2001

Teaching the Law of Race (Book Review)

Anthony V. Alfieri
University of Miami School of Law, aalfieri@law.miami.edu

Book Review

Teaching the Law of Race

RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA. Edited By Juan F. Perea,† Richard Delgado,†† Angela P. Harris,††† and Stephanie M. Wildman.†††† St. Paul: West Group, 2000. Pp. xlix, 1171. $60.00 cloth.

Reviewed by Anthony V. Alfieri‡

INTRODUCTION

For too long, scholars have debated the place of race in the legal academy. Clothed in private silence and public quarrel,[1] the debate rises again in the wake of the duly celebrated publication of *Race and Races: Cases and Resources for a Diverse America*. Situated at the intersection of civil rights, jurisprudential, and interdisciplinary movements, *Race and Races* provides a sweeping account of race in American law and society.[2] Interest in this account will be keen for those seeking to understand the theory and

† Cone, Wagner, Nugent, Johnson, Hazouri & Roth Professor of Law, University of Florida.

†† Jean Lindsley Professor of Law, Univeristy of Colorado.

††† Professor of Law, School of Law, University of California, Berkeley (Boalt Hall).

†††† Professor of Law, Santa Clara Law School.

‡ Professor of Law and Director, Center for Ethics and Public Service, University of Miami School of Law. I am grateful to David Abraham, Kathy Abrams, Margalynne Armstrong, Adrian Barker, Wes Daniels, Richard Delgado, John Ely, Michael Fischl, Clark Freshman, Ellen Grant, Patrick Gudridge, Angela Harris, Amelia Hope, Lisa Iglesias, Sharon Keller, Juan Perea, Susan Stefan, Jean Stefancic, Frank Valdes, Stephanie Wildman, Robert Williams, and Eric Yamamoto for their comments and support. I also wish to thank Porpoise Evans, Christina Farley, Shana Stephens, and the University of Miami School of Law library staff for their research assistance, and Michael Gallo and the *California Law Review* for their commitment, patience, and skill. This Essay is dedicated to critieal race friends.

1. *See* Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984); Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745 (1989).

2. For complementary accounts, see CRITICAL RACE FEMINISM: A READER (Adrien Katherine Wing ed., 1997); CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY (Francisco Valdes, Jr. et al. eds., forthcoming Feb. 2002); CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado & Jean Stenfancic eds., 2d ed. 1999); CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw et al. eds., 1995); RACIAL CLASSIFICATION AND HISTORY (E. Nathaniel Gates ed., 1997); and READINGS IN RACE AND LAW: A GUIDE TO CRITICAL RACE THEORY (Alex M. Johnson, Jr. ed., 1998). *See also* ANGELO N. ANCHETA, RACE, RIGHTS, AND THE ASIAN AMERICAN EXPERIENCE (1998).

practice of race in law, and equally important, in lawyering and ethics.[3] Often stymied, advocacy-grounded efforts to grasp the meaning and take the measure of race in action demand the mapping of law and the lawyering process in race cases along the boundaries of racial identity, racialized narrative, and interracial community.[4] Careful mapping enables lawyers and judges to embrace race when relevant and, conversely, to reject it when inapposite. Elsewhere I have argued that these boundaries starkly demarcate the practice of criminal law, particularly the prosecution and defense of racial violence.[5] Beyond the criminal law, however, the scope and depth of racial boundaries lie largely unmarked.[6]

Accordingly, the first purpose of this Book Review is to mark the boundary lines of contemporary sociolegal research on race synthesized by the distinguished editors of *Race and Races* and tested, indeed sometimes traversed, by the accompanying book reviews in this collection. In addition to framing the bright lines of discussion for this rich collection, the second purpose of this Review is to critique the effort by the editors to set down some rough markers surveying the meaning of racial identity, the content of racialized narrative, and the form of race-neutral and race-conscious representation. *Race and Races* establishes the groundwork for its analysis by tracing the genealogy and multiplicity of race and racism, splicing race to law, citizenship, culture, and society, and finally, adjoining race to legal and social reform. To integrate these themes, the editors formulate certain guiding principles of criticism. Applied to the sociolegal text of race, these

---

3. *See* Robin D. Barnes, *Interracial Violence and Racialized Narratives: Discovering the Road Less Traveled*, 96 COLUM. L. REV. 788 (1996); Richard Delgado, *Making Pets: Social Workers, "Problem Groups," and the Role of the SPCA—Getting a Little More Precise About Racialized Narratives*, 77 TEX. L. REV. 1571 (1999); Elaine R. Jones & Jaribu Hill; *Contemporary Civil Rights Struggle: The Role of Black Attorneys*, 16 NAT'L BLACK L.J. 185 (1999); Abbe Smith, *Burdening the Least of Us: "Race-Conscious" Ethics in Criminal Defense*, 77 TEX. L. REV. 1585 (1999); David B. Wilkins, *Identities and Roles: Race, Recognition, and Professional Responsibility*, 57 MD. L. REV. 1502 (1998); David B. Wilkins, *Race, Ethics, and the First Amendment: Should a Black Lawyer Represent the Ku Klux Klan?*, 63 GEO. WASH. L. REV. 1030 (1995).

4. Racialized narrative refers to the racial rhetoric (the race talk) found in the juridical storytelling of lawyers and judges. Interracial community refers to the convergence and clash of interests among communities of color. For a deft illustration of the mapping of narrative and community in the context of race, see David B. Wilkins, *On Being Good and Black*, 112 HARV. L. REV. 1924 (1999) (reviewing PAUL M. BARRETT, THE GOOD BLACK: A TRUE STORY OF RACE IN AMERICA (1999)).

5. *See* Anthony V. Alfieri, *Defending Racial Violence*, 95 COLUM. L. REV. 1301 (1995); Anthony V. Alfieri, *(Er)Racc-ing an Ethic of Justice*, 51 STAN. L. REV. 935 (1999); Anthony V. Alfieri, *Lynching Ethics: Toward a Theory of Racialized Defenses*, 95 MICH. L. REV. 1063 (1997); Anthony V. Alfieri, *Prosecuting Race*, 48 DUKE L.J. 1157 (1999); Anthony V. Alfieri, *Prosecuting Violence/Reconstructing Community*, 52 STAN. L. REV. 809 (2000); Anthony V. Alfieri, *Race Trials*, 76 TEX. L. REV. 1293 (1998); Anthony V. Alfieri, *Racc-ing Legal Ethics*, 96 COLUM. L. REV. 800 (1996).

