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AN INTRODUCTION TO RACE AS PROXY

Mark R. Bradford*

Sadly, in the end, we do nothing more than quantify race. We quantify race in our nation's schools, seeking a "critical mass" of minority enrollment.¹ We quantify race in making hiring decisions and investment decisions. Many among us quantify race in determining whom we will scrutinize, avoid, fear, love, and hate.²

While the quantification of race reached the forefront of American debate with the United States Supreme Court's recent decisions in *Grutter v. Bollinger*³ and *Gratz v. Bollinger*,⁴ it seems that the quantification of race, the search for racial "equilibrium," and the use of race as a proxy for making even the most basic and fundamental decisions, has a lasting history. Indeed, uses of race as proxy were born in this nation more than two hundred years ago, as minorities were consistently commodified into units of labor. We now debate the propriety of redressing such uses of race as proxy in the arena of slave reparations.⁵

The use of race as proxy has also long infiltrated our nation's criminal justice system, where law enforcement officers utilize race to de-

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1. See R. Lawrence Purdy, *Prelude: Bakke Revisited*, 7 TEX. REV. L. & POL. 313, 316 (2003) (quoting the dean of the highly regarded University of Michigan Law School for the proposition that, to be properly "diverse," the student body must contain a "critical mass" or "meaningful numbers" of students from certain racial and ethnic minority groups).

2. Interestingly, it is arguable that "race" is nothing more than a construct of human nature, with little biological justification. For example, in 1997, the American Anthropological Association recommended that the United States government abandon the use of the term "race" on official forms because it held no scientific justification in human biology. See Kimberly Hohman, *Race and the Human Genome: Researchers Definitively Trump the Notion of Race with DNA Research*, at <http://racereactions.about.com/library/weekly/aa021501a.htm> (last visited Feb. 18, 2004). Indeed, scientists studying the human genome recently concluded that human DNA is 99.9 percent alike, rendering humans nearly genetically identical to each other (but for physical appearance). See *id.*

3. 539 U.S. 306 (2003).

4. 539 U.S. 244 (2003).

5. Even a cursory search of the Internet on the issue of slave reparations yields an untold number of newspaper and magazine articles, studies, surveys, and commentary representing a wide variety of viewpoints and conclusions.

termine who they will stop and question,⁶ and juries to determine who they will sentence to death.⁷ Likewise, the use of race as proxy has seeped into our healthcare system, in which critical decisions such as the distribution of medication are often made on the basis of one's race. Indeed, we have become a nation defined, in many ways, by our ineptitude in reaching a satisfactory understanding of race.

To address these and other critical issues involving race, the *DePaul Law Review* presented its 13th Annual Symposium, entitled *Race as Proxy in Law and Society: Emerging Issues in Race and the Law*. Twelve incredibly distinguished panelists presented their views, insights, opinions, and experiences with the use of race as proxy in a number of legal, social, and moral contexts. This third issue of the 53rd *DePaul Law Review* is a unique and timely product of the Symposium.

It is the goal of this publication—and, indeed, of the Symposium—to challenge its readers and participants to assess their own perspectives on these vital and controversial issues. Perhaps we can then move beyond the simple quantification of race that has borne few fruits—though much debate—over the past three centuries.

I am personally indebted to each of the panelists and writers for their patience, hard work, intellect, and contributions in planning and carrying out the Symposium to achieve this lofty goal. On behalf of the entire *DePaul Law Review*, please accept my sincerest thanks, and enjoy this final product of your labor.

6. For a comprehensive review of racial profiling among law enforcement, including both anecdotal and empirical evidence, see Deborah Ramirez et al., *A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned* (Nov. 2000), at <http://www.ncjrs.org/pdffiles1/bja/184768.pdf> (last visited Feb. 17, 2004).

7. This race-based phenomena appears to have been first recognized by the United States Supreme Court in *Furman v. Georgia*, 408 U.S. 238 (1972), in which Justice Thurgood Marshall observed: "It is immediately apparent that Negroes were executed far more often than whites in proportion to their percentage of the population. Studies indicate that while the higher rate of execution among Negroes is partially due to a higher rate of crime, there is evidence of racial discrimination." 408 U.S. 238, 364 (1972) (Marshall, J., concurring).