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Transforming Talks: Public Dialogue About Social Justice in a Post-9-11 Age

Margaret Chon¹

To situate the following speeches in a tradition of philosophical and political dialogue about social justice is to interrogate the question that each speechwriter asks. Professor Bond² queries whether America should embrace or reject multiculturalism while Professor Matsuda³ inquires, “Who is excellent?” as she considers the values and meanings of affirmative action. And lastly, Professor Zinn⁴ asks about the role of artists and other citizens in a time of war.

These inquiries are profoundly important in an increasingly interconnected world. Answering each involves complex judgments offered by each of the authors in his or her carefully informed and beautifully written opinion. Moreover, these three transforming talks were given during a time of considerable transition from the pre—to the post—9-11 world. We are acutely aware of this historical period as an epoch, even as we live through it, and epochs generate their own kinds of questions.⁵

In this introduction, therefore, I ask three questions about these three rather different yet compelling talks. First is the question of public dialogue: What do these speeches reveal to us about the power and purpose of public dialogue? Second is the question of social justice: What do they tell us about the ways and means of achieving social justice? Overarching is the question of national, indeed global, crisis: What role do these three American intellectuals play in this epoch of the “war” against terrorism?

PUBLIC DIALOGUE: FROM SOCRATES TO AUNG SAN SUU KYI

What do the three speeches published here reveal to us about the nature of public dialogue? The personal consequences of questioning other people’s assumptions can be profound, as both the Greek philosopher, Socrates,⁶ and

the Burmese political activist, Aung San Suu Kyi,⁷ discovered. The raw power of asking questions is something that can unnerve and disturb listeners who prefer the false unity of a surface consensus because, in effect, it is far easier to live with one's assumptions and values unchallenged rather than unmasked. Moreover, at the extreme, forcing public dialogue on others can result in a speaker's exile or imprisonment, as in the case of Suu Kyi, or even death, as in the case of Socrates.

Yet a version of the oral Socratic method—prematurely truncated in the marketplace of Athens—is carried on as a live tradition in the law school classrooms of America. And the powerful non-violent tactics of slain American civil rights leader, Dr. Martin Luther King, Jr., or of the Indian independence movement leader, Mohandas Gandhi, are emulated in the current political stance of Nobel laureate Suu Kyi.⁸ As these examples show, engaging in public dialogue about controversial subjects results in the creation and maintenance of important cultural legacies. Whether national or global, our common culture is not a given. Rather, it is the outcome of vigorous, even impassioned, private and public debate to affirm our commonalities as well as to mediate our differences. Moreover, the virtue of simplicity in monologic or totalitarian thinking is far outweighed by the vice of suppressing diversity or pluralism. Suffice it to say, the cultural legacy of dialogue resides not so much in the content that is the outcome of our dialogue, as it is in the *process* of dialoguing. More than most other disciplines, law is conscious of the substance-procedure distinction,⁹ and it is this awareness of the significance of procedure that lies at the core of dialogue.¹⁰

Interpreting the “culture wars” in American universities during the 1980's and 1990's, University of Chicago literature professor Gerald Graff states that “one way to describe the conflict . . . , then, is to say that theory has broken out. ‘Theory’ . . . is what erupts when what was once silently agreed to in a community becomes disputed, forcing its members to formulate and defend assumptions that they previously did not even have to be aware of.”¹¹ If there is anything that these three speeches exemplify, it is that public dialogue generates theory. And theory, by its very nature, generates conflict.

Conflict does not necessarily mean armed conflict. However, it could and definitely should mean greater epistemological awareness and tolerance for other perspectives.¹²

Dialogue occurs when people are involved in a comparative endeavor to understand self-reflectively not only their own locations in the world (or, as postmodernist theorists would say, their own subject positions) but also their locations relative to others. Whether we agree to agree, or agree to disagree, any conscious choice presumes that we know where we stand with respect to others and why. And by analogy to the Heisenberg Uncertainty Principle,¹³ truth is something that is inevitably influenced by our own subject positions.¹⁴ Accordingly, those engaged in dialogue must exercise humility in the face of the knowledge of others. We must not fear the conflicts that dialogue engenders because these conflicts are precisely what we need to learn to live with others in a multicultural world.

