

# “SAFE SPACES” AND THE EDUCATIONAL BENEFITS OF DIVERSITY

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## INTRODUCTION

In August 2016, the University of Chicago (UC) sparked a national controversy when it sent a letter to incoming UC students which stated: “[o]ur commitment to academic freedom means that . . . we do not condone the creation of intellectual ‘safe spaces’ where students can retreat from ideas and perspectives at odds with their own.”<sup>1</sup> The letter was authored by John (Jay) Ellison, Dean of Students of the College at UC, and it echoed a recent monograph on academic freedom by UC College Dean John Boyer which also criticized “safe spaces.”<sup>2</sup> Reaction to the letter was swift and pointed.<sup>3</sup> One-hundred and seventy-five of the University’s own faculty soon responded with their own letter defending safe spaces.<sup>4</sup> Nevertheless, many commentators also praised UC and condemned safe spaces as antithetical to learning and open discourse.<sup>5</sup>

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1. See Pete Grieve, *University to Freshmen: Don’t Expect Safe Spaces or Trigger Warnings*, CHI. MAROON, Aug. 24, 2016, <https://www.chicagomaroon.com/2016/08/24/university-to-freshmen-dont-expect-safe-spaces-or-trigger-warnings/> (citing and depicting full text of Letter from Dean John (Jay) Ellison to Class of 2020 Student[s]).

2. See JOHN BOYER, *ACADEMIC FREEDOM AND THE MODERN UNIVERSITY* 10 (2016), [https://college.uchicago.edu/sites/college.uchicago.edu/files/attachments/Boyer\\_OccasionalPapers\\_V10.pdf](https://college.uchicago.edu/sites/college.uchicago.edu/files/attachments/Boyer_OccasionalPapers_V10.pdf) (noting that UC does not “engage in censored practices, such as . . . ‘safe spaces,’ that would treat our students as being incapable of tough-minded and independent judgment.”).

3. See generally Sarah Brown & Katherine Mangan, *What ‘Safe Spaces’ Really Look Like on College Campuses*, 63 CHRON. HIGHER EDUC., Sept. 8, 2016 (summarizing responses to Dean Ellison’s letter).

4. See Letter to the Editor, *Letter: Faculty Respond To Ellison With A Letter Of Their Own*, CHI. MAROON, Sept. 13, 2016, <https://www.chicagomaroon.com/article/2016/9/13/letter-faculty-respond-ellison-letter/> (“To start a conversation by declaring that such requests [for safe spaces] are not worth making is an affront to the basic principles of liberal education and participatory democracy.”).

5. See generally Brown & Mangan, *supra* note 3 (describing various reactions to Dean Ellison’s letter).

UC’s letter did not define “safe space” and it is not clear what the university meant by the term,<sup>6</sup> but “safe space” most commonly refers to institutions and programs devoted to supporting minority students and other marginalized groups on college campuses.<sup>7</sup> For example, Stanford University’s Ujamaa house is a residential program which describes itself as “a safe space for residents to explore topics that are not a part of their academic journey . . . [through] intellectual engagement around the African Diaspora . . . .”<sup>8</sup> In September 2016, Morton Schapiro, President of Northwestern

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6. See *id.* (“Mr. Ellison’s letter once again left many scratching their heads about what a safe space even means . . . [.]”). The 175 UC faculty criticizing Dean Ellison note in their response letter, “[T]he [UC] administration confusingly disconnects ‘safe spaces’ it supports (see the list of mentoring services on the College’s own website) from ‘intellectual safe spaces’ that it does not . . . .” Letter to the Editor, *supra* note 4. Dean Boyer’s monograph did not include any additional reference such as “intellectual” when criticizing safe spaces. BOYER, *supra* note 2, at 10.

UC Professor Jerry Coyne attempted to clarify the meaning of “safe space.” See Jerry Coyne, *In Defense of the University of Chicago and Its Letter to First-Year Students*, WHY EVOLUTION IS TRUE (Sept. 5, 2016, 10:45 AM), <https://whyevolutionistrue.wordpress.com/2016/09/05/in-defense-of-the-university-of-chicago-and-its-letter-to-first-year-students/> (contending that Dean Ellison intended to challenge “safe intellectual spaces”: “[C]lassrooms and other places of academic discourse should not have restrictions on expression unless that expression constitutes harassment under university policy”) (emphasis removed). Professor Coyne did acknowledge that “the dean’s letter could have been clearer by explaining what ‘intellectual safe spaces’ mean . . . .” *Id.* However, even the existence of “intellectual safe spaces” is contested. See Brown & Mangan, *supra* note 3 (quoting Wesleyan University President Michael S. Roth as saying, “The idea that a safe space is a corridor for intellectual isolationism is a fantasy”). My view is that use of “safe space” to denote places of censorship or intellectual retreat is a misappropriation of the term.

7. See, e.g., Brown & Mangan, *supra* note 3 (“Students today use the term ‘safe space’ to describe [‘campus centers for women, LGBT students, and racial-minority students’].”); Teddy Amenabar, *The New Language of Protest*, WASH. POST, May 19, 2016, [http://www.washingtonpost.com/sf/style/2016/05/19/what-college-students-mean-when-they-ask-for-safe-spaces-and-trigger-warnings/?utm\\_term=.d9f083789796](http://www.washingtonpost.com/sf/style/2016/05/19/what-college-students-mean-when-they-ask-for-safe-spaces-and-trigger-warnings/?utm_term=.d9f083789796) (quoting student activist Fadumo Osman defining safe spaces as “place[s] where usually people who are marginalized to some degree can come together and communicate and dialogue and unpack their experiences”); L.V. Anderson, *U. Chicago Sent Incoming Freshmen a Letter Decrying Safe Spaces and Trigger Warnings*, SLATE, Aug. 25, 2016, [http://www.slate.com/blogs/xx\\_factor/2016/08/25/the\\_university\\_of\\_chicago\\_sent\\_incoming\\_freshmen\\_a\\_letter\\_decrying\\_safe.html](http://www.slate.com/blogs/xx_factor/2016/08/25/the_university_of_chicago_sent_incoming_freshmen_a_letter_decrying_safe.html) (“[S]afe spaces’ on campus typically describe extracurricular groups that are intended to be havens for historically marginalized students.”). Christina Paxson, *Brown University President: A Safe Space for Freedom of Expression*, WASH. POST, Sept. 5, 2016, [https://www.washingtonpost.com/opinions/brown-university-president-safe-spaces-dont-threaten-freedom-of-expression-they-protect-it/2016/09/05/6201870e-736a-11e6-8149-b8d05321db62\\_story.html?utm\\_term=.5bffa4022c0f](https://www.washingtonpost.com/opinions/brown-university-president-safe-spaces-dont-threaten-freedom-of-expression-they-protect-it/2016/09/05/6201870e-736a-11e6-8149-b8d05321db62_story.html?utm_term=.5bffa4022c0f) (describing contemporary meaning of “safe spaces” as “places where students from marginalized groups can come together to feel comfortable discussing their experiences and just being themselves”).

8. *Ujaama | Residential Education*, STANFORD, <https://resed.stanford.edu/house-profiles/theme-houses/ethnic/ujamaa> (quoting Jan Barker Alexander, Resident Fellow, Ujamaa House) (last visited Oct. 24, 2017).

University—UC’s main academic rival in the Chicago area—stated in his address to new Northwestern students that “people who decry safe spaces . . . just drive[] me nuts.”<sup>9</sup> President Schapiro defended safe spaces such as Northwestern’s Black House—a gathering place for Black students on campus.<sup>10</sup>

In media and public discourse, safe spaces are largely known through the eyes of their critics,<sup>11</sup> and spaces for Black students such as as Ujamaa and the Black House are frequent targets of criticism.<sup>12</sup> One common critique is that safe spaces cause balkanization: “the tendency for students to group themselves racially on campus.”<sup>13</sup> Critics claim that safe spaces undermine the educational benefits of diversity—the compelling interest that justifies universities’ race-conscious admissions policies<sup>14</sup>—by inhibiting interactions between

9. Peter Kotecki, *Schapiro to Freshmen: People Criticizing Safe Spaces ‘Drives Me Nuts’*, DAILY NORTHWESTERN, Sept. 21, 2016, <https://dailynorthwestern.com/2016/09/21/campus/schapiro-to-freshmen-people-criticizing-safe-spaces-drives-me-nuts/>.

10. *Id.* Earlier in the year, in a *Washington Post* op-ed, Schapiro discussed why it was necessary for Black students to have safe spaces. Morton Schapiro, *I’m Northwestern’s President. Here’s Why Safe Spaces for Students Are Important*, WASH. POST, Jan. 15, 2016, [https://www.washingtonpost.com/opinions/how-to-create-inclusive-campus-communities-first-create-safe-places/2016/01/15/069f3a66-bb94-11e5-829c-26ffb874a18d\\_story.html?utm\\_term=.af8e3e825814](https://www.washingtonpost.com/opinions/how-to-create-inclusive-campus-communities-first-create-safe-places/2016/01/15/069f3a66-bb94-11e5-829c-26ffb874a18d_story.html?utm_term=.af8e3e825814).

11. See Brown & Mangan, *supra* note 3 (“[T]he broader trend that those episodes [involving safe spaces] seem to point to can appear problematic: college campuses filled with overly sensitive students who find course assignments and dissenting viewpoints traumatizing.”).

12. See, e.g., Alec Dent, *Black Students Demand Segregated Spaces From White Students*, THE COLLEGE FIX (Jan. 6, 2016), <http://www.thecollegefix.com/post/25748/> (“This trend seems to stand against what Martin Luther King Jr. . . . and other civil rights leaders in the past envisioned for an integrated America.”); Frank Furedi, *Op-Ed, Campuses Are Breaking Apart into ‘Safe Spaces’*, L.A. TIMES, Jan. 5, 2017, <http://www.latimes.com/opinion/op-ed/la-oe-furedi-safe-space-20170105-story.html> (“When everyone retreats to their separate corners, that subverts the foundation on which a tolerant and liberal university is constituted.”); James Huffman, *The Real Cause of Campus Racism*, HOOVER INST. (Dec. 15, 2015), <http://www.hoover.org/research/real-cause-campus-racism> (“Special programming for minority students cannot help but convey . . . that campus officials believe students of color need extra help to succeed. . . . Some universities even provide separate (dare one say segregated) housing for students of particular races.”).

13. Anthony Antonio, *Diversity and the Influence of Friendship Groups in College*, 25 REV. HIGHER EDUC. 63, 65 (2001). Professor Antonio further notes that balkanization “has received such intense attention, in part, because it shatters idyllic conceptions of multicultural race relations.” *Id.*

14. See *Fisher v. Univ. of Tex. at Austin*, 136 S. Ct. 2198, 2208 (2016) (“*Fisher I* confirmed that ‘the decision to pursue “the educational benefits that flow from student body diversity” . . . is, in substantial measure, an academic judgment to which some, but not complete, judicial deference is proper.’”) (quoting *Fisher v. Univ. of Tex. at Austin (Fisher I)*, 133 S. Ct. 2411, 2419 (2013)); *Fisher I*, 133 S. Ct. at 2418 (“[O]btaining the educational benefits of ‘student body diversity is a compelling state interest that can justify the use of race in university admissions.’”) (quoting *Grutter v. Bollinger*, 539 U.S. 306, 325 (2003)); *Grutter*, 539 U.S. at 325 (“[S]tudent body diversity is a compelling state interest that can justify the use of race in university

students from different racial backgrounds.<sup>15</sup> Recent controversies at the University of Connecticut,<sup>16</sup> Oberlin College,<sup>17</sup> California State University, Los Angeles,<sup>18</sup> and other universities<sup>19</sup> have ignited debates about safe spaces for students of color, and various commentators linked UC’s letter to these controversies.<sup>20</sup> All of these

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admissions.”); *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 311–12 (1978) (Powell, J., concurring) (“[T]he attainment of a diverse student body . . . clearly is a constitutionally permissible goal for an institution of higher education.”).

15. See, e.g., Frank Bruni, *The Lie About College Diversity*, N.Y. TIMES, Dec. 12, 2015, [http://www.nytimes.com/2015/12/13/opinion/sunday/the-lie-about-college-diversity.html?&module=Detail&section-news-1&action=click&contentCollection=Opinion&region=Footer&module=MoreInSection&version=WhatsNext&contentID=WhatsNext&pgtype=article&\\_r=1](http://www.nytimes.com/2015/12/13/opinion/sunday/the-lie-about-college-diversity.html?&module=Detail&section-news-1&action=click&contentCollection=Opinion&region=Footer&module=MoreInSection&version=WhatsNext&contentID=WhatsNext&pgtype=article&_r=1) (“[E]ven if a school succeeds in using its admissions process to put together a diverse student body, it often fails at the more important goal that this diversity ideally serves: meaningful interactions between people from different backgrounds . . . [Universities have] done the opposite, indulging students’ desires for self-affirming enclaves—[through] ‘safe spaces’ . . .”); Letter from Gail Heriot & Peter Kirsanow to Catherine Lhamon (Mar. 21, 2016), <http://www.newamericancivilrightsproject.org/wp-content/uploads/2016/03/3.21LettertoOCROnRacialThemeHousing.pdf>, (“We do not understand how [racial/ethnic-themed residence programs] help achieve *Grutter*’s ideals of ‘meaningful diversity’ or prepare students to work in a racially diverse marketplace. Rather, by limiting students’ exposure to members of other racial and ethnic backgrounds, they are more likely to do the opposite.”); Mae Kuykendall & Charles Adside, III, *Unmuting the Volume: Fisher, Affirmative Action Jurisprudence, and the Legacy of Racial Silence*, 22 WM. & MARY BILL RTS. J. 1011, 1078 (2014) (“The existence of safe spaces, with premises of retreat and exclusivity, is logically incompatible with the claims for diversity admissions developed for Supreme Court approval.”); see also Kevin Woodson, *Diversity Without Integration*, 120 PENN ST. L. REV 807, 834 (2016) (“[R]acialized housing arrangements reinforce and aggravate patterns of campus segregation.”); *Id.* at 836 (“[A]lthough race- and ethnicity-based student groups can serve important functions . . . they also all too often have the unfortunate effect of further separating students on the basis of race and ethnicity.”).

16. See *Blacks-Only Dorm Created at UConn*, NEW OBSERVER, Jan. 31, 2016, <http://newobserveronline.com/blacks-only-dorm-created-at-uconn/> (“[Although it] would be attacked as ‘racist’ if done by whites, a blacks-only dormitory is being built at the University of Connecticut’s campus.”); Emily Deruy, *The Fine Line Between Safe Space and Segregation*, THE ATLANTIC, Aug. 17, 2016, <https://www.theatlantic.com/education/archive/2016/08/finding-the-line-between-safe-space-and-segregation/496289/> (“While many see the creation of safe spaces . . . as a positive step toward helping [minority students] navigate campus, others see it as resegregation and a step backward.”).

17. See Scott Jaschik, *Oberlin President Says No to Black Students’ Demands*, PBS NEWSHOUR, Jan. 22, 2016, <http://www.pbs.org/newshour/run-down/oberlin-president-says-no-to-black-students-demands/> (“Martin Krislov, the president, said that . . . he would not respond directly to the proposals from black students, which were termed nonnegotiable.”).

18. See Jeremy Beaman, *Cal State LA Offers Segregated Housing for Black Students*, THE COLLEGE FIX (Sept. 6, 2016), <http://www.thecollegefix.com/post/28906/> (“One [student] demand was for a . . . ‘housing space delegated for Black students . . . [which] would also serve as a safe space for Black CSLA students . . .”). See also Anthony Williams, *Black Student Union at California State University, Los Angeles Issues Demands*, AFRIKAN BLACK COALITION (Nov. 13, 2015), <http://afrikanblackcoalition.org/2015/11/23/black-student-union-at-california-state-university-los-angeles-issues-demands/> (containing the demands sent by the Black Student Union to the California State University, Los Angeles administration).

19. See *supra* sources at note 12 (criticizing safe space residential programs).

20. See, e.g., Beth McMurtrie, *Safe-Space Antagonist*, CHRON. HIGHER EDUC., Dec. 11,

incidents highlight the relationship between safe spaces and the educational benefits of diversity—an issue that is fraught with misunderstanding.

This Article defends safe spaces and argues that in spite of the claims of critics, they actually foster the educational benefits of diversity. The Article focuses mainly on institutions and programs devoted to Black students,<sup>21</sup> which have arguably been the most widely criticized of all safe spaces.<sup>22</sup> It argues that such safe spaces provide important support for the social and cultural adjustment of Black and other minority students, and that they do not create or promote balkanization.<sup>23</sup> Such safe spaces are open to all interested students, and they can provide unique educational opportunities for White and other outgroup students.<sup>24</sup>

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2016, <http://www.chronicle.com/article/Safe-Space-Antagonist/238641> (“[Amidst the debate sparked by Ellison’s letter,] minority students are asking for their own spaces on campus. But is that a celebration of multiculturalism or the promotion of segregation?”); Sameer Rao, *Cal State Housing Option Focused on Black Students Causes Controversy*, COLORLINES (Sept. 7, 2016), <https://www.colorlines.com/articles/cal-state-housing-option-focused-black-students-causes-controversy> (noting that the California State University, Los Angeles residence program devoted to the experiences of Black Americans “arrives amid a bigger debate about safe spaces on university campuses, particularly for students of color attending institutions wrestling with endemic racism”); Matthew Zehner, *UChicago Safe Space Letter: Let’s Agree on Definitions First*, ODYSSEY ONLINE (Sept. 1, 2016), <https://www.theodysseyonline.com/uchicago-safe-space-letter-lets-agree-on-definitions-first> (“Should the university promote organizations which offer students, especially students who are members of historically oppressed or disadvantaged minorities, a safe space where they can go and be free of judgment? Absolutely.”).

21. The Article does refer to “minority students” and “students of color” also, in order to denote some generalization of its arguments. Any reference to these two terms would also include Black students, and many (but not all) references specifically to Black students may be generalizable to other groups.

22. See, e.g., *supra* notes 12, 15, 16–18, & 20 (summarizing criticism of safe spaces for Black students on college campuses). The arguments in this Article also apply to safe spaces devoted to other racial and ethnic minority students, and they largely apply to other safe spaces on university campuses.

