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### Critical Race Theory: An Annotated Bibliography

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Essay

**\*461** CRITICAL RACE THEORY: AN ANNOTATED BIBLIOGRAPHY

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Introduction

**CRITICAL** Race Theory (CRT) took start in the mid-1970s with the realization that the Civil Rights Movement of the 1960s had stalled and that many of its gains, in fact, were being rolled back. Many of us believed that new tactics and theories were needed to understand and come to grips with the complex interplay among race, racism, and American law. Beginning with the ground-breaking works of Derrick Bell and Alan Freeman, the body of CRT scholarship now contains several books and more than two hundred articles.

This Bibliography lists and annotates the major entries within the CRT corpus. For each entry we have supplied a brief summary, together with one or more numbers corresponding to a list of major Critical Race themes. Although we have aimed at completeness, we have not attempted to list every article that arguably could be included within the CRT corpus. Short pieces that seemed duplicative of a scholar's previous work were omitted, as were articles dealing with the legal problems of African-Americans or people of color in general.

Our methodology was as follows. We entered into a master database every article or book by a recognized Critical Race scholar listed on LegalTrac. We then read every item to make sure that it did, indeed, incorporate one or more clearly recognizable Critical themes or ideas. We noted additional articles cited or discussed by these authors for possible inclusion. Finally, we sent a preliminary **\*462** draft of the Bibliography to each author and asked for comments and corrections. We also requested suggestions for additional authors and works to be added to the list.

To be included in the Bibliography, a work needed to address one or more themes we deemed to fall within Critical Race thought. These themes, along with the numbering scheme we have employed, follow:

1. *Critique of liberalism.* Most, if not all, CRT writers are discontent with liberalism as a means of addressing the American race problem. Sometimes this discontent is only implicit in an article's structure or focus. At other times, the author takes as his or her target a mainstay of liberal jurisprudence such as affirmative action, neutrality, color blindness, role modeling, or the merit principle. Works that pursue these or similar approaches were included in the Bibliography under theme number 1.

2. *Storytelling/counterstorytelling and "naming one's own reality."* Many Critical Race theorists consider that a principal obstacle to racial reform is majoritarian mindset—the bundle of presuppositions, received wisdoms, and shared cultural understandings persons in the dominant group bring to discussions of race. To analyze and challenge these power-laden beliefs, some writers employ counterstories, parables, chronicles, and anecdotes aimed at revealing their contingency, cruelty, and self-serving nature. (Theme number 2).

3. *Revisionist interpretations of American civil rights law and progress.* One recurring source of concern for Critical scholars is why American antidiscrimination law has proven so ineffective in redressing racial inequality—or why progress has been cyclical, consisting of alternating

periods of advance followed by ones of retrenchment. Some Critical scholars address this question, seeking answers in the psychology of race, white self-interest, the politics of colonialism and anticolonialism, or other sources. (Theme number 3).

4. *A greater understanding of the underpinnings of race and racism.* A number of Critical writers seek to apply insights from social science writing on race and racism to legal problems. For example: understanding how majoritarian society sees black sexuality helps explain law's treatment of interracial sex, marriage, and adoption; knowing how different settings encourage or discourage discrimination helps us decide whether the movement toward Alternative Dispute Resolution is likely to help or hurt disempowered disputants. (Theme number 4).

**\*463** 5. *Structural determinism.* A number of CRT writers focus on ways in which the structure of legal thought or culture influences its content, frequently in a status quo-maintaining direction. Once these constraints are understood, we may free ourselves to work more effectively for racial and other types of reform. (Theme number 5).

6. *Race, sex, class, and their intersections.* Other scholars explore the intersections of race, sex, and class, pursuing such questions as whether race and class are separate disadvantaging factors, or the extent to which black women's interest is or is not adequately represented in the contemporary women's movement. (Theme number 6).

7. *Essentialism and anti-essentialism.* Scholars who write about these issues are concerned with the appropriate unit for analysis: Is the black community one, or many, communities? Do middle- and working-class African-Americans have different interests and needs? Do all oppressed peoples have something in common? (Theme number 7).

8. *Cultural nationalism/separatism.* An emerging strain within CRT holds that people of color can best promote their interest through separation from the American mainstream. Some believe that preserving diversity and separateness will benefit all, not just groups of color. We include here, as well, articles encouraging black nationalism, power, or insurrection. (Theme number 8).

9. *Legal institutions, Critical pedagogy, and minorities in the bar.* Women and scholars of color have long been concerned about representation in law school and the bar. Recently, a number of authors have begun to search for new approaches to these questions and to develop an alternative, Critical pedagogy. (Theme number 9).

10. *Criticism and self-criticism; responses.* Under this heading we include works of significant criticism addressed at CRT, either by outsiders or persons within the movement, together with responses to such criticism. (Theme number 10).

A final note about our methodology. The following is a list of books and articles. It is not a list of persons, much less the members of an organization or group. CRT lacks a formal structure; there are no members as such. Many of the authors whose works are listed devote only a portion of their output to Critical jurisprudence. A number identify with the movement only slightly, if at all. Some of the works are flatly critical of CRT (see theme number 10), or discuss **\*464** its place within legal thought generally. We warrant only that the items that follow contain or develop one or more Critical Race themes and thus can assist a reader interested in gaining access to this body of thought.

These annotations, of course, cannot begin to do justice to the rich body of Critical thought they summarize; at most, we have been able to identify a few major themes in each work. We invite readers to read the complete works for themselves.

#### Annotated Bibliography

Aleinikoff, T. Alexander, [A Case for Race-Consciousness, 91 Colum. L. Rev. 1060 \(1991\)](#). (1, 4, 5, 7, 8).

Criticizes colorblind jurisprudence. Law can never achieve neutrality because our culture and experience lead us to organize and process information in a race-conscious way-and because white culture will continue to be seen as superior. Urges race-conscious measures to reach racial justice by allowing minorities to define themselves and their membership in American society, by generating material improvements in the lives of black Americans, and by placing minorities in positions of power, authority, and responsibility.

Aleinikoff, T. Alexander, The [Constitution in Context: The Continuing Significance of Racism](#), [63 U. Colo. L. Rev. 325 \(1992\)](#). (2, 3, 4).

Discusses numerous examples of recent racial discrimination in areas such as the housing market, the work place, and college campuses, as well as specific examples of hate crimes aimed at people of color. Argues that the Supreme Court and all lower courts must make decisions mindful of this persistent racially discriminatory context, and that lawyers and scholars must be aware that race affects all of constitutional law-not just equal protection. Applies analysis to voting rights and affirmative action in higher education.

Ansley, Frances Lee, [Race and the Core Curriculum in Legal Education](#), [79 Cal. L. Rev. 1511 \(1991\)](#). (2, 5, 9).

Argues that matters of race are central to American legal history and our core texts, and thus can easily and beneficially be integrated into classroom teaching. Discusses accounts from Ansley's own teaching experience including student reactions to racially charged materials and discussions. Urges others in legal education to integrate race-conscious material into their own teaching and scholarship.

**\*465** Ansley, Frances Lee, [Stirring the Ashes: Race, Class and the Future of Civil Rights Scholarship](#), [74 Cornell L. Rev. 993 \(1989\)](#). (3, 6).

Describes conflicting theories civil rights scholars use to explain the staying power of white supremacy, with particular focus on the tension between race-based and class-based explanations. Urges civil rights activists and legal scholars to continue the quest for equality, despite the formidable obstacles of white racism and anti-Communism that stand in the way. Concludes by enumerating specific projects on which committed progressives can work together.

Austin, Regina & Michael Schill, [Black, Brown, Poor & Poisoned: Minority Grassroots Environmentalism & the Quest for Eco-Justice](#), [1 Kan. J.L. & Pub. Pol'y 69 \(1991\)](#). (1, 3).

Examines ways and reasons why minority communities bear a disproportionately larger burden of the effects of pollution and describes successes and failures of remedial efforts by community activist groups. Contrasts the minority grassroots environmental movement which is described as antibourgeois, antiracist, and class conscious, and which seeks primarily to redress community, economic, and workplace health hazards, with mainstream environmental organizations which focus on romantic and transcendental ideals and seek to preserve wilderness and wildlife.

Austin, Regina, "The [Black Community," Its Lawbreakers, and a Politics of Identification](#), [65 S. Cal. L. Rev. 1769 \(1992\)](#). (4, 6, 7, 8).

Discusses the composition of "the black community." Examines the criminal activities black men and women are accused of engaging in, as well as the ambivalence these unlawful activities produce within African-American neighborhoods. Argues that "bridge people"-those people in proximity to individuals engaged in street life-can act as intermediaries for the various divisions within the black community, including the allegedly criminal and the middle class.

Austin, Regina, [Black Women, Sisterhood, and the Difference/Deviance Divide](#), [26 New Eng. L. Rev. 877 \(1992\)](#). (6, 7).

Analyzes defamation suit filed by a black woman against the American Broadcasting Co. (ABC) for using her image in a program about commercialized sex, implying through voice-over narrative that she was a prostitute. Describes the difficulty of articulating her complaint within the parameters of mainstream sexual morality without acceding to stereotypes of black females as sexually unattractive or asexual-or as lesbians, or prostitutes. Calls for black women to rethink boundaries **\*466** between difference and deviance in black female lifestyles of all classes and to develop a sisterhood of mutual support that will bring about the social and economic liberation of all black females.

Austin, Regina, [Sapphire Bound!](#), [1989 Wis. L. Rev. 539. \(1, 2, 4, 6, 8\)](#).

Discusses problems facing pregnant, unmarried black women, urging that these problems cease to be viewed from a white, middle-class perspective. Argues that black women, particularly those who are scholars, must voice their views more forcefully, so that they can be heard as the character Sapphire of *Amos 'n' Andy* was heard. One of the matters on which they must be heard is black teen pregnancy, which Austin analyzes in terms of the black community.

Ball, Milner S., [The Legal Academy and Minority Scholars](#), 103 *Harv. L. Rev.* 1855 (1990). (2, 9, 10).

Argues that Randall Kennedy's criticism of CRT (see *infra* p. 498) is narrow, premature, and would close off world-crossing experiment, depriving the broader culture of alternative visions and narratives.

Ball, Milner S., [Stories of Origin and Constitutional Possibilities](#), 87 *Mich. L. Rev.* 2280 (1989). (1, 2, 3, 5).

Analyzes the early narrative concerning Native Americans. Shows how American legal culture has failed fully to incorporate Native Americans' culture and self-understandings. Urges narrative multiplicity and "polyphony"—a "plurality of consciousnesses, voices, and languages"—to modify and remedy the current "monophony" of the American story.

Banks, Taunya Lovell, [Teaching Laws with Flaws: Adopting a Pluralistic Approach to Torts](#), 57 *Mo. L. Rev.* 443 (1992). (1, 5, 9).

Discusses *O'Brien v. Cunard Steamship Co.*, demonstrating that the parties were unequal when a ship physician vaccinated a poor Irish girl. Argues that the parties' inequalities stemmed from their cultural backgrounds, and urges that law professors address issues such as race, class, and gender in this and other cases.

Banks, Taunya Lovell, *Two Life Stories: Reflections of One Black Woman Law Professor*, 6 *Berkeley Women's L.J.* 46 (1990-91). (2, 6, 9).

Recounts personal experiences that have shaped Banks' perspective as a black woman. Argues that legal education and scholarship can \*467 greatly benefit from the perspective black women bring. Urges law schools actively to seek more black women faculty members.

Banks, Taunya Lovell, [Women and AIDS-Racism, Sexism, and Classism](#), 17 *N.Y.U. Rev. L. & Soc. Change* 351 (1989-90). (1, 4, 6).

Discusses discrimination against minority women of child-bearing age who are or may be infected with the HIV virus. Analyzes various screening methods and options for pregnant women with AIDS and cautions against imposing mandatory or involuntary screening of women in high-risk categories. Foreshadows critical analysis of reproductive and privacy rights issues by showing that current approaches are inadequate and racist.

Barnes, Robin D., *Black Women Law Professors and Critical Self-Consciousness: A Tribute to Professor Denise S. Carty-Bennia*, 6 *Berkeley Women's L.J.* 57 (1990-91). (6, 7, 9).

Dedicated to the memory of Denise S. Carty-Bennia, an inspirational black woman law professor. Argues that there is no typical black woman law professor, although many in the academic world expect black women professors to hold similar views and behave in a similar manner. Concludes, however, that many black women do seek a political and scholarly agenda that affirms black cultural identity while guaranteeing full democratic rights.

Barnes, Robin D., *An Extra-Terrestrial Trade Proposition Brings an End to the World as We Know It*, 34 *St. Louis U. L.J.* 413 (1990). (2, 10).

Narrative proposing an alternative outcome to Derrick Bell's *Chronicle of the Space Traders*, in *After We're Gone* (see *infra* p. 468). Hypothesizes that the aliens in the story only wanted to awaken Americans to the wide racial gaps still existing in the year 2000, and concludes by holding that a more optimistic outcome than the one Bell wrote is still possible.

Barnes, Robin D., [Politics and Passion: Theoretically A Dangerous Liaison](#), 101 *Yale L.J.* 1631 (1992) (reviewing Stephen L. Carter, *Reflections of an Affirmative Action Baby* (1991) and Patricia J. Williams, *The Alchemy of Race and Rights* (1989)). (2, 9).

Dedicated to the memory of Muhammad I. Kenyatta, a pioneer in the movement for civil and human rights. Argues that the benefits of contemporary affirmative action policies far outweigh the costs. Advances the argument by retelling several anecdotes of racial prejudice and inequality.

\*468 Barnes, Robin D., [Race Consciousness: The Thematic Content of Racial Distinctiveness in Critical Race Scholarship](#), 103 *Harv. L. Rev.* 1864 (1990). (6, 7, 10).

Identifies several distinguishing themes in recent Critical writing including: a theory of dual consciousness, the value of theory for the enhancement of practice, and an explanation of how differentiating characteristics often compound racial oppression. Argues that Randall Kennedy's insistence on quantifiable proof of a neatly defined minority perspective (see *infra* p. 498) has the potential of prematurely terminating any hearing of the substantive CRT claim.