The power and purpose of public dialogue is apparent in Professor Bond's claim that "America has always faced an enduring challenge: how to encourage the enriching aspects of America's ethnic and racial diversity while simultaneously moderating the divisive tendencies of that same diversity."¹⁵ It is present in Professor Matsuda's enumeration of the skill-set necessary to function in a multicultural world: "First, an understanding that difference exists Second, an understanding of subordination—that difference is used to distribute power Third, a basic set of practices for effective dealings across cultures Finally, the tools of a change agent" ¹⁶ And it is conveyed from Professor Zinn's observation that "there have been acts of terrorism going on throughout the world for a long time. I bring that up not to minimize or diminish the terror of what happened in New York and Washington, but to enlarge our compassion beyond that. Otherwise, we will never understand what happened or what we must do about it."¹⁷

As educators, what the three speechwriters in this volume thus share is this perhaps utopian view that *public* dialogue and education will result in better understanding and therefore improved social conditions. Whether libertarian or left-progressive, the writers are firmly embarked on the

Enlightenment project of human progress. Although they are not dialoguing directly with each other, they each chose public forums to promote greater cultural conversation about important issues of the day.¹⁸ Thus, this issue could be viewed as part of a larger cultural conversation about social justice, about which the next section elaborates.

SOCIAL JUSTICE: PUBLIC DIALOGUE IN PRAXIS

Like any other term of importance, social justice is a contested one.¹⁹ Yet, as argued above, the process of discussing what social justice means is an important component of its ultimate substantive definition.²⁰ Just as race can be viewed profitably as a verb rather than a noun,²¹ social justice is far more accurately conceptualized as a dynamic social process rather than a static result. This section thus asks: What do these speeches tell us about the ways and means of achieving social justice?

Neo-conservative Michael Novak has offered what he terms an “ideologically neutral” definition of social justice:

Social justice rightly understood is a specific habit of justice that is “social” in two senses. First, the skills it requires are those of inspiring, working with, and organizing others to accomplish together a work of justice. . . .

The second characteristic of “social justice rightly understood” is that it aims at the good of the city, not at the good of one agent only. . . . Hence the second sense in which this habit of justice is “social”: its object, as well as its form, primarily involves the good of others.²²

Although I would argue that there is no such thing as an ideologically neutral term, I understand Novak to mean that this definition skirts the divisive question of what should be done about the unequal distribution of power, wealth, and resources between rich and poor, white and non-white, male and female, and so on.

Taking Novak's view as a starting point, all three talks fall under the genre of social justice because they are about "working with . . . others" for the "good of the city." They all question the relationship of the individual to community, although each offers a distinctly different view of the good of the community. However, the dialogue about social justice does not stop there. If one is concerned with the distributional inequities within the common good, then it is not enough to work with others for the common good. Indeed, it then becomes imperative to ask questions about and perform social justice according to the measure of whether each person's share of the common good is consistent with minimum standards of human dignity.²³ This is the point of departure between Novak and others within the tradition of Catholic social thought,²⁴ for example, or in this volume, between Professor Bond and Professor Matsuda, or between Professor Zinn and his critics at the American Council of Trustees and Alumni (ACTA),²⁵ discussed in the next section. Some who dialogue about social justice seem to view the status quo as acceptable, while others are not so sure about "conservatives [who] are so anxious to conserve."²⁶ As discussed in the above section, it is the purpose of dialogue to uncover elisions and distinctions among those who are otherwise engaged in a common effort, so as to reinforce the common bonds while acknowledging inevitable differences. It is instructive to look at the discussion about social justice both here and elsewhere as an example of public dialogue in praxis. Thus, if we step beyond Novak's minimalist social justice definition, we may approach social justice with theories of equality as well as commonality.²⁷ One possible alternative definition of social justice is

that branch of the virtue of justice that moves us to use our best efforts to bring about a more just ordering of society—one in which people's needs are more fully met. It . . . is something due from everyone whose efforts can make a difference to everyone whose needs are not met as things stand. I do not owe the man on the grate a place to live, but I do owe him whatever I can do to provide a

social order in which housing is available to him. I do not owe any poor person a share of my wealth, but I owe every poor person my best effort to reform the social institutions by which I am enriched and he or she is impoverished.²⁸

This statement focuses more squarely on distributional concerns that are at the heart of many theories of social justice. For as political philosopher David Miller has argued, even under a deserts-based system of social justice,

[i]f we want our society to be egalitarian, then we will try to shape our distributive practices so that the emergence of hierarchy is discouraged; in particular, we will try to avoid the emergence of large-scale, cumulative inequalities of advantage that make it difficult for people to live together on terms of equality, even if politically they are all defined as equals.²⁹

Both Bond and Matsuda profess an interest in equality as well as commonality, yet they disagree vigorously about the equality inherent in the status quo. One way of understanding the difference in their social justice theories is by reference to materiality. By adhering to a theory of American exceptionalism,³⁰ Bond assumes that our republican form of government naturally and inevitably includes dialogue among all interested parties. In his view, multiculturalism does not require anything more than what Americans have always done.