6. *See* Naomi R. Cahn, *Representing Race Outside of Explicitly Racialized Contexts*, 95 MICH. L. REV. 965 (1997); Margaret M. Russell, *Beyond "Sellouts" and "Race Cards": Black Attorneys and the Straitjacket of Legal Practice*, 95 MICH. L. REV. 766 (1997).

rules of reading urge us to "make the implicit explicit" and to "look for the hidden norm" (p. 3). Moreover, they direct us to "avoid we/they thinking" and "remember context" (p. 3). Further, they steer us toward "justice" by contemplating "benefits and harm" (p. 3). Last, they exhort us to "trust intuition" (p. 3). Against this backdrop of textual construction and criticism, the Review follows the discrete divisions of the casebook: Part I examines the genealogy of race and racism, Part II analyzes the multiplicity of race and racism, Part III considers race, law, and citizenship, Part IV explores race, culture, and society, and Part V assesses race and reform in legal theory and practice.

I
THE GENEALOGY OF RACE AND RACISM

Race and Races opens by evaluating the relationship between the practices of racism and the concept of race. Racism, according to the editors, carries material and ideological import for both the collective and the individual. For the collective, material racism infects the structure of social life and state policy. For the individual, racism inflicts particularized harm. Contingent on racial difference, these material practices find justification in "a pool of beliefs, symbols, metaphors and images" that define a natural order (p. 6).

From the outset, the editors challenge the natural order of race. Deploying the work of a wide variety of scholars, they assert that in American history "racial hierarchy rather than racial equality has been the fundamental organizing principle" (p. 14). For example, Benjamin Ringer and Elinor Lawless argue (pp. 6-11) that the genealogy of race and racism originates in "the colonial expansion of the White European from the fifteenth century onward" (p. 6). Initiated by early Spanish conquistadors and English settlers, this expansion created a dual colonial society, racially segmented between dominant Whites and subordinate non-Whites. Tessie Liu (pp. 11-12) shows how that duality, linked to European dynastic customs and colonial racial privileges, produced "bifurcated visions of womanhood" (p. 11) that cast White women as guardians of civilization and non-White women as both desexualized laborers and easily available sexual objects. Such visions of privilege and their constituent categories of racial and gender subordination permeated the structures of the colonial world so thoroughly as to make them appear natural, even banal. It is precisely the banality and seeming naturalness of what Michael Omi and Howard Winant call "racial dictatorship" (pp. 12-13) that allowed it to shape historical notions of identity, color, and nationalism through coercion and consent (pp. 6-14).[7]

7. Omi and Winant remark that "hegemonic forms of racial rule—those based on consent—eventually came to supplant those based on coercion" (p. 13).

To amplify the ideas of physical force and ideological enforcement, the editors weave together multiple theories of oppression, such as Iris Young's politics of difference (pp. 14-15), and Robert Blauner's catalogue of colonized minorities (pp. 16-20), offering a broad "account for the many different ways in which [racialized] groups can be oppressed" (pp. 15-16). The account also draws on Joel Kovel's psychohistory of White racism (pp. 23-25), and Robert Williams's research on European racism and colonialism (pp. 26-28). It cites both conscious and unconscious forms of racist microaggression, noting Robert Chang and Keith Aoki's work on nativism (pp. 28-31), Linda Hamilton Krieger's study of cognitive bias (pp. 33-36), and Charles Lawrence's writing on the unconscious (pp. 37-41). It also usefully recommends classroom exercises and scenarios elucidating the individual, cultural, and institutional dimensions of racism. The classroom exercises strive to discern the presence or absence of racism on college campuses and city streets, as well as in high schools and in the media (pp. 20-23). Discernment, the editors remark, entails multiple theories and definitions of racism marked by the relationships of perpetrator and victim, individual and institution, culture and society, ideology and practice, and conscious and unconscious intent. Although often overt, the social and cultural relationships of racism sometimes vanish under the neutral veil of legal pedagogy (pp. 1145-54) and practice.[8]

In the practice of law and lawyering, racial microaggressions routinely take the form of stereotyping at trial in criminal and civil actions.[9] Turning to practice, the editors describe the microaggressions of racial stereotypes in courtroom advocacy and trial testimony. Their account calls attention to the "[a]mple evidence" of stereotyping suffusing the legal process. Surprisingly, the account fails to call for the establishment of an ethical duty to refrain from or to avoid "triggering" racial advocacy, especially in criminal cases. Instead, in an apparent concession to race-saturated lawyering, the editors suggest that while lawyers' "playing of the race card" may be repugnant, the "special duty of 'zealous advocacy'" to criminal clients may sometimes call for a defense lawyer to exploit party, juror, or public prejudice. Rather than resolve this tension, the editors use it to provoke reflection about the permissible ambit of lawyer professional responsibility in race cases (pp. 36-37), leaving others to make the case for an ethical duty to refrain from race stereotyping in the courtroom.[10]

Specifically, the editors show how private and public stereotyping, and state-sanctioned exclusion and inclusion, take shape through a series of material and discursive practices fashioning the definition of race. These

8. *See* Peggy C. Davis, *Law as Microaggression*, 98 YALE L.J. 1559 (1989).

9. *See* Alfieri, *Defending Racial Violence*, *supra* note 5; Alfieri, *Race Trials*, *supra* note 5.