Barnes, Robin D., *Realist Review*, 24 Conn. L. Rev. 553 (1992). (1, 3, 8, 10).

Compilation of reactions and observations of black women in public service to Derrick Bell's article, *Racial Realism* (see infra p. 473), in which he assess black America's future. While agreeing with his underlying premise about the inefficacy of attempting to attain racial equality only through changes in the law, the commentators generally challenge Bell's bleak final assessment. Urges economic solidarity as a means for obtaining social and political equality for blacks.

Bell, Derrick A., Jr., *After We're Gone: Prudent Speculations on America in a Post-Racial Epoch*, 34 St. Louis U. L.J. 393 (1990). (2, 3).

Fictional *Chronicle of the Space Traders*, in which aliens offer solutions for the nation's economic and environmental problems in exchange for all black Americans. Argues that people of color have occupied the bottom rung in the socioeconomic ladder, and after their departure a new group will be assigned that status, lest a portion of the white population realize that they may be next.

Bell, Derrick A., Jr., *An American Fairy Tale: The Income-Related Neutralization of Race Law Precedent*, 18 Suffolk U. L. Rev. 331 (1984). (2, 3).

Uses the tale of *Bluebeard's Castle* as a metaphor to examine several civil rights documents: the Emancipation Proclamation, the Post-Civil War Amendments, and the Civil Rights Acts of the 1960s—symbols of redemption holding potential for economic and social betterment for blacks, but which have failed to deliver on their promises.

**\*469** Bell, Derrick A., Jr., *And We Are Not Saved: The Elusive Quest for Racial Justice* (1987). (1, 2, 3, 4, 5, 6, 8, 9).

Expanded version of *Foreword: The Civil Rights Chronicles* (see infra p. 471). Analyzes a number of myths and strategies for social reform, including the myths of an egalitarian, color-blind Constitution; of litigation as a source of hope; of school desegregation as a source of succor for black schoolchildren; of the legal academy's limitless commitment to hiring qualified African-Americans; and of the faith that whites will tolerate or encourage self-help measures by the black community.

Bell, Derrick A., Jr., *Application of the "Tipping Point" Principle to Law Faculty Hiring Policies*, 10 Nova L.J. 319 (1986). (1, 3, 9).

Analyzes current makeup of law school faculties and urges schools to hire a representative number of minority professors—up to a psychological "tipping point"—in order to realize gains in legitimacy as well as to scholarship.

Bell, Derrick A., Jr., *Bakke, Minority Admissions, and the Usual Price of Racial Remedies*, 67 Cal. L. Rev. 3 (1979). (1, 3).

Examines the social and legal problems that led up to the *University of California v. Bakke* decision. Argues that like any policy intended to remedy racism, minority admissions policies are merely modest mechanisms for slightly increasing the number of minority professionals, "adopted as much to further the self-interest of the white majority as to aid the designated beneficiaries." Urges proponents to continue to defend minority admissions programs, while developing other approaches that will more significantly advance the goal of equal opportunity. Notes that minorities and their counsel were "relegated to the wings" in the *Bakke* litigation, and that as a result, the costs of racial relief were placed—as usual—on persons of color.

Bell, Derrick A., Jr., *Britain, Blacks, and Busing*, 79 Mich. L. Rev. 835 (1981) (reviewing David L. Kirp, *Doing Good by Doing Little: Race and Schooling in Britain* (1979)). (1, 3, 7, 8).

Attempts to prove that although America's approach to equal education—busing of minorities—is not working, racism is too embedded in American society to be eradicated indirectly. Argues that someday the Supreme Court will have to reach the issue raised by black parents who insist that *Brown* be read to emphasize equal education directly rather than by mere racial balance in the schools.

**\*470** Bell, Derrick A., Jr., [\*Brown v. Board of Education and the Interest-Convergence Dilemma\*, 93 Harv. L. Rev. 518 \(1980\)](#). (1, 3, 8).

Critiques Herbert Wechsler's analysis of *Brown v. Board of Education*. Argues that the racial convergence existing at the time of *Brown* is fading because the political atmosphere has changed and because school desegregation has proven to be more problematic than beneficial.

Posits, therefore, that the focus should shift away from forced desegregation to improvement of existing schools and curricula.

Bell, Derrick A., Jr., [Civil Rights Lawyers on the Bench, 91 Yale L.J. 814 \(1982\)](#) (reviewing Jack Bass, *Unlikely Heroes* (1981)). (1, 3).

Praises Jack Bass for providing a valuable historic record of the Fifth Circuit's civil rights reform in the 1960s, but criticizes him for failing to address the dashed hopes and unrealized expectations that resulted from attempts at reform, for failing to credit the efforts of black reformers and activists, and for giving unwarranted hope that racial reformers may look to today's judiciary for succor.

Bell, Derrick A., Jr., *The Dilemma of the Responsible Law Reform Lawyer in the Post-Free Enterprise Era*, 4 *Law & Ineq. J.* 231 (1986). (1, 2, 3, 9).

Reviews civil rights struggles of the last century through an imaginary "Colored Crusader." Argues that society's resistance to civil rights still revolves around issues of compensation, such as the old question of "who will pay the slave owners." Proposes that conservatives on the Supreme Court, by blocking racial progress and thereby fomenting civil disorder, may inadvertently be agents of revolutionary reform.

Bell, Derrick A., Jr., [Does Discrimination Make Economic Sense? For Some-it Did and Still Does, 15 Hum. Rts. 38 \(Fall 1988\)](#). (3, 5).

Argues that the original slavery compromises set precedent under which black rights repeatedly have been sacrificed to further white interests; even those whites who lack wealth and power are sustained in their sense of racial superiority and thus are rendered more willing to accept economic subordination to the ruling white minority.

Bell, Derrick A., Jr., *Faces at the Bottom of the Well: The Permanence of Racism* (1992). (1, 2, 3, 4).

Through further chronicles with Geneva, the fictional lawyer-prophet heroine of Bell's previous book, the author explores the many **\*471** reasons why racism against African-Americans remains unchanged. The "faces" mentioned in the title are those of black Americans, from whose presence at society's bottom even the poorest whites gain comfort. Chapters take the form of allegorical tales, each illustrating a point about racial justice, many in an ironic or satiric manner. The book's prognosis is bleak-yet Bell urges that persons of goodwill must continue the struggle.

Bell, Derrick A., Jr., [The Final Report: Harvard's Affirmative Action Allegory, 87 Mich. L. Rev. 2382 \(1989\)](#). (1, 2, 9).

Fictional account of a tragedy at Harvard University in which all black faculty and administrators are killed in an explosion. Argues that throughout history only such tragedies have led to racial reform. Urges that Harvard actively seek minority faculty and administrative candidates to raise ratio of minority members to ten percent. Argues that if this type of action is not taken, the small percentage of minority faculty members will serve only to validate arguments against affirmative action.

Bell, Derrick A., Jr., [Foreword: The Civil Rights Chronicles, 99 Harv. L. Rev. 4 \(1985\)](#). (1, 2, 3, 4, 5, 6, 8, 9).

Through a series of conversations with "Geneva," discusses several modern myths including the belief that social justice can only be attained with the assistance of a liberal Supreme Court, as well as the notion that affirmative action, self help, or a "common crisis" will dismantle racial barriers. An early influential example of legal storytelling.

Bell, Derrick A., Jr., [Foreword: The Final Civil Rights Act, 79 Cal. L. Rev. 597 \(1991\)](#). (2, 3).

Discusses potential disintegration of Civil Rights Act of 1964 in light of hypothetical and actual Supreme Court developments and the fictional "Racial Preference Licensing Act of 1996." Asks if civil rights activists should abandon the task of trying to achieve social justice and agree to license discrimination for a fee, just as we do other forms of socially harmful conduct, and then put the money to good use. Also asks if this would force society to confront the costs of discrimination.

**\*472** Bell, Derrick A., Jr., *A Holiday for Dr. King: The Significance of Symbols in the Black Freedom Struggle*, 17 *U.C. Davis L. Rev.* 433 (1984). (2, 3).

A dialogue between Bell and fictional cab driver Jesse B. Semple commemorating the decision to create a national holiday in Dr. Martin Luther King, Jr.'s honor. Analyzes strengths

and shortcomings of symbolism in the civil rights movement. Argues that many laws purporting to advance minority rights are merely symbolic and have little real substance. Asserts that measures like establishing the holiday may easily cause unwarranted self-satisfaction among whites and unrealistically raise blacks' hopes that progress is at hand.

Bell, Derrick A., Jr., [Humanity in Legal Education](#), 59 Or. L. Rev. 243 (1980). (9).

Argues that teaching legal techniques should not be the sole goal for a law school; rather, that mission includes strengthening character, increasing sensitivity to humanitarian concerns, and deepening moral values. Adapted from his Commencement Day address to the Oregon Law School.

Bell, Derrick A., Jr., A Hurdle Too High: Class-based Roadblocks to Racial Remediation, 33 Buff. L. Rev. 1 (1984) (The 1983 James McCormick Mitchell Lecture). (3, 5, 6, 10).

Responds to various reviews of his book *Race, Racism and American Law* (see infra p. 473). Reiterates that his goal is to review the political and economic dimensions of our racial predicament, thus enabling lawyers and lay people to decide where to go from here. Argues that although the self-interest of elite whites always takes precedence over racial justice, and although gains are cyclical and a "victory" is always followed by a falling-back, the struggle still must be waged.

Bell, Derrick A., Jr., [Law, Litigation, and the Search for the Promised Land](#), 76 Geo. L.J. 229 (1987) (reviewing Mark V. Tushnet, *The NAACP: Legal Strategy Against Segregated Education 1925-1950* (1987)). (1, 3, 5).

Argues that Mark Tushnet's praise of the NAACP and its strategies and results gives too little weight to criticism of that organization's dedication to desegregation at the expense of its clients' actual desires-better, not desegregated, schools. Concludes that Tushnet's book provides a helpful perspective for those committed to avoiding a replication of legal campaigns where victories are gained at too great a cost.

**\*473** Bell, Derrick A., Jr., Law School Exams and Minority-Group Students, 7 Black L.J. 304 (1981). (9).

Exam guide for minority students confronting what for many is an alien challenge. Offers advice on how to overcome bias on essay-type exams and organize a coherent answer.

Bell, Derrick A., Jr., [Private Clubs and Public Judges: A Nonsubstantive Debate About Symbols](#), 59 Tex. L. Rev. 733 (1981). (1, 5, 9).

Discusses proposed reform of the Code of Judicial Conduct that would bar judges from maintaining memberships at discriminatory clubs. Some argue that such reforms are only symbolic. Bell argues that they are nevertheless useful because women and people of color will no longer have to question whether a judge's association stems from discriminatory beliefs. Moreover, under unjust social conditions, symbolic reforms are sometimes all for which one can hope.

Bell, Derrick A., Jr., *Race, Racism and American Law* (3d ed. 1992). (1, 3, 4, 5, 6, 8).

Casebook on the reciprocal impact of race and American law. Integrates historical, cultural, social-scientific, and legal analysis into discussion of constitutional history, interracial sex and marriage, public facilities, voting rights, the criminal justice system, protest rights, school desegregation, fair housing, and employment discrimination.

Bell, Derrick A., Jr., [Racial Realism](#), 24 Conn. L. Rev. 363 (1992). (1, 3, 8).

Compares the current liberal understanding of civil rights with the view of law, dominated by "mechanical jurisprudence," that prevailed before the advent of the Legal Realists. Argues that even favorable legal precedents cannot confine and prevent racism. Acceptance and understanding of the approach of Racial Realism will enable African-Americans and their defenders to think, plan, and persevere even in the face of recurring defeats.

Bell, Derrick A., Jr., [Racial Reflections: Dialogues in the Direction of Liberation](#), 37 UCLA L. Rev. 1037 (Tracy Higgins & Sung-Hee Suh eds., 1990). (1, 2, 3, 4, 6, 7, 8, 9).

Introduction by Derrick Bell. Compilation of student writings on racism. Papers discuss the universality of prejudice; property rights in "whiteness"; the successes and failures of school desegregation; the **\*474** psychological effects of racism; and racial remediation. Many have a personal or autobiographical dimension.

Bell, Derrick A., Jr., Racism: A Prophecy for the Year 2000, 42 Rutgers L. Rev. 93 (1989). (2, 3).



Discusses origins of white property interests in black subordination and details predictions for the future in light of *The Chronicle of the Space Traders* (see supra p. 468). The *Chronicle* examines potential outcomes if the United States were faced with an extraterrestrial civilization's offer to purchase all black citizens in exchange for solutions to many of the nation's current woes, including the national debt.

Bell, Derrick A., Jr., *Reconstruction's Racial Realities*, 23 Rutgers L.J. 261 (1992). (1, 3).

Recounts early constitutional history and reconstruction debates to develop three ironic rules of Race Relations Law. Each of the rules focuses on the ways in which civil rights case law and jurisprudence benefit whites more than they do their ostensible beneficiaries, blacks.

Bell, Derrick A., Jr. & Preeta Bansal, [The Republican Revival and Racial Politics](#), 97 *Yale L.J.* 1609 (1988). (1, 5).

Critique of Frank Michelman's and Cass Sunstein's theory that republicanism can lead to fuller participation in public life for minority and oppressed citizens. Applauds the efforts of the neorepublicans, but points with skepticism to some aspects of their theory, in particular its failure to aid the oppressed in the past and its reliance on courts to recognize "voices from the margin."

Bell, [Derrick A., Jr., A School Desegregation Post-Mortem](#), 62 *Tex. L. Rev.* 175 (1983) (reviewing David L. Kirp, *Just Schools: The Idea of Racial Equality in American Education* (1982)). (1).

Argues that David Kirp's vision of desegregation avoids the realities of racism. Concludes that when racism is taken into account, the book's school desegregation data are supportive of achieving integration through improving the quality of education at predominantly black schools, rather than through the policy initiatives Kirp urges.

**\*475** Bell, Derrick A., Jr., [Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation](#), 85 *Yale L.J.* 470 (1976). (1, 2, 3, 10).

