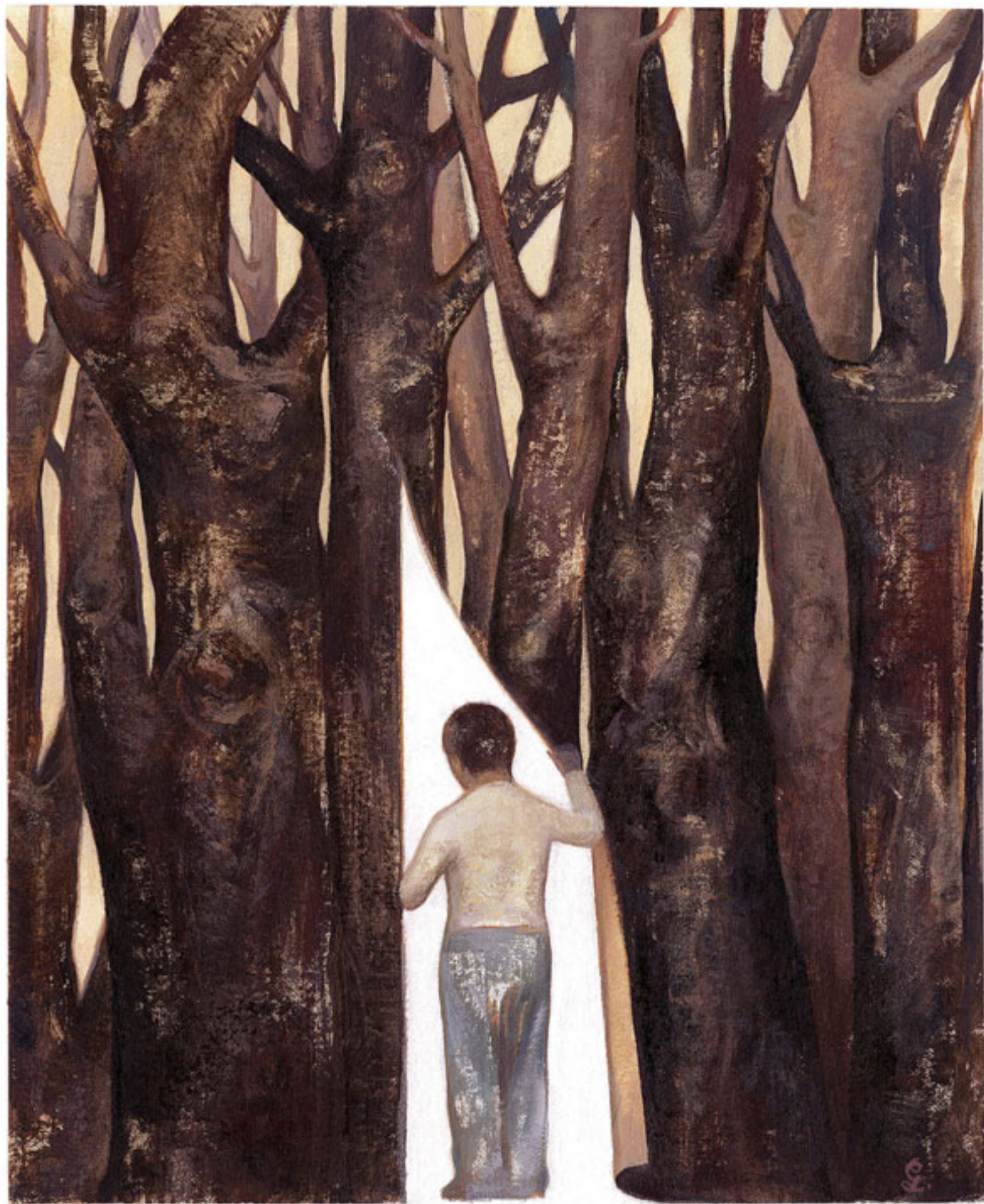


a walk of thanksgiving

THE FOLLOWING IS AN EXCERPT FROM PROFESSOR DAVID DOMINGUEZ'S
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AFFIRMATIVE ACTION CAN BECOME RACE-NEUTRAL BY 2028," *OREGON LAW
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by david
dominguez



LOS ANGELES, YALE, UC BERKELEY, AND BYU || I was raised in, at the time, one of the toughest sections of Los Angeles in the vicinity of the University of Southern California campus. There was no way I was supposed to reach my 18th year, let alone attend Yale University, receive legal training at the University of California, Berkeley, then move to Utah to join the law faculty at Brigham Young University, where I have been teaching for 20 years.

