

BOOK REVIEW

In Defense of Excellence

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ANTHONY T. KRONMAN,¹ *THE ASSAULT ON AMERICAN EXCELLENCE*, Free Press 2019. Pp. 272. \$27.00 Hardcover.

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INTRODUCTION

Up until recently, excellence had been an educational ideal. At the founding of the Catholic University of Ireland in 1852, John Henry Newman envisioned a university as a community of thinkers engaging

* Many thanks to Cameron Baker, Justin C. Beck, June Carbone, Emily Goldberg Knox, and Kevin S. Song for their thoughtful feedback. The views expressed herein are personal and do not necessarily reflect those of my employer or its current/former clients. All errors of omission and commission are my own.

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in intellectual pursuits as an end in itself and teaching students “to think and to reason and to compare and to discriminate and to analyse.”² Even thirteen decades later, Americans were still holding on to and teaching our children this very ideal “to respect the diversity of ideas that is fundamental to the American system.”³ But that understanding has changed. Just half a decade thereafter, Allan Bloom’s bestseller, *The Closing of the American Mind*, sparked an intense debate on the issue of viewpoint diversity by contending that academia has been forgoing intellectual openness to pursue egalitarianism.⁴ Anthony Kronman’s new book, *The Assault on American Excellence* (“Assault” or the “Book”), continues this

2. JOHN HENRY NEWMAN, *THE IDEA OF A UNIVERSITY* Discourse V (1852) [hereinafter *IDEA*]; see also ROBERT MAYNARD HUTCHINS, *THE HIGHER LEARNING IN AMERICA* 119 (1936) (“The university . . . is intellectual. It is wholly and completely so. As such, it is the only kind of university worth having. I believe that it will accomplish greater political and professional results than one that is devoted to current events or vocational training.”).

3. Bd. of Educ., *Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 880 (1982) (Blackmun, J., concurring); see also *Branzburg v. Hayes*, 408 U.S. 665, 727 (1972) (Stewart, J., dissenting) (discussing “a continuing need . . . to disseminate a robust variety of information and opinion through reportage, investigation, and criticism, if we are to preserve our constitutional tradition of maximizing freedom of choice by encouraging diversity of expression”); *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949) (“The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets [America] apart from totalitarian regimes.”); *Kubik v. Scripps Coll.*, 118 Cal. App. 3d 544, 553 (1981) (discussing “the legitimate state interest in academic excellence and intellectual diversity”). As Voltaire aptly remarked, “I disapprove of what you say, but I will defend to the death your right to say it.” *Young v. Am. Mini Theatres, Inc.*, 427 U.S. 50, 63 (1976) (approvingly quoting S. TALLENTRYE, *THE FRIENDS OF VOLTAIRE* 199 (1907)).

4. ALLAN BLOOM, *THE CLOSING OF THE AMERICAN MIND: HOW HIGHER EDUCATION HAS FAILED DEMOCRACY AND IMPOVERISHED THE SOULS OF TODAY’S STUDENTS* (1987); see also, e.g., WILLIAM A. HENRY III, *IN DEFENSE OF ELITISM* (1994); GREG LUKIANOFF & JONATHAN HAIDT, *THE CODDLING OF THE AMERICAN MIND: HOW GOOD INTENTIONS AND BAD IDEAS ARE SETTING UP A GENERATION FOR FAILURE* (2018); Barack Obama, U.S. Dept. of Educ. Sec. Arne Duncan’s 2015 Back-to-School Bus Tour at Des Moines North High School (Sept. 14, 2015) (“I don’t agree that you, when you become students at colleges, have to be coddled and protected from different points of view.”). For an earlier account of anti-intellectualism in education, see RICHARD HOFSTADTER, *ANTI-INTELLECTUALISM IN AMERICAN LIFE* 51, 299–390 (1963). *Contra*, e.g., LAWRENCE W. LEVINE, *THE OPENING OF THE AMERICAN MIND: CANONS, CULTURE, AND HISTORY* (1996); Martha C. Nussbaum, *Undemocratic Vistas*, in *PHILOSOPHICAL INTERVENTIONS* 36–52 (2012). “Egalitarianism” used herein denotes equality of outcomes, including group outcomes (see generally KARL MARX & FRIEDRICH ENGELS, *THE COMMUNIST MANIFESTO* (1848)), not necessarily equality of opportunity (see generally JOHN RAWLS, *A THEORY OF JUSTICE* (1971); RONALD DWORKIN, *SOVEREIGN VIRTUE: THE THEORY AND PRACTICE OF EQUALITY* 11–119 (2000)). Equality of opportunity (which usually results in different outcomes due to different aptitudes and interests) can coexist with excellence (which values different outcomes), but equality of outcomes directly contradicts excellence. See, e.g., JAMES MADISON, *THE FEDERALIST* No. 10 (1788) [hereinafter *FEDERALIST*] (discussing the government’s object in protecting men’s “different and unequal faculties”). *But see* *THE DECLARATION OF INDEPENDENCE* ¶ 2 (U.S. 1776) (“all men are created equal”). Thus, egalitarianism’s gradual shift from equality of opportunity to equality of outcomes has displaced excellence as the goal for colleges and universities. This discussion on egalitarianism—the driving force behind all anti-excellence movements—could have and should have been an additional chapter in Kronman’s Book.

conversation more than three decades later, describing the recent loss of intellectual diversity (pluralism) and arguing for a return to the pursuit of excellence in higher education.⁵

While Kronman's compelling Book certainly has many rich veins to mine, this Review aims to tap only those central to his observations on how academic excellence has gradually lost its reign in colleges and universities. This Introduction situates the Book among his earlier scholarship and other scholars' work. To better understand his vantage point, Part I contextualizes the Book with Kronman's intellectual journey and the historical development of "diversity." Part II discusses the Book in detail, beginning with Kronman's argument for the pursuit of excellence and followed by his identification of the three anti-excellence movements. Part II also critically engages the Book with arguments and counterarguments that it could have, should have, but did not cover. The Review briefly concludes with an *ex ante* view on the future of excellence and intellectual diversity.

I. BACKGROUND

A. *Kronman's Intellectual Journey*

Following the classical path of how a liberal youth becomes more conservative with age, Kronman gradually progressed from championing equality to preserving intellectual diversity after spending more than five decades in academia.⁶ As a student at Williams

5. ANTHONY T. KRONMAN, *THE ASSAULT ON AMERICAN EXCELLENCE* 23 (2019) [hereinafter *ASSAULT*]; see also *id.* at 217 ("What a grievous loss that would be: for our student, their schools, the country at large."). Kronman began this conversation years earlier. See ANTHONY T. KRONMAN, *EDUCATION'S END: WHY OUR COLLEGES AND UNIVERSITIES HAVE GIVEN UP ON THE MEANING OF LIFE* (2007) [hereinafter *EDUCATION'S END*]; Anthony T. Kronman, *Is Diversity A Value in American Higher Education?*, 52 FLA. L. REV. 861 (2000) [hereinafter *Diversity*]; cf. Anthony T. Kronman, *Jurisprudence Is Not Just a Course. It's the Key to Liberating the Lawyer*, 4 LEARNING & L. 4, 7 (1977) (A student may "discover that thinking is a pleasure in itself" as a "day activity that men enjoy for its own sake and not merely because it promotes some other end. This is an important discovery" for the student to eventually "recognize that there are many different ways in which human excellence may display itself, and that his way, the way he has chosen, is but one of these."). Intellectual diversity, of course, includes without limitation political diversity.

6. As the old adage goes, if you are not a liberal at 20 you have no heart; if you are not a conservative by 35, you have no brain. See THOMAS JEFFERSON, IV *THE WRITINGS OF THOMAS JEFFERSON* 509 (1829) (paraphrasing John Adams). (By that standard, Kronman has both heart and brain at the appropriate time.) The reason is simple: Students traditionally flirt with radical ideas during their college years, but their dalliance with leftist thinking is often merely a passing phase motivated by naïveté. With maturity, they tend to abandon liberal thinking and embrace the soundness of conservative and moderate values. See also *infra* note 83. According to Justice Powell, who later penned *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 316 (1978), this radicalization of college students—"almost as if they were untutored children"—is due to "an astonishing absence of critical analysis and little concern for truth" that colleges and universities ought to teach. Since at least 1970, it has been "evident that the modern university has failed in

College in the 1960s, he was a fierce activist, fighting for civil rights and against the Vietnam War; he even left college in the middle of his sophomore year to work for Students for a Democratic Society.⁷

After graduating from college in 1968, he enrolled in the Ph.D. program in philosophy at Yale with the ambition “to become a better Marxist.”⁸ But that did not last. By 2000, Kronman, then the Yale Law School dean delivering a lecture on the value of diversity in higher education, was developing “an intermediate position that is sympathetic and skeptical at once.”⁹ And now in his new Book, he concludes that diversity has become a destructive force infecting colleges and universities, covering them in “a pall of mendacity.”¹⁰

B. Diversity’s Changing Definition

Rooted in liberal education, “diversity” in the context of academia traditionally meant diversity of thoughts in the marketplace of ideas.¹¹ But diversity, regardless of settings (including higher education), has now morphed into diversity of race/ethnicity and gender/sexual orientations.¹² In doing so, diversity has abandoned its

its historic task of training young minds to be skeptical of sloganeers, to question the glib huckster, and to seek rational rather than emotional solutions.” Lewis F. Powell, Jr., Address to the S. Indus. Relations Conference: The Attack on American Institutions 10–11 (July 15, 1970).