Reviews developments in school desegregation litigation and "the unique lawyer-client relationship that has evolved out of it." Shows how civil rights lawyers in school desegregation cases after *Brown v. Board of Education* single-mindedly pursued "unconditional integration" even when their clients often wanted better schools, regardless of whether they were integrated or segregated. Urges lawyers to abandon their preoccupation with desegregation at any cost and instead pursue their clients' wishes for a better education for their children.

Bell, Derrick A., Jr., *Strangers in Academic Paradise: Law Teachers of Color in Still White Schools*, 20 *U.S.F. L. Rev.* 385 (1986). (1, 2, 5, 9).

Tells the story of "The Academy"-the superior legal institution-and other legal institutions that try to keep minority professors out, and, once in, that make it difficult for them to succeed. An early example of legal storytelling; mocks pseudo-meritocratic nature of law school and notes its complicity with various regressive social movements and causes.

Bell, Derrick A., Jr., [A Tragedy of Timing](#), 19 *Harv. C.R.-C.L. L. Rev.* 277 (1984) (Tribute to Clarence Clyde Ferguson, Jr.). (9).

Short article commemorating the life of Clarence Clyde Ferguson, Jr. Notes the tragic effects of racism on Ferguson's life.

Bell, Derrick A., Jr., *White Superiority in America: Its Legal Legacy, Its Economic Costs*, 33 *Vill. L. Rev.* 767 (1988). (2, 3, 5).

Argues that white supremacy as reflected in the courts has resulted in the creation of a property interest in "whiteness." This property interest sustains those whites who lack power, making them more willing to accept their status. Asserts that this belief in white superiority historically has resulted in the sacrifice of black interests to further those of whites. Also discusses the economic costs of racism.

Bell, Derrick A., Jr., [Xerxes and the Affirmative Action Mystique](#), 57 *Geo. Wash. L. Rev.* 1595 (1989). (1, 2, 3, 5).

In a dialogue with an extraterrestrial, Bell examines whether civil rights activists have been sidetracked by focusing on doctrinal flaws in judicial opinions on affirmative action issues, rather than analyzing broad mechanisms that maintain the socioeconomic status quo.

**\*476** Brown, Kevin, [Has the Supreme Court Allowed the Cure for De Jure Segregation to Replicate the Disease?](#), 78 *Cornell L. Rev.* 1 (1992). (1, 3).

Argues that de jure segregation injured African-American children, but that judicial remedies for such segregation cause similar harm. Those who advocate judicial remedies assume black schoolchildren have been made inferior, cognitively and educationally, by segregation, an assumption that harms them even when segregation ends. A better approach would emphasize the socializing and value-inculcating functions of schools. Employing this approach would avoid the harm produced by solely focusing on African-Americans, as well as improve schools' institutional mission of inculcating equality values in all students.

Caldwell, Paulette M., [A Hair Piece: Perspectives on the Intersection of Race and Gender](#), [1991 Duke L.J. 365. \(1, 2, 6, 7, 9\)](#).

Critiques the traditional approach to race and gender as analogous, but distinct, categories by focusing on their intersection. Analyzes *Rogers v. American Airlines*, in which a black woman employee charged that American's policy forbidding braided hair was discriminatory. Employs a narrative account of Caldwell's own experiences with braided hairstyles. Argues that intersection analysis acknowledges not only black women's particular situation but also sheds light on the gendered construction of black men's, and the raced construction of white women's, experiences.

Calmore, John O., [Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World](#), [65 S. Cal. L. Rev. 2129 \(1992\)](#). (1, 4, 5, 6, 7, 8, 9).

Presents the "fire music" of jazz saxophonist Archie Shepp as a metaphor illustrating CRT's experiential grounding, orientation, and oppositional and transformative potential. Addresses how CRT's themes, perspectives, and directions can provide intellectual authenticity to people of color. Argues that liberating praxis is tied to a cultural orientation of racial distinctiveness and that cultural racism is a crucial form of subordination that scholars must confront.

Calmore, John O., *Exploring the Significance of Race and Class in Representing the Black Poor*, [61 Or. L. Rev. 201 \(1982\)](#). (1, 6, 7).

Argues that historic and present racism is the root problem for blacks of all classes, but that the black poor are doubly victimized by both racism and classism. Proposes that a doctrine of spatial equality of results be adopted to serve as a unifying principle that both will **\*477** mobilize blacks to improve education, housing, and employment opportunities and will compensate them for historic oppression.

Carter, Stephen L., [Academic Tenure and "White Male" Standards: Some Lessons from the Patent Law](#), [100 Yale L.J. 2065 \(1991\)](#). (2, 9, 10).

Discusses the troubling direction discussions about legal scholarship have recently taken, in that many readers want to know about the author—and particularly his or her race—in order to put the work in "context." Argues that the result of this approach is a greater importance on who wrote an article than on what that article says. Urges that scholars not be judged according to their voice but by whether they are bringing novel ideas to legal scholarship.

Carter, Stephen L., *Reflections of an Affirmative Action Baby* (1991). (1, 2, 3, 7, 9, 10).

Partly autobiographical discussion of affirmative action, black identity, and the role of race in the life of an African-American professional. Calls attention to the dangers of treating the black community as though it speaks with a single voice, of suppressing dissent from a monolithic party line, of treating difference as a criterion of merit, and of relying on victimhood and affirmative action as methods of black advancement.

Carter, Stephen L., [When Victims Happen to Be Black](#), [97 Yale L.J. 420 \(1988\)](#). (1, 4).

Analyzes reactions to the Bernard Goetz subway vigilante case in light of racial categorizations. Cautions that such categorizations can be dangerous because they lead to statistical discrimination and wrong assumptions and predictions. Discusses the effect of racial categorization on affirmative action programs, which some criticize for reinforcing the idea of racial difference, and on a number of criminal cases, particularly *McClesky v. Kemp*.

Cook, Anthony E., [Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King, Jr.](#), [103 Harv. L. Rev. 985 \(1990\)](#). (1, 3, 10).

Argues that greater emphasis should be placed on the concrete experiences of the oppressed. Focuses in particular on minority religious experience and the theology of Dr. Martin Luther King, Jr. Analyzes multiple facets of King's methodology including social struggle, experiential deconstruction, and reconstructive theorizing.

**\*478** Cook, Anthony E., Foreword: The Postmodern Quest for Community: An Introduction to a Symposium on Republicanism and Voting Rights, 41 Fla. L. Rev. 409 (1989). (1).

Analyzes Frank Michelman's critique of liberalism and argument for a new republicanism. Includes critiques by other legal scholars of Michelman's republicanism. Approves of attempts at reconstruction, but cautions against the blindness that may result from undue introspection and urges that republican scholars look "to the bottom"-to the reception of their theory by marginalized groups-to judge their own efficacy.

Cook, Anthony E., Reflections on Postmodernism, 26 New Eng. L. Rev. 751 (1992). (1, 10).

Provides a cultural history of postmodern philosophy and its implications for many of the problems raised by CRT. Examines some of the historical events that influenced postmodern philosophers Michel Foucault and Jacques Derrida, as well as writings that influenced Dr. Martin Luther King, Jr. Addresses ways in which progressive scholars can alleviate concerns of postmodern nihilism by harnessing the insights of postmodernism for transformative purposes.

Cook, Anthony E., The [Temptation and Fall of Original Understanding](#), 1990 Duke L.J. 1163 (reviewing Robert H. Bork, *The Tempting of America: The Political Seduction of the Law* (1989)). (1, 5).

Explains why the version of historicist judicial philosophy embraced by Robert Bork's conception of original understanding is an impoverished approach to constitutional interpretation. Argues further that Bork's insistence on a color-blind Constitution silences the very voices who must be heard-those of African-Americans, whom the Thirteenth, Fourteenth, and Fifteenth Amendments were designed to protect.

Cottrol, Robert J. & Raymond T. Diamond, The [Second Amendment: Toward an Afro-Americanist Reconsideration](#), 80 Geo. L.J. 309 (1991). (3, 8).

Explores the Second Amendment's right to bear arms in light of the individual and group violence to which the black community has been subjected throughout the United States' history. Urges that the Amendment should be interpreted as providing an individual, not a group, right-one essential to blacks and Native Americans as an aspect of legitimate self-defense and insurrection.

**\*479** Crenshaw, Kimberlé Williams, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, 1989 U. Chi. Legal F. 139. (5, 6).

Discusses why black women's experience is more than merely the sum of racism and sexism. Also details how that experience is ignored in discrimination cases as a result of the "single axis" framework employed in analyzing prejudice.

Crenshaw, Kimberlé Williams, Foreword: Toward a Race-Conscious Pedagogy in Legal Education, 11 Nat'l Black L.J. 1 (1989). (2, 5, 9).

Analyzes difficulties confronting minority students in the classroom-including objectification, subjectification, and alienation-that also extend beyond the classroom to the construction of legal doctrine. Explains how a teacher can address and overcome these problems by examining the frameworks and the racial implications of legal doctrine and by shifting the framework. Urges development of a critical pedagogy to overcome the silencing of outsider perspectives.

Crenshaw, Kimberlé Williams, [Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law](#), 101 Harv. L. Rev. 1331 (1988). (1, 3, 4, 5).

Critiques the conservative right's and the liberal left's approaches to antidiscrimination law. Argues that the right's belief in "color-blindness," which justifies elimination of antidiscrimination measures, does not advance equal opportunity. The left's harsh criticism of these measures, on the other hand, does not credit any of the benefits they provide, and ignores the role racism plays in legitimizing oppression. Argues that race barriers cannot be overcome until racism's role is fully understood.

Culp, Jerome McCristal, Jr., [Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy](#), 77 Va. L. Rev. 539 (1991). (2, 9).

Explains the importance of bringing black perspective to the classroom, particularly through the use of autobiographical examples. Argues that failure to present personal experiences merely supports the majoritarian perspective.

**\*480** Culp, Jerome McCristal, Jr., Diversity, Multiculturalism, and Affirmative Action: Duke, the NAS, and Apartheid, 41 DePaul L. Rev. 1141 (1992). (2, 6, 9).

Points out that racial categories and consciousness are double-edged swords. They may increase oppression and reinforce harmful stereo-types. Nevertheless, they may also promote desirable solidarity on the part of people of color and spur social change. Defends university affirmative action programs as necessary to redress the harms resulting from the institutions' all-white policies, which persisted until the recent past, and as not unfair to "innocent" whites. Describes the National Association of Scholars as bent on forcing blacks back into a box and on defending traditional values against the perceived threat of diversity. Emphasizes the need for candid, thoughtful, and constructive dialogue that respects differing viewpoints without surrendering personal beliefs.

Culp, Jerome McCristal, Jr., *Firing Legal Canons and Shooting Blanks: Finding a Neutral Way in the Law*, 10 St. Louis U. Pub. L. Rev. 185 (1991). (1, 9).

Argues that there is no agreed legal scholarly paradigm and that the search for one is likely to be futile given the diversity of views. Contends that it is important that the canon contain racial and other views—even ones that seem unscholarly, like anger. Further asserts that because of the heterogeneity of views, the most a system of selection can do is judge works and ideas consistently on their own terms.

Culp, Jerome McCristal, Jr., *A New Employment Policy for the 1980's: Learning from the Victories and Defeats of Twenty Years of Title VII*, 37 Rutgers L. Rev. 895 (1985). (1, 3).

Analyzes stages of civil rights development in America as reflected in Title VII suits and their effect on the civil rights movement, particularly with regard to poverty, race, and childrearing concerns. Suggests a new approach to Title VII that includes focusing on new areas of enforcement and explicitly recognizing race.

Culp, Jerome McCristal, Jr., [Posner on Duncan Kennedy and Racial Difference: White Authority in the Legal Academy](#), 41 Duke L.J. 1095 (1992). (9).

Responds to Richard Posner's comments about Duncan Kennedy and affirmative action. Argues that refusal to engage the work of scholars of color helps perpetuate the subjugation of black people and black viewpoints. Charges that Posner's refusal to engage the work of **\*481** such scholars, while at the same time claiming ignorance and doubting their work's importance, is inexcusable.

Culp, Jerome McCristal, Jr., [Toward a Black Legal Scholarship: Race and Original Understandings](#), 1991 Duke L.J. 39. (1, 5, 9).

Examines the difficulties of being a black law professor in a society dominated by white males. Argues that there is indeed a "Black Jurisprudence" that is leading to the development of a "Black Legal Scholarship." Criticizes the policy of color-blindness because it ignores the black struggle. Also analyzes the relationship between black legal scholars and the Constitution, including the constitutional legacy of racism.

Culp, Jerome McCristal, Jr., *Voice, Perspective, Truth, and Justice: Race and the Mountain in the Legal Academy*, 38 Loy. L. Rev. 61 (1992). (2, 7, 9, 10).

Argues that the use of voice and perspective has been muddled by confusion about the meaning of these terms. Voice is part of a person's identity; all scholars of color have a voice of color. Black perspective is concerned with opposition to oppression and white supremacy. Criticizes Professors Stephen Carter, Randall Kennedy, and Alex Johnson for ignoring this duality and its necessary and powerful use in scholarship and teaching.

Dalton, Harlon L., [The Clouded Prism](#), 22 Harv. C.R.-C.L. L. Rev. 435 (1987). (1, 10).

Describes gulf between founders of Critical Legal Studies (CLS) movement and legal scholars of color stemming from CLS's preference for theory over practice and community engagement. Criticizes the CLS movement for silencing voices of color, and urges receptivity to minorities' experiences and opinions.

Davis, Adrienne D. & Stephanie M. Wildman, [The Legacy of Doubt: Treatment of Sex and Race in the Hill-Thomas Hearings](#), 65 S. Cal. L. Rev. 1367 (1992). (5, 6, 7).

Explores ways in which the Senate's treatment of sexual harassment during the Hill-Thomas hearings reflects patriarchal assumptions about women. Examines the construction of race and gender as mutually exclusive. Analyzes these issues in the context of the Hill-Thomas hearings and as presented in a popular situation comedy.

**\*482** Davis, Peggy C., [Contextual Legal Criticism: A Demonstration Exploring Hierarchy and "Feminine" Style](#), 66 N.Y.U. L. Rev. 1635 (1991). (2, 3, 4, 10).

