

## Prospects of a Dusselian Ethics of Liberation among US Minorities: The Case of Affirmative Action in Higher Education

by Sergio A. Gallegos Ordorica

### English Abstract

This paper proposes an application of Enrique Dussel's ethics of liberation to an issue of crucial importance to US minorities: the debate on affirmative action. Over the past fifty years, this debate has been framed in terms of the opposition between advocates of affirmative action who claim that it is needed in order to achieve the integration and participation of traditionally oppressed groups to society without which there is no equality of rights, and critics who argue that affirmative action violates equality by enforcing a double standard that undermines the ideal of a color-blind society. In this paper, I show how the basic principles of Dussel's ethical theory (which are best expounded in his book *Ethics of Liberation*) allow us to address what I take to be the main demands of both advocates and critics of affirmative action in a satisfactory way.

### Resumen en español

Este artículo propone una aplicación de la ética de la liberación de Enrique Dussel a una cuestión de importancia crucial para las minorías en Estados Unidos: el debate sobre la acción afirmativa. En los últimos cincuenta años, el debate ha estado enmarcado en términos de los defensores de la acción afirmativa, los cuales mantienen que es necesaria para alcanzar la integración y la participación de los grupos tradicionalmente oprimidos en la sociedad, sin lo que no hay igualdad de derechos, y los críticos que argumentan que la acción afirmativa viola la igualdad porque establece un doble estándar que socava el ideal de una sociedad insensible al color. En este artículo, muestro cómo los principios básicos de la teoría ética de Dussel (que son mejor expuestos en su libro *Ética de la liberación*) nos permiten satisfacer de forma satisfactoria lo que considero ser las principales demandas de los defensores y los críticos de la acción afirmativa.

### Resumo em português

Este artigo propõe aplicar a ética de libertação de Enrique Dussel a uma questão de crucial importância para as minorias dos EUA: o debate sobre a ação afirmativa. Nos últimos 50 anos, este debate foi enquadrado em termos da oposição entre os defensores da ação afirmativa, que afirmam que esta é necessária para alcançar a integração e a participação dos grupos tradicionalmente oprimidos na sociedade, sem a qual não há igualdade de direitos, e os críticos da mesma, que argumentam que a ação afirmativa viola a igualdade, por que estabelece um duplo standard, que mina o ideal de uma sociedade que não vê cor. Neste artigo, mostro como os princípios básicos da teoria ética de Dussel (que são melhor explicados em seu livro *Ética da Libertação*) nos

permitem abordar de forma satisfatória o que eu acredito serem as principais demandas de ambos defensores e críticos da ação afirmativa.

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Two of the greatest philosophical contributions of Enrique Dussel have been his rejection of a conception of ethics often accepted by the major figures of the Western philosophical tradition as an abstract discipline that has no cultural roots and the central claims of which are deemed to have a universal validity in virtue of its independence from historical contingencies, and his attempt to articulate and defend an alternate conception of ethics as a human activity that, throughout its history, has been shaped by the political and economic interests of those who create it. In virtue of this, Dussel has shown how ethics has been used often throughout history to justify some cultural or social institutions (such as slavery or colonialism),[1] but also how it can also be employed to liberate individuals that have been oppressed by these institutions.

In particular, in the case of education, Dussel (1985, 12) has famously argued that, although universities and other higher education institutions in ‘periphery’ countries functioned as ‘brain-washing theaters’ in which students were taught to repeat and emulate fashionable trends of thought generated in European metropolises, the eventual recognition by some individuals in the ‘periphery’ of this role led them to question some key assumptions underlying this educational model, thus yielding a dismantlement of some social structures that fostered oppression. In particular, in the case of Freire, Dussel (2013, 312) remarks that his pedagogical views constitute a departure from a traditional notion of education because “without losing sight of [the importance of theoretical or moral intelligence], Freire aims, first and foremost, to educate the victims in the very historical, communitarian and real process through which they abandon their condition as victims.” Indeed, as Freire (1970) suggests rethinking the philosophical assumptions underlying traditional pedagogy to promote in students a critical and transformative activity geared towards their intellectual emancipation, his pedagogical proposal can be considered as a clear expression of one of the main desiderata of the philosophy of liberation which, as Dussel (1985, 173) maintains, is ‘to think what has never been thought before: the process of the liberation of dependent and peripheral countries’.

