



Alabama Law Scholarly Commons

Working Papers

Faculty Scholarship

6-27-2012

The Colonial Scholar: Do Outsider Authors Replicate the Citation Practices of the Insiders, But in Reverse?

Richard Delgado

University of Alabama - School of Law, rdelgado@law.ua.edu

Follow this and additional works at: https://scholarship.law.ua.edu/fac_working_papers

Recommended Citation

Richard Delgado, *The Colonial Scholar: Do Outsider Authors Replicate the Citation Practices of the Insiders, But in Reverse?*, (2012).

Available at: https://scholarship.law.ua.edu/fac_working_papers/221

This Working Paper is brought to you for free and open access by the Faculty Scholarship at Alabama Law Scholarly Commons. It has been accepted for inclusion in Working Papers by an authorized administrator of Alabama Law Scholarly Commons.

***969 THE COLONIAL SCHOLAR: DO OUTSIDER AUTHORS REPLICATE THE CITATION PRACTICES OF THE INSIDERS, BUT IN REVERSE?**

Richard Delgado [\[FNa\]](#)

Copyright (c) 1996 IIT Chicago-Kent College of Law; Richard Delgado

In two previous articles, I analyzed the citation practices of mainstream scholars writing in the areas of civil rights and equality. In *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, [\[FN1\]](#) I showed that the major figures who were writing during the heyday of the Civil Rights Movement marginalized and ignored the writings of scholars of color to a surprising degree. In a follow-up article written ten years later, I showed that, although some majority-race scholars had changed their citation practices, and many of the newer scholars were avoiding the errors of their predecessors, much of the same preference for in-group recognition that I noticed earlier held true in 1992. [\[FN2\]](#)

One as yet unaddressed question is whether outsider scholars--crits, feminists, and critical race theorists ('CRTs')--are guilty of the same pattern of behavior. As I stated on another occasion, "all discourse marginalizes," [\[FN3\]](#) hence it is a reasonable hypothesis that outsider scholars may be evidencing the same preference for the familiar that characterized their more mainstream counterparts in my two earlier studies. Might there not be a "colonial scholar" phenomenon, in which Black scholars, for example, exhibit a marked preference for works written by scholars from their same group, a similar one on the part of Chicano scholars, gay writers, and so on? At least one scholar has suggested that this is so. Arthur Austin, writing in the *Oregon Law Review*, finds in-group and self-citation rampant among the crits, a practice he attributes to preference for ones' friends, a dislike of patriarchy, and a "payback" mentality. [\[FN4\]](#)

***970** To test the hypothesis about in-group citation practices among outsider scholars, I selected three of the most characteristic works from the CRT corpus--Patricia J. Williams, *The Alchemy of Race and Rights*, Charles R. Lawrence, *The Id, the Ego, and Equal Protection: Reckoning With Unconscious Racism*, and Derrick Bell, *Foreword: The Civil Rights Chronicles*--and, in addition, seventeen articles and books chosen from two recent bibliographies of critical race theory, employing a table of random numbers. One of the articles so selected, Cornel West, *The Role of Law in Progressive Politics*, [\[FN5\]](#) turned out to contain no citations suitable for tabulating under the criteria set out immediately below, and was replaced by another randomly selected article. The final list of books and articles selected turned out to include six by women, fifteen by men, six by Whites, twelve by African Americans, two by Latinos, and one by a Native American scholar. [\[FN6\]](#) I then analyzed the footnote citation practices of this sample of twenty-two writers.

I. Quantitative Analysis

The twenty articles contained over three thousand footnotes, many with multiple items. I eliminated from consideration items, such as cases and governmental reports, with no author. I also eliminated newspaper articles and other ephemera, leaving a sample consisting entirely of books and journal and law review articles, over nineteen hundred in total.

I then analyzed these citations by the cited author's ethnicity--White, Black, Latino, Asian-American, Native American or unknown. To determine the race of the author, I used his or her last name (e.g., Chang or Ramirez), the AALS Directory's list of minority law professors, my own personal knowledge of and acquaintance with some of the authors, and in a few cases, reasonable inferences

from the data. [FN7] I also benefited from the help of a well-known Critical Race writer who assisted me in classifying some of the authors. The results are summarized in Table 1.

Table 1

Article or Book, and Author	Authorities Cited					
	White Authors	Black Authors	Latino Authors	Asian- American Authors	Native American Authors	Unknown
Patricia J. Williams, The Alchemy of Race and Rights (1991).	33	13	3	2	1	11
Charles R. Lawrence, III, The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism, 39 Stan. L. Rev. 317 (1987).	178	39	11	1	0	71
Derrick A. Bell, Forward: The Civil Rights Chronicles, 99 Harv. L. Rev. 4 (1985).	50	30	0	0	0	34
Kevin Brown, The Social Construction of a Rape Victim: Stories of African-American Males About the Rape of Desiree Washington, 1992 U. Ill. L. Rev. 997 (1992).	2	0	0	0	0	0
Robert A. Williams, Jr., Gendered Checks and Balances: Understanding the Legacy of White Patriarchy In an American Indian Cultural Context, 24 Ga. L. Rev. 1019 (1990).	20	11	3	4	5	28
Derrick A. Bell & Erin Edmonds, Students as Teachers, Teachers as Learners, 91 Mich. L. Rev. 2025 (1993).	10	17	1	1	2	5
Robin D. Barnes, Realist Review, 24 Conn. L. Rev. 553 (1992).	1	5	0	0	0	0
Richard Delgado, Rodrigo's Chronicle, 101 Yale L.J. 1357 (1992).	34	34	28	3	2	7
Derrick A. Bell, White Superiority in America:	3	2	0	0	0	3