Describes the outsider voice in legal theory, identifying in the work of critical race, feminist, and other legal theorists an increasingly sophisticated "conceptual criticism." Urges that this conceptual criticism be augmented by "contextual criticism," or analysis of the cultural and situational settings in which legal concepts evolve. Demonstrates her methodology by means of an analysis of simulated lawyer-client interviews that compares the effects of masculine and feminine conversational styles.

Davis, Peggy C., [Law as Microaggression, 98 Yale L.J. 1559 \(1989\)](#). (4).

Discusses black and white perceptions of interracial interactions in light of cognitive psychology and psychoanalysis. Analyzes the relationship between varying forms of perception and the commonly held belief by people of color that the legal system is biased. Describes "microaggressions"-those "subtle, stunning, often automatic, and non-verbal exchanges," that amount to "assault on black self-esteem."

Delgado, Richard, [Affirmative Action As a Majoritarian Device: Or, Do You Really Want to be a Role Model, 89 Mich. L. Rev. 1222 \(1991\)](#). (1, 8, 9).

Offers the view that affirmative action, and especially the role-model argument for it, are disempowering devices more useful to the majority than to persons of color. Proposes that professionals of color eschew the "role model" function and seek out more authentic and vital relationships with their constituent communities.

Delgado, Richard, [Brewer's Plea: Critical Thoughts on Common Cause, 44 Vand. L. Rev. 1 \(1991\)](#). (8, 10).

Takes issue with Scott Brewer's *Foreword* to the Harvard Law Review colloquy on Randall Kennedy's critique of the CRT movement. Brewer calls for both parties to work toward common goals; Delgado questions whether such common goals exist and, if so, whether the time is right for coalition politics.

Delgado, Richard, [Campus Antiracism Rules: Constitutional Narratives in Collision, 85 Nw. U. L. Rev. 343 \(1991\)](#). (1).

Argues that debate about hate-speech can be approached, with equal validity, from two perspectives-from either an equality or free speech \*483 paradigm, depending on the values that one favors and the historical "narrative" that rings most true to one's experience. Observes that the concerted nature of racist speech creates a picture of changed social reality that seriously harms persons of color.

Delgado, Richard, [Critical Legal Studies and the Realities of Race-Does the Fundamental Contradiction Have a Corollary?, 23 Harv. C.R.-C.L. L. Rev. 407 \(1988\)](#). (1, 10).

Argues that a structural feature of human experience separates people of color from their friends of majority race. Whites rarely notice acts of subtle or even blatant racism, whereas persons of color see or suffer them all the time. Explains how this feature arises and traces out its consequences through sociolegal theorizing. Shows how the race-charged quality of the world in which minority people live affects the way they strike various balances between formal protections (e.g., rights) and nonformal community. Uses these observations to coin a new "fundamental contradiction, sub-two."

Delgado, Richard, [Derrick Bell and the Ideology of Racial Reform: Will We Ever Be Saved?, 97 Yale L.J. 923 \(1988\)](#) (reviewing Derrick Bell, *And We Are Not Saved: The Elusive Quest for Racial Justice* (1987)). (1, 2, 10).

Employs dialogue format and analyzes twin themes of optimism and despair in Derrick Bell's writing.

Delgado, Richard, [Enormous Anomaly? Left-Right Parallels in Recent Writing About Race, 91 Colum. L. Rev. 1547 \(1991\)](#) (book review). (1, 5, 10).

Reviews several recent books by scholars of the new right and the CRT left. Points out their shared dissatisfaction with liberalism and the moderate-left civil rights program that has dominated the United States' political and social scene since the early 1960s. Argues that liberalism today is practically bankrupt as a source of civil rights reform.

Delgado, Richard, The [Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?, 22 Harv. C.R.-C.L. L. Rev. 301 \(1987\)](#). (1, 10).

Friendly criticism of CLS, including discussion of themes in CLS movement that persons of color find troubling. Urges greater attention to perspectives of color in leftist thought.

**\*484** Delgado, Richard & Jean Stefancic, [Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?](#), 77 *Cornell L. Rev.* 1258 (1992). (1, 3, 4).

Reviews two centuries of depictions of racial minorities in American popular culture, showing that in each era the dominant images of minorities have been negative and demeaning-although not recognized as such at the time. Examines reasons why this has happened, concluding that an "empathic fallacy" encourages the audience to believe that free expression will remedy racism and other deeply inscribed social ills, when it will not. Shows that the marketplace of free speech intensifies rather than relieves the predicament of minority groups. Includes bibliography of writings on ethnic imagery.

Delgado, Richard, The [Imperial Scholar: Reflections on a Review of Civil Rights Literature](#), 132 *U. Pa. L. Rev.* 561 (1984). (1, 9).

Analyzes citation practices of a number of mainstream civil rights scholars, all of whom are white and male. Finds that most ignore work of scholars of color, resulting in distortions and omissions in the development of civil rights doctrine and theory. An early article calling attention to issues of voice and marginalization in legal scholarship.

Delgado, Richard, The [Imperial Scholar Revisited: How to Marginalize Outsider Writing, Ten Years Later](#), 140 *U. Pa. L. Rev.* 1349 (1992). (1, 5, 9).

Describes a number of mechanisms by which mainstream writers marginalize outsider scholarship. Article updates Delgado's earlier one on same subject (see supra p. 484); shows that the situation is not greatly different from that which prevailed ten years ago. Concludes: "All discourse marginalizes."

Delgado, Richard, [Mindset and Metaphor](#), 103 *Harv. L. Rev.* 1872 (1990). (1, 10).

Response to Randall Kennedy (see infra p. 498). Shows that Kennedy's disagreements with three CRT authors stem from certain presuppositions and metaphors authors of Kennedy's persuasion subscribe to and deploy.

Delgado, Richard, [Minority Law Professors' Lives: The Bell-Delgado Survey](#), 24 *Harv. C.R.-C.L. L. Rev.* 349 (1989). (9).

Reports on a survey of law professors of color covering such issues as workload, stress, job satisfaction, community service, and degree of **\*485** support from colleagues and administrators. Concludes that "[l]arge numbers of minority law professors are overworked, excluded from informal information networks and describe their work environment as hostile, unsupportive, or openly or subtly racist." Foreword by Derrick Bell.

Delgado, Richard & Jean Stefancic, [Norms and Narratives: Can Judges Avoid Serious Moral Error?](#), 69 *Tex. L. Rev.* 1929 (1991). (1, 2, 5).

Early statement of the "Empathic fallacy"-the idea that by reading or writing new, ennobling texts we may advance society to greater and greater levels of compassion, fairness, and racial equality. Illustrates thesis by juxtaposing *Dred Scott*, *Plessy v. Ferguson*, the Japanese internment cases, and other notorious opinions with extant literary texts that the Supreme Court Justices ignored.

Delgado, Richard, [Norms and Normal Science: Toward a Critique of Normativity in Legal Thought](#), 139 *U. Pa. L. Rev.* 933 (1991). (1, 5).

Argues that the dominant school of normative jurisprudence is empty, pointless, and especially treacherous for persons interested in understanding or changing society.

Delgado, Richard, [Recasting the American Race Problem](#), 79 *Cal. L. Rev.* 1389 (1991) (reviewing Roy L. Brooks, *Rethinking the American Race Problem* (1990)). (1, 10).

Argues that many of the defects of liberalism can be remedied by attending to broader perspectives offered by Critical thought. Shows that the principle of formal equality promotes subordination of people of color because racism is the norm in our society. Posits that formal equality will only single out highly visible deviations from a racist status quo.

Delgado, Richard, [Rodrigo's Chronicle](#), 101 *Yale L.J.* 1357 (1992) (reviewing Dinesh D'Souza, *Illiberal Education: The Politics of Race and Sex on Campus* (1991)). (1, 2, 3, 8).

Conversation between the fictional "Rodrigo Crenshaw" and "the Professor" covering affirmative action, the law teaching market, and cultural nationalism.

**\*486** Delgado, Richard, [Shadowboxing: An Essay on Power](#), 77 *Cornell L. Rev.* 813 (1992). (1, 3, 5).

Analyzes why empowered parties often prefer objective to subjective legal rules. Uses examples of medical informed consent, cigarette warnings, and date rape to show how objective rules favor empowered parties because long ago they were able to have their meanings and preferences inscribed in the culture so that they now appear objectively "true."

Delgado, Richard, [Storytelling for Oppositionists and Others: A Plea for Narrative](#), 87 *Mich. L. Rev.* 2411 (1989). (2, 9).

Discusses the theory and practice of oppositional storytelling. Illustrates counterstorytelling by means of five retellings or versions of the same event, in which a black professor applies for a teaching job at a famous school and is rejected.

Delgado, Richard & Jean Stefancic, [Why Do We Tell the Same Stories?: Law Reform, Critical Librarianship, and the Triple Helix Dilemma](#), 42 *Stan. L. Rev.* 207 (1989). (1, 5).

Argues that the tools lawyers rely on to research and think about the law confine legal thought and argument to safe, familiar channels and make transformative thought and action difficult.

Delgado, Richard, [Words That Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling](#), 17 *Harv. C.R.-C.L. L. Rev.* 133 (1982). (1, 4).

Early article on discourse, focusing on hate-speech. Analyzes harms stemming from such speech and tort law's inadequate response. Outlines a proposed course of action against such speech.

Dudziak, Mary L., [Desegregation as a Cold War Imperative](#), 41 *Stan. L. Rev.* 61 (1988). (3, 5).

Documents international reactions to racial segregation within the United States and the responses of the United States government during the early Cold War years. Argues that United States government support for desegregation and racial equality was motivated in part by the concern that racial discrimination harmed the United States' foreign relations. Maintains the United States could not argue that democracy was a more moral form of government than communism when the United States practiced racial segregation.

**\*487** Dudziak, Mary L., *The Limits of Good Faith: Desegregation in Topeka, Kansas, 1950-1956*, 5 *Law & Hist. Rev.* 351 (1987). (3, 5).

Analyzes the decisions of Topeka School Board members, who first voted to end school segregation the year before the Supreme Court handed down its ruling in *Brown v. Board of Education of Topeka, Kansas*. Examines the Board's effort to accommodate both the interest of blacks in avoiding segregation and that of whites in avoiding forced association, by means of the concept of associational freedom and by implementing freedom of choice desegregation plans. Hypothesizes that the board's integration effort was taken to distance itself from the South, where "real" segregation prevailed, and thus was aimed more at protecting the community's self-concept than protecting black futures.

Espinoza, Leslie G., *Labeling Scholarship: Recognition or Barrier to Legitimacy*, 10 *St. Louis U. Pub. L. Rev.* 197 (1991). (2, 6, 7, 8).

Notes that although differences in perspective are now being recognized by the legal academy, scholarship analyzing law from a race or gender viewpoint is labeled "race-conscious," "minority," or "feminist." Argues that this labeling poses three threats: (1) categorization may reduce the perceived value of outsider scholarship; (2) assimilation may nullify the outsider's unique perspective; and (3) the outsider's own developing voice will fragment.

Espinoza, Leslie G., [Masks and Other Disguises: Exposing Legal Academia](#), 103 *Harv. L. Rev.* 1878 (1990). (2, 9, 10).

Discusses several failures of Randall Kennedy's critique of CRT (see *infra* p. 498) including his reliance on methodology, mythology, and the "rhetoric of individuality." Recounts author's personal experiences to illustrate limits of Kennedy's universalist approach.

Freeman, Alan D., [Antidiscrimination Law: The View from 1989](#), 64 *Tul. L. Rev.* 1407 (1990). (1, 3, 5).

Reviews antidiscrimination law as it has evolved in Supreme Court opinions since 1954 in light of the "perpetrator" perspective that outlaws intentional discrimination, guarantees equality "before the law," and offers no more than equal opportunity to compete in the game of life. States this doctrinal history in a larger social and political context, updating his earlier landmark article (see *infra* p. 489) on the same subject and showing that little has changed.

**\*488** Freeman, Alan D., *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 *Minn. L. Rev.* 1049 (1978). (1, 3, 5).

Analyzes the ineffective contribution the American legal system has made to reducing prejudice and discrimination. Argues that most judges and lawyers adopt a "perpetrator" rather than a "victim" perspective, ignoring the actual status of black Americans. Argues that occasional Supreme Court "breakthroughs" serve simply to validate a generally unjust social system.

Freeman, Alan D., [Race and Class: The Dilemma of Liberal Reform](#), 90 *Yale L.J.* 1880 (1981) (reviewing Derrick Bell, *Race, Racism and American Law* (2d ed. 1980)). (6, 10).

Praises Bell, but is critical of his despairing tone and failure effectively to place antidiscrimination law in its sociohistorical setting. Rejects several traditional Marxist approaches to racism and suggests that it has been in the interest of the majority to appear to be ending racism. Concludes that in a class-based society any remedy for racism will inevitably come at the expense of lower-class whites.

Freeman, Alan D., [Racism, Rights and the Quest for Equality of Opportunity: A Critical Legal Essay](#), 23 *Harv. C.R.-C.L. L. Rev.* 295 (1988). (3, 6, 10).

Responds to various articles critical of CLS. Describes experiences that led him to the CLS movement and summarizes that movement's method of challenging received wisdom. Cautions those in CRT not to alienate potential allies by becoming excessively defensive. Examines the historical successes and failures of achieving equal opportunity, and demonstrates that the "classlessness" presupposed by equal opportunity theory cannot be achieved.

Gilmore, Angela D., *It Is Better to Speak*, 6 *Berkeley Women's L.J.* 74 (1990-91). (2, 6).

Discusses Gilmore's feelings of disconnection and dissonance because of her multiple status as a lesbian black woman. Describes her early reaction to these feelings-falling silent-and how this reaction neither dispels the feelings nor solves any of the problems associated with them. Encourages others to overcome their silence and support others who may be similarly isolated.

**\*489** Gotanda, Neil, [A Critique of "Our Constitution Is Color-Blind,"](#) 44 *Stan. L. Rev.* 1 (1991). (1, 3, 4, 5).

