institutions.¹⁷ This requires that both people of color and people who represent their collective interests be admitted into the "establishment."¹⁸ Such a vision of affirmative action, Lawrence and Matsuda suggest, calls for an end to privilege based on race, gender, and economic power because those privileges dehumanize all of us.¹⁹ But this vision also means that Clarence Thomas could not possibly be perceived as the most qualified Black person to serve on the United States Supreme Court.²⁰

This analysis, grounded in justice, continues the patriotic theme that the authors first used by retelling the story of the civil rights movement. Something more than making a case for affirmative action is at work here. Lawrence and Matsuda subtly begin to connect the struggle for affirmative action to our belief in freedom, justice, and liberty—beliefs that brought the first immigrants to this

9. Exec. Order No. 11,246, 3 C.F.R. 339 (1964–1965), *reprinted as amended in* 42 U.S.C. § 2000e (1994).

10. LAWRENCE & MATSUDA, *supra* note 1, at 23.

11. *Id.* at 24.

12. *Id.* at 25–26.

13. *Id.*

14. *Id.* at 26.

15. *Id.*

16. *Id.*

17. *Id.* at 28.

18. *Id.*

19. *Id.* at 29.

20. *Id.* at 28.

country. They remind us that justice is not merely a concept for the courtroom; it is an effective calling to our latent patriotism.

Matsuda and Lawrence's historical discussion is interwoven with stories—like that of Anthony Romero, a son of affirmative action.²¹ While Romero is Puerto Rican, his chronicle could be that of an African American or Asian American and is a story to which we can all relate. Romero explicitly embraces affirmative action, is not ashamed that he is successful because of it, and freely admits that he was helped by it, even though others think of him as “so smart” and “so special.”²² We follow him from low income housing to the Ivy League to a position as a foundation executive, making a difference in the lives of others.²³ And yet we see in him that “twoness” so appropriately described by W.E.B. DuBois—those two “warring souls” making the peace that facilitates their coexistence.²⁴ Lawrence and Matsuda effectively use these portraits of Romero and others throughout the book to show us the faces of affirmative action—real people whose lives we are allowed to experience and whose experiences many of us may recognize as our own.

Describing the *Bakke* decision²⁵ and the Board of Regents' dismantling of affirmative action in the University of California system²⁶ as the first and second assaults on affirmative action, Lawrence and Matsuda present a critical analysis of the fate of affirmative action in higher education.²⁷ They expose the University's half-hearted support for affirmative action and how it paved the way for the *Bakke* decision. As an example, they cite the lack of an expert witness showing that traditional means of choosing candidates for admission were not useful in selecting minority candidates or measuring their potential.²⁸ They also point out that the University failed to submit any evidence exhibiting the need for minority doctors in minority communities, even though they knew that need would not be met without the use of affirmative measures.²⁹ The University never

21. *Id.* at 33–40.

22. *Id.* at 33–34.

23. *Id.* at 36–38.

24. W.E.B. DUBOIS, *THE SOULS OF BLACK FOLK* 17 (Fawcett Publications, Inc. 1961) (1903) (“One ever feels his twoness—an American, a negro; two souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder.”)

25. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).

26. See Melvin L. Oliver, *When a Promise Is Broken, What's Left but Anger? Affirmative Action: Once, Minorities Could Hope that Hard Work Would Earn a Spot at UC*, L.A. TIMES, July 28, 1995, at B9.

27. LAWRENCE & MATSUDA, *supra* note 1, at 41–58.

28. *Id.* at 44.

29. *Id.*

challenged Bakke's position that he was better qualified.³⁰ It did not mention its program allowing special considerations for politically well-connected White candidates or White candidates that were related to benefactors of the University.³¹ Nor was evidence of any past discrimination presented by the University, even though such discrimination was pervasive in the California public education system.³²

While many readers will be familiar with the *Bakke* case and the media and community attention it received, the authors' review of the University's ineffective defense will be new to many readers and is an important point to note in their argument for affirmative action. Lawrence and Matsuda assert that *Bakke* came at a time when the emergence of a small but more visible Black middle class overshadowed the real-life increase in Black unemployment and the continued disparity between Black and White incomes.³³ With a view that was colored by sorry economic times, Whites believed that Blacks had become equal and that race was no longer a factor.³⁴ But America's truly disadvantaged were not winners in the *Bakke* case or in society. Once again, only the privileged were ensured the right "to choose who would share their privilege."³⁵