10. *See* Alfieri, *(Er)Race-ing an Ethic of Justice*, *supra* note 5; Alfieri, *Race-ing Legal Ethics*, *supra* note 5.

practices can be glimpsed in Christopher Ford's work on state administrative differentiation in the classification of people by race (pp. 50-55), and in Joe Feagin and Clairece Booher Feagin's writing on the development of the concept of race in biology and social science (pp. 56-58). This work is buttressed by Tessie Liu's analysis of race and gender as social categories of knowledge and proof (pp. 58-59). In fact, Yen Le Espiritu contends that the legal sedimentation of nineteenth-century racial categories produces a kind of "pan-ethnicity" in the treatment of different minority ethnic groups under the racial rubric of a single, dominant culture (p. 60). The tendency toward pan-ethnic groupings in law and legal practices strains against color-blind traditions in constitutional, statutory, and regulatory jurisprudence. This tension emerges in Neil Gotanda's examination of the false color-blind quality of constitutional jurisprudence (pp. 61-63), Luis Angel Toro's review of obscurantist ethnic classifications (pp. 64-69), and Tanya Kateri Hernández's exploration of "pseudoscientific" multiracial classifications (pp. 69-77). The editors marshal this literature to declare that "race is fluid, rather than fixed" and to countenance "the increasing number of openly multiracial people" (p. 77). The fluidity of multiracial identity categories adds complexity to the advocacy and adjudication of civil rights claims, such as those at issue in the racial classification of American Indians in *Arthur Perkins v. Lake County Department of Utilities* (pp. 77-90).[11] Civil rights advocates struggle to contain this fluidity both as a matter of strategy[12] and as a matter of professionalism.[13] Unfortunately, the editors make no recommendations on how to cabin and sort out this growing complexity, moving instead to a discussion of multiplicity.

II
THE MULTIPLICITY OF RACE AND RACISM

With the theoretical foundation in place, the editors next trace the particular histories and struggles of four groups: African Americans, American Indians, Latinos/as, and Asian Americans. The juxtaposition of those histories shows both the multiplicity and the unity of racism in the United States. Multiplicity gains from both external and internal comparison of these diverse groups. Externally, their ranks span two centuries of colonial and imperial expansion. Internally, their color, geography, and political economy vary across region and locale. Yet, despite such differences, they experience unity in the changing caste of racial subordination.

---

11. 860 F. Supp. 1262 (N.D. Ohio 1994) (discussing the extent to which provable genetic and heriditary classification controls membership in a protected class under Title VII).

12. *See* Herbert A. Eastman, *Speaking Truth to Power: The Language of Civil Rights Litigators*, 104 YALE L.J. 763 (1995); Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821 (1997).

13. *See* Russell, *supra* note 6.

A. African Americans

For the editors, parsing the multiple strands of race and racism in American history highlights "the constant, rational struggle of African Americans against the oppression imposed upon them" (p. 91). That struggle frames the editors' discussion of African American history beginning with the colonial assumptions made by the Framers, notably Benjamin Franklin and Thomas Jefferson. Their eighteenth-century view of race, difference, and the natural inferiority of African Americans animated the early debate over slavery and secured its constitutional accommodation, in spite of countervailing natural-law ideology and abolitionist judgment, best exemplified by Frederick Douglass's essay *The Meaning of July Fourth for the Negro* (pp. 106-07).

To resolve this constitutional contradiction and to avoid the reductionism of property-based interest analysis, the editors focus on the "lived experiences and histories" of race in American society (p. 107). They uncover those histories in the legal and social structures of slavery, citing the text of the Virginia slave laws (pp. 108-11) and the violence of slave conditions disclosed in the despairing 1861 interview of Lavinia Bell (pp. 112-14). Strict judicial enforcement sustained this regime of legal violence erected upon the fear of slave insurrection and resistance. Examples include the perverse North Carolina and Louisiana state court opinions of *State v. John Mann* (pp. 114-16)[14] and *Kennedy v. Mason* (pp. 116-18).[15] Both narrowly interpreted property and tort laws to endorse a slaveholder's property rights in slaves "damaged" by third parties, but denied the slaves' own rights to seek redress for abusive treatment. This jurisprudence of state-sanctioned cruelty acquired sufficient force of logic to overcome the sentiment of anti-slavery southern judges. Herbert Aptheker documents the way this jurisprudence worked to suppress slave rebellion. Suppression occurred not only through physical force, but also through the denial of citizenship in *Dred Scott v. Sandford* (pp. 123-25),[16] a case later denounced in Frederick Douglass's speech to the American Anti-Slavery Society (pp. 126-29).

Although they advert to the antislavery moral discourse of the Abolitionist movement and the opprobrium towards slavery expressed during the Civil War, the editors note the ambivalence and expedience of the Reconstruction Era's attitudes toward African American equality, citing the core weakness in the equality principle soon manifested in an upsurge of federalism doctrine protecting state interests and in Jim Crow

14. 13 N.C. (2 Dev.) 263 (1829) (discussing whether a cruel and unreasonable battery on a slave by the hirer is indictable).

15. 10 La. Ann. 519 (1855) (holding slave overseer liable to the owner for slave mistreatment and killing).

16. 60 U.S. 393 (1856).

segregation laws. Given legal encouragement from the Supreme Court's holding in *Plessy v. Ferguson* (pp. 142-47),[17] the Jim Crow Era of separate-but-equal laws not only disenfranchised Blacks through literacy qualifications, poll taxes, and the White primary, but also degraded their education through deficient public schools and textbooks. Reinforced by the lynching and mob violence recounted in Barbara Holden-Smith's historical digest (pp. 149-51), this degradation and isolation extended even into the American military both here and abroad in the twentieth century. In the 1918 French Directive (p. 153-54), for example, the U.S. Army attempted to discourage fraternization between French and American Black troops because it might incense White Americans.

Shifting to the modern era, the editors survey post-WWII segregation, the rise of the NAACP, and the civil rights movement. Here they embrace the early litigation campaigns crafted by Charles Hamilton Houston and Thurgood Marshall, and the collective action and organized protest of the Montgomery bus boycott and the student sit-in movement in Greensboro, North Carolina (pp. 156-64). Skeptical of formal equality as a bulwark against racial violence, however, the editors limit their celebration of the Civil Rights Act of 1964 and the Voting Rights Act of 1965, a dissonance that haunts advocates and antiracist judges alike (pp. 129-72). To be clear, that discordancy in no way inhibits the advocacy or enforcement of civil rights remedies. Instead, it shrouds the pursuit of equality in the despair of unrealized hopes.[18]

B. American Indians

The editors continue their exploration of American racism by turning to the history of American Indians, emphasizing the diversity and particularity of the Indian nations. Their starting point is the doctrine of conquest and dominion depicted in *Johnson v. McIntosh* (pp. 175-78).[19] Borrowing from the work of Robert Williams on the cultural bias of federal Indian law, the editors scrutinize the views of the Framers expressed in the 1783 correspondence of George Washington to James Duane and in Washington's Third Annual Presidential Address to Congress, subsequently reiterated in the 1803 letters of President Jefferson to William Henry Harrison and in Jefferson's *Confidential Message Recommending a Western Exploring Expedition*. Surprisingly restrained in its racial tenor, the Washington-Duane correspondence refers to the Indian nations as

17. 163 U.S. 537 (1896) (upholding constitutionality of 1890 Louisiana statute providing for separate railway carriages for the "white and colored races").