Its Legal Legacy, Its
Economic Costs, 33
Vill. L. Rev. 767
(1988).

Lani Guinier, Of
Gentlemen and Role
Models, 6 Berkeley
Women's L.J. 93 (1991).

Derrick A. Bell, Jr., Bakke,
Minority Admissions, and
the Usual Price of Racial
Remedies, 67 Cal. L.
Rev. 3 (1979).

Duncan Kennedy, A
Cultural Pluralist Case
For Affirmative Action in
Legal Academia, 1990
Duke L.J. 705.

Sheri L. Johnson, Cross-
Racial Identification
Errors in Criminal Cases,
69 Cornell L. Rev. 934
(1984).

Gary Peller, Race
Consciousness, 1990
Duke L.J. 758.

Derrick A. Bell, Strangers
in Academic Paradise:
Law Teachers of Color in
Still White Schools, 20
U.S.F. L. Rev. 993
(1989).

Frances L. Ansley, Stirring
the Ashes: Race, Class
and Future of Civil
Rights Scholarship, 74
Cornell L. Rev. 993
(1989).

Stephen L. Carter,
Reflections of an
Affirmative Action
Baby, (1991).

Derrick A. Bell, After
We're Gone: prudent
Speculations On America
In a Post-Racial Epoch,
34 St. Louis L.J. 393
(1990).

Richard Delgado & Jean
Stefancic, Norms and

1 10 5 2 0 11

6 10 3 0 0 7

38 62 7 6 1 9

10 0 0 0 0 17

78 138 5 8 2 159

2 2 0 0 0 2

108 121 12 8 1 29

22 39 0 3 0 16

5 2 0 0 0 2

74 17 15 9 9 18

Narratives: Can Judges
Avoid Serious Moral
Error?, 69 Tex. L. Rev.
1929 (1991).

Mark Tushnet, The Degradation of Constitutional Discourse, 81 Geo. L.J. 251 (1992).	92	24	2	0	0	18
TOTALS	767	576	95	47	23	447

***973** A number of patterns are immediately evident. As the reader will see from Table 1, White authors were the most-cited group, with 767 citations. Then followed Blacks with 576 cites, Latinos with 95, Asian-Americans with 47, and Native Americans with 23 cites. Authors whose ethnicity we were unable to ascertain totaled 447.

The total for White authors cited, 767, thus exceeds the total for all authors of color (Blacks, Latinos, Asian-Americans and Native Americans), which was 741. The aggregate numbers thus do not bear out the initial hypothesis that the outsider scholars cite each other more often than they cite Whites.

Six of the outsider scholars selected randomly turned out to be white (Kennedy, Johnson, Peller, Ansley, Stefancic, and Tushnet), providing an opportunity to compare the citation practices of white outsider scholars (crits and critical race theorists) to those of color. It turned out that there was little difference--outsider scholars who were White cited White authors 400 times, non-Whites 465 times. (See Table 2).

Table 2

Author	Citations to White Authors	Citations to Authors of Color
Kennedy	38	76
Johnson	10	0
Peller	78	153
Ansley	108	142
Stefancic	74	50
Tushnet	92	44
Total	400	465

A final hypothesis that I was able to test was whether Black authors in my sample tended to favor other scholars who were Black over those of other ethnicities, and so on for the other groups of color. As is shown in Table 3, this proved true, but only for Black authors. The Black authors in my sample cited Black authors 169 times; other ***974** authors of color 35 times; and Whites 313 times. Latinos cited authors of their own ethnicity 43 times; other authors of color 74 times; and Whites 108 times. For Native Americans, I found 5 citations to other Native American authors; 18 to other ethnic, minority authors; and 20 citations to Whites. These figures must be interpreted cautiously, since there are many more Blacks in the world of scholarship than there are members of these other groups, thus it should not be surprising to find Black authors citing each other more frequently than they do members of groups whose representation in academia is very small, such as Native Americans. On the whole, however, the figures did not show critical race scholars relying unduly on scholars of like color.