Lawrence and Matsuda contend that *Hopwood v. Texas*³⁶ is the third assault on affirmative action. It is with the Supreme Court's refusal to hear the *Hopwood* case that Lawrence and Matsuda begin to lay the foundation for their argument that affirmative action is not only necessary, but has not yet gone far enough. The authors claim that the American dream of equality must be reconciled with the American history of inequality.³⁷ In this political battle, the rallying cry is "we won't go back!" and the war is between the haves and the have-nots.³⁸ Confronting this exclusion of poor Americans of every color, Lawrence and Matsuda ask: "Is there a vision of affirmative action that can at once right the wrongs of racism and sexism and

30. *Id.*

31. *Id.* at 44-45.

32. *Id.* at 45.

33. *Id.* at 46.

34. *Id.* (referring to a 1970 Louis Harris poll cited in JOEL DREYFUSS & CHARLES LAWRENCE III, *THE BAKKE CASE: THE POLITICS OF INEQUALITY* 144 (1979)).

35. *Id.* at 53.

36. 78 F.3d 932 (5th Cir.), *cert. denied*, 116 S. Ct. 2581 (1996). While some might read Justice Ruth Bader Ginsburg's opinion denying certiorari in *Hopwood* to suggest the Court does not endorse the Fifth Circuit's affirmative action analysis, those who do so should be cautious and recognize that the Supreme Court must eventually address issues raised in *Hopwood*. LAWRENCE & MATSUDA, *supra* note 1, at 56.

37. *Id.* at 56-57.

38. *Id.* at 58.

poverty while speaking to the very real anxieties of all of America's working people?"³⁹

The authors partially answer this question with a portrait of Robert Demmons, the African American fire chief of the San Francisco Fire Department who is one of "America's working people."⁴⁰ Through his story, we see the integration of minorities and women into a fire department plagued with racial discrimination and racial hatred.⁴¹ Like many others, Demmons endured discrimination even though he was a deserving minority. Having exhausted the ability to advance using traditional means, Demmons waited eighteen years for the system to finally provide relief.⁴² Through his personal struggle, we are introduced to other groups, women and minorities, who fight for the same rights.⁴³ Through his story, we see how people struggle both within and without the system to make it work for all. Through the authors' description of the 1996 fire department graduation, Demmons' first as chief, we see the new vision of what affirmative action can be: "The gathering of Asian, Black, white, Latino, gay, and straight"—the "faces of affirmative action."⁴⁴

Despite the authors' convincing portrayal of Demmons as a man of the working people, persuading all of America to share Demmons' vision of affirmative action is a difficult task. It is not the picture that all of America wants to see. Lawrence and Matsuda's work reminds me of a national church meeting I attended where the group was asked to envision the church in the next century. One African American woman offered her multicultural, multiracial vision. When the audience was asked to respond, one White male was disturbed about his place in that picture. Convincing that White male that he is included and not diminished in a multicultural and multiracial vision of society is a more difficult task than Lawrence and Matsuda suggest, especially considering their argument about privilege.⁴⁵ I am not sure my fellow church member, who sees himself as liberal, appreciates that picture as easily as Demmons.

The final part of Lawrence and Matsuda's historical account⁴⁶ begins with quotations from Supreme Court Justices Antonin Scalia and Harry Blackmun, that appropriately illustrate the state of the

39. *Id.*

40. *Id.* at 59-66.

41. *Id.* at 59.

42. *Id.*

43. *Id.* at 64-65.

44. *Id.* at 66.

45. *See id.* at 97 (describing how privilege is two times more likely to lead to success than merit).

