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Thinking About Race and Races: Reflections and Responses [Book Review]

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Book Review

Thinking About *Race and Races*: Reflections and Responses

RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA. Edited By Juan F. Perea,† Richard Delgado,†† Angela P. Harris,††† and Stephanie M. Wildman.††††
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> Certain absences are so stressed, so ornate, so planned, they call attention to themselves; arrest us with intentionality and purpose, like neighborhoods that are defined by the population held away from them.... The spectacularly interesting question is "What intellectual feats had to be performed by the author or his critic to erase me from a society seething with my presence, and what effect has that performance had on the work?" What are the strategies of escape from knowledge? Of willful oblivion?
>
> Toni Morrison[1]

I
REFLECTIONS ON RACE AND RACES

The presence of people of color haunts the United States. Race and racism are central to the history, the mythology, and the basic institutions of American life, including American legal institutions. Yet American public discourse has seldom been forthright about the existence and implications of American racism. Thus, for example, prior to the Thirteenth Amendment in 1865, the Constitution never mentioned the word "slavery." The drafters of the Constitution were scrupulously careful not to include the word anywhere in the document, even as they crafted compromises that protected and recognized the peculiar institution.[2]

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1. Toni Morrison, *Unspeakable Things Unspoken: The Afro-American Presence in American Literature*, *in* WITHIN THE CIRCLE: AN ANTHOLOGY OF AFRICAN AMERICAN LITERARY CRITICISM FROM THE HARLEM RENAISSANCE TO THE PRESENT 378 (Angelyn Mitchell ed., 1994); *see also* TONI MORRISON, PLAYING IN THE DARK (1992).

2. *See* DERRICK BELL, RACE, RACISM AND AMERICAN LAW 46-48 (4th ed. 2000) (listing the clauses that protected the institution of slavery).

The framers maintained this constitutional silence, it seems, to preserve the ideological integrity of the document.[3] More recent silences about race in legal discourse seem intended to protect the public from being confronted with the enormity of racial injustice. For example, in decisions like *Shaw v. Reno*,[4] *Adarand Constructors, Inc. v. Peña*,[5] and *Rice v. Cayetano*,[6] the Supreme Court has found governmental racial classifications unconstitutional under the Fourteenth and Fifteenth Amendments even when their purpose has been to ameliorate racial inequality and strengthen the political power of racialized and historically subordinated communities. In *McCleskey v. Kemp*,[7] the Court refused to recognize a claim of systemic racial discrimination in the administration of the death penalty for fear of undermining the criminal justice system itself, a fear dissenting justice William Brennan described as "a fear of too much justice."[8] In these and other decisions, the Court has treated government recognition of race as inherently divisive and antidemocratic. Yet these decisions, imposing public silence on the issue of race, have had the practical effect of maintaining historical and continuing racialized inequalities of political and economic power.

The repercussions of this silence about the racialized injustice that so pervades American society are perhaps most haunting in areas that public discourse treats as race-free. In its recent decision in *United States v. Morrison*,[9] for example, the Court held that Congress lacked authority under either the Commerce Clause or Section 5 of the Fourteenth Amendment to create a federal civil remedy for victims of gender-motivated violence, thus invalidating a portion of the Violence Against

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3. In debating the wording of Article I, Section 9, which prohibited Congress from using its new commerce powers to restrict the importation of slaves, Speaker of the House Dayton was unambiguous about the reason for omitting the word "slave" from the constitutional text:

> [I]n the discussion of its merits, no question arose, or was agitated respecting the admission of foreigners, but, on the contrary, that it was confined simply to slaves, and was first voted upon and carried with that word expressed in it, which was afterwards upon reconsideration changed for "such persons," as it now stands .... The sole reason assigned for changing it was that it would be better not to stain the Constitutional code with such a term, since it could be avoided by the introduction of other equally intelligible words, as had been done in the former part of the same instrument, where the same sense was conveyed by the circuitous expression of "three fifths of all other persons."

Debate in the House of Representatives (June 16-20, 1798), *in* 3 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 377 (Max Farrand ed., 1966).

4. 509 U.S. 630 (1993) (redistricting legislation that is "unexplainable on grounds other than race" demands strict scrutiny).

5. 515 U.S. 200 (1995) (strict scrutiny is appropriate for all government racial classifications, whether created by federal or state governments).