Argues that the Supreme Court's color-blind approach to constitutionalism promotes white supremacy. Analyzes several recent Supreme Court opinions that embrace the color-blind norm, categorizing the Court's use of the word "race" in its opinions to mean status-race, formal-race, historical-race, or culture-race. Further analyzes these uses into five general themes: the public-private distinction, a nonrecognition of race, racial categories, formal-race and unconnectedness, and theories of racial social change. Examines how each of these themes promotes the subordination of people of color and concludes by suggesting alternative modes of judicial interpretation that would diminish current white supremacy.

Gotanda, Neil, ["Other Non-Whites" in American Legal History: A Review of Justice at War](#), 85 *Colum. L. Rev.* 1186 (1985) (reviewing Peter Irons, *Justice at War* (1983)). (3).

Criticizes Peter Irons, author of *Justice at War*, for failing to place the racism of the attorneys and officials involved in the Japanese internment cases in the larger setting of racism against "Other non-Whites." The concentration camp cases illustrate the historical association often drawn between "non-white" and "foreign." Argues that a closer examination of the opinions, in light of the legal history of American racism, would confront, and perhaps prevent, racially conditioned governmental actions in the future.

Greene, Dwight L., [Abusive Prosecutors: Gender, Race & Class Discretion and the Prosecution of Drug-Addicted Mothers](#), 39 *Buff. L. Rev.* 737 (1991). (1, 4).

Criticizes the lack of information available on prosecutorial discretion, a mechanism that often leads to gender and race biases in choosing which suspects are prosecuted. The plight of mothers of color who are prosecuted for delivering drugs to their unborn children is highlighted as an area that is particularly prone to bias. Advocates creation of Prosecutorial Research, Information, and Reporting Boards that would gather information on prosecutorial discretion and provide a means of minimizing the effects of bias in this area.

Greene, Dwight L., [Drug Decriminalization: A Chorus in Need of Masterrap's Voice](#), 18 *Hofstra L. Rev.* 457 (1990). (1, 2).

Develops a taxonomy of the four major approaches to drug policy ranging from decriminalization to increased reliance on the criminal **\*490** law. Critiques these policies from



certain perspectives of the disenfranchised through the voice of a partially fictionalized man of color, a New York Dominican named Masterrap. Concludes most current approaches to drug policy are ineffective and antidemocratic because they fail to take into account key constituents in communities of color, particularly young males, drug-sellers and users, and their families.

Greene, Linda S., Equal Employment Opportunity Law Twenty Years After the Civil Rights Act of 1964: Prospects for the Realization of Equality in Employment, 18 *Suffolk U. L. Rev.* 593 (1984). (1, 3, 4).

Reviews Supreme Court decisions in the area of employment discrimination law. Brings to bear social science research on tokens and "skewed groups" to urge greater judicial attention to members of social groups whose workplace status is marginal.

Greene, Linda S., Multiculturalism as Metaphor, 41 *DePaul L. Rev.* 1173 (1992). (1).

Argues that the Supreme Court has failed to enforce equality and inclusion principles, indeed has often acted to thwart fulfillment of those values. In the "normative vacuum" thus created, the role of nonjudicial institutions in giving shape to defining equality principles has increased. The debate about multiculturalism and political correctness can be seen in these terms: advocates of multiculturalism wish to increase the empowerment and representation of previously excluded groups, whereas those who raise political correctness concerns wish to quell discussion of these issues.

Greene, Linda S., The New NCAA Rules of the Game: Academic Integrity or Racism?, 28 *St. Louis U. L.J.* 101 (1984). (9).

Critically reviews the National Collegiate Athletic Association's (NCAA) initial eligibility rules for college athletes. Examines the framework under which the rules were adopted and analyzes the impact that the new regulations will have on black students and colleges. Raises concern that rules whose ostensible purpose is to promote academic integrity will end up disadvantaging black athletes. Presents several alternatives including professionalizing college sports.

Greene, Linda S., [Race in the 21st Century: Equality Through Law?](#), 64 *Tul. L. Rev.* 1515 (1990). (1, 3).

Discusses 1989 Supreme Court employment discrimination cases, specifically focusing on the Court's themes of formalism and equality, politics and equality, and rights of whites and equality. Questions \*491 whether significant racial reform may be achieved by means of judicial quietism.

Greene, Linda S., Serving the Community: Aspiration and Abyss for the Law Professor of Color, 10 *St. Louis U. Pub. L. Rev.* 297 (1991). (9).

Discusses the symbolic role imposed on a professor of color in an otherwise all white law school. Examines the tension resulting from conflicting demands and high service obligations that can impair a professor's ability to meet the requirements for professional advancement. Questions whether a lone professor of color can do more than provide a gloss of racial legitimacy for a law school, merely enabling it to go about business as usual with a good conscience.

Greene, Linda S., Tokens, Role Models, and Pedagogical Politics: *Lamentations of an African American Female Law Professor*, 6 *Berkeley Women's L.J.* 81 (1990-91). (6, 7, 9).

Examines the effects of tokenism, including the negative inferences it creates about minority qualifications. Analyzes the symbolic roles minorities often are forced to play in academia. Also discusses the lack of professional privacy in the life of an African-American female law professor. Urges institutions to move beyond tokenism to a fuller inclusion of previously excluded groups.

Greene, Linda S., Twenty Years of Civil Rights: How Firm a Foundation?, 37 *Rutgers L. Rev.* 707 (1985). (1, 3).

Discusses progress made toward equality under twentieth century civil rights statutes; focuses on housing and employment discrimination. Explores concepts of state sovereignty, voting rights, and victimization. Concludes that the future of equality depends on resolving controversies about the notion of victimization and the appropriateness of group remediation, and on eliminating the current fixation on costs to "innocent" whites of racial remedies.

Grillo, Trina, The [Mediation Alternative: Process Dangers for Women](#), 100 *Yale L.J.* 1545 (1991). (4, 6, 9).

Studies the rise and use of mediation as an alternative to adversarial adjudication in divorce and child custody cases. Argues that although many who have used the process are pleased with it, mediation, particularly of the involuntary type, has many potentially harmful consequences. For example, despite the general assumption that mediation is "gentler" than litigation, the process can easily assume adversarial characteristics. Mediation can also lead to suppression of necessary \*492 anger in women. Further, the intimate setting of mediation provides an environment where racial and sexual prejudices can flourish.

Grillo, Trina & Stephanie M. Wildman, [Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism \(Or Other -Isms\)](#), 1991 Duke L.J. 397. (1, 2, 5, 9).

Discusses the unconscious tactic employed by some whites of taking "center stage"-directing attention away from the concerns of people of color in discussions of race, and focusing instead on their own concerns. Cautions against the use of analogies by whites to equate feelings and experiences of people of color with those of whites.

Guinier, Lani, [Keeping the Faith: Black Voters in the Post-Reagan Era](#), 24 Harv. C.R.-C.L. L. Rev. 393 (1989). (1, 3).

Examines the legacy of the Reagan administration, including its failure to enforce the Voting Rights Act of 1965 and its polarization of the electorate. Criticizes the Democratic party for "snubbing" its black constituency, while at the same time urging the Bush administration to alter its voting rights policies to include more black representation. Criticizes the American political system for being too easily satisfied with token black representation and the appearance, rather than the reality, of political fairness.

Guinier, Lani, [No Two Seats: The Elusive Quest for Political Equality](#), 77 Va. L. Rev. 1413 (1991). (1, 3).

Criticizes conventional subdistricting strategy as an ineffective means of obtaining minority political representation. Argues that voluntary interest representation combined with cumulative voting would more effectively represent minority interests. The particulars of an "interest-based" approach are discussed in light of the Voting Rights Act, particularly sections two and five.

Guinier, Lani, *Of Gentlemen and Role Models*, 6 Berkeley Women's L.J. 93 (1990-91). (2, 6, 9).

Recalls Guinier's law school experience and the institution's attempt to mold her into a "gentleman." Discusses role of multiple consciousness in her relationships with colleagues and clients, and analyzes problems and responsibilities that come with being a role model.

\*493 Guinier, Lani, [The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success](#), 89 Mich. L. Rev. 1077 (1991). (1, 3).

Criticizes black electoral success theory. Argues that the theory is flawed because it romanticizes black elected officials, creates single-race voting districts thereby further isolating voting blocs, and has failed to reform either the black community or politics in general. Further, the theory evaluates success in terms of numbers of black officials elected rather than actual participation by blacks in the electoral process. Finally, advocates "proportionate interest representation" to replace winner-take-all majority rule with principles of proportionate power sharing.

Haney-Lopez, Ian, *Community Ties, Race, and Faculty Hiring: The Case for Professors Who Don't Think White*, 1 Reconstruction No. 3, 1991, at 46. (1, 7, 9).

Argues for race-conscious law-faculty hiring, emphasizing the importance of professors with ties to the community of color. Such professors can serve as role models and mentors. Moreover, their scholarship is likely to be enriched by their ties to, and experience in, their communities. Defends race-conscious hiring in the face of various common objections, including: diversity is a boundless goal, neutrality is more defensible, the goal of diversity is itself racist, and the tasks of role model and articulation of a unique perspective are unfair to the professors employed to carry them out.

Harris, Angela P., *On Doing the Right Thing: Education Work in the Academy*, 15 Vt. L. Rev. 125 (1990). (9).

Analyzes the theory and practice of "education work," of educating white colleagues about racial struggle. Identifies several risks for minorities undertaking such work-the psychic and

energy costs of "boundary-crossing," the risk of being labelled uncollegial, the danger of being misunderstood, and the likelihood of failure and disappointment-but nevertheless recommends that the effort be made.

Harris, Angela P., [Race and Essentialism in Feminist Legal Theory](#), 42 *Stan. L. Rev.* 581 (1990). (2, 6, 7, 10).

Argues that gender and racial essentialism silence those who traditionally have been prevented from speaking out. Criticizes the writings of Robin West and Catharine MacKinnon for implicitly assuming the commonality of all women. Suggests storytelling and multiple consciousness as means of moving beyond essentialism.

**\*494** Harris, Angela P., Women of Color in Legal Education: *Representing La Mestiza*, 6 *Berkeley Women's L.J.* 107 (1990-91). (2, 9).

Reflects on her experiences as a black student at the University of Chicago and as a black woman law professor. Illustrates the seemingly small incidents that shaped her experience as a person of color in an almost all-white community and her reactions, at several levels of self, to these events.

Horwitz, Morton J., [Rights](#), 23 *Harv. C.R.-C.L. L. Rev.* 393 (1988). (1, 3, 5, 10).

Responds to portions of articles from the [Minority Critiques of the Critical Legal Studies Movement](#), 22 *Harv. C.R.-C.L. L. Rev.* 297-447 (1987), concerned with the critique of rights. Characterizes the recent embrace of rights as a fundamentalist reaction to modernism. Points out that rights-assertion has had a long and checkered history; that rights discourse is indeterminate, formal, and devoid of moral content; that it is individualistic and alienating, often conservative and pro-property; that it facilitates a baseless public-private distinction, and is hostile to group claims. To have any relevance to the quest for social justice, liberal rights jurisprudence must incorporate an equality dimension it now lacks.

Ikemoto, Lisa C., [The Code of Perfect Pregnancy \(COPP\): At the Intersection of the Ideology of Motherhood, the Practice of Defaulting to Science, and the Interventionist Mindset of Law](#), 53 *Ohio St. L.J.* 1205 (1992). (1, 3, 4, 5, 6, 7).

Analyzes movement to regulate women's exercise of reproductive liberty and thus reduce women to status of child-bearers. Shows how the movement gains impetus from nineteenth-century narratives, from excessive deference to scientific authority, and from social consensus that women who act in ways injurious to their fetuses are "bad." Argues that culturally inscribed norm of the good mother is middle-class, educated, and white, thus women of color are especially likely to become victims of state intervention aimed at assuring compliance with emerging Code of Perfect Pregnancy (COPP).

Ikemoto, Lisa C., *Furthering the Inquiry: Race, Class, and Culture in the Forced Medical Treatment of Pregnant Women*, 59 *Tenn. L. Rev.* 487 (1992). (1, 2, 6).

Describes the standard and standardizing legal explanations and stories used to justify subjecting pregnant women to forced medical treatment. Questions those stories, as well as the rights-based and feminist **\*495** responses to court-ordered medical treatment. Shows that not only gender, but also race, class, and culture are sources of illegitimate discrimination.

Johnson, Alex M., Jr., [The New Voice of Color](#), 100 *Yale L.J.* 2007 (1991). (1, 9, 10).

Argues that a voice of color unquestionably exists. That voice, however, has distinct forms that possess both similarities and differences. One voice employs traditional, white male arguments and formulations, and uses the voice of color, albeit unconsciously, by virtue of the experiences of the writer. A second voice consciously and expressly writes as a voice of color, but incorrectly assumes that only one such voice exists. Argues that although different types of black voice exist, all share the goal of racial equality.

Johnson, Alex M., Jr., [Racial Critiques of Legal Academia: A Reply in Favor of Context](#), 43 *Stan. L. Rev.* 137 (1990). (1, 5, 9, 10).

Argues that Randall Kennedy and the "trio of voices" (Derrick Bell, Richard Delgado, and Mari Matsuda) alike have adopted extreme standards for evaluating scholarship. In place of those standards, suggests an approach focusing on the reader's perception and the author's intent rather than on universalistic "merit" standards or falsely assumed uniformities of outsider experience.

Johnson, Alex M., Jr., *Scholarly Paradigms: A New Tradition Based on Context and Color*, 16 *Vt. L. Rev.* 913 (1992). (9).

Addresses whether neutral scholarly paradigms exist and whether minority scholars should embrace them. Argues that there should be no single paradigm by which to evaluate the merit of all scholarly works and, further, that multiple paradigms should be used to evaluate the works of scholars of color speaking in the voice of color.

Johnson, Sheri Lynn, [Black Innocence and the White Jury](#), 83 Mich. L. Rev. 1611 (1985). (4).

Studies the effects of racial prejudice on black defendants. Shows that prejudice does exist among jurors because black defendants consistently have higher conviction rates than similarly-situated whites when tried by white jurors. Examines current mechanisms designed to reduce racial biases of a jury, exposing some of the inadequacies inherent in the system. Proposes a plan for comprehensive protection for defendants of color against racially biased juries, by applying a "strict scrutiny standard."

