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ARTICLE: Collective Recognition as a Communitarian Device: Or, of Course We Want to Be Role Models!

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BIO:

+ Professor of Law, University of Iowa, College of Law. This article has benefitted greatly from the perceptive commentary of Professors Jim Anaya, Arthur Bonfield, Joe Knight, Kenneth Kress, Sumi Cho, David Vernon, Gerald Wetlaufer, Adrien Wing, and Michael Olivas. I am also grateful to Professor Frank Valdes for organizing a workshop of my paper during a Critical Race Theory conference in October 1995. The comments I received were very helpful, particularly those of my primary readers, Professors Leslie Espinoza, Deborah Ramirez, Jennifer Rosato, and Edward Fallone. I would also like to thank Ricardo Contreras, Rick Haberman, Amanda Paracuellos, and Scott Goings for their fine research assistance.

Finally, I dedicate this article to my parents, Pedro V. Carrasco and Elaine Carrasco. As critical role models and mentors, they taught me the importance of obligation, determination, optimism, and justice -- values that have sustained me in my *lucha*.

SUMMARY: ... Affirmative action is under renewed attack. ... This essay responds to Delgado's piece by arguing that his criticism of the role model is based on an unduly narrow conception of that term, one that is based on role models as mere "exemplars of success" for the purposes of affirmative action. ... "By virtue of her commitment to diversity, the role model is 'connected' to her fellow human beings both in the majority and the minority. ... "Thus, the students who fought to get me and other Latinos into law school were role models exercising their power as connected critics when they argued to the administration that the school had to admit more Latino students if they were truly committed to diversity. ... When a majoritarian says that I am a poor role model, she is saying that the *model* to which I correspond may not be a viable interpretation of the facts they have come to know about people of color like me. ...

[*81] I.

INTRODUCTION

Affirmative action is under renewed attack. Students, university administrators, academics, politicians, workers, and business owners are asking whether affirmative action is still a viable way of pursuing integration, job opportunity, and social stability. n1 Critics argue that affirmative action is a form of reverse discrimination and that it leads to [*82] stigmatization of its beneficiaries. n2 Supporters respond that affirmative action is still an effective means of combating deeply ingrained racism. n3 In the midst of the debate stand people of color who are looked upon as role models, people who supposedly have "made it" based on their talent and the opportunities made available to them through the civil rights movement and affirmative action.

These role models are manifestations of diversity -- the ultimate product of affirmative action's efforts to eradicate discrimination against and exclusion of minorities and women in public and private institutions. n4 However, diversity is more than a mere afterthought in the liberal state. n5 It merits the state's

recognition and support because liberalism would be an empty concept without *proof* that the equal opportunity principle really works. n6 The equal opportunity principle, however, rewards hardworking and meritorious *individuals*, not groups. When these previously excluded *individuals* "make it," they are called role models and offered as proof that liberalism is alive and well.

Professor Delgado, a Critical Race Theorist, doubts that writers of color should support affirmative action. Nor, says Delgado, should professionals of color accept the "role model" job that accompanies affirmative action. In a well-known essay, Delgado argues that a racist majority uses both concepts to exploit and demean the few of us who have made it and to otherwise pacify the rest of the minority population. n7

This essay responds to Delgado's piece by arguing that his criticism of the role model is based on an unduly narrow conception of that term, one [*83] that is based on role models as mere "exemplars of success" n8 for the purposes of affirmative action. A more accurate conception of the role model is based on a complex and multidimensional phenomenon that is both rooted in the community and critical to reform. Those of us who are committed to diversity *must* be role models. Serious, committed role models are not flunkies for liberalism. On the contrary, role models are in the best position to question affirmative action and its liberal premise, and to press for a communal and inclusive vision of diversity, which I call "collective recognition."

My argument will be based on the following *cuento*, a special type of narrative in Latino culture. *Cuentos* capture themes ranging from the hilarious to the fantastic. I have constructed a *cuento* that my father often used, one that uses a collage of intersubjective life experiences (neither the speaker nor the listener cares whether the experiences are the speaker's own) to relate the storyteller's perspectives on the human condition. n9 The narrative focuses on a Latino, n10 Paco Oleas, who becomes a law professor and a role model.

We first encounter Paco in his office. Something is wrong. Someone has just left his office. The phone rings, making Paco jump slightly. On the other end is a law student who is participating in a mentor program Paco established years ago at his former law firm. "Good afternoon, professor!" said the student. "The Latino law students in the city have decided to plan a special program to recognize the Latino legal community here. Since you helped establish the mentor program for Latino law students, we would like you to present a talk on our theme, 'Celebrating Our Latino Role Models.' Would you like to participate?"

A wave of nausea slams into Paco. The receiver falls to the floor. After regaining his composure, Paco says, "Sure. Thanks for thinking of me. It's a good time for me to say a few things about role models."

What's wrong with Professor Oleas? Why did the phone call precipitate nausea? Why the cryptic reference to role models? His research in preparation for the talk might give us a clue.

II.

PACO'S RESEARCH

Paco decides to concentrate on Professor Delgado's critique of role models. Delgado's essay begins with a critical analysis of affirmative action. Affirmative action, Delgado says, ignores the history of the majority's exploitation of minorities and adopts instead a "forward-looking," [*84] teleological approach that seeks to achieve policy goals such as integration, social stability, and increased employment. n11 Since the majority decides when those goals have been reached or when they must be abandoned, affirmative action really is an "homeostatic device," ensuring that only a small number of people of color and women are hired and promoted within the world of the majority. n12

Affirmative action also enables the majority group to cast minorities in a demeaning light by requiring one to ask whether it is fair to hire a less-qualified person of color over a more-qualified white person. n13 The question is both absurd and superbly crafted, Delgado says, for it has allowed "the beneficiaries of history's largest affirmative action program," the majority, to divert attention away from unjust historical preferences

in favor of the majority. n14 Moreover, the question reflects the dominant group's ability to establish and control the standards that are used to hire and promote the few minorities that have been "magically raised by affirmative action's unseen hand." n15 Minorities who have benefitted from affirmative action are thus made to feel "guilty, undeserving, and *stigmatized*." n16 It follows, says Delgado, that "affirmative action . . . is something no self-respecting attorney of color ought to support." n17 He calls upon us to "demystify, interrogate, and destabilize affirmative action." n18

Delgado then casts his critical eye on the related role model argument, which he describes as follows: The role model argument, in simplest form, holds that affirmative action is justified in order to provide communities of color with exemplars of success, without which they might conclude that certain social roles and professional opportunities are closed to them. Role models are expected to communicate to their communities that opportunities are indeed available and that hard work and perseverance will be rewarded. n19

In his view, the role-model argument further demeans people of color. [*85] The white-dominated institution does not hire the person of color because she deserves the job or because it is trying to rectify past discrimination. n20 Given the "instrumental and forward-looking" aspect of the argument, you, the person of color, are hired "because of what others think you will do for them. If they hire you now and you are a good role model, things will be better in the next generation." n21 The role model argument is also extremely useful to the majority because it ensures the development of a docile minority population that will outnumber--and have to support--an aging white population after the turn of the century. n22 Delgado articulates five reasons for rejecting the job of role model. First, uplifting "your entire people" is "tough," "sweaty work." n23 Second, you are treated as a means to an end, even by your own people. For example, everybody expects the role model to give this speech or serve on that panel. n24 Third, the "job description is unclear." Role models are not sure whether they must perform the same tasks as their white counterparts in addition to their work with the community. n25 Fourth, a role model must be "assimilationist, never a cultural or economic nationalist, separatist, [or] radical reformer." n26 In other words, role models must adhere to "majoritarian social mores." n27 Finally, and most important to Delgado, role models are forced to lie to the extent that they prop up liberalism's equal-opportunity principle. We lie, for example, when we tell our children of color that they can be like us if they work and study hard and stay out of trouble. n28 The numbers of minorities that have "made it" in the white world tell a far different story. But if we were to tell the truth, majoritarians would label us "poor role model[s]." n29