7. ASSAULT, *supra* note 5, at 20; *see also id.* at 216 (Kronman “gave a commencement speech attacking the Vietnam War”). It appears that Kronman shared his intellectual history in the Book to establish credibility (empathy) with the Left. For background, Students for a Democratic Society “was the largest and most influential US radical student organization of the 1960s, . . . concerned with *equality*, economic justice, peace, and participatory democracy.” STUDENTS FOR A DEMOCRATIC SOCIETY (SDS), <https://www.sds-1960s.org/> [<https://perma.cc/9LNG-UKWQ>] (emphasis added). *See generally* John Edgar Hoover, *A Study in Marxist Revolutionary Violence: Students for a Democratic Society, 1962-1969*, 38 FORDHAM L. REV. 289, 292–306 (1969).

8. ANTHONY T. KRONMAN, *CONFESSIONS OF A BORN-AGAIN PAGAN* 8 (2016) [hereinafter *CONFESSIONS*]. Marxism has some overlap (at least on equal rights) with egalitarianism. *See* Richard Arneson, *Egalitarianism*, STAN. ENCYCLOPEDIA PHIL. § 3.2 (2013), <https://plato.stanford.edu/entries/egalitarianism/> [<https://perma.cc/HL9L-2RBA>].

9. *Diversity*, *supra* note 5, at 862.

10. ASSAULT, *supra* note 5, at 7, 143, 151.

11. *See* Kirk A. Kennedy, *Race-Exclusive Scholarships: Constitutional Vel Non*, 30 WAKE FOREST L. REV. 759, 773 (1995); *see also* ASSAULT, *supra* note 5, at 15 & 231–32 n.84; *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting) (“[T]he best test of truth is the power of the thought to get itself accepted in the competition of the market.”) Though the phrase “marketplace of ideas” has often been credited to Holmes, it was Justice Brennan’s turn of phrase. *See Lamont v. Postmaster Gen.*, 381 U.S. 301, 308 (1965) (Brennan, J., concurring) (“The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no buyers.”). *See generally* Vincent Blasi, *Holmes and the Marketplace of Ideas*, 2004 SUP. CT. REV. 1, 24.

12. *See* Kennedy, *supra* note 11; Anthony Kronman, *The Downside of Diversity*, WALL ST. J. (Aug. 2, 2019), <https://www.wsj.com/articles/the-downside-of-diversity-11564758009> [<https://perma.cc/2HRW-3BHY>]; *Diversity*, *supra* note 5, at 862–68; *see also, e.g.*, Scott D. Gerber,

focus on thoughts and ideas in favor of race/ethnicity and gender/sexual orientation, sacrificing the pursuit of intellect for the sake of physical appearance.¹³

In his 2000 lecture on diversity, Kronman explained how the modern definition of “diversity” appears “largely irrelevant to the goals of education” in certain fields.¹⁴ He finds it “difficult to see, for example, how diversity of experience and values among the students in a calculus

The Court, the Constitution, and the History of Ideas, 61 VAND. L. REV. 1067, 1084–86 (2008) (discussing the “ongoing debate over the place of race and gender conscious diversity programs in public” universities); Angela Onwuachi-Willig, *The Admission of Legacy Blacks*, 60 VAND. L. REV. 1141 (2007) (discussing racial diversity in higher education). Some contend that class/socioeconomic status and geographical origin (urban vs. rural) also belong to the modern definition of “diversity.” See, e.g., Meera E. Deo, *Faculty Insights on Educational Diversity*, 83 FORDHAM L. REV. 3115, 3147 (2015); Regents of Univ. of California v. Bakke, 438 U.S. 265, 316 (1978) (diversity includes “students from disadvantaged economic” groups and “farm boy[s] from Idaho”).

13. Diversity “in universities has come to mean that everyone looks different but thinks the same.” Daniel Callam, *Orthodoxy: A Centenary Edition*, 35 CHESTERTON REV. 79, 84 (2009). The product of this kind of university—the graduates—would inevitably be cut from the dogmatic cloth. *But see, e.g.*, Adler v. Bd. of Educ. of City of New York, 342 U.S. 485, 510–11 (1952) (Douglas, J., dissenting), *overruled in part by Keyishian v. Bd. of Regents*, 385 U.S. 589 (1967) (Where teachers and scholars fear for their jobs without real academic freedom, “there can be no exercise of the free intellect. Supineness and dogmatism take the place of inquiry.” It is “dangerous” to merely agree with and not question “the orthodox view, of the conventional thought, of the accepted approach. A problem can no longer be pursued with impunity to its edges. Fear stalks the classroom. The teacher is no longer a stimulant to adventurous thinking; she becomes instead a pipe line for safe and sound information.” The “deadening dogma takes the place of free inquiry. Instruction tends to become sterile; pursuit of knowledge is discouraged; discussion often leaves off where it should begin.” This sort of system “produces standardized thought, not the pursuit of truth. Yet it was the pursuit of truth which the First Amendment was designed to protect.”); Oliver Wendell Holmes Jr., *The Path of the Law*, 10 HARV. L. REV. 457, 474–76 (1897) (“I look forward to a time when the part played by history in the explanation of dogma shall be very small, and instead of ingenious research we shall spend our energy on a study of the ends sought to be attained and the reasons for desiring them.” To gain a liberal view of your subject, you ought to: First, “follow the existing body of dogma into its highest generalizations by the help of jurisprudence”; second, “discover from history how it has come to be what it is”; and lastly, as far as you can, “consider the ends which the several rules seek to accomplish, the reasons why those ends are desired, what is given up to gain them, and whether they are worth the price.”); JOHN ADAMS, THE LETTERS OF JOHN AND ABIGAIL ADAMS (1876) (“Let the human mind loose[;] dogmatism cannot confine it.”); Ralph Waldo Emerson, *Literary Ethics*, in 5 WORKS OF RALPH WALDO EMERSON 152 (1880) (“Be neither chided nor flattered out of your position of perpetual inquiry. Neither dogmatize or accept another’s dogmatism.”).

14. *Diversity*, *supra* note 5, at 869. *But see, e.g.*, Grutter v. Bollinger, 539 U.S. 306, 307 (2003) (discussing “the educational benefits that flow from a diverse student body”). With respect to legal education, Kronman would have been supported by Frankfurter, who once said: “What mattered was excellence in your profession to which your father or your face was equally irrelevant If a man was respected, it was because he was very good either because he showed up very well in the classroom or in private discussion.” All the “big talk about ‘leadership’ and character,” including the “usually high falutin’ expressions for personal likes and dislikes, or class, or color, or religious partialities or antipathies—they were all out. These incommensurable things give too much room for personal preferences and on the whole make room for unworthy and irrelevant biases.”). FELIX FRANKFURTER REMINISCES 26–27 (1960) [hereinafter FELIX FRANKFURTER]. For a comprehensive work on cognitive biases, see generally ELIEZER YUDKOWSKY, RATIONALITY: FROM AI TO ZOMBIES (2015).

course contributes in a positive way to their mastery of the material involved.”¹⁵ This logic equally applies to the natural sciences (such as physics, chemistry, geology, and astronomy) and arguably biological sciences.¹⁶ During oral argument in *Fisher v. University of Texas at Austin* (Dec. 9, 2015), Chief Justice Roberts echoed Kronman’s skepticism in the form of questions: “What unique perspective does a minority student bring to a physics class? I’m just wondering what the benefits of diversity are in that situation?”¹⁷

While excellence versus the contemporary view on “diversity,” in theory, need not be mutually exclusive, they are in reality at odds with one another. The traditional camp that includes Kronman has become the new minority, and the modern camp views the other as fighting progress.¹⁸ The Book focuses in part on the damaging consequences that

15. *Diversity*, *supra* note 5, at 869.