18. *See* DERRICK A. BELL, FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM (1992); A. LEON HIGGINBOTHAM, JR., SHADES OF FREEDOM: RACIAL POLITICS AND PRESUMPTIONS OF THE AMERICAN LEGAL PROCESS (1996); LINN WASHINGTON, BLACK JUDGES ON JUSTICE (1994).

19. 21 U.S. (8 Wheat.) 543 (1823) (discussing federal court recognition of Indian tribal land claims).

"Savages" and "Wild Beasts of the Forest," while Washington's 1791 Presidential Address adverts to the "deluded tribes" of the Indian nations as "an unenlightened race of men" (pp. 179-82). The Jefferson-Harrison letter on Indian affairs urges the cultivation of the "affectionate attachment" of the Indian nations through mercantile trade and debt accumulation; Jefferson's *Confidential Message* similarly lauds the "wisdom" of economic exchange (pp. 183-84). Reflected in the substance of early federal Indian policy, those views approved White expansion and Indian displacement, through force and seizure if necessary (pp. 173-85).[20]

The editors track these foundational views in the development of federal Indian policy under the Indian Trade and Intercourse Acts of 1790 to 1834 and the Indian Removal Act of 1830 (pp. 186-88, 190). Echoed in President Andrew Jackson's *First Annual Message to Congress* in 1829 (pp. 188-90), such views reached fruition in the White state law and land seizure prerogatives of *Cherokee Nation v. Georgia* (194-202),[21] the asserted state sovereignty and constitutional resistance of *Worcester v. Georgia* (202-07),[22] and the frustrated federal criminal jurisdiction over Indian reservations in *Ex Parte Crow Dog* (pp. 208-12).[23] However deeply contested, the judicially condoned state prerogatives of seizure and removal complemented the paternalistic expansion of federal court criminal jurisdiction over Indian reservations in *United States v. Kagama* (pp. 213-15)[24] and the congressional splintering of tribalism under the plenary power of the General Allotment Act of 1887 in *Lone Wolf v. Hitchcock* (p. 216).[25] While the Indian Reorganization Act of 1934, recounted by Vine Deloria, Clifford Lytle, and Felix Cohen (pp. 217-19), ended the policy of privatizing tribal land through allotment and renewed the notion of tribal sovereignty and the doctrine of reserved rights, the editors point to the identity politics of the "termination period" as the reawakening of Indian consciousness-raising, resistance, and self-determination manifested in the 1961 *Declaration of Indian Purpose* (pp. 221-23) and the disputed employment preference of *Morton v. Mancari* (pp. 208-28).[26] This reawakening, they add, evolved in tension with the diminished-rights claims of *Lac*

20. Consider also Jefferson's 1785 letter to the Marquis de Chastellux (p. 185) (comparing Indian and Black claims to White equality).

21. 30 U.S. (5 Pet.) 1 (1831) (reviewing Georgia statutory seizure of Cherokee land).

22. 31 U.S. (6 Pet.) 515 (1832) (invalidating Georgia state law prosecution of Vermont citizen for residing on Cherokee land).

23. 109 U.S. 556 (1883) (voiding Dakota criminal indictment, conviction, and sentencing of member of Brule Sioux Indian nation).

24. 118 U.S. 375 (1886) (permitting federal criminal court jurisdiction over Hoopa Valley Indian reservation murder).

25. 187 U.S. 553 (1903) (dismissing Kiowa, Comanche, and Apache Indian challenge to congressional enactment of Allotment-era statutes as non-justiciable political question).

26. 417 U.S. 535 (1974) (rejecting non-Indian employee race discrimination and due process challenge to the Bureau of Indian Affairs' employment preference program).

du Flambeau Band of Lake Superior Chippewa Indians v. Stop Treaty Abuse-Wisconsin, Inc.[27] and the eroded commitment to tribalism and equality (pp. 228-30). It is unclear whether a similar normative deterioration will impede the international human rights strategies of indigenous peoples recalled by James Anaya and the legal rights struggle of native Hawaiians (pp. 236-46).

C. Latinos/as

The historical experience of Latinos/as is marked by their survival of a double conquest: first by Spain, and then by the United States through its annexation of Texas and the 1846-48 War with Mexico. Stripping away the rhetoric of Manifest Destiny, the editors reveal the familiar currents of White supremacy and racial dominion driving the conquest of Mexico and the invasion of Puerto Rico. Rhetorically, the currents of imperial superiority inform the history of the amendment and ratification of the 1848 Treaty of Guadalupe Hidalgo (pp. 260-66). That history chronicles the diminution of Mexican American citizenship claims, coupled with the dilution of their legal status and the restriction of their land ownership rights. For illustration, the editors cite the citizenship borders of the California Constitution of 1849 (pp. 266-67) erected to permit only White citizens to vote. Bolstered in *People v. De La Guerra* (pp. 267-270),[28] the borders confirm that the treaty-ratified grant of citizenship did not guarantee the possession of all political rights such as the exercise of the electoral franchise in California. The editors demonstrate how United States courts expanded these borders of exclusion by construing land grant claims to dispossess Mexican property owners under the ideology of Manifest Destiny in the Northern New Mexico land grant litigation (pp. 272-75), and under the weight of cases such as *John Charles Fremont v. United States* (pp. 275-78),[29] *De Arguello v. United States* (pp. 278-80),[30] *Botiller v. Dominguez* (pp. 282-83),[31] and *United States v. Sandoval* (pp. 284-87).[32]

Having shown the futility of litigation and the ubiquity of violence, the editors next count the varied modes of Mexican American resistance to American conquest in the Southwest. Reciting the history of the Cortina Wars and the New Mexico Land Grant Wars, as well as border folklore

27. 759 F. Supp. 1339 (W.D. Wis. 1991) (issuing preliminary injunction prohibiting private individuals from interfering with the Chippewas' off-reservation spearing of walleye).