For all these reasons, Delgado urges us not to apply for the job: You can do other more honorable, authentic things. You can be a mentor. You can be an "organic intellectual," offering analysis and action programs for our people. You can be a matriarch, a patriarch, a legend, or a provocateur. You can be a socially committed professional who marches to your own drummer. You can even be yourself. n30

[*86] Paco pauses on the last sentence--be yourself. What does that mean? Paco wonders whether there is a link between the concept of a role model and the meaning of "yourself." He thinks and writes.

III.

PACO TALKS

Having completed his research and written a paper, Paco welcomes the opportunity to share his thoughts on role models with the students who invited him to celebrate the solidarity and achievements of the Latino community.

"I am very pleased to be here with you this afternoon. We will be celebrating Latino role models tonight. Some of us are justifiably ambivalent about that concept. We may not know how to define a role model or we may not agree on a definition. Even if most of us can agree on some very general definition of the concept, we may disagree about its utility in general or about its particular applicability to each of us.

"Today, though, I would like to focus on Professor Delgado's thoughtful conception and critique of role models in a racist society. Delgado urges professionals of color to reject the 'role model' job in the context of affirmative action as it is defined by racist majoritarians. In his view, affirmative action and its corollary concept of role model are used to exploit and demean the few of us who have 'made it' in the professions.

"I have been called a role model and I have called others the same. Never have I explicitly rejected the concept. But in light of Delgado's criticisms, I should rewind my life and re-examine parts of it accordingly."

A. Paco's Story

"I was born in Chicago. My father was Bolivian; he made a living making harps. My mother is North American, a 'gringa.' She has always been proud of her German heritage--I still remember wearing 'lederhosen' on occasion! She was also very proud to have married a Latin American. In fact, she raised me and my eight brothers and sisters in the Latin American tradition, which was very thick in Chicago. My parents' hard work kept us on the edge of middle class life--a modest apartment in the city, simple but good food on the table, clothes on our backs. I lived happily there.

"Life, of course, brings pain as well as happiness. I experienced the pain of being different and the shame of stigma. I knew the psychological pain of being called a 'spik' and a 'wetback.' I felt the physical pain of being beaten-up merely because I was the only Latino on a street-hockey team. I also felt the burning shame of being caught speaking Spanish on the city bus. I could feel others, including Latinos, staring at me, their faces filled with anger and shame. The bus is a [*87] 'melting pot zone,' like school. 'Speak English, you idiot!' I would say to myself.

"Shame and stigma followed me to a Southern city, where I completed high school. All of the high school students and teachers at my high school were black, except for a few white teachers who didn't last very long. I was the only non-black student there. Because of my skin color, I was called 'white boy,' 'honky,' 'cracker' and other wounding names. I nevertheless stayed at the school. I lived in blackness, n31 during and after school. Eventually, I earned the respect of my fellow human beings. Friends and enemies called me a 'reverse oreo,' meaning that I was white on the outside but black on the inside.

"I went to college in the North after graduating from high school. College was both exhilarating and frightening for me. Despite the friends I made at college, I often felt like a fish out of water. I found few Latinos or blacks on campus, either as students or professors. During the latter part of my undergraduate studies, I became interested in law and in particular the relationship between law and society.

"I applied to several law schools after graduating from college. I recall placing a check in the box marked 'Other Hispanic.' One day I received a letter of acceptance from a prominent law school. The letter touted the diversity of its student body; twenty-five percent was comprised of racial and ethnic minorities, and women accounted for fifty percent of the entering class. I eagerly enrolled in that law school.

"After joining the Latino student group at the law school, I learned that Latino students sitting on the Admissions Committee had been fighting hard to increase the number of Latino students in the law school. I was a beneficiary of the battle. I still recall attending a reception that the Latino group held early in the first semester of my first year. We were celebrating the large first-year class of Latinos. Wanting to look professional, I dressed up in a (cheap) charcoal grey suit. The upper-class students in the group welcomed me and assigned me a 'mentor,' that is, a third-year Latino student who could show me the ropes. Being a terrified first year law student at that point, I found great comfort in the smiling face of my mentor. Her smile seemed to say, 'I've survived and so will you!'

"That smile helped me survive hard times in law school. The curriculum was tough. So, too, was my experience with yet another form of stigma. Word got around that a good number of white students--maybe some of the students who sat next to me in class--thought that I and other minority students did not deserve

to be in the law school. I recall reading racist graffiti in the bathrooms. A white student wrote an [*88] expose in the student newspaper, revealing that minority students with lower LSAT scores were admitted to the law school over more 'qualified' non-minority students. I also heard talk about how the 'special support services program' was filled with minority students who were 'clueless' in class. Even the few professors of color at the school were disparaged.

"But I am a survivor and an optimist. I worked hard in law school, learned how to play the game, and, after graduation, joined a large law firm. The firm had no people of color as partners. I knew of a few black associates at the firm, but there were no Latinos. I was the first. During my job interviews with various partners, they all seemed genuinely excited about having me 'come on board.' Many of them complimented me on my credentials. They talked about the importance of diversifying the profession. They also spoke of meritocracy. In the firm, 'you "make it" strictly on your merits.'

"Soon after joining the firm, some of the partners encouraged me to attend the bar's activities, including job fairs, on behalf of the firm. I felt good about representing the firm. It troubled me, though, when both students and lawyers of color told me that my law firm, like most other major firms, was not truly interested in diversifying the profession. A Latino law student once told me, 'You know, Mr. Oleas, your law firm sent our Latino organization a letter, indicating that it wanted to consider minority applicants. The firm encouraged us to send resumes of interested students. We sent the firm a thick stack of resumes. None of us got an interview!'

"I eventually thought of an idea that might encourage diversity in both my law firm and other firms. Why not have the firm sponsor a 'mentor' program? 'We could start with a program for Latino law students in the local schools,' I suggested this to other Latino lawyers who were equally committed to their community. 'We could match Latino lawyers in the area with the students. The program's purpose would be to inspire and support Latino law students, particularly in the first year. The firm could sponsor events for the mentors and mentees. A dialogue could develop among Latinos, and between Latinos and firms like mine. A dynamic might develop, a dynamic that might promote diversity.'

"I suggested the program to several partners at the firm. They thought it was a good idea. 'You're a good role model, Paco. And there are others like you in this town. We do want to see a more diversified bar and this program might help.'

"Nearly one hundred lawyers and students attended the first meeting. Several prominent Latino lawyers spoke; they said they were gratified to see so many Latino law students. They told the students that when they went to law school, there were only a handful of Latino students. The students, too, were happy to meet and listen to the lawyers.