16. *Id.*

17. See Rachel D. Godsil, *Why Race Matters in Physics Class*, 64 UCLA L. REV. DISC. 40, 42 (2016) (quoting John G. Roberts, Jr.). See generally *Fisher v. Univ. of Texas at Austin*, 136 S. Ct. 2198 (2016). By way of a related example, Justice Kagan does “not think there is much of a female perspective [that] was responsible for a real divide in opinion” of the Supreme Court, being able to recall only one “rar[er]” instance in her ten years on the Court where gender really mattered. Elena Kagan, Assoc. Just., U.S. Sup. Ct., Stein Lecture at University of Minnesota Law School (Oct. 21, 2019). *But see* Vincent Blasi, *Bakke as Precedent: Does Mr. Justice Powell Have a Theory?*, 67 CALIF. L. REV. 21, 44 (1979):

[M]embership in a minority race can be viewed as a good proxy for several personal characteristics that may be important in the learning process. Compared to his white counterpart, a black applicant is much more likely to: (1) have been the object of racial prejudice in a wide variety of contexts, and thus have firsthand knowledge about the nature and impact of such prejudice; (2) have had his aspirations seriously influenced by perceptions regarding what opportunities were available to persons of his race, and thus have a special appreciation of the social significance of aspiration and self-esteem; (3) have had personal relationships with people who are very poor and frequently unemployed; (4) have spent a great deal of time coming to grips with his own racial identity as well as thinking and talking about the social problem of race relations; (5) have been the object of special scrutiny by others who were curious to see how a person of his race would behave or perform in the particular situation, and thus have an appreciation of the “fishbowl” phenomenon in social relations; (6) feel a responsibility to help mitigate the suffering of the persons who have been most oppressed by social and political patterns that can be traced in part to racial prejudice; (7) display a special interest in and knowledge about the black experience in the United States and the rest of the world; and (8) feel a disenchantment with, if not hostility toward, social structures and institutions (including principles of distribution) that historically have operated to the detriment of black people.

18. See also *supra* note 4. FELIX FRANKFURTER, *supra* note 14, at 205–06 (explaining how dissenters, including dissidents, become silent and “what it is that makes people cowardly, [hesitant,] timid and afraid to say publicly what they say privately”—to fulfill their self-interested desires—that would eventually lead to “the result . . . that those who have no scruples, who are ruthless, who don’t give a damn, influence gradually wider and wider circles, and you get Hitler movements,” etc.). *But see* Elie Wiesel, Acceptance Speech of Nobel Peace Prize in Oslo, Norway (Dec. 10, 1986) (explaining “how naïve we were, that the world did know and remained silent. And that is why I swore never to be silent whenever wherever human beings endure suffering and humiliation. We must take sides. Neutrality helps the oppressor, never the victim. Silence

follow this paradigm shift, not only for the essences of colleges and universities—i.e., scholars' intellectual pursuits and students' learning processes—but also for our civilization as a whole.¹⁹

II. THE BOOK

In addition to the typical inclusion of Introduction (pp. 1–21) and Epilogue (pp. 213–17), this medium-length Book has four chapters, entitled: (1) Excellence (pp. 23–75), (2) Speech (pp. 77–118), (3) Diversity (pp. 119–62), and (4) Memory (pp. 163–212).²⁰ My initial reaction was to wish the Book covered more topics, such as students or learning, egalitarianism or fairness, and politics or democracy, but Kronman clearly chose to focus on depth over breadth.²¹ For this reason, the Book by itself appears incomplete, though it is not. Instead, it contributes to the ongoing debate on the preservation of intellectual diversity.²²

Stylistically, *Assault* (like Kronman's other books) is unsurprisingly easy to read and accessible to the lay public,²³ though it errs on the side of political incorrectness.²⁴ The Book's focus is mostly on students (e.g., what students are not doing right according to Professor Kronman). Given that most students are not the intended readers of the Book,²⁵ Kronman could have written it in a way that

encourages the tormentor, never the tormented." In fact, "we must interfere. When human lives are endangered, when human dignity is in jeopardy, national borders and sensitivities become irrelevant. Wherever men and women are persecuted" because of their beliefs or "political views, that place must—at that moment—become the center of the universe."

19. See IDEA, *supra* note 2, at Discourse V; ASSAULT, *supra* note 5, at 19.

20. ASSAULT, *supra* note 5. The Book's total of 272 pages is misleading because the main text spans only 217 pages, accompanied by 38 pages of endnotes, as Kronman's expertise is in writing law review articles with many hefty footnotes. See, e.g., Richard A. Posner, *Law Reviews*, 46 WASHBURN L.J. 155, 158 (2006). As such, the Book may qualify as "short" to certain readers.

21. See also *supra* note 4.

22. See, e.g., *id.*

23. See, e.g., CONFESIONS, *supra* note 8; EDUCATION'S END, *supra* note 5; ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 35, 93 (1993) (discussing, inter alia, "excellence of judgment"). Out of these four exemplary books, only *Assault* is published by a commercial publisher, which makes this Book even more readable than the other three books.

24. As diversity is certainly a controversial topic, this serves as a trigger warning for the student readers who choose to consume only views they agree with. See also Edward L. Rubin, *On Beyond Truth: A Theory for Evaluating Legal Scholarship*, 80 CALIF. L. REV. 889, 941 (1992) ("In academia, . . . bias becomes an increasing danger as the author's viewpoint diverges from the evaluator's."). See generally Heidi Kitrosser, *Free Speech, Higher Education, and the PC Narrative*, 101 MINN. L. REV. 1987 (2017). In fact, the current culture of political correctness has hollowed out our freedom of speech from which "one may think what one likes and say what one thinks" to the point of which one may think what likes but say what others approve of. See TACITUS, *THE HISTORIES* (c. 100–110).

25. Except perhaps for the graduate students in Education programs, other college students spend the majority of their time on assigned readings that do not include Kronman's Book.

would communicate to the intended audience—educators and other scholars—more directly (pathos).²⁶ Citing respected wisdom throughout, Kronman’s erudite arguments are based on reason (logos), but what would have been more persuasive and useful to readers is authoritative research that he could have provided to support his views.²⁷

A. Excellence

The Introduction and Chapter One make a strong argument for the pursuit of excellence. During Alexis de Tocqueville’s 1830s visit to the United States, he identified our colleges and universities as potential counterweights against what he termed “the tyranny of the majority.”²⁸ According to Kronman, institutions of higher learning ought to “preserve, transmit, and honor an aristocratic tradition of respect for human greatness.”²⁹ Without this appreciation for excellence, life becomes less noble—smaller and flatter.³⁰ An education in human excellence liberates the mind from ignorance and groupthink, and allows students the freedom to make up their own minds by developing judgment from a point of view that is less vulnerable to the moods of the moment and increasing their self-reliance to have less need to base their standards on what “everyone knows” or what “goes without saying.”³¹ This elevation of the human spirit prepares students

26. See generally ARISTOTLE, RHETORIC (c. 400–301 BCE).

27. See, e.g., ASSAULT, *supra* note 5, at 29 (citing exemplary excellence in living such as thinkers like Socrates and Plato, statesmen like Lincoln and Douglas, scientists like Galileo, poets like Emily Dickinson, psychologists like Montaigne and Freud, and saints like Augustine).

28. *Id.* at 8–9 (citing ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 243–46, 450–52 (Harvey Mansfield & Debra Winthrop trans., U. Chi. Press 2000) (1835)); see also *Whitney v. California*, 274 U.S. 357, 376 (1927) (Brandeis, J., concurring) (“Recognizing the occasional tyrannies of governing majorities, [those who won our independence] amended the Constitution so that free speech and assembly should be guaranteed.”).

29. ASSAULT, *supra* note 5, at 9; see also, e.g., *Cornell University Core Values*, CORNELL UNIV., <https://www.cornell.edu/about/values.cfm> [<https://perma.cc/F3U5-KY9N>] (last visited Nov. 29, 2019) (“to advance the University’s mission, in all cases striving with integrity for excellence and purpose”); *Harvard University Statement of Values*, HARV. UNIV. (Aug. 1, 2002), <https://www.harvard.edu/president/speech/2002/harvard-university-statement-values> [<https://perma.cc/594E-3AC6>] (listing “[c]onscientious pursuit of excellence in one’s work”); *infra* note 34.

30. ASSAULT, *supra* note 5, at 9; see also *Ecclesiastes* 9:10 (New International Version) (“Whatever your hand finds to do, do it with all your might . . .”).