28. 40 Cal. 311 (1870).

29. 58 U.S. (17 How.) 542 (1854) (confirming validity of Mexican American land conveyance).

30. 59 U.S. (18 How.) 539 (1855) (affirming validity of Mexican land grant claim to California ranch).

31. 130 U.S. 238 (1889) (approving federal statutorily created California Land Claims Commission jurisdiction over private land claims of Mexican citizen).

32. 167 U.S. 278 (1897) (confirming land grants to individual settlers, rather than common lands, in New Mexico territory).

(pp. 293-99), they stress that Mexican American resistance continues in contemporary battles over linguistic primacy, educational equality, and agricultural labor. Fought out against the current backdrop of state bilingual education, the main linguistic battle concerns the merits of regional bilingualism in Spanish and English (pp. 299-304). The educational battle goes to the struggle against segregation in schools and public facilities (pp. 304-09). An even more pitched battle relates to the employment struggle of Mexican immigrant agricultural labor in the fields of the Southwest, especially California. Inspired by the anti-immigrant impulse labeled "the new nativism" by Gilbert Paul Carrasco, the exploitation and expulsion of immigrant labor enmeshes the Mexican and Filipino farmworker movement in state and agribusiness disputes over land, wages, and working conditions (pp. 310-19).

The cultural stigma marring Mexican American identity also sullies Puerto Ricans. As a territory acquired in the Spanish-American War of 1898, Puerto Rico suffers a colonial relationship with the United States.[33] American colonial rule of Puerto Rico, the editors explain, shapes legal, political, and social status inside the territory. Rationalized by the ideology of expansion and justified by the language of conquest, Puerto Rico's subordinate status is inscribed in both legislation and adjudication. Although Congress granted United States citizenship to Puerto Ricans pursuant to the Jones Act of 1917 (p. 341), Puerto Rico's commonwealth status deforms the meaning of that citizenship for voting and equality purposes given that the territory holds no sway in Presidential elections and commands no congressional representation (p. 347). Commonwealth status also makes possible disparate treatment of federal entitlements.

D. Asian Americans

Asian Americans, the editors contend, likewise suffer discrimination in private and public spheres of American life. Because immigration connects both spheres, much of the focus of the Asian American chapter of *Race and Races* is on immigration law. The editors point to the common patterns of racism against all Asian Americans in immigration law despite the historical, cultural, and linguistic diversity of the Chinese, Japanese, Koreans, Filipinos, Asian Indians, Vietnamese, Laotians, and Cambodians. Even a cursory examination of the history of labor immigration shows signs of race-based exclusion and resentment, initially against the Chinese, as illustrated by the ban on Chinese testimony in criminal and civil cases enacted in *People v. Hall* (pp. 370-73),[34] and later against the Japanese in equally virulent fashion. That exclusionary history triumphed over

33. Under the 1898 Treaty of Paris (p. 327).

34. 4 Cal. 399 (1854) (prohibiting admissibility of Chinese testimony against a White defendant in criminal trial). The California legislature repealed the ban in 1872 (p. 374).

safeguards such as civil rights protections specifically negotiated by the Chinese government on behalf of its subjects in the Burlingame Treaty of 1868 (p. 374) and also over the more general protections of the Civil Rights Act of 1870 (pp. 374-75). As a consequence, the Chinese faced intensifying racism not only from states, exhibited in the corporate employment restrictions of Article XIX of the California Constitution of 1879 (pp. 376-77),[35] but also from anti-Chinese hate groups (pp. 375-76). State-sponsored racism, the editors maintain, infected laundry, licensing, and building code ordinances. The discrimination inherent in these economic regulations, vividly displayed in *Yick Wo v. Hopkins* (pp. 378-81),[36] was surpassed by the Chinese Exclusion Act of 1882 (pp. 382-84), curtailing the right to immigrate, and the Scott Act of 1888 (p. 384), restricting the right to return. This brazen discrimination was repeated by the invidious enactment of the 1892 Geary Act (pp. 388-90), the first race-based internal passport system in the United States. Federal courts endorsed the exercise of congressional power both to regulate the status of Chinese laborers (pp. 384-88)[37] and to control the flow of Chinese immigration (pp. 390-95),[38] thereby condoning the nineteenth-century practice of public discrimination.

Although the first significant immigration of Japanese Americans occurred in 1885, later than that of the Chinese, they also suffered from the enactment and enforcement of discriminatory legislation. Alien Land Laws, such as the 1913 California Alien Land Law (pp. 398-99), and the Washington Alien Land Law discussed in *Terrace v. Thompson* (pp. 401-04),[39] restricted aliens' ability to own or transfer land to those eligible for citizenship. By effectively prohibiting Japanese Americans from qualifying for citizenship, such laws inhibited the social assimilation and economic integration of the Japanese (pp. 401-04). The double blow of *Takao Ozawa v. United States* (pp. 435-37),[40] upholding legislation rendering Japanese Americans ineligible for citizenship, and the World War II curfew and internment orders imposed upon those of Japanese ancestry residing along the West coast (pp. 406-12), badly undermined Japanese citizenship status.[41] These acts established the precursor for anti-Asian

35. CAL. CONST. of 1879, art. XIX (invalidated 1880) (prohibiting employment of Chinese by California corporations).

36. 118 U.S. 356 (1886) (overturning conviction under discriminatory municipal ordinance for equal protection violation of the Fourteenth Amendment).

37. *See* Chae Chan Ping v. United States, 130 U.S. 581 (1889) (recognizing the plenary power of Congress under the Scott Act of 1888 to prohibit from entering the United States Chinese laborers who had departed before its passage).

38. *See* Fong Yue Ting v. United States, 149 U.S. 698 (1893) (companion cases) (affirming dismissal of writs of habeas corpus issued on behalf of Chinese laborers arrested for violations of the Geary Act's internal passport system).