Now, even if there have been many successful applications of the central ideas that underpin philosophy of liberation in peripheral countries in the last forty years (for instance, in the case of the use of Freire’s ideas to design and implement literacy campaigns),[2] the philosophical project put forth by Dussel still leaves many issues open. Let me illustrate this with an example. Even though Dussel (2013, 47) characterizes his project as ‘a critical philosophy born in the periphery (from the perspective of the victims), which has the intention of being relevant on a global scale’, there has been so far relatively little work done on how Dussel’s ethics of liberation can

be applied to address the causes of disenfranchisement that afflict different oppressed and marginalized groups residing in 'center' countries such as the US.[3] My goal in this paper is to articulate and defend a potential application of Dussel's ethics of liberation to address a contentious issue in the US: the access of historically vulnerable and marginalized groups in the US to higher education through affirmative action.

I will proceed in the following way. In the second section of the paper, I will present very succinctly the traditional debate between advocates and opponents of affirmative action policy in regards to the access of traditionally marginalized students to higher education, highlighting one major limitation that underpins the debate. In the third section, I will rehearse and discuss briefly what I take to be the three core principles of Dussel's ethics of liberation –namely, the material principle, the formal principle and the feasibility principle– and I will show how these principles relate to each other. In the fourth section, I will show how these principles provide a framework that enables us to address the issue of affirmative action in regards to access to higher education in a way that bypasses the limitations of the traditional debate. Finally, in the last section, I will provide a brief conclusion.

## I. The Traditional Debate

In order to understand the traditional debate between advocates and opponents of affirmative action, it is first crucial to understand what affirmative action consists of. Although there are many different characterizations of the concept, I will take as a point of reference the following definition (Fullinwider 2013): “‘Affirmative action’ means positive steps taken to increase the representation of women and minorities in areas of employment, education, and culture from which they have been historically excluded.” It is important to observe that this characterization is different from the way in which the notion of affirmative action was presented in one of the first official documents in which it is used:

The contractor will not discriminate against any employee or applicant because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color or national origin. (Executive Order 10925, sec. 301)

As we can appreciate, although the original intent of the affirmative action was to eliminate discrimination with vis-à-vis persons employed by federal contractors on the basis of certain features such as race or national origin (which is a goal that is consistent with both the letter and the spirit of the US Constitution, in particular with the 14th amendment), the notion of affirmative action that Fullinwider presents is far more substantial (and potentially more controversial) since it involves not only the enforcement of the negative right of individuals not to be discriminated as members of certain groups in areas such as education or employment but also the enforcement of a

*positive* right to a larger representation in these areas to ensure genuine integration and participation –a right that has been typically enforced through the implementation of preferential selections for certain individuals in regards to access to education or employment on the basis of their being members of certain groups.[4]

This process of preferential selection, which has been implemented in some way or another by many American universities, has generated a deep controversy in the last five decades. Two of the crucial questions that have driven the debate are the following ones: why should we give preference to certain individuals (in particular, regarding access to higher education) based on their belonging to a certain group? Are there good reasons to offer to some individuals access to higher education institutions over others that may be as equally qualified as the preferred ones? Several philosophers have articulated and critically assessed during the last four decades different responses to these questions. For instance, some have contended that affirmative action is justified because certain minority groups (e.g., Blacks) have been discriminated *de jure* until very recently in comparison to other groups which still enjoy unearned advantages. On the basis of this, some authors have then argued that the use of affirmative action is justified in decisions about access to higher education because it provides a path to equality by *redressing* past wrongs (Thomson 1973) and/or by *neutralizing unearned advantages* enjoyed by privileged groups (Rachels 1979).