\*496 Johnson, Sheri Lynn, [Confessions, Criminals and Community](#), 26 Harv. C.R.-C.L. L. Rev. 327 (1991). (1, 5, 10).

Examines the principle of voluntariness in criminal confessions and the rights guaranteed to all defendants. Juxtaposes the examination of rights with the debate raging in the CLS and CRT camps about listening to the voices of color. Argues that scholars should examine the area of criminal procedure to explore the rights afforded, but often denied, defendants, and, conversely, that scholars of criminal procedure and law should enter the rights debate. This cross-exploration could expand understanding of the function of criminal rights and bring illumination to the many violations of those rights.

Johnson, Sheri Lynn, [Cross-Racial Identification Errors in Criminal Cases](#), 69 Cornell L. Rev. 934 (1984). (4).

Explores the phenomenon of cross-racial misidentification in which defendants of color are mistakenly identified as perpetrators of crimes that were actually committed by an unrelated person of color. Demonstrates that the incidence of misidentification increases sharply when the perpetrator is a person of color and the witness or victim belongs to the majority group. Criticizes the adequacy of current safeguards and proposes additional measures to protect persons of color from false identification.

Johnson, Sheri Lynn, [Race and the Decision to Detain a Suspect](#), 93 Yale L.J. 214 (1983). (4).

Studies the association between the race of a suspect and the decision by officers to detain that suspect. Demonstrates that race is often a crucial factor in that decision and that courts use race as a factor in establishing probable cause. Argues that the use of race as a factor in determining probable cause is unconstitutional and illustrates how "casually both probabilistic and equal protection constraints are violated."

Johnson, Sheri Lynn, [Unconscious Racism and the Criminal Law](#), 73 Cornell L. Rev. 1016 (1988). (4, 5).

Argues that the Supreme Court has a "blindspot" in that it is unable to identify unconscious racism as the source of racial disparities in criminal law, particularly in capital cases. Presents possible reasons for this blindness, including ignorance, fear, and denial. Once these sources are recognized, the problem can be examined more closely, yielding tools and a base of information with which to eliminate unconscious\*497 racism in other areas of law, particularly equal protection analysis.

Karst, Kenneth L., [Citizenship, Race, and Marginality](#), 30 Wm. & Mary L. Rev. 1 (1988). (2, 4, 5, 6).

Discusses the plight of the marginalized poor. Argues that they are not granted the benefits of full citizenship, in part because of majoritarian society's perception that most of the poor belong to a racial or ethnic minority group. Urges the situation can be remedied through the efforts of citizens, the government, and particularly the courts.

Karst, Kenneth L., [Paths to Belonging: The Constitution and Cultural Identity](#), 64 N.C. L. Rev. 303 (1986). (4, 7).

Analyzes the experiences of immigrants and cultural or ethnic minorities. Demonstrates that in responding to the universal need to belong, members of these groups tend to follow one of two paths: either assimilate into majoritarian society or seek group solidarity. Both paths are also reactions to nativism, the sometimes hostile reception by American culture. Argues that at

least for a time in modern history, constitutional culture did much to aid distinct groups by ensuring tolerance of cultural differences and equal citizenship.

Kennedy, Duncan, [A Cultural Pluralist Case for Affirmative Action in Legal Academia, 1990 Duke L.J. 705. \(1, 5, 9, 10\).](#)

Addresses importance of including scholars of color in the legal academic community. Argues that law schools are a form of political institution, and, as such, all races and ethnic groups are entitled to a share of these institutions' resources. Further argues that legal writings by scholars of color will broaden and enrich current legal scholarship. States that colorblind meritocratic fundamentalism, although recognizing the importance of outstanding scholarship, fails to see the broader range of issues the debate about faculty scholarship presents.

Kennedy, Randall L., [Race Relations Law and the Tradition of Celebration: The Case of Professor Schmidt, 86 Colum. L. Rev. 1622 \(1986\).](#) (1, 5).

Discusses the role of "celebrants" of the Supreme Court who, by defending and praising the Court, obscure its responsibility for perpetuating an oppressive racial order. Specifically examines a history, written by Professor Benno Schmidt, Jr., of Supreme Court opinions during the Progressive Era. Argues that Schmidt's analysis does not \*498 sufficiently examine the outer limits to which the Court could have taken racial justice.

Kennedy, Randall L., [Racial Critiques of Legal Academia, 102 Harv. L. Rev. 1745 \(1989\).](#) (10).

Criticizes three CRT figures-Derrick Bell, Mari Matsuda, and Richard Delgado-for unwarrantedly asserting the existence of a distinct voice of color, for elevating race into a positive credential, for substituting myth and narrative fiction for reality, and for militarizing the debate about racial justice. Holds that many of these vices stem from the same source-substituting the perspective or experience of the author for merit as a mark of achieved distinction.

Lâm, Maivân Clech, The [Kuleana Act Revisited: The Survival of Traditional Hawaiian Commoner Rights in Land, 64 Wash. L. Rev. 233 \(1989\).](#) (3, 8).

Analyzes the historical context of the Kuleana Act of 1850 and cases interpreting it. The Act was designed by King Kamehameha III to give native commoners fee simple rights to land. Points out that although the Act may have been well intentioned, authorities ignored traditional Hawaiian land use, which regarded all commoners as tenants in common to all land, and frustrated the goals of Kamehameha's government. Further, the commoners were only apportioned a small amount of the available land to divide into fee simple holdings. Argues that the old regime of land rights survives the system imposed by Western demands, and that Hawaiian land must now be reassessed and granted to the descendants of the earlier commoners.

Lawrence, Charles R., III, A Dream: On Discovering the Significance of Fear, 10 Nova L. Rev. 627 (1986). (2, 4).

Short narrative describing a dream in which the author seeks to explain the significance of fear to a condescending white colleague. That significance is described in terms of differing perspectives and several levels of consciousness.

Lawrence, Charles R., III, The [Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism, 39 Stan. L. Rev. 317 \(1987\).](#) (1, 2, 3, 4, 5).

Demonstrates the prevalence of unconscious racism. Argues that the Court's approach to racism in *Washington v. Davis*, which requires that a racially discriminatory purpose be proven in each case, is inadequate to deal with unconscious racism. Proposes an alternative cultural\*499 meaning test. Under this approach, courts look to cultural symbols to determine whether the meaning attached to an act is racially discriminatory.

Lawrence, Charles R., III, [If He Hollers Let Him Go: Regulating Racist Speech on Campus, 1990 Duke L.J. 431. \(1, 3\).](#)

Argues that traditional First Amendment analysis overlooks psychic injuries and the subordinating quality of racist insults. Urges that free speech, properly understood, should not trump equal-dignity concerns at stake in campus speech controversies. Observes that civil libertarians frequently demonstrate more concern for free speech rights of perpetrators of insults than for harms incurred by those who receive them.

Lawrence, Charles R., III, Minority Hiring in AALS Law Schools: The Need for Voluntary Quotas, 20 U.S.F. L. Rev. 429 (1986). (9).

Examines problem of minority hiring, particularly such obstacles in the appointments process as evaluating merit and credentials, the purportedly small pool of candidates, "old boy networks," and the dearth of open positions. Proposes remedying these ills by giving "highest priority" to voluntary quotas-positions to be held open until filled by a professor of color-as well as by vigorously recruiting.

Lawrence, Charles R., III, The [Word and the River: Pedagogy as Scholarship as Struggle](#), 65 *S. Cal. L. Rev.* 2231 (1992). (2, 5, 9).

A highly personal account of the author's roles as teacher, scholar, and political activist. Explores the African-American tradition of "the Word": teaching, preaching, and healing as well as its application to legal pedagogy. Discusses talents, materials, and methods a teacher may employ to analyze issues of racial justice more effectively and to question conventional approaches when those fail to effect justice.

López, Gerald P., The [Idea of a Constitution in the Chicano Tradition](#), 37 *J. Legal Educ.* 162 (1987). (2, 5, 8).

Discusses the idea of a constitution from a Chicano perspective. Argues that a constitution often is not a healing tool but rather a source of injury. Discusses the importance of struggle in the development of a constitution.

López, Gerald P., [Lay Lawyering](#), 32 *UCLA L. Rev.* 1 (1984). (2, 5, 9).

Discusses problem-solving by lay lawyers. Argues that society attaches certain understandings-"stock stories"-to many recurring \*500 situations, and that these stories or scripts determine the role participants in the situation will play. To demonstrate his theory, López fictionalizes an account of a mother and son trying to hail a taxi in Manhattan.

López, Gerald P., *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (1992). (1, 2, 5).

Evaluates current practice of public interest law within low income communities and its ineffectiveness in producing reform. Demonstrates his findings by narrating illustrative accounts of lawyers practicing in these areas. Concludes that deeply ingrained notions of law practice foster conditions of stagnation rather than ones of change.

López, Gerald P., [Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration](#), 77 *Geo. L.J.* 1603 (1989). (2, 3, 5).

Fictional account of a young attorney representing a client in a federal civil rights action. Provides an analysis of the process of lawyering such a suit, and suggests where potential snares may lie if the lawyer fails to proceed with full political and practical awareness. Argues that "rebellious" lawyers must understand their clients' experiences and social setting in order adequately to represent them.

López, Gerald P., *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 *W. Va. L. Rev.* 305 (1989). (9).

Criticizes contemporary legal education for its "generic" nature. Argues that such an approach teaches students to treat all individuals as interchangeable, and thus fails to prepare students for work with the politically and socially subordinated. Proposes a new approach to legal education that would include smaller classes, more theory, more practice, "core literacy," interdisciplinary knowledge, and intensive workshops. Illustrates his ideas by briefly describing Stanford Law School's Lawyering for Social Change Concentration.

López, Gerald P., *Undocumented Mexican Migration: In Search of a Just Immigration Law and Policy*, 28 *UCLA L. Rev.* 615 (1981). (1, 4).

Argues that the current government approach to Latin American immigration is cruel and unjust, in part because it is based on false cultural and socioeconomic premises. Suggests that American national self-interest, properly understood, argues for a more generous approach to Mexican immigration.

\*501 López, Gerald P., The [Work We Know So Little About](#), 42 *Stan. L. Rev.* 1 (1989). (2, 9).

Address to Stanford Law School marking López's inauguration as the first Kenneth and Harle Montgomery Professor of Public Interest Law. Focuses on the life of a Mexican immigrant-her

problems in providing for her children and gaining legal status. Challenges legal community to practice and provide training for lawyering for social change.

Matsuda, Mari J., *Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-Up Ground*, 11 *Harv. Women's L.J.* 1 (1988). (2, 9).

Emphasizes importance for scholarship of incorporating new ideas and perspectives. Urges legal scholars, law students, and interested readers to search out writings by outsiders-women and people of color-that offer such perspectives. Suggests that these ideas be brought into mainstream scholarship through several channels, including citations to the works by other legal academics, insistence by law students that such writings be included in course materials, and requests for these works directed at booksellers.

Matsuda, Mari J., *Law and Culture in the District Court of Honolulu, 1844-1845: A Case Study of the Rise of Legal Consciousness*, 32 *Am. J. Legal Hist.* 16 (1988). (3, 5).

Examines nineteenth century Hawaiian law as reflected in the Honolulu Minute Books. Discusses several ways in which Western legal thought eventually altered Hawaiian culture, including the promotion of a competing ideology of property and alteration of customary concepts of dispute resolution. Notes that Hawaiians were "active and creative participant[s]" in the new order that resulted.

Matsuda, Mari J., *Liberal Jurisprudence and Abstracted Visions of Human Nature: A Feminist Critique of Rawls' Theory of Justice*, 16 *N.M. L. Rev.* 613 (1986). (1, 5).

Argues that Rawls' theory of justice fails because of its choice of disembodied abstraction as a mode of inquiry. Provides a feminist theory derived through consciousness raising that includes multiple visions of human nature. Argues that Rawls' assumptions about human nature drawn from his analysis of the "original position" fail to account for the richness of human experience, particularly that of disempowered groups.

**\*502** Matsuda, Mari J., [Looking to the Bottom: Critical Legal Studies and Reparations](#), 22 *Harv. C.R.-C.L. L. Rev.* 323 (1987). (2, 10).

Discusses the theories and critiques of writers in the CLS movement. Urges that these scholars look to the stories and perspectives of persons of color who have experienced racism, both as a jurisprudential method and as a means of understanding deficiencies in their own views of social change.

Matsuda, Mari J., *Pragmatism Modified and the False Consciousness Problem*, 63 *S. Cal. L. Rev.* 1763 (1990). (1, 10).

Discusses three ways in which pragmatism should lean toward liberation: adoption of "weighted pragmatism," a first principle of antisubordination, and a more normative vision. Identifies and rebuts several criticisms of pragmatism, including false consciousness and identification problems.

Matsuda, Mari J., [Public Response to Racist Speech: Considering the Victim's Story](#), 87 *Mich. L. Rev.* 2320 (1989). (1, 2).

Analyzes the conflict between the First Amendment's guarantee of free speech and the harmful effects of racist hate speech. Suggests that an absolutist First Amendment response to hate speech furthers racism. Proposes a narrow restriction of hate speech by requiring three elements for prosecution. Applies these criteria to several hypothetical cases.

Matsuda, Mari J., [Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction](#), 100 *Yale L.J.* 1329 (1991). (1, 2, 4).

Demonstrates that many harbor prejudices against people with different accents and that this prejudice leads to job discrimination. Proposes that Title VII be used to combat accent discrimination in the workplace. Outlines a series of questions that should be addressed when evaluating such cases.

Matsuda, Mari J., *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 *Women's Rts. L. Rep.* 7 (1989). (1, 2, 5, 10).

Transcript of speech presented at Yale Law School Conference on Women of Color and the Law, April 1988. Discusses value of multiple consciousness and the jurisprudence of outsiders. Argues for a non-neutral jurisprudence founded in the reality of oppression. A response by Patricia Williams follows.

**\*503** Mensch, Elizabeth & Alan Freeman, *A Republican Agenda for Hobbesian America?*, 41 *Fla. L. Rev.* 581 (1989). (1, 5).

