CHAPTER ONE

What Edith Wharton Teaches about the Defense of Affirmative Action

Critical Presentism

Edith Wharton's fiction illuminates campus and legal struggles over affirmative action in higher education—despite, and in part because of, the discontinuities in time and subject matter involved. Today, such conflicts center primarily on how to interpret subtly nuanced dynamics of institutional inclusion and exclusion: what Robert Charles Smith has called the “now you see it, now you don’t” character of racial discrimination in the “post–Civil Rights era.”¹ Wharton's fiction provides American literature's most sustained and most canny exploration of the overlapping mechanisms by which inclusion, exclusion, and marginalization function in relation to a range of different social institutions. Moreover, she sets much of this fiction within the context of struggles over the liberalization of longstanding social mores. Finally, her fiction probes into how socioinstitutional mechanisms of inclusion and exclusion feel to those involved.

In what follows, I juxtapose Edith Wharton's 1911 short story “Autre Temps . . .” with key documents from a Fifth Circuit Court case, which in 1996 rendered illegal all state-sponsored affirmative action programs in Texas higher education.² The Hopwood case constituted the first successful attack on a university's practice of affirmative action sponsored by the privately funded Center for Individual Rights in Washington, D.C. It set many patterns followed later in the 1990s and in the first few years of the twenty-first century by similar cases in Georgia, Michigan, and elsewhere, where plaintiffs also relied on the Center for Individual Rights.³ I argue here that, despite the obvious disjunctions, Wharton's story can serve as a penetrating examination, albeit avant le mot, of some of the Hopwood trial's most central and difficult aspects. Above all, in improving our understanding of the University of Texas's inability to mount a successful argument in support of its own affirmative action programs, reading
“Autre Temps . . .” next to Hopwood helps illuminate the curious relationship among racism, liberalism, and temporality in the United States.4

Wharton’s fiction portrays the dynamics of inclusion and exclusion, however, in the context of late-nineteenth- and early-twentieth-century New York’s fashionable high society, and she portrays such dynamics mostly in relation to changing conventions surrounding sexuality, marriage, and wealth, not race. In seeking detailed connections between Wharton’s earlier fiction of “manners” and our own conflicts over race-based affirmative action, I purposefully engage in a strategy that might be thought of as “critical presentism.” Under literary studies’ current “regime of historicism,”5 to convict a piece of literary criticism as “presentist” is to imply that it is glib, underresearched, textually forced, and, above all, insensitive to pertinent historical context. Used pejoratively, “presentist” refers to criticism perceived as blithely and unselfconsciously projecting a critic’s own political or social concerns onto the literature of an earlier period. The impulse toward “critical presentism” that motivates this essay, however, seeks new ways of reading specific literature of the past not only in but with the social present—and of doing so self-consciously and also productively. I believe that in certain cases we can gain unique interpretative and pedagogical leverage over both “present” matters and “past” literary works by locating unexpected, even uncanny, points of contact between them.

Historian Dominick LaCapra defines what he calls presentism—but what I would call blithe or uncritical presentism—as “the dream of total liberation from the ‘burden’ of history.”6 But there is also a version of historicism—one duly acknowledging the pastness of the past—that seeks a similar liberation from history’s burden. In his “Theses on the Philosophy of History,” Walter Benjamin associates “objective” historiography with Leopold von Ranke and his influential promotion of “scientific” history-writing. Regarding the past, such history-writing seeks to “recognize it ‘the way it really was.’” Yet this “objective” historiography implicitly treats the past as having existed “once upon a time,” a time now passed, which is a corollary of the liberal vision of progress as “boundless” and “irresistible.”7 The historicism that Benjamin critiques presumes, in Russell Berman’s paraphrase, our own “objectified separation from the historical period.”8

Perhaps few professional historians today would subscribe to the tenets of scientific historiography in the Rankean sense. Exactly this way of understanding history is at work, however, in what Barbara Flagg identifies as the United States’ “popular white story about progress in race relations”: “The central theme of this story is that our society has an unfortunate history of race discrimination that is largely behind us. In the past, the story goes, some unenlightened individuals practiced slavery and other forms of overt oppression of black people, but the belief in the inferiority
of blacks upon which these practices were premised has almost entirely disappeared today.”9 The same “objective” historicism leads white undergraduates, who may have studied slavery and the Civil Rights movement in high school, to assert that racial oppression (or, for another example, sexism) used to be a problem, “back then.”