23. This Article does not argue that balkanization on college campuses is non-existent. Various studies and commentaries suggest that racial separation characterizes many fraternities and sororities, student groups, residence halls, and campus centers. See generally, Woodson, *supra* note 15, at 822–29 (discussing the “longstanding patterns of social segregation” that persist on campuses). However, the argument that safe spaces cause or even exacerbate this problem is weak. See *id.* at 860 (noting that “the existing empirical evidence” of a connection between “formally racialized space on campus” and balkanization is “far from conclusive”). Also, students of color tend to have far more cross-racial interactions than White students. See *infra* note 89 (summarizing data on cross-racial interactions).

24. The term “outgroup” refers to individuals who are not members of the group which is the focus of a given safe space. For simplicity’s sake, this Article generally treats White students as the outgroup, except where delineating other groups is helpful. Nevertheless, the arguments herein mostly apply to other outgroups: for example, Asian American students who are engaging safe spaces devoted to Black heritage and experiences.

Part I presents an overview of safe spaces for students of color and the support role that they play for these students. It discusses how safe spaces help minority students feel less isolated at predominantly White universities. In this way, safe spaces address a concern expressed by the U.S. Supreme Court in its recent rulings on race-conscious admissions policies.<sup>25</sup> By providing such support, safe spaces help universities to actualize the educational benefits of diversity.

Part II argues that contrary to popular discourse, safe spaces do not promote balkanization on campus. These spaces are open to all students, and many of them are quite welcoming to outgroup students. This Part uses examples from residential programs that focus on Black heritage and experiences and from Black student organizations. It also discusses the burden of integration that is placed on minority students and argues that White students should share this burden.

Part III illustrates how safe spaces can provide unique learning opportunities not only for students of color, but also for White students. This Part argues that rather than constituting a “retreat” from opposing viewpoints, safe spaces can serve as miniature “marketplaces of ideas,” where students share different perspectives that are not considered elsewhere on campus. This can occur through immersion in the issues and perspectives salient for one minority group, in a way similar to study abroad programs which involve immersion in a different culture and language. Safe spaces are thus venues for novel, enriching, and uncomfortable conversations that otherwise would not happen on campus.

The Conclusion lays out the broader implications of safe spaces for the educational benefits of diversity. It argues that universities should reframe the discourse on these benefits to include not only the integration of minority students into predominantly White spaces, but also the immersion of White students in safe spaces.

## I. SAFE SPACES: AN OVERVIEW

What exactly is a “safe space”? The term can be confusing because it is used in a variety of ways,<sup>26</sup> and public discourse on safe

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25. See *Fisher v. Univ. of Tex. at Austin (Fisher I)*, 133 S. Ct. 2411, 2418 (2013) (noting importance of “lessening . . . racial isolation”); *Grutter v. Bollinger*, 539 U.S. 306, 319 (2003) (highlighting need to ensure that “underrepresented minority students do not feel isolated or like spokespersons for their race”).

26. See Betty J. Barrett, *Is “Safety” Dangerous? A Critical Examination of the Classroom as a Safe Space*, 1 CANADIAN J. FOR SCHOLARSHIP TEACHING & LEARNING 1, 1 (June 21,

spaces has frequently conflated these various usages.<sup>27</sup> In its most common usage, the term refers to institutions on college campuses that are devoted to the needs of marginalized groups.<sup>28</sup> Often, safe spaces are physical places on campus, but they can also be organizations or specific gatherings. Examples of safe spaces include residential programs,<sup>29</sup> campus cultural centers,<sup>30</sup> minority student organizations,<sup>31</sup> and sometimes particular classes or events.<sup>32</sup> These institutions sponsor a variety of campus activities, ranging from

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2010), <http://files.eric.ed.gov/fulltext/EJ1073567.pdf> (“It has been argued that safe space is an overused but undertheorized metaphor in higher education.”) (citations omitted); Paxson, *supra* note 7 (noting that “the term [‘safe space’] is used in so many different ways”). *Cf. supra* note 6 and accompanying text (noting how the use of the term “safe space” can be confusing).

27. *See, e.g.*, Katherine Ho, *Tackling the Term: What is a Safe Space?* HARV. POL. REV. (Jan. 30, 2017), <http://harvardpolitics.com/harvard/what-is-a-safe-space/> (“[T]wo meanings of the term ‘safe space’ are distinctly different. Emotional safe spaces offer comfort and respectfulness; academic safety refers to the freedom to make others uncomfortable through intellectual debate. When used correctly, emotional and academic safe spaces are both beneficial for students. . . . But because the term ‘safe space’ is used interchangeably to refer to two very different ideas, the concepts themselves become conflated.”); Margaret Hu, *Safe Spaces are Necessary*, BROWN DAILY HERALD, Sept. 7, 2016, <http://www.browndailyherald.com/2016/09/07/safe-spaces-are-necessary/> (“‘Safe spaces’ in particular have been defined in various ways throughout history. . . . [L]ack of precision makes it rather hard to have productive discussion about them.”). *See also supra* note 6 (discussing confusion over usage of “safe space”).

28. *See supra* sources at note 7 (giving common meaning of “safe spaces”).

29. *See, e.g., supra* note 8 (describing Stanford University’s Ujamaa house as “safe space”).

30. *See, e.g.*, Brown & Mangan, *supra* note 3 (“While campus centers for women, LGBT, and racial-minority students weren’t specifically called safe spaces at first, . . . [s]tudents today often use the term ‘safe space’ to describe such centers.”). Campus cultural centers are non-residential physical places that support different groups of students, sponsor programs, and host the activities of minority student organizations. Cultural centers are also often the main link between university administrators and student of color organizations. This Article does not focus on such cultural centers, because student participation in them is more difficult to assess (they do not have residents as residential programs do or regular “members” as organizations do); and because their activities often overlap with those of student of color organizations. In fact, one important function of cultural centers is to provide a consistent physical space for student organizations’ events and other social gatherings. *See, e.g.*, GIC STUDENT GROUPS, <http://www.vpul.upenn.edu/gic/studentgroups.php> (last visited Oct. 24, 2017) (listing student organizations which use Albert M. Greenfield Intercultural Center at the University of Pennsylvania).

31. *See, e.g.*, Meera E. Deo, *Two Sides of a Coin: Safe Space & Segregation in Race/Ethnic-Specific Law Student Organizations*, 42 WASH. U. J.L. & POL’Y 83, 85 (2013) (“[M]any members of student organizations . . . recognize the importance of identity-based groups allowing otherwise-marginalized individuals a safe space . . .”).

32. *See, e.g.*, Barrett, *supra* note 26, at 3 (“[S]tudents perceive safe classrooms to be superior to others in enhancing their learning experience.”). Unlike campus programs, centers, and organizations devoted to marginalized groups of students, references to classrooms as “safe spaces” may not denote a focus on issues and challenges faced by a particular marginalized group. The notion of “safe space” espoused in this Article does denote such a focus.

academic and social support programs to cultural celebrations to discussions of salient issues for particular marginalized groups.

### A. Origins of “Safe” Spaces

There are differing views on when the term “safe space” was first used. Professor Vaughn Bell traces it back to the 1940s, when renowned psychologist Kurt Lewin began developing “sensitivity training” for corporate leaders.<sup>33</sup> Moira Rachel Kenney attributes the term “safe space” to the women’s movement of the 1960s and 70s,<sup>34</sup> and to then gay and lesbian bars and activist organizations during the same time period.<sup>35</sup> The late 1960s and early 1970s also saw a rise in campus activism among students of color,<sup>36</sup> and universities responded to this activism by creating campus centers devoted to particular racial and ethnic minority groups,<sup>37</sup> for women<sup>38</sup> and later

33. Vaughn Bell, *The Real History of the ‘Safe Space’*, MIND HACKS (Nov. 12, 2015), <https://mindhacks.com/2015/11/12/the-real-history-of-the-safe-space/>. Lewin drew upon techniques in group psychotherapy and emphasized the need for candid discussion and feedback without judgment of others. *Id.*

34. MOIRA RACHEL KENNEY, MAPPING GAY L.A.: THE INTERSECTION OF PLACE AND POLITICS 24 (2001) (“Safe space, in the women’s movement, was a means rather than an end and not only a physical space but also a space created by the coming together of women searching for community.”).

35. *See id.* at 24–25 (noting how gay and lesbian bars and activist organizations provided “safe space” in the 1960s and 70s). *See also* Paxson, *supra* note 7 (“The term [‘safe space’] emerged from the women’s movement . . . to refer to forums where women’s rights issues were discussed [and] was extended to denote spaces where violence and harassment against the lesbian, gay, bisexual, transgender and queer community would not be tolerated . . .”).

36. *See* George Lowery, *A Campus Takeover That Symbolized an Era of Change*, CORNELL CHRON., Apr. 16, 2009, <http://www.news.cornell.edu/stories/2009/04/campus-takeover-symbolized-era-change> (“Within weeks [of the Black student uprising at Cornell University], student uprisings occurred on the campuses of Dartmouth College and Princeton, Tulane and Howard universities.”); *Third World Student Strikes at SFSU & UCB 1968-1969*, ASIAN AMERICAN MOVEMENT 1968 (Jan. 17, 2008, 2:33 PM), <http://aam1968.blogspot.com/2008/01/third-world-student-strikes-at-sfsu-ucb.html> (“In 1968-69, African American, Asian American, Chicano and Native American students at San Francisco State College and University of California, Berkeley organized campus coalitions known as the Third World Liberation Front (TWLF). TWLF led student strikes demanded the establishment of Third World Colleges comprised of departments of Asian American, African American, Chicano and Native American Studies. Significance of these strikes were twofold [sic]: first, minority student were able to unite in solidarity against institutional racism and second, the strikes won the formation of Ethnic Studies programs.”). *See generally* DONALD ALEXANDER DOWNS, CORNELL ‘69: LIBERALISM AND THE CRISIS OF THE AMERICAN UNIVERSITY (1999) (describing how Black student uprising at Cornell University in 1969 led to creation of campus resources for Black students and other students of color); WAYNE GLASKER, BLACK STUDENTS IN THE IVORY TOWER: AFRICAN AMERICAN STUDENT ACTIVISM AT THE UNIVERSITY OF PENNSYLVANIA, 1967-1990 (2002) (describing how Black student activism in 1960s and 70s led to creation of campus resources at University of Pennsylvania).

37. *See id.* (describing universities’ reactions to protests).

38. *See, e.g.*, Maria Zanke, *Penn Women’s Center Celebrates 40 Years*, PENN CURRENT,

for LGBT students.<sup>39</sup> Eventually, these centers were labelled as “safe spaces.”<sup>40</sup> The term began appearing in academic literature in the mid-1990s, in the context of LGBT rights on campus,<sup>41</sup> and it was also applied to other resources focused on marginalized groups.<sup>42</sup> Many safe spaces became hubs for future social and political activism, as they gave students places to organize and disseminate information.

It is important to note that “safe” in this context does not mean being shielded from opposing perspectives, as the UC Deans assumed.<sup>43</sup> Rather, it means feeling “safe” to express perspectives and engage in debates that are outside of mainstream discourse and not properly considered in other campus venues.<sup>44</sup> Such discussions often focus on issues that are specific to one marginalized group and are not known or well understood by others.<sup>45</sup> “Safe” also does not mean free

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Sept. 12, 2013, <https://penncurrent.upenn.edu/2013-09-12/features/penn-women%E2%80%99s-center-celebrates-40-years> (“In 1973, second-wave feminism was in full force . . . . The feminist community at Penn staged a sit-in at College Hall, lasting four days and garnering nearly 200 participants. Among the protesters’ requests were rape counselors, alarms in restrooms, a campus shuttle service, extra lighting throughout campus, and self-defense classes. The group also requested an on-campus space for women. The University honored that request . . . .”).

39. See, e.g. LGBT CENTER AT THE UNIVERSITY OF PENNSYLVANIA, <http://www.vpul.upenn.edu/lgbtc/about.php> (“The Lesbian Gay Bisexual Transgender Center at Penn, one of the oldest and most active programs of its kind in the country . . . [was] [e]stablished in 1982 . . .”).

40. See, e.g., Brown & Mangan, *supra* note 3 (“While campus centers for women, LGBT, and racial-minority students weren’t specifically called safe spaces at first, . . . [s]tudents today often use the term ‘safe space’ to describe such centers.”).

41. *Id.*

42. See *supra* notes 7, 12–18, 27, 30, and accompanying text (explaining term’s contemporary prevalence on college campuses and mixed reaction accompanying its expansion).

43. See *supra* notes 1–2 (noting how Deans Ellison and Boyer characterize “safe spaces”).

44. See, e.g., Brian Arao & Kristi Clemens, *From Safe Spaces to Brave Spaces: A New Way to Frame Dialogue Around Diversity and Social Justice*, in THE ART OF EFFECTIVE FACILITATION 135, 139 (Lisa M. Landreman, ed., 2013), <https://ssw.umich.edu/sites/default/files/documents/events/colc/from-safe-spaces-to-brave-spaces.pdf> (arguing that activities in safe spaces are “inconsistent with the definition of *safety* as being free of discomfort or difficulty”); Barrett, *supra* note 26 at 3 (arguing that in safe spaces “students are sufficiently comfortable to take social and psychological risks by expressing their individuality (particularly their thoughts, beliefs, opinions, experiences, and creativity)”); Roestone Collective, *Safe Space: Towards a Reconceptualization*, 46 ANTIPODE 1346, 1362 (2014) (“Safe space is a space of uncertainty and change—reactively and proactively responding to and interacting with an insecure world.”).

45. See Amenabar, *supra* note 7 (quoting student activist Fadumo Osman, who defines safe spaces as “place[s] where usually people who are marginalized to some degree can come together and communicate and dialogue and unpack their experiences”); Paxson, *supra* note 7 (describing contemporary meaning of “safe spaces” as “places where students from marginalized groups can come together to feel comfortable discussing their experiences and just being themselves”).

from discomfort; in fact, safe spaces function to “address difficult or tension-filled learning encounters[,]”<sup>46</sup> by creating “learning environment[s] that allow students to engage each other with honesty, sensitivity, and respect.”<sup>47</sup> As such, the goal of safe spaces is to facilitate engagement of uncomfortable issues and to provide a supportive atmosphere for this endeavor.<sup>48</sup>

This Article focuses on safe spaces devoted to racial/ethnic minority groups,<sup>49</sup> which are directly tied to the compelling interest in diversity. It largely uses examples from spaces devoted to supporting Black students,<sup>50</sup> as these are a paradigmatic representation of safe spaces for minority students—in their purpose, functioning, and in the criticism they receive.<sup>51</sup>

### *B. Safe Spaces as Support Mechanisms for Minority Students*

The primary purpose of safe spaces is to serve as support mechanisms for minority students, by mitigating feelings of isolation among these students and helping them adjust to life on predominantly White campuses. In this way, safe spaces promote the compelling interest in diversity upheld by the U.S. Supreme Court in *Grutter v. Bollinger* (2003) and *Fisher v. University of Texas I* (2013)

46. Barbara Mae Gayle, Derek Cortez, & Raymond W. Preiss, *Safe Spaces, Difficult Dialogues, and Critical Thinking*, 7 INT’L J. FOR SCHOLARSHIP TEACHING & LEARNING 1, 2 (July 2013), <https://doi.org/10.20429/ijstl.2013.070205>.

47. Arao & Clemens, *supra* note 44, at 135.

48. See *infra* Part III.B.

49. Previously, I defined “race-conscious campus spaces” as “physical campus locations or campus initiatives and activities that focus on racial identity, whether for a specified racial group or in a more general sense . . . includ[ing] ethnic studies departments and programs, campus cultural centers, and residence halls . . . .” Vinay Harpalani, *Narrowly Tailored but Broadly Compelling: Defending Race-Conscious Admissions After Fisher*, 45 SETON HALL L. REV. 761, 825 (2015). This definition is similar to the notion of safe spaces here, although this Article does not focus on academic departments and curricular programs.

50. In addition to Black students, there are safe spaces devoted to Latinx, Native American, and Asian American students—and also safe spaces for all students of color that focus on all of these groups together. See, e.g., CULTURAL RESOURCE CTRS., <http://www.admissions.upenn.edu/life-at-penn/our-diverse-community/cultural-resource-centers> (last visited Oct. 24, 2017) (linking to webpages of the Albert M. Greenfield Intercultural Center (focusing on all students of color), La Casa Latina (focusing on Latinx students), Makuu (focusing on Black students), and the Pan Asian-American Community House (PAACH) (focusing on Asian American students), all at the University of Pennsylvania). All of centers were created between the 1970s and 2000s. *Id.* These spaces are usually “majority-minority” environments, where White students who are present are usually not a numerical majority or plurality on a regular basis.

51. Cf. Devon W. Carbado, *Intraracial Diversity*, 60 UCLA L. REV. 1130, 1132 n.3 (2013) (“African Americans . . . are the paradigmatic group around which debates about affirmative action are framed.”).

and *II* (2016).<sup>52</sup> In *Grutter*, the Court held that universities could use race-conscious admissions policies to ensure that they enrolled a “critical mass” of minority students, in part so that these students “do not feel isolated or like spokespersons for their race[.]”<sup>53</sup> Both parties in *Fisher* acknowledged that “critical mass” was not a fixed number, but rather a climate where minority students do not feel isolated.<sup>54</sup> Predominantly White universities have not generally achieved this type of climate on their campuses, but safe spaces can provide it within specific campus settings.

### 1. Feelings of Isolation Among Minority Students

Many recent empirical studies suggest that minority students feel isolated on predominantly White university campuses. In 2016, Northwestern University published a 149 page report which included survey data from 658 Black undergraduates and focus group data from 68 Black undergraduates.<sup>55</sup> Northwestern’s report concluded

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52. See *supra* note 14 (highlighting U.S. Supreme Court’s articulation of compelling state interest in educational benefits of diversity).

53. 539 U.S. 306, 319 (2003).