6. 528 U.S. 495 (2000).

7. 481 U.S. 279 (1987).

8. 481 U.S. at 339 (Brennan, J., dissenting).

9. 529 U.S. 598 (2000). *See also* Bd. of Trs. of Univ. of Alabama v. Garrett, 531 U.S. 356 (2001) (declaring state governments immune from suit under the Americans With Disabilities Act).

Women Act (VAWA).[10] Reviewing the scope of congressional power under Section 5, the Court held that because the Fourteenth Amendment applies only to state action, Congress had no power to create a civil remedy against private persons who engage in gender-motivated violence. This understanding of the Fourteenth Amendment is not compelled by the constitutional text itself, however, but is based on two cases decided shortly after the adoption of the amendment, *United States v. Harris*[11] and the *Civil Rights Cases*.[12] According to the *Morrison* Court:

> The force of the doctrine of stare decisis behind these decisions stems not only from the length of time they have been on the books, but also from the insight attributable to the Members of the Court at that time. Every Member had been appointed by President Lincoln, Grant, Hayes, Garfield, or Arthur—and each of their judicial appointees obviously had intimate knowledge and familiarity with the events surrounding the adoption of the Fourteenth Amendment.[13]

What the Court does not say is that when these cases were decided, the Supreme Court was engaged in a war with Congress over race and racism: a war in which the Court moved time and time again to thwart the project of making African Americans equal citizens. Akhil Amar points out, for example, that the intent behind section 1 of the Fourteenth Amendment reflected, in part, congressional desire to overrule the Court's infamous decision in *Dred Scott*[14] that Blacks in America had no rights that White persons were bound to respect.[15] Amar asks why the Rehnquist Court should choose to look for meaning in the interpretations of a hostile Supreme Court and not in the statements of the drafters of the Fourteenth Amendment.[16]

The Court's silence about our racial past has not only skewed its approach to statutory interpretation. Robert Post and Reva Siegel argue that

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10. In deciding the Commerce Clause issue, the Court relied on its analysis in *United States v. Lopez*, 514 U.S. 549 (1995). The Court held that, while the line between the economic and noneconomic is not always crystal clear, "[g]ender-motivated crimes of violence are not, in any sense of the phrase, economic activity." *Morrison*, 529 U.S at 613.

11. 106 U.S. 629 (1882).

12. 109 U.S. 3 (1883).

13. *Morrison*, 529 U.S. at 622.

14. Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1856).

15. Akhil Reed Amar, *The Supreme Court 1999 Term: Foreword: The Document and the Doctrine*, 114 HARV. L. REV. 26 (2000).

16. As Amar argues:

> Many of the Congressmen supporting these laws had been leading architects of the Fourteenth Amendment itself. Why doesn't Chief Justice Rehnquist accord these men any epistemic respect? Founders such as James Madison and Thomas Jefferson, who lived and died as slaveholders, are treated with reverence by the Court (even though Jeffersou was not even in America at the Founding). Why are Reconstructors like John Bingham and Charles Sumner, crusaders for racial justice, treated with so much less respect?

Id. at 105-06.

the substantive scope of congressional power under Section 5, and the meaning of Section 1's guarantees, can be understood only by understanding our nation's long political and legal struggle over racial injustice.[17] In passing over this history in silence, they argue, the Court's recent decisions concerning congressional power to pass antidiscrimination legislation threaten to construct a jurisprudence that is not only "mechanical" but may diminish the authority both of the Court and of the Constitution itself.[18]

The silences, omissions, and strained reasoning in these cases are not, in our view, the result simply of faulty reasoning or a misunderstanding of precedent. Rather, the cracks in *Morrison*'s analysis, and in the Court's jurisprudence of congressional power under the Fourteenth Amendment more generally, betray the effort required to ignore a central truth of American jurisprudence: that the constitutional principles of federalism and separation of powers on which *Morrison* and like cases turn are inextricably intertwined with the history of race and racism.