31. See ASSAULT, *supra* note 5, at 10, 28, 98; see also, e.g., David D. Corey, *Liberal Education: Its Conditions and Ends*, in *THE FUTURE OF LIBERAL EDUCATION* 3–4 (Timothy W. Burns & Peter Augustine Lawler eds., 2015) (“The purpose of liberal education is, of course, to set us free . . . by removing us from the confines of a particular place and time . . . by introducing us to paradigmatic lives and therewith to the many subtle ways that lives can be described and evaluated” by “expanding our moral imagination” but also by introducing us to other modes of thought, beyond the moral.); MICHAEL OAKESHOTT, *THE VOICE OF LIBERAL LEARNING* 66–67 (1989) (“Education is

to become competent citizens and leaders, and contributes to the essence of democracy in America, where every adult has the right to vote.³² Indeed, pursuing excellence is in and of itself excellent and a worthwhile goal.³³

To Kronman, “excellence” simply means doing one’s best at “a well-defined task with a specific and limited objective.”³⁴ Put succinctly, excellence’s motto is seriousness.³⁵ But the concept of excellence is amorphous and complex,³⁶ and the Book focuses on excellence and its relationship with diversity only in theory, not in practice. Kronman devotes little space to explaining excellence and fails to distinguish its application at different kinds of institutions.³⁷ The reality of pursuing excellence in conjunction with diversity in the modern context is more nuanced than Kronman’s idealistic notion of “excellence.”³⁸

not acquiring a stock of ready-made ideas, images, sentiments, beliefs, and so forth; it is learning to look, to listen, to think, to feel, to imagine, to believe, to understand, to choose, and to wish.”); Benjamin N. Cardozo, *Mr. Justice Holmes*, 44 HARV. L. REV. 682, 688 (1931) (“There shall be no compromise of the freedom to think one’s thoughts and speak them . . .”). See generally MARK VAN DOREN, *LIBERAL EDUCATION* (1943).

32. See ASSAULT, *supra* note 5, at 10, 24–26; see also FEDERALIST, *supra* note 4, at No. 51 (“[W]hat is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary.”); U.S. CONST. amend. XXVI (“The right of citizens of the United States, who are eighteen years of age or older, to vote, shall not be denied or abridged . . .”).

33. See also LORD CHESTERFIELD’S LETTERS: THE LETTERS OF PHILIP DORMER STANHOPE EARL OF CHESTERFIELD WITH THE CHARACTERS 40 (John Bradshaw, Ed. 1802) (“[W]hatever is worth doing at all is worth doing well.”). For a deep analysis in, and the origin of, “in and of itself,” see generally MARTIN HEIDEGGER, *BEING AND TIME* (1962); JEAN-PAUL SARTRE, *BEING AND NOTHINGNESS* (1943).

34. See ASSAULT, *supra* note 5, at 23. In the Book, Kronman uses *excellence* interchangeably with *aristocracy*. *Id.*; see also OLIVER WENDELL HOLMES SR., *THE AUTOCRAT OF THE BREAKFAST-TABLE* (1858). Kronman later shared a “prefatory comment” for the Book in an interview, stating: “Many of my friends warned me against using the word ‘aristocratic’ and I decided to forge on ahead because it seemed to me to best express the truth of the matter.” Len Gutkin, *Elite Schools Are National Treasures. Their Elitism Is What Makes Them Such*, CHRON. HIGHER EDUC. (July 12, 2019), <https://www.chronicle.com/article/Elite-Schools-Are-National/246657> [<https://perma.cc/PH3J-GRGX>]. Kronman continued, “I could have used ‘elite’ instead. But that would have done my argument no good, and not pleased or placated my critics. So I decided to eat the whole enchilada.” *Id.* Had Kronman used the terms *elite* or *elitism* interchangeably with *excellence* in the Book, its scope would have been much narrower, applicable to only elite schools (Ivy League, public Ivies, and top liberal arts colleges).

35. For instance, Frankfurter who unequivocally epitomized and exemplified excellence in the legal profession took “law very seriously, deeply seriously, because fragile as reason is and limited as law is as the expression of the institutionalized medium of reason, that’s all we have standing between us and the tyranny of mere will and the cruelty of unbridled, undisciplined feeling.” FELIX FRANKFURTER, *supra* note 14, at 189.

36. See Margherita M. Henning, *Excellence and Equality in American Education*, 25 ETC: A REV. OF GEN. SEMANTICS 447, 447 (1969) (“In American society, as in American education, precise meanings for the terms ‘excellence’ and ‘equality’ are virtually impossible because of their somewhat irrational emotional concepts or character—meaning different things to different people at different times.”).

37. See ASSAULT, *supra* note 5, at 23–24.

38. See also Thomas E. Schaefer, *One More Time: How Do You Get Both Equality and*

For instance, Ivy League institutions, including Yale, frontload their notions of excellence at the admission stage by selecting for test scores, which heavily emphasizes the ability to do well on exams under time pressure. Their rampant grade inflation has diluted the measurement of excellence after admission.³⁹ Such an inverse correlation between excellence and diversity makes reconciling the two difficult for Ivy League institutions. This unsurprisingly aligns with Kronman's vantage point as a long-time Yale faculty member. But he overlooks another kind of institution: military schools.⁴⁰

It is possible to have both diversity and excellence at places like military schools. Their admission process is relatively easier, but they flunk out a much higher percentage of their class and have clear metrics for the survivors as they are forged into soldiers. Their definition of "excellence" relates to achievements after admission and is based on a mix of learnables (e.g., physical training and engineering), intangibles (e.g., leadership skills), and socialization into a military mindset. Put differently, service academies can select for diversity at the front end while maintaining a standard of excellence throughout to ensure an excellent end product. By way of another example, institutions similar to the service academies already include community colleges, which are easy to admit students but difficult in grading their courses so that only

Excellence in Education?, 24 J. EDUC. THOUGHT 39, 50 (1990) (discussing the "public policy not [to] attempt to legislate excellence"; instead, "[t]he prime aim of legislation must be to provide the broadest possible opportunity for the many to choose excellence if they will").

39. See, e.g., VALEN E. JOHNSON, GRADE INFLATION: A CRISIS IN COLLEGE EDUCATION 4 (2003) ("Grade inflation compress all grades at the top, making it difficult to discriminate the best from the very good, the very good from the good, the good from the mediocre."); Rachel Treisman & David Yaffe-Bellany, *Grade Inflation Abounds, Faculty Say*, YALE DAILY NEWS (Sept. 13, 2017), <https://yaledailynews.com/blog/2017/09/13/grade-inflation-abounds-faculty-say/> [<https://perma.cc/B7PA-X9FF>] ("If there is one thing that Yale faculty members agree on, it's that getting an A at Yale is too easy."). Grades are meant to compare students to a standard of excellence. JAMES V. SCHALL, DOCILITAS: ON TEACHING AND BEING TAUGHT 181 (2016) [hereinafter DOCILITAS]. Inflating grades is no different than signaling to—and implicitly teaching—students that "there [is] no difference between the excellent and the shoddy or dubious." See *id.* But "[b]y making all academic performances equal or unimportant, we end up [with] having no meaning to academic performance." *Id.*; see also Amy L. Wax, *On Not Dreaming of Affirmative Action*, 17 U. PA. J. CONST. L. 757, 775 (2015) (discussing how to focus one's "energy and attention on acquiring skills and achieving educational excellence, rather than on seeking a change in the measures of achievement"—by changing the performance itself instead of other people's reactions to one's performance). Taking this train of thought further, grade inflation (which is sometimes equated with lax academic standards) is thus in and of itself anti-excellence.

40. In his 2000 lecture on diversity, Kronman disregarded the army as an educational institution, stating: "A diverse group of young people living and working together in some other setting (in the army, for example, or a large corporation) might also learn from their interactions with one another, but we would not on this account call the institution in question an *educational* institution." *Diversity*, *supra* note 5, at 868–69. According to Kronman, "the relations of those in [such an *educational*] institution must be structured around, and oriented toward, some central activity of teaching and learning, carried on in a discrete and disciplined way." *Id.*

excellent students are able to obtain necessary grades to transfer to four-year universities.⁴¹

In short, one group measures excellence at the entrance, the other at the exit. If colleges and universities adopt the service academies' model, they can reconcile diversity (at the entrance) and excellence (at the exit). In order for this to work, they need to go through a transitional period of grade deflation and return to the era of no grade inflation to pursue excellence.

B. Three Anti-Excellence Movements

Chapters Two through Four, respectively, warn of three anti-excellence movements that have swept colleges and universities: (1) the restriction of campus speech in the name of respect and inclusion; (2) the transformation of diversity from a political to a pedagogical value; and more recently, (3) the renaming of the past to fit our current understanding of equality.⁴² According to Kronman's diagnosis, these movements are the symptoms of the increasingly aggressive intrusion of politics to academia.⁴³ The normative antidote he prescribes is, as alluded to in the Book's title, no other than a return to the traditional pursuit of academic excellence.