In virtue of this, it is patent that some defenses of affirmative action have been supported by arguments that rely on notions of justice and desert. But this is troublesome for advocates of affirmative action because critics have in many occasions developed arguments opposing affirmative action that also rely on these very notions of justice and desert. For instance, Goldman (1976, 191) has argued that ‘it seems unjust for a society to set standards of achievement and then to thwart the expectations of those who have met those standards’. And, in a parallel fashion, Sher has contended that, in the case of individuals who were not able to succeed in school because of material or other privations, it is the case that:

(...) reverse discrimination to restore precisely the competitive position that a person would have had if he had not been prevented from working would not be desirable [because] actual effort creates desert in a way that merely possible effort does not. (1975, 166)

In fact, the panorama is more somber for supporters of affirmative action. Not only have their adversaries mounted counter-arguments based on the very notions they invoke to justify affirmative action, but it seems to be the case that affirmative action is an inconsistent or self-undermining policy because, in spite of the fact that it was embraced by the civil rights movement in the late 1960’s to further some of its key goals (e.g., achieving a color-blind society with equal rights and equal opportunity for all its members), it allegedly undermines those very goals:

The civil rights movement (...) should turn its attention back to its first principles – the zealous regard for equal opportunity and the promotion of color-blind law and social policy– and away from color conscious remedies that abandon principle and lead us further away from a society free of the bane of racial discrimination. (Abram 1986, 1312)

This objection is particularly trenchant because it rests on a key principle that is enshrined in the fourteenth amendment, which is that of equality of all before the law.[5] This principle is so deeply ingrained in the American judicial system that courts have upheld several challenges to affirmative action in access to higher education (*Regents of the University of California v. Bakke*, *Hopwood v. Texas* and *Schuette v. Coalition to defend affirmative action*) by appealing to this principle, though they have upheld the validity of the use of affirmative action to further diversity, which is recognized as a ‘compelling state interest’ as long as its use is ‘narrowly tailored’ (*Grutter v. Bollinger*). In virtue of this, it seems that one cannot mount a solid case for affirmative action based on equality considerations because the principle of equality of all before the law cuts both ways.[6] On one side, it can be used to argue persuasively for affirmative action on the basis that equality requires the full integration and participation of minority groups that have been traditionally excluded via a preferential treatment. On the other side, it can be also used to argue against affirmative action on the basis that the use of different standards for different groups perpetuates a color-conscious society in which minorities are often stigmatized.

As we can appreciate, the debate on affirmative action has essentially revolved around the concepts of equality, justice, desert and diversity in the last five decades, and a substantial number of authors have made attempts to find a balance between competing demands. In particular, the vast majority of the legal and philosophical literature on affirmative action has addressed a version of at least one of the two following questions to either defend or criticize its use: (a) is there a way to justify and preserve the use of affirmative action in a way that does not involve either infringing on justice and/or upsetting desert and (b) does the right of individuals to equal treatment trump the state’s compelling interest to promote diversity?

Despite the importance of these two questions, I believe that a sustained focus on them has blinded us to a point clearly made by Justice O’Connor in the majority opinion written for *Grutter*: ‘Race-conscious admission policies must be limited in time. (...) Enshrining a permanent justification for racial preferences would offend this fundamental equal protection principle.’ As the majority of court made clear, affirmative action understood as a set of preferential policies meant to enforce a positive right of certain communities to a larger representation was never intended to be permanent and is solely justified as a temporary relief measure. But this in turn raises a question: what should we do to avoid turning affirmative action into a perennial policy while being true to the ideals of equality and justice that initially motivated it? The lack of interest on this question, which has not been addressed in the legal or philosophical literature to the best of my knowledge, constitutes a limitation of the way in which the debate has been

framed. Now, I believe that Dussel's ethics of liberation provides us with a potentially interesting way to address this question. However, prior to showing how Dussel's ethical system can be applied to this issue, it is important to be clear on the key principles that underly Dussel's theory, so I will present them in the next section.