46. *Id.* at 67-87.

discussion about race in America. Justice Blackmun suggests that “[i]n order to get beyond racism, we must first take account of race,”⁴⁷ but his colleague, Justice Scalia, flaunts the need for such an approach and asserts that “we are just one race.”⁴⁸

Lawrence and Matsuda confront this “Big Lie.”⁴⁹ They say that it is naïve to assume that Americans are no longer racists or aver that there is no longer a need for affirmative action based on race as a remedy.⁵⁰ The authors first use specific examples of economic racism, surveys, focus group research, and other statistics to attack the notion that the playing field is now level.⁵¹ They note that, despite lip service asserting that race does not matter, Whites stated negative attitudes and stereotyped Blacks and Hispanics when surveyed.⁵² Research also shows that hate crimes are on the rise⁵³ and that Blacks and Hispanics still live and study in “racial isolation.”⁵⁴ In short, Lawrence and Matsuda reiterate well-known markers of the disparities in the quality of life between Whites and people of color by reporting statistics about incomes, incarceration and mortality rates.⁵⁵

Although opponents of affirmative action often refer to the Constitution as a “colorblind” document, Lawrence and Matsuda deftly reject that argument by pointing to Justice Harlan’s origination of the term in *Plessy v. Ferguson*⁵⁶ and contrasting Dinesh D’Souza’s misinterpretation of Harlan in his book, *The End of Racism*.⁵⁷ Lawrence and Matsuda point out that the obviousness that racism is an “injury to a group”⁵⁸ is as plain as the racially laden messages children see each day.⁵⁹ For political reasons—including the arguments against affirmative action—honest talk about racism is often foreclosed.⁶⁰ We, therefore, owe it to our children not to keep telling “The Big Lie.”⁶¹

47. *Id.* at 67 (quoting *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 407 (1978) (Blackmun, J., concurring)).

48. *Id.* (quoting *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 239 (1995) (Scalia, J., concurring)).

49. *Id.* at 69.

50. *Id.* at 70.

51. *Id.* at 70–74.

52. *Id.* at 71.

53. *Id.* at 72.

54. *Id.* at 73.

55. *Id.* at 73–74.

56. 163 U.S. 537, 559 (1896) (Harlan, J., dissenting).

57. *Id.* at 80 (citing DINESH D’SOUZA, *THE END OF RACISM* (1995)).

58. *Id.*

59. *Id.* at 86.

60. *Id.* at 83.

61. *Id.* at 87.

II. EACH OTHER'S HARVEST: THE CASE FOR AFFIRMATIVE ACTION

In Section II, Lawrence and Matsuda make their argument for affirmative action by dispelling the myth of meritocracy.⁶² Although they claim that the "American dream" of being judged upon individual merit is what has brought most Americans to these shores,⁶³ the authors critique meritocracy on several levels. They argue that merit "masks privilege," that the manner in which merit is measured is neither precise nor broad enough to account for the variety of talents that might legitimately qualify as meritorious, and that it is not clear that merit is the only or the best "method of distribution possible in a completely just world."⁶⁴ Then, using examples from the lives of an African American and an Asian American, they show that "merit" is often a code word for denying equal opportunities.⁶⁵

But they also point out that minorities are "deeply attached" to the idea that they should be judged by their abilities, not by the color of their skin or other physically distinguishing features.⁶⁶ The danger of blindly buying into that idea, however, is that merit is often trumped by privilege.⁶⁷ Here, the authors delve into what I call "the other affirmative action"—the benefits of wealth and privilege that are not causes for shame in our society.⁶⁸

The notion of whether "it is possible to determine the best with exactitude"⁶⁹ is also challenged. What really is the difference between the ninetieth and the ninety-first percentile? Does determining merit not call for a subjective evaluation?⁷⁰ Are such evaluations not fraught with prejudice? Clearly, the answer is yes. Who then gets the power to engage in this subjective evaluation? Lawrence and Matsuda suggest affirmative action provides some answers: "Privilege should not trump merit, and merit should include the talents of those without privilege."⁷¹ Merit must be expanded to include a broader definition of who is best qualified for a job or educational opportunity. Also included in notions of merit must be community-based definitions that respond to community

62. *Id.* at 91–111. Lawrence and Matsuda note that Jefferson correctly forecast the fact that slavery would haunt American society. *Id.* at 93.

63. *Id.* at 93–94. Among the classes that obviously did come to chase this American dream are the Blacks who were forcibly transported to America and into slavery.

64. *Id.* at 94.

65. *Id.* at 94–95.

66. *Id.* at 95.

67. *See id.* at 94–101.

68. *Id.* at 98.

69. *Id.* at 100.