As the majority in *Morrison* acknowledged, "the principle that the Constitution created a Federal Government of limited powers, while reserving a generalized police power to the States is deeply ingrained in our constitutional history."[19] But this principle, in turn, is seething with the presence of slavery, conquest, racial terror, and apartheid. These are the unquiet ghosts in the machine of federalism jurisprudence. *Race and Races*

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17. Robert C. Post & Reva B. Siegel, *Equal Protection by Law: Federal Antidiscrimination Legislation After* Morrison *and* Kimel, 110 YALE L.J. 441 (2000). Post and Siegel write:

> The Congress that passed the Fourteenth Amendment knew that it could not establish equality for the newly freed slaves without reaching deep into Southern society and reforming its fundamental principles. That is why it drafted Section 5. But the Supreme Court, fearing a disruption of the balance of the federal system, refused to allow this exercise of federal power, and instead created doctrines that shielded the right of state legal systems to segregate and the freedom of private property owners to discriminate.
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> Even after the gates of federal power were thrown open during the New Deal, it was still not clear whether the national government had the power to overcome these deeply inbred practices and principles of discrimination. It was not until Brown changed the standards of Section 1 that this objective became imaginable. And even then, it was not until thousands of protests forced the federal hand that Congress was finally willing to enact the Civil Rights Act of 1964 to accomplish what the Framers of the Fourteenth Amendment thought they had achieved.
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> When we speak of using the values of federalism to restrict the scope of federal power in the context of national antidiscrimination statutes, therefore, we are speaking of a trust put into federal hands by the Framers of the Fourteenth Amendment, taken away by the Court for almost a century, but, after struggle, returned to national authority in the 1960s. This assumption of federal authority was vindicated by all three branches of the federal government. The question of federalism thus merges with the question of the federal government's proper role in combating discrimination. For whatever might be said about Section 5 power generally, the use of Section 5 power to combat unconstitutional discrimination cannot be conceived as a potential threat to the legitimate balance of the federal system so long as this history retains its normative force.

Id. at 507-08.

18. *Id.* at 446.

19. *Morrison*, 529 U.S. at 619 (internal quotations omitted).

is our attempt to give form and substance to the unquiet ghosts whose stories lie deep in American legal and constitutional history.

As one of us has recently noted, the story of "race law" is ordinarily taken to be the story of equality law.[20] In this equality story, despite many setbacks, "We, the People" gradually enlarges to embrace everyone. African Americans are the central characters in this story. Their inspiring journey from slavery to freedom, from apartheid to the American mainstream, is taken as a metonym for the optimistic story of American racial struggle generally, a story that ends with Martin Luther King, Jr.'s "I Have a Dream" speech.[21]

While the African American struggle against slavery and for equality retains central importance in United States history and in our book, *Race and Races* attempts to tell a more comprehensive story of race in the United States. It is an alternative to the fragmented, separated treatment that racial topics typically receive, if treated at all, in the law school curriculum (p. 2). As Professor Robert Williams, Jr., notes, we have attempted to produce a book which presents "multiple race perspectives on American law," to teach "how the rule of law has been applied to a much broader set of racial minority groups in this country, and the strategies those groups have adopted to survive and create a diverse America."[22]

We hope to teach students that race has always mattered in the United States, and that it continues to matter in many ways that they may or may not have understood before. Some of the most profoundly important events in the early history of the colonies and the country were racial events. The conquest, displacement, and removal of Indians yielded land for the expansion of the colonies, and later the United States (pp. 173-216). The enslavement of Black Africans supplied labor for Southern agriculture (pp. 91-129). We still confront the powerful repercussions of these events today in Indian claims for self-determination (pp. 220-28) and in African American claims for reparations (p.412).[23]

One striking way to understand the relevance of race to legal education is to consider the enormous amount of law, assumed to be independent and unrelated, that nonetheless emerges as closely related when race and racism are used as organizing principles. For example, law school curricula

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20. Angela P. Harris, *Equality Trouble: Sameness and Difference in Twentieth-Century Race Law*, 88 CALIF. L. REV. 1923, 1927-28 (2000).

21. *See* A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR. 217 (James M. Washington ed., 1991). *See also* Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 CALIF. L. REV. 1213 (1997); Richard Delgado, *Rodrigo's Fifteenth Chronicle: Racial Mixture, Latino-Critical Scholarship, and the Black-White Binary*, 75 TEX. L. REV. 1181 (1997) (noting that equality law, and civil rights generally, are commonly equated with the African American experience).