Matsuda, on the other hand, assumes that the material consequences of any theoretical approach matter and thus focuses on those voices that are absent from the national dialogue because they are both materially and politically disenfranchised. Indeed, the questions raised by Matsuda in her speech reprise her adoption of the anti-subordination principle: “a deliberate choice to see the world from the standpoint of the oppressed”³¹ for insight into the normative direction of social change. Listening to the silences,³² like looking to the bottom,³³ involves dialogue with people who are typi-

cally left out: the exploited, the marginalized, the powerless,³⁴ the cleaning woman who “pays taxes that fund the university.”³⁵ The genesis of the modern convenience store is Matsuda’s metaphor for the better world that can result if we listen to those who are generally not heard.

Another way of understanding the theoretical differences between Bond and Matsuda is by reference to structuralism. Bond celebrates the individualism within our larger national identity,³⁶ echoing Justice Scalia’s view that “We are just one race here. It is American.”³⁷ Matsuda, on the other hand, cannot imagine individuals without groups and views identity (including racial identity) politics as an important means of mapping and then negotiating a multicultural world.³⁸ This view is echoed in Justice Stevens’s view that the current Supreme Court simplistically “would disregard the difference between a ‘No Trespassing’ sign and a welcome mat.”³⁹ Regardless of which perspective one has in this public dialogue, the question of social justice is a live debate,⁴⁰ as the contemporaneous creation of these two speeches makes clear.

PUBLIC DIALOGUE ABOUT SOCIAL JUSTICE IN A POST-9-11 WORLD

Finally, we reach the question of what role American intellectuals should play in this post 9-11 epoch of the “war” against terrorism? This question is best answered here by examining both Professor Zinn’s speech on the role of artists and citizens in wartime along with the general attack on academics, including Zinn, by ACTA.

Professor Zinn is best known as the left-progressive historian who wrote *The People’s History of the United States: 1492 to the Present*, in which he argues that those who were historically disempowered and disenfranchised played a very important role in the making of America as we know it today. Focusing on the perspectives of indigenous peoples, women, slaves, and labor movements, among other groups, his book has had broad influence outside of his field.⁴¹

ACTA is less well-known. This organization was founded in 1995 by Senator Joseph Lieberman, who is also a former Democratic vice-presidential

candidate, and vice-presidential spouse Lynne Cheney, who is also the former head of the National Endowment for the Humanities.⁴² A recent report issued under the auspices of ACTA, entitled *Defending Civilization: How Our Universities are Failing America and What Can Be Done About It*,⁴³ lists 117 incidents between September 11 and mid-November 2001 that purportedly illustrate how American academics are undermining American values of “democracy, human rights, individual liberty, and mutual tolerance.”⁴⁴ Essentially, ACTA’s report alleges that American academics are unpatriotic.⁴⁵ According to Ms. Cheney, quoted in the report, the remedy for this patriotic absence is to give added emphasis to teaching American history from kindergarten to college.⁴⁶

There is no small irony in the fact that a report recommending an increased focus on American history education should criticize an American historian who is responsible for increasing popular debate about and interest in American history. Zinn is accused by ACTA of being unpatriotic: for speaking out publicly against the massive militarization that has followed the events of September 11, specifically, for stating that “our security can only come by using our national wealth, not for guns, planes, and bombs, but for the health and welfare of our people, and for people suffering in other countries.”⁴⁷

Again, it is instructive to examine this encounter as a process of public dialogue about social justice. Like the differences in theoretical locations between Professors Bond and Matsuda, it is important to pinpoint where Zinn and ACTA diverge in their respective theories. What are the assumptions that they share and the ones they do not?