"The mentor program wasn't the only thing in my life, of course. I had begun a family and my other responsibilities at the law firm increased geometrically. Before I knew it, I was a couple of years away from being considered for partnership.

"About that time, a local paper wrote a lengthy article about my work at the firm. The article emphasized the popularity of my mentor program and the substantial pro bono work I had performed for 'marginalized people' in the city. A photo showed me, as you can see, a [*89] short man with short, jet black hair, shaking the hand of a much taller White man with perfectly combed greying hair. Both of us were smiling radiantly. The caption read: 'Managing partner describes Oleas as a perfect role model.'

"I resigned from the firm a few months after the publication of that article. I had grown uncomfortable with the perception that I was a minority 'superstar' at the firm. I was also frustrated that there were so few minorities either as partners or on the firm's partnership track. n32 Moreover, I received mixed signals regarding the partnership decision and life thereafter. I was told by confidants that some influential members of the firm were concerned about the emphasis I had been placing on pro bono activities, especially the mentor program. 'Will he be able to generate business for the firm--do the real work?' they

asked. I also started asking myself what life would be like as the sole Latino partner at the firm. Would I be marginalized, trotted out for special occasions to demonstrate the firm's commitment to diversity? I could try to abandon my identity and think of myself as a businessman first and foremost--who just happens to be called Paco Oleas. But this possibility seemed very alien to me and frightened me to the core."

B. *The Multidimensional Role Model*

"Given what I've just told you about my life, Delgado's criticism of the role model seems to be right on the mark! Should I now hate myself for being, in Delgado's view, a 'flunky for the man,' a 'Tio Taco?' n33 According to Delgado, I should, at the very least, think of another term that can apply to me and others like me who seek greater diversity in the professions. Perhaps I should walk away from the job altogether.

"Then again, maybe I shouldn't. The more I think about it, the more I believe that a role model is a more complex and multidimensional concept than Delgado's description suggests. Under the more complex conception of the role model, I have no choice. If I continue to pursue my belief in diversity, I must inevitably play various roles and others will inevitably view me as a model."

1. *The Justificatory Model*

"Let's address the latter proposition first--the inevitability of being a model. As Delgado observes, the word 'model' in the term 'role model' [*90] suggests an exemplar of success which should be imitated. n34 The word, as thus defined, provides us with a widely recognized reference point, one which is used in one form or another in sociology. n35 However, the more complex meaning of the concept, examined in the context of affirmative action and race relations, can be understood by determining how and why well-intentioned liberals create what I will call the justificatory model.

"The justificatory model of a person, say a Latino like myself, is based upon facts that have been gathered by those wishing to create the model, in this case the liberal majoritarians in whose midst I now supposedly stand. n36 The facts are interpreted on the basis of the creator's background and experiences. Some of the facts, which may be based on 'stories' of people like myself, may or may not be accurate. Once the facts are gathered, they are organized in a coherent and stylized fashion.

"Thus, a model in these circumstances may be articulated as follows: 'We, the majoritarians, have some understanding of Latinos. Many of us have seen them (and even known them) in school, on the bus, or in the grocery store. Many of them have brown skin and dark hair. Many of them speak Spanish. Many of them believe in a strong family. Many, but not all, Latinos are born into poverty. Hardship and struggle have strengthened their character and their loyalty to the 'barrio'--the community. Their background also makes them tenacious survivors. Many of the Latinos who have been processed through law school will in all likelihood be able to work with us. They can be thoughtful and responsible, and, importantly, many of them believe in, and support, individual achievement. Since they played the game in law school, they will likely play the game in the profession.'

"The model is useful because *most* majoritarians, given their backgrounds and experiences, can agree that it is a viable interpretation of the facts they have come to know about a minority group and that the model effectively advances the universality of liberalism's equal opportunity principle. The model, therefore, reaffirms majoritarian membership (*we*, in the majority, want *those* individuals of color to join us) while it simultaneously provides a self-perpetuating method of justifying the equal opportunity principle. n37

[*91] "The use of a justificatory model is rational and inevitable. Majoritarian partners use the model to recruit people of color for their law firms. Law schools use the model to recruit faculty of color, something I'll talk about in a moment. So even if we destabilize the current form of affirmative action in favor of some other approach, majoritarians and minorities would still interface through models. However, destabilization may *change* the models' content." n38

2. *Human Beings Must Fulfill Roles*

"At this point in my analysis I should carefully distinguish between a model and a human being. Others will view me as corresponding to a model. The model is only a general, abstract representation of me, the human being. In many cases, the representation is inaccurate, n39 though not radically. n40 Thus, a blurred image would result if we were to superimpose the model I have just described over Paco Oleas, the human being informed by the narrative of his life. n41

"In my day-to-day living, I don't perceive myself as acting as a model. Instead, I perceive myself as acting as a human being fulfilling various roles in various communities; my actions governed and defined by my communities. I am an embodiment of my communities, past and present. I doubt Delgado would disagree, for in the context of the First Amendment, he rejects the notion of a pre-existing individual who is free to choose among 'external' ideas in the marketplace of ideas: In an important sense, we are our current stock of [*92] narratives, and they us. We subscribe to a stock of explanatory scripts, plots, narratives, and understandings that enable us to make sense of--to construct--our social world. Because we then live in that world, it begins to shape and determine us, who we are, what we see, how we select, reject, interpret and order subsequent reality. n42 Thus, when Delgado urges us to be ourselves n43 we can only do so by recognizing that our teleological quest through life is a narrative informed by roles we assume through communal practices and traditions. n44 My quest through life is informed by many communities and cultures, including the Latino culture of a Midwestern city and the African American culture of a city in the Deep South." n45

3. *The Exemplar Model*

"As we fulfill our roles, we may learn from and be looked upon as models, but not the same type of model I described in the context of affirmative action--the justificatory model. The models I speak of here [*93] are important teaching tools within the community. As Delgado's description suggests, models in this context are exemplars of success that should be imitated, for through such imitation we confirm our individual and communal identities and provide for ourselves a reference point for making sense of the world around us. n46 Throughout the narrative that is my life I have used such models, ranging from my teachers and parents to Atahualpa, Simon Bolivar, Cesar Chavez, Rigoberta Menchu, Rosa Parks, Malcolm X, Martin Luther King, Jr., Judge Cardozo, Justice Thurgood Marshall, and others. We can call these 'exemplar models.' Here, too, we must recognize that there is a difference between the passive exemplar model and the human being. n47

"Let's summarize at this point. My analysis thus far suggests that the word 'model' in the term 'role model' is a passive device that must be used in a multicultural society. The model can be justificatory or exemplar. The term 'role' relates to role fulfillment by human beings; role fulfillment is an inevitable and useful means of perpetuating culture. A definition of role model that captures these concepts seems unobjectionable."

C. *Delgado's Reasons for Rejecting Role Modeling*

"So if we still think there is merit to Delgado's criticisms, we must look elsewhere. Let's examine, then, the five reasons he provides for rejecting the role model job--(i) it's hard work, (ii) you're treated as a means to an end, (iii) the job description is unclear, (iv) it's assimilationist, and (v) you're forced to lie."

1. *Paco's Story Continued*

"I would like to place these criticisms in context by describing what happened to me after I left the law firm. Thanks to a friend, who is popularly known as the 'crusader,' I was persuaded that I could bring a new dimension to my commitment to diversity by moving to academia. With the crusader's help, I secured a tenure-track position at a prominent law school. I later learned that the Latino students had been pressing the administration for some time to add a Latino to the faculty. The school stated publicly, however, that it did not hire me because of the crusader's pressure or the students' activism.