1. Campus Speech

In response to the proliferation of trigger warnings, safe spaces, and student demonstrations aiming to force administrators to cancel their invitations to speakers, Kronman views colleges and universities as a special kind of community governed by expectations different from those in the political sphere.⁴⁴ The former has a duty to collaborate in

41. In fact, not long ago higher education used to be this way, which evidently gave rise to "the now infamous 'look to your left—look to your right' speech" as "a part of the Dean's opening remarks to the first-year class. 'Gentlemen,' he advised, 'look to the man on your left; now look to the man on your right. At the end of this year, one of you will not be here.'" By graduation, only one of three will remain. "This classic warning about the effects of the so-called revolving door admissions policy struck fear into the hearts of freshmen year after year and encouraged them early on to either 'fish or cut bait.'" Robert A. Stein, *In Pursuit of Excellence—A History of the University of Minnesota Law School, Part III: The Fraser Years—A Time of Excellence and Innovation*, 62 MINN. L. REV. 1161, 1181 (1978); accord RICHARD D. KAHLBERG, *BROKEN CONTRACT: A MEMOIR OF HARVARD LAW SCHOOL 5–6* (1992); Peter W. Martin, *Introduction: Looking Forward from the First 100 Years*, 73 CORNELL L. REV. 1248, 1251 (1988).

42. See ASSAULT, *supra* note 5, at 15–17, 215. The first and second movements are related due to how deeply free speech and intellectual diversity are intertwined. See also U.S. CONST. amend. I ("Congress shall make no law . . . abridging the freedom of speech . . .").

43. See ASSAULT, *supra* note 5, at 215; see also ARISTOTLE, I POLITICS 1253a-1 (c. 350 BCE) (discussing "that man is by nature a political animal"). But see *infra* note 86 (discussing how politics has long been intruding into academia).

44. ASSAULT, *supra* note 5, at 15, 77–84.

the search for truth; the latter does not.⁴⁵ This duty to collaborate comes with an obligation to converse with one another, such that mere declarations of feelings do not have an authority of their own because every statement of this kind must be subjected to searching scrutiny.⁴⁶ Thus, “truth is distinguished from error not because we happen to believe it but on account of its greater reality.”⁴⁷ Participants in this community of conversation, devoted to the pursuit of truth, embrace the essences of diversity and inclusion by separating the person from her ideas (and feelings) to freely challenge *what* she says without worrying about affecting *who* she is.⁴⁸ It is here that students learn to be open-minded and have sufficient intellectual humility to suspend their preconceived judgment and disagreement to empathize and understand views different from their own.⁴⁹ According to Kronman, students ought to “learn that their pains and pleasures, experiences and beliefs, are not valid simply because they are theirs,” and be weaned away from this habit to have the courage to cross-examine their feelings and beliefs with the possibility of disrupting or dislodging them.⁵⁰ As he elaborated in his 2000 lecture on diversity, this purpose of learning “is what makes them *students* rather than something else.”⁵¹

45. *Id.* at 16; see also FELIX FRANKFURTER, *supra* note 14, at 24 (describing his own professors as “the best products of civilization—dedication of lives of great powers to the pursuit of truth, and nothing else, complete indifference to all the shoddiness, pettiness and silliness that occupies the concern of most people who are deemed to be important or big”); cf. DOCILITAS, *supra* note 39, at 14 (“[I]n many ways, all really great books are the same book. That is, they are searched for the truth, for the excellent, for what we do not have but what we search for.” (emphasis added)). *But see* Whitney v. California, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring) (“Those who won our independence believed that the final end of the State was to make men free to develop their faculties; . . . that public discussion is a political duty; and that this should be a fundamental principle of the American government.”).

46. ASSAULT, *supra* note 5, at 16.

47. *Id.*

48. See also HENRY ADAMS, THE EDUCATION OF HENRY ADAMS 300 (1918) (“A teacher is expected to teach truth”); James V. Schall, *On the Mystery of Teachers I Never Met*, in ON THE UNSERIOUSNESS OF HUMAN AFFAIRS 64 (2001) (“[T]eachers cannot be paid for what they teach. What they teach, if it is true, is not theirs. They do not own it. They did not make it or make it to be true.”). Hence, *ad hominem* attack is a logical fallacy. Note that *diversity* and *inclusion* in this sense mean *including* everyone from any *diverse* background regardless of what she says.

49. See ASSAULT, *supra* note 5, at 105.

50. *Id.*; see also Milk Wagon Drivers Union of Chicago, Local 753 v. Meadowmoor Dairies, 312 U.S. 287, 293 (1941) (Frankfurter, J.) (“Back of the guarantee of free speech lay faith in the power of an appeal to reason by all the peaceful means for gaining access to the mind.”); Abrams v. United States, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting) (“Persecution for the expression of opinions [is] perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition.”); Louis Auchincloss, *The Long Life and Broad Mind of Mr. Justice Holmes*, AM. HERITAGE (June/July 1968), <https://www.americanheritage.com/long-life-and-broad-mind-mr-justice-holmes> [<https://perma.cc/RC9K-6YXF>] (“[M]ore than once, in defending free speech in his correspondence, [Justice Holmes] said that it was the right ‘of a fool to drool.’” (quoting Oliver Wendell Holmes Jr.)).

51. *Diversity*, *supra* note 5, at 868; see also JOHN HENRY NEWMAN, THE RISE AND PROGRESS

While I concur with Kronman's broader point on free speech, he fails to acknowledge that students' feelings or gut instincts can actually be *valid* simply because they are theirs.⁵² However, those feelings are subjective and others cannot objectively confirm them despite the students' ability to express such feelings (as they can lie with false expressions), just as we cannot objectively confirm the existence of the afterlife while we are still alive. Students ought to learn the art of self-examination to locate and express the rooted reason that sprouted those feelings and to engage in conversation with others using such reason, not feelings.⁵³ This is one purpose of education. Another purpose is to teach students the ability to engage opposing arguments seriously—i.e., to enable students to learn to distance themselves from their feelings long enough to be able to soberly consider and assess the other side's arguments.⁵⁴ If students cannot emotionally permit themselves to consider the possibility that the other side has valid arguments, then they cannot engage in reasoned discourse, even if they can articulate their arguments in reasoned terms.⁵⁵ This does not mean, however, that

OF UNIVERSITIES AND BENEDICTINE ESSAYS 74 (1872) (“An academical system without the personal influence of teachers upon pupils, is an arctic winter; it will create an ice-bound, petrified, cast-iron University, and nothing else.”). In addition to *student's* meaning “to study” (which shares the same root) and “to learn,” its Latin origin means “to take pains.” *Student*, DICTIONARY.COM (last visited Nov. 3, 2019), <https://www.dictionary.com/browse/student> [<https://perma.cc/NTE8-H5ER>].

52. See ASSAULT, *supra* note 5, at 105. Perhaps the terms that Kronman uses (such as “valid” or “politics”) have different meanings to him than how readers may perceive and understand them. For instance, readers may be left wondering whether the term “politics” used by Kronman throughout the Book includes federal and state funding for public colleges and universities, which have always been there throughout history. See also *infra* note 86 (discussing the historical interaction of universities and public funding). If so, how is funding politics different than diversity politics, where the former have always had a place in public colleges and universities but the latter did not? In short, he could have and should have defined such words (and their metes and bounds) in order for readers to be on the same page.

53. See ASSAULT, *supra* note 5, at 92 (“[I]t is the teacher’s responsibility to point out that arguments . . . must be supported by reasons” (internal quotation marks omitted)).

54. See, e.g., Brief of Columbia University, Harvard University, Stanford University and the University of Pennsylvania as Amici Curiae, Regents of Univ. of Calif. v. Bakke, 438 U.S. 265 (1978) (No. 76-811), 1977 WL 188007, at *12–13 (“A primary value of liberal education should be exposure to new and provocative points of view, at a time in the student’s life when he or she has recently left home and is eager for new intellectual experiences.”).

55. See *id.* An “ideal speech situation” requires participants to have the same capacities of discourse and social equality solely on the basis of reason and evidence in an environment completely free of any non-rational coercive influences, including both physical and psychological coercion. See Jürgen Habermas, *Reflections on the Linguistic Foundation of Sociology: The Christian Gauss Lecture, Princeton University, February–March 1971*, in ON THE PRAGMATICS OF SOCIAL INTERACTION: PRELIMINARY STUDIES IN THE THEORY OF COMMUNICATIVE ACTION 89, 97–99 (Barbara Fultner trans. 2001); see also JAMES A. MONTMARQUET, EPISTEMIC VIRTUE AND DOXASTIC RESPONSIBILITY 21, 23 (1993) (discussing four relevant intellectual virtues: (1) epistemic *conscientiousness*—a desire to achieve the proper ends of the intellectual life, especially the desire for truth and the avoidance of error; (2) *impartiality*—“an openness to the ideas of others, the willingness to exchange ideas with and learn from them, the lack of jealousy and personal bias directed at their ideas, and the lively sense of one’s own fallibility”; (3)

their gut instincts or feelings are inauthentic or invalid, or even necessarily wrong.