## II. Dussel's Ethics of Liberation

Although Dussel's ethics of liberation is an incredibly rich and complex view that enables us to account for various issues that traditional moral theories also address such as the subjugation of women, it can be characterized as being underpinned by a key insight. For Dussel (2013, 55), an ethics of liberation 'unfolds in its own way from the exercise of an ethical critique, where the negated dignity of the life of the victim, oppressed or excluded, is affirmed.' As this citation makes clear, the crucial insight on which an ethics of liberation rests is a concern for all those who are most oppressed or marginalized in any society. This idea is clearly captured in one of the key principles that lies at the heart of Dussel's ethics, which he calls the *material principle*:

The one who acts ethically ought to produce, reproduce and develop self-responsibly the concrete life of each human subject, in a community of life, and inevitably out of a cultural and historical good life (...) that is shared instinctually and solidaristically. (2013, 104)

As we can see, the material principle, which states that ethical actions are those geared towards the development of all human lives (particularly, of those who are most oppressed or marginalized) rests on the value of *solidarity*. In virtue of this, in order to apply the material principle, we are required to do the following: (a) we must first identify those individuals who are the most oppressed or marginalized in a given social system and (b) we must address subsequently from their perspective why the social system in question fails them (i.e., why it oppresses them and marginalizes them). Consequently, the material principle grounds all ethical action on the recognition and vindication of the lives of those who make up the underside of society.

Dussel stresses in many places that, to be genuine, the application of the material principle must be accompanied not by a *reform* of political or social institutions (which is a change that leaves intact the structural conditions of oppression), but rather by:

(...) transforming action [which], by contrast, judges and modifies the formal system from the life and the responsible discursiveness of any human subject, and, as the ultimate reference, of the victims. (2013, 395)

For Dussel, this transforming action is often carried by social justice movements (such as the civil rights movement in the US or the Zapatista Army of National Liberation in Mexico), which are manifestations of anti-hegemonic forces. These anti-hegemonic forces are crucial for Dussel because they function according to him as catalysts of

'analectic moments' where we identify with and affirm the lives of the oppressed. In the case of education, these anti-hegemonic forces, which have been at play for Dussel for decades, have helped to create at certain moments a critical consensus, such as the one that allowed in 1995 students but also families, churches and even whole communities to rally against Proposition 187.[7] Now, in doing so, these anti-hegemonic forces operate in accordance with the second key principle of Dussel's ethics, which he calls the *formal* principle and expresses in the following way:

There is critical validity in the community when the excluded victims, having recognized each other as distinct from the oppressive system, symmetrically participate in the agreements about what affects them while at the same time sustaining that critical consensus is grounded in rational argumentation and motivated by the drive of co-solidarity. (2013, 345)

This clearly shows that the formal principle is motivated by solidarity with those who are most oppressed, but its goal is the inclusion of oppressed victims as symmetric or equal participants in a transformative process that is based on rational argumentation. In virtue of this, the formal principle aims to achieve an ideal of equality. Now, Dussel does not consider equality as an abstract value that is given to us from the start (as in Rawls' view of justice as fairness). Rather, equality is an achievement that emerges as the result of the progressive inclusion of those who are oppressed and the transformation of the political system. And, since this change or transformation is progressive, it is subject to several important constrains, which are taken into account by the third and last principle of Dussel's ethics, which he calls the *feasibility* principle and expresses as follows:

[...] who proposes to carry out or transform a norm, act, institution, and so on, cannot leave out of consideration the conditions of possibility of its objective, material and formal, empirical, technical, economic, political, and so on fulfillment, such that the act will be possible taking into account the laws of nature in general, and human laws in particular. (2003, 188)

This principle of feasibility articulates a notion of positive liberty –i.e., liberty that we have to transform things in accordance with certain constrains that are imposed on us both by natural and human laws, and by the goals of the two other principles (the material principle and the formal principle). Thus, in a nutshell, Dussel's ethics of liberation can be described or characterized as follows:

- (A) It is an ethical system which values at its core solidarity with those who are most oppressed in society.
- (B) It is an ethical system which stresses that the only genuine way to manifest solidarity is through a political transformation (not a reform) of social and economic structures to include the oppressed as equal participants.
- (C) It is an ethical system in which political transformation is constrained by our capacity or liberty to act without violating either natural or human laws, or any prior commitments to solidarity and equality.