"I plunged into my academic work and soon found myself overwhelmed. My teaching, writing, committee work, and speeches easily [*94] filled my days and nights. I also worked closely with the Latino students at the school, trying to continue the role I played in the private sector.

"Time flew by. Before I knew it, I was in my final year before the tenure decision. I worked hard, trying to be the good teacher, the good writer/thinker, the good colleague, and the good mentor. I was so committed to the latter role, that I scheduled a property law review session for first year Latino students. Although I scheduled the review at the request of the Latino student group, only a few students attended the session. I later found out that a group of Latino students questioned my motives: 'He's been doing these things for us only because he's up for tenure. As soon as he gets it, we'll never see him. He's not one of us anyway--he's Bolivian!' To make matters worse, the signs announcing the session caused an uproar among the rest of the student body and the faculty: 'How dare he schedule a review exclusively for the benefit of one minority group!'

"A few days after the incident, I sat dazed in my office. One of my colleagues knocked on the door and entered. 'You know, Paco, *you* don't *have* to do any of the things you've been doing with the Latino students. It's not part of your job description. In fact, some of these activities may offend some of your colleagues who will vote on your tenure.'

"I don't understand,' I responded. 'The work I do with Latinos is part of who I am. Surely, the faculty understood this when they hired me and *expected* that I would perform that function. In fact, during my initial interview with the faculty, we talked about my work at the law firm on behalf of Latinos and how I might be able to transfer my skills and commitment in that regard to the academic community.'

"Relax,' my colleague said as he walked out of the office, 'just be yourself.' Ironically, I then received the call from your organization, asking me to help you celebrate Latino role models!

"This account suggests, once again, that Delgado's criticisms are valid. But if we look at his reasons in light of the inevitability of the justificatory and exemplar models I've described and the importance of role fulfillment, we shall see that much of his criticism is unwarranted."

2. *The Reasons*

"*Tough, Sweaty Work for Assimilationists*. Focusing on his first and fourth reasons, Delgado argues that we should reject the job because assimilation is not worth the toil. The argument does not survive close analysis. Being a passive justificatory or exemplar model requires no work. Role fulfillment is tough, though. It is a struggle for all human beings. Learning through practice and teaching through example make all of us sweat. Perhaps Delgado is saying, 'We in the minority wouldn't mind sweating if we could define our own projects--if our sweat would serve our own purposes.' n48

[*95] "Of course, Delgado understands that to talk of 'our own' projects and 'our own' purposes is to recognize that there are other competing projects and purposes in our multicultural society. n49 To be more precise, Delgado might add, 'Sweating is worth it only to the extent that the marginalized can effectively challenge the power of the dominant group and the projects it seeks to impose on the marginalized through supposedly universal principles. n50 Because role models are assimilationists, they are not capable of performing that task. Therefore, their hard work and sweat would be in vain or they would serve the wrong purpose.'

"I disagree. In fact, the *opposite* is true. The role model is critical to radical reform. She can be what Michael Walzer has described as a 'connected critic' in the context of social criticism. n51 The connected critic lives in a thick moral world, and her job is to generate a critical interpretation of that world. n52 Social criticism, however, requires 'critical distance.' n53 Although the conventional view of critical distance requires the critic to be a detached 'outsider,' n54 Walzer believes that interpretive moral argument is better understood through an insider, one who lives by the 'practices and arrangements' of the

moral world that is the object of the criticism. n55 The insider's criticism is legitimate and effective because critical distance is 'measured in inches' n56 and because members of a community, through their conversations with each other, seek to justify their actions to each other through high standards. These high standards [*96] can be interpreted critically. n57

"By virtue of her commitment to diversity, the role model is 'connected' to her fellow human beings both in the majority and the minority. She can also be a 'critic' because of her critical distance--the disjunction between the justificatory/exemplar model and the human being: The human being is not a model; she merely corresponds to it. The disjunction enables the human being to interpret the majoritarians' standards critically. She can destabilize the justificatory model by exposing the weaknesses and contradictions in the dominant class' universal principles. In the words of Italian Marxist Antonio Gramsci, n58 she can initiate 'a process of differentiation and change in the relative weight that the elements of the old ideologies used to possess. What was previously secondary and subordinate. . . is now taken to be primary and becomes the nucleus of a new ideological and theoretical complex.' n59

"Thus, the students who fought to get me and other Latinos into law school were role models exercising their power as connected critics when they argued to the administration that the school had to admit more Latino students if they were truly committed to diversity. The crusader, another role model, used his power as a connected critic when he placed pressure on law schools to increase their hiring of Latino faculty. The students at my current law school were role models acting as connected critics when they threatened to accuse the law school publicly of duplicity if the school did not hire me. I used my powers as a connected critic when I scheduled a property law review session not long ago for Latino law students, despite objections that I was wrongly catering exclusively to one group.

"Our jobs as role models may be tough and sweaty but they are undoubtedly worth the toil. Indeed, the Critical Race Theory movement would not be possible without the voices of role models!

"*Means to an End.* Even if the job is worth it, says Delgado, one should not be treated as means to an end. So what if the *model* is treated as a means to an end? Models are supposed to serve this function. What may trouble Delgado is the possibility that a *human being* would be hired for reasons other than merit. But before determining whether a person deserves the job, one must be clear about the criteria that will be applied to each candidate--the job qualifications. Let's suppose that an institution, say a law firm, wants more Latinos, Blacks, Native Americans, and Asian Americans as associates and partners. Thus, one of the firm's criteria, one of the job qualifications, focuses on whether the candidate is a member of [*97] that group. If the firm takes its criteria seriously and hires people of color, it *is* hiring these individuals because, among other factors, they *deserve* the job over their white counterparts. n60 Moreover, if they are hired on this basis, their 'own people' may legitimately expect these people to address their interests and concerns, just as any constituency may look upon their 'experts' for advice and guidance.

"Delgado correctly characterizes as absurd the question whether, in the context of affirmative action it is fair to hire a 'less-qualified' person of color over a 'more-qualified' white person. The question is absurd because we are more qualified than our white counterparts in the sense I've just described. Consequently, we should rid ourselves of guilt and break free of stigma, particularly in light of the moral imperative I will mention in a moment.

"*Unclear Job Description.* Delgado's complaint in this regard reflects the conflict between equal opportunity's emphasis on the individual and the communitarian nature of our roles. Predictably, we receive mixed signals. When we are hired in the name of diversity, our employers recognize us for our solidarity with our communities of color and they expect us to bring this 'expertise' to the job. Yet, as we climb the ladder towards job security and fulfillment, we are told that we ultimately must 'make it' on our 'individual' merit. Our colleagues stop by our offices and tell us that we don't have to demonstrate solidarity with our communities in order to gain job security. In fact, we are told to do less of that type of work and to concentrate instead on the stuff that *really* counts.

"The solution, it seems to me, is not to walk away or to insist on a different label for ourselves. There are other alternatives. Professionals of color should force the question: 'What do you want from us, really?' If our employers' response is that they want us to do everything that our majoritarian counterparts do--and this is the response we should seek--as well as perform our functions with our communities, we should insist on additional compensation for our expertise. However, the better approach would be to insist on many more professionals of color to share the responsibilities for our community work.