Yet if liberal or mainstream white identity in the United States relies on a historicism that views the past as unproblematically passed, it also clings to an uncritical form of presentism by resisting the idea that normative whiteness itself even has a history. Scholars have begun to render visible American whiteness’s often hidden past by uncovering, for instance, the mechanisms by which various immigrant groups initially counting as non-white (such as the Irish and Eastern European Jews) achieved white identities and, thereby, the economic, social, and political benefits that whiteness confers.10 Critical presentist reading can function to probe and to subvert liberal whiteness’s double status as antihistorical (forever pushing away its own overlapping histories) yet also “objectively” historicist in the Rankean sense (conceiving slavery and segregation as nothing but history, clearly distinct from our own national “now”).

Political Metaphor

One might draw encouragement for a self-consciously “presentist” reading of this particular Edith Wharton short story from its title, “Autre Temps . . .” (“Other Times . .”), which Wharton puts in italics and follows with open-ended ellipses. For further support, I would appeal to the distinguished, if still sometimes controversial, theatrical tradition in which directors devise purposefully anachronistic stagings of plays to comment politically on the directors’ own times and places. Defending this presentist practice, Jonathan Miller (himself responsible for several such productions in theater and opera) asserts that every dramatic work “must necessarily undergo change with the passage of time, and that this change is best inflicted upon the work deliberately rather than, as it were, by default.”11 In his book After Dickens: Reading, Adaptation, and Performance, John Glavin goes so far as to propose that not only theatrical staging but any literary reading, or at least any reading that “problematizes” its own processes, should be seen as a performative “adaptation” of a text, a text regarding which, in any case, a reading or performance can only ever be “after” (“after” in the sense, for instance, that the paintings of an art-historical school are considered “after” the style of their master). Using Jerzy Grotowski’s Poor Theater techniques as a model, Glavin and a group of performers adapted the novel Little Dorrit for a Dickens conference in
Santa Cruz, California. Glavin comments that, “Through Poor Theater, we can *update* the Dickens we are *after*, to perform him belatedly as ‘present.’ We thereby re-make his fictions into something ‘comprehensible, usable and relevant to our own interests’ (Orgel 1996: 64), understanding our ‘interests’ as simultaneously theoretical and pragmatic, intellectual and emotional, the community’s and our own.”

Shakespeare’s plays, more than the work of any other writer, have a history of having been staged specifically so as to produce what director John Elsom calls “political metaphor.” For instance, “at a time when the rigours of Stalinist censorship could be felt through Eastern Europe, Shakespearean productions became a way of commenting on political events without running the risk of banning or imprisonment.” The possibility for political metaphor has motivated directors even in contexts not heavily burdened by state censorship. Discussing his staging of *Henry IV* and *Henry V* in 1988, British director Michael Bogdanov observed, “When Prince John of Lancaster meets the Archbishop on neutral ground, and tricks the rebels into laying down their arms, I think of Reagan and Gorbachev in Reykjavik.” I too wish to undertake “political metaphor” in my reading of Wharton’s short story, but not in Bogdanov’s sense of finding one-to-one correspondences between given actors or events. Bogdanov conceives the political metaphors that directing Shakespeare makes available to him as based on parallels or analogies: “I look for the ways in which the political circumstances were handled then, and find inspirational parallels in what is happening now. We governed disgustingly in the fourteenth century, and we are still governing disgustingly today.” When “political metaphor” is understood as Bogdanov seems to, that is, as a way to underline parallels between two sets of “political circumstances,” the metaphor presumes a certain transparency, an easy readability, for both sets of circumstances. Even before juxtaposing them, the director can already see—he already knows—the underlying essence of each political moment. This prior grasp of each political moment’s central truth (“we” govern disgustingly) inspires the director to emphasize what he sees as preexisting analogies, parallels simply there in the material itself and needing only to be made more obvious for an audience.

Presuming that we already grasp in full each side of a comparison, metaphor as analogy indeed can obscure crucial dimensions of difference between “then” and “now,” or between an older text and its presentist adaptation. Moreover, as several critics have recently argued, thinking that we see preexisting or “natural” analogies between racial and gender discrimination can be particularly hazardous. In order for them to be rendered parallel, each side of the racism/sexism analogy tends to be reductively simplified.

Wharton’s “*Autre Temps* . . .” depicts the effects of discrimination based on
gender, marital status, and sexual behavior, all within an elite upper-class context; by contrast, *Hopwood v. Texas*’s central focus is racial discrimination at a large public university. The differences between these two subjects are significant and multidimensional. It is not my intent to gloss over such differences by claiming that the 1911 short story and the 1996 court case are in fact “parallels” of each other. Nor do I suggest that “*Autre Temps . . .*” and *Hopwood* each offer different surface manifestations of some underlying, transhistoric structure called “discrimination.” Rather, I seek actively to locate various sorts of contingent, heuristic points of contact or resonance between the two—to locate such points not only in the sense of “find the location of” but also in the word’s other, more creative sense of “establish in a certain place.” Because of the compressed imaginative force of its literary art, “*Autre Temps . . .*” offers figuration, concepts, and even language for dimensions of *Hopwood* that are otherwise difficult to recognize and articulate.