1954 || In 1954 all nine justices of the U.S. Supreme Court spoke with one voice in *Brown v. Board of Education*.¹ Henceforth, America would be a land where all children would get equal opportunity to excel academically. No longer would children be robbed of their educational promise on account of skin color. A new nation was truly born in 1954, and the unanimity among nine, quite diverse Supreme Court justices was striking. Of one accord, they issued a challenge to all Americans to do whatever was necessary, as quickly as necessary, to take the printed words of a legal opinion and turn them into a full-fledged reality of educational equity and racial harmony.

In 1954 my story began as well. I, the newest member of the Dominguez family, was the fourth child, the oldest being five years of age at the time. Even though this would mean six people scratching out a living in a tiny ramshackle “cottage” in one of the scariest sections of inner-city Los Angeles, there was unanimity of joy and celebration in the household.

Both for *Brown* and for the new brown child, the legal and social reality of racial discrimination in 1954 America meant lean times lay ahead. No matter how happy my father was at my birth, it did not increase employment opportunities or the size of the paycheck for a naturalized Mexican who immigrated with hope of achieving the American dream. He worked very hard but wound up with very little except bitter experiences of being told, “No Mexicans need apply,” or the ubiquitous sign “No dogs or Mexicans allowed.”

In 1962, when President Kennedy was forced to send federal marshals to assist in the enforcement of *Brown*, I did not know, as a boy of eight, that there was anything odd or amiss with the ethnic makeup of my predominately black and Latino neighborhood that included a smattering of virtually all other ethnic minorities. It did not faze me that the student population of my school included very few whites.

As every kid could testify growing up during my years in the killing fields of downtown and south central Los Angeles, the chances of surviving childhood in one piece were not good. If gangs, drugs, and gunfire did not claim us, sexually transmitted diseases would. If somehow

I made it to my 18th birthday, Vietnam was waiting to send me to a new killing field far, far away—most likely to come back home in a pine box.² Prospects were dim, to say the least, that *Brown* would ever mean anything to brown and black children.

JAIL || When I was 10 or 11, a bunch of children, including me, gathered on the playground. Since it was a Sunday, the playground was closed, and there was nothing to do. Bored and restless, someone suggested we break into the equipment room of the school and “liberate” the sports gear. Before the suggestion was complete, we were jimmying the lock into the facility. Once inside, we remembered that the best stuff was secured in a second-story closet. We climbed the steel ladder that led up to the closet and broke the lock. All inside, we marveled at the gloves, helmets, and baseball bats. One of the older guys blurted out, “Hey, we can fetch good coin for these items. I know where we can pawn this stuff.”

I was horrified. Breaking and entering to use the equipment struck me as worthwhile, even resourceful, but I had no desire to steal. I liked the playground director and could not bear the thought of him seeing me as a thief. So I started to back out of the room, saying to the others that I wanted no part of their plan. As my feet reached the threshold of the door, however, my heel caught on the lip of the threshold, and I started to fall straight back through the door. My knees buckled, and I fell headfirst from the second-story closet onto solid concrete. My body twitched uncontrollably, and then I froze.

I later learned from the other guys that they figured I had killed myself and that they would be blamed for causing the death. They immediately replaced all the sports equipment, ran away from the playground, and left me there sprawled out on the concrete, bleeding from my head.

We were all on our way to the jail at the juvenile detention center when the playground director, piecing together the story of how we almost stole the baseball gear, intervened. You might say he went to bat for me, and I was removed from the group headed for lockup. Apparently, it was decided that the night spent at the county psych ward and the baseball-size lump on the side of my head was punishment enough.