Though there is far more to be said on how the three aforementioned principles are related to each other and how they are articulated by Dussel to develop a full blown ethical theory,[8] I will limit myself here to what I have presented above, which are the bare bones of his proposal. Indeed, my goal here is not to present in great detail an analysis of Dussel's ethical proposal to evaluate both its advantages and shortcomings vis-à-vis other ethical views (for instance, utilitarianism), but rather just to suggest a potential application of Dussel's overall view to the problem raised at the end of the second section of this paper, and I will do this in the following section.

### III. An Application of Dussel's Ethics of Liberation

As I mentioned previously, though the debate on affirmative action in regards to access to higher education has been remarkably enriching over the last fifty years, it has suffered from one serious limitation, which is the failure to address the point stressed by O'Connor when she penned the majority opinion in *Bollinger*. How can Dussel's ethics of liberation help us to avoid turning affirmative action into a perennial policy while nonetheless staying true to the ideals of equality and justice that initially motivated it? Here is my suggestion. Given the distinction between political reform and political transformation introduced by Dussel,[9] one may argue along the following lines.

Although the initial goals of affirmative action in higher education –i.e., achieving equality and promoting diversity– are good and praiseworthy, affirmative action is flawed because it is a reformist policy that leaves intact the structural conditions that generate discrimination and oppression. Moreover, as a reformist policy that was implemented along a 'top-down' line by a series of Executive Orders or legislative decisions rather than by a 'bottom-up' anti-hegemonic movement, affirmative action is a product of an unjust and corrupt political and economic system, so it is not surprising that it often has perverse consequences, as the following story illustrates:

The case of a young man who was a high school classmate of my daughters is also instructive. (...) he was a mature pleasant fellow, although he was not particularly bright, a fact reflected by his grades in high school. (...) But he had the good fortune of having had a Mexican American great-grandmother. He had no other connection to the Latino community. (...) The only living connection he had to anything Latino was through his friendship with my daughter. (...) When it came to applying for college, however, this young man, on the advice of his parents, applied to one of the premier universities in the nation and he got in. (Gracia 2008, 97)

In virtue of this, one possible solution (along roughly Dusselian lines) would be the following: in order to avoid similar cases, rather than spending time and effort to assess the merits of all potential candidates to higher education who claim minority status to determine if they should benefit from affirmative action or not, we should strive to achieve a political transformation of our system grounded on solidarity with those who



are most oppressed. The main rationale to undertake this, following Dussel, is that, in doing so, we would address the roots of the oppression and discrimination of marginalized individuals rather than its consequences. This is of crucial importance because, according to Dussel, the roots of this discrimination and oppression are not merely accidental features. Instead, they lie at the very core of the global political and economic system, the actions and policies of which are inconsistent with what it proclaims:

The utopian project of the prevailing world system, which is becoming globalized, is revealed as being in contradiction with itself, given that the majority of its possible participants have become victims deprived of the ability to satisfy the needs that this same system has proclaimed as rights. (2013, 217)

Considering this, I contend that applying Dussel's ethics of liberation to the issue of affirmative action regarding the access to higher education provides us with a way to reconcile what I take to be the crucial demands of both critics and advocates of affirmative action. Indeed, on one side, adopting an ethics of liberation would enable us to concede that affirmative action is a limited and flawed policy that violates the ideal of color-blind equality and that yields often perverse results, as its critics maintain.[10] And, on the other side, adopting an ethics of liberation would enable us to justify and strive for a transformation of the political and economic system in which, by embracing solidarity towards the oppressed victims and working to include them as equal participants, we would achieve the goals of the civil rights movement (i.e., social peace and social justice), which is what advocates of affirmative action have traditionally fought for.[11] Moreover, by adopting an ethics of liberation, I believe that we could in principle transcend the debates regarding the impacts of affirmative action on justice, equality and desert, by focusing on a more basic issue: how can we transform the structural conditions which initially motivated affirmative action?