**Present Effects of Past Discrimination**

I first became interested in a “presentist” reading of “*Autre Temps . . .*” next to *Hopwood v. Texas* because both the story and the court case center on a problem of historicity: that is, how to conceive what the *Hopwood* decision referred to as “the present effects of past discrimination.”17 Indeed, the University of Texas’s defeat in *Hopwood* permanently removed from the legal arena the argument that affirmative action could help repair past or continuing wrongs—although similar arguments remain at the center of, for example, the debate over slavery reparations. The 2003 Supreme Court decision supporting affirmative action at the University of Michigan (*Grutter v. Bollinger*) was made exclusively on the grounds of the “diversity rationale,” which holds that the quality of education for all students, white and nonwhite, depends upon the student body maintaining certain levels of racial and ethnic diversity.18 (Ironically, in *Hopwood*, the diversity rationale was rejected by the courts at a relatively early stage; see chapter 2.) Despite the diversity rationale’s later success at the Supreme Court, the question of racial temporality with which *Hopwood* leaves us still remains. Why is it so hard, in mainstream or even “liberal” arenas, to represent a continuing history of racial injustice?

Here is the conundrum that Edith Wharton’s story presents: Mrs. Lidcote has been effectively banished from upper-class New York City society for almost eighteen years because she divorced her husband for another man, and thus she has spent most of her adult life in Florence, Italy. Braving a return to New York as the story opens, however, Mrs.
Lidcote discovers that “times have changed.”19 “Things are different now—altogether easier” (241). Under the “new dispensation,” as a cousin explains to her, it has become widely agreed upon that “every woman ha[s] a right to happiness,” which means that leaving one man for another is no longer grounds for social ostracism (271, 246). Indeed, Mrs. Lidcote is shown much concrete evidence that divorced women are no longer subject, as they were in her own youth, to what the Hopwood court might call “overt officially sanctioned discrimination.” Yet, nonetheless, she finds herself mysteriously unable to enter into the new opportunities that people insist have now become open to her—including a supposed circle of waiting friends, an admirer who wishes to marry her, and a publicly acknowledged role as her daughter’s mother. At story’s end, and without any clear explanation, Mrs. Lidcote returns to her separate life abroad.

In asking us to grapple with the complex of factors that prevents Mrs. Lidcote from taking advantage of her supposed new opportunities to participate in New York’s elite circles, “Autre Temps . . .” focuses our attention on three questions integral both to itself and to the circuit court decision in the Hopwood case:

- How does one think about the temporal relation of past and present when trying to describe “the present effects of past discrimination”?
- How does one understand the agency of continuing discriminatory effects that are seen as an unfortunate “legacy” of the past?
- When can past discrimination be considered as sufficiently compensated or remedied?

Regarding the Hopwood case, these three questions all depend upon the presumption shared by the white plaintiffs (Hopwood, et al), by the defendants (University of Texas et al.) and by the court itself that UT’s Law School does not currently have any official policies that openly discriminate by race. Below, I have more to say about this shared presumption.

The circuit court’s anxiety about the third question—When can past discrimination be considered as sufficiently remedied?—kept bringing the court back to versions of the first two questions. If UT’s Law School itself no longer actively and officially discriminates, and if, at least in the court’s view, “the vast majority of the faculty, staff, and students” currently at the Law School “had absolutely nothing to do with any discrimination that the Law School practiced in the past,” then to what extent can the Law School as an institution still be held responsible? Held responsible, for
instance, for its “alleged current lingering reputation in the minority community” as having a racially biased environment? The court decided that “mere knowledge of historical fact is not the kind of present effect that can justify a race-exclusive remedy. If it were otherwise, as long as there are people who have access to history books, there will be programs such as this.” In other words, if a potential minority candidate hesitates to apply to UT’s Law School today because she knows that the Law School used to refuse categorically to consider any minority applications, that could not be counted as a reason to continue affirmative action programs.