22. Robert Williams, Jr., *Do You Believe in the Rule of Law?*, 89 CALIF. L. REV 1633, 1637 (2001).

23. *See, e.g.*, RANDALL ROBINSON, THE DEBT (2000).

may typically include separate courses on Indian Law, Immigration Law or History, Civil Rights, and Equal Protection. These are all treated as separate and discrete disciplines. This curricular separation tends to obscure the independent significance of race and racism. As Professor Margalynne Armstrong points out, when students are not exposed to the racial dynamics lurking in these other courses, issues of race and racism that should be raised are instead ignored.[24]

When race and racism are used as lenses through which to view the law in these traditionally separate subject areas, a unified story of race in the United States emerges. For example, consider how Europeans sought to justify the conquest of Indians and the usurpation of Indian lands by presuming the inferiority of Indian peoples. As Chief Justice Marshall wrote in *Johnson v. McIntosh*, "the character and religion of [the Indians] afforded an apology for considering them as a people over whom the superior genius of Europe might claim an ascendancy" (pp. 175-76). Europeans justified Black slavery in similar terms. Indeed, abolitionism and the struggle against Jim Crow included, as central components, challenges to the presumed inferiority of Blacks (pp. 141-56). From 1790 to 1952, immigration law was a remarkable forum for the development and definition of Whiteness and the exclusion of many non-Whites. In 1790, the first condition for naturalized citizenship was that one be a "free white person," presumed to be fit, temperamentally, intellectually, and morally, to participate in the affairs of government (p. 583). Of course, in *Dred Scott v. Sandford* (pp. 123-25), the Supreme Court decided that Africans and African Americans, whether slave or free, were never intended to be considered citizens under the federal constitution. During the latter half of the nineteenth century, the federal courts decided who qualified as a "white person" for naturalization (pp. 429-33). The courts, including the Supreme Court, decided that immigrants from China, Japan, India, and other nations were not "white" and therefore not entitled to citizenship (pp. 429-40).[25] Astonishingly, the racial qualification for naturalization remained in place until 1952.[26]

Thus, traditional civil rights law and equal protection, Indian law, and immigration law all form important parts of the history and construction of racial identities in the United States. Remarkably, even integrating all of these ostensibly disparate areas of law, one would learn nearly nothing about Latinos/as.[27] Much of the story of Latinos/as in the United States lies in the race-based conquest of Mexico and later Puerto Rico, and in the

24. Margalynne Armstrong, *Teaching by the Book*, 89 CALIF. L. REV. 1625, 1626-27 (2001).

25. *See also* IAN HANEY LÓPEZ, WHITE BY LAW (1996).

26. *Id.* at 49.

27. *See, e.g.*, Juan F. Perea, *Los Olvidados: On the Making of Invisible People*, 70 N.Y.U. L. REV. 965 (1995) (describing the production of Latino/a invisibility); THE LATINO/A CONDITION: A CRITICAL READER (Richard Delgado & Jean Stefancic eds., 1998).

extraordinary legal process through which one-half of Mexico became the Southwestern United States (pp. 246-97). After the military conquest, this legal process began with the Treaty of Guadalupe Hidalgo in 1848 (pp. 260-66), and continued with land grant adjudications decided by the Taney Court and later Courts in the mid-to-late nineteenth century (275-98). Litigation continues even today over the validity of dispositions of Mexican land grants.[28]

While White racism has influenced powerfully the destinies of all people of color in this country, it is important to understand that the forms that racism takes are not the same with respect to each of the groups affected by it. Including multiple race perspectives in our book provides historical background for understanding the varied ways that racism affected and affects different communities of color. By giving prominent attention to the particular histories of the major racial groups in the United States, including Whites (pp. 429-99),[29] we hope to facilitate important comparisons, linkages, and distinctions regarding the conditions faced by the different groups. For example, consider the period 1880-1900. In 1882, anti-Chinese agitation in California culminated in congressional enactment of the federal Chinese Exclusion Act, which prohibited the immigration of Chinese laborers into the United States (pp. 382-84). Subsequently, the Supreme Court upheld the exclusion acts in 1889 in *Chae Chan Ping* (p. 384-88). In 1887, Congress passed the General Allotment Act, also known as the Dawes Act, which destroyed Indian tribal sovereignty by breaking up lands held jointly by the tribes and allotting these lands in separate parcels to individual tribal members (pp. 215-16). This Act led to reductions in the land base controlled by Indian tribes. And in 1896, the Supreme Court decided *Plessy v. Ferguson* (pp. 142-47),[30] upholding and encouraging racial segregation. In 1898, during the Spanish-American War, the United States conquered Puerto Rico, Cuba, and the Philippines and invaded Hawaii (326-28).