Lying. Delgado's assertion that role models are *required* to tell 'big, [*98] whopping lies' n61 is misleading. The justificatory model I've described may become radically inaccurate and defective (and therefore less useful to majoritarians), but it cannot lie. Nor can exemplar models lie. Human beings lie. If I go to a gathering of inner city Latino youth and tell them that they too could become a law professor if they simply work hard and stay out of trouble, n62 I could be called a liar or a fool, just like any other person could be called a liar or a fool for negligently or recklessly misrepresenting facts. But I am not *forced* to make that statement because I am a role model.

"What explains, then, Delgado's observation that I would be labeled a 'poor role model' if I were to tell these inner city youth that they have very little chance of becoming law professors? The explanation focuses on the justificatory model: it is not functioning well. When a majoritarian says that I am a poor role model, she is saying that the *model* to which I correspond may not be a viable interpretation of the facts they have come to know about people of color like me. Nor is the model effectively advancing the universal principle of equal opportunity. In other words, if this majoritarian were to superimpose the model over me at this point, the image would be radically blurred. n63

"A similar phenomenon explains the terms 'Tio Taco,' 'Uncle Tom,' and 'Oreo.' As people of color, we use these terms to declare that one of our exemplar models has lost his utility, i.e., that he should no longer be imitated in order to confirm our individual and communal identities or to provide us with a reference point for making sense of the world. In other words, an Oreo can't be trusted because although he is black on the outside, he is really white on the inside. This usually means that the Oreo unrealistically projects the majoritarians' equal opportunity principle, a principle which makes no sense to the marginalized. n64 Understandably, then, Delgado calls upon us to be 'mentors' rather than role models because a mentor n65 is 'one who tells aspiring young persons of color *truthfully* what it is like to practice your profession in a society dominated by race.' n66

"Notice the dilemma. Majoritarians are likely to agree with Delgado that human beings who correspond to models should be truthful. After [*99] all, a liar or fool (a Tio Taco or Oreo) is counterproductive because he breeds resentment among people of color. If, however, majoritarians want these human beings to be truthful, they increase the risk that the justificatory model they have adopted will lose its viability."

D. *Of Course We Want to Be Role Models!*

"This observation brings me to my conclusion this afternoon. *All of us should apply for the job of role model!* All people of color who are seriously committed to diversity should fulfill the role of the connected critic. As role models, we can press the majoritarians' dilemma. When we tell the truth, they may resist changing the justificatory model n67 and instead try to replace us on the grounds that we are poor role models. But what if the replacement presses the dilemma? What if the replacement's replacement presses the dilemma? Perhaps the content and the purpose of the justificatory model will change! n68

"By pressing the dilemma, role models can 'demystify, interrogate, and destabilize' current notions of affirmative action, which seek to advance *individuals* of color into the world of the majority through the equal opportunity principle. We should reject the term affirmative action altogether and adopt instead the term 'collective recognition.' 'Collective' refers not only to the communities that live within us and give meaning to our lives as people of color but also to our solidarity with all human beings engaged in the struggle of life. 'Recognition' refers to our moral obligation to recognize and manifest this collectivity in

our public and private lives. n69 Role models can constantly remind us that forward-looking-but-ephemeral [*100] policy goals articulated by a dominant group (Delgado's 'homeostatic device') cannot trump the moral obligation.

"Not so fast,' you say. 'Do I *have* to be a role model?' This question raises what Professor David Wilkins has called the 'obligation thesis,' which posits that professionals of color have moral obligations towards their communities 'that must be balanced against other legitimate professional duties and personal commitments when deciding on particular actions and, more generally, when constructing a morally acceptable life plan.' n70 The answer to the question is 'You ought to be a role model, especially if you "checked the box" on the law school application indicating your racial or ethnic identity.' For by checking the box you implicitly, if not explicitly (when combined with other statements in your application), accepted the importance of diversity to the law school, to the legal profession, and to society. And the moral imperative of diversity cannot be sustained without your participation. As Wilkins has pointed out, even if you didn't check the box, you should not be permitted to be a free rider with respect to a public good--the diversity that has come about through the struggle of others. n71

"Maybe the sense of obligation is not the problem, though. Many of us might feel obligated to be role models but nevertheless be reluctant to take the job because the communitarian vision I have just outlined forces us to relinquish ownership of our individual identity--it endangers the self. Without such ownership, role modeling seems to expose the self to the pernicious effects of essentialism--the assumption that Latinos (and [*101] other minority groups) all think alike. n72 The self is also apparently attacked by the 'you're not ___ enough because. . .' syndrome--i.e., 'you're not Latino enough because you're Bolivian' or 'you're not Black enough because you're of black Cuban lineage' or 'you're not a good enough role model because you're a political conservative.' n73 The predictable and understandable reaction is to reject role modeling and march to your own drummer--even be yourself! n74

"No one would seriously dispute the proposition that protection of the self is essential. The communitarian ethic recognizes this need, for communities could not exist without individuals--with a sense of self--to animate them. n75 However, one's identity, one's sense of self is shaped by others in the community. n76 Thus, to claim a protective ownership of our individual identities is to claim ownership of the communities that constitute each of us.

Rather than rejecting the job of role model, people of color should instead empower themselves through strong criticisms of their own communities, criticisms which flow from their positions as connected critics. By doing so, collective recognition becomes a prismatic consensus that is fluid, inclusionary, and liberating."

IV.

PACO SMILES

As he gathers his notes, Paco realizes that his back is wet with sweat. He reaches for a glass of water to relieve his dry, scratchy throat. As he places the glass back on the lectern, he notices that a student is standing just behind him. He turns around and sees an individual dressed in a charcoal grey suit, immaculate white shirt, and carefully polished shoes. Despite this otherwise crisp appearance, the student seems ill at ease. Splotches cover a face that on any other given day would have proudly displayed healthy, handsome brown skin. The student's blood-shot eyes add to the unmistakable signs of a terrified 1L. The student shakes Paco's hand vigorously. Paco is tired, his soul weary. But he smiles. And the student smiles back.

FOOTNOTE-1:

n1 The intensity of the affirmative action debate increased dramatically after [Adarand v. Pena, 115 S. Ct. 2097 \(1995\)](#), where the U.S. Supreme Court held that the strict scrutiny standard is applicable to federal affirmative action programs that use racial or ethnic classifications as the basis for decision making. *Id.* at 2113. The Court thus overruled [Metro Broadcasting, Inc. v. FCC, 497 U.S. 547 \(1990\)](#), to the extent that it prescribed a more lenient standard of review--"intermediate scrutiny"--for federal affirmative action programs. [Adarand, 115 S. Ct. at 2113](#). For a Justice Department analysis of the case, see Justice Department Memorandum on Supreme Court's Adarand Decision, 1995 D.L.R. 125 d33 (June 29, 1995). Relying heavily on Adarand, the U.S. Court of Appeals for the Fifth Circuit recently ruled that the University of Texas School of Law could not "use race as a factor in deciding which applicants to admit in order to achieve a diverse student body, to combat the perceived effects of a hostile environment at the law school, to alleviate the law school's poor reputation in the minority community, or to eliminate any present effects of past discrimination by actors other than the law school." [Hopwood v. Texas, 78 F.3d 932,962 \(5th Cir. 1996\)](#). For newspaper articles on affirmative action, see Nicholas Lemann, *What Happened to the Case for Affirmative Action*, N.Y. Times, July 11, 1995 § 6 (Magazine), at 36; Karen Brandon, *Affirmative Action Smoldering in '96: Efforts to Repeal Race and Sex-Based Hiring Practices Remain a Volatile Issue*, Orlando Sentinel, Jan. 21, 1996, at G1 (describing efforts in California and other states to repeal affirmative action measures); Amy Wallace, *UC Regents Refuse to Yield on Affirmative Action Ban*, L.A. Times, Jan. 19, 1996, at A1 (reporting current developments in the University of California's ban on affirmative action). For an assessment of affirmative action in the context of multiculturalism, see generally Symposium, *Race and Remedy in A Multicultural Society*, [47 STAN. L. REV. 819 \(1995\)](#).