The court’s insistence that history books should be regarded as mere repositories of fact with no illocutionary force in the present is simplistic, to say the least, but for comparison with “Autre Temps . . .” I want to underline the court’s fear of a temporal collapse. If past acts of discrimination could continue to count as justification for present affirmative action remedies, what would that mean about the future? The court envisioned being asked to approve “remedies that are ageless in their reach into the past, and timeless in their ability to affect the future.” If affirmative action could be allowed to find its own continuing necessity in a past of official discrimination, the court worried, then affirmative action might continue forever, into a “boundless” tomorrow. The Hopwood court seemed to fear ratifying a borderless spatialization of time, where past, present, and future would exist on the same simultaneous plane, where history books and outdated statutes would operate on the same level as today’s, and even tomorrow’s, newspaper.

At the start of “Autre Temps . . .,” Mrs. Lidcote seems almost literally to embody the unending, all-consuming fixation on past social ostracism that the Hopwood court feared affirmative action might encourage. On the steamer taking Mrs. Lidcote back to New York City, “It was always the past that occupied her. . . . [I]t would always be there, huge, obstructing, encumbering, bigger and more dominant than anything the future could ever conjure up.” The past “looked out at her from the face of every acquaintance, it appeared suddenly in the eyes of strangers” (235). However, even before the steamer docks, Mrs. Lidcote starts to perceive that the rigid sexual and social mores of her day have undergone remarkable loosening since the time, eighteen years earlier, when she was forced to leave the city. Everybody has divorced friends. Mrs. Lidcote’s own daughter has left one husband and married another without seeming to pay any social penalty. What Mrs. Lidcote calls the “clan” constituted by her husband’s family, which had united in expelling her eighteen years earlier, seems (not unlike today’s “Klan”) to have dissipated and lost much of its relevance. She starts to think that perhaps her own painful past can
now, finally, cease to matter. In light of the “general readjustment” of society, with its “new tolerances and indifferences and accommodations,” “was not she herself released?” (252). Unfortunately, a series of social encounters convinces Mrs. Lidcote that it cannot be so simple. While staying at her daughter and new son-in-law’s luxurious country home—in their large house, which strikes her as an “‘establishment’ . . . something solid, avowed, founded on sacraments and precedents and principles” (as a university is)—Mrs. Lidcote finds herself unable to recall “having ever had so strange a sense of being out alone, under the night, in a wind-beaten plain” (253, 263). Everyone avoids any mention of her divorce. Nor does anyone ask her where she has been, or what she has been doing, during the twenty intervening years. In The Mother’s Recompense, a 1925 novel that draws heavily on “Autre Temps . . . ,” a divorced mother who has similarly returned to New York after many years of European exile reflects on society’s “kind” avoidance of her own scandalous past: “Well, that was what people called ‘starting with a clean slate,’ she supposed; would no one ever again scribble anything unguardedly on hers? She felt indescribably alone.” 20 So, too, the concerted social effort to guard Mrs. Lidcote’s “slate” from any embarrassing or wounding references gives her the impression that no one speaks casually or naturally to her. She comes to feel that virtually all of her conversations occur through a “painted gauze let down between herself and the real facts of life” (274).

Still more disturbing, Mrs. Lidcote finds herself unable to ignore that several of the other guests at her daughter’s new house, including many of the very same people who now claim easily to accept divorce—and who, in most instances, indeed do accept it—nonetheless still continue, although more subtly than in the past, to “cut” her socially, to avoid recognizing her presence. Her friends and allies deny it: “‘Then you don’t think Margaret Wynn meant to cut me?’ ‘I think your ideas are absurd,’” exclaims her admirer Franklin Ides. But Mrs. Lidcote concludes, “Oh, I saw she did, though she never moved an eyelid” (268). Here is the explanation that Mrs. Lidcote finally arrives at for these instances of cutting: “My case has been passed on and classified: I’m the woman who has been cut for nearly twenty years. The older people have half forgotten why, and the younger ones have never really known: it’s simply become a tradition to cut me. And traditions that have lost their meaning are the hardest of all to destroy” (272).

What does it mean for Mrs. Lidcote to say that the tradition of cutting her continues, even though, or in some sense because, it has lost its meaning? This is the dilemma at the heart both of “Autre Temps . . .” and, I contend, of the Hopwood case. While on the steamer taking her back to the States, Mrs. Lidcote had envisioned her past as a massive physical object—“a great
concrete fact in her path that she had to walk around every time she moved in any direction” (235). Now, however, we might say that she sees it as something more like a sentence (both the linguistic and the penal senses of “sentence” are pertinent here), but a sentence in a no-longer spoken language: “Traditions that have lost their meaning are the hardest of all to destroy.”