This question, which is of paramount importance, has been recognized as being more pressing than problems that stem from the implementation of affirmative action. In particular, Nagel has raised this issue in the following manner:

When we try to deal with the inequality in advantages that results from a disparity in qualifications (however produced) between races and sexes, we are up again a pervasive feature of the system (...) We must face the possibility that the primary injustice with which we have to contend lies in this feature itself, and that some of the worst aspects of what we now perceive as racial or sexual injustice are merely conspicuous manifestations of the great social injustice. (Nagel 1973, 353)

However, though it is clear that Nagel is aware that both racial and gender discrimination (which have been used to justify affirmative action) are likely rooted in a larger and more pervasive feature of the current political and economic global system[12] he does not propose a feasible solution to tackle this great social injustice. In virtue of this, a more precise version of the above-mentioned question may be raised:

what means can we actually employ at a *concrete and practical level* within the context of higher education to accomplish this worthy goal?[13] Though I cannot provide here, given space limitations, a full account of how a Dusselian ethics of liberation could be used to answer this question, I will make in the following lines a tentative suggestion that outlines a feasible course of action to challenge this great social injustice.

Over a decade ago, several newspapers, businesses, faith organizations, school boards and higher education institutions in Colorado formed a coalition known as the Higher Education Access Alliance (HEAA) to support legislation that would offer in-state tuition for undocumented students.[14] Though there was considerable support from a large section of Colorado's population for a tuition equity law (the ASSET bill) that would alleviate the situation that thousands of undocumented students residing in Colorado faced, many attempts to pass this legislation in the Colorado General Assembly failed. After the last failure in 2012, the President and the Board of Trustees of MSU Denver recognized that they were not compelled by law to establish for undocumented students that qualified as Colorado residents the same tuition rate set for out-of-state students and, consequently, they decided unilaterally to implement a nonresident unsubsidized tuition rate called the Colorado High School/GED Non-resident tuition rate for undocumented students. This tuition rate, though higher than the in-state one, was nevertheless significantly lower than the out-of-state rate. In doing so, MSU Denver affirmed its solidarity with the most vulnerable and oppressed group belonging to its student population (i.e., undocumented students, who often had immigrated with their parents from Latin American countries as children and had extremely limited financial resources to pay for a college education) and made an earnest effort to include them as equal participants in a transformative process through a policy that did not offer them a positive preference (as affirmative action does) but that attempted to challenge directly the great injustice that they were subject to.

In virtue of this actual example, one potential course of action that both advocates and critics of affirmative action can then follow consists in working both within and outside institutions of higher education to emulate the actions of MSU Denver in other states[15] in order to implement, if not full tuition-equity for undocumented students, at least tuition rates that are significantly lower than the out-of-state tuition rates. This course of action, which challenges the structural injustice that afflicts the most vulnerable and oppressed group of students, is consistent with Dussel's principle of feasibility and also satisfies the material and formal principles.

#### **IV. Conclusion**

Let me recap. I have argued in this paper that Dussel's ethics of liberation can be effectively used to tackle the debate on affirmative action regarding the access to higher education in the US. The main advantages of employing such a method are the following ones: on the one side, it would enable us to satisfy Justice O'Connor's point regarding the need to avoid turning affirmative action into a perennial policy and, on the

other side, it would potentially enable us to satisfy what I consider to be the main demands of both opponents and advocates of affirmative action. Indeed, adopting an ethics of liberation would enable us to concede that affirmative action violates the ideal of a color-blind law, to justify the need to transform the current political and economic system to eliminate the structural conditions that give rise to the discrimination of racial minorities in the US and to undertake certain actions that effectively address (at least in a partial way) the great social injustice that initially motivated affirmative action.

Sergio A. Gallegos Ordorica  
Philosophy Department  
Metropolitan State University of Denver  
CN 307J  
Campus Box 49, P.O. Box 173362  
Denver, CO 80217-3362  
sgalle36@msudenver.edu

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## Notes

[1] There are many cases that illustrate this tendency throughout history. See, for instance, Aristotle's discussion of natural slavery in his *Politics* (1254b17-1255b39) and the use of his arguments by Juan Ginés de Sepulveda in *On the just causes of the war with the Indians* to justify the oppression of Indigenous populations in the American continent.

[2] For a recent discussion of the influence of Freire's pedagogical views on the development of literacy campaigns (particularly in Chile and Nicaragua), see Kirkendall (2010).