n2 See *infra* text accompanying note 16.

n3 See generally Affirmative Action Review Report to President Clinton, 1995 DLR 139 (July 20, 1995) [hereinafter Affirmative Action Report]; Randall Kennedy, *Persuasion and Distrust: A Comment on the Affirmative Action Debate*, [99 HARV. L. REV. 1327 \(1986\)](#); James Podgers, *ABA House Backs Affirmative Action*, 81 ABA J. 18 (1995) (describing the ABA's stand on affirmative action); Arleen Jacobius, *Affirmative Action on Way Out in California*, 81 ABA J. 22 (1995) (noting Dean of Boalt Hall School of Law's support of affirmative action).

n4 For a post-Adarand analysis and discussion of the history, impact, and continuing justification for affirmative action, see Affirmative Action Report, *supra* note 3. Cf. [Wygant v. Jackson Bd. Of Educ., 476 U.S. 267, 274-76 \(1986\)](#) (plurality opinion)(rejecting role modeling for minority students as justification for racial classification protecting minority teachers from disproportionate layoffs).

n5 See [University of California v. Bakke, 438 U.S. 265, 315 \(1978\)](#) (plurality opinion)(increasing racial and ethnic diversity of university student body constitutes compelling government interest because it enriches academic experience). *But see* [Hopwood v. Texas, 78 F.3d 932, 948 \(5th Cir. 1996\)](#) (increasing racial and ethnic diversity of student body at University of Texas School of Law "cannot be a state interest compelling enough to meet the steep standard of strict scrutiny.").

n6 See JOHN RAWLS, A THEORY OF JUSTICE 302 (1971) (principles of justice require in part that social and economic equalities be arranged so that (i) they provide greatest benefit to the least advantaged and (ii) they are "attached to offices and positions open to all under conditions of fair equality and equal opportunity"); Michael K. Braswell et al., *Affirmative Action: An Assessment of its Continuing Role in Employment Discrimination Policy*, [57 ALB. L. REV. 365, 367-69](#) (quoting President Kennedy's executive order articulating government

policy to "promote and ensure equal opportunity for all qualified persons, without regard to race, creed, color, or national origin").

n7 See Richard Delgado, *Affirmative Action as a Majoritarian Device: Or, Do You Really Want to be a Role Model?*, [89 MICH. L. REV. 1222 \(1991\)](#). For other critical assessments of role models, see also Anita L. Allen, *On Being A Role Model*, 6 BERKELEY WOMEN'S L.J. 22 (1990-91); Taunya Lovell Banks, *Two Life Stories: Reflections of One Black Woman Law Professor*, 6 BERKELEY WOMEN'S L.J. 46 (1990-91); Lani Guinier, *Of Gentlemen and Role Models*, 6 BERKELEY WOMEN'S L.J. 93 (1990-91).

n8 Delgado, *supra* note 7, at 1223 n.5.

n9 See Richard Delgado, *Legal Storytelling: Storytelling for Oppositionists and Others: A Plea for Narrative*, [87 MICH. L. REV. 2411 \(1989\)](#) (discussing use of storytelling by dominant group and "outgroups" in context of racial reform).

n10 The term "Hispanic" may be preferred to "Latino," depending on the region of the country and the groups within that region. See EARL SHORRIS, *LATINOS: A BIOGRAPHY OF THE PEOPLE* xvi-xvii (1992).

n11 Delgado, *supra* note 7, at 1223.

n12 *Id.* at 1224.

n13 *Id.*

n14 *Id.* at 1224-25.

n15 *Id.* at 1225.

n16 *Id.* (emphasis in original); see STEPHEN L. CARTER, *REFLECTIONS OF AN AFFIRMATIVE ACTION BABY* 12 (1991) ("So many Americans seem to treat receipt of the benefits of affirmative action as a badge of shame."); SHELBY STEELE, *THE CONTENT OF OUR CHARACTER* 116 (1990) ("One of the most troubling effects of racial preferences for blacks is a kind of demoralization, or put another way, an enlargement of self-doubt.").

n17 Delgado, *supra* note 7, at 1225-26.

n18 *Id.* at 1226.

n19 *Id.* at 1223 n.5.

n20 *Id.* at 1226.

n21 *Id.*

n22 *Id.* at 1230.

n23 *Id.* at 1226-27. Delgado notes elsewhere that storytelling is "frequently ironic or satiric." Delgado, *supra* note 9, at 2414.

n24 Delgado, *supra* note 7, at 1227.

n25 *Id.*

n26 *Id.*

n27 *Id.* at 1228.

n28 *Id.*

n29 *Id.* at 1229.

n30 *Id.* at 1230-31 (footnotes omitted).

n31 Cornel West has stated:[Blackness] assume[s] neither a black essence that all black people share nor one black perspective to which all black people should adhere. . . . Instead, blackness is understood to be either the perennial possibility of white supremacist abuse or the distinct styles and dominant modes of expression found in black cultures and communities. These styles and modes are diverse--yet they do stand apart from those of other groups (even as they are shaped by and shape those of other groups). CORNEL WEST, RACE MATTERS 28 (1993).

n32 See Berta Esperanza Hernandez Truyol, *Building Bridges--Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement*, 25 COLUM. HUM. RTS. L. REV. 369, 401-02 (1994) (discussing 1992 survey of 251 largest law firms and noting that Latinos/as constituted only 1.2% of total lawyers, 0.6% of total partners, and 1.6% of total associates).

n33 The term is the Latino equivalent of an 'Uncle Tom' in Black culture.

n34 See *supra* text accompanying note 19.

n35 See, e.g., ALBERT BANDURA, AGGRESSION: A SOCIAL LEARNING ANALYSIS 68-90(1973)(discussing the modeling process as it relates to aggression); WILLIAM JULIUS WILSON, THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY (1987) (arguing that mainstream role models in poor sectors serve important functions); Elizabeth B. Bolton, *A Conceptual Analysis of the Mentor Relationship in the Career Development of Women*, 30 ADULT EDUC., 195, 196-98 (1980) ("In our society it is normal for young people to model their future role after their parents and other adult members in the community through imitation."); Theodore D. Kemper, *Reference Groups, Socialization and Achievement*, 33 AM. SOC. REV. 31 (1968)(describing model as individual who demonstrates how something is done).

n36 Here I draw loosely from Kuhn's paradigm analysis. See generally THOMAS S. KUHN, THE STRUCTURE OF SCIENTIFIC REVOLUTIONS 10-22 (1962).