Clearly, both share the important assumption that education matters and that education about history, in particular, matters a lot. However, Zinn assumes that education about history is one that is critical and not just received, one that accounts for a pluralism of viewpoints rather than reflecting a unitary perspective, one that is formed through a process of mutually respectful dialogue instead of unilateral cooptation.⁴⁸

ACTA evidently promulgates the notion that multiculturalism is divisive and wrong. According to the group’s mission statement, it exists to “help

meet the challenges facing higher education—from political intolerance and speech codes to declining academic standards”⁴⁹ The ACTA report seems to assume that no dialogue needs to occur on “how and why this nation was founded, and of the continuing relevance and urgency of its first principles.”⁵⁰ Instead, it assumes that these founding principles are a given.

This theoretical debate between traditionalists and multiculturalists within the universities for at least the last twenty years⁵¹ takes on a new urgency in the context of national and international crisis. Americans have been told that we are fighting against terrorism. However, what exactly is it that Americans are fighting *for*? This, again, is a point of contestation.

The speech by Professor Zinn published here states that “[o]f course, everyone praises the Declaration [of Independence] when it is hung up on a classroom wall, but not when people read it and understand it.”⁵² This brings to mind earlier speeches, such as by Frederick Douglass on *The Meaning of the July Fourth for the Negro*, in which he declaims: “What, to the American slave, is your 4th of July? I answer; a day that reveals to him, more than all other days in the year, the gross injustice and cruelty to which he is the constant victim.”⁵³ The meanings of patriotism, of loyalty, and of adherence to American principles of democracy, human rights, individual liberty, and mutual tolerance indeed depend very much upon who is speaking and what is being said. As Zinn asserts in this issue, for some, “[i]n reality, to criticize the government is the highest act of patriotism.”⁵⁴ Indeed, Zinn has had a profound effect on the critical thinking of high school students such as this high school junior who wrote the following essay in response to September 11:

It is true that our enemies are far from perfect, but if we remove the rose-colored glasses that we so avidly use to reflect on ourselves and our lifestyles, as well as on our convictions and morals, we may see a different picture than that of which we have been taught. For instance, we may view the Taliban leadership in Afghanistan as inhumane and cruel, but to be fair to ourselves and to the rest of the

world, we must also investigate U.S. foreign policies in Latin America, especially during the Carter and Reagan administrations. The governments in El Salvador and Guatemala, installed and backed by the United States government, are prime examples of inhumane dictatorships, worthy of the reputation that the Taliban have received. Although we are rightfully appalled at the degrading and harmful treatment of women in Afghanistan and other religious states, we should be equally disturbed by the massacre in El Mezote by the Salvadoran military (who, incidentally, were trained at the School of Americas), in which an entire village, innocent of any political affiliation, was massacred, burned, and buried. Furthermore, we may also inspect the Cerezo government in Guatemala, also supported by the U.S., who educated the indigenous people of the country by leaving the body parts of leftist revolutionaries around the streets of the cities for all to see. If we compare U.S. clients' human [rights] abuses to those of the religious governments in the Middle East, we see that to criticize the Taliban for their treatment of women would at this point be hypocritical⁵⁵

According to this student, the role of the citizen is to

reflect on our own history of foreign policies in order to get an idea of what, exactly, we are denouncing. In many cases, we will find that we are denouncing atrocities that we (the United States) ourselves have committed or supported in many countries across the world. I will further suggest that it is our responsibility as Americans to learn about and understand basic United States foreign policy issues from a centrist viewpoint, in that we may then make our judgements free of influence from the U.S. government, media, or other biased sources (including historians, intellectuals, and general outraged citizens). I am not attacking the American public in this statement. I know, as an American, that the 9-11 attacks were both tragic and provocative, and that the atrocity

cannot be ignored. I also know, as an American, that this country is morally capable of much more than death and destruction in the name of revenge. Perhaps, if we are educated and determined enough, we may save the world rather than destroy it.⁵⁶

While the negative consequences of public dialogue may include censure (if not exile or death) from those who are uncomfortable with pluralism, the positive consequences are related to the best and most fragile quality of America: the freedom and ability to tolerate, indeed encourage, civic dialogue and dissent about issues that affect us all. In America, unlike ancient Greece or present-day Burma, more and more voices can and should be encouraged to speak out in order that we may have a greatest palette possible of ideas and actions with which to create a more socially just world.