Critiques the possibility of establishing an authentic "new republicanism," suggesting that American popular sovereignty originally derived from a Hobbesian model of ultimate authority resting in the people. Holds that sovereignty was subordinated in the constitutional choice for a national structure of institutionalism. Points out the dilemma of effecting social change when individual rights are thus subsumed.

Olivas, Michael A., "[Breaking the Law" on Principle: An Essay on Lawyers' Dilemmas, Unpopular Causes, and Legal Regimes](#), 52 U. Pitt. L. Rev. 815 (1991). (3, 5, 9).

Discusses the adequacy of lawyering for the radically disenfranchised, and argues that law schools and the legal system do not do enough to ensure that these individuals are properly represented. Describes the plight of Central American refugee children held in United States detention camps who are virtually denied legal protection. Argues that lawyers and law students must force the legal system to confront its own ethical and political shortcomings, as did attorneys representing Palestinian detainees in Israeli military courts and as Oscar Zeta Acosta attempted to do in the United States in the 1970s.

Olivas, Michael A., *The Chronicles, My Grandfather's Stories, and Immigration Law: The Slave Traders Chronicle as Racial History*, 34 St. Louis U. L.J. 425 (1990). (1, 2, 10).

Recounts stories told by his grandfather to illustrate how stories build solidarity among outgroups and cast doubt on comforting majoritarian myths. Argues that Derrick Bell's *Chronicle of the Space Traders* (in which Americans vote to trade all blacks to an extraterrestrial force) (see supra p. 468) is truer even than Bell intended. Recounts incidents of Native American removal, mistreatment of Chinese laborers, Bracero programs, and racist immigration quotas to show that the United States has often sold out the rights of minority groups for psychic or pecuniary advantage. Concludes nevertheless that Bell's *Chronicle* is a vivid example of the use of narrative to teach a lesson about race.

**\*504** Paust, Jordan J., [Rereading the First Amendment in Light of Treaties Proscribing Incitement to Racial Discrimination or Hostility](#), 43 Rutgers L. Rev. 565 (1991). (3, 10).

Praises Matsuda's rereading of the First Amendment in *Public Response to Racist Speech: Considering the Victim's Story* (see supra p. 502). Discusses the 1965 Convention on the Elimination of All Forms of Racial Discrimination. Argues that the United States' reservation in that treaty-mandatory adherence to the First Amendment-is not a barrier to regulating hate speech, and offers further constitutional argument.

Peller, Gary, [Race Consciousness](#), 1990 Duke L.J. 758. (1, 8, 10).

Explores roots of CRT movement by contrasting the integrationist and black nationalist views of racial justice as they existed in the 1960s and 1970s. Argues that the dominant emphasis on integrationism is a result of the perceived threat that black nationalism represents to whites and to black moderates. Depicts the CRT movement as a revival of nationalist perspectives and race consciousness.

Post, Deborah Waire, *Reflections on Identity, Diversity and Morality*, 6 Berkeley Women's L.J. 136 (1990-91). (2, 6, 7, 8, 9).

Articulates Post's experiences at discovering and asserting her own identity as a black woman, as well as the interplay between her two identities-black and woman. Discusses the similarities and differences between types of oppression and offers a theory of "multiple oppression." Examines the exaggerated scrutiny she and others endure as professionals who are both women and black. Discusses the cultural politics of groups and the risks and dangers associated with assimilation.

powell, john a. & Eileen B. Hershenov, [Hostage to the Drug War: The National Purse, the Constitution and the Black Community](#), 24 U.C. Davis L. Rev. 557 (1991). (4, 6).

Argues that the Reagan and Bush administrations' war on drugs has been a failure. Demonstrates that the law-and-order approach has served to turn many poor communities into occupied territories. Argues that the disproportionate number of black men prosecuted for drug-related crimes is evidence that arrests target the black community and are a form of institutionalized racism. Urges that problems associated with drug abuse be addressed primarily as a health rather than a crime problem.

**\*505** powell, john a., *New Property Disaggregated: A Model to Address Employment Discrimination*, 24 U.S.F. L. Rev. 363 (1990). (1, 5).



Analyzes Charles Reich's theory of the nature and function of property as detailed in *The New Property*. Argues for a more nuanced approach that would distinguish different types of property. Discusses several other modifications to Reich's theory, including recognition of the link between property and relationships, and of the rightholder's power over nonrightholders. Applies Powell's "Revised New Property Model" to several cases.

Powell, John A., [Racial Realism or Racial Despair?](#), 24 *Conn. L. Rev.* 533 (1992). (10).

Reaction to Derrick Bell's article, *Racial Realism* (see supra p. 473), in which Bell maintains that law is of little use in combatting racism and that racism will continue into the foreseeable future. Argues that equality-based arguments and efforts, properly understood, can promote the cause of racial justice and equality, and that making those arguments can prove transformative whether or not they effect immediate concrete results. If one compares the status of African-Americans today with that which they enjoyed at the turn of the century, "the disparity ... has improved in almost every category." Concludes that Bell's bleak pronouncements are unwarranted and calculated to deepen rather than eliminate despair.

Roberts, Dorothy E., [Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy](#), 104 *Harv. L. Rev.* 1419 (1991). (1, 2, 4, 6).

Examines the current trend of prosecuting women for using drugs during pregnancy. Demonstrates that this trend in prosecution weighs heavily on poor black women, who are much more likely than others to be reported to government authorities. Argues that this higher incidence must be challenged as a perpetuation of black subjugation and the devaluation of black motherhood. Holds that women of color cannot achieve equality unless their humanity is ensured by autonomy over their reproductive lives.

Ross, Thomas, [Innocence and Affirmative Action](#), 43 *Vand. L. Rev.* 297 (1990). (2, 4, 5).

Explores the source and power of the argument on behalf of the "innocent white victim" in the constitutional debate about affirmative action. Demonstrates the ways in which this argument draws its power from the tenets of racism. Argues that the persistent plea on behalf of the "innocent white victim" embodies and reveals the unconscious racism in all of us.

Ross, Thomas, [The Rhetorical Tapestry of Race: White Innocence and Black Abstraction](#), 32 *Wm. & Mary L. Rev.* 1 (1990). (2, 4, 5).

Contrasts the judicial rhetoric and themes of the most infamous of the nineteenth-century race cases with those of the Court's contemporary cases. Argues that the essential rhetorical themes of the discredited nineteenth-century cases remain those of today's. Argues that this continuity helps us see the tragic mistakes of our contemporary approach to matters of race.

Ross, Thomas, [The Richmond Narratives](#), 68 *Tex. L. Rev.* 381 (1989). (2, 5).

Analyzes in narrative terms the Supreme Court's opinion in *City of Richmond v. J.A. Croson Co.*, which struck down a minority set-aside. The controversial opinion fleshed out the Justices' opposing views of affirmative action. Urges readers actively to analyze judicial opinions in terms of the narratives the Justices employ to illuminate the underlying sentiments—such as empathy, need for symmetry, and a sense of disgrace—as he does with Justice Antonin Scalia's and Justice Thurgood Marshall's concurring and dissenting opinions.

Russell, Margaret M., [Entering Great America: Reflections on Race and the Convergence of Progressive Legal Theory and Practice](#), 43 *Hastings L.J.* 749 (1992). (2, 4).

Discusses ways the work of critical race scholars and progressive practitioners can be mutually beneficial. Describes increasing use by businesses and police of "gang profiling" to label young African-American, Latino, and Asian males as "dangerous" based on their appearance and demeanor. Illustrates, through storytelling, how different racial perspectives result in differing interpretations of events.

Russell, Margaret M., [Race and the Dominant Gaze: Narratives of Law and Inequality in Popular Film](#), 15 *Legal Stud. F.* 243 (1991). (2, 4).

Examines the role of popular movies in replicating and reinforcing images of racial subordination. Analyzes the "dominant gaze" of mainstream Hollywood cinema through which people of color historically have been objectified as morally or intellectually deficient, and analogizes it to dominant legal narratives that omit or marginalize the experiences of people of color. Examines the recent movie *Soul Man* as commentary on race and affirmative action.

\*507 Scales-Trent, Judy, *Black Women and the Constitution: Finding Our Place*, [Asserting Our Rights](#), 24 *Harv. C.R.-C.L. L. Rev.* 9 (1989). (1, 4, 6, 7).

Demonstrates that black women historically have borne a heavier discriminatory burden than either white women or black men because of their dual status as women and as blacks. Argues that black women should be a separate, distinct legal category because the burden placed on them is heavier than the sum of the burdens on women and blacks. Argues that black women are entitled to strictest scrutiny and an eased burden of proof in discrimination cases.

Scales-Trent, Judy, [Commonalities: On Being Black and White, Different, and the Same, 2 Yale J.L. & Feminism 305 \(1990\)](#). (2, 6, 7).

Recounts her experiences as a light-skinned black woman and her struggle to gain acceptance into a cultural group. Addresses barriers to acceptance resulting from perceived differences, even in the presence of underlying "sameness." Observes that just as categories (white, black; male, female) classify, they also confuse and discomfit.

Scales-Trent, Judy, *A Judge Shapes and Manages Institutional Reform: School Desegregation in Buffalo*, 17 N.Y.U. Rev. L. & Soc. Change 119 (1989-90). (3, 5).

Analyzes *Arthur v. Nyquist*, the landmark Buffalo desegregation case, focusing particularly on the role of the presiding judge in the implementation process. Discusses what "successful" desegregation is and one path to achieve that goal. Also discusses the part a "complex fabric" of community and institutional actors play in desegregation.

Scales-Trent, Judy, *Women in the Lawyering Process: The Complications of Categories*, 35 N.Y.L. Sch. L. Rev. 337 (1990). (6, 7).

Discusses the way some members of society belong to two categories traditionally considered distinct. Explains what happens when categories intersect, and examines the consequences of such an intersection, e.g., a black woman suffers both race and sex discrimination. Notes that a multicategorized person functions differently depending on the circumstances of the situation, and points out that no one person in a category can speak for all because diversity exists even within categories.

**\*508** Scarborough, Cathy, [Conceptualizing Black Women's Employment Experiences, 98 Yale L.J. 1457 \(1989\)](#). (1, 2, 6, 7).

Discusses ways in which the law has treated the black woman as "invisible"-failing to address her concerns and ignoring her unique experiences-using Title VII of the Civil Rights Act of 1964 as a framework. Explains that the experiences of black women cannot be understood as a combination of black men's and white women's experiences. Urges that black women be recognized as a distinct class, so that their unique history and situation can be adequately addressed.

Singer, Joseph William, [Property and Coercion in Federal Indian Law: The Conflict Between Critical and Complacent Pragmatism, 63 S. Cal. L. Rev. 1821 \(1990\)](#). (2, 3, 5).

Discusses the dangers of "complacent pragmatism," which often amounts to unreflective common sense. Uses the recent case of *Lyng v. Northwest Indian Cemetery Protective Ass'n*, in which California was allowed to build a highway through sacred Native American land, to illustrate that non-critical analysis can lead to injustice for those outside mainstream "common sense." Suggests pragmatic analysis can become more successfully critical by struggling to understand a problem's context, and by engaging it from multiple perspectives, especially those of the oppressed.

Spann, Girardeau A., [Pure Politics, 88 Mich. L. Rev. 1971 \(1990\)](#). (3, 5).

Examines the political strength of minorities. Argues that the adjudicative process used in the Supreme Court may not be the most effective avenue to bring about social and racial reform because the members of the Court hail mostly from the majority and therefore cannot easily decide a case in a countermajoritarian manner, and because overreliance on the Court presents risks of dependency and of legitimating an unjust institution. Instead, the ordinary political arena may be the better tool. However, because it is not possible to avoid the Supreme Court's arena, Spann puts forth a model minorities can follow to "neutralize the Court's distortion of the political process."

Strickland, Rennard, *Genocide-At-Law: An Historic and Contemporary View of the Native American Experience*, 34 Kan. L. Rev. 713 (1986). (2, 3, 8).

Argues United States dealings with Native American nations were in most cases carried out with scrupulous legality, yet amounted to cultural genocide. Emphasizes the degree to which federal law permeates Native American life and discusses the role of today's progressive

lawyer\*509 in pressing claims on behalf of Native Americans. Urges respect for Native American traditions and world-views that appear to run counter to contemporary ideas of progress and enlightenment. Points out that Native American thought contains much that Western culture needs today.

Strickland, Rennard, [Indian Law and the Miner's Canary: The Signs of Poison Gas, 39 Clev. St. L. Rev. 483 \(1991\)](#). (1, 3).

Comments on the cyclical nature of American Indian law. This body of law alternately serves as an instrument of preservation and as one of genocidal homogenization. Expresses concern that law's treatment of American Indians, like that of minorities generally, has returned to the harsh nineteenth-century form.

Strickland, Rennard, Scholarship in the Academic Circus or the Balancing Act at the Minority Side Show, 20 U.S.F. L. Rev. 491 (1986). (9).

Analyzes the intricate balancing act scholars of color must perform to work effectively in the academic arena. Advises such scholars carefully to consider personal goals and determine which of the many crises that call for attention are worth confronting. The balancing act will be easier to manage once personal goals are set and stated to colleagues, who must be made to recognize the exacting demands scholars of color often willingly accept.

Thomas, Kendall, A House Divided Against Itself: A Comment on "Mastery, Slavery, and Emancipation," 10 Cardozo L. Rev. 1481 (1989). (1, 10).

Critiques Guyora Binder's article *Mastery, Slavery and Emancipation*, which argues that Southern aristocrats derived their Southern gentility from the timocratic values of slaves. Argues that Binder's interpretation distorts the historical record and imposes on the issue of slavery a misguided theoretical construct that obscures the material reality of oppression, which is grounded in physical domination. States that Binder's use of the Hegelian construct of the Master/Slave relationship wrenches that construct out of its historical and philosophical context, and imposes it uncritically on a historical situation that it is ill-prepared to explain. Attempts a "double-crossing" of the Hegelian text, inspired by the Afro-American trickster tale, to provide a more nuanced framework for understanding slavery.

\*510 Torres, Gerald, [Critical Race Theory: The Decline of the Universalist Ideal and the Hope of Plural Justice-Some Observations and Questions of an Emerging Phenomenon, 75 Minn. L. Rev. 993 \(1991\)](#). (1, 7, 8).