70. *See id.* at 100–01.

71. *Id.* at 101.

needs. Finally, borrowing from the teachings of Lawrence's mother, the authors question whether, where appropriate, need-based considerations should be substituted for merit.⁷² Such a substitution, for example, would provide the best schooling for children with the worst test scores.⁷³ I do not find this idea to be so far fetched.

I recently attended a presentation by Dr. Vinetta Jones of Equity 2000,⁷⁴ a program which received praise from the White House just a few months ago.⁷⁵ Although algebra and geometry classes are known to be indicators of success on college entrance exams and in college itself, minority students are often tracked into lower level math classes.⁷⁶ In its pilot program, Equity 2000 attempted to close the gap between the college entrance exam scores of Whites and minorities by instituting a pilot program that offered algebra and geometry classes to all students in several school districts across the country.⁷⁷ As part of the experiment, Saturday academies, tutoring, homework hotlines, parent seminars, and teacher education were used to support students needing assistance.⁷⁸ The results were promising. More students were taking and passing algebra in 1996 than had been taking algebra in 1991.⁷⁹ The percentage of students with passing grades in algebra among African Americans, Hispanics and Asian Americans improved.⁸⁰ And while college entrance exam scores have not increased, they have not continued their downward spiral.⁸¹ Most important, however, is the fact that the equal opportunities in the classroom that Equity 2000 provides mean that students will have an equal opportunity to excel beyond the classroom door. As Lawrence and Matsuda adeptly point out, the current problem is that children do not have equal access to education.⁸²

The authors use the success of the Americans with Disabilities Act⁸³ to support their position that the best candidate may not always appear when traditional selection criteria are used.⁸⁴ In fact, the

72. *Id.* at 103-05.

73. *Id.* at 103.

74. Dr. Vinetta C. Jones, Address at the Detroit Study Club (Feb. 15, 1998).

75. Press briefing by Secretary of Education Richard Riley, M2 Presswire, Oct. 30, 1997, available in 1997 WL 15141485.

76. Vinetta C. Jones, *What a Difference a Standard Makes!*, in IMPLEMENTING SCIENCE EDUCATION REFORM: ARE WE MAKING AN IMPACT? (Dennis M. Bartels & Judith Opert Sandler eds.) (1997).

77. *Id.*

78. Dr. Vinetta C. Jones, Address at the Detroit Study Club (Feb. 15, 1998).

79. Jones, *supra* note 76.

80. *Id.*

81. Dr. Vinetta C. Jones, Address at the Detroit Study Club (Feb. 15, 1998).

82. LAWRENCE & MATSUDA, *supra* note 1, at 105.

83. Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* (1994).

84. LAWRENCE & MATSUDA, *supra* note 1, at 107.

public support of this Act belies traditional notions that the “best” worker is always the fastest or the strongest.⁸⁵ The question is then raised, “How is it that the American public could accept affirmative action for the disabled, even given the significant expenditures that reasonable accommodation requires, but could not accept affirmative action for those burdened with racial discrimination?”⁸⁶ Lawrence and Matsuda have the answer: racism.⁸⁷ They note that physical disability is not seen as the fault of the disabled person.⁸⁸ Does that then mean the color of a person’s skin is his or her “fault?” In the “ideal world,” Lawrence and Matsuda would use merit in an inclusive rather than an exclusive fashion.⁸⁹ They ask that merit be looked at in a different way, through a more diverse lens.⁹⁰

In “Tokens and Traitors: On Stigma and Self-Hate,” Lawrence and Matsuda confront opponents’ arguments asserting that affirmative action harms beneficiaries by stigmatizing them. The section begins with a discussion of Clarence Thomas’ nomination, and a comparison of Thomas’ claims of individual achievement to the legacy of Blacks like Fredrick Douglas, Sojourner Truth, and W.E.B. DuBois—people whose individual triumphs have become the triumphs of their people.⁹¹ The authors note that “[w]hile the success of these heroes was symbolic of our race’s capacity, it was success individually earned.”⁹² This is undoubtedly true, but there is an important distinction to draw. While the success of people like DuBois may have been individually earned, it was not always individually *achieved*.