In part, the people surrounding Mrs. Lidcote, especially her daughter Leila and her admirer Franklin Ides, avoid putting into words Mrs. Lidcote’s continuing status as “the woman who has been cut” because they wish to create a present space “in which she could think and feel and behave like any other woman” (239). In a society that prides itself on its “new tolerances and indifferences,” they wish, as it were, to enact indifference for her—and thereby to make it true that her past need no longer mark her as different, that it has become an indifferent or non-signifying detail about her self. Using the same logic, the Hopwood court ruled that to strike down affirmative action would be to move significantly closer to realizing the ideal of a race-neutral society, insofar as we all now recognize that “the use of race, in and of itself, to choose students. . . . is no more rational on its own terms than would be choice based upon the physical size or blood type of applicants.” It is only commonsense fairness, the court implied, that today’s admissions and financial aid offices should be indifferent to all such irrelevant factors. Wharton’s story makes visible, however, how a new and supposedly liberalizing “indifference” to some previously all-determining characteristic can nonetheless mask a continued “cutting” along the same line as before, however disavowed by common sense the cutting may now be, and however jagged or uneven.

The court’s raising the question of the present rationality of the race-based preferences that affirmative action involves pushes us to think further about the implications of Wharton’s saying that the tradition of cutting Mrs. Lidcote still continued even though it had lost its meaning. Twenty years earlier, what mainstream society thought it meant by cutting Mrs. Lidcote was manifest—she was a fallen woman who deserved to be shunned. But, in “the new order of things,” continuing to cut her no longer makes any sense, which explains why the characters in Wharton’s story find that cutting almost literally unspeakable. Given society’s changed sexual mores, the cutting of Mrs. Lidcote can only transpire somewhere, as it were, outside her society’s self-understanding, which is why nobody except her is able to put it into words. So, too, what if in the post–Civil Rights era at the University of Texas the traditions of racial exclusion that affirmative action responds to have indeed lost whatever inner rationale or coherence they might once, at least on their own terms, have possessed? Although now incoherent and inexplicable even to them-
selves, what if those traditions of racial exclusion nonetheless persist at the university—and persist with a structuring force?

Throughout the course of Wharton’s story, no one ever articulates Mrs. Lidcote’s irrationally-continued exclusion. In fact, both her daughter Leila and her admirer Franklin Ides spend much of the story trying to convince Mrs. Lidcote and, in a way, themselves that it is she who is irrational, that she exaggerates or even imagines slights. They seek to “cure” her of her “delusions”: “You don’t know that any of the acts you describe are due to the causes you suppose,” Franklin says to her (268, 270). “Don’t you see what all these complications of feeling mean? Simply that you were too nervous at the moment to let things happen naturally, just as you’re too nervous now to judge them rationally. . . . Give yourself a little more time” (273). What cannot be allowed for verbally, however, is acknowledged involuntarily by the bodies of Franklin and, even more so, Leila, in a pair of remarkable blushes. Wharton figures these blushes as invasive eruptions, in each case triggered by Mrs. Lidcote’s announcing that she intends to insert herself into a social situation (a dinner party, an evening visit) from which her daughter or her admirer has delicately tried to steer her away. Here is how Wharton describes the more spectacular of the blushes, which is Leila’s:

Leila stopped short, her lips half parted to reply. As she paused, the colour stole over her bare neck, swept up to her throat, and burst into flame in her cheeks. Thence it sent its devastating crimson up to her very temples, to the lobes of her ears, to the edges of her eye-lids, beating all over her in fiery waves, as if fanned by some imperceptible wind. Mrs. Lidcote silently watched the conflagration. (264–65)

The eruptive blush displaces what Leila had parted her lips to say. The blush marks the limit of what can be said in words that make sense under the “new dispensation” of Mrs. Lidcote’s society. Yet although what the blush acknowledges is something that disrupts sense itself—it is indeed now “preposterous,” as Franklin says, to think that Mrs. Lidcote would still be cut for having done twenty years ago what is today commonly accepted—that preposterousness does not render the cut less forceful (271).

In the Hopwood decision, the circuit court insisted that it would, in effect, be nonsense to find the university’s Law School guilty of the sort of continuing racial exclusions that legally imply the need for redress by affirmative action. As the court emphasized, since the late 1960s the University of Texas and its Law School have officially welcomed diversity and have, moreover, devoted what the court considered “a significant amount of scholarship money” to minority recruitment and retention programs.
Given its apparently active and proactive recent history around diversity, the university was unable to articulate to the court's satisfaction how it could still be a racially exclusionary institution. “Autre Temps . . .,” however, faces us with the challenge of learning how better to represent (in both the legal and the literary senses of the word “represent”) a persisting reality of exclusion. We must learn how to give effective language and figure to a reality of exclusion that persists irrationally and unspeakably, but persists nonetheless, even within an institution that genuinely wishes to see itself as having already moved past such exclusions.