Table 3

Authors	Citations to Authors of Same Ethnicity	Citations to other Authors of Color	Citations to White Authors
Black	169	35	313
Latino	43	74	108
Native American	5	18	20

II. Qualitative Analysis

In addition to the numerical analysis, I also performed a qualitative one. In this qualitative stage, I closely examined a sample of footnote references for general tone and approach. In particular, I was curious whether the outsiders were citing mainstream scholars dismissively, cavalierly, grudgingly, perfunctorily, or in a token fashion. In my *Imperial Scholar Revisited*, [FN8] I noted a variety of citation styles on the part of mainstream scholars that had the effect, subtle or not, of marginalizing the contributions of minorities and women. I was curious to see whether minority and critical race scholars were guilty of something similar.

I found little evidence that this was happening. Most string cites (ones containing a variety of authors and works) that referred to works by both Whites and non-Whites listed them in no particular or obvious order; in particular, White authors did not tend to be cited first or last. I, also, was not struck by any differences in strength of signal. The more general "cf." and "see also" signals, as well as the stronger signals such as "see," did not seem to correlate with any particular*975 group. Vengeful or blatantly exclusionary citation of the sort mentioned by Professor Austin simply seemed not to occur.

Limitations of My Methodology

I should call attention to certain limitations of my methodology. My sample size, twenty items, is relatively small. Even though I used a randomizing instrument to arrive at the items, it is possible that the resulting sample is biased in some respect. The population from which I drew also could be criticized as skewed, in that it consisted of about three hundred law review articles and books I deemed, at an earlier time, to be significant and also characteristic of critical race theory. Moreover, I did not employ a control group, relying instead on my previous two studies dealing with majority-race scholars as a basis of comparison. It is possible that mainstream scholars' practices have changed since I last studied them in 1992, so that the relatively egalitarian citation patterns I found for the crits are now matched by non-crits. Finally, the "unknown" category, which accounts for about twenty-three percent of all cited items, may be a source of bias. It may be that authorities who are unknown to me may be dominantly white, or, for that matter, of color. Human error may have crept in.

Still, my admittedly limited survey begins to answer the question with which I began. There seems not to be any dramatic "colonial scholar" counterpart phenomenon to the imperial-scholar one I found earlier. Outsider scholars cited scholars of majority and nonmajority race almost evenly with a slight edge to authorities who are White. This held true among each ethnic group in my sample--Black, White, Latino, Asian-American, and Native American. Moreover, when outsider scholars did cite scholars of majority race, I found little evidence that they were doing so caustically, dismissively, or as an afterthought. Most of the citations were respectful and treated the white scholar or authority in much the same way the author treated other scholars of Critical orientation or minority hue.

A Concluding Comment

Might it be argued that the outsiders' distribution of citations--about one-half to white authors, the other half to non-White authors--is nevertheless skewed, in that there are many more White than non-White authors and that an unbiased distribution for an article on civil rights would be, say, 70-30 or 80-20? I do not believe so. Since the advent of critical race theory, the top reviews have seen a great*976 infusion of articles by scholars of color. White scholars continue to write about civil rights, of course, some in a critical, others in a more mainstream vein. But the body of material waiting to be cited, in recent years at least, has been composed almost equally of works by White and non-White authors.

A second reason has to do with the theory and psychology of citation. Commonplace propositions, ones that accord with the reader's common sense, rarely are thought to require authority. Thus, most law review editors allow statements like "The United States system of civil justice is the best in the world," or "The United States has one of the highest standards of living" to pass uncited, while they would want to see authority for a proposition such as: "Black infant mortality in the United States is at Third World level and worsening," or "Interest convergence, not idealism, accounts for the many twists and turns of racial justice." Critical propositions, in short, are thought to require support since they go against the grain, while more moderate propositions are not. For both reasons, outsiders' citation practices as revealed in this survey strike me as about what they should be. Crits seem to display no undue favoritism toward other crits or minority scholars. Indeed, authors writing today about equality

or civil rights whose footnotes deviated radically from the roughly equal distribution displayed by the twenty-two authors in my survey, may want to reflect on whether they are being fair and even-handed in their attribution and citation patterns.

[FN^a]. Charles Inglis Thomson Professor of Law, University of Colorado J.D., University of California at Berkeley, 1974. I am grateful to Jean Stefancic and Kim Quinn for invaluable assistance in preparing this article.

[FN1]. Richard Delgado, The [Imperial Scholar: Reflections on a Review of Civil Rights Literature](#), 132 U. Pa. L. Rev. 561 (1984).

[FN2]. Richard Delgado, The [Imperial Scholar Revisited: How to Marginalize Outsider Writing, Ten Years Later](#), 140 U. Pa. L. Rev. 1349 (1992).

[FN3]. [Id. at 1372.](#)

[FN4]. Arthur Austin, Political Correctness Is a Footnote, 71 Or. L. Rev. 543, 555 (1992).

[FN5]. Cornel West, The [Role of Law in Progressive Politics](#), 43 Vand. L. Rev. 1797 (1991).

[FN6]. Two of the articles were co-authored. (See Table 1, immediately below). One author, Erin Edmonds, was of unknown race.

[FN7]. For example, a known author, writing on a familiar subject but cited without his or her first name.

[FN8]. Delgado, *supra* note 2.

71 CHIKLR 969

END OF DOCUMENT