Kronman also takes the students' declarations of feelings and beliefs at face value instead of injecting a healthy dose of skepticism, such as whether the students' actions might have been an expression of a will to power or a desire to evade requirements and expectations.⁵⁶ More broadly, he accepts students as model individuals with desires to learn while excluding the possibility that some may simply want an honorific diploma without putting in the work to obtain the education that accompanies it or are most interested in politics and see campuses as a playground for practice.

2. Race and Gender Diversity

Kronman criticizes *Regents of the University of California v. Bakke* for opening the Pandora's box that has resulted in more than forty years of harm done to colleges and universities.⁵⁷ *Bakke* forbid schools from pursuing affirmative action directly but permitted them to use race as one of the factors to pass on applications—under the banner of diversity.⁵⁸ But importing social justice into academia has encouraged a culture of grievances that narrows horizons and inhibits honest reflection, teaching “students to view themselves as victims and wrongdoers; to act as spokespersons for the racial, ethnic, and other groups to which they belong; and to believe they are fatally confined in their loyalties and judgments by characteristics beyond their power to

intellectual *sobriety*—“the virtues of the sober-minded inquirer, as opposed to the ‘enthusiast’ who is disposed, out of sheer love of truth, discovery, and the excitement of new and unfamiliar ideas, to embrace what is not really warranted, even relative to the limits of his own evidence”; and (4) intellectual *courage*—“the willingness to conceive and examine alternatives to popularly held beliefs, perseverance in the face of opposition from others (until one is convinced one is mistaken), and the determination required to see such a project through to completion”).

56. See ASSAULT, *supra* note 5, at 189–212; *cf.* *United States v. Ballard*, 322 U.S. 78, 85–86 (1944) (discussing fraudulent religious beliefs). See generally IMMANUEL KANT, CRITIQUE OF PURE REASON A 761 = B 789–90 (1781) (finding skepticism a sanctuary “for human reason, where it can reflect upon its dogmatic wanderings and make survey of the region in which it finds itself, so that for the future it may be able to choose its path with more certainty”).

57. ASSAULT, *supra* note 5, at 17; see also *N. Sec. Co. v. United States*, 193 U.S. 197, 364 (1904) (Holmes, J., dissenting) (“Great cases, like hard cases, make bad law.”); Frederick Schauer, *Analogy in the Supreme Court: Lozman v City of Riviera Beach, Florida*, 2013 SUP. CT. REV. 405, 432 (“[O]ften the least important cases are . . . the most instructive.”). See generally *Regents of Univ. of California v. Bakke*, 438 U.S. 265 (1978) (holding that (1) specific racial quotas, such as the 16 out of 100 seats set aside for minority students by University of California, Davis medical school, were unconstitutional, but (2) race may be one of a number of factors considered by schools in passing on applications, and (3) since the school could not show that the white applicant would not have been admitted even in the absence of the special admissions program, the applicant was entitled to admission); *Fisher v. Univ. of Texas at Austin*, 570 U.S. 297 (2013) (affirming *Bakke*'s holdings).

58. ASSAULT, *supra* note 5, at 17.

change.”⁵⁹ It has also promoted a form of solidarity that corrupts the spirit of individualism and self-discovery and pressures individuals to speak as representatives of a group, inhibiting their development and growth and negating their individual choice.⁶⁰ According to Kronman, this is contrary to the purpose of admitting students, which is to give them a formal education, not “to ensure they are treated with equal respect or to secure a greater measure of social justice.”⁶¹

While treating students with respect (not necessarily as equals but as students and as fellow human beings) need not be the purpose of admitting students, it is still the right thing to do, as it gives them an inclusive and comfortable environment devoid of distractions and permits unitary focus on learning.⁶² It is not mutually exclusive with, nor is it contrary to, giving students an education. To wit, colleges and universities may pursue excellence, and at the same time, treat their students with respect.

3. Renaming Campuses

Kronman finds students’ passionate campaigns for renaming campuses dangerous.⁶³ His novel contribution to the current

59. *Id.* at 17, 144–46.

60. *Id.* at 146–58; *see also* ADAMS, *supra* note 48, at 302 (“Any large body of students stifles the student.”).

61. ASSAULT, *supra* note 5, at 162; *see also id.* at 11 (Education “lies mainly in the shaping of men’s interests and aims. If you convince a man that another way of looking at things is more profound, another form of pleasure more subtle than that to which he has been accustomed—if you make him really see it,” then “the very nature of man is such that he will desire the profounder thought and the subtler joy.”) (quoting Oliver Wendell Holmes Jr., *The Use of Law Schools: Oration Before Harvard Law School Association*, in COLLECTED LEGAL PAPERS 37 (1920))). But at the same time, *de gustibus non est disputandum*.

62. *See* *Furman v. Georgia*, 408 U.S. 238, 410 (1972) (Blackmun, J., dissenting) (“It is comforting to relax in the thoughts—perhaps the rationalizations—that this is the compassionate decision for a maturing society; that this is the moral and the ‘right’ thing to do; that thereby we convince ourselves that we are moving down the road toward human decency.” Indeed, “we are less barbaric than we were in 1879, or in 1890, or in 1910, or in 1947, or in 1958, or in 1963, or a year ago”); ARISTOTLE, NICOMACHEAN ETHICS 1098a15–16 (c. 340 BCE) (“[H]uman good turns out to be activity of soul in accordance with virtue, and if there are more than one virtue, in accordance with the best and most complete.”). The *raison d’être* of diversity and inclusion programs is to foster a community of *tolerance* (i.e., instantaneous, unconditional—including non-judgmental—acceptance of differences). This sort of environment allows students from diverse backgrounds to comfortably be themselves—to learn, to excel, and to thrive—in order to become the best versions of themselves. *See also id.* at 1097a15–98b8 (defining happiness (eudaemonia) as the exercise of vital powers, along lines of excellence, in a life affording them scope); RICHARD TAYLOR, RESTORING PRIDE: THE LOST VIRTUE OF OUR AGE 21 (1995) (viewing pride as “the justified love of oneself for having achieved personal excellence”); AMY L. WAX, RACE, WRONGS, AND REMEDIES: GROUP JUSTICE IN THE 21ST CENTURY 62 (2009) (“Education is an individual responsibility, and each student is the gatekeeper of his or her own educational success. Progress depends on each student’s effort and discipline.”).

63. ASSAULT, *supra* note 5, at 18.

scholarship⁶⁴ is in telling the story of Yale renaming Calhoun College and the Master title of the residential colleges from his perspective as a Yale faculty member. After initially refusing to rename Calhoun College, Yale's President appointed an advisory Committee to Establish Principles on Renaming and subsequently applied the Committee's principles to reverse his earlier decision and rename Calhoun College to promote the spirit of inclusion on campus.⁶⁵ But colleges and universities, as beneficiaries and custodians of the past,⁶⁶ have a special duty to resist such a demand and the temptation to please students as customers.⁶⁷ That is because colleges and universities owe a responsibility to foster an environment of tolerance for ambiguity and dissonance that would be "the best antidote to the spirit of righteous conviction that confines the soul within narrow bounds by conferring a moral authority on its existing prejudices and exposes it to the danger of blindly deferring to the opinions of the group or tribe to which one belongs."⁶⁸ Heeding the old adage that those who cannot remember the

64. See, e.g., EDUCATION'S END, *supra* note 5; DAVID O. SACKS & PETER A. THIEL, THE DIVERSITY MYTH: MULTICULTURALISM AND POLITICAL INTOLERANCE ON CAMPUS (1995); DINESH D'SOUZA, ILLIBERAL EDUCATION: THE POLITICS OF RACE AND SEX ON CAMPUS (1998); LUKIANOFF & HAIDT, *supra* note 4; HEATHER MAC DONALD, THE DIVERSITY DELUSION: HOW RACE AND GENDER PANDERING CORRUPT THE UNIVERSITY AND UNDERMINE OUR CULTURE (2018); cf. AINSWORTH RAND SPOFFORD, A BOOK FOR ALL READERS 3 (1900) ("Most books are but repetitions, in a different form, of what has already been many times written and printed . . . Most writers are mere echoes, and the greater part of [scholarship] is the pouring out of one bottle into another."). According to the Book's abstract, "Kronman is the first to tie today's campus clashes to the history of American values . . . to argue that our modern controversies threaten the best of our intellectual traditions." ASSAULT, *supra* note 5, at Book Jacket.

65. ASSAULT, *supra* note 5, at 189–212. For an earlier account of Yale's forcing liberal orthodoxy onto its students, see WILLIAM F. BUCKLEY JR., GOD AND MAN AT YALE: THE SUPERSTITIONS OF "ACADEMIC FREEDOM" (1951).