The Past as Past?

I return to Leila’s eruptive blush at the beginning of the next chapter. First, however, I want to note that during the *Hopwood* trial the University of Texas did actively participate, although perhaps more indirectly than directly, in rendering unsayable one aspect of its own exclusionary reality: the discriminatory impact of LSAT scores on the admissions process. To grasp this crucial dimension of the university’s actions, it is important to realize that, in turning down the university’s appeal, the Fifth Circuit judges declared that any state agency wishing to continue using affirmative action first had to demonstrate that it still required affirmative action to counter its own continuing legacy of institutional racism. This specific demonstration would be necessary in order to overcome the constitutional obligation of color-blindness on the part of all government entities, as set out in the “equal protection” clause of the Reconstruction-era Fourteenth Amendment. The court stringently insisted that the university should not, and legally could not, use “racial preferences” (affirmative action) to compensate for general “societal discrimination” against minorities—not even for discrimination by other “state actors,” such as public school systems. A state Law School such as that at UT could deploy affirmative action’s “system of racial preferences” only if such an action were “narrowly tailored” to “remediate” an equivalent or worse form of discrimination practiced by the Law School itself (*Hopwood* 5th Cir). As Texas Attorney General Daniel Morales later put it, the Law School was the only “relevant putative discriminator.” This narrow guideline rendered irrelevant any attempts to show that minority applicants to UT’s Law School continue to find themselves at a disadvantage because of manifold forms of past or even present discrimination by other arms of the government. For example, one university argument declared irrelevant by the court involved the effects on current minority applicants of Texas’s recent history of legally segregated and vastly unequal public school systems, which
Anticipating and responding to this legal impasse, however, two university organizations representing black students had tried to gain official status as “interveners” since the case’s early months in 1994: the undergraduate Black Pre-Law Association and the Law School’s Thurgood Marshall Legal Society. The would-be interveners wished “to present evidence which showed that admissions practices currently in use had a discriminatory impact on African-American students.” Specifically, the two student organizations wished to introduce research studies and expert witnesses to establish that the LSAT is a poor guide to how individual African-American students will actually perform in law school. The LSAT’s “differential predictive validity” means that it tends to measure academic potential more accurately for white than for black applicants. Being allowed to demonstrate the LSAT’s “racially discriminatory impact,” the prospective interveners argued, would “establish the need for the Law School to take race into account . . . in order to mitigate” the LSAT’s prejudicial effects on its admissions process. In effect, the interveners wished to demonstrate that, through its heavy reliance on the LSATs, the Law School as an entity not only did once but still does practice officially sanctioned discrimination against minorities. This demonstration would meet the court’s stringent requirement for allowing an affirmative action program to continue.23

However, from 1994 to 1998 petition after petition to intervene was denied, first by the district court, then on appeal by the Fifth Circuit panel, and finally by the Supreme Court (which declined to get involved in the case at all). Of course, the Hopwood plaintiffs consistently opposed the petitions. More significantly, however, the university’s lawyers’ response to the proposed intervention wavered between discouraging, neutral, and, at best, ambiguously supportive. In fact, although the two African American student groups supplied university lawyers with the relevant studies about the LSATs and offered to provide expert witnesses to interpret them, university and state lawyers chose to use none of this evidence in their defense of the Law School’s affirmative action policy.24

Why not? The African American student groups argued in a later brief that “It was in neither plaintiffs’ interest nor defendants’ to advance the argument regarding the invalidity of the Texas Index for the selection of African-American students.” University officials probably worried, the students’ brief suggested, that the court might indeed validate an argument that use of the LSATs gives white applicants an unfair advantage. At that point, the university might find itself exposed to potential lawsuits by
minority applicants who had been previously rejected because of low LSAT scores—rejected, that is, because of what would now be legally established as racially discriminatory criteria.25

Beyond opening themselves to the possibility of new lawsuits, for the University of Texas and its Law School to have accepted that the LSATs are, in effect, rigged to favor white applicants would have been for the institution radically to challenge its own ways of defining itself. Higher education, the legal system, and ideologies of professionalism in the United States (all of which were at issue in the Hopwood case) construe their most central values in close relation to Enlightenment ideals of reason, neutral expertise, and the unbiased recognition of “merit.” Although institutional self-envisioning may allow for certain necessary deviations from these Enlightenment values, they have always remained absolutely central as defining ideals. A key insight of recent work in critical race theory has been that these same Enlightenment ideals have historically been developed and interpreted within contexts that also accepted white supremacy as common sense. Might not current versions of such supposedly neutral Enlightenment ideals still be, as Gary Peller puts it, “a manifestation of group power, of politics”? Regarding American higher education, Peller asks “whether ‘standards,’ definitions of ‘merit,’ and the other myriad features of the day-to-day aspects of institutional life constructed or maintained during [legal] segregation might have reflected deeper aspects of a culture within which the explicit exclusion of blacks seemed uncontroversial.”26