[3] A clarification is important here. Though a number of theologians based in the US have made very substantial contributions that show how different liberation theologies can have a profound impact on oppressed and marginalized groups (e.g.,

Isazi-Díaz 2004, De la Torre 2004, De la Torre and Aponte 2006), there has been little work on how Dussel's specific writings and, in particular, his ethical views bear on issues of interest to oppressed and marginalized groups in the US. Since this is the project that I am pursuing in this paper, I will leave aside here the contribution of these other authors.

[4] For further discussion on the distinction between negative and positive rights, see Narveson (2001).

[5] It is important to point out here that even staunch defenders of affirmative action tend to be sensitive to the line of argument according to which it violates equality. For instance, Ezorsky (1991, 82) acknowledges the following: 'According to this claim, all whites deserve to pay the cost of preferential treatment (hereafter, the desert claim). I do not accept the desert claim; indeed, I suggest that the criticism of racial preference as unfair to adversely affected whites is not without merit.'

[6] I am in agreement with this position, which is defended by Warnke (1998).

[7] For further details on the popular reaction to Proposition 187, before and after its vote, see Ono and Sloop (2002).

[8] For further discussion concerning the three principles of Dussel's ethics of liberation, see Mendieta (1999) and Marsh (2000).

[9] For more details on the difference and opposition between reform and transformation, see Dussel (2008, 111-112).

[10] In addition to Abram, other opponents to affirmative action on the grounds that it violates the ideal of a color-blind society include Reynolds (1996) and Welch (1996). While I am in agreement with this point, the solution is not (as some people would have) to eliminate affirmative action by pretending, as Patrick (1996, 144) critically observes, that 'discrimination is not still with us, or that it has no present widespread effects.' Rather, a better solution involves, as I argue below, transforming the political and economic system that motivates the need of affirmative action policies in the first place.

[11] In particular, advocates of affirmative action such as Crosby and Herzberger (1996, 89) justify it by arguing that 'to the extent that affirmative action arrests the trend toward bifurcated wealth in our nation, it contributes to economic and social stability.'

[12] This feature, which lies in the contradictory nature of capitalism that destroys both the world and humanity (which are conditions of possibility of its own existence) as it defeats all barriers, is characterized by Dussel (2013, 39) in the following terms: 'Given that for Modernity nature is only a medium of production, nature fulfills its fate of being consumed and destroyed. In addition the by-products of that destruction accumulate on upon the Earth, until it jeopardizes the reproduction or survival of life itself. Life is the absolute condition of capital; its destruction destroys capital.'

[13] I thank an anonymous reviewer for pressing this question. What follows is an attempt to provide a partial answer to it that is consistent with Dussel's principle of feasibility.

[14] For more details on this, see <http://www.msudenver.edu/media/content/presidentofficeof/6-20-12%20JBC%20Memo.pdf>

[15] Colorado passed in 2013 along with three other states (New Jersey, Minnesota and Oregon) legislation that guarantees in-state tuition for undocumented

students meeting certain eligibility criteria. However, over half of the states in the US do not currently have such legislation and some states have laws *barring* undocumented students from receiving in-state tuition rates or *prohibiting* them from enrolling in their public higher education institutions.

## References

Aristotle. Politics. In *The Complete Works of Aristotle. Vol. II*, edited by Jonathan Barnes. Princeton: Princeton University Press, 1984.

Abram, Morris. "Affirmative Action: Fair Shakers and Social Engineers". *Harvard Law Review* 99, no. 6, (1986): 1312-26.

De la Torre, Miguel. (ed.) *Handbook of US Liberation Theologies*. St. Louis, MO: Chalice Press, 2004

De la Torre, Miguel and Aponte, Edwin. (eds.) *Handbook of Latino/a Theologies*. St. Louis, MO: Chalice Press, 2006.

Dussel, Enrique. *Philosophy of liberation*. New York: Orbis Books, 1985.

\_\_\_\_\_. *Twenty Theses on Politics*. Durham: Duke University Press, 2008.

\_\_\_\_\_. *Ethics of Liberation in the Age of Globalization and Exclusion*. Durham: Duke University Press, 2013.

Freire, Paulo. *Pedagogy of the Oppressed*. New York: Herder and Herder, 1970.