54. Transcript of Oral Argument at 15, *Fisher v. Univ. of Tex. at Austin (Fisher I)*, 133 S. Ct. 2411 (2013) (No. 11-345) (Plaintiff’s counsel Bert Rein responding to Justice Sotomayor’s question about definition of critical mass by stating issue to evaluate is whether underrepresented minority students are “isolated [and] unable to speak out”); *id.* at 46 (University of Texas at Austin counsel Gregory Garre responding to Chief Justice Roberts’s inquiry about definition of critical mass by stating “we look to feedback directly from students about racial isolation that they experience. Do they feel like spokespersons for their race.”). Similarly, Professor I. Bennett Capers notes that:

[C]ritical mass is not solely numerical. Rather, a critical mass implies a climate where one is neither conspicuous nor on display, where one does not feel the opprobrium of being a token, nor the burden of being the designated representative for an entire group. It also implies a climate where one can speak freely, where one not only has a voice, but a voice that will be heard.

I. Bennett Capers, *Flags*, 48 *How. L.J.* 121, 122–23 (2004). See also William C. Kidder, *The Salience of Racial Isolation: African Americans’ and Latinos’ Perceptions of Climate and Enrollment Choices with and without Proposition 209*, CIVIL RIGHTS PROJECT AT UCLA, 6 (Oct. 2012), [http://civilrightsproject.ucla.edu/research/college-access/affirmative-action/the-salience-of-racial-isolation-african-americans2019-and-latinos2019-perceptions-of-climate-and-enrollment-choices-with-and-without-proposition-209/Kidder\\_Racial-Isolation\\_CRP\\_final\\_Oct\\_2012-w-table.pdf](http://civilrightsproject.ucla.edu/research/college-access/affirmative-action/the-salience-of-racial-isolation-african-americans2019-and-latinos2019-perceptions-of-climate-and-enrollment-choices-with-and-without-proposition-209/Kidder_Racial-Isolation_CRP_final_Oct_2012-w-table.pdf) (“The data lend support to the concept of ‘critical mass’ while acknowledging that context matters and it is unrealistic to expect an across-the-board numerical definition of what constitutes sufficient critical mass.”); William C. Kidder, *Misshaping the River: Proposition 209 and Lessons for the Fisher Case*, 39 *J.C. & U.L.* 53, 63 (2013) (“The benefits associated with ‘critical mass’ are highly context-dependent and not amenable to a one-size-fits-all admissions target. . .”).

55. BLACK STUDENT EXPERIENCE TASK FORCE, THE AFRICAN AMERICAN/BLACK STUDENT EXPERIENCE (2016), <http://www.northwestern.edu/inclusion/reports-reviews/black-student-experience-report/background/assets/black-student-experience-task-force-report-2016.pdf> [hereinafter NWU REPORT].

that “African American/Black students frequently described feeling alone and isolated.”<sup>56</sup> Similarly, in a survey of over 4800 minority students at the University of Illinois, published in 2015, 51 percent of respondents reported that they had been stereotyped in class, and 39 percent indicated they felt uncomfortable on campus because of their race.<sup>57</sup>

Other studies have covered many institutions and surveyed university administrators rather than students. A 2016 survey, conducted by the American Council of Education’s Center for Policy Research and Strategy, included over 500 university presidents from four-year institutions.<sup>58</sup> Almost one-half of the presidents indicated that minority students had organized because of concerns related to racial diversity.<sup>59</sup> Over one-half of these respondents also reported that racial climate had become a greater concern on their campuses in the last three years.<sup>60</sup> This indicates that many university administrators are aware of racial tensions on their campuses—tensions that have only been augmented since the election of Donald Trump.<sup>61</sup>

Various scholars have come to similar conclusions. In her studies of campus racial dynamics, Professor Deirdre Bowen has described the “stigma and racism” that many minority students feel even with campus diversity efforts in place.<sup>62</sup> Professor Derald Wing Sue and colleagues describe how minorities face “racial microaggressions,” which are:

brief and commonplace daily verbal, behavioral, or environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative racial slights and insults toward people of color.<sup>63</sup>

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56. *Id.* at 16.

57. STACY ANNE HARWOOD ET AL., RACIAL MICROAGGRESSIONS AT THE UNIVERSITY OF ILLINOIS AT URBANA-CHAMPAIGN: VOICES OF STUDENTS OF COLOR IN THE CLASSROOM 1 (2015), <http://www.racialmicroaggressions.illinois.edu/files/2015/03/RMA-Classroom-Report.pdf>. For a definition of “racial microaggression”, see text accompanying *infra* note 63.

58. Lorelle Espinosa, Hollie Chessman & Lindsay Wayt, *Racial Climate on Campus: A Survey of College Presidents*, HIGHER EDUC. TODAY (Mar. 8, 2016), <https://higheredtoday.org/2016/03/08/racial-climate-on-campus-a-survey-of-college-presidents/>.

59. *Id.*

60. *Id.*

61. See, e.g., Brown & Mangan, *supra* note 3 (noting that some Emory students feel that “Trump’s name [has] become synonymous with racism”).

62. Deirdre M. Bowen, *Brilliant Disguise: An Empirical Analysis of a Social Experiment Banning Affirmative Action*, 85 IND. L.J. 1197, 1233 (2010).

63. Derald Wing Sue et al., *Racial Microaggressions in Everyday Life: Implications for*

Scholars have examined how such racial microaggressions negatively impact Black,<sup>64</sup> Latinx,<sup>65</sup> and Asian American<sup>66</sup> college students. Many others have also commented on feelings of isolation among minority students at various universities.<sup>67</sup>

## 2. Safe Spaces to Mitigate Feelings of Isolation

Although university campuses can be isolating environments for minority students, safe spaces can help reduce feelings of isolation and assist these students with social adjustment issues on campus.<sup>68</sup> Many empirical studies demonstrate the importance of safe spaces as support mechanisms for minority students. In its 2016 report, Northwestern University emphasized that “[s]pace is important”<sup>69</sup> for

*Clinical Practice*, 62 AM. PSYCHOLOGIST 271, 271 (2007); see also Lindsay Pérez Huber & Daniel G. Solórzano, *Racial Microaggressions as a Tool for Critical Race Research*, 18 RACE, ETHNICITY AND EDUC. 297, 297 (2015) (“We provide a framework for understanding and analyzing racial microaggressions that demonstrates how everyday racist events are systematized by institutionalized racism . . . and guided by ideologies of white supremacy . . .”).

64. Daniel Solórzano, Miguel Ceja, & Tara Yosso, *Critical Race Theory, Racial Microaggressions, and Campus Racial Climate: The Experiences of African American College Students*, 69 J. NEGRO EDUC. 60 (2000).

65. Tara J. Yosso et al., *Critical Race Theory, Racial Microaggressions, and Campus Racial Climate for Latina/o Undergraduates*, 79 HARV. EDUC. REV. 659 (2009).

66. Derald Wing Sue et al., *Racial Microaggressions and the Asian American Experience*, 13 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCHOL. 72 (2007).

67. See, e.g., Katherine Long, *What It's Like to Be Black on Campus: Isolated, Exhausted, Calling for Change*, SEATTLE TIMES, Apr. 11, 2016, <http://www.seattletimes.com/seattle-news/education/what-its-like-to-be-black-on-campus-isolating-exhausting-calling-for-change/> (“[B]lack students say white students often treat them as if they were offered college admission only to fill a nonexistent diversity quota . . .”); Mary Beth Marklein, *Black Students Can Face Uneasy Adjustment to College*, USA TODAY, Feb. 11, 2014, <http://www.usatoday.com/story/news/nation/2014/02/11/black-history-month-black-students-white-schools/5405903/> (“Fifty years after the Civil Rights Act of 1964 prohibited discrimination based on skin color, black students who enroll at predominantly white colleges in the USA still need . . . ‘tough skin.’”); Carla Rivera, *African American Students Weigh Campus Attitudes in Picking Colleges*, L.A. TIMES, Apr. 30, 2014, <http://www.latimes.com/local/la-me-college-choice-20140501-story.html> (quoting incoming UCLA student as saying, “I’m honestly not sure if I’m going to feel isolated, but I’m going in with an open mind, even knowing I might be the only black person in my class”); Casey Quinlan, *5 Things That Make It Hard To Be A Black Student At A Mostly White College*, THINKPROGRESS (Jan. 25, 2016), <https://thinkprogress.org/5-things-that-make-it-hard-to-be-a-black-student-at-a-mostly-white-college-33ef44abe034#sst4a8xgz> (“[R]esearch has shown students experience more feelings of isolation and negative stereotyping at less diverse universities . . .”).

68. See, e.g., MAYA BEASLEY, OPTING OUT: LOSING THE POTENTIAL OF AMERICA’S YOUNG BLACK ELITE 67 (2011) (quoting Black student who stated, “When I visited [Stanford], I stayed at [U]jamaa, the black theme dorm], and . . . it was a black community . . . and it seemed really close. It was very visible, and I felt like I could go here and not feel isolated from other black people”).

69. NWU REPORT, *supra* note 55, at 38.

Black students and recommended “the creation of new spaces for Black connection and community building, . . . ones which are open to student definition and creation.”<sup>70</sup> Similarly, the Georgia Institute of Technology commissioned a task force to study Black student experiences on campus. After conducting interviews with 110 students, one of the task force’s recommendations was the creation of a “Multicultural Center . . . where all students feel welcome on campus, in support of students’ overall adjustment and well-being.”<sup>71</sup> Studies at other universities have yielded similar conclusions.<sup>72</sup>

Beyond physical spaces, racial/ethnic student organizations can also serve as safe spaces that help minority students to cope with feelings of isolation and alienation. Professor James Sidanius and colleagues reported that in their 1996 survey of 1368 undergraduate students at UCLA,<sup>73</sup> membership in minority ethnic student organizations was related not only to high levels of ethnic identification, ethnic activism, and increased awareness of racism,<sup>74</sup> but also a “sense of being a part of the larger university community.”<sup>75</sup> Other studies also suggest that membership in racial/ethnic student organizations helps undergraduate minority students feel less isolated on university campuses.<sup>76</sup> Professor Samuel Museus notes that:

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70. *Id.* at 57.

71. BLACK STUDENT EXPERIENCE TASK FORCE, BLACK STUDENT EXPERIENCE TASK FORCE FAQ (2016), [http://diversity.gatech.edu/sites/default/files/images/bse\\_task\\_force\\_faq\\_.pdf](http://diversity.gatech.edu/sites/default/files/images/bse_task_force_faq_.pdf).

72. *See, e.g.*, MINORITY RECRUITMENT AND RETENTION SUBCOMMITTEE, SURVEY OF THE RACIAL CLIMATE AT THE UNIVERSITY OF MISSOURI–KANSAS CITY 5 (2006), <https://www.umkc.edu/provost/strategic-planning-process/student-success/climate-study.pdf> (finding that “[h]igh levels of Black student dissatisfaction” arose from “[i]nequitable access to institutional resources” including lack of “[s]pace for Black student organization events” and “[t]hreat of losing the African American Cultural House”).

73. Jim Sidanius et al., *Ethnic Enclaves and the Dynamics of Social Identity on the College Campus: The Good, the Bad, and the Ugly*, 87 J. PERSONALITY & SOC. PSYCH. 96, 100 (2004). Professor Sidanius’s survey included a total of 2132 students: 764 White, 758 Asian/Asian American, 466 Latinx, and 144 Black. *Id.*

74. *See id.* at 106. Professor Sidanius and his colleagues suggest that it is “somewhat troubling” that among minority students in their study, participation in racial/ethnic student organizations was related to increased feelings of ethnic victimization and sense of intergroup conflict. *Id.* at 103, 107. Such increased awareness of racism might just mean that minority students learn more about the reality of such racism via their participation. As Sidanius and colleagues acknowledge, such awareness has positive effects: for example, research has indicated that when Black college students recognize discrimination more, they tend to perform better academically. *Id.* at 107 (citing S. Levin & C. Van Laar, Causes and Consequences of Ethnic Segregation in College (June 2002) (unpublished paper)).

75. *Id.* at 106.

76. *See, e.g.*, Michelle Denise Gilliard, Racial Climate and Institutional Support Factors Affecting Success in Predominantly White Institutions: An Examination of African-American

[E]thnic student organizations . . . provid[e] students with venues of cultural familiarity, vehicles for cultural expression and advocacy, and sources of cultural validation, function[ing] to facilitate racial/ethnic minority students' adjustment to and membership in . . . predominantly White campus cultures.<sup>77</sup>

The support role of racial/ethnic student organizations is apparent not only for undergraduates, but also for law students. Professor Meera Deo discusses how many minority law students join racial/ethnic student organizations, such as the Black Law Students Association (BLSA),<sup>78</sup> to interact with others of common background and to seek support.<sup>79</sup> Professor Deo identifies four types of support that minority law students seek from these organizations: 1. Social support—building close friendships and social interactions with peers; 2. Cultural support—having a shared sense of identity and common experiences to celebrate; 3. Emotional support—relying on peers in times of stress (particularly with respect to racially charged incidents); and 4. Academic support—cooperating in educational endeavors to achieve academic success.<sup>80</sup> She also notes that in one of her studies, approximately half of Black and Latinx students and 30 percent of Asian American students reported receiving strong support from student organizations, compared to 15 percent of White students.<sup>81</sup>

### 3. Safe Spaces as “Home Bases”

Critics contend that safe spaces allow minority students to “retreat” from general campus engagement, thereby reducing cross-racial interactions and learning and undermining the educational benefits of diversity.<sup>82</sup> Even some supporters of safe spaces worry that

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and White Student Experiences 193 (1996) (unpublished Ph.D. dissertation, University of Michigan) (on file with University of Michigan) (noting that in her 1990-91 study of 896 Black students at six Midwestern predominantly White four-year colleges and universities, “African American students who use minority-oriented social and cultural support services tend to feel more a part of the general college life”).

77. Samuel D. Museus, *The Role of Ethnic Student Organizations in Fostering African American and Asian American Students' Cultural Adjustment and Membership at Predominantly White Institutions*, 49 J. C. STUDENT DEV. 568, 580 (2008).

78. Many law schools also have similar student organizations for Latinx, Asian Americans, South Asian Americans, and other groups. See Deo, *supra* note 31, at 94–103.

79. *Id.* at 87.

80. Meera Deo, *Separate, Unequal, and Seeking Support*, 28 HARV. J. RACIAL & ETHNIC JUST. 9, 27–36 (2012).

81. Deo, *supra* note 31, at 100.

82. See sources cited *supra* note 15 (contending that safe spaces inhibit cross-racial interactions by allowing minority students to isolate themselves).

these spaces can harm minority students by preventing them from developing wider social and professional networks.<sup>83</sup>

However, safe spaces may also help minority students to have more productive cross-racial interactions on campus. Professors Nickolas Bowman and Julie Park argue that racial/ethnic student organizations can promote cross-racial interactions because they “serv[e] as a ‘home base’ for . . . students of color[.]”<sup>84</sup> so that these students “feel more comfortable on campus, enabling them to have higher rates of [cross-racial interactions].”<sup>85</sup> By serving as “home bases,” safe spaces can provide a respite where minority students do not “feel isolated or like spokespersons for their race[.]”<sup>86</sup> In this way, safe spaces may help energize minority students to have more high quality cross-racial interactions on the rest of campus.<sup>87</sup>

Although there has been no direct study of “home base” hypothesis, research does indicate that minority students are just as engaged or more engaged than White students in student organizations that reflect a variety of interests.<sup>88</sup> Additionally,

83. Professor Maya Beasley acknowledges that racial/ethnic-themed residence programs are “supportive environments,” but she suggests that such spaces may preclude minority students from developing wider social and professional networks. See Beasley, *supra* note 68, at 81. Professor Kevin Woodson echoes these concerns. See Woodson, *supra* note 15, at 822–29 (discussing lack of interaction between Black and White students on university campuses). However, he does note that the evidence of a connection between safe spaces and lack of cross-racial interaction is “far from conclusive.” *Id.* at 860. Professor Woodson also worries that safe spaces may reduce “productive intergroup contact” which can reduce prejudice among White students. See *id.* at 822–29, 860. See also *supra* note 23 (discussing prevalence of balkanization on college campuses); *infra* Part II.

84. Nicholas A. Bowman & Julie J. Park, *Interracial Contact on College Campuses: Comparing and Contrasting Predictors of Cross-Racial Interaction and Interracial Friendship*, 85 J. HIGHER ED. 660, 684 (2014).

85. *Id.*

86. See *Grutter v. Bollinger*, 539 U.S. 306, 319 (2003).

87. Apart from their safe spaces, most college campuses are predominantly White “home bases” for White students. There are some universities that are not majority or plurality White, such as historically Black colleges and universities (HBCUs). These are not considered in this Article. Other exceptions include the University of Hawaii at Manoa (the state of Hawaii has always had a plurality Asian Pacific Islander (API) population), and some California universities where Asian and Asian American students outnumber White students. See, e.g., QUICK FACTS ABOUT UCLA, <http://www.admission.ucla.edu/campusprofile.htm> (giving undergraduate student demographics at UCLA). But even at these universities, the predominant social and cultural norms are those of White Americans.

88. See Julie Park, *Clubs and the Campus Racial Climate*, 55 J. C. STUDENT DEV. 641, 650–52 (2014). Professor Park also found Black students were also more likely than White students to participate in religious organizations, and more likely than all other racial/ethnic groups to participate in music, arts, or theater groups. *Id.* Additionally, Black students participating in service organizations were just as likely to join “mostly White” groups as “mostly Black” groups; in fact, approximately one-third of Black students in fraternities/sororities, career

numerous studies have demonstrated that minority college students have significantly more cross-racial interactions than White college students.<sup>89</sup> Moreover, in one large empirical study, Professors Julie Park and Young Kim concluded that for minority students, greater participation in minority student organizations did not reduce the number of interracial friendships.<sup>90</sup> Professor Park notes that this “counter[s] the idea that students of color are pervasively self-segregating and that balkanization is the dominant trend amongst students of color.”<sup>91</sup>

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organizations, and music, arts, or theater groups participated in organizations that were “mostly White.” *Id.* at 251. Latinx and Asian American students were even more likely to be involved in “mostly White” student organizations. *Id.* See also Deo, *supra* note 80, at 27 (finding that 73 percent of Black students, 93 percent of Latinx students, and 74 percent of Asian American students were involved in “mainstream” student organizations across 11 different law schools); Deo, *supra* note 31, at 99 (finding that in a study at University of Michigan Law School, over 80 percent of minority students were involved in “mainstream” student organizations).