As just one possible example, we should recall that the techniques for measuring “scholastic aptitude” widely promulgated by the Educational Testing Service (ETS) after World War II (the SAT, LSAT, and so on) were themselves closely modeled on early-twentieth-century IQ tests. However, the very idea of IQ as a measurable quantity was popularized in the United States around the turn of the twentieth century by eugenicists explicitly seeking a scientific basis for maintaining and extending racial hierarchies. IQ “data” from the first mass testing, performed on inductees during the First World War, served as an important justification for restrictive immigration quotas and other forms of ethnic and racial discrimination.27 Of course, this history does not necessarily equate the current ETS system of exams with the racist purposes and uses of the earlier IQ tests on which the exams were based, but it does suggest that Peller is right to wonder about unrecognized ways in which “day-to-day aspects of institutional life” may still “reflect” the past.

In the Hopwood case, not allowing the black student groups to participate as interveners served also to exclude their evidence about the racially biased results of admissions decisions that rely on LSAT scores. This exclusion functioned to avoid any legal or official consideration of ways in
which the university’s core values of merit, fairness, and reason might themselves remain hopelessly entangled with the relentlessly racializing, segregative culture of late-nineteenth- and early-twentieth-century America. The University of Texas was founded in 1883. More generally, this was the period during which the competitive research-and-teaching university as we know it was envisioned and first developed in the United States. What if “deeper aspects” (in Peller’s phrase) of that older, openly racist time still constitute an inassimilable real, a real carried within the identities of competitive colleges and universities nationwide? As recently as June 2000, the dean of UT’s Law School at the time of Hopwood—a dean who worked hard to defend affirmative action policies during and after the trial—insisted that he could not imagine processing Law School admissions without relying on LSAT scores: “The [LSAT] is the one unifying examination and measurement. . . . I don’t think that we or any law school that I know of is going to give up giving some weight to the LSAT.” The same institution going to court in vigorous defense of its well-meaning recent attempts to adjust for leftover racial imbalances still finds itself relying, for its continuing coherence as a distinctive institution, on certain concepts and technologies of “merit” shaped within and quite possibly by an actively white-supremacist culture.

To confront such powerfully disturbing possibilities as a primal, perhaps inescapable connection between the supposedly “other days” (autre temps . . . ) of eugenicism and racial segregation and its own current day-to-day modes of interpreting “standards” and “merit” would indeed be difficult for the university. Officially recognizing the LSATs—and above all the still-current understanding of “merit” for which they are a metonym—as potentially inextricable from white supremacy would have unforeseeable but traumatic implications for university self-conceptions, university practices and, not least, university personnel. If the university’s quite possibly hard-wired commitment to racially biased hierarchy were to be authentically and fully interrogated, the resulting implications would surely reach far beyond the use or non-use of standardized admissions exams. “We” who comprise the predominantly white liberal university understandably resist grappling with the full range of such possibilities and implications, which might affect our professional status, our self-respect, and, indeed, our employment. We resist, consciously and unconsciously, at sites ranging from the courtroom and administrative office to the classroom and faculty office.

Achieving a more genuine understanding of the current university’s relationship with its past requires a disjunctive act of historical recognition. We must learn to recognize how an anachronistic, seemingly disconnected moment of the past might best capture, uncannily—as in a window that turns out to be a mirror—the university’s, and our, “present.” By contrast,
to respect the otherness of the past—“the past as past”—as we are urged to do by those who use “presentist” as a term of automatic condemnation, would in this case be to correlate, first, with the *Hopwood* plaintiffs’ argument that affirmative action may once have been necessary but is no longer needed. At bottom, moreover, a similar emphasis on the essential difference of past and present, then and now, also underlies the university’s “liberal” defense of affirmative action: the past is almost and will soon be past, but not quite yet. Franklin Ides’s advice to Mrs. Lidgate encapsulates the liberal university’s deployment of the idea of change as at once definitively achieved but also still moving forward along its proper path. Even as Franklin vigorously concurs with everyone around that “the times have changed,” he urges Mrs. Lidgate to give herself just “a little more time” in order to feel fully reintegrated into New York society. The liberal view that the bad past is almost past allows the university still to conceive itself within a narrative of progress, of improvement. The university can defend its need for a limited affirmative-action program to help finish off the virtually completed past, yet it can do so without putting into question its currently most cherished tenets of identity.