Ezorsky, Gertrude. *Racism and Justice: The Case for Affirmative Action*. Ithaca: Cornell University Press, 1991.

Executive Order No. 10925, 3 C. F. R. (1961)

Fullinwider, Robert. "Affirmative Action", *The Stanford Encyclopedia of Philosophy* (Fall 2013 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/fall2013/entries/affirmative-action/>>

Goldman, Alan. "Affirmative Action". *Philosophy and Public Affairs*, 5, no. 2 (Winter 1976): 178- 95 .

Gracia, Jorge J. E. *Latinos in America. Philosophy and Social Identity*. Blackwell: Oxford, 2008.

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

*Hopwood v. Texas* 78 F.3d 932 (5th Cir. 1996)

Isazi Díaz, Ada María. *La lucha continues: Mujerista Theology*. New York: Orbis Books, 2004.

Jones Jr., James. E. "The Origins of Affirmative Action". *UC Davis Law Review*, 21, no. 2, (1987): 383-419.

Kirkendall, Andrew. *Paulo Freire and the Cold War Politics of Literacy*. Chapel Hill: University of North Carolina Press, 2010.

Marsh, James. "The Material Principle and the Formal Principle on Dussel's Ethics". In *Thinking from the Underside of History. Enrique Dussel's Philosophy of Liberation*, edited by Linda Martín Alcoff and Eduardo Mendieta, 51-67. Lanham, Maryland: Rowman & Littlefield Publishers, 2000.

Mendieta, Eduardo. "Review Essay: Ethics for an Age of Globalization and Exclusion: Enrique Dussel, Ética de la Liberación en la Edad de la Globalización y de la Exclusion (Madrid: Editorial Trotta, 1998), 661 pp". *Philosophy & Social Criticism*, 25, no. 2: 115-21.

Nagel, Thomas. "Equal Treatment and Compensatory Discrimination". *Philosophy & Public Affairs*, 2, no. 4 (Summer 1973): 348-63.

Narveson, Jan. *The Libertarian Idea*. Peterborough, Ontario: Broadview, 2001.

Office of the President of MSU Denver Memorandum regarding June, 20 2012 presentation on Colorado High School/GED Non-resident Tuition Rate, URL = <http://www.msudenver.edu/media/content/presidentofficeof/6-20-12%20JBC%20Memo.pdf> >

Ono, Kent A. and Sloop, John M. *Shifting Borders: Rhetoric, Immigration and Proposition 187*. Philadelphia: Temple University Press, 2002.

Patrick, Deval L. "Standing in the Right Place". In *The Affirmative Action Debate*, edited by George Curry, 137-45. Reading, MA: Addison-Wesley, 1996.

Rachels, James. "What People Deserve". In *Justice and Economic Distribution*, edited by John Arthur and William Shaw, 150-63. Englewood Cliffs, New Jersey: Prentice-Hall, 1978.

*Regents of the University of California v. Bakke* 438 U.S. 265 (1978)

Reynolds, William Bradford. "An experiment gone awry". In *The Affirmative Action Debate*, edited by George Curry, 130-36. Reading, MA: Addison-Wesley, 1996.

Thomasson, Richard, Crosby, Faye J. and Herzberger, Sharon. *Affirmative Action. The Pros and Cons of Policy and Practice*. Washington, D.C.: American University Press, 1996.

Thomson, Judith Jarvis. "Preferential Hiring". *Philosophy & Public Affairs*, 2, no. 4 (Summer 1973): 364-84.

*Schuetz v. Coalition to defend Affirmative Action* 572 U.S. \_\_\_\_ (2014)

Sher, George. "Justifying Reverse Discrimination in Employment". *Philosophy & Public Affairs*, 4, no. 2 (Winter 1975): 159-70.

Warnke, Georgia. "Affirmative Action, Neutrality and Integration". *Journal of Social Philosophy*, 29, no. 3 (Winter 1998): 87-103.

Welch, Todd S. "The Supreme Court ruled correctly in Adarand". In *The Affirmative Action Debate*, edited by George Curry, 157-64. Reading, MA: Addison-Wesley, 1996.