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### The Author Replies

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## The Author Replies

Richard Delgado\*

Robert O'Neil restates my thesis<sup>1</sup> (leaving a few things out),<sup>2</sup> points out errors in the restated thesis,<sup>3</sup> and offers his own "deeper,"<sup>4</sup> "more complex"<sup>5</sup> analysis of the problem of imperial scholarship. Along the way he drops an occasional gracious compliment—on a peripheral point—showing he can give credit where credit is due.<sup>6</sup> O'Neil also offers his own solutions to the imperial scholar problem.<sup>7</sup> His answers, however, do more to reveal the mind-set that creates imperial scholarship than they would do to mitigate its harmful consequences.

My thesis in "Imperial Scholar" was:

- 1) The leading law review articles on core civil rights issues are written by a small circle of white, male scholars who teach at the leading law schools;<sup>8</sup>
- 2) these authors mainly cite each other's work, neglecting that of writers of minority race;<sup>9</sup>
- 3) they may even actively counsel minority scholars to leave

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1. Robert O'Neil, *A Reaction to "The Imperial Scholar" and Professor Delgado's Proposed Solution*, 3 *Law & Inequality* 255 (1985).

2. Specifically, O'Neil omits items three (majority-race writers counsel minorities to steer clear of civil rights topics) and five (minority scholars who write in legal areas other than the ones in question generally receive fair treatment) in the summary of my argument below. He also rephrases number six (deformed version of civil rights enshrined in law reviews) so as to evade its main point. See *infra* text accompanying notes 28-29. Moreover, he ignores my reasons for the behavior of inner-circle writers, choosing instead to explain imperial scholarship as a product of outside forces or impersonal conditions. See *infra* text accompanying notes 19-22.

3. O'Neil, *supra* note 1, at 257-58 (imperial scholarship product of historical forces and "fascination" of white authors with civil rights); *id.* at 257-59 (suggestion that inner-circle authors stop writing about civil rights paternalistic, would lead to the ghettoization of the field).

4. O'Neil, *supra* note 1, at 256 (real issue "deeper" than the one I pose).

5. O'Neil, *supra* note 1, at 256 (causes of imperial scholarship "complex").

6. *Id.* at 255, 258 ("makes a telling . . . point," "marshals impressive and credible evidence," would "applaud" one "corrective").

7. *Id.* at 258. O'Neil's solutions are discussed at *infra* notes 30-31.

8. Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. Pa. L. Rev. 561, 562-63 (1984).

9. *Id.* at 561-63.

these areas to them;<sup>10</sup>

4) the selective citation practices in question extend even to nonlegal propositions and assertions of fact;<sup>11</sup>

5) minority scholars who write in areas other than the core areas of civil rights confront no such hurdle;<sup>12</sup> and

6) as a result of these practices, a deformed and unsatisfactory version of civil rights is enshrined in the law reviews.<sup>13</sup>

I also offered reasons why the inner-circle scholars may act as they do, including fear of change, need for control, and reluctance to abandon roles that confer power, status, and satisfaction.<sup>14</sup> To avoid the harms of imperial scholarship, I urged minority students and scholars to challenge the unsatisfactory scholarship produced by the inner circle and proposed that inner-circle writers redirect their efforts elsewhere.<sup>15</sup>

O'Neil begins by conceding that there is a problem of imperial scholarship<sup>16</sup> (although he, himself, is not part of it).<sup>17</sup> The causes are "complex,"<sup>18</sup> however. It turns out that he does not mean the kind of psychological complexity I spoke of in my article—having to do with the conscious or unconscious motivations of the inner-circle writers. His complexity arises from a composite of three factors: the best law reviews publish only known quantities and few minority scholars are known;<sup>19</sup> there were few minority legal scholars until recently;<sup>20</sup> and not all minority scholars choose to write about civil rights.<sup>21</sup>

Interestingly, all three of O'Neil's explanations lie either with the victims of imperial scholarship or third-person scapegoats. They neatly absolve those in the inner circle who produce imperial scholarship, ignore the contributions of minority writers, and sometimes actively counsel them to stay away. The problem be-

10. *Id.* at 561, 566.

11. *Id.* at 563-64.

12. *Id.* at 565-66, 573.

13. *Id.* at 566-73.

14. *Id.* at 573-77.

15. *Id.* at 577.

16. O'Neil, *supra* note 1, at 255.

17. *Id.* (O'Neil cited Black authors in a 1971 article in *Yale Law Journal*); *id.* at 256-57 (O'Neil worked to get minority lawyers jobs teaching at summer CLEO (pre-law) institutes; allegedly, many went on to become full-time law professors at major law schools).