Working from Edith Wharton’s “*Autre Temps* . . . ,” I have attempted here to provide one example of how “past” literature may serve as a special kind of “political metaphor,” with the potential to open new ways of viewing current impasses in our culture or society. Seemingly disconnected literature of the past can uncannily re-present our own present to us, including unexpected, idiosyncratic, or obscured facets of our present. Using a somewhat different version of critical presentism, chapter 2 again explores the juxtaposition of a classic text of American literary realism with events at the University of Texas. The juxtaposition again allows us to investigate questions that extend well beyond UT’s campus. The text treated in chapter 2, Mark Twain’s *Adventures of Huckleberry Finn* (1884), is today the most famous, most frequently taught, most widely read, and most written-about example of American literary realism. Rather than mounting a new interpretative reading of Twain’s novel in itself, I seek to understand the strange temporality, the foldings and unfoldings, of America’s blatantly racist past and of its liberal, integrationist present that ensue when *Huck Finn* is taught in a predominantly white, middle-class college classroom.

**Coda**

On February 18, 2001, Richard C. Atkinson, president of the University of California system, delivered a remarkable speech about the SAT examination to a largely surprised audience of college presidents and other
higher education officials. In light of the foregoing chapter, I believe that Atkinson’s speech constituted then and, three years later, still does constitute, a moment of genuine possibility. Addressing members of the American Council on Education in Washington, D.C., he announced that he submitted a recommendation to his faculty that the University of California should stop requiring prospective undergraduates to take the SAT. Atkinson asserted that the test measures only “undefined notions of ‘aptitude’ or ‘intelligence,’” and argued that its widespread use has had a pernicious influence on how “we . . . allocate educational opportunity” to all students, but “especially low-income and minority students.”

It is still too soon to assess the full implications of Atkinson’s initiative, even within the University of California system. Nonetheless, given the size and prominence of the University of California, Atkinson’s proposal has already begun (as put by the New York Times’s front-page story on the proposal) to “echo throughout the world of higher education.” My own discussion of Hopwood v. Texas has asked whether an “Autre Temps . . .” of openly racist exclusions might be inseparable from notions of standards and merit that are still centrally involved in the identities and the day-to-day operations of The University of Texas and other competitive research universities. The use of standardized “aptitude” tests for admissions (the LSATs) served in the current chapter as a synecdoche for this larger question. Nonetheless, one cannot predict how abandoning use of the SAT might affect notions of quality and merit beyond undergraduate admissions. (I should also mention that, as the Law School dean in Texas predicted, no major law school, at least to my knowledge, has yet indicated plans to abandon use of the LSAT.) For that matter, even within undergraduate admissions, I do not think that we can be certain what effect the absence of SAT scores would have on an uncannily ever-present “Autre Temps . . .” of open racial exclusion. If the SAT has indeed continued to play a role in excluding minorities, then removing it from the admissions equation should, by all logic, constitute a major step toward genuinely fairer and more equal educational access. Yet, if Edith Wharton’s short story shows anything, it is that the persistence of exclusionary “other times” occurs most powerfully at the very limits of rational calculation or prediction.

It is precisely these radical uncertainties about the future that make Atkinson’s bold initiative so exciting. To return to Wharton’s short story, Mrs. Lidcote comes to conceive of her past as something like a sentence, but a sentence handed down in a no-longer spoken language: “Traditions that have lost their meaning are the hardest of all to destroy.” One significant part of Atkinson’s speech was devoted to chewing over the meaning of SAT. The initials used to stand for Scholastic Aptitude Test. But because
“aptitude test” reeked too strongly of the increasingly controversial notion of IQ testing, in 1990, ETS said SAT would henceforth stand for Scholastic Assessment Test. Finally, in 1996, as Atkinson explained, ETS dropped a semantically recognizable name altogether for the exam and, in what Atkinson calls “a rhetorical sleight of hand,” “said that the ‘SAT’ was the ‘SAT’ and that the initials no longer stood for anything.” Again, “traditions that have lost their meaning are the hardest of all to destroy.” But Atkinson’s speech worked to recover or translate some of the unacknowledged but nonetheless effectual meanings of SAT. To many minority parents and others, he suggested, SAT means a past and present lack of fairness and transparency in determining educational opportunity. With the policy recommendation that it carries, Atkinson’s speech may end up helping to re-speak, and thus perhaps to alter, some very persistent sentences.