39. 263 U.S. 197 (1923).

40. 260 U.S. 178 (1922).

41. *See* Hirabayashi v. United States, 320 U.S. 81 (1943) (upholding the validity of federal curfew orders).

violence. Rooted in the racial hierarchy of national identity and the attribution of "foreignness," violence against Asian Americans continues unabated, as demonstrated by the 1992 findings of the U.S. Commission on Civil Rights (pp. 397-428).

III
RACE, LAW, AND CITIZENSHIP

Race and the forces of exclusion animating the law of immigration frame the notion of citizenship. Construed in terms of both marked and unmarked groups, citizenship embroils the concepts of democracy and equality, sometimes erupting in violence. Race and violence permeate the legal history of American citizenship, coloring the grant and denial of status, and the caste of inclusion and exclusion. Historical studies, the editors contend, confirm the privilege of color in the imagery, transparency, and invisibility of the status of Whiteness and the caste of otherness.[42] The editors show that White color consciousness and supremacy gave rise to the White-cabined citizenship eligibility of the Naturalization Act of 1790 (p. 429) and to the court-determined citizenship controversies over light-skinned non-European qualification in *In re Ah Yup* (Chinese) (pp. 430-32),[43] *Takao Ozawa v. United States* (Japanese) (pp. 435-37),[44] and *United States v. Bhagat Singh Thind* (Asian Indian) (pp. 437-40).[45] Fanned by class conflict, that sense of supremacy also produced violence. The editors link conflict and violence to the ideology of White racial purity. The belief in racial purity, they explain, motivated an anti-immigrant sentiment toward the early twentieth-century European immigration of the Irish, Italians, and Jews (pp. 445-53), and more recently toward Vietnamese Amerasian refugees (pp. 441-44). For James Barrett and David Roediger (pp. 445-52), the immigrant flight to Whiteness stems from an attempt to escape the demeaning shadow of race and the corresponding danger of violence incited by the nationalistic fervor of Manifest Destiny and the scientific supremacy of Social Darwinism. The same flight from the color line encourages the effort to emulate White transparency in Black-for-White passing.

In addition to the color-coded imagery of Black-for-White passing, the editors suggest that White privilege manifests itself through the prevalence of a White aesthetic in art and literature. The cultural regulation of racial caste under the gaze of this aesthetic mimics and reinforces social hierarchy. Thomas Ross (pp. 465-68) and Linda Ammons (p. 468) decipher

---

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

43. 1 F. Cas. 223 (C.C.D. Cal. 1878) (No. 104).

44. 260 U.S. 178 (1922).

45. 261 U.S. 204 (1923).

elements of racial hierarchy in the image of White innocence. D. Marvin Jones (pp. 469-70) unearths the same properties in metaphor and story. The editors imply that these properties insidiously grip the popular imagination, corroding visions of the racial self and other, and thereby deforming the classical liberal conception of personhood and mutuality. Intuitively appealing, this implication garners weak empirical support from the text of *Race and Races*. The editors, for example, decline to explicate the sociology of the popular imagination, estimate the White aesthetic's corrosive effect on the racial self, or measure its disparate impact on the public and private spheres of the self. With sparing elaboration and evidence, they seem to reiterate the axiom of the Black-White binary paradigm of race and extend its reach to the arts. But the cultural inscription of race requires more than broad-brush engrafting, especially in the performing and visual arts. To be sure, White metaphor may be tied to the racial pride, nationalism, and supremacy of the White power movement documented by Elinor Langer's study of American Neo-Nazi groups (pp. 479-484) and Mark Mueller's research on internet hate groups (pp. 485-86). This tie is also displayed in the racial paranoia of on-line newsgroups (pp. 486-88). That cultural link, however, may be frayed by the dissonance of racial commitment and betrayal illustrated by Noel Ignatiev's conception of "race traitors" (pp. 489-93). The race traitor idea nicely illuminates the contested role of Whites in the struggle for equality. Both Frances Lee Ansley (pp. 493-97) and Barbara Flagg (497-99) point to the centrality of identity politics, racial allegiance, and White race consciousness to that struggle.

The editors take up the concept of racial equality as it applies to both individuals and groups. Starting from the liberal framework of equality, embodied in current Fourteenth Amendment Equal Protection Clause jurisprudence, they point to the requirement of "comparing individuals" and "ensuring that likes are treated alike" (p. 500). Under this framework, they continue, individuals are reduced to atomistic entities "absent any relation to others" (p. 500). Reductionism of this sort, they contend, makes it appear that the harm of racism is confined to "disparate individuals unconnected by race or by the other categories that identify and connect people" (p. 500). Well-known to critical race theorists,[46] this critique of the liberal subject and individual harm opens the door to an enlarged concept of group and community identity. The editors believe that a more expansive concept of identity can be found in a postmodern vision of personhood which "recognizes that individuals are more complex than an identifying trait" (p. 501). More accurately conceived, individuals "exist as part of larger groups—races, families, genders, sexual orientations, and many other vectors that comprise identity" (p. 501). Decontextualizing the

46. *See* BARBARA J. FLAGG, WAS BLIND, BUT NOW I SEE: WHITE RACE CONSCIOUSNESS & THE LAW 1-65 (1998).

individual from this identity foundation, the editors insist, results in not only "unfair treatment," but also "a failure of equality" (p. 501). That insistence, couched within a critique of the individualized orientation of equal protection remedies, fails to resolve the tension spurred by individual and group competition over the scope of protection afforded by constitutional equality. Likewise, it fails to settle the conflicts between individual equality and community sovereignty or self-determination. The editors appear to attribute this twin failure to the contested meaning of the Equal Protection Clause, its racialized constitutional origin, and its embattled development under the neutral formalism of color-blind doctrinal rationality. The inequitable regulation of river port pilots in *Kotch v. Board of River Port Pilot Commissioners*[47] shows the thinness of neutral rationality (pp. 506-09). The Japanese exclusion order approved in *Korematsu v. United States*[48] and the Mexican jury exclusion policy struck down in *Hernandez v. Texas*[49] demonstrate its unstable logic (pp. 511-19).