This distinction reminds me of Paula Giddings’ account of Ida B. Wells.⁹³ It was Wells’ individual perseverance that kept her writing and reporting on lynchings in the South even after her newspaper in Memphis was burned down and she was driven from the town.⁹⁴ It was through the efforts of Black women in New York who organized a fundraiser in New York’s Lyric Hall that Wells was able to widely publish her booklet on lynching.⁹⁵

The recognition that individual achievement is often supported by the vast nameless others who lend their efforts to individual causes

85. *Id.*

86. *Id.* at 108.

87. *Id.*

88. *Id.*

89. *Id.* at 110.

90. *Id.*

91. *Id.* at 121–22.

92. *Id.* at 123.

93. PAULA GIDDINGS, *WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA* 17–31 (1984).

94. *Id.* at 29.

95. *Id.* at 30.

is perhaps not the argument Lawrence and Matsuda wish to make. Yet the understanding that we did not get to the places we now occupy without help protects us from the kind of self-hatred that might otherwise allow affirmative action to stigmatize us. In this regard, the words of Ladoris Hazzard Cordell, profiled in this section of the book, resonate with me. Responding to a Black student who was concerned that affirmative action might cause him to be viewed as less qualified or less intelligent than his White classmates, Cordell responded, "Get over it."⁹⁶ I wonder if, as the authors suggest, the stigma argument gains credibility from its association with Justice Thomas.⁹⁷ In any case, I agree with Lawrence and Matsuda's belief that the contentions that affirmative action stigmatizes its beneficiaries must be taken seriously and placed in its proper context. That is, these claims must be seen not as valid criticisms of affirmative action programs, but as statements within the context that Lawrence and Matsuda choose to place them—as part of "the cultural belief of white supremacy."⁹⁸ Only racism would allow us to see affirmative action as the oppressor, but still assume that every member of a racial minority is a direct beneficiary of affirmative action.⁹⁹

The issues surrounding tokenism, stigma, and self-hate are discussed in some depth, often in the context of Stephen Carter's book, *Reflections of an Affirmative Action Baby*,¹⁰⁰ and the behavior and statements of Justice Clarence Thomas.¹⁰¹ Lawrence insists that some of his personal experiences suggest that intellectual and social contact with one's peers relieves the trying and tiring ordeal of constantly being judged and devalued in the mainstream culture.¹⁰² I agree with his position that people of color must be involved in determining what is valued.¹⁰³ That means that it is also equally important to hold each other accountable and to speak out even when it is one of our own voicing self-hatred.¹⁰⁴

Throughout the book, Lawrence, who is African American, and Matsuda, who is Asian American, effectively blend their voices. They often speak together, but when only one speaks, at times it is hard to determine who is talking. The perspective being voiced often sneaks up on you. This technique is useful in demonstrating that

96. LAWRENCE & MATSUDA, *supra* note 1, at 118.

97. *Id.* at 124.

98. *Id.* at 125–27.

99. Lawrence and Matsuda correctly note that prior to affirmative action people of color were still considered inferior. *Id.* at 124.

100. STEPHEN L. CARTER, *REFLECTIONS OF AN AFFIRMATIVE ACTION BABY* (1991).

101. *Id.* at 124–27.

102. *Id.* at 131–33.

103. *Id.* at 134.

104. *Id.* at 141.

people of color from different racial backgrounds have common goals and interests in affirmative action. That is, they all want to effect their inclusion in the American dream. Sometimes, the instances of racism are so similar that the story could be that of any person of color describing a common experience at the hands of White supremacy. Unfortunately, the prevalent voice in the discussion of tokenism and self-hatred is that of Lawrence. Most of the examples are those which resonate with Black men. While their suffering is very real and perhaps they are most targeted by racism, another voice would have added much to the understanding of the isolation of constantly being judged by the color of one's skin.

The portrait of Bernadette Gross¹⁰⁵ creates a good bridge from the prior section on tokenism and stigma to the discussion of feminism and affirmative action. Gross' story of a woman breaking into the carpentry trade and finding her niche demonstrates how construction and skilled trades businesses circumvented affirmative action.¹⁰⁶ But it also shows a different kind of tokenism and stigmatization.¹⁰⁷ Although Matsuda and Lawrence may not have intended it, the treatment of women in the construction industry in some ways parallels the treatment of African American firefighters in Robert Demmons' profile. In both examples, the status of the same group, blue collar White males, is threatened. Interestingly, both groups' response to perceived outsiders and the final acceptance of those outsiders are surprisingly similar even though they are not commonly considered together.