89. See, e.g. WILLIAM G. BOWEN & DEREK BOK, *THE SHAPE OF THE RIVER: LONG-TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND UNIVERSITY ADMISSIONS* 233 (1998) (finding that 88 percent of Black students, 93 percent of Hispanic students, 92 percent of Asian students, and 73 percent of Native American students “knew well two or more students who were White,” and that all of these groups far exceeded White students in this regard); THOMAS J. ESPENSHADE & ALEXANDRIA WALTON RADFORD, *NO LONGER SEPARATE, NOT YET EQUAL: RACE AND CLASS IN ELITE COLLEGE ADMISSION AND CAMPUS LIFE* 194 (2009) (finding that “[e]ach group of nonwhite students has much greater odds than do white students of interacting with students from other racial backgrounds”); Bowman & Park, *supra* note 84, at 677 (concluding that students of color had “much greater CRI [cross-racial interaction] and IRF [interracial friendship] than did White students”); Mitchell J. Chang, Alexander W. Astin, & Dongbin Kim, *Cross-racial Interaction Among Undergraduates: Some Consequences, Causes, and Patterns*, 45 RES. HIGHER ED. 529, 546 (2004) (“Students of color always have higher levels of cross-racial interaction than their white counterparts . . . [I]f cross-racial interaction is a good indicator of racial balkanization, our results suggest that . . . the group most likely to be balkanized are white students.”); Park, *supra* note 88, at 650 (finding that 74.3 percent of Black students, 84.2 percent Asian/Asian American students, and 92.3 percent of Latinx students had at least one close friend of a different race, compared to only 48.5 percent of White students); Elizabeth Stearns, Claudia Buchmann, & Kara Boneau, *Interracial Friendships in the Transition to College: Do Birds of a Feather Flock Together Once They Leave the Nest?* 82 SOC. ED. 173, 189 (2009) (“[T]he proportion of interracial friendships in whites’ friendship networks in the first year of college remains lower than that of students of other racial groups.”). The study by Professor Stearns and her colleagues also reported “that no white students reported that all their friends were nonwhite, but a number of blacks (5), Latinos (37), and Asians (15) had homogeneous all-white networks, and some Asians and Latinos (5) had homogeneous networks made up of nonwhites of a race different from their own.” *Id.* at 192 n.4.

90. Julie J. Park & Young K. Kim, *Interracial Friendship and Structural Diversity: Trends for Greek, Religious, and Ethnic Student Organizations*, 37 REV. HIGHER ED. 1, 18 (2013).

91. Park, *supra* note 88, at 654. *But cf.* Peter Arcidiacono et al., *Racial Segregation Patterns in Selective Universities*, 56 J. Law & Econ. 1039, 1059 (2013) (noting that in their study, Black students’ “friendships are no more diverse in college than in high school” even though the colleges in question have “substantially smaller” Black student populations). However, Arcidiacono et al. acknowledge that “while the rather small number of reported friends . . . may reflect . . . a student’s closest friends, it by no means provides a comprehensive measure of the

If safe spaces do serve as home bases and allow minority students to feel more comfortable interacting on campus, this alters the narrative. Far from promoting balkanization on campus or even just reflecting it, safe spaces may actually reduce balkanization. Nevertheless, the narrative that safe spaces lead to balkanization persists.

## II. SAFE SPACES AND BALKANIZATION: MYTHS AND REALITIES

The major criticism of safe spaces devoted to racial and ethnic minority students is that they promote balkanization on campuses and undermine universities compelling interest in diversity.<sup>92</sup> Such criticism is usually cast through bald, conclusory statements, with little or no attention to everyday realities in safe spaces. Consequently, public discourse on safe spaces has become highly distorted, and this Part aims to clarify it.

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degree of social interaction among students within or across racial groups.” *Id.* at 1059. This is a significant limitation, as the educational benefits of diversity do not necessitate formation of close friendships, but rather cross-racial interactions for the purpose of breaking down racial stereotypes and learning about people of different racial and cultural backgrounds. *See Fisher v. Univ. of Tex. at Austin (Fisher I)*, 133 S. Ct. 2411, 2418 (2013) (noting educational benefits of diversity); *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003) (discussing educational benefits of diversity). It should not be surprising if students tend to have the closest friendships with members of the same racial group—whether that be White, Black, Latinx, Asian American, or Native American.

Also, Arcidiacono et al. presume that Black students would have more cross-racial friendships in college because of the “substantially smaller” Black student populations. *See Arcidiacono et al., supra* note 91, at 1059 (noting that smaller student populations lead to more friendship outside of the group). Conversely, empirical data indicate that smaller Black student populations at colleges are related to greater feelings of racial isolation among Black students. *See Kidder, supra* note 54, at 13 (“[D]ata from leading research universities show that higher levels of racial diversity are generally better for the campus climate faced by African American students, whereas racial isolation in combination with an affirmative action ban is associated with a more inhospitable racial climate.”). Thus, one might infer the opposite: Black students may actually be more likely to stick together and draw upon each other for support when their numbers are small and they feel racially isolated. *See Nicholas Bowman, Structural Diversity and Close Interracial Relationships in College*, 41 ED. RESEARCHER 133, 134–35 (2012) (“Although underrepresented students of color may actively seek same-race friendships for social support, this propensity becomes less necessary (and therefore less pronounced) when a sizable number of same-race students attend that institution.”); Chang, Astin, & Kim, *supra* note 89, at 543 (“[E]ven though their opportunities for within-group interaction increase, by definition, with increasing diversity, students of color tend to show the least cross-racial interaction in the least diverse institutions.”).

92. *See supra* note 15.

### A. A Distorted Discourse

Critics claim that safe spaces promote “self-segregation”<sup>93</sup> and that they are unwelcoming to White students.<sup>94</sup> Some critics mistakenly suggest that safe spaces are only open to particular groups of minority students.<sup>95</sup> For example, in his dissent in *Grutter*, the late Justice Antonin Scalia contended that:

universities ... talk the talk of multiculturalism and racial diversity in the courts but walk the walk of tribalism and racial segregation on . . . campuses—through minority-only student organizations, separate minority housing opportunities, separate minority student centers, even separate minority-only graduation ceremonies.”<sup>96</sup>

Similarly, in his well-known book, *The Disuniting of America*, the late historian Arthur Schlesinger, Jr. decried “institutionalized separatism”—specifically citing “black dormitories, black student unions, black fraternities and societies[.]”<sup>97</sup> More recently, in March

93. The term “segregation” is a very charged term with a particular historical meaning. My view is that it is not an appropriate term to describe the phenomenon of minority students seeking or creating safe spaces on predominantly White university campuses. *Cf. Deo, supra* note 31, at 86 (“[S]egregation in the sense of keeping Black students out of white schools may be different from students of color on predominantly white campuses maintaining a separate safe space for themselves. An understanding of white privilege clarifies that segregation mandated by those in power seeks to maintain the racial order, whereas when those from marginalized groups choose segregation (or separation or sovereignty), they may do so to protect group members within a safe space.”) (citing STEPHANIE M. WILDMAN, *PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA* 61 (1996)). Nevertheless, critics commonly use the term “self-segregation” to refer to minority students’ use of safe spaces, and this Article uses the term when referencing their accusations.

94. *See* Kuykendall & Adside, *supra* note 15, at 1078 (“[W]hite students are not encouraged to participate in [safe] spaces because their presence would hamper the free discourse among minority students.”). Professors Kuykendall and Adside provide little support for their assertion. This issue is discussed further *infra* at Part III.B.

95. On a most basic level, universities would not create such exclusive safe spaces, because programs that excluded any students based on race would likely be held unconstitutional under *Bakke*. *See Grutter*, 539 U.S. at 334 (holding that “a race-conscious admissions program . . . cannot ‘insulat[e] each category of applicants with certain desired qualifications from competition with all other applicants.’”) (quoting *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 315 (1978) (Powell, J., concurring)); *Bakke*, 438 U.S. at 319 (1978) (Powell, J., concurring) (holding that applicants cannot be “totally excluded” because of their racial background). *See also* *Podberesky v. Kirwan*, 38 F.3d 147 (4th Cir. 1994), *cert denied* 514 U.S. 1128 (1995) (holding scholarship designated only for African Americans to be unconstitutional). *But see* Ellison Ward, Note, *Toward Constitutional Minority Recruitment and Retention Programs: A Narrowly Tailored Approach*, 84 N.Y.U. L. Rev. 609, 612 (2009) (“[A]rguing that colleges may, consistent with the Constitution, maintain race-exclusive . . . recruitment and retention programs.”).

96. *Grutter*, 539 U.S. at 349 (Scalia, J., concurring in part and dissenting in part).

97. ARTHUR M. SCHLESINGER, JR., *THE DISUNITING OF AMERICA: REFLECTIONS ON A MULTICULTURAL SOCIETY* 107–08 (1998).

2016, Gail Heriot and Peter Kirsanow, two members of the U.S. Civil Rights Commission, wrote a letter to the President of the University of Connecticut, criticizing the University because it created a residence program devoted to confronting Black male experiences and challenges.<sup>98</sup> Many others have echoed these sentiments.<sup>99</sup>

Media coverage of safe spaces can also be misleading, as it usually focuses on contentious student protests that lead to the creation of safe spaces and ignores everyday activities in these spaces after they are created.<sup>100</sup> Student protests demanding new safe spaces often have a critical and oppositional tone, and protesters can make demands in stark terms which suggest a desire for exclusivity or separatism. For example, student protestors at the University of Michigan demanded that the University “[c]reate a space for Black students and other people of color without white students.”<sup>101</sup> However, the protests are just a means to an end, and there is no indication that when

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98. See Letter from Gail Heriot & Peter Kirsanow to Susan Herbst (Mar. 21, 2016), <http://www.newamericancivilrightsproject.org/wp-content/uploads/2016/03/3.21LettertoUConnonRacialThemeHousing.pdf> (“It is hard to avoid the conclusion that SchOLA<sup>2</sup>RS House [University of Connecticut residence program devoted to experiences of Black men] was intended to promote racial isolation on campus. Moreover, it is impossible to avoid the conclusion that it will in fact promote racial isolation on campus.”). Kirsanow and Heriot also sent essentially the same letter to the Chair of the U.S. Civil Rights Commission. Letter from Gail Heriot & Peter Kirsanow to Catherine Lhamon (Mar. 21, 2016), <http://www.newamericancivilrightsproject.org/wp-content/uploads/2016/03/3.21LettertoOCRonRacialThemeHousing.pdf>.

99. See, e.g., sources cited *supra* notes 12, 15, 16–18, & 20. For more sources that have problematized balkanization on college campuses, see Woodson, *supra* note 15, at 811 n.10.

100. See sources cited *supra* notes 12, 15, 16–18, & 20.

101. *Drawing the line: Which side will you choose?* MICH. DAILY, Sept. 28, 2016, <https://www.michigandaily.com/section/mic/letter-schlissel>. See also Stephan Thernstrom & Abigail Thernstrom, *Reflections on the Shape of the River*, 46 UCLA L. REV. 1583, 1607 (1999) (noting that at Wesleyan University in 1996, “[w]hen an unexpectedly large freshman class arrived in 1996, the university decided to fill nine empty spaces at Malcolm X house with whites, but backed down when black students objected to living with anyone of another race”). The 1996 incident at Wesleyan involved White students who were placed in the Malcolm X house, not those who wanted to live there because they were interested in the program’s activities.

There may also be instances where students of color desire that White students do not attend particular events, often after racially charged incidents have occurred. For example, Illinois State University student Kristina Wiemer relayed to me an incident where her views “were not welcomed” at a diversity program, but she also notes that this occurred “during a period right after the election . . . and people, especially the minorities on my campus, were feeling threatened.”). E-mail from Kristina Wiemer to Vinay Harpalani (May 16, 2017, 5:17 pm EST) (on file with author). See also Susan Svrluga & Joe Heim, *A Washington State College, Caught Up in Racial Turmoil, Remains Closed Friday After Threat of Violence*, WASH. POST, June 2, 2017 (describing racially-charged incidents at Evergreen College, including demand by some students of color that White students do not participate in certain discussions about race). This Article acknowledges that such incidents occur, but it argues that they do not reflect everyday activities in safe spaces.

universities create safe spaces, they disallow or discourage White students from participation.<sup>102</sup>

It is important to distinguish safe spaces and their everyday functioning from the student protests that lead to their creation. By the time safe spaces are established, protests have usually concluded. Safe spaces then take on an array of enriching activities, aiming to meet students' day-to-day needs, and to implement educational programming and other activities. However, such everyday operation of safe spaces is largely absent in the public discourse. A closer look at safe spaces shows that they are generally open and welcoming to all students who want to participate in their activities.

### *B. Safe Spaces as Open and Welcoming Environments*

Many safe spaces note their desire for diverse participation in their missions and on their websites. Racial/ethnic-themed residential programs, which are perhaps the most frequent targets of the balkanization critique,<sup>103</sup> illustrate well how this critique is off base. For example, the W.E.B. Du Bois College House (“Du Bois” or “Du

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102. See, e.g., Dent, *supra* note 12 (noting that at “Claremont McKenna College . . . the campus’ president has committed to a resource center organized around diversity and inclusion but in a message to the CMC community . . . he expressly wrote . . . [n]o student or group on our campus should live and learn in isolation . . . both law and explicit College policy forbid social or spatial exclusion based on any specifically defined identities of race, ethnicity, or other protected classification”) (internal quotations omitted).

White students may still believe that these spaces are exclusive or that they promote balkanization, even if the safe spaces are open to all students. See NATASHA K. WARIKOO, *DIVERSITY BARGAIN* 75 (2016) (noting that White students may be “uncomfortable with and opposed to perceived segregation” of safe spaces even if they have “awareness that all students are welcome”). White students’ views here may well be inaccurate in many situations due to confirmation bias. See *id.* at 235–36 n.27 (citing ELIZABETH ARIES, *RACE AND CLASS MATTERS AT AN ELITE COLLEGE* (2008)) (“[W]hites arrive on campus with concerns that minority peers will ‘self segregate.’ Hence, seeing some minorities together may fuel that concern, despite the evidence to the contrary of other black students associating with whites or across minority groups.”); *id.* at 41 (noting that twice as many White students were concerned that minority students would self-segregate as vice versa).

103. See sources cited *supra* notes 12, 15, 16–18, 20, 96–99. Professor Maya Beasley acknowledges that racial/ethnic-themed residence programs are “supportive environments” but contends that “ethnic program dorms actively inhibit students’ exposure to diversity” and that this “claim remains undisputed by . . . proponents [of such dorms].” Beasley, *supra* note 68, at 81. *But see supra* Part I.B.3 (arguing that safe spaces may serve as “home bases” for students of color and “help energize minority students to have more high-quality cross-racial interactions on the rest of campus”).

Additionally, Professor Beasley worries that racial/ethnic-themed residence programs preclude minority students from benefiting from diversity both during college and afterwards. Beasley, *supra* note 68, at 81. *But see* sources cited *supra* notes 84–91 (noting that minority students have significantly more cross-racial interactions than White students).

Bois College House” for short) at the University of Pennsylvania is one of the oldest and most well-known racial/ethnic-themed residence halls. Du Bois was founded in 1972 and focuses on the heritage and experiences of Black students.<sup>104</sup> Ever since its inception, it has been criticized for promoting self-segregation.<sup>105</sup>

However, Du Bois College House has always been open to all interested students. Although relatively few White students lived there during its earlier years, those who did reported having good experiences.<sup>106</sup> In the early 1980s, one White student, Robert Zagerman, stated that he “loved living there,”<sup>107</sup> and that the “overwhelming majority [of Black students living in Du Bois College House] accepted him.”<sup>108</sup> In 1999, another White student, Alessandro Rimoldi, wrote in a letter to *The Daily Pennsylvanian*, Penn’s student newspaper:

I chose to live in DuBois College House because I thought it would be an excellent opportunity to immerse myself in an environment where I could learn about a new culture by meeting new people, participating in activities, etc. Now in my second year living in the house, I have had a fantastic experience, to say the least. I have met a lot of wonderful people from whom I have learned a great deal about the African-American experience and I have made some great friends.<sup>109</sup>

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104. See W.E.B. DU BOIS COLLEGE HOUSE, <https://dubois.house.upenn.edu/front> (last visited Oct. 24, 2017) (examining the experiences of Black students). Professor Wayne Glasker thoroughly documents the history of the Du Bois College House from its creation in 1972 until the early 1990s. See Glasker, *supra* note 36, at 129–46 (examining the history of Du Bois College House).

105. See generally Glasker, *supra* note 36. (looking into the criticism faced by Du Bois College House); Rachel E. Ryan, *Turmoil and Transformation: Du Bois College House Turns 40*, PA. GAZETTE, Mar.-Apr. 2013, at 23–24 (documenting past criticism of Du Bois College House.).

106. Glasker, *supra* note 36, at 136–37.

107. *Id.* at 137.

108. *Id.*

109. Alessandro Rimoldi, *LETTERS: Want Diversity? Look Around*. DAILY PENNSYLVANIAN, Oct. 28, 1999, [http://www.thedp.com:8080/article/1999/10/letters\\_want\\_diversity\\_look\\_around](http://www.thedp.com:8080/article/1999/10/letters_want_diversity_look_around). This letter does not state explicitly that Rimoldi is White, but another letter that he later wrote to *The Daily Pennsylvanian* does make it clear that he is “Italian American.” See Alessandro Rimoldi, *Not Black or White*, DAILY PENNSYLVANIAN, Nov. 13, 2000, [http://www.thedp.com:8080/article/2000/11/a\\_call\\_for\\_safety](http://www.thedp.com:8080/article/2000/11/a_call_for_safety).