Thus, during this twenty-year period, aggressive United States colonialism combined with severe internal repression of racial minorities. Only by comparing the histories of the different racial groups can one identify and explain this phenomenon. Indeed, *Race and Races* illustrates how United States racial history follows a zigzag path, sometimes forwards,

28. *See, e.g.*, PETER NABOKOV, TIJERINA AND THE COURTHOUSE RAID (1969); *Symposium: Understanding the Treaty of Guadalupe Hidalgo on its 150th Anniversary*, 5 SW. J. L. & TRADE AM. 5 (1998).

29. *See also* CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR (Richard Delgado & Jean Stefancic eds., 1997).

30. 163 U.S. 537 (1896).

often backwards.[31] Readers will also discover how this is not at all accidental.[32] Society often arranges it so that one racial group is in favor while another is intensely repressed.[33] Seeing the checkerboard of racial progress and the way groups are often played off against each other helps the reader understand the behavior of higher courts today.

Professor Abrams suggests that a chronological sequence might have been preferable for facilitating such comparisons.[34] We respectfully disagree. Part of the aim of providing separate chapters for the major racial groups was to demonstrate the nature, degree, and particularity of the racism experienced by each and to emphasize the trends and advances just described. Not all racism is the same, nor has it played out in the same way for each group. These dynamics and particularities likely would have been osbscured had we taken a purely chronological approach.

II

RESPONSES TO REVIEWS OF *Race and Races*

As Professors Abrams and Yamamoto correctly note, the authors of a casebook are in a luckier position than most: we have the opportunity to correct our mistakes in subsequent editions.[35] We embrace several goals for the next edition that the contributors to this colloquy have identified. Professor Yamamoto suggests a richer chapter on Asian Americans and an extended treatment of reparations.[36] Professor Abrams suggests a sustained examination of the relationship between race, class, and poverty. We also take to heart Abrams' suggestion that we pay more attention to lawyering strategies beyond the strictly conventional and the purely interpersonal. Beyond these, some of our reviewers raised issues requiring more extensive responses.

A. Professor Abrams

Abrams' suggestion that the book could use "more emphasis on the affirmative meanings assigned to race"[37] is an interesting one. If all Abrams means by her suggestion is that we could have added material on the unintended benefits of racial segregation, that is certainly right. Perhaps

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31. *See also* Richard Delgado, *Derrick Bell's Toolkit—Fit to Dismantle That Famous House?*, 75 N.Y.U. L. REV. 283 (2000); CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado & Jean Stefancic eds., 2d ed. 1999).

32. *Id.* at 290-93.

33. *Id.* at 291.

34. *See* Kathryn Abrams, *Race and Races: Constructing a New Legal Actor*, 89 CALIF. L. REV. 1589, 1601 (2001).

35. *See id.* at 1602; Eric K. Yamamoto, *Teaching Race Through Law: "Resources for a Diverse America"*, 89 CALIF. L. REV. 1641, 1645 (2001).

36. *See* Yamamoto, *supra* note 35, at 1645-51.

37. *See* Abrams, *supra* note 34, at 1599.

we should have also made more references to the racial pride and kinship that most people of color feel deeply. But Abrams' comment raises a deeper question that many have struggled with: are there, in fact, "affirmative meanings assigned to race"? Certainly as an accidental by-product, racism has given rise to political solidarity, family feeling among strangers, a vivid sense of historical connection to those who came before; vibrant cultural traditions; and deep commitments to justice. But are these "affirmative meanings assigned to race"? Or are they inherently reactive in nature? If racism were somehow vanquished, what would be left of race? Noel Ignatiev, calling for the abolition of the White race, argues that Whiteness is nothing but the label for unjust privilege (pp. 489-93). Does "race" itself have content, once it is disentangled from cultural, historical, and political identity? We think we have done right by not answering these questions. Indeed, given that racism is unlikely to be eliminated any time soon, it is not clear that these questions are pressing ones. Instead, since the central meaning of "race" seems to turn on historically contingent value judgments, beliefs and faiths that support relationships of differential power and subordination, our approach has been to examine the nature of the historical development and expression of these beliefs.