Especially in this post 9-11 age, public dialogue about issues of social justice can and should no longer be avoided. American intellectuals and their counterparts in other countries have an important leadership role in demonstrating the responsible use of academic freedom, free speech, and public activism. This is not a burden to be undertaken lightly. The three speeches published in this inaugural issue of the *Seattle Journal for Social Justice* provide just such an opportunity to engage with viewpoints different from our own and to grapple with the comparative learning that results.

However, whether this journal continues to publish transforming talks by engaged intellectuals like these depends on the vigilance of those who understand the profound significance of preserving public dialogue about social justice in a post-9-11 age. For “[i]f justice is to describe what we owe others we must first determine who we are to one another. And if justice is to be the measure of moral communities, we must decide how rich and full these communities need to be.”⁵⁷ It is only through the sharing of viewpoints, the examination of starting points, and the consensus towards endpoints that we will be able to survive together in our increasingly interconnected world.

¹ Associate Professor, Seattle University School of Law. I would like to thank the editorial board of the *Seattle Journal for Social Justice* for inviting me to share my perspectives in this inaugural issue. I would also like to thank Professor Gary Chamberlain and Professor Erik Olsen for bringing to my attention materials about social justice, as well as the Wismer Diversity Professors Jeanette Rodriguez and Kellye Testy for their support.

² James E. Bond served as the dean of Seattle University School of Law from 1986 to 1993, and from 1995 to 2000. Professor Bond currently teaches at Seattle University School of Law and currently holds the position of University Professor. He has also taught at the Judge Advocate General's School, Washington and Lee University, Wake Forest University, and in CLEO Institutes at the Universities of South Carolina and Richmond. He is the author of many legal articles and five books, including *No Easy Walk to Freedom: Reconstruction and the Ratification of the 14th Amendment*.

³ Mari J. Matsuda is a Professor of Law at the Georgetown University Law Center. She has also taught at the University of California at Los Angeles School of Law, the University of Hawai'i School of Law, Stanford Law School, and the University of Hiroshima. Professor Matsuda has written many well-known articles on constitutional law and jurisprudential issues such as hate speech, affirmative action, and feminist theory. Her books include *Called from Within; Words that Wound; Where is Your Body? and Other Essays on Race, Gender and the Law*; and *We Won't Go Back, Making a Case for Affirmative Action*.

⁴ Howard Zinn is a distinguished historian, professor, political theorist, social activist, playwright, and author. He has taught at Spelman College and Boston University. He has also been a history fellow at Harvard University and a visiting professor at the University of Paris and the University of Bologna. Professor Zinn has authored over twenty books and plays. His seminal book, *A People's History of the United States: 1492 to Present*, is widely used in college classrooms.

⁵ Howard Zinn, *Artists and Citizens in a Time of War*, 1 *Seattle J. Soc. Just.* 51, 51 (2002). As Howard Zinn writes here, "There are certain historical moments when learning is more compressed and intense than others. The time after September 11 is one of those moments."

⁶ Greek philosopher Socrates (*circa* 470–399 B.C.) is credited with developing the philosophical thought concerned with the analysis of the character and conduct of human life. He is famous for his injunction "know thyself" and is remembered for his conviction on charges of impiety and subsequent death by drinking poisonous hemlock.

⁷ Daw Aung San Suu Kyi (1945–) is the leader of the nonviolent National League for Democracy in Burma. She is the daughter of the martyred first president of Burma, who was under house arrest from 1989 to 1995. She was awarded the Nobel Peace Prize in 1991 for her reform efforts.

⁸ See AUNG SAN SUU KYI, *FREEDOM FROM FEAR AND OTHER WRITINGS* (Michael Aris ed., 1995).

⁹ KARL LLEWELYN, *THE CASE LAW SYSTEM IN AMERICA* 26–27 (Paul Gewirtz ed., 1989). Moreover, law is the situs of stylized dialogues in the service of conflict resolution and in certain ways provides a model for civil discourse.

¹⁰ By this I do not mean to suggest that procedural justice is the sole criterion of social justice. Rather, as David Miller explains:

there is indeed a justice of procedures that can be identified independent of the outcomes to which these procedures lead; and it is an important requirement of social justice that a society's institutions and practices should comply with this. In most cases, however, outcomes can also be judged as just or unjust indepen-

dent of the procedures that gave rise to them, and so one main quality that we will look for in procedures is precisely that they should be well calculated to produce just results.