66. For example, Yale University's very namesake originated from Elihu Yale, a slave trader who gifted the school over four hundred "books, a portrait and coat of arms of King George I, and nine bales of goods" in the 1710s, which "was the largest private contribution made to the college for the next century." *Do You Elihu? The History of Elihu*, YALE UNIV. (2019), <https://doyouelihu.yale.edu/history-elihu> [<https://perma.cc/6J2S-FSBC>]. See generally CRAIG STEVEN WILDER, EBONY AND IVY: RACE, SLAVERY, AND THE TROUBLED HISTORY OF AMERICA'S UNIVERSITIES 17 (2013) (discussing how the first five colleges in the British American colonies—including Harvard, William and Mary, and Yale—were "major beneficiaries of the African slave trade and slavery").

67. ASSAULT, *supra* note 5, at 18.

68. *Id.* Kronman equates what he calls "tolerance for ambiguity and dissonance" with Judge Learned Hand's "spirit of liberty"; the spirit that "is not too sure that it is right." It encourages doubt and self-reflection and breaks the tendency to go along with what "everyone is saying." The people "who succeed in acquiring it take in more of the world and of themselves. They achieve a spaciousness of outlook and feeling." That is, "[t]heir souls are larger, freer, more developed." *Id.* at 19 (quoting Learned Hand, *The Spirit of Liberty*, in THE SPIRIT OF LIBERTY 190 (1944)); see also Frederick Schauer, *The Jurisprudence of Reasons*, 85 MICH. L. REV. 847, 847 (1987) (discussing "the tolerance for the wrong answer"); F. Scott Fitzgerald, *The Crack-Up*, ESQUIRE (Feb. 1936) ("[T]he test of a first-rate intelligence is the ability to hold two opposed ideas in the mind at the same time, and still retain the ability to function. One should, for example, be able to see that things are hopeless and yet be determined to make them otherwise."); Sharon Chiang, *The Biology*

past are doomed to repeat it,⁶⁹ Kronman discourages forgetting the past by erasing all reminders of prior mistakes and instead encourages confronting such mistakes to learn all we can from them.⁷⁰

Here, Kronman exaggeratedly equates the renaming of campuses to the “erasure of the past” and fails to acknowledge the fact that the past is also documented in history books and encyclopedias, among other places (including websites easily accessible through our smart phones such as Wikipedia).⁷¹ Furthermore, naming a building occupies a place of honor, prestige, and respect in our society, not unlike naming law firms and other private organizations to honor the few living and no-longer-living named partners.⁷² Though we ought to judge our ancestors by the moral standards of their time, not ours, removing their names from a place of honor, prestige, and respect is hardly incorrect, as it is the living’s choice to honor, and how to honor, (or not honor) the no-longer-living.⁷³

of *Good and Evil*, BERGER INSTITUTE (Apr. 13, 2017), <https://www.bergerinstitute.org/2017/04/13/the-biology-of-good-and-evil/> [<https://perma.cc/7HK2-JDF8>] (citing Robert M. Sapolsky, Class Day Lecture at Stanford University: The Uniqueness of Humans (June 13, 2009)) (discussing how “humans have the capacity to simultaneously believe in two contradictory things”).

69. GEORGE SANTAYANA, *THE LIFE OF REASON: THE PHASES OF HUMAN PROGRESS* 284 (1905); see ASSAULT, *supra* note 5, at 167 (“Our changing understanding of what *really* happened and *why* it was important is as much a part of this effort as the plans we make for the future, where nothing has yet happened at all.”). But at the same time, unfortunately, “[t]he younger generation [is] often bored with the past.” LOUIS AUCHINCLOSS, *Collaboration*, in *MANHATTAN MONOLOGUES* 89, 110 (2002). And most “Americans care so little about history. Even their own—so far as the history of other countries is concerned, they are perfectly blank.” JOHN DERBYSHIRE, *SEEING CALVIN COOLIDGE IN A DREAM* 21 (1996).

70. See ASSAULT, *supra* note 5, at 166–89. Kronman’s view aligns with the reasoning for the initial decision of Yale’s president. See *id.* at 190–91; see also SIMONE WEIL, *THE NEED FOR ROOTS* 48, 51–52 (Arthur Wills trans. 1952) (“The destruction of the past is perhaps the greatest of all crimes. Today the preservation of what little of it remains ought to become almost an obsession.”).

71. See ASSAULT, *supra* note 5, at 174. But see H. Albert Liou & Jasper L. Tran, *Internet (Re)Search by Judges, Jurors, and Lawyers*, 9 *IP THEORY* 1, 9–10 (2019) (discussing and collecting cases on Wikipedia’s unreliability).

72. See also THOMAS HOBBS, *LEVIATHAN* 56, 117 (1904) (A.R. Waller, ed.) (“To give great gifts to a man[] is to Honour him” because “men are continually in competition for Honour.”). Kronman uses the term *honor* but does not mean it as prestige or respect. See ASSAULT, *supra* note 5, at 163, 207 & 209. See generally JAMES BOWMAN, *HONOR: A HISTORY* (2006) (surveying the historical evolution of honor across many cultures).

73. See, e.g., HENRY WOOD NEVINSON, *RUNNING ACCOMPANIMENTS* 52 (1936) (“It is natural for each generation to scoff at its predecessor, and, like the bright young man in Homer, to boast itself much better than its fathers. A beggar mounted must naturally be taller than the horse, and a child on [her] father’s shoulders glories in [her] elevation.”); Harriet Trubee Garlich, *Our Stratford Ancestors*, 14 *AM. MONTHLY MAG.* 186 (1899) (“Judge not our ancestors too harshly; they lived, according to their light, true and noble lives. Two hundred years in the future will not our descendants judge this age, even as we are judging the centuries that are past?”); cf. *Brown v. Allen*, 344 U.S. 443, 479 (1953) (“Past practice is evidence of past attitude of mind. That attitude is shown to no longer control the action of officials” in the present.). At the same time, it is, of course, not this Review’s purpose to deny or minimize past injustices of class, gender, race, region, and other kinds (including those to be discovered). Indeed, “if we have learned anything from the

C. Takeaways

The Epilogue closes with a call for colleges and universities to not abandon but rather to keep faith in and embrace the pursuit of excellence that is rare, fine, and “recognizably, teachably, lastingly different from mediocrity and failure . . . the strength to persevere in the search for truth; the capacity to live with awful ambiguities; and the resolve to be an individual, not just the representative of a group.”⁷⁴ What has remained constant throughout Kronman’s more than five decades in academia is admittedly his unwavering belief that colleges and universities are not political institutions due to their different values and expectations, and that their work is not the pursuit of politics.⁷⁵

Yet Kronman could have expanded this relatively short Epilogue (only a little over four full pages of text)⁷⁶ to include the consequences of the inevitable next steps, such as the invasion of politics into specific departments that have traditionally been shielded (e.g., science, technology, engineering, and math (“STEM”)).⁷⁷ He also did not distinguish between different departments on campuses as to whether one is more or less (e.g., classical liberal art and political science vs. STEM, respectively) affected by politics than the others.

CONCLUSION

As Kronman readily admitted (elsewhere), “the most gratifying form of flattery for an author [is] to have his or her ideas taken

significant evolution in the prevailing societal views and official policies toward members of minority races and toward women over the past half-century, it is that even the most familiar and generally accepted of social practices and traditions often mask an unfairness and inequality that frequently is not recognized or appreciated by those not directly harmed by those practices or traditions.” In re Marriage Cases, 183 P.3d 384, 451 (Cal. 2008). Half a century prior, Frankfurter wisely and rightly foresaw that “[o]nly the constructive use of time will achieve what an advanced civilization demands and the Constitution confirms.” *Cooper v. Aaron*, 358 U.S. 1, 25 (1958) (Frankfurter, J., concurring). *But see WAX*, *supra* note 62, at 7–13 (explaining how it is only the victim who can ultimately save herself from drowning in—and pull herself out of—her own victimhood via the simple-yet-insightful “parable of the pedestrian”).

74. See ASSAULT, *supra* note 5, at 216.

75. See *id.* at 217. A dozen years earlier, Kronman shared his “deepest belief [that] has remained unchanged: that a college or university is not just a place for the transmission of knowledge but a forum for the exploration of life’s mystery and meaning through the careful but critical reading of the great works of literary and philosophical imagination” EDUCATION’S END, *supra* note 5, at 6.

76. See ASSAULT, *supra* note 5, at 213–17.

77. See, e.g., MACDONALD, *supra* note 64, at 189–200 (discussing “how identity politics is harming the sciences” by altering their standards of competence). In a field that deals with life and death as does medicine, its standard of competence ought to not lower; else, death ensues. See *id.* at 194–95.

seriously, even if seriously means being sharply criticized and roundly rebuked[—]an author is [not] entitled . . . to anything more than having his or her ideas discussed.”⁷⁸ Disagreements and quibbles aside, this Review has not done enough justice to *Assault*, which—like Kronman’s other books⁷⁹—is unsurprisingly⁸⁰ excellent and worth reading in its entirety.