One lesson our book teaches is that the dominant society in practically every era has assigned positive images to itself and to Whiteness. One chapter of *Race and Races* (pp. 429-99), for example, details how color imagery and invisible privileges provide an "affirmative meaning assigned to (the white) race" (pp. 464-78). By the same token, popular culture (pp. 959-1016) almost invariably assigns negative meanings and images to groups of color, except for the rare periods in which it assigns ridiculously romanticized ones to them such as the noble savage.

Professor Abrams also encourages us in the next edition to address interminority tensions and conflicts.[38] This is a sore point in communities of color right now. Consider a situation like the controversy over admissions quotas at Lowell High School challenged in *Ho v. S.F. Unified School District* (p.745), where tension persists between Asian Americans and African Americans. We decided the proper role for us as casebook authors was to discuss the *Ho* case as an example of the need for negotiation and coalition, and to show that intergroup social dynamics may sometimes be fraught with the same struggles over self-interest as those between a minority group and the majority. We doubt that it would be wise for us to do more than this. In particular, we think it would be unwarranted for us to take a stand on who is right and who is wrong in that controversy. While intergroup complaints between communities of color might theoretically rise to such an egregious level that progressive scholars such as ourselves could not avoid taking a stand, we found no such cases in our research.

38. *Id.* at 1601.

Professor Abrams also chides us, somewhat surprisingly, for remaining mired in a Black-White paradigm.[39] This casebook, of course, is the first expressly to expand beyond that paradigm and consider the racial fortunes, issues, problems, and histories of all the major groups of color in the United States, and include the construction of Whiteness (pp. 304-09, 471-77). Thus, practically every chapter on a substantive topic, such as hate speech or popular culture, devotes attention to all the major groups. However, one of the lessons of the differential racialization thesis is that each of the groups has been racialized in different, but overlapping, ways (pp. 1-2, 14-15). Thus, for example, immigration and language rights play little role in Black history. Mexican Americans suffered conquest, but were not enslaved in a literal sense. Accordingly, any organizational scheme that sets out to march determinedly through a four-part matrix under every single topic heading would distort history. Thus, we have tried to devote attention to the rich tapestry of race, realizing that not every strand attaches to every other.

Professor Abrams also complains that our book is missing a praxis.[40] Robert Williams provides part of the answer to that complaint: Indian history (like that of most of the groups we consider) teaches legal skepticism.[41] We believe that a book that highlights how frail a reed the law has proven to be for oppressed peoples provides a valuable dose of skepticism and realism for would-be lawyers. The young lawyer wins cases she knows she should have lost, loses cases she knows she should have won. Judges can be biased. Jurors can kowtow to a domineering foreperson. One's clients can lose their nerve or lie. We suspect that law students who take the time to develop their own radical critique of social institutions, including the law, will enter practice with a type of psychic armoring that will enable them to persevere in the face of resistance and disappointment. Perhaps this is the most valuable praxis lesson of all, and one we very much hope readers will take from our book.

B. Professor Alfieri

Toward the end of his critique, Professor Alfieri poses a curious challenge. "To render prescriptive counsel properly," he writes, *Race and Races*' editors "must confront the tension dividing modern and postmodern modes of analysis."[42] He notes that we appear to both "condemn and exploit the hegemonic logic of law."[43] We also simultaneously "ridicule and embrace formalism and process values . . . [and both] celebrate

39. *Id.* at 1600.
40. *Id.* at 1601-02.
41. Williams, *supra* note 22, at 1634-36.
42. Anthony Alfieri, *Teaching the Law of Race*, 89 CALIF. L. REV. 1605, 1624 (2001).
43. *Id.*

multiracial identity and assail"[44] those methods of advocacy that appear to him incompatible with that identity. He suggests that we are ambivalent about rights.[45] To be sure, Alfieri professes a gracious understanding of our predicament, for we "labor in the ambiguity of this long moment of transition."[46] He concludes by declaring "We should be grateful for their leadership. We should hope they do not grow weary."[47]

We are not weary. However, if we were to set ourselves the task of reconciling modernism and postmodernism, formalism and its opposite, multiracialism and conventional Anglocentric advocacy, we might well grow so. But these are not our tasks. As we imply in the sections devoted to strategies and methods of reform, we are prepared to embrace an unapologetic eclecticism (pp. 3, 1091-1154). Just as race and racism take different forms at different periods and in relation to different minority groups, the tools of resistance must likewise vary. In one setting, litigation may be a perfectly sensible means of confronting a particular evil. In another, litigation may be fruitless; mass demonstration or storytelling[48] or enlistment of race traitors[49] may be needed. Some racial roadblocks may yield to discourse analysis; others may be better addressed by efforts to change material conditions.[50] In some situations, such as the army or organized sports, formality may guarantee at least a degree of fairness.[51] In others, free-flowing coalition politics and interpersonal friendships may be what the situation requires.

