



Better Scholarship Through Diversity?

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Little-known fact: Harvard lawprof Elizabeth Warren once gave a speech to a Manhattan Institute luncheon crowd on the topic of asbestos bankruptcy trusts. As I recall, she gave a deft account of this abstruse but important subject, and I much doubt it would have improved anything had the Institute asked her to address the topic from the special vantage point of a female scholar. Much less did anyone imagine that Warren might bring some special insight to bear from her family tradition of remote Cherokee lineage, which has lately furnished **so much grist for critics**.

For many readers, the Warren-as-Cherokee brouhaha has been their first close look at the matrix of identity politics in which law schools operate. When HLS administrators began to claim Warren as a minority hire, they were under intense pressure for not having any female minority professors. These days, the relevant pressure is likely to take the form not so much of student occupiers but of relentlessly screw-turning accreditation agencies, **a process well described by Gail Heriot**.

Is this a mere identity spoils system, or does it amount to something nobler and more high-minded? The strong claim I want to focus on here is that diversity hiring improves the quality of scholarship in the traditional law curriculum by bringing distinctive minority insights that straight white Anglo abled males would not or could not have contributed. (I will leave for another post the question of how it might influence scholarly development on topics that do relate to identity, such as discrimination law.)

There's no definitive way to resolve this claim, I suppose, without agreeing on how to evaluate the now-vast literature advancing (e.g.) feminist approaches to torts, the "queering" of intellectual property law, and so on. I can only say that I must not be reading the right papers in this genre, because the papers I've read haven't impressed me. Given that criticizing identity-studies literature seems to be a good way to get **fired from one's writing gig**, I'd better stop there.

To me, time has vindicated the basic position staked out by Stephen Carter of Yale in his *Reflections of an Affirmative Action Baby*. Carter writes of the "Dear Minority Colleague" letters presuming he holds correct views on various topics, and the resentment aimed at minority faculty like himself who choose to specialize in scholarly topics having little or nothing to do with identity. Twenty years later it remains true that many of the minority lawprofs to have made the biggest impact on the outside world have been those who've **largely avoided identity themes** in their intellectual work, such as Carter himself and Stanford's William Gould, to whose number might be added Elizabeth Warren (to the extent she counts as minority) and Chicago's Barack Obama.

As I put it in **reviewing Carter's book**: "It doesn't take a white or a black mind to explode a fallacy: it takes a mind."