n37 According to Kuhn, The study of paradigms . . . is what mainly prepares the student for membership in the particular scientific community with which he will later practice. Because he there joins men who learned the bases of their field from the same concrete models, his subsequent practice will seldom evoke overt disagreement over fundamentals. Men whose research is based on shared paradigms are committed to the same rules and standards for scientific practice. That commitment and the apparent consensus it produces are prerequisites for normal science, i.e., for the genesis and continuation of a particular research tradition. *Id.* at 11; see also Delgado, *supra* note 9, at 2412 ("The stories or narratives told by the ingroup [dominant group] remind it of its identity in relation to outgroups, and provide it with a form of shared reality in which its own superior position is seen as natural.").

n38 See KUHN, *supra* note 36, at 122-23, 150-55 (explaining process of paradigm shifts).

n39 The disjunction I describe is familiar in law. Professor Kessler wrote, "Anglo-American law never became the perfect mirror image of free enterprise capitalism, but always retained a measure of independence from the underlying market relations it was helping to rationalize, a characteristic that neo-Marxist writers describe as 'relative autonomy.'" Friedrich Kessler, *Introduction: Contract as a Principle of Order*, in CONTRACTS 8 (Friedrich Kessler et al. eds., 3d ed. 1986) (quoting Mark Tushnet).

n40 A liberal majoritarian who believes in the equal opportunity principle would find little utility in a radically inaccurate model. He would call such a model a stereotype. Liberals want to avoid stereotypes. *See generally* Kimberle Williams Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, [101 HARV. L. REV. 1331, 1370-76 \(1988\)](#) (noting that white supremacists have used stereotypes to rationalize oppression of blacks; stereotypes serve hegemonic function by perpetuating mythology of both blacks and whites).

n41 In this sense, the alternative characters Delgado would have us adopt--mentor, organic intellectual, matriarch, patriarch, legend, provocateur, and socially committed professional--are susceptible to the same analysis. These characters can be viewed as stylized images that may or may not correspond to real people.

n42 Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, [77 CORNELL L. REV. 1258, 1280 \(1992\)](#) (footnotes omitted).

n43 *See supra* text accompanying note 30.

n44 *See* Enrique R. Carrasco, *Law, Hierarchy, and Vulnerable Groups in Latin America: Towards a Communal Model of Development in a Neoliberal World*, [30 STAN. J. INT'L L. 221, 290-91 \(1994\)](#) (describing Alasdair MacIntyre's neo-Aristotelian critique of liberalism).

n45 *See generally* Gerald P. Lopez, *The Idea of a Constitution in the Chicano Tradition*, 37 J. LEG. EDUC. 162 (1987) (describing "the tradition of East L.A."). *See also* GREGORY HOWARD WILLIAMS, *LIFE ON THE COLOR LINE: THE TRUE STORY OF A WHITE BOY WHO DISCOVERED HE WAS BLACK* (1995). In this autobiography, Gregory Williams, Dean of the Ohio State University College of Law, writes about his experiences as a "white boy who discovered he was black." The child of a white mother and a light-skinned African American, Williams passed for a white boy in Virginia. He then moved to Muncie, Indiana, where he first learned of his African American heritage and lived in an African American community. Years later, his father told him he had to be white to "make it out of this hellhole." *Id.* at 156. But Williams did not "want to be white." *Id.* at 157. "I hadn't wanted to be colored, but too much had happened to me in Muncie to be a part of the white world that rejected me so completely." *Id.* at 156. Recalling NAACP's executive director Walter White, who was blond, blueeyed, and white-skinned but nevertheless part African American, Williams states: "If Walter White could choose to remain in the black community and make a difference, so could I. No matter what . . . anyone else said or thought. I knew who I was and what I wanted to be." *Id.* Despite his white skin, Williams knew who he was--an African American--because of the narrative he had lived in Muncie.

Years later, Williams' white mother came to Muncie. She had married a white man, who offered to adopt Williams and his brother in order to rescue them from the prejudice of Muncie. Williams writes: The conditions for becoming part of her life became very clear to me. We could reenter her world if we rejected the one in which we had lived for the past ten years. . . . Gaining acceptance to her world required that we deny our black heritage and pretend that the people and circumstances of our life in Muncie did not exist. . . . She expected us to move back into her life without a past, without roots. . . I knew this was something we could never do. *Id.* at 281.

n46 *See* Kemper, *supra* note 35 (describing sociological definitions of role models).

n47 David B. Wilkins, *Two Paths to the Mountaintop? The Role of Legal Education in Shaping the Values of Black Corporate Lawyers*, [45 STAN. L. REV. 1981, 1991 \(1993\)](#) (suggesting that

"the achievements of black corporate lawyers [as "passive role models"] might inspire other young black women and men to strive harder to become successful in their own right.").

n48 *See generally* Delgado, *supra* note 7, at 1226 ("We could, of course, take our own program, with our own goals, our own theoretical grounding, and our own managers and call it 'Affirmative Action.'").

n49 *See* Richard Delgado, *Brewer's Plea: Critical Thoughts on Common Cause*, [44 VAND. L. REV. 1, 14 \(1991\)](#) ("Conflict and vigorous competition thus may be more in order today" in context of theoretical approach to affirmative action).

n50 *See* Richard Delgado, *When A Story Is Just a Story: Does Voice Really Matter*, [76 VA. L. REV. 95, 103 \(1990\)](#) (defining dominant discourse as "the collection of ideas, concepts, presuppositions, and arguments that make up liberal legalism" and asserting that "one of its principal functions is to make reform difficult to achieve or even imagine"); *see generally* Delgado, *supra* note 7, at 1226 (favoring particularist over dominant group's universalist approach to civil rights analysis).

n51 MICHAEL WALZER, *INTERPRETATION AND SOCIAL CRITICISM* 39 (1987).

n52 *Id.* at 18-32.

n53 *Id.* at 36.

n54 *Id.* at 36-38. In a recent article, Delgado suggests that, in light of racism and other "systemic social ills," civic republicans should stop talking to each other and instead talk to "outsiders." Richard Delgado, *Rodrigo's Fifth Chronicles: Civitas, Civil Wrongs, and the Politics of Denial*, [45 STAN. L. REV. 1581, 1604 \(1993\)](#). Through an exchange between Delgado's fictional Professor and Rodrigo (Delgado's alter ego), Delgado states:[Delgado] And do you think that's true in general--that social reform relies on the perspective of the outsider, the heretic who lives outside the culture and thus sees and is in position to articulate its defects?