In short, the traditional either/or categories Alfieri lists are not well tailored to addressing the vast panoply of race. This is both a disadvantage and a blessing. Students and fellow travelers cannot tie themselves to a single theory of race, any more than they can rely on a unitary method of resistance.

CONCLUSION

The complexity of "race," of "races," and their development and deployment through United States history cannot be confined by simple categories and facile resolutions. Some of the questions raised by our reviewers

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44. *Id.*

45. *See id.*

46. *Id.*

47. *Id.*

48. *See* Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1988).

49. On the concept of race traitor, see *Race and Races* (pp. 489, 493).

50. *See* Richard Delgado, *Two Ways to Think About Race: Reflections on the Id, the Ego, and other Reformist Theories of Equal Protection*, 89 GEO. L.J. 2279 (2001); *Delgado,* THE LATINO/A CONDITION, *supra* note 27, at 303-45 (describing role of rebellious lawyering and street politics in effecting reform).

51. *See* Richard Delgado et al., *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, 1985 WIS. L. REV. 1359 (1985).

allow no easy solutions. Accordingly, the multidisciplinary, historical approach we have taken in the book is pragmatic and eclectic.[52] We have sought to give voice to stunning silences and omissions of race, to provide history and resources that we hope will enable us, in Professor Yamamoto's words, "to 'talk about it.'"[53]

The perceptive insights of these distinguished reviewers give us much to think about. We are grateful to them for their knowledge, their insights, and their criticisms, all of which we find helpful in understanding what our book means to others and how we can make it better.

52. *Cf.* Catharine Pierce Wells, *Why Pragmatism Works for Me*, 74 S. CAL. L. REV. 347, 353 (2000) ("Good lawyers do not obsessively adhere to a single theory. Instead they try to keep their minds free so that they are receptive to various ways of formulating the issues."); Margaret Jane Radin, *The Pragmatist and the Feminist*, 63 S. CAL. L. REV. 1699, 1700 (1990) ("We must look carefully at the nonideal circumstances in each case and decide which horn of the dilemma is better (or less bad), and we must keep re-deciding as time goes on.").

53. Yamamoto, *supra* note 35, at 1651. Even as we write, the conservative American Civil Rights Coalition, an arm of Ward Connerly's American Civil Rights Institute, has unveiled a new proposed initiative for the March 2002 California ballot. The measure, titled the "Racial Privacy Initiative," would prevent the state from "classify[ing] any individual by race, ethnicity, color or national origin in the operation of public education, public contracting or public employment." Under the measure, the state would be prohibited from collecting data about an individual's race on government forms for the purpose of detecting racial discrimination. Letter from Kevin Nguyen, Executive Director, and M. Royce Van Tassell, Director of Research, American Civil Rights Coalition, to Tricia Knight, Initiative Coordinator, Office of the Attorney General of California, 2-3 (Feb. 20, 2001) (on file with authors). However, police uses of race, including the controversial practice of "racial profiling," would be specifically exempted from the ban. Letter from Elizabeth B. Guillen, Legislative Counsel, Mexican American Legal Defense and Education Fund, to Joe Shinstock, California Department of Finance 7-8 (Mar. 14, 2001) (on file with authors) (arguing that law enforcement will, in practice, have a difficult time distinguishing uses of race authorized by the statute and those not authorized). *But see* Libertarian Party, Reviewer's Guide to the "California Racial Privacy Initiative" (Jan. 12, 2001), *at* http://www.peoplesveto.org/lp/text_files/010112%20Initiative.txt (claiming that "[s]ince racial profiling is already illegal, this exemption does not make it legal"). Yet another attempt to make matters of race unspeakable seemingly awaits in the wings.