In "Feminism and Affirmative Action," Lawrence and Matsuda, through Matsuda's voice, raise the question, "What is a feminist?" Matsuda writes that she has posed this questions to her students, and their responses often characterize feminists as White, privileged, middle-class persons who dislike men.¹⁰⁸ For me, however, the portrait of Bernadette Gross again comes to mind, even though she scarcely fits some of the descriptions that Matsuda's students offer.

Matsuda argues that if all women voiced support for affirmative action, as they should, their voices could combine with those of progressive White males and progressive men of color to drown any argument against affirmative action and silence political opposition to it.¹⁰⁹ Acknowledging that women are not all together on this issue, Matsuda makes the case for affirmative action by showing that

105. *Id.* at 142-50.

106. *Id.* at 147-48.

107. *Id.* at 149.

108. *Id.* at 151.

109. *Id.* at 152.

women have been its major beneficiaries.¹¹⁰ Matsuda insists that the need to continue affirmative action programs for women is demonstrated by the effect of the glass ceiling on women's progress in employment.¹¹¹

Matsuda believes that the more open and varied the choices become for women, the more just and humanized the American workplace and lifestyle will become for everyone.¹¹² The Family and Medical Leave Act¹¹³ is cited as an example of this progress.¹¹⁴ Despite these efforts to humanize the workplace, women still drop out of professions like the law because they dislike the workplace environment.¹¹⁵ Perhaps such drop outs are not statistically significant. Perhaps women in professions such as law are not the ones who are willing, or are in a position, to effectively challenge the American work ethic gone awry.¹¹⁶ Not long ago, I had lunch with a group of women in traditional professions—lawyers, professors, educators, doctors, bankers. One of the doctors who once worked at a busy city hospital servicing predominantly lower income patients had moved to a suburban hospital to get better hours so she could spend more time with her children. Another doctor had taken a leave of absence so she could achieve the same goal. Although I do not condemn these women for their choices, I cannot help but consider the power their demand for changes in the work environment that accommodate their child-rearing interests might have for other women who can not afford the luxury of a leave of absence or who lack the ability or skills needed for job mobility. This is a part of the issues concerning patriarchy and women's complicity in it that Matsuda addresses in this section.¹¹⁷

Barbara Babcock, profiled in connection with feminism and affirmative action, does not fit the popular stereotype of an "affirmative action baby," but it is clear that discrimination has had a powerful effect on her life.¹¹⁸ Having overcome numerous obstacles, Babcock, like Ladoris Hazzard Cordell, discounts the alleged stigma of affirmative action. Responding to a question about how it felt to be getting a position because she was a woman, she answered, "[i]t feels a lot better than not getting it because I am a woman."¹¹⁹ On a

110. *Id.* at 152–53.

111. *Id.* at 153.

112. *Id.* at 159.

113. Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 *et seq.* (1994).

114. LAWRENCE & MATSUDA, *supra* note 1, at 159.

115. *Id.*

116. *See id.* at 159.

117. *Id.*

118. *See id.* at 169.

119. *Id.* at 175.

more serious note she states, "I take the side of affirmative action for the most personal of reasons. I am the direct, immediate beneficiary."¹²⁰ She goes on to add credence to Lawrence and Matsuda's premise that affirmative action should be continued and expanded:

Affirmative action is still young as a legal concept, while discrimination against minorities and women has been with us for three hundred years. We should give affirmative action a chance before abandoning it When people can honestly stand up and say discrimination against people of color and white women is no longer a serious problem—then we can give up one of the tools we have developed.¹²¹