[Rodrigo] Yes. [Id. at 1602](#). *But see infra* note 56 (noting that Delgado's outsider is not too removed from society).

n55 WALZER, *supra* note 51, at 39.

n56 The social critic steps away from power relationships in society--the "ambition to whisper in the ear of the prince"--but not from society itself. She is thus "[a] little to the side, but not outside." *Id.* at 60-61. Delgado seems to describe the same distance when he characterizes people of color, such as the fictional professor in his chronicles, as "outsiders." Delgado, *supra* note 54, at 1598.

n57 WALZER, *supra* note 51, at 47-48.

n58 *See* Delgado, *supra* note 7, at 1230 n.50 (attributing the term 'organic intellectual,' a people's intellectual, to Antonio Gramsci).

n59 ANTONIO GRAMSCI, *SELECTIONS FROM THE PRISON NOTEBOOKS* 195 (Quintin Hoare & Geoffrey Nowell Smith trans. & eds., International Publishers 1971)(1985). The concept of the connected critic is similar to professor Mari Matsuda's concept of "multiple consciousness," which focuses on the ability to shift back and forth between the consciousness of a person of color and white consciousness. Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 *WOMEN'S RTS. L. RPTR.* 1 (1992). Black women teaching in predominantly white law schools have referred to Matsuda's concept in the context of role modeling. *See* Guinier, *supra* note 7; Adrien Katherine Wing, *Brief*

Reflections Toward a Multiplicative Theory and Praxis of Being, 6 BERKELEY WOMEN'S L.J. 181 (1990-91).

n60 Patricia Williams' view of affirmative action as "structured preferences" is instructive in this regard: Standards are nothing more than structured preferences. Preferential treatment isn't inherently dirty; seeing its ubiquity, within and without racial politics, is the key to the underground vaults of freedom locked up in the idea of whom one likes. The whole historical object of equal opportunity, formal or informal, is to structure preferences for rather than against--to like rather than dislike--the participation of black people. PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 103 (1991). Dworkin has similarly defended affirmative action on the grounds that "there is no combination of abilities and skills and traits that constitutes 'merit' in the abstract." RONALD DWORKIN, *A MATTER OF PRINCIPLE* 299 (1985). He argues that black skin is a "merit" in the context of a quota system to admit more blacks to medical school and in light of society's need for medical service. *Id.* One might ask, however, "How can skin color be viewed as merit when one has no control over that attribute?" From a moral point of view, we cannot say that we deserve to be born with any attributes, be they skin color, intelligence, physical ability, or any number of talents. See Carrasco, *supra* note 44, at 279 (discussing Rawls' veil of ignorance).

n61 Delgado, *supra* note 7, at 1228.

n62 *See id.*

n63 *See WILLIAMS, supra* note 60, at 116 ("Blacks who refuse the protective shell of white goodness and insist that they are black are inconsistent with the paradigm of goodness, and therefore they are bad.").

n64 The marginalized person asks, "What equality? What opportunity?" *See* Richard Delgado, *Rodrigo's Third Chronicle: Care, Competition and the Redemptive Tragedy of Race*, [81 CAL. L. REV. 387, 405-06 \(1993\)](#) (describing Black/Brown underclass and noting that the "average young Black gang member, if he watched TV at all, would be amazed at the number of cardigan-wearing Black doctors and lawyers that appear there--all out of proportion to their numbers in real life") (citing ANDREW HACKER, *TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL* (1992)).

n65 A mentor "personalizes the modeling influences for the individual by a direct involvement not necessarily implied by a role model. Thus in addition to being a role model, the mentor acts as a guide, a tutor or coach, and a confidant." Bolton, *supra* note 35, at 198. A mentor thus corresponds only to the exemplar model; the term does not embrace the justificatory model I have described.

n66 Delgado, *supra* note 7, at 1230 n.49.

n67 *See* KUHN, *supra* note 36, at 151 (describing resistance to paradigm shifts "particularly from those whose productive careers have committed them to an older tradition of normal science. . . . The source of resistance is the assurance that the older paradigm will ultimately solve its problems."); Delgado, *supra* note 7, at 1595-98 (arguing that normative discourse deflects attention away from declining society infected by racism, sexism, and other ills and instead we talk to each other in inscribed, circular terms).

n68 *See* THOMAS S. KUHN, *THE ESSENTIAL TENSION: SELECTED STUDIES IN SCIENTIFIC TRADITION AND USAGE* 234(1977) (arguing that "well-defined and deeply ingrained" scientific tradition "seems more productive of tradition-shattering novelties

because no other sort of work is so well suited to isolate . . . those loci of trouble or causes of crisis upon whose recognition the most fundamental advances in basic sciences depend.").

n69 The ultimate success of the civic republican revival (led by Cass Sunstein, Bruce Ackerman, and Frank Michelman) depends critically on diversity. While emphasizing political dialogue based on both public values and a common good, the new civic republicanism stresses the importance including previously excluded groups in the dialogue. *See generally* Stephen M. Feldman, *Whose Common Good? Racism in the Political Community*, [80 GEO. L.J. 1835, 1849-55 \(1992\)](#) (discussing the new civic republicanism); Stephen M. Feldman, *The Persistence of Power and the Struggle for Dialogic Standards in Postmodern Constitutional Jurisprudence: Michelman, Habermas, and Civic Republicanism*, [81 GEO. L.J. 2243 \(1993\)](#) (critically assessing Michelman's dialogic view of politics); Cynthia V. Ward, *The Limits of "Liberal Republicanism": Why Group-Based Remedies and Republican Citizenship Don't Mix*, [91 COLUM. L. REV. 581 \(1991\)](#) (discussing aspects of civic republicanism and critically assessing claim that republicanism can incorporate organized disadvantaged groups as separate political entities into a polity based on deliberation and citizenship).

Critical race theorists have questioned civic republicanism's ability to overcome racism and radical inequality. *See* Derrick Bell & Preeti Bansal, *The Republican Revival and Race*, [97 YALE L.J. 1609, 1610-12 \(1988\)](#) (republicanism is based on racist consensus); Richard Delgado, *Zero-Based Racial Politics and an Infinity-Based Response: Will Endless Talking Cure America's Racial Ills?*, [80 GEO. L.J. 1879, 1887 \(1992\)](#) (communitarian dialogue of civic republicanism elicits predictable responses to normative exhortations and therefore inscribes "ineffectual discourse patterns" in which minorities lose); Richard Delgado, *Zero-Based Racial Politics: An Evaluation of Three Best-Case Arguments On Behalf of the Nonwhite Underclass*, [78 GEO. L.J. 1929, 1939-40 \(1990\)](#) (dialogic communitarianism is "weak spur to action" because dialog takes place under circumstances of radical inequality). Although these criticisms are warranted, the ability to stress inclusion and diversity in dialogue gives the connected critic an opportunity to stress diversity as a moral imperative. *See also* Feldman, *Persistence of Power*, *supra* note 69, at 2278 (under post-modern interpretivist approach to republicanism "the vitality of communal diversity emerges quite clearly" and "difference is as central as consensus to building community.").

n70 Wilkins, *supra* note 47, at 1984 (focusing on the obligations of black corporate lawyers to the black community).

n71 Wilkins states: Like clean air, a less racist and hostile environment is a "public good" that black corporate lawyers cannot do without. Basic principles of fair play, reciprocity, and gratitude counsel in favor of recognizing an obligation to repay this benefit with actions that support the continued production of the public good. *Id.* at 2006-07.

n72 *Id.* at 1993-95.

n73 *See generally* Irene Sege, *Not Black Enough?*, Boston Globe, Feb. 9, 1995, at 63 (describing Northwestern University Law School's refusal to hire Maria Hylton, a law professor of black Cuban and Irish-Australian heritage); Charles R. Lawrence III, *supra* note 1, at 819, 841 ("Attacks on coalition efforts from inside communities of color usually assume a nationalist stance, accusing coalitionists of being insufficiently identified with their own race, as in 'not black enough,' or of collaborating with the enemy.").

n74 *See supra* note 30 and accompanying text.

n75 *See generally* Carrasco, *supra* note 44, at 292-96.

n76 *See id.* at 291 (discussing Charles Taylor's view of human beings as self-interpreting animals whose identity depends on language generated in the community).