To test this logic, the editors introduce a number of readings criticizing the color-blind tenor of Equal Protection jurisprudence. For Reva Siegel (pp. 520-33), the logic of constitutional scrutiny of racial and gender classification is status-enforcing. Even when the classification embodies a facially neutral policy, it incorporates existing hierarchical values and renews historical patterns of racial and gender inequity. Stephanie Wildman (pp. 534-35) finds these values and patterns embedded in the rights discourse of anti-discrimination statutes regulating workplace equality. Parsing the application of Title VII of the 1964 Civil Rights Act, she confronts persistent strands of bias that survive in the form of unacknowledged privilege. Examples of court-condoned privilege-based employment policies which operate differentially according to the employee's race include the workplace grooming requirement prohibiting "corn rows" in *Rogers v. American Airlines* (pp. 536-38)[50] and the English-only workplace speech requirement in *Garcia v. Spun Steak Company* (pp. 541-48).[51] A selection by Mari Matsuda (pp. 551-61) shows how privilege and power may also hinge, though less overtly, on workplace assumptions about the linguistics of "standard" and deviant accents. Overcoming privileged positions in the workplace, the editors admit, risks putting anti-subordination and race-conscious principles at variance. Of necessity, workplace elevation in the

47. 330 U.S. 552 (1947) (sustaining Louisiana river pilotage selection system based on practice of nepotism).

48. 323 U.S. 214 (1944) (upholding constitutionality of 1942 civilian exclusion order directed at persons of Japanese ancestry).

49. 347 U.S. 475 (1954) (reversing criminal conviction because of systematic exclusion of persons of Mexican descent from service as jury commissioners, grand jurors, and petit jurors).

50. 527 F. Supp. 229 (S.D.N.Y. 1981) (dismissing statutory claims of race and sex discrimination in enforcement of airline grooming policy).

51. 998 F.2d 1480 (9th Cir. 1993) (rejecting employment discrimination challenge of bilingual workers to English-only workplace speech policy).

form of race-conscious hiring and promotion clashes with the anti-subordination principle of non-hierarchical treatment. Coupled with the ascendant disparate treatment jurisprudence of *Adarand Constructors, Inc. v. Pena* (pp. 564-70)[52] limiting the ambit of affirmative action in the workplace, that clash threatens to weaken the search for equality across language, accent, hair style, dress, and skin color and, moreover, to undermine multiracial representation in the workplace (pp. 500-79).

In the public sphere, infused by democratic norms of participation, equality of citizenship and representation are closely allied with the idea of voting. The editors record the historical struggle to realize this idea against exclusionary practices endorsed by law, and enforced by state officials and vigilante groups. Underscoring the importance of voting to equality, they emphasize the role of law and legal rights vindication in strategic combination with political organizing and voter registration (pp. 588-89). Without this combination of advocacy and organizing, the editors fear the continued disenfranchisement of communities of color by new methods, as shown in the Supreme Court's acceptance of a transfer of authority away from recently elected Black county commissioners in *Presley v. Etowah County Commission* (pp. 618-30).[53] Aroused by Robert Chang's account of Asian American exclusion from avenues of political participation, they call for the revitalization of democratic participatory norms and for heightened practice in the "training for democracy" on behalf of both individuals and groups (pp. 614-45).

Plainly, education stands as an essential part of democratic training. For the editors, education is also an area where the state, the market, and the law of property entwine with the geography of race. Using Margalynne Armstrong's study of race and property values under conditions of entrenched segregation as a starting point (pp. 647-52), they find the roots of educational inequality in the racialization of space caused by residential segregation and housing discrimination. To demystify the natural order of racialized space, the editors track the development of segregation in public school education, culminating in the condemnation of *Brown v. Board of Education* (pp. 675-82).[54] The hardening of this racial order in the post-*Brown* era sheds doubt upon the efficacy of group-oriented remedial strategies as the best means to ensure high-quality desegregated education.[55] The

52. 515 U.S. 200 (1995) (applying strict scrutiny to a minority-preference program in federal highway construction).

53. 502 U.S. 491 (1992).

54. 347 U.S. 483 (1954) (holding that segregation of children in public schools solely on the basis of race deprives the minority group's children of equal educational opportunities guaranteed by the Fourteenth Amendment).

55. *See* GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? 107-55 (1991); GIRARDEAU A. SPANN, RACE AGAINST THE COURT: THE SUPREME COURT AND MINORITIES IN CONTEMPORARY AMERICA (1993).

Supreme Court's failure to fashion an appropriate remedy under the Fourteenth Amendment for disparate state systems of public school financing in *San Antonio Independent School District v. Rodriguez* (pp. 686-95)[56] and a similar failure to address residential patterns of segregation induced by "white flight" in *Missouri v. Jenkins* (pp. 697-708),[57] deepens that sense of doubt. Commenting on the futility of litigation in the face of intractable segregation and educational inequality, Drew Days challenges the very desirability of integration, particularly for Black males (pp. 710-22). The erosion of the integrative ideal corresponds to a growing repudiation of racial classifications in education and a move toward race-neutral admission procedures exemplified by the recent federal court retreat from racial preferences to promote law school diversity in *Hopwood v. State of Texas* (pp. 725-42).[58] A disturbing turn, this retreat may signal a shift in the progress toward a more inclusive sense of citizenship and a more sensitive racial aesthetic in American culture and society. Much of that progress hinges on an enhanced appreciation of racial identity and group harm and on an enlarged commitment to the public and private equality of democratic community.