My own experience in Du Bois College House was similar. From 1999 to 2003, I was a graduate resident advisor, and I also served as a faculty fellow there during the 2005-06 academic year. As a South Asian American, I found it to be a welcoming environment and a great learning experience, as I have documented. Vinay Harpalani, *Finding a Place in the Halls of Du Bois*, DAILY PENNSYLVANIAN (Dec. 1, 2000), [http://www.thedp.com/article/2000/12/finding\\_a\\_place\\_in\\_the\\_halls\\_of\\_dubois](http://www.thedp.com/article/2000/12/finding_a_place_in_the_halls_of_dubois) [hereinafter *Finding a Place*] (“When I first entered

Black students once constituted a significant majority of Du Bois College House residents,<sup>110</sup> but the number of White and other non-Black students living in Du Bois College House has grown over the years.<sup>111</sup> By the 2012-2013 academic year, “46 percent of . . . residents report[ed] a racial identity other than African American.”<sup>112</sup> It has now become one of the most racially diverse residence halls at the University of Pennsylvania.<sup>113</sup> Such diversity and inclusion are reflected in Du Bois College House’s mission. In 2012, student residents on the Du Bois College House Executive Board published an editorial in *The Daily Pennsylvanian*, where they stated:

Du Bois [College House] is not just a space for black students. It is a college house for students of all cultures . . . Du Bois has evolved to serve as a college house for Penn students. We haven’t forgotten our heritage, but we also wish to accommodate a more diverse group of residents. We are no longer a college house that caters solely to the black community, but one that still emphasizes Africana interests through its programming . . . [W]e’re “the U.N. at UPenn.”<sup>114</sup>

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DuBois College House three years ago, I was unsure of my place there . . . [but] . . . no one in DuBois seemed to care much about my ethnic background—except for me. In all of the black student activities I have attended over the years, not a single student has raised my ethnicity as an issue . . . I . . . created my own niche in DuBois—it is a more comfortable home to me than any other place on campus.”). See also Vinay Harpalani, Essay, *Ambiguity, Ambivalence, and Awakening: A South Asian Becoming “Critically” Aware of Race in America*, 11 BERKELEY J. AFR.-AM. L. & POL’Y 71, 81 (2009) [hereinafter *Ambiguity, Ambivalence, and Awakening*] (noting that in Du Bois College House, “residents welcomed and embraced me”). In fact, the day-to-day race and ethnic consciousness in Du Bois College House led me to further explore South Asian American racial identity. *Id.* This in turn has greatly influenced my academic career. See, e.g., Harpalani, *Ambiguity, Ambivalence, and Awakening*, *supra* note 109; Harpalani, *Finding a Place*, *supra* note 109; *DesiCrit: Theorizing the Racial Ambiguity of South Asian Americans*, 69 N.Y.U. ANN. SURV. OF AM. L. 77 (2013).

110. In 1993, 80.9 percent of Du Bois College House residents were Black. Daniel Gingiss, *U. Dorms Racially Divided, Report Reveals*, DAILY PENNSYLVANIAN, Jan. 13, 1994, at 1, [http://www.library.upenn.edu/docs/kislak/dp/1994/1994\\_01\\_13.pdf](http://www.library.upenn.edu/docs/kislak/dp/1994/1994_01_13.pdf).

111. See Ryan, *supra* note 105, at 23–24 (examining the racial makeup of Du Bois College House residents).

112. *Id.*

113. See *id.* (discussing racial diversity in Du Bois College House).

114. Ernest Owens, Farrah Alkhaleel, Simon Tesfalul & Taylor Blackston, *Appreciating Du Bois as a Loving Home*, DAILY PENNSYLVANIAN, Oct. 15, 2012, <http://www.thedp.com/article/2012/10/du-bois-house-council-appreciating-du-bois-as-a-loving-home>. During the 2014–15 academic year, the front page of the Du Bois College House website stated:

As the African American theme-based house, and in adhering to its original mission, most of the programs and events in Du Bois College House are based upon the history and culture of people of the African Diaspora. However, in recognizing the range of diversity within the House’s population, we must also acknowledge, not only its role as

The W.E.B. Du Bois College House provides a model for how universities can view and implement racial/ethnic-themed residence programs. These safe spaces were created to serve a support role for particular groups, and that is still an important part of their missions. Nevertheless, such programs also aim to educate all interested students, and they have evolved more into that role over time.

Similar residential programs at other universities also explicitly welcome students of all backgrounds. Stanford University’s Ujamaa residential program website states:

Ujamaa serves as a residential space where students of all backgrounds can come to explore Black Culture and heritage . . . . In describing the Ujamaa community, it is important to understand that the dorm is not just a hub for black people. It is a social community, known for its friendly, open atmosphere. People from all backgrounds, experiences, and interests make Ujamaa their home. While a great deal of the educational programming that occurs in the dorm centers around issues impacting Black Culture and Black communities, the dorm is in no way centered exclusively on the experience of black students.<sup>115</sup>

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a microcosm of the Greater American society, but the House’s role in preparing our residents for the greater global world. Du Bois College House is one of the most diverse college houses on Penn’s campus, and often refers to itself as “the U.N. at UPenn!” This means that the entire staff works hard to ensure that our programming is just as diverse as the population, and that it meets the needs of all residents.

W.E.B. DU BOIS COLLEGE HOUSE, <http://dubois.house.upenn.edu/frontpage> (last visited Mar. 7, 2015); *see also* Harpalani, *supra* note 49, at 825–26 (citing older version of Du Bois College House website).

The front page has since been updated. Nevertheless, statements and photographs on the Du Bois College House website still illustrate its diversity. *See, e.g.*, W.E.B. DUBOIS COLLEGE HOUSE STAFF, [https://dubois.house.upenn.edu/people#senior\\_staff](https://dubois.house.upenn.edu/people#senior_staff) (last visited Feb. 3, 2017). Also, a more recent op-ed in *The Daily Pennsylvanian* reiterated Du Bois College House’s theme of openness. *See* Jordan Palmer and Kayla Byrd, *The Purpose of the Du Bois College House*, DAILY PENNSYLVANIAN, Feb. 13, 2017, <http://www.thedp.com/article/2017/02/guest-column-du-bois-house> (“Though founded with black culture in mind, the Du Bois College House has evolved into a place of cultural learning and inclusion, available to anyone and everyone at Penn . . . . The house represents people from all walks of life who come in different sizes, colors and from different socioeconomic backgrounds . . . . For those who see it as a place of segregation, we implore you to come spend some time in our home . . . . We invite student groups to partner with our house for events that can be opened up to the entire campus . . . . Du Bois is a place to celebrate diversity, not cut oneself off from those who are different. It is a place to share ideas and to hear what others have to say.”).

115. *Supra* note 8. Professor Maya Beasley reported that African American students received priority for assignment in Ujamaa. *See* Beasley, *supra* note 68, at 75. However, Professor Beasley’s data were from 2002–03, *id.* at 10, and the Ujamaa website currently does not indicate any such priority.

Although Ujamaa is focused on Black culture and heritage, the community views itself as a “safe space” for all of its residents.<sup>116</sup>

At the University of California, Davis, the housing website lists various residential programs, and the description of the African American and African Living Learning Community states: “Students from all cultures who are interested in exploring the African Diaspora are encouraged to join this living-learning community.”<sup>117</sup> Moreover, there is a short video on this residential community, which includes clips of an Asian American student who enjoyed living here and found it to be a great learning experience.<sup>118</sup> The same video includes several Black students who also state explicitly that the African American and African Living Learning Community is for students of all backgrounds.<sup>119</sup>

Other residential programs devoted to Black heritage have similar statements of inclusivity,<sup>120</sup> and the University of California, Santa

116. See *supra* note 8 and accompanying text (detailing mission of Ujamaa program).

117. COMMUNITIES, <http://housing.ucdavis.edu/education/communities/> (last visited Oct. 17, 2017).

118. U.C. DAVIS STUDENT HOUSING, *Living-Learning (Shared-Interest) Community-African American and African*, YOUTUBE (Apr. 29, 2014), <https://www.youtube.com/watch?v=HUF1Moo8xWY&feature=youtu.be>.

119. *Id.*

120. See, e.g., Harambee: African/African American Student Community at the University of Massachusetts-Amherst, LIVING AT UMASS AMHERST, <https://www.umass.edu/living/learning/drc> (last visited Oct. 17, 2017) (noting that it is “designed to support students who are of African descent, identify within the African Diaspora and/or wish to learn more about African culture and celebrate different African Diaspora cultures”); HARAMBEE HOUSE AT BROWN UNIVERSITY, <http://theharambeehouse.wixsite.com/home/about> (last visited Oct. 17, 2017) (“Harambee House is a living center for all those interested in the politics, history, society, and other aspects of African and African-American culture.”); Huntley House for African American Men at the University of Minnesota, ORGANIZATIONS & CLUBS, <http://aaas.umn.edu/ugrad/huntleyhouse.html> (last visited Oct. 17, 2017) (“Huntley House is open to all male students from any college within the University of Minnesota-Twin Cities.”); ROSA PARKS AFRICAN AMERICAN THEME HOUSE (R.PAATH), <http://housing.ucsc.edu/rpaath/> (last visited Oct. 17, 2017) (describing R.PAATH as “a student-initiated themed living option for *all students* whose interests span historical, present-day, and future experiences of predominately Black/African American peoples.”) (emphasis added); YOUNG, GIFTED, AND BLACK LIVING LEARNING COMMUNITY, <https://housing.uiowa.edu/living-learning-communities/young-gifted-and-black> (last visited Oct. 17, 2017) (“This community welcomes and is open to *all students* who seek to strengthen knowledge and empowerment of Black students.”) (emphasis added).

One residential program that does not seem to have a clear, unequivocal statement that it is open to students of all backgrounds is at Gordon State College. See [http://www.gordonstate.edu/pdf/LLC\\_Brochure.pdf](http://www.gordonstate.edu/pdf/LLC_Brochure.pdf) (noting one eligibility requirement as “First-time, full-time African American Male students.”). There may be others, but these appear to be the exception. See *supra* notes 106–120 and accompanying text. Moreover, even these seemingly exclusive residential programs may not have been confronted with the issue. If there are interested outgroup students who apply, these students may well be accepted. See

Barbara program explicitly notes that “ethnic residential theme houses benefit both minority and majority students.”<sup>121</sup> There are also similar inclusive residential programs which focus on other minority groups, and there are some which address common issues and coalitions between all minority groups.<sup>122</sup> Cornell University’s racial/ethnic-themed residential programs state that they aim to allow residents to either “reaffirm or explore an ethnic or cultural identity”<sup>123</sup>—again highlighting the benefit to both in-group and out-group members.

Many non-residential campus centers also highlight these issues.<sup>124</sup> In all of these safe spaces, it is clear that the educational activities focus on a particular minority group<sup>125</sup> or on racial/ethnic minorities

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*supra* note 95 (noting that racially exclusive programs are probably unconstitutional).

121. ROSA PARKS AFRICAN AMERICAN THEME HOUSE (R.PAATH), <http://housing.ucsc.edu/rpaath/> (last visited Oct. 17, 2017). There is also social science evidence suggesting that participation in racial/ethnic-themed residential programs has a positive effect on White students. In a study of 4,697 students (including 3,088 White students) from nine public universities, Professor Victor Saenz found that among other activities, “living in culturally themed residences for White students from PWEs [growing up in predominantly White environments (both neighborhoods and schools)] . . . enhance[d] [their] quality of interactions with diverse peers.” Victor B. Saenz, *Breaking the Segregation Cycle: Examining Students’ Precollege Racial Environments and College Diversity Experiences*, 34 REV. OF HIGHER ED. 1, 10–11, 31 (2010).

122. The Multicultural Living Learning Community (MLLC) at Syracuse University states explicitly that “Jewish and/or White students interested and committed to understanding the histories, experiences, struggles, and contributions of [various minority communities including Jewish Americans] were also being encouraged to participate.” MULTICULTURAL LIVING LEARNING COMMUNITY, <http://multicultural.syr.edu/programs/mlc.html> (last visited Oct. 17, 2017). This is not a new sentiment: the MLLC website states that such inclusion was part of the original mission of the program in 1994–95. *Id.* The pictures on the website also suggest that MMLC still has diverse participation. *See id.*

Paul Robeson Living Learning Community (LLC) at Rutgers University notes that one of the benefits of joining its community, which is focused on Black experiences, is the opportunity to “[c]onnect to other LLCs in the building such as Latin Images (Latin diaspora), Asian American Identities and Images (Asian American diaspora) and French and German Language and Culture.” PAUL ROBESON LIVING-LEARNING COMMUNITY, <https://rulc.rutgers.edu/content/paul-roberson-living-learning-community> (last visited Oct. 17, 2017). *See also, e.g.,* LIVING-LEARNING COMMUNITIES, <http://housing.ucdavis.edu/education/communities/> (last visited Oct. 17, 2017) (University of California, Davis); LIVING LEARNING COMMUNITIES, <http://www.housing.ucsb.edu/residence-halls/living-learning-communities> (last visited Oct. 17, 2017) (University of California, Santa Barbara); PARTICIPATING HOUSES, <https://resed.stanford.edu/residences/pre-assignment/theme-houses> (last visited Oct. 17, 2017) (Stanford University).

123. *See* PROGRAM HOUSES, <http://living.sas.cornell.edu/live/wheretolive/programhouses/index.cfm> (last visited Oct. 17, 2017) (describing Cornell University’s programs devoted to Black, Native American, Latinx experiences, and its multicultural residential program).

124. *See supra* note 50.

125. The focus on Black people itself entails a wide range of histories and issues. Students of all racial backgrounds, including Black students themselves, can learn about the diversity

generally, but it is also clear that these residential programs encourage participation by interested students of all backgrounds.<sup>126</sup> Moreover, by bringing these students together for events that often focus on race, these programs can facilitate cross-racial understanding—one of the educational benefits of diversity noted in *Grutter* and *Fisher*.<sup>127</sup>

Minority student organizations operate similarly. These safe spaces are run by students rather than university staff and administrators; thus, they may reflect different agendas and interests than university policy at large.<sup>128</sup> Nevertheless, minority student organizations are generally open and welcoming to outgroup members.<sup>129</sup> Some advertise their openness: for example, the website of the Black Student Union at Whitman College states:

Black Student Union is a safe space in which students can discuss topics of race and other areas of social justice. The club serves as a support group for students of color but is not exclusive to non-white students. Students of all backgrounds are welcome to attend meetings and events.<sup>130</sup>

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between and within various Black communities. *See infra* Part III.B.1.

126. Critics might contend that having the term “Black” or “African American” in the name of a program or organization discourages out-group members from participating. *Cf.* HERIOT & KIRSANOW, *supra* note 15 (noting that UConn residential program is not named “Scholastic House of Individuals Interested in Engaging Topics Related to the Experience of Black Males in Higher Education”). But one can just as easily conclude that these terms are positive rather than negative signals. Rather than signaling to White students that they should not participate, including the terms “Black” or “African American” serves to inform Black, White, and other students that the program will focus on issues of salience to Black people. Otherwise, they would not have this information—at least not in a form that is quickly accessible. Even the UConn program that Heriot and Kirsanow criticized, HERIOT & KIRSANOW, *supra* notes 15, 98, has a statement reflecting its openness to students of all races (although it still appears to be limited to males). *See* SCHOLA<sup>2</sup>RS HOUSE, <http://lc.uconn.edu/schola2rshouse/> (last visited Oct. 17, 2017) (“Any male undergraduate student enrolled at the University of Connecticut, eligible for on-campus housing, and interested in engaging in topics related to the experience of black males in higher education is invited to apply.”).

127. *See Fisher v. Univ. of Tex. at Austin (Fisher II)*, 136 S.Ct. 2198, 2203 (2016) (noting that educational benefits of diversity include “ending stereotypes, promoting ‘cross-racial understanding,’ . . . that mirror the compelling interest this Court has approved[.]”); *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003) (“[T]he educational benefits that diversity is designed to produce . . . are substantial . . . [and include] . . . promot[ing] ‘cross-racial understanding,’ help[ing] to break down racial stereotypes, and ‘enabl[ing] [students] to better understand persons of different races.’”).

128. *Cf. supra* note 101 (noting difference between agendas of student protesters and university administrators).

129. *Park, supra* note 88, at 647 (noting that “students of all races/ethnicities are welcome to participate” in “ethnic student organizations”).

130. BLACK STUDENT UNION, <https://www.whitman.edu/student-life/student-clubs-and-organizations/black-student-union> (last visited Oct. 17, 2017). My experience in the Black Allied

Anecdotes from minority student leaders also illustrate that outgroup students are encouraged to participate. When I was a Visiting Assistant Professor at Chicago-Kent College of Law (2012-14), I served as Faculty Advisor to the Black Law Students Association (BLSA). Nickolas Spencer, a 2014 graduate of Chicago-Kent, was President of Black Law Students Association (BLSA) during the 2012-13 and 2013-14 academic years.<sup>131</sup> In response to my inquiry about this issue, Nickolas noted:

I did desire participation from members of other [non-Black] groups. I was convinced then, and I remain convinced now, that social justice isn't the province of any particular group. A lot of our events were actually outward facing. They were designed to put certain views in front of our peers. Our success at this was not overwhelming. We did have a core group of committed non-blacks that were interested and often attended . . .

As a board, we all had diverse groups of friends. I tried to encourage members to invite their friends to events. This probably served to blunt any particular discomfort [among non-Black law students]. In any event, I am unaware of any particular opposition [to participation of non-Black law students]. This could, of course, be the result of my leadership shortcomings rather . . . [than] . . . a lack of dissent, but I don't think so. I think we had a pretty open shop and members usually felt free to express dissent.<sup>132</sup>

According to Nickolas, cross-racial understanding and interaction was one of BLSA's goals: the organization wanted “to put certain views in front of our peers.”<sup>133</sup> BLSA leaders at Savannah Law School have expressed similar sentiments.<sup>134</sup>

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Law Students Association (BALSAs) at NYU is also informative here. NYU's BALSAs chapter was the first in the nation. <http://nblsa.org/about/> (last visited Oct. 17, 2017). In Fall 2008, NYU BALSAs's membership voted to change the language of its constitution to state explicitly that “[a]ctive membership is open to any student of NYU School of Law on a full or part-time basis.” See NYU BALSAs CONST. art. II, § I.A. (available from author). BALSAs was already open to all NYU law students and had non-Black members such as me. Nevertheless, the group's members wanted to make this openness explicit in the BALSAs Constitution.

131. E-mail from Nickolas Spencer to Vinay Harpalani (Jan. 26, 2017, 11:38 pm EST) (on file with author).

132. *Id.*

133. Nickolas's statement here is consistent with Professor Natasha Warikoo's findings in her study. See WARIKOO, *supra* note 102, at 132 (noting that she found that “students of color of color desired interracial dialogue[] . . . as an important mechanism to influence their [White] peers to become more sympathetic to minority concerns”).