DAVID MILLER, PRINCIPLES OF SOCIAL JUSTICE 94 (1999).

¹¹ GERALD GRAFF, BEYOND THE CULTURE WARS: HOW TEACHING THE CONFLICTS CAN REVITALIZE AMERICAN EDUCATION 52–53 (1992).

¹² As Graff notes:

Instead of choosing between the Western Conrad[’s *Heart of Darkness*] and the non-Western Achebe[’s *Things Fall Apart*], I teach the conflict between their novels and between competing views of literature. . . . When I had taught Conrad’s novel as a universal statement, my students seemed to find the concept of universality difficult and elusive—or perhaps they simply could not see the point of insisting on it. Again, “Universality as opposed to what?” seemed to be their unspoken thought. Once I introduced Achebe, however, with his sharp challenge to the idea that Conrad’s world view is the universal one, the concept of universality came into much clearer focus for my students. The ‘Western’ aspect of Conrad suddenly became a less mystifying quality now that students had something to contrast it with. This led in turn to the question of whether “Western” and “non-Western” are really mutually exclusive.

Id. at 33. Cf. EDWARD W. SAID, CULTURE AND IMPERIALISM 19–31(1993) (discussing *Two Visions of Heart of Darkness*). Professor Said explains:

As we look back at the cultural archive, we begin to reread it not univocally, but *contrapuntally*, with a simultaneous awareness both of the metropolitan history that is narrated and of those other histories against which (and together with which) the dominating discourse acts.

Id. at 51. He also remarks:

On the one hand when in a celebrated essay Chinua Achebe criticizes [Josef] Conrad’s racism, he either says nothing about or overrides the limitations placed on Conrad by the novel as an aesthetic form. On the other hand, Achebe shows that he understands how the form works when, in some of his own novels, he rewrites—painstakingly and with originality—Conrad.

Id. at 76.

¹³ The Uncertainty Principle was formulated by German physicist Werner Heisenberg in 1927 and was significant in the development of quantum mechanics. The Principle states that it is impossible to precisely specify both the position and momentum of a particle simultaneously. In addition, the Principle states that a more accurate determination of one quantity will cause a less precise measurement of another.

¹⁴ Graff writes:

I now had to recognize that I had been teaching an interpretation of the text, one that was shaped by a certain *theory* that told me what was and what was not worth noticing and emphasizing in my classroom. I had been unable to see my theory *as a theory* because I was living so comfortably inside it.

GRAFF, *supra* note 11, at 29–30.

¹⁵ James E. Bond, *Multiculturalism: America’s Enduring Challenge*, 1 Seattle J. Soc. Just. 59, 59 (2002).

¹⁶ Mari J. Matsuda, *Who is Excellent?*, 1 Seattle J. Soc. Just. 29, 29 (2002).

¹⁷ Zinn, *supra* note 5, at 55.

¹⁸ Professor James E. Bond, Address at Seattle University (Oct. 9, 2001); Professor Mari J. Matsuda, Keynote Address, National Conference on Race and Ethnicity in American Higher Education (May 31, 2001); Professor Howard Zinn, Massachusetts College of Art (Oct. 10, 2001).

¹⁹ MILLER, *supra* note 10, at 21 (“We need theories . . . because of *uncertainty* and *disagreement* about what justice requires of us.”). See generally JAMES P. STERBA, *SOCIAL AND POLITICAL PHILOSOPHY: CLASSICAL WESTERN TEXTS IN FEMINIST AND MULTICULTURAL PERSPECTIVES* (2d ed. 1998).

²⁰ Patrick McCormick, *That They May Converse: Voices of Catholic Social Thought*, 42 *CROSS CURRENTS* 521, 522 (1992–93) (“For if recent developments in Catholic social thought have taught us anything, it is that a sustained and civil conversation (and argumentation) is the sound of justice.”).

²¹ As Michael Omi and Howard Winant explain:

The effort must be made to understand race as an unstable and ‘decentered’ complex of social meaning constantly being transformed by political struggle. With this in mind, let us propose a definition: *race is a concept which signifies and symbolizes social conflicts and interests by referring to different types of human bodies.*

MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES FROM THE 1960S TO THE 1990S* 55 (2d ed. 1994).