YALE || Then 1972 happened. I was 17 and looking to graduate from high school that year. I had enjoyed the party life of high school and was prepared to join the workforce. I had no thought of going to college the day I was summoned to meet with the high school counselor. Mrs. MacKenzie, the lead counselor, wasted no time: “Have you heard of Yale?”³ “No,” I replied. “Do you know where New Haven, Connecticut, is?” Again I replied that I had no idea

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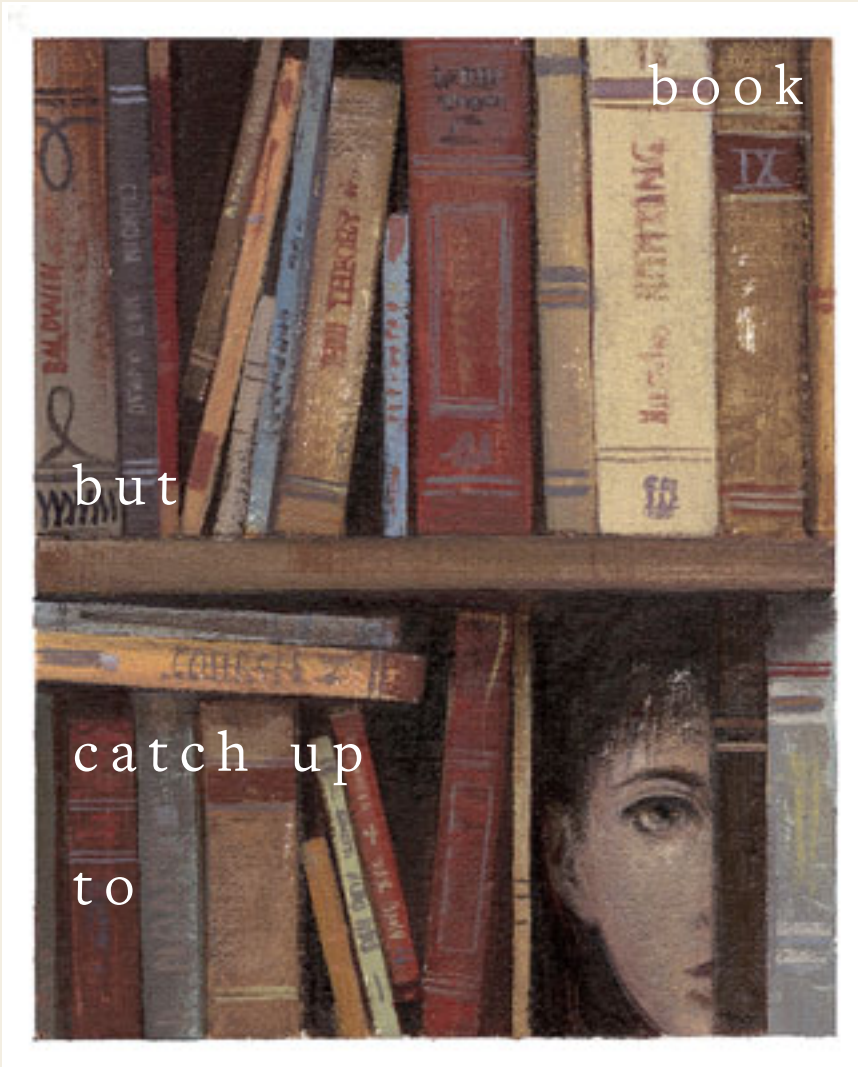
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of what she was talking about. She reached back to a large rolled-up map of the United States, placed it on her desk, unrolled it, and asked: "Do you know where Los Angeles is on the map?" I placed my finger on the large dot signifying the City of Angels, and Mrs. MacKenzie then lifted my finger and placed it back down on the extreme other side of the map: "Here is New Haven." She carefully explained that there was a group of illustrious universities on the East Coast known as the "Ivy League," and Yale, in particular, was aggressively pursuing a radical social and educational experiment called "affirmative action." Yale was asking Mrs. MacKenzie to identify one graduating senior who possessed the raw academic talent and boundless temerity to take his place in the 1972 entering class. "I immediately thought of you, David."

So the *Brown* decision, helped mightily by explosive riots in major cities, as well as ongoing street protests and public demonstrations around the country, found a way to deliver on its promise to me in 1972. "But why was I picked?" I wondered. I had done nothing to deserve the radical new trajectory of my life story.

It was soon painfully obvious to everyone that I did not merit an admissions spot in the Yale freshman class. I had no credentials to stack up against the academic prowess, amazing accomplishments, and cultural sophistication of my fellow "Elis." And this fact became abundantly clear when the first essay I wrote in English was returned to me covered in red ink with a note appended to the grade of zero. The professor wrote: "I would have given this paper an F, but that would be giving it too much credit."