134. When I attended the initial BLSA meeting of the 2015 academic year at Savannah Law School, BLSA President Cherrell Holmes announced explicitly that BLSA was not just for Black students and that all interested students were welcome to participate in the organization.

There have been some exceptions to this type of openness,<sup>135</sup> but these most often occur at times of heightened tension on campuses—particularly after racially charged incidents. During those times, minority students focus on emotionally supporting each other rather than on sponsoring educational and cultural activities. They may desire to share these supportive moments only with those who can relate directly to their experiences. Under the vast majority of circumstances, however, minority student organizations and other safe spaces welcome broader participation in their events.

But how much do White students actually participate in safe spaces designated for minority students? The limited studies addressing this question suggest that the levels of White participation in safe spaces are often low.<sup>136</sup> There are some exceptions,<sup>137</sup> and

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Former Savannah Law BLSA President Janetta Burch also noted that “it is part of [the National Black Law Students Association’s] mission to incorporate, not just the black student body, but the entire student body” to help attain its goals. E-mail of Janetta Burch to Vinay Harpalani (Feb 19, 2017, 11:07 pm EST) (on file with author).

135. See *supra* note 101 and accompanying text (describing instances where minority students did not want safe spaces to be open to White students).

136. Professor James Sidanius and colleagues reported that in their survey of 764 White undergraduate students at UCLA, using data collected in 1996, 1.2 percent were members of “(minority) ethnic organizations.” Sidanius et al., *supra* note 73, at 100. These data were also collected before California’s Proposition 209 was implemented and greatly reduced Black and Latinx enrollment at UCLA. See Teresa Watanabe, *How UCLA is Boosting Campus Diversity, Despite the Ban on Affirmative Action*, L.A. TIMES, June 23, 2016, <http://www.latimes.com/local/california/la-me-ucla-diversity-20160620-snap-story.html> (showing how the affirmative action ban in California affected diversity on UCLA’s campus). Similarly, in a study of 3008 undergraduate students from 28 selective universities from 1999-2003, Professor Julie Park found that 1.9 percent of the 804 White students in her sample participated in “ethnic student organizations.” Park, *supra* note 88, at 648, 650. This percentage may be even lower, because some of the White students in Professor Park’s sample participated in “mostly White” ethnic student organizations. *Id.* at 651.

However, it is not clear whether these studies assessed only membership in minority student organizations or also surveyed attendance at events sponsored by the organizations. Even if outgroup membership is low, there may be diverse attendance at events. See, e.g., e-mail from Chantale Dasher to Vinay Harpalani (Feb 21, 2017, 11:04 pm EST) (on file with author) (noting that when she was Vice President of the Black Law Students Association at Seattle University School of Law in 2010-11, “approximately 5%” of the membership of Seattle Law’s BLSA was non-Black, but that a “diverse group of students [attended] the BLSA events”).

137. In two more recent studies of minority student organizations at law schools, Professor Meera Deo found greater levels of White participation. In a 2006-07 survey of 203 students from 11 law schools, Professor Deo found that 14 percent of the White students in her sample reported that they were members of “race/ethnic-specific groups.” See Deo, *supra* note 80, at 26. Professor Deo conducted a similar survey of 502 students at the University of Michigan School of Law in 2010, where she found that 20 percent of the White students in her sample were members of racial/ethnic-specific organizations. See Deo, *supra* note 31, at 91, 97. Moreover, biracial or multiracial identity could not explain White students’ involvement here. *Id.* at 97 n.35 (“[S]ince all students identified in this Article as white are those who self-identified as coming from only one racial/ethnic background, we know that none of the sixty-seven white student

research findings indicate that White students benefit from such participation.<sup>138</sup> Furthermore, to fully actualize the educational benefits of diversity, the burden of integration must be shared by White students.

### C. The Burden of Integration

The typical assumption underlying integration and cross-racial interaction is that minority students will go to predominantly White spaces. Almost any time that racial integration is discussed or actually occurs, it is minority students who go to spaces where they remain a minority. Minority students must adapt to majority group norms: they must learn to act, speak, and present themselves differently in majority White settings than they might in safe spaces or other non-White majority spaces.<sup>139</sup> While this ability to adjust to context can be a beneficial skill to develop,<sup>140</sup> it is also challenging and

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members of race/ethnic-specific organizations are biracial or multiracial. In other words, they are involved in a student organization that does not correspond to their own racial identity.”).

The difference between Professor Sidanius’s and Professor Park’s findings, *supra* note 136, and Professor Deo’s findings may have to do with the different social environments of undergraduate programs and professional schools. Also, given that Professor Deo’s studies analyze more recent data, the findings may reflect a trend towards greater White student involvement in minority student organizations. *See also supra* notes 110–114 and accompanying text (discussing increase in racial diversity at Du Bois College House over time).

138. *See supra* note 121 and accompanying text (noting that White students who have participated in racial/ethnic-themed have more high-quality cross-racial interactions).

139. *See generally* DEVON CARBADO & MITU GULATI, *ACTING WHITE?: RETHINKING RACE IN POST-RACIAL AMERICA* (2013) (discussing the concept of “acting White”). The phenomenon of “code switching”—where minority group members employ different language dialects around White Americans than they do when with members of their own group—is also well-documented. *See generally, e.g.*, CODESWITCHING (Carol M. Eastman ed., 1992); Charles E. DeBose, *Codeswitching: Black English and standard English in the African American linguistic repertoire*, 13 J. OF MULTILINGUAL & MULTICULTURAL DEV. 157 (1992). All of these issues are also salient for other minority groups. *See, e.g.*, Khaled A. Beydoun, *Acting Muslim* HARV. C.R.-C.L. L. REV. (forthcoming) (discussing identity dilemmas faced by Muslim Americans); Grace Kao, *Oreos, Coconuts, and Bananas: Race and Ethnic Differences in Conceptions of Success Among Adolescents* (1997) (unpublished Ph.D. dissertation, University of Chicago) (discussing “oreos (black on the outside, white on the inside for blacks), coconuts (brown on the outside, white on the inside for Hispanics), or bananas (yellow on the outside, white on the inside for Asians)”) (on file with University of Chicago).

140. *See generally* H. SAMY ALIM & GENEVA SMITHERMAN, *ARTICULATE WHILE BLACK: BARACK OBAMA, LANGUAGE, AND RACE IN THE U.S.* (2012) (addressing language and racial politics through examination of President Obama’s use of language); Carbado & Gulati, *supra* note 139 (discussing how minorities learn to succeed in workplaces by conforming to White norms). This is also why minority students tend to have more cross-racial interactions than White students. *See supra* note 89 (summarizing studies that illustrate greater cross-racial interactions of minority students). Students of color must seek interracial friendships, because “interracial contact is basically unavoidable for them” at predominantly White universities. Park, *supra* note 129, at 654. Unlike White students, students of color cannot spend all or most

cumbersome,<sup>141</sup> and it may contribute to minority students' feelings of isolation on campus.

White students usually do not have to bear the burden of integration. They can remain in predominantly White spaces, with the expectation that minority students will come to them.<sup>142</sup> White students are not expected to seek out minority students in safe spaces or other places where they do not feel a sense of control.<sup>143</sup> This is typical view that White students have of diversity initiatives.<sup>144</sup> It often escapes their attention that there is a fundamental inequity here: the implicit expectation that the educational benefits of diversity will occur on terms that are comfortable to White students but not necessarily to minority students. While predominantly Black spaces are deemed to be segregated, a space that is 60 percent or 80 Black is just as diverse as one that is 60 percent or 80 percent White. Being majority Black does not mean that a space lacks racial diversity—a fact is lost upon some critics.<sup>145</sup>

This Article argues that White students should bear an equal burden for integration on campus. To facilitate the educational benefits of diversity, universities should expect White students to go

of their time in spaces where they constitute a majority. The vast majority of their classes are predominantly White, and in any class that requires group projects or that is discussion-based, they will have significant interactions with White students.

141. See generally Carbado & Gulati, *supra* note 139 (describing pressure on young Black professionals to conform to White norms).

142. Cf. WARIKOO, *supra* note 102, at 106 (“Minority students often object to the expectation that they take on the job of educating whites about matters of race.”).

143. Even when White people go to minority-controlled spaces, people of color in those spaces often take special measures to make those White people feel more comfortable. See Doug Criss, *A Georgia networking event wants to help white people ‘Come Meet a Black Person’*, CNN, Nov. 14, 2017, <http://www.cnn.com/2017/11/14/us/meet-a-black-person-networking-trnd/index.html> (describing networking event organized by group of Black media professionals to “help [White] attendees learn about the black community . . .”). The “Come Meet a Black Person” event “will also feature a ‘cultural’ scavenger hunt . . . as well as [Black media professionals] greeting whites and engaging them in conversation.” *Id.*

There are people of color who find such special measures to be objectionable. See Breanna Edwards, *A ‘Come Meet a Black Person’ Networking Event Is Happening in Georgia This Week and I Have So Many Thoughts*, ROOT (Nov. 14, 2017) (“Come Meet a Black Person” event “gives me the same icky vibe I get about black women who opt to put up signs and invite strangers to touch their hair. . . . [Black people] are not entertainment. We are not props. And this is certainly not the kind of sideshow I would want to be a part of.”).

144. See WARIKOO, *supra* note 102, at 104 (“[I]nteraction with peers of color is a *resource* some white students feel entitled to . . .”).

145. Compare sources cited *supra* notes 12, 15, 16–18, 20, 96–99 (contending that racial/ethnic-themed residential programs lead to self-segregation) with *supra* notes 112–114 and accompanying text (giving example of W.E.B. Du Bois College House as racial/ethnic-themed residence program that has racially diverse participation).

into safe spaces where they become the minorities. Moreover, the reason for this is not just equity: White students actually benefit when they bear this burden, because it is a valuable learning experience. In fact, it is perhaps the hallmark of cross-racial understanding, and it highlights the role of safe spaces as “marketplaces of ideas.”

### III. SAFE SPACES AS MARKETPLACES OF IDEAS

Safe spaces are often decried for being antithetical to free speech and exchange of ideas. In 2016, the University of Chicago brought national attention to this issue in its letter to incoming students, where it described safe spaces as places “where students can retreat from ideas and perspectives at odds with their own.”<sup>146</sup> Earlier in 2016, UC College Dean John Boyer authored a monograph on academic freedom in which he stated that UC does not “engage in censored practices, such as . . . ‘safe spaces,’ that would treat our students as being incapable of tough-minded and independent judgment.”<sup>147</sup> The 175 UC faculty members who responded to UC’s letter noted that “‘safe spaces’ served as *incubators of new ideas* away from the censure of the very authorities threatened by [gay, civil rights, and feminist] movements.”<sup>148</sup>

This Article argues that not only do safe spaces act as “incubators” where new ideas are generated, but they are also novel “marketplaces of ideas” where students debate and exchange different perspectives that are marginalized elsewhere.<sup>149</sup> Moreover, as marketplaces of ideas, safe spaces exemplify the educational benefits of diversity noted in *Grutter* and *Fisher*—perhaps more than any other settings on campus.

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146. Grieve, *supra* note 1.

147. BOYER, *supra* note 2, at 10.

148. Letter to the Editor, *supra* note 4 (emphasis added).

149. By discussing and debating marginalized perspectives, events in safe spaces may not engage conventional debates that occur on other parts of campus. But this is no more a “retreat” than, for example, the College Republicans choosing to focus on discussing their platform rather than that of the College Democrats. In both cases, students can choose to engage the issues, perspectives, and debates that are of most interest to them, and to set aside other issues, perspectives, and debates in the process. *See also* Hu, *supra* note 27 (“[T]he ultimate irony of Ellison’s letter . . . [is that] . . . he professes to support academic freedom by quashing the very intellectual discourse necessary for it. It demonstrates an incomplete understanding of the concept of safe spaces and an ignorance of the complexities involved in supporting academic freedom for students of all backgrounds.”).

### A. Educational Benefits of Diversity and the Marketplace of Ideas

Broadly speaking, the “marketplace of ideas” notion holds that academic freedom allows the free exchange of ideas, much like goods and services in the economy. Professor Robert Post notes that the relationship between the First Amendment and academic freedom, in its traditional formulation, encapsulates a “marketplace of ideas” that “produces knowledge.”<sup>150</sup> This traditional formulation began with Justice Oliver Wendell Holmes’ dissent in *Abrams v. United States* (1919),<sup>151</sup> and it was adopted in future U.S. Supreme Court decisions.<sup>152</sup> The marketplace notion has been critiqued,<sup>153</sup> but it has unquestionably influenced public discourse on academic freedom.<sup>154</sup>

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150. ROBERT POST, *DEMOCRACY, EXPERTISE, & ACADEMIC FREEDOM* x (2012). Professor Post notes that marketplace notion has greatly influenced both First Amendment jurisprudence and public discourse on academic freedom. *Id.*

151. 250 U.S. 616, 620 (1919) (asserting that “free trade in ideas” was best path to “truth,” via “competition in the market” and “experiment”).

152. See *Red Lion Broad v. FCC*, 395 U.S. 367, 390 (1969) (“It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth shall ultimately prevail . . . .”); *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967) (“The classroom is peculiarly the ‘marketplace of ideas.’ The Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas . . . .”); See also Paul Horowitz, *Grutter’s First Amendment*, 46 B.C. L. REV. 461, 488–89 (2005) (discussing wider implications of *Keyishian* for academic freedom).

153. Most of these critiques do not apply to the educational benefits of diversity. For example, a major critique of the marketplace of ideas is that it does not lead to truth. See Stanley Ingber, *The Marketplace of Ideas: A Legitimizing Myth*, 1984 DUKE L.J. 1, 31 (1984) (“[T]he marketplace assumption of objective truth is implausible . . . .”). But as Professor Paul Horowitz notes, in *Keyishian*, the U.S. Supreme Court suggested that academic freedom was valuable not only as a “search for truth,” but also for “the training and shaping of the nation’s citizens.” Horowitz, *supra* note 152, at 489. In the context of diversity, the goal is not to find truth, but rather to train citizens for global leadership, see, e.g., *Grutter v. Bollinger*, 539 U.S. 306, 324 (2003); *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 313 (1978) (Powell, J., concurring), and to allow students to understand different perspectives. See *Grutter*, 539 U.S. at 330 (noting that a racially diverse student body “enables [students] to better understand persons of different races”).

Professor Stanley Ingber also argues that “[a] diversity of perspectives first requires a corresponding diversity of social experiences and opportunities.” Ingber, *supra*, at 86. In this vein, the traditional marketplace of ideas notion falls short because it “focus[es] on diversity of expression rather than diversity of experience . . . [which] . . . is to focus on the dependent rather than the independent variable.” *Id.* at 76. However, this critique is also not applicable to the educational benefits of diversity. Race-conscious admissions policies justified by these benefits do focus on different experiences, assessed by admissions committees, to produce different ideas and perspectives on campus.

Additionally, Professor Post notes how academic freedom at universities is not manifested through an open marketplace, but rather through protection for experts with recognized and demonstrated competence. See POST, *supra* note 150, at 66–68. Again, the goal of student body diversity is different from the professional norms of scholarly competence. For the former, the objective is inclusion, whereas for the later, it is exclusion.

154. See generally POST, *supra* note 150 (analyzing how values of academic freedom

The compelling interest in diversity flows logically from the marketplace of ideas.<sup>155</sup> In order to function properly, a marketplace of ideas must include diverse viewpoints from people with diverse backgrounds. In *Keyishian v. Board of Regents* (1967), the Supreme Court extended the marketplace notion from scholarship to teaching, stating that: “The classroom is peculiarly the ‘marketplace of ideas.’ The Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas[.]”<sup>156</sup> This language was later quoted in *Regents of the University of California v. Bakke* (1978) and *Grutter v. Bollinger* (2003), both of which applied it to the educational benefits of diversity.<sup>157</sup> In *Bakke*, Justice Lewis Powell’s concurring opinion also noted that an “atmosphere of ‘speculation, experiment and creation’—so essential to the quality of higher education—is widely believed to be promoted by a diverse student body.”<sup>158</sup> Twenty-five years later, *Grutter* became the most comprehensive statement on the educational benefits of diversity to date. Justice Sandra Day O’Connor’s majority opinion specifically delineated some of these benefits, including promoting “cross-racial understanding” and breaking down racial stereotypes.<sup>159</sup> She linked these benefits to the presence of a “variety of viewpoints” among minority students,<sup>160</sup> and “the greatest possible variety of backgrounds” among all students.<sup>161</sup> *Grutter* also cited social science research to support the proposition that a diverse student body at universities can “challenge students to consider alternative viewpoints.”<sup>162</sup> Most recently, *Fisher* echoed all of these educational

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developed over time).

155. See Cedric M. Powell, *Rhetorical Neutrality: Colorblindness, Frederick Douglass, and Inverted Critical Race Theory*, 56 CLEV. ST. L. REV. 823, 873 (2008) (noting that *Grutter* “embraces the marketplace of ideas.”). Professor Powell criticizes the “doctrinal shift [in the Court’s race jurisprudence] from the Fourteenth Amendment’s anti-subordination principle to the First Amendment’s marketplace of ideas paradigm.” *Id.* at 830.

156. *Keyishian*, 385 U.S. at 603.

157. See *Grutter*, 539 U.S. at 324 (noting importance of “robust exchange of ideas” in education) (quoting *Keyishian*, 385 U.S. at 603); *Bakke*, 438 U.S. at 312 (Powell, J., concurring) (noting importance of education through “robust exchange of ideas which discovers truth ‘out of a multitude of tongues’”) (quoting *Keyishian*, 385 U.S. at 603).

158. *Bakke*, 438 U.S. at 312 (Powell, J., concurring).

159. *Grutter*, 539 U.S. at 330 (“[T]he educational benefits that diversity is designed to produce . . . are substantial . . . [and include] . . . promot[ing] cross-racial understanding, help[ing] to break down racial stereotypes, and “enable[ing] [students] to better understand persons of different races.”) (internal quotations omitted).

160. *Id.* at 319–20.

161. *Id.* at 330.

162. Brief of American Educational Research Association et al. in Support of Respondents

benefits of diversity;<sup>163</sup> and all of them occur through the “robust exchange” that is characteristic of a marketplace of ideas.