In their chapter entitled "Affirmative Action, Class, and Interethnic Conflict," Lawrence and Matsuda courageously address issues of class and ethnic diversity.¹²² This is a difficult discussion. Moderate privilege influences perspectives of the middle class in communities of color.¹²³ Questions of who in communities of color should benefit from affirmative action are complicated by the widening economic gap between the upper middle class and the poor and the increasing number of "biracial" and "multicultural" persons "who live on the borders between ethnicities."¹²⁴ I think that the real questions are what groups raise the issue of privilege, and what groups select those who should benefit from affirmative action.¹²⁵ Lawrence and Matsuda also address the argument that affirmative action does not help the truly "needy."¹²⁶ Here, the authors suggest that diversity and the perspectives that people of color bring to the table—be it in the elementary school, the university, or the construction site—are valuable whether or not the people are "needy." They imply that racism offsets privilege, allowing the lives of even so-called privileged people of color to be fraught with incidences of discrimination that are current in their memories, their experiences, and those of others around them.¹²⁷ Selecting individuals for more than their identity is one way to effect inclusivity.¹²⁸ Lawrence and Matsuda suggest selection criteria that might include a "demonstrated

120. *Id.* at 176 (quoting Professor Babcock's statement to a local meeting of the bar).

121. *Id.*

122. *Id.* at 178.

123. *See id.*

124. *Id.* at 180.

125. *See id.* at 180–81.

126. *Id.* at 181.

127. *See id.* at 183–84.

128. *Id.* at 186.

ability and commitment to serve as an agent for change."¹²⁹ Who actually evaluates interest, commitment, or ability to be an "agent for change" is an issue not specifically addressed by the authors.

Lawrence and Matsuda question what groups in the community of color should be eligible for affirmative action, particularly as it is seen to redress past (or continuing) discrimination.¹³⁰ Rather than viewing this issue as divisive, they see it as an opportunity to build interethnic coalitions and to expand affirmative action.¹³¹ Using specific examples of inter- and intraethnic conflict over affirmative action, they acknowledge that these issues are complex but observe that the survival ability of the species, means that we, as a "connected tribe," are smart enough to find a way "to bring to the place of power those formerly excluded."¹³² The authors do not lead us to the path of enlightenment, even though a road map to find our way might be useful. This is not really a criticism of the book—Lawrence and Matsuda have tackled the task of "making the case" for affirmative action, not the one of solving every problem with its administration.

The profile of Lawrence Levine, a Jewish history professor, supports the argument trivialized by some, that diversity, one end product of affirmative action, is good for all of us.¹³³ Levine's portrait shows how we are enriched, how our discussions are broadened, and how our lives are made more full by sharing the experience of difference. It demonstrates America on the edge of a new world.

Although it does not seem necessary to address the social anxiety that accompanies any social upheaval, such as the civil rights movement, Lawrence and Matsuda do so because this anxiety is directed at affirmative action.¹³⁴ Citing Crèvecoeur and Schlesinger, they first return to the historical roots of American social and political culture.¹³⁵ Lawrence then tells the story of his great-grandfather who, after emancipation, wanted nothing more than to leave the past behind and claim the future.¹³⁶ The present is attributable in part to affirmative action, and the reaction has been a rise in hate speech, hate crimes, and a backlash against newcomers

129. *Id.*

130. *See id.* at 192–93.

131. *See id.* at 193.

132. *Id.* at 202.

133. *See id.* at 203–08.

134. *See id.* at 209–10.

135. *Id.* at 210 (citing Hector St. John de Crèvecoeur, *Letter III: What is an American?*, in *LETTERS FROM AN AMERICAN FARMER* 40–82 (Susan Manning ed., Oxford Univ. Press 1997) (1782); Arthur Schlesinger, Jr., *Multiculturalism and the Bill of Rights*, 46 *ME. L. REV.* 191 (1994)).

136. *See id.* at 210–12.

in every arena, but especially in academia.¹³⁷ Added to the previously mentioned markers of backlash is the concept of political correctness which the authors turn on its head by suggesting that all things be evaluated using a critical perspective with the proper emphasis on the spaces in which power and oppression lie. Lawrence and Matsuda attribute the resistance to new faces and voices in the academy to the fear of facing our own identities or the tragedy of realizing that we have left a portion of our identity behind.¹³⁸ This idea is heartwrenchingly illustrated by the story of Lawrence's sister leaving home and packing up all the objects she held dear, only to leave them in a suitcase outside when she went off to the "scary place called college."¹³⁹ Lawrence and Matsuda conclude that multiculturalism is about transforming and opening minds while affirmative action is about opening doors.¹⁴⁰