“The true question to ask respecting a book, is, *has it help[ed] any human soul?*”⁸¹ Kronman’s Book certainly has eased mine and possibly the souls of those who still believe in intellectual diversity and the pursuit of excellence. It may even help save the lost souls who are still perplexed about the increasingly aggressive intrusion of politics to higher education to better understand and formulate their stands on this issue.

In addition to Kronman’s professed belief that has remained constant throughout his academic career,⁸² the known constant in life is change.⁸³ For example, the foundation of all progress depends on change.⁸⁴ Higher education bears no exception—if Sisyphus were a scholar, his field would be higher education.⁸⁵ Even the purpose of

78. Transcript, *The Second Driker Forum for Excellence in the Law*, 42 WAYNE L. REV. 115, 118 (1995); see also Daniel A. Farber & Suzanna Sherry, *Telling Stories out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807, 850 (1993) (Since written scholarship “[is] part of an ongoing scholarly dialogue, even biting criticism is preferable to silence from other scholars Because scholarship is an interactive activity, the reader must be able to disagree with the author and dispute her ideas.”).

79. See *supra* note 23.

80. A book defending excellence ought to be excellent itself.

81. WALT WHITMAN, *DEMOCRATIC VISTAS* 74 (1888) (quoting the Librarian of Congress, Ainsworth Rand Spofford). But see Vincent Blasi, *Reading Holmes through the Lens of Schauer: The Abrams Dissent*, 72 NOTRE DAME L. REV. 1343, 1343 (1997) (“Even the best scholars rarely persuade. Mostly, they illuminate. They make us more discerning readers and interlocutors.”). Nevertheless, Kronman’s Book would have passed Blasi’s “litmus test for a work of scholarship”—being “as interesting on the third reading as on the first.” Vincent Blasi, *The Teaching Function of the First Amendment*, 87 COLUM. L. REV. 387, 407 (1987).

82. ASSAULT, *supra* note 5, at 217.

83. Attributed to Heraclitus of Ephesus (Greek philosopher, 535–475 BCE); see also BENJAMIN N. CARDOZO, *THE PARADOXES OF LEGAL SCIENCE* 10 (1928) (“There is change whether we will it or not.”). Change is especially quick in politics to please the fickle public. See, e.g., Philip Parnaments & Jay Van Bavel, *How Political Opinions Change*, SCI. AM. (Nov. 20, 2018), <https://www.scientificamerican.com/article/how-political-opinions-change/> [<https://perma.cc/NY4P-F55N>] (“[E]xperiment shows it’s surprisingly easy to change someone’s political views, revealing how flexible we are.”).

84. See, e.g., *The Safe Thing to Do*, 57 AM. ECONOMIST 295 (June 23, 1916) (quoting U.S. Senator Charles A. Towne as saying “all progress depends on change of mind”).

85. See David F. Labaree, *Educational Researchers: Living with a Lesser Form of Knowledge*, 27 EDUC. RESEARCHER 4, 9 (1998) (“If Sisyphus were a scholar, his field would be education.”); cf. Pierre Schlag, *Spam Jurisprudence, Air Law, and the Rank Anxiety of Nothing Happening (A Report on the State of the Art)*, 97 GEO. L.J. 803, 829 (2009) (“[A]cademics—with aspirations to intellectual excellence—are thus destined to play out the myth of Sisyphus. The main difference, of course, is that Sisyphus had a real rock to push up a real hill.”). See generally ALBERT CAMUS, *THE MYTH OF SISYPHUS* (1942).

colleges and universities has changed.⁸⁶ Yesterday's pursuit of excellence has become today's pursuit of egalitarianism.⁸⁷ To extrapolate, today's minority—including Kronman—that still fiercely defends intellectual diversity may inevitably become tomorrow's majority again.⁸⁸ For instance, Justice Sandra Day O'Connor writing for the majority in *Grutter v. Bollinger* expected no further need of using racial preferences in affirmative action programs by 2028.⁸⁹ After the dust of retributive social justice settles,⁹⁰ we may someday—perhaps

86. See, e.g., Ronald Reagan, Governor of Cal., Press Conference (Feb. 28, 1967) (successfully telling colleges to change their purpose to jobs because taxpayers are done “subsidizing intellectual curiosity”). If one follows the money, one may very well find the origin of how colleges and universities lost their traditional mission—to educate rather than merely train.

87. See ASSAULT, *supra* note 5, at 245 n.139 (In 1968, Columbia students lamented that they had “looked to the university to help them discover what life was about” but were not satisfied with the answers they received.” Additionally, “[t]hey criticized the university for falling short of its responsibility to provide an intellectual space in which inquiry could shed light on the most pressing questions of justice and human flourishing. In doing so, they implicitly affirmed the worthiness of this endeavor itself.”).

88. This conclusion follows Hegelian dialectics: thesis (intellectual diversity), antithesis (egalitarianism), and synthesis (their future reconciliation). See generally GEORG WILHELM FRIEDRICH HEGEL, ELEMENTS OF THE PHILOSOPHY OF RIGHT § 10 (1820). And needless to say, defenders of intellectual diversity (which implies more than one view) do not necessarily endorse or embrace *all* views—excluding the extreme, long-settled issues such as being pro-slavery or pro-Nazi.

89. 539 U.S. 306, 308, 310 (2003) (“The Court expects that 25 years from now, the use of racial preferences will no longer be necessary to further the interest” in “attaining a diverse student body.”); see also *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 780–81 (2007) (Thomas, J., concurring) (“[I]f our history has taught us anything, it has taught us to beware of elites bearing racial theories.”). *But see* Sandra Day O'Connor & Stewart J. Schwab, *Affirmative Action in Higher Education over the Next Twenty-five Years: A Need for Study and Action, in THE NEXT TWENTY-FIVE YEARS: AFFIRMATIVE ACTION IN HIGHER EDUCATION IN THE UNITED STATES AND SOUTH AFRICA* 62 (David Lee Featherman et al. eds., 2009) (“That 25-year expectation is, of course, far from binding on any justices who may be responsible for entertaining a challenge to an affirmative action program in 2028.”); Wax, *supra* note 39, at 768 (“Justice Sandra Day O'Connor’s twenty-five years of race-based admissions stretches out indefinitely on the horizon with no terminus in sight.”). While I will not go so far as Wax does, I am not optimistic that it will happen within this decade. See *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 448 (1975) (Blackmun, J., concurring) (“[M]ost attempts to predict the future[] will never be completely accurate.”); cf. *Wilson v. Layne*, 526 U.S. 603, 604–05 (1999) (“The state of the law was at best undeveloped at the relevant time, and the [judicial] officers cannot have been expected to predict the future course of constitutional law.”).

90. See, e.g., *Gratz v. Bollinger*, 539 U.S. 244, 302 (2003) (Ginsburg, J., dissenting) (“The Constitution is both color blind and color conscious . . . [—it] is color conscious to prevent discrimination being perpetuated and to undo the effects of past discrimination.” (quoting *United States v. Jefferson Cnty. Bd. of Ed.*, 372 F.2d 836, 876 (5th Cir. 1966))). *But see* *Forbes v. Apleyard*, 63 N.E. 894, 895 (Mass. 1902) (Holmes, J.) (“[T]he past cannot be undone.”); *Bell v. Beard*, No. 07-cv-1215, 2009 WL 689319, at *5 (W.D. Pa. Mar. 16, 2009) (“As powerful as federal courts are, they cannot undo past deeds, they cannot change the past.”); cf. *Carchman v. Nash*, 473 U.S. 716, 750 n.20 (1985) (Brennan, J., dissenting) (For “a vestigial remnant of the age-old concept of retributive justice[, n]o purpose is served except the destructive expression of a primitive urge for vengeance.” (quoting James V. Bennett, *The Last Full Ounce*, 23 FED. PROBATION 20, 20 (1959))).

necessarily⁹¹—have affirmative action programs for intellectual diversity.⁹²

91. Without intellectual diversity's help and rescue, we would fall prey to groupthink, dogmatism, and becoming cultural philistines (*Bildungsphilisters*). See *supra* note 13; FRIEDRICH NIETZSCHE, UNTIMELY MEDITATIONS 7–8 (1873–76).

92. History and experience, time and time again, have shown that treatment costs much more than prevention. See, e.g., Peter Huber, *Safety and the Second Best: The Hazards of Public Risk Management in the Courts*, 85 COLUM. L. REV. 277, 288 (1985) (“[E]very dollar invested in vaccination reaps an estimated potential savings of eleven dollars in reduced costs of treatment.”).