Discusses the history of the cultural nationalism movement and compares it to the structure and influence of political interest groups. Argues that cultural pluralism should not be reduced to the status of a political interest, because that categorization is too narrow for the broad differences within and among cultural groups. Urges that pluralism and postmodern politics be redefined to incorporate differences within society without requiring universal "sameness" or one totalizing notion of justice.

Torres, Gerald, Local Knowledge, Local Color: Critical Legal Studies and the Law of Race Relations, 25 San Diego L. Rev. 1043 (1988). (1, 3, 8).

Argues that to understand changing race relations law, we must understand how the dominant culture has understood itself and its relationship to persons of color. Discusses history of race reform in Supreme Court opinions. Urges that scholars examine culture and the relationship between law and culture (local law) to further race reform. Early statement of the case for a "new cultural pluralism."

Torres, Gerald, Teaching and Writing: Curriculum Reform as an Exercise in Critical Education, 10 Nova L.J. 867 (1986). (9).

Advocates reform of legal education by emphasizing specialization, good teaching, a more coherent curriculum, and more writing. Urges that law school focus more on the communication of skills and culture. Argues that such an emphasis would benefit students of color who often suffer in environments heavily influenced by right-wing and left-wing intellectualism.

Torres, Gerald & Kathryn Milun, [Translating Yonnonidio by Precedent and Evidence: The Mashpee Indian Case, 1990 Duke L.J. 625](#). (2, 5).

Through the story of the Mashpee tribe, analyzes conflicting systems of meaning and the nature of ignorance that results from the dominance of only the system. Illustrates how the structure of legal thought reflects distribution of social power and thereby permits only a limited majoritarian perspective.

**\*511** West, Cornel, [Between Dewey and Gramsci: Unger's Emancipatory Experimentalism](#), 81 *Nw. U. L. Rev.* 941 (1987). (1, 5, 6, 10).

Analyzes Roberto Unger's contribution to contemporary thought and characterizes it as "Third-Wave Left romanticism." Praises Unger for his contribution to radical Utopian thought, yet criticizes him for omitting instances of gender and racial oppression and political struggle from his analysis, and for allowing himself to be caught up in Eurocentric and patriarchal discourse.

West, Cornel, Brendan Brown Lecture: Reassessing the Critical Legal Studies Movement, 34 *Loy. L. Rev.* 265 (1988). (1, 10).

Situates CLS within a larger "crisis in purpose" afflicting current movements. Examines three flaws that impair CLS's ability to respond to social crisis, namely (i) its tendency to "trash" liberalism, (ii) its "refusal to come to terms with tradition as both an impediment and impetus to social change," and (iii) its self-imposed distancing from nonacademic programs for social reform. Urges a Gramscian public intellectual perspective to make CLS a more effective tool for cultures of resistance.

West, Cornel, [CLS and a Liberal Critic](#), 97 *Yale L.J.* 757 (1988). (1, 10).

Responds to William Ewald's criticism of Roberto Unger. Argues that Ewald too readily dismisses contributions of CLS writers. Acknowledges CLS's strides toward understanding the dynamic links between law and structural constraints, but also warns against overly negative view of traditional liberal thought. Holds that ignoring liberalism's contribution fails to acknowledge the many positive steps liberalism has made and serves to fuel only further intellectual debate, not actual social reform.

West, Cornel, The [Role of Law in Progressive Politics](#), 43 *Vand. L. Rev.* 1797 (1990). (1, 3, 5).

Attempts to describe a role for law that strikes a balance between "upbeat liberalism" and the bleak scenarios of the Critical left. Holds that two principal obstacles impede social reform: (1) the manner in which "American society is disproportionately shaped by the outlooks, interests, and aims of the [corporate] community," and (2) America's profoundly racist, sexist, homophobic, and conservative culture. Argues that although American liberalism challenges America's deeply entrenched cultural conservatism, it leaves untouched "the maldistribution of resources, wealth, and power in American society." Proposes measures that progressive lawyers can employ to effectuate reform.

**\*512** Williams, Patricia J., [Alchemical Notes: Reconstructing Ideals from Deconstructed Rights](#), 22 *Harv. C.R.-C.L. L. Rev.* 401 (1987). (1, 2, 10).

Through a series of stories, argues that CLS's disdain for rights-based theory ignores extent to which rights-assertion has helped minorities. Urges that the conferring of rights symbolizes respect and responsibility owed by a society to its members.

Williams, Patricia J., *The Alchemy of Race and Rights* (1991). (1, 2, 3, 5, 6, 9).

Narrative treatment of recent events and phenomenology of race. Also discusses law's shortcomings as a means of dealing with our culture's racism and sexism. Shows how our very words and patterns of thought forward a racist agenda.

Williams, Patricia J., [Commercial Rights and Constitutional Wrongs](#), 49 *Md. L. Rev.* 293 (1990). (2, 4).

Argues, through a series of stories about the plight of the urban homeless, that characteristics of private contract, such as evasion and control, are also embedded in social contracts. Asserts that contract is no longer a three party interaction among law, profit, and relationship, but rather a two party equation where "money reflects law and law reflects money." Such an equation gives rise to mindless materialism.

Williams, Patricia J., [Fetal Fictions: An Exploration of Property Archetypes in Racial and Gendered Contexts](#), 42 *Fla. L. Rev.* 81 (1990). (2, 3, 5).

Using anecdotes, analyzes the tension that exists between freedom of contract and the idea of equality. Discusses current notions of property and argues for "self-possession"-the desirable combination of social interaction and legal intervention.

Williams, Patricia J., [Metro Broadcasting, Inc. v. FCC: Regrouping in Singular Times](#), 104 *Harv. L. Rev.* 525 (1990). (1, 3).

Analyzes significance of *Metro Broadcasting* and its effects on broadcasting diversity and multiculturalism. Argues that *Metro Broadcasting* should be interpreted as recognizing the value

of diversity in all aspects of our lives, not merely broadcasting. Discusses importance of group claims on property interests and problems that arise when group and individual rights conflict.

**\*513** Williams, Patricia J., The [Obliging Shell: An Informal Essay on Formal Equal Opportunity](#), 87 Mich. L. Rev. 2128 (1989). (1, 2, 8).

Examines the progression from a segregated to a diverse society. Critically examines several concepts, including race-neutrality, and suggests a multivalent perspective in learning to unthink racist stories and thought processes.

Williams, Patricia J., [Spirit-Murdering the Messenger: The Discourse of Fingerprinting as the Law's Response to Racism](#), 42 U. Miami L. Rev. 127 (1987). (1, 2, 4).

Recounts the events surrounding Ms. Bumpur's slaying and the Howard Beach incident. Argues that privatization of the nation's neighborhoods has made public spaces inaccessible and provided a rationalization for racism. Maintains that this form of racist exclusion denies its victims life-giving dignity. Williams labels this psychic crime "spirit-murder."

Williams, Robert A., Jr., The [Algebra of Federal Indian Law: The Hard Trail of Decolonizing and Americanizing the White Man's Indian Jurisprudence](#), 1986 Wis. L. Rev. 219. (1, 2, 3, 5, 8).

Argues that legal myths derived from European colonial history provided the basis for nineteenth-century colonization of American Indian lands. Analyzes the modern day effects of these myths, particularly as they influenced the Burger Court. Suggests a new methodology to eliminate these myths and thereby "Americanize" current legal doctrines by borrowing from principles inherent in the American Indian tradition.

Williams, Robert A., Jr., *The American Indian in Western Legal Thought: The Discourses of Conquest* (1990). (1, 2, 3, 8).

Traces the development in legal discourse of justificatory notions of American Indians as "heathens" and "barbarians" from medieval times to the present. Shows that early views of the legality of European subjugation still give shape to current Federal Indian law. Calls for throwing off the "Norman Yoke" and recognizing the inherent right of cultural dignity and sovereignty that indigenous people possess.

**\*514** Williams, Robert A., Jr., [Columbus's Legacy: Law as an Instrument of Racial Discrimination Against Indigenous Peoples' Rights of Self-Determination](#), 8 Ariz. J. Int'l & Comp. L. 51 (1991). (1, 4, 5).

Shows how the law of colonization brought to the western hemisphere by Columbus derives from the medieval European crusading tradition and a papal bull of donation that granted by implication the sovereignty of the New World to Spain. Points out that Supreme Court jurisprudence dealing with Native Americans stems from these same medieval European traditions. Argues that such jurisprudence is highly apologetic, in that it seeks to legitimate a form of cultural racism that denies native peoples the fundamental right of self-determination.

Williams, Robert A., Jr., *Columbus's Legacy: The Rehnquist Court's Perpetuation of European Cultural Racism Against American Indian Tribes*, 39 Fed. B. News & J. 358 (1992). (1, 4, 5).

Extends analysis begun in earlier *Columbus's Legacy* article (see supra p. 514). Examines the Rehnquist Court's interpretation of American Indian tribes' rights of control over reservation lands as decided in *Brendale v. Confederated Tribes and Bands of Yakima Indian Nation*. Shows how the present conservative Court extends its Federal Indian law jurisprudence and perpetuates Columbus's legacy of cultural racism by drawing on a thousand year old Christian European tradition embodied in such concepts as the Doctrine of Discovery, and thereby denying Native Americans their right of self-determination.

Williams, Robert A., Jr., *Documents of Barbarism: The Contemporary Legacy of European Racism and Colonialism in the Narrative Traditions of Federal Indian Law*, 31 Ariz. L. Rev. 237 (1989). (1, 2, 3, 5, 8).

Contrasts the nineteenth-century Cherokee Nation's themes of tribal sovereignty with the Removal era's theme of unassimilability. Argues that contemporary limitations on tribalism stem from the same Eurocentric misconceptions about tribal inferiority and incompatibility that existed in the Removal era, and that these misconceptions are reflected in Federal Indian law and modern Supreme Court decisions.

Williams, Robert A., J., [Encounters on the Frontiers of International Human Rights Law: Redefining the Terms of Indigenous Peoples' Survival in the World](#), 1990 Duke L.J. 660. (2, 3, 5, 8).

Discusses historical rationalizations for the oppression of indigenous peoples. Praises the steps taken by the United Nations Working Group \*515 on Indigenous Populations and the draft of the Universal Declaration on Rights of Indigenous Peoples. Describes four areas of rights sought by indigenous peoples: collective rights, territorial rights, the right of self-determination, and international legal status. Describes the use of stories by indigenous peoples to explain both their needs and the violations of human rights committed against them, and urges further use of such stories in Critical thought.

Williams, Robert A., Jr., [Gendered Checks and Balances: Understanding the Legacy of White Patriarchy in an American Indian Cultural Context](#), 24 Ga. L. Rev. 1019 (1990). (2, 5, 10).

Extends Mari Matsuda's analysis of outsider jurisprudence into aspects of American Indian culture including humor, gender, and property. Urges that a plurality of perceptions replace unstated white patriarchal interpretation infected by racism, sexism, colonialism, and homophobia. Uses this approach to blunt the criticism that American Indian culture itself embraces skewed gender roles.

Williams, Robert A., Jr., Jefferson, the Norman Yoke, and American Indian Lands, 29 Ariz. L. Rev. 165 (1987). (1, 2, 3, 5).

Examines the roots of modern American Indian law, particularly suppressed modes of discourse. Argues that modern American Indian law is a reflection neither of rationality nor the "Rule of Law," but rather an expression of politics-feudal, tyrannical politics at that. Holds that reassessing current American Indian law is in order.

Williams, Robert A., Jr., Learning Not to Live with Eurocentric Myopia: A Reply to Professor Laurence's *Learning to Live with the Plenary Power of Congress over the Indian Nations*, 30 Ariz. L. Rev. 439 (1988). (1, 3, 5, 8, 10).

Responds to Professor Robert Laurence's assertion that he can "live with the plenary power" of Congress over Native Americans. Discusses some of the past wrongs committed in the name of that power, and argues that history cannot be swept aside with the counsel to "trust us." Urges a more active opposition to Congress than the "wait-and-see" policy advocated by Professor Laurence. A brief reply by Laurence follows.

\*516 Williams, Robert A., Jr., [The Medieval and Renaissance Origins of the Status of the American Indian in Western Legal Thought](#), 57 S. Cal. L. Rev. 1 (1983). (1, 2, 5, 8).

Argues that the medieval notion of a European, Christian natural law shaped colonizing European's perceptions of indigenous peoples. Medieval and renaissance theories held that an ideal natural law could only be attained through adoption of European practices. Holds that Spanish explorers and colonists were the first to adopt this philosophy, which was also embraced by other colonizing European nations.

Williams, Robert A., Jr., [Small Steps on the Long Road to Self-Sufficiency for Indian Nations: The Indian Tribal Governmental Tax Status Act of 1982](#), 22 Harv. J. on Legis. 335 (1985). (1, 8).

Discusses barriers to self-sufficiency facing American Indian nations and the legislative history behind the Tribal Governmental Tax Status Act. Analyzes provisions of the Act that attempt to give the American Indian nations a status similar to that of state and local governments, arguing that the Act does not go far enough. Urges that Congress allow American Indian nations to raise capital through Industrial Development Bonds.

Williams, Robert A., Jr., Taking Rights Aggressively: The Perils and Promise of Critical Legal Theory for Peoples of Color, 5 Law & Ineq. J. 103 (1987). (1, 2, 5, 10).

Recounts a parable contrasting Native and European American cultures in order to show that legal interpretations are very often Eurocentric. Argues that CLS approaches problems of race from a similar Eurocentric perspective. Notes, however, that the CLS movement has developed analytical tools that can be adopted by scholars of color when "decoding" and criticizing Western legal theory and power.

Wing, Adrienne Katherine, Brief Reflections Toward a Multiplicative Theory and Praxis of Being, 6 Berkeley Women's L.J. 181 (1990-91). (2, 6).

Reflects on the numerous occasions the author has experienced "spirit injury," a term attributed to Patricia Williams. Discusses the many levels at which "spirit murder" takes place for a woman of color, identifying these many-layered injuries as having a multiplier effect. The effect shows that black women cannot be categorized either as black or as female, because they

are one indivisible person, not the sum of two parts. Urges that the unique needs of such persons be addressed.

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