III. THE WELCOME TABLE: EXPANDING AFFIRMATIVE ACTION

In the final section of this book, "The Welcome Table," Lawrence and Matsuda lay out their case for expanding affirmative action. Using the perspective of Micronesian judges, they offer us a different way of looking at justice.¹⁴¹ We learn that there are different questions to be asked when one is charged with redressing wrongdoing in a different, non-Western cultural context.¹⁴² We learn that there are different attitudes about the place and practice of apologizing in those different settings.¹⁴³ And we also learn about the importance of goodness, being at peace, and spiritual and emotional balance—concepts not generally discussed in traditional American legal circles.¹⁴⁴ Lawrence and Matsuda speak about the concept of reparation and its place in the discussion of liberty, equality, and American greatness by citing the historical hurt and injury to Native Hawaiians, Native Americans, African Americans, and Japanese Americans.¹⁴⁵ This discussion reminds me of the hundreds of leis hung on the statute of Queen Lili'uokalani to remember her unjust overthrow,¹⁴⁶ of candle vigils with gays and lesbians, of women

137. See *id.* at 212.

138. *Id.* at 227.

139. See *id.* at 225–26.

140. *Id.* at 228.

141. See *id.* at 231–32.

142. See *id.* at 232.

143. *Id.*

144. *Id.*

145. See *id.* at 233–41.

146. For detailed accounts of Queen Lili'uokalani's overthrow by the United States Government, refer to MICHAEL DOUGHERTY, *TO STEAL A KINGDOM* (1992);

marching in white attire, and of Black men marching on the Washington mall.

Diane Ho, the final face of affirmative action that Lawrence and Matsuda present, is a Native Hawaiian female attorney whose law office is always full of kids. She reminds me of my old music teacher, Vincent Walters, a Black man who brought music alive for Black kids in Columbus, Ohio. He taught those who came to his mother's house after school on a first come, first served basis. In his house, we learned to play Mozart and Chopin, and stayed after to hear the jazz pianist that he was teaching to read music. We learned about the piano, but we also learned about self-esteem. We learned theory, but we also learned that a Black man could run a non-traditional business. He announced our recitals by publishing our photographs in the weekly Black newspaper. We learned to believe in ourselves and our ability to be whatever we wanted. Affirmative action helped many of us achieve our goals either as direct or indirect beneficiaries.

In closing, Lawrence and Matsuda claim that affirmative action has not gone far enough. They call for its expansion by adding a category for the economically disadvantaged, but are careful to specify that such an expansion should not be facilitated by the exclusion of other categories.¹⁴⁷ But they do not stop there. They argue for programs to improve the quality of life and the fulfill the promise of opportunity for all Americans.¹⁴⁸ They insist that literacy programs, remedial education, and anti-poverty efforts must accompany this expanded affirmative action approach.¹⁴⁹ Lawrence and Matsuda tout the now-threatened City College of New York remedial programs as an example of where we ought to go. Although they do not set forth the details of how such an expanded plan will work, they stick to their position that beneficiaries must have a voice in the system's design. And although the expanded programs they envision have a substantial price tag, it would be money well invested, with untold returns.¹⁵⁰ They reason that this expansion is necessary—at almost any cost—because a democratic society works only when its citizens are sufficiently educated to participate in self-government.¹⁵¹

NATIVE HAWAIIANS STUDY COMMISSION, REPORT ON THE CULTURE, NEEDS AND CONCERNS OF NATIVE HAWAIIANS (1983).

147. Lawrence and Matsuda offer to include gays and lesbians at the affirmative action table, but defer the timing of that issue to those in that community. *Id.* at 259.

148. *See id.* at 254.

149. *Id.*

150. *See id.* at 255.

151. *See id.* at 256.

Affirmative action is a claim for substantive equality under an analysis of ongoing constitutional interpretation.¹⁵² Reconciling the constitutional protections of property with the Fourteenth Amendment's mandate of equality, affirmative action picks up where Reconstruction attempted to establish equality, but ultimately failed. Lawrence and Matsuda argue that inequality must be dismantled and the way to achieve this is affirmative action. They use lessons they learned from their forebears, and the lessons they learned from their parents, lessons they offer to us to make our own.

152. *Id.* at 276.