Moreover, universities’ compelling interest in the educational benefits of diversity is broad and far-reaching.<sup>164</sup> In *Grutter* and *Fisher*, the U.S. Supreme Court also gave deference to universities in determining how diversity fits into their educational missions.<sup>165</sup> The Court has articulated the compelling interest through a marketplace of ideas framework, but the actual implementation of diversity education is the province of universities. Universities can define and implement novel and creative diversity-related initiatives, including safe spaces. The educational benefits of diversity can happen not only in classrooms, but also in other settings on campus.<sup>166</sup> Safe spaces are some of the most salient venues for these benefits: they are marketplaces of ideas which harbor rich intellectual debates and

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at 3, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (NO. 02-041). Other studies cited in *Grutter* also supported this notion. See, e.g., Gary Orfield & Dean Whitley, *Diversity and Legal Education: Student Experiences in Leading Law Schools*, in DIVERSITY CHALLENGED: EVIDENCE ON THE IMPACT OF AFFIRMATIVE ACTION 143, 162 (Gary Orfield & Michal Kurlaender, eds., 2001) (finding that many law school students agreed that “conflicts arising from racial differences led them to reexamine their own ideas[.]”); Sylvia Hurtado, *Linking Diversity and Educational Purpose: How Diversity Affects the Classroom Environment and Student Development*, in DIVERSITY CHALLENGED, *supra* note 162, at 187, 189 (quoting Ernest Pascarella et al., *Influences on Students’ Openness to Diversity and Challenge in the First Year of College*, 67 J. HIGHER EDUC. 174 (1996)) (finding that “interactions with diverse peers (in terms of race, interests, and values)” led to “a greater openness to diverse perspectives and a willingness to challenge their own beliefs after the first year of college”).

163. *Fisher v. Univ. of Texas at Austin (Fisher II)*, 136 S. Ct. 2198, 2203 (2016) (noting that educational benefits of diversity, such as “ending stereotypes” and “promoting ‘cross-racial understanding,’” “mirror the compelling interest this Court has approved in prior cases”).

164. See Anita Bernstein, *Diversity May Be Justified*, 64 HASTINGS L.J. 201, 255 (2012) (noting that diversity “can work toward rectification of historical injustice while honoring the ‘fundamental American principle’ of *e pluribus unum*”); Harpalani, *supra* note 49, at 772 (“The Supreme Court has adopted a broad notion of the compelling interest in diversity, allowing universities to incorporate race-consciousness in their educational missions in various ways.”); Stacy L. Hawkins, *A Deliberative Defense of Diversity: Moving Beyond the Affirmative Action Debate to Embrace a 21st Century View of Equality*, 2 COLUM. J. RACE L. 75, 110 (2012) (“[T]he diversity interest may in fact entail both achieving and maintaining diversity.”).

165. *Fisher II*, 136 S. Ct. at 2214 (“Considerable deference is owed to a university in defining those intangible characteristics, like student body diversity, that are central to its identity and educational mission.”); *Fisher v. Univ. of Texas at Austin (Fisher I)*, 133 S. Ct. 2411, 2419 (2013) (“[A] university’s ‘educational judgment that such diversity is essential to its educational mission is one to which we defer.’”) (quoting *Grutter*, 539 U.S. at 328).

166. See *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 312 n.48 (1978) (Powell, J., concurring) (quoting William G. Bowen, *Admissions and the Relevance of Race*, PRINCETON ALUMNI WEEKLY 7, 9, Sept. 26, 1977 (“[T]he unplanned, casual encounters with roommates . . . student workers in the library, teammates on a basketball squad, or other participants in class affairs or student government can be subtle and yet powerful sources of improved understanding and personal growth.”)).

allow cross-racial exchanges that can provide valuable learning experiences for students of all backgrounds.

### *B. Novel Learning Opportunities in Safe Spaces*

*Grutter* and *Fisher* focused primarily on the educational benefits of diversity that take place in classrooms.<sup>167</sup> Further, the assumption in all cases has been that these benefits will occur in majority White settings: the whole notion of attaining a “critical mass” of minority students is premised on having a White majority that needs to be exposed to diverse perspectives.<sup>168</sup> However, predominantly White campus settings have some limitations in this vein. Minority students may feel the need to assimilate,<sup>169</sup> and they often feel like they cannot express themselves fully and freely in such settings.<sup>170</sup> Also, the unique issues facing each minority group, which are the focus of safe spaces, may be lost in predominantly White settings because minority students do not direct the course of conversation.

As such, majority-minority settings such as safe spaces can bring out issues, ideas, and perspectives that would not occur in predominantly White settings. A safe space is not just some place where students “retreat” and stay quiet. Although media and public discourse tends to neglect their everyday activities, safe spaces sponsor many educational events and learning opportunities for students. These activities usually focus on issues of particular salience to one marginalized group, and it is through exposure to and deliberation of these issues that students can best learn “to understand persons of different races.”<sup>171</sup> Through social and cultural immersion, safe spaces become novel marketplaces of ideas which can

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167. See *Fisher I*, 133 S. Ct. at 2418 (“The attainment of a diverse student body . . . serves values beyond race alone, including enhanced classroom dialogue and the lessening of racial isolation and stereotypes.”); *Grutter*, 539 U.S. at 330 (“These benefits [of diversity] are ‘important and laudable,’ because ‘classroom discussion is livelier, more spirited, and simply more enlightening and interesting’ when the students have ‘the greatest possible variety of backgrounds.’”). See also *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967) (“The classroom is peculiarly the ‘marketplace of ideas.’ The Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas . . .”).

168. See *Grutter*, 539 U.S. at 319–20 (“[W]hen a critical mass of underrepresented minority students is present, racial stereotypes lose their force because nonminority students learn there is no ‘minority viewpoint’ but rather a variety of viewpoints among minority students.”).

169. See sources cited *supra* note 139 (addressing the concepts of “acting White” and code switching).

170. *Id.*

171. *Grutter*, 539 U.S. at 330.

promote cross-racial understanding and help to break down racial stereotypes.

### 1. Cross-Racial Understanding through Immersion

Cross-racial understanding can occur through immersion within a particular minority group, where the issues that are salient to a particular minority group are the focus of discussion and debate. Safe spaces provide settings for such immersion, as minority students set the tone and terms of conversations here, which they cannot usually do in predominately White spaces. Consequently, minority students feel less isolated and have greater freedom to express themselves, and they can raise specific issues and perspectives that would likely not arise in other spaces. This provides the opportunity for minority students to learn about their own heritage and the variety of experiences within their own group, all while being part of a supportive community.

Safe spaces may provide even more valuable learning experiences for White students. Participation in safe spaces can, in some ways, be analogous to studying abroad, where students immerse themselves in a different culture. For White students, many activities in safe spaces are also a form of *cultural immersion*:<sup>172</sup>

Cultural immersion . . . consists of embedding oneself in a community other than your own in order to understand its customs, practices, and ways of life . . . [in] programs [that] could stress language acquisition or service to a culturally different community than the student's own—whether religious, ethnic, linguistic, or socio-economic.<sup>173</sup>

Such experiences are widely recognized to be valuable opportunities for learning and growth, and there are many different ways to pursue them. Moreover, immersion can involve not only cultural practices, but also social and political perspectives—which are often closely linked to cultural practices.

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172. For more on cultural immersion in the context of studying abroad, see Nate Nault, *Cultural Immersion—The Essence of Study Abroad*, THE STUDY ABROAD BLOG, <http://thestudyabroadblog.com/cultural-immersion/> (last visited Oct. 26, 2017); Karen Rodriguez, *Cultural Immersion Through Study Abroad: Achieving the Elusive Perspective Shift*, TRANSITIONS ABROAD, [http://www.transitionsabroad.com/publications/magazine/0005/cultural\\_immersion.shtml](http://www.transitionsabroad.com/publications/magazine/0005/cultural_immersion.shtml) (last visited Oct. 26, 2017).

173. Tykerious Coleman et al., *Cross-Cultural Immersion Must Start in High School*, N.Y. TIMES (Apr., 2015), <http://nytimesineducation.com/spotlight/cross-cultural-immersion-must-start-in-high-school/>.

Immersion in the rich marketplace of ideas that safe spaces provide is another such opportunity for White students—one that may facilitate cross-racial understanding more than any other set of activities on campus. Black and other students of color already encounter the perspectives of White students in their classes and campus activities. But White students have fewer opportunities to encounter the perspectives of different groups of minority students. Safe spaces focus directly on these perspectives, and activities in safe spaces are arguably the best way for White students to “better understand persons of different races.”<sup>174</sup> These activities serve to break down racial stereotypes by exposing White students to the “variety of viewpoints”<sup>175</sup> within a given minority group. As such, safe spaces can play a key role actualizing the educational benefits of diversity.

Some activities, such as Martin Luther King, Jr. Day and Black History Month events, which celebrate Black heritage, can draw large, diverse attendance at universities. But the most unique and valuable learning opportunities in safe spaces come through smaller discussions and debates on the unique experiences of specific groups of minority students.

For example, among Black college students at predominantly White institutions, the dilemma of “acting White” is a salient issue of racial identity—one that many have experienced directly in various settings.<sup>176</sup> The ways in which Black Americans negotiate social and cultural norms of White society has been a prominent topic in academic literature. In particular, the idea that low-achieving Black students accuse their high-achieving Black peers of “acting White” has received much attention.<sup>177</sup> This is a widely-debated issue, as there

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174. See *Grutter*, 539 U.S. at 330 (stating that a better understanding of persons of different races is an “important and laudable” benefit).

175. *Id.* at 320.

176. See generally Signithia Fordham & John Ogbu, *Black Students' School Success: Coping with the “Burden of Acting White,”* 18 URBAN REV. 176 (1986) (describing how Black students face accusations of “acting White” from Black peers if they engage in various behaviors, including performing well in school). Professor Fordham and Ogbu’s article is one of the most widely cited works ever in educational research. For an article that focuses on “acting White” as an implicit pressure rather than an explicit epithet, see Clare G. McArdle & Nancy F. Young, *Classroom Discussion of Racial Identity or How Can We Make It without “Acting White”?* 40 AM. J. ORTHOPSYCHIATRY 135 (1970). For an application of this perspective to employment settings, see Carbado & Gulati, *supra* note 139. For a historical perspective on “acting White” see RON CHRISTIE, *ACTING WHITE: THE CURIOUS HISTORY OF A RACIAL SLUR* (2010).

177. See generally Fordham & Ogbu, *supra* note 176 (discussing the concept of “acting White”). There are numerous articles critiquing Professor Fordham and Ogbu’s work. See, e.g.,

is tremendous variation among Black students regarding their experiences with the “acting White” dilemma. The issue has large implications for education policy, race relations, and social interactions more generally.<sup>178</sup> It is particularly salient for high-achieving Black students who enroll at elite universities,<sup>179</sup> and it is a common topic of discussion in safe spaces devoted to the needs and experiences of Black students.<sup>180</sup>

But ironically, White students know very little about “acting White”—few if any of them would have that term levied at them as an epithet. Many of them are not even aware of the issue or have only heard about it at a superficial level. The only way they can learn about “acting White” in a meaningful and comprehensive manner is by hearing perspectives from a number of Black students, in a forum where Black students are the majority and can steer the course of discussion. Learning about the “acting White” phenomenon can bring about cross-racial understanding among White students, in a manner that focuses directly on the immediate identity issues that their Black peers are facing. Moreover, Black students have a variety of experiences with “acting White” and differing views on the issue,<sup>181</sup> and exposure to these can allow White students to overcome racial stereotypes and gain insight into racial identity dilemmas.

Another issue of particular salience to Black college students is the complex relationship between multigenerational African

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Margaret Beale Spencer & Vinay Harpalani, *What Does “Acting White” Actually Mean?: Racial Identity, Adolescent Development, and Academic Achievement Among Black Youth*, in *MINORITY STATUS, OPPOSITIONAL CULTURE, AND SCHOOLING* 222 (John U. Ogbu ed., 2008); Vinay Harpalani, *What Does “Acting White” Really Mean?: Racial Identity Formation and Academic Achievement Among Black Youth*, 1 PA. GRADUATE SCH. OF EDUC. PERSP. ON URB. EDUC. (2002), <http://www.urbanedjournal.org/archive/volume-1-issue-1-spring-2002/what-does-acting-white-really-mean-racial-identity-formation-an>. There are many other critiques of Fordham and Ogbu cited within these sources, and many different views on how and why Black youth use the term “acting White.”

178. See *supra* notes 176–177 (discussing the concept of “acting White”).

179. Cf. *supra* note 177 (noting salience of “acting White” dilemma for high-achieving Black students, who are most likely to eventually enroll at elite universities.).

180. I have also written scholarly works about “acting White,” cited at *supra* note 177, and on two occasions, I have been invited by Black student organizations to discuss this work and facilitate discussions on the topic.

181. See Spencer & Harpalani, *supra* note 177 (discussing different understandings of “acting White” among Black youth). Professor Maya Beasley also describes a similar phenomenon within the Black student community at Stanford University, where Black students who did not participate in activities sponsored by Black organizations were referred to by other Black students as “incogs” [short for “incog-negro—a play on “incognito”] or told they were “not [B]lack enough.” Beasley, *supra* note 68, at 75–76, 181 n.12.

Americans and immigrants or second generation Americans of African or Afro-Caribbean descent.<sup>182</sup> As Professor Kevin Brown has noted, this issue is particularly salient at elite universities, where over time the Black student population has become more composed of Black immigrants and children of recent Black immigrants.<sup>183</sup> Many White and non-Black students are unaware of this demographic trend,<sup>184</sup> but it has had a significant impact on the social and cultural dynamics of the Black student population on these campuses,<sup>185</sup> and on the U.S. Black population more generally.<sup>186</sup> These types of cross-cultural relationships within racial groups also speak directly to the “variety of viewpoints” that *Grutter* emphasized.<sup>187</sup> And it is through

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182. See generally Eleanor M. Brown, *The Blacks who “Got Their Forty Acres”: A Theory of Black West Indian Migrant Asset Acquisition*, 89 N.Y.U. L. REV. 27 (2014) (discussing law and property in regard to Black migrants); Jennifer V. Jackson & Mary E. Cothran, *Black versus Black: The Relationships Among African, African American, and African Caribbean Persons*, 33 J. BLACK STUD. 576 (2003) (addressing immigration and arguing the need for more Afrocentric education); Mary C. Waters, Phillip Kasinitz, & Asad L. Asad, *Immigrants and African Americans*, 40 ANN. REV. SOCIOLOGY 369 (2014) (discussing the growing diversity within the black population, driven by immigrants from the Caribbean and Africa).

183. See KEVIN BROWN, *BECAUSE OF OUR SUCCESS: THE CHANGING RACIAL & ETHNIC ANCESTRY OF BLACKS ON AFFIRMATIVE ACTION* (2014) (discussing Black Multiracials and Black Immigrants in higher education); Kevin Brown & Jeannine Bell, *Demise of the Talented Tenth: Affirmative Action and the Increasing Underrepresentation of Ascendant Blacks at Selective Higher Educational Institutions*, 69 OHIO ST. L.J. 1229, 1231 (2008) (questioning admissions policies “that lump[] all blacks into a single-category approach that pervades admissions decisions of so many selective colleges, universities, and graduate programs.”); Kevin D. Brown, *Should Black Immigrants be Favored Over Black Hispanics and Black Multiracials in the Admissions Processes of Selective Higher Education Programs?*, 54 HOW. L.J. 255, 302 (2011) (arguing that “admissions committees of selective higher education institutions should not provide treatment that is more favorable to Black Immigrant applicants . . .”). See also Cara Anna, *Immigrants Among Blacks at Colleges Raises Diversity Questions*, BOSTON GLOBE, Apr. 30, 2007, [http://www.boston.com/news/education/higher/articles/2007/04/30/immigrants\\_among\\_blacks\\_at\\_colleges\\_raises\\_diversity\\_questions/?page=2](http://www.boston.com/news/education/higher/articles/2007/04/30/immigrants_among_blacks_at_colleges_raises_diversity_questions/?page=2) (“The issue of native vs. immigrant blacks took hold at Harvard in 2004, when Professors Henry Louis Gates and Lani Guinier pointed out at a black alumni reunion that a majority of attendees were of African or Caribbean origin.”).

184. Cf. Brown & Bell, *supra* note 183, at 1231 (“[B]lacks whose predominate racial and ethnic heritage is traceable to the historical oppression of blacks in the U.S. are far more underrepresented than administrators, admissions committees, and faculties realize.”).

185. Many universities have student organizations representing the various groups. For example, in addition to the Black Student League (BSL), the University of Pennsylvania has the Penn African Students Association (PASA) and the Caribbean American Students Association (CASA). See *Student Groups*, GROUPS ONLINE @ PENN, [https://upenn-community.symplicity.com/index.php?s=student\\_group](https://upenn-community.symplicity.com/index.php?s=student_group) (last visited Oct. 26, 2017). In the early 2000s when I was at Penn, there was also an active Haitian American student organization called Dessalines (name after Haitian revolutionary leader Jean-Jacques Dessalines).

186. See sources cited *supra* note 182 (discussing impact of Black immigrants on Black American communities).

187. See *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003) (explaining that racial stereotypes “lose their force” when students understand there are a variety of minority viewpoints).

immersion in these conversations, through activities in safe spaces, that White students can best learn about these issues.

Safe spaces can sponsor events addressing many other issues within Black communities. Some activities combine education with social justice and activism; student organizing as part of the #BlackLivesMatter movement is one such activity that has been prominent lately. Other events might cover specific issues for Black students on campus. For example, the skewed gender ratio on college campuses, and concomitant shortage of educated marriageable Black men,<sup>188</sup> has a tremendous impact on the social lives of Black college students and their views of intimate relationships. Yet, White students are often unaware of this gender skew, and of its historical context and contemporary effects. Skin color bias within Black communities is another widely-discussed issue with a long history.<sup>189</sup> Additionally, conversations among Black students might address racial profiling, the merits of integration versus Black nationalism; the obligation (or lack thereof) of Black Americans who have achieved wealth and status to give back to disadvantaged Black communities; and other salient issues specific to Black people and Black communities. All of these topics are frequently discussed and debated in safe spaces that focus on Black experiences. However, many White students are unaware of them altogether, or at least have not thought much about them or heard different perspectives about them from Black students.