Things went from bad to worse that first semester of my freshman year. Consequently, I decided that I would bide my time until the Christmas break rolled around, fly home, and never return. While pondering this plan over lunch one day in late November, a very pretty coed, Catie Stevens, asked what I was planning to do during the upcoming Thanksgiving weekend. When I said I'd be hanging around campus, she invited me to spend the weekend at her family estate in Wallingford. Mind you, the Stevens family, led by the father, John B. Stevens (J.B.), was truly the upper crust of East Coast society, and here I was, a low-class thug, for all intents and purposes, being asked to join in their traditional, family Thanksgiving dinner. I leapt at the chance!

That Thanksgiving the whole Stevens family made me feel completely at home despite the extreme cultural chasm between us. Catie's act at the dining hall of going well out of her way to show kindness was, I soon learned, a common trait of the Stevens family. Early the next morning, J.B. asked me to join him along a favorite footpath. As we walked along the snowy fields of the Stevens estate, J.B. inquired about my experience so far at Yale. I was so grateful for his love and comfort—and already impressed that Yale meant so much to his family with many generations of "Old Blues"—that I could not bring myself to answer his question honestly. I still felt the acute sting of that zero on my first English essay.

J.B. could see disconsolation written all over me. After I mumbled something similar to "Yale is a great place, but, maybe, I am just too far behind academically to ever catch up," he looked straight at me and asked if I was leaving something out, namely what I offered to the education of my Yale classmates. "Me?" I answered, incredulous at his suggestion. I thought to myself, the biggest "major" at my downtown Los Angeles high school was English as a second language! There is nothing I bring to the table at Yale except glaring, woeful deficiencies. I am totally out of my element, and there is no way I'll ever fit in. Yep, I am going to quit. Despite the hope of *Brown*, the "affirmative action" experiment failed.

J.B. could see the wheels spinning in my mind and took it upon himself to forever change my life with his challenge. He said:

Let's assume that it will take you working as hard as you ever have, day and night, for you to catch up to your classmates. Yes, it will be difficult, maybe even painful at times. But it can be done, and you can do it, or else Yale would not have asked you to join the freshman class. Now let's consider this from the other side of the fence. What would it take for them to catch up to lessons you have learned growing up the way you did? How long do you think your classmates would last if they were dropped suddenly into your neighborhood?

I remember smiling broadly inside, perhaps laughing out loud, at the thought of my preppy classmates trying to make it alive through even one day in the 'hood. J.B. said:

You see, you can catch up with their book learning, but can they catch up to your street smarts? How? They will not grasp what life is like for poor people in the inner city unless someone like you teaches them the lessons you learned the hard way. So go back and teach them. What you offer Yale is as important as what Yale offers you.

That morning walk and conversation with J.B. turned my life around. It was so wholly improbable that a top executive of a major international company would take a long walk with me. Why did Catie, then her dad, and the rest of the family go out of their way to help me?

I returned to Yale after Thanksgiving determined to make my voice speak for my family and the people of my background. It hit me full force that I needed to stick up for the guardian angels of my boyhood—devoted parents, teachers, playground leaders, and church folk—who did what they could to give me a second chance. To make a long story short, I brought my grades to respectable marks during my freshman year and then proceeded to excel for my remaining years.

But more to the point, I took the lesson of that Stevens family Thanksgiving to another level. I realized how few inner-city kids would ever learn the lesson J.B. taught me: What we have to teach the powerful is as important as anything they have to teach us.⁴

NOTES

1 347 U.S. 483 (1954).

2 See Lea Ybarra, *Vietnam Veterans: Chicanos Recall the War* 5 (2004). ("Mexican Americans accounted for approximately 20 percent of U.S. casualties in Vietnam, although they made up only 10 percent of this country's population at the time.")

3 For a second, I thought she pronounced the name as "jail," producing flashbacks and freaking me out.

4 I have taken J.B.'s wisdom to heart ever since. At Yale I started a service organization that called upon fellow Yalies to hang around poor Puerto Rican children living in New Haven so each side could communicate in new ways with the other. During law school at UC Berkeley, I cofounded the Minority Pre-Law Coalition on the undergraduate campus, which highlighted the exceptional leadership and scholastic abilities of students of color and grew to 300 college students, mostly of color, but including college classmates from all backgrounds. During my years as a law professor, I have applied J.B.'s teaching to many community struggles for freedom and justice.