²² Michael Novak, *Defining Social Justice*, *FIRST THINGS*, Dec. 2000, at 11, 13, <http://print.firstthings.com/ftissues/ft0012/opinion/novak.html>.

²³ David Hollenbach writes:

the [Catholic Social] tradition claims that membership in the human community creates a bond between persons sufficient to ground a right for all to share in the public good to the minimum degree compatible with human dignity. Distributive justice thus is the norm which states the obligation of society and the state to guarantee this participation by all in the common good.” Social justice “concerns institutionalized patterns of mutual action and interdependence which are necessary to bring about the realization of distributive justice. . . . Citizens have a personal obligation, . . . [i.e.,] concern for concrete needs of all persons and for the creation of reciprocal interdependence. Social justice also states the obligation of the state both to promote distributive justice and to make those legal claims on all citizens which are entailed by this task.

David Hollenbach, S.J., *Modern Catholic Teachings Concerning Justice*, in *THE FAITH THAT DOES JUSTICE* 207, 220 (John C. Haughey ed., 1977).

²⁴ McCormick, *supra* note 20. I focus on the Catholic tradition of social justice not because it is the definitive version of social justice, but because it has developed a literature and praxis that offers many insights. See William J. Byron, S.J., *Ten Building Blocks of Catholic Social Teaching*, *AM.*, Oct. 31, 1998, at 9; Catholic Social Teaching, *A Catholic Framework for Economic Life*, available at <http://www.osjspm.org/cst/10points.htm> (Nov. 1996).

²⁵ JERRY L. MARTIN & ANNE D. NEAL, *AM. COUNCIL OF TRS. AND ALUMNI, DEFENDING CIVILIZATION: HOW OUR UNIVERSITIES ARE FAILING AMERICA AND WHAT CAN BE DONE ABOUT IT* 16 (2001) (critiquing Zinn’s comment: “[O]ur security can only come by using our national wealth, not for guns, planes, and bombs, but for the health and welfare of our people, and for people suffering in other countries,” quoted by James Bowman, *Towers of Intellect*, *WALL ST. J.*, Oct. 5, 2001, at W17). After the initial distribution, ACTA then reissued the report without attributions to the quotations such as Zinn’s. For the full text including attributions, see ACTA, *Defending Civilization: How Our Universities Are Failing America and What Can Be Done About It*, available at <http://www.eecs.harvard.edu/~aaron/defciv.pdf>.

²⁶ A. Leon Higginbotham, Jr., *An Open Letter to Justice Clarence Thomas from a Federal Judicial Colleague*, 140 U. PA. L. REV. 1005, 1018 (1992).

²⁷ Hollenbach notes:

All three [forms of justice] contain an egalitarian core: equal claims to mutual freedom and fidelity to contracts in the case of commutative justice, equal rights to mutual participation in the public good in the case of distributive justice, and equal obligation to aid in the creation of social and political structures for participation and mutuality in the case of social justice.

Hollenbach, *supra* note 23, at 221. See also MILLER, *supra* note 10, at 242–43.

²⁸ Robert E. Rodes, Jr., *Social Justice and Liberation*, 71 NOTRE DAME L. REV. 619, 620–21 (1996).

²⁹ MILLER, *supra* note 10, at 242.

³⁰ Bond, *supra* note 15, at 69 (“Our continuing commitment to that creed makes us unique among nations; it makes us a propositional nation.”).

³¹ MARI J. MATSUDA, *WHERE IS YOUR BODY? AND OTHER ESSAYS ON RACE, GENDER AND THE LAW* 8 (1997).

³² Matsuda, *supra* note 16, at 29.

³³ Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987).

³⁴ IRIS MARION YOUNG, *The Five Faces of Oppression*, in READINGS FOR DIVERSITY AND SOCIAL JUSTICE 35, 36–49 (2000).

³⁵ Matsuda, *supra* note 16, at 31.

³⁶ *Id.* Bond, *supra* note 15, at 68.

³⁷ *Adarand v. Peña*, 515 U.S. 200, 239 (1995) (Scalia, J., concurring in part and concurring in the judgment). Cf. Bond, *supra* note 15, at 69 (“This ‘strange mixture of blood,’ said Crevecoeur, was found ‘in no other country’ and constituted what he called ‘this new race of men.’”).