Even when few or no White students are present at these discussions, there is an exchange of ideas among Black students that would not happen otherwise. And for those White students who are interested, the only way to learn about these issues is to be in a forum where Black students—who more likely know the right questions to ask—can direct the course of discussion and bring out different

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188. See RALPH BANKS, IS MARRIAGE FOR WHITE PEOPLE?: HOW THE AFRICAN AMERICAN MARRIAGE DECLINE AFFECTS EVERYONE (2012) (discussing decline of marriage among Black Americans and its impact on Black women); Ralph Richard Banks, *A Definite Shortage of Marriageable Black Men*, N.Y. TIMES, Jan. 20, 2012, <http://www.nytimes.com/roomfordebate/2011/12/20/black-men-for-black-women/a-definite-shortage-of-marriageable-black-men> (“[T]he economic and educational gaps that separate young black men and women diminish the likelihood of a successful relationship[.]”).

189. See, e.g., COLOR MATTERS: SKIN TONE BIAS AND THE MYTH OF A POST-RACIAL AMERICA, (Kimberly Jade Norwood ed., 2014); MARGARET L. HUNTER, RACE, GENDER, AND THE POLITICS OF SKIN TONE (2005); NINA G. JABLONSKI, LIVING COLOR: THE BIOLOGICAL AND SOCIAL MEANING OF SKIN COLOR (2012); KATHY RUSSELL, MIDGE WILSON, & RONALD HALL, THE COLOR COMPLEX (REVISED): THE POLITICS OF SKIN COLOR IN A NEW MILLENNIUM (2013); SHADES OF DIFFERENCE, WHY SKIN COLOR MATTERS (Evelyn Nakano Glenn ed., 2009).

perspectives. It is possible that some of the topics may come up in class discussions—perhaps in sociology or African American studies courses. However, safe spaces still provide unique learning opportunities. Candor of discussion may be mitigated not only by a predominantly White environment (if the class is one), but also by the presence of a professor or the prospect of a grade. Also, conversations in safe spaces go beyond conventional academic discourse and often focus on the everyday experiences of Black and other minority students. These conversations represent valuable learning experiences outside of the classroom and also exemplify the educational benefits of diversity.<sup>190</sup>

## 2. “Education Should Not Be Intended to Make People Comfortable”

In the same monograph on academic freedom where he criticized safe spaces, University of Chicago College Dean John Boyer also discussed the importance of exploring new ideas. He quoted the University’s former President Hanna Holborn Gray: “[E]ducation should not be intended to make people comfortable, it is meant to make them think.”<sup>191</sup> Ironically, this is precisely what happens in safe spaces. In different ways, safe spaces bring both minority students and White students out of their comfort zones,<sup>192</sup> and this discomfort is healthy and facilitates learning.

### a. Healthy Discomfort for Minority Students

Although they are intended in part as support mechanisms,<sup>193</sup> safe spaces are not always “comfortable” for minority students. “Safe” in this context does not mean free from discomfort.<sup>194</sup> The debates within each minority group, such as those noted in Part III.B.1., can be even more intense and uncomfortable than debates between minority students and White students. Dilemmas such as “acting White” are

190. See *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 312 n.48 (1978) (Powell, J., concurring) (quoting William G. Bowen, *Admissions and the Relevance of Race*, PRINCETON ALUMNI WEEKLY, Sept. 26, 1977, at 7, 9 (discussing how educational benefits of diversity can occur outside classrooms)).

191. BOYER, *supra* note 2, at 6 (quoting HANNA HOLBORN GRAY, *SEARCHING FOR UTOPIA: UNIVERSITIES AND THEIR HISTORIES* 86 (2011)).

192. In this sense, the term “safe space” can be misleading. See *supra* notes 43–47 and accompanying text (discussing how safe spaces allow students to confront uncomfortable issues).

193. See *supra* Part I.B.2 (describing how safe spaces support minority students).

194. See *supra* notes 43–47 and accompanying text (discussing how safe spaces allow students to confront uncomfortable issues).

very personal for some Black and other minority students,<sup>195</sup> particularly during young adulthood when their identities are still in flux.<sup>196</sup> Many students of color want to discuss issues that are specific to their group, but these conversations may well create more discomfort for them than their interactions with White students. This is a healthy discomfort, as it helps minority students resolve some of their own identity dilemmas in young adulthood and also can challenge stereotypes they have about their own groups.<sup>197</sup> Rather than serving a retreat from uncomfortable ideas, safe spaces allow minority students to engage different uncomfortable ideas that are specific to their particular groups or to minority/marginalized groups more generally.

#### b. Healthy Discomfort for White Students

Healthy discomfort in safe spaces can also play a key role in learning for White students. As noted earlier, White students can gain insight that they generally would not encounter in other campus settings. But on a more fundamental level, immersion can provide an even more important lesson for White students: learning what it is like to be a minority—or at least to gain some sense of the discomfort that accompanies this experience. Unlike students of color, White students can usually choose to avoid settings that are not predominantly White without sacrificing academic and professional opportunities.<sup>198</sup> There are some instances when White college students do have the experience of being a minority, such as studying abroad or performing community service in predominantly minority communities. But even in these settings, White students are usually in a relatively privileged social and/or economic position, and they are treated as guests rather than peers.

For several reasons, it is beneficial for White students to experience the firsthand the discomfort of being a minority among their peers (fellow college students). This experience can give White students a better sense of how minority students feel in

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195. See *supra* note 139 (noting dilemmas of “acting White” for various minority groups).

196. See Spencer & Harpalani, *supra* note 177 (discussing how accusations of “acting White” are related to racial identity development among Black youth).

197. The exposure to a “variety of viewpoints” noted in *Grutter* can also apply within group. A particular minority student might initially think that his or her experience is representative of the group, only to realize that other members of the same group (perhaps those from a different part of the country or world) have very different experiences and views.

198. See *supra* Part II.C.

predominantly White settings—which constitute most academic and professional settings. It can help create both cross-racial understanding and empathy—sentiments that are all the more important given that racial inequalities and tensions have been arguably the most charged and divisive conflicts in American history.

By directly experiencing the discomfort of minority status among one’s peers, White students can also better understand social and cultural adjustment issues,<sup>199</sup> racial microaggressions,<sup>200</sup> and White privilege.<sup>201</sup> Regardless of their views on these issues, White students can gain some insight by hearing minority students’ varying perspectives—and the visceral experience of being a minority and bearing the burden of integration can add another dimension to this cross-racial understanding. In fact, social science evidence indicates that perspective-taking, which can be a part of such immersion, can reduce both the expression of stereotypes and the unconscious biases associated them.<sup>202</sup>

White students can also begin to critically analyze their own experiences with race and with other axes of marginality, such as gender, socioeconomic status, sexual orientation, and other statuses. Conversations in safe spaces may lead White students to see how they themselves may be marginalized in various ways. Moreover, students of color may also be able to hear White students’ views on these

199. See, e.g., sources cited *supra* notes 139, 176–189 and accompanying text.

200. See *supra* notes 63–67 and accompanying text.

201. See, e.g., ROBERT JENSEN, *THE HEART OF WHITENESS: CONFRONTING RACE, RACISM AND WHITE PRIVILEGE* (2005) (discussing difficult realities of racism and white privilege); TIM WISE, *WHITE LIKE ME: REFLECTIONS ON RACE FROM A PRIVILEGED SON* (2005) (examining ways in which racial privilege affects daily lives of White Americans); Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, *PEACE AND FREEDOM* 10 (July–Aug. 1989) (introducing concept of White privilege as invisible benefits that White people possess).

202. Adam D. Galinsky & Gordon B. Moskowitz, *Perspective-Taking: Decreasing Stereotype Expression, Stereotype Accessibility, and In-Group Favoritism*, 78 *J. PERSONALITY & SOC. PSYCHOL.* 708, 722 (2000) (finding that perspective-taking “appears to diminish not just the expression of stereotypes but their accessibility[] . . . [because] . . . [t]he constructive process of taking and realizing another person’s perspective furthers the egalitarian principles themselves”); Linda R. Tropp & Rachel D. Godsil, *Overcoming Implicit Bias and Racial Anxiety*, *PSYCHOL. TODAY*, Jan. 23, 2015, <https://www.psychologytoday.com/blog/sound-science-sound-policy/201501/overcoming-implicit-bias-and-racial-anxiety> (noting that one method to reduce implicit bias “is to assume the perspective of an outgroup member”). See also Ann Mallatt Killenbeck, *Ferguson, Fisher, and the Future: Diversity and Inclusion as a Remedy for Implicit Racial Bias*, 42 *J.C. & U.L.* 59, 101 (2016) (“An institution that treats diversity as an opportunity for creative and proactive education, rather than as simple numbers, can use the sorts of approaches described in the implicit bias literature to work toward the elimination of inappropriate attitudes and beliefs.”).

issues, which are rarely discussed in other contexts. In this way, safe spaces can epitomize cross-racial understanding.

Finally, the experience of being a minority will help prepare White students for the changing demographics of America. The *Grutter* majority highlighted the importance of preparing White students for work in an “increasingly global marketplace,”<sup>203</sup> and the same reasoning applies to diversity within America. As the U.S. becomes more diverse, White Americans will regularly encounter more settings where they are a minority, similar to safe spaces on college campuses. Spending time in these spaces may help White students experience and adjust to the realities of the coming world.

Through the diverse learning experiences they create for all students, safe spaces can allow universities to actively “reap the benefits” of diversity, rather than merely attaining representation of different racial/ethnic groups.<sup>204</sup> In the process, however, they also confront the dilemma of remaining “safe.”

### *C. Remaining “Safe”: How Diverse Can Safe Spaces Become?*

While safe spaces can be valuable marketplaces of ideas, their original purpose of these spaces was to be “safe” for minority students: to create an environment where these students can support each other in the challenges that they share. Although safe spaces are open to White students, their primary function is to cater to the needs of students of color. As such, it is possible that the frequent presence of too many White students may prevent students of color from feeling “safe” in these spaces.

In a sense, safe spaces at predominantly White universities are “serving two masters”:<sup>205</sup> students of color who are looking for

203. *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003).

204. See Patrick S. Shin & Mitu Gulati, *Cultivating Inclusion*, 112 MICH. L. REV. FIRST IMPRESSIONS 117, 123 (2014) (“[A]ffirmative action is not a policy that we can just put in place and then passively reap the benefits. If we are not careful in first being clear as to what benefits we are hoping to obtain from and then working to ensure that our diversity initiatives actually produce these benefits, we will end up wasting resources . . .”).

205. Derrick A. Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 470 (1976) (describing tension between goals of civil rights advocates and those of their clients). Professor Bell derived the “serving two masters” metaphor from the New Testament. See *Luke* 16:13 (King James) (“No servant can serve two masters: for either he will hate the one, and love the other; or else he will hold to one, and despise the other.”). The idea of “serving two masters” is analogous in some ways to the identity dilemmas that people of color face more generally in a predominantly White society. See sources cited *supra* notes 139, 176–180 (describing dilemmas of “acting White” and code

support, and White students who are looking for diverse educational experiences. On the one hand, students of color want “to influence their [White] peers to become more sympathetic to minority concerns . . . .”<sup>206</sup> But on the other hand, “[m]inority students often object to the expectation that they take on the job of educating whites about matters of race.”<sup>207</sup>

Strategies for navigating this tension may vary, and these strategies will become more important as greater numbers of White students begin to engage safe spaces that are devoted to particular minority groups. As this occurs, safe spaces must remain “safe” for students of color. Two basic principles to consider in reconciling the dual role of safe spaces are control and immersion.

### 1. Control

As an overarching matter, the key requirement for safe spaces to function is *control*. Minority students must feel a sense of control: that they control the activities that occur in these spaces, and that university administrators who run particular programs are meeting their specific needs. They typically do not have this sense of control elsewhere on predominantly White campuses, where they often feel marginalized.<sup>208</sup> For minority students, this sense of control is more significant than having any particular number or percentage of same-race peers in a given space.

One can draw a parallel here with the concept of “critical mass.” On a predominately White campus, “critical mass” means sufficient numbers such that minority students do not feel “isolated or like spokespersons for their race.”<sup>209</sup> In a safe space on a predominantly White campus, the standard for control would perhaps be larger: sufficient numbers such that minority students feel that their group controls the agenda and direction of activities in the given safe space. Moreover, like critical mass, the threshold for control is not fixed.<sup>210</sup> It depends on campus social dynamics, as well as the specific dynamics of the given safe space.

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switching).

206. WARIKOO, *supra* note 102, at 132.

207. *Id.* at 106.

208. *See supra* Part I.B.1.

209. *Grutter v. Bollinger*, 539 U.S. 306, 319 (2003).

210. *See supra* note 54 and accompanying text (noting that “critical mass” is not defined merely by numbers or percentages of minority students, but rather by students’ experiences).

## 2. Immersion

Control can be a limiting factor on White student participation because students of color must feel that safe spaces are supportive and focused on their needs. Conversely, *immersion* itself can be a limiting factor because in safe spaces, the educational benefits of diversity for White students come in part with being a minority. It is immersion, as a minority within a different group, which creates unique learning opportunities for White students in safe spaces. Immersion leads to the issues and perspectives that students of color bring out when they control the conversation.<sup>211</sup> White students can learn by observing, listening, and participating when they feel comfortable doing so, and when it fits into the agenda set by students of color. They also learn by experiencing minority status firsthand. Events or activities where this did not occur would not fully provide White students with cross-racial understanding in the unique manner that can occur in safe spaces.

Currently, problems of control and immersion are usually not significant issues, because the number of White students participating in safe spaces is often low.<sup>212</sup> But this could change as more White students become involved in safe spaces and their activities. Implementation strategies may be necessary to navigate the inherent tension between support and diversity education that characterizes safe spaces. Students and safe space administrators may want to advertise certain educational events to target more diverse audiences, while targeting support-based activities more towards minority students. This may be even more important when racial incidents have recently occurred on campus and tensions are heightened. Additionally, social and cultural events that occur in safe spaces can serve as “icebreakers”—allowing students of different backgrounds to become more comfortable with each other before they engage more difficult conversations and debates.<sup>213</sup> Such familiarity can help ease

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211. See *supra* Part III.B.1.

212. See *supra* note 137 (discussing empirical research which found low White student participation in undergraduate minority student organizations). See also, e.g., WARIKOO, *supra* note 102, at 73 (“[E]veryone is welcome [at the Third World Transition Program] . . . [but] less than 10 percent of attendees are white.”). Of course, there are exceptions like the W.E.B. Du Bois College House at the University of Pennsylvania. See *supra* notes 112–113 and accompanying text. See also *supra* note 137 (discussing recent studies indicating that White students do participate in law school minority student organizations).

213. This is similar to the strategy of the Black media professionals organizing the “Come Meet a Black Person” event in Georgia. See Criss, *supra* note 143 (noting that organizers “will go around and break the ice and introduce people to each other.”). However, this event seeks to

the discomfort that accompanies meaningful cross-racial learning endeavors.

There are no prescribed rules for balancing the dual role of safe spaces. Each university campus has its own social dynamics which may dictate proper solutions. Ultimately, if students of color felt that they were losing control in an existing safe space, history tells us that they would likely create a new safe space.<sup>214</sup> The creation and continuation of these spaces is a dynamic process, as students’ needs and perspectives change over time. The value of diversity itself derives from the ability to be “flexible, adaptive, and accommodating to social change.”<sup>215</sup> This is true not only for individuals benefitting from exposure to diverse perspectives, but also for safe spaces themselves.

### CONCLUSION

This Article has illustrated the ways in which safe spaces for minority students contribute to the educational benefits of diversity. Through supporting students of color and providing unique educational opportunities for all students, safe spaces play an important role in achieving and maintaining these benefits. These spaces focus directly on different facets of cross-racial understanding, ranging from cultural competence to racial justice. And contrary to much popular discourse, safe spaces are open, welcoming environments to all interested students—they serve as marketplaces of ideas where meaningful intellectual exchanges can occur.

Safe spaces illustrate how cross-racial interaction is compatible with immersion. Pluralism does not equate with separatism, and organizations or venues focused on the experiences of one group can be valuable for all students. Typically, universities emphasize the educational benefits of diversity that occur via integration of minority students into predominantly White campus settings, but the learning opportunities in safe spaces may be even more significant. The educational benefits of diversity can occur most saliently when there are spaces for all interested students to focus individually on different racial/ethnic groups. Universities should reframe the discourse on

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avoid “the clichéd ‘conversation on race.’” *Id.* Conversely, this Article advances meaningful conversations about race as the ultimate aim of safe spaces.

214. *Cf.* sources cited *supra* notes 36 and 38 (discussing rises in campus activism among Black students).

215. Vinay Harpalani, *Diversity and Living Constitution Theory*, AM. CONSTITUTION SOC’Y (Sept. 15, 2015), <https://www.acslaw.org/acsblog/diversity-and-living-constitution-theory>.

diversity and recognize that its educational benefits can also come about through the immersion of White students in safe spaces.

This view of safe spaces can begin to balance another tension: that between acknowledging White privilege and racism and furthering the anxiety that White people feel when they are accused of being racist.<sup>216</sup> Although safe spaces focus on students of color and must be controlled by their needs and initiatives, immersion creates a place for White students to listen, learn, partake, and to gradually overcome that anxiety. There will certainly be discomfort and tense moments in this process. University administrators, staff, and students will need to experiment and determine how to attain these goals optimally in different safe spaces. But the potential here is immense, and immersion may well lead to more meaningful cross-racial understanding than could otherwise be accomplished.

Finally, as students' needs evolve over time, universities should be willing to establish new safe spaces on campus that "are open to student definition and creation."<sup>217</sup> Outside of the classroom, safe spaces may be the primary venues for learning at universities. And unlike most classrooms, safe spaces are student-centered, not professor-centered: students have a significant voice in how they function. Perhaps the hallmark feature of safe spaces is that they represent student expression and investment at universities. For students of color and marginalized students more generally, this is a large step in turning the predominantly White university campus into a more equitable and hospitable environment.

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216. See Rachel D. Godsil and L. Song Richardson, *Racial Anxiety*, 102 IOWA L. REV. 2235, 2239 (2017) ("White people . . . experience [racial anxiety] . . . when they worry that they will be perceived as racist.").

217. NWU REPORT, *supra* note 55, at 57.