18. *Id.* at 256.

19. *Id.* at 256 ("propensity of prestigious journals to publish already published and cited authors, who are mostly white.").

20. *Id.* at 256 ("miniscule number of minority legal scholars as recently as a decade and a half ago.").

21. *Id.* at 257 ("not all minority legal scholars have chosen to write about equal opportunity . . . their major scholarly interest includes but transcends minority rights and issues.").

comes a statistical anomaly with subtle roots that must have escaped my hasty glance.

Certainly, O'Neil is entitled to his own view of the causes of imperial scholarship. I do not think his explanations are especially complex, however, or even true. The top law reviews do not discriminate against minority writers, and probably not against unknown scholars either. To the extent that being unknown is a barrier to getting an article accepted in a major law review, majority and minority writers probably suffer the same handicap. Previously unknown minority writers seem to have broken through quite nicely in areas other than the core areas of civil rights scholarship; and, when they do, their work is cited and recognized appropriately.<sup>22</sup>

It may be, as O'Neil contends, that there were few minority-race law professors in 1968 (although I wonder about his assertion that there were fewer than ten),<sup>23</sup> but what of today, when we number in the hundreds?<sup>24</sup> The imperial scholarship problem shows no sign of abating, according to evidence O'Neil himself concedes is "credible and impressive."<sup>25</sup> O'Neil blames an anonymous, remote past for a present evil—ironically, one of the imperial behavioral traits described in my article.<sup>26</sup>

O'Neil also points out that not all minority scholars write about civil rights, or even want to. That is certainly true, as I pointed out myself<sup>27</sup>—but it ignores that some minority scholars may have had a little help in that direction from their white friends, as I did.<sup>28</sup>

Finally, O'Neil attributes the lack of minority-race and preponderance of majority-race scholars in the core areas of civil rights to the latter group's fascination with these issues (a compliment?). What could be wrong with scholars' following their noses and going where there is an interesting scent? Plenty, if they fol-

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22. Delgado, *supra* note 8, at 565 n.19 (minority scholars' contributions recognized outside core areas of civil rights).

23. O'Neil makes this assertion out of the mouth of an unnamed Black colleague who, when asked to count the number of Black legal scholars outside predominantly Black law schools, "stopped before he had used the fingers of both hands." O'Neil, *supra* note 1, at 256.

24. Delgado, *supra* note 8, at 561-62 n.1 (listing numbers of Black, Hispanic, and American Indian law professors).

25. O'Neil, *supra* note 1, at 255.

26. Delgado, *supra* note 8, at 571 (inner-circle writers tend to blame racism on actions that lie in another time and place).

27. *Id.* at 565 & n.19 (minority legal writers recognized and cited fairly outside core areas of civil rights).

28. *Id.* at 561, 575 (author counseled to avoid writing about civil rights and to leave field to others).

low the wrong path and harm others while doing so. O'Neil grossly undervalues the impact of the current scholarship. Part II of my article, "Defects in Imperial Scholarship," shows that imperial scholarship is often inaccurate and oppressive. As O'Neil delicately rephrases it, the inner circle's domination of civil rights scholarship causes an "elliptical and incomplete version of civil rights law" to prevail.<sup>29</sup> The sins of ellipsis and incompleteness are not very great; they could be remedied, one would think, by writing less compactly and filling things out more. But if, as I maintain, a body of writing is wrong and hurtful, not merely "elliptical and incomplete," it is not remedied by producing more of it.

After recharacterizing the problem and its causes, O'Neil offers his solutions. Established writers should take on minority co-authors<sup>30</sup> and put in a good word for us at the law reviews, among other things.<sup>31</sup> How revealing! What is needed is not favors of this sort, but better advocacy and better scholarship. If I am right, these will not come until white, inner-circle authors overcome their fascination with civil rights and permit newer voices to be heard.

O'Neil says he learned from my article and agrees that something must be done about the problem of imperial scholarship. Yet he blames the victim, absolves the perpetrator, and offers solutions that will not cure. The solution for imperial scholarship, as for colonial imperialism, is not for the colonial administrators to be kinder to the colonial subjects. It is to leave. I was not using "imperial" totally as a metaphor.

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29. O'Neil, *supra* note 1, at 255.

30. *Id.* at 258 ("We should enlist minority colleagues as co-authors wherever appropriate.").

31. *Id.* ("We should suggest symposia and special issue topics for prestigious journals, dealing with equal opportunity and other subjects likely to provide forums for minority writers.").