³⁸ Matsuda, *supra* note 16, at 37 (“I would like to close these remarks by discussing a form of resistance called, in the theory world, the critique of identity politics.”). See ROBERT S. CHANG, *Politics After the Fall of the Essential Subject*, in DIS-ORIENTED: ASIAN AMERICANS, LAW AND THE NATION-STATE 128 (1993). There is a huge literature on identity politics, and as Professor Matsuda has noted, critiques come from both the left and the right. Left critiques of identity politics are answered also by Professor Robert Chang’s book, in which he advocates moving from identity politics to political identities.

³⁹ *Id.*

⁴⁰ *Educating for Justice: What Does it Mean for Seattle University?*, BROADWAY & MADISON (Seattle University, Seattle, WA), Sept. 10, 2001, at 1. As Seattle University President Stephen V. Sundborg said:

I don’t believe it is critical to define justice, nor is that our purpose. I believe that if you cling too narrowly to a definition, you exclude those with different visions. I also believe a university is not defined by the answers it provides, but by the questions it asks. I want students, faculty and staff members at Seattle University to be so in contact with the world as it really is—the way people really live—that they are constantly motivated to ask questions of justice.

Id.

⁴¹ A recent Westlaw search reveals sixty-four citations to this book in law reviews and other texts and periodicals.

⁴² Bill Berkowitz, *Lynne Cheney's Campus Crusade: Second Lady's ACTA Launches Campaign against 'Blame America First' Academics*, at <http://www.workingforchange.com/article.cfm?ItemID=12355> (Nov. 19, 2001) (on file with the Seattle Journal of Social Justice).

⁴³ MARTIN & NEAL, *supra* note 25.

⁴⁴ *Id.* at 5.

⁴⁵ Emily Eakin, *On the Lookout for Patriotic Incorrectness*, N.Y. TIMES, Nov. 4, 2001, at A15.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Zinn, *supra* note 5. See also Interview by Sharon Basco with Hugh Gusterson, Assistant Professor of Anthropology, MIT, *Lynn Cheney's Free Speech Blacklist: Spinning Tolerance and Diversity as Harmful Dissent*, available at <http://www.tompaine.com/feature.cfm?ID=4688> (Jan. 5, 2002). As stated by Professor Hugh Gusterson, another academic reviled in the ACTA report, "The role and purpose of the university in America is not to cheer-lead for whatever the chosen policy of the American government is. The role and purpose of the university is to peruse knowledge and to encourage people to think critically."

⁴⁹ Berkowitz, *supra* note 42, at ¶ 15.

⁵⁰ MARTIN & NEAL, *supra* note 25, at 7.

⁵¹ GRAFF, *supra* note 11, at 52 (documenting Ms. Cheney's tenure at the NEH as one that consistently promoted a "'conflict-free' idea of culture."). Graff states,

Whereas this conflict-free idea of culture once held a privileged place in humanistic education as something that went without saying, it has now become one theory among others, something that you have to argue for against competing theories. This is what most bothers [the traditionalists]: that the literary canon, once seen as an accepted heritage to be noiselessly passed from one generation to the next, has become a conflict of theories.

See also *id.* at 20, 93, 108, 121, 165, 167, 195.

⁵² Zinn, *supra* note 5, at 54.

⁵³ RACE AND RACES: CASES AND RESOURCES FOR A MULTICULTURAL AMERICA 106–07 (Juan Perea et al. eds., 2000). Mr. Douglass declaimed:

To him, your celebration is a sham; your boasted liberty, an unholy license; your national greatness, swelling vanity; your sounds of rejoicing are empty and heartless; your denunciation of tyrants, brass fronted impudence; and your shouts of liberty and equality, hollow mockery . . . Fellow citizens, I will not enlarge further on your national inconsistencies. The existence of slavery in this country . . . destroys your moral power abroad.

See also Higginbotham, Jr., *supra* note 26, at 1012–14 (describing Justice Clarence Thomas's negative response to Justice Thurgood Marshall's critical understanding of the Constitution).

⁵⁴ Zinn, *supra* note 5, at 53.

⁵⁵ Nick Diamond, *Reflection on the War in Afghanistan and General U.S. Foreign Policy* (2002) (unpublished manuscript, on file with the Seattle Journal for Social Justice).

⁵⁶ *Id.*

⁵⁷ Patrick McCormick, *Whose Justice?* (unpublished manuscript, on file with the *Seattle Journal for Social Justice*).