IV
RACE, CULTURE, AND SOCIETY

The advance and retreat of racial community is also visible in culture and society. Although the translation of race from politics to culture and society is imprecise, its lexicon of color-coded discourses infuses everyday life in the popular mind and in the law. The editors explore the indefinite connection between race, racism, and popular culture by compiling the demeaning artifacts of outsider imagery and narrative that construct the daily life of racial experience. Richard Delgado and Jean Stefancic assemble the artifacts of group experience from popular narrative (pp. 959-70), showing how racial groups are similarly cast as outsiders. Margaret Russell collects like images from modern film (pp. 970-73). The racial stereotypes both exhibited and informed by cultural caricature extend beyond the Black figure to infect the aesthetic of "foreignness" governing images of Asians Americans (pp. 974-76), the "quaint" images of American Indians as vanished or strangely primitive people (pp. 991-94), and even the mythology of Pocahontas (pp. 994-96). Linda Ammons's look at the credibility of Black women's trial testimony demonstrates how these racial stereotypes can play out in the courtroom (pp. 985-88). Combating caricature at trial[59] and in the arts, as Yolanda Broyles-González observes in her account of

56. 411 U.S. 1 (1973).
57. 515 U.S. 70 (1995).
58. 78 F.3d 932 (5th Cir. 1996), *cert. denied*, 518 U.S. 1033 (1996).
59. *See* Anthony V. Alfieri, *Race Prosecutors, Race Defenders*, 89 GEO. L.J. 2227 (2001).

the Farm Worker's Theater, depends on the mobilization of countervailing power, racial memory, and community identity (pp. 976-79). According to two pieces by Richard Delgado, it also rests on constraining racist impulse through the formality of legal process (pp. 997-1001) and hate speech regulation (pp. 1013-16).

For many, the editors admit, "free speech is a necessary condition for community, solidarity, and self-fulfillment . . . ." (p. 758). Moreover, free speech historically served the civil rights ideal by safeguarding minority political protest, oftentimes with mixed results.[60] Against this robust history of free speech guarantees to civil rights protest, the call for hate speech regulation sounds widespread alarm among both civil libertarians and civil rights activists,[61] even when limited to campus racial epithets. Unlike restrictions based on common law or statutory libel,[62] hate speech prohibitions rooted in the presumption of identity and community harm encounter both judicial reluctance[63] and majority-based popular resistance, notwithstanding the doctrinal appropriateness of tort law in defamation. To the editors, constitutionally-tailored hate speech regulation warrants sympathy and enactment. Paradoxically, less speech may advance the denigration of cultural identity and pluralism under "Official English" legislative initiatives (pp. 835-56).[64]

For law, the paramount forum for speech is the oral, written, and social text of lawyering. The cultural denigration of the Black image and the social subordination of the Black voice is sharply etched in the law and lawyering of the criminal justice system. In the arena of crime and punishment, Juan Perea's astutely observed binary paradigm of White innocence and Black guilt still largely prevails. This racialized paradigm survives in

60. *Compare* Cox v. Louisiana, 379 U.S. 536 (1965) (pp. 758-64) (throwing out breach of the peace convictions of civil rights sit-in protestors on First Amendment grounds), *with* Adderley v. Florida, 385 U.S. 39 (1966) (pp. 764-68) (affirming convictions for trespass of protestors who marched onto the grounds of a jail to protest the arrest of civil rights demonstrators), *and* Walker v. City of Birmingham, 388 U.S. 307 (1967) (pp. 768-75) (upholding contempt sanctions against protestors who defied an arguably unconstitutional anti-assembly injunction).

61. *See* Stephen G. Gey, *The Case Against Postmodern Censorship Theory*, 125 U. PA. L. REV. 193 (1996).

62. *See* Beauharnais v. Illinois, 343 U.S. 250 (1952) (affirming criminal conviction under Illinois libel statute); N.Y. Times v. Sullivan, 376 U.S. 254 (1964) (reversing state damage award under Alabama libel law for violation of First and Fourteenth Amendment freedoms of speech and the press).

63. *Compare* Doe v. Univ. of Michigan., 721 F. Supp. 852 (E.D. Mich. 1989) (enjoining administrative enforcement of University of Michigan policy prohibiting hate speech because it violated the First Amendment), *and* R.A.V. v. City of St. Paul, 505 U.S. 377 (1992) (proclaiming St. Paul anti-bias ordinance facially unconstitutional under the First Amendment), *with* Wisconsin v. Mitchell, 508 U.S. 476 (1993) (approving Wisconsin penalty-enhancement sentencing statute punishing bias-inspired conduct).

64. *See* Arizonans for Official English v. Arizona, 520 U.S. 43 (1997) (p. 848) (vacating challenge to Arizona official English constitutional amendment as non-justiciable controversy); Ruiz v. Hull, 957 P.2d 984 (Ariz. 1998) (pp. 849-57) (concluding that Arizona official English constitutional amendment violates First Amendment free speech and Fourteenth Amendment equal protection rights).

spite of the recurrent White violence against Asians and Latinos (pp. 1019-23), the pervasive evidence of race-motivated police brutality (pp. 1028-34), and the disproportionate rates of Black male arrest and imprisonment (p. 1035). Like the capital sentencing irregularities in *McCleskey v. Kemp* (pp. 1076-87),[65] these disparities may be attributable to racially neutral policies, social norms, and cultural differences. Yet their unbroken continuity implies something more than neutral happenstance. Indeed, the enduring legacy of race and crime, either in the differential prosecution of violence against women of color mentioned by Kimberlé Crenshaw (pp. 1026-28), or in the racially based jury nullification reported by Paul Butler (pp. 1045-47), lies in the ineradicable and seemingly evanescent quality of bias in private offices, courtroom halls, and public streets.[66]

A similar bias, obdurate but elusive, marks the site of sexuality and the family in American law. Traditionally thought of as a private realm sequestered from the state, sexuality in communities of color, especially in Native American and slave contexts, is heavily regulated through both cultural and governmental encroachment. Under antebellum and postbellum regimes, the editors note, legal doctrines and evidentiary burdens bent to accommodate White and Black hierarchy. For example, in *Story v. State* (p. 886-89),[67] a White woman's reputation for prostitution was not considered evidence of unchastity admissible to challenge her testimony that she was raped by a Black man. Darren Hutchinson (pp. 890-93) and Catharine MacKinnon (pp. 895-97) refer to the ongoing lack of juridical accommodation of difference in the marginalized treatment of gays, lesbians, and sexual atrocity victims, specifically showing how the lack of police interest in, and judicial awareness of, sexualized violence is exacerbated when victims are members of minority groups. The editors see some signs of progress in recent federal court decisions recognizing sexual assault as a basis for a genocide claim according to international law and international war crime tribunals, shifts that may signal the opening of gender hierarchies in international law. They also look to the surprisingly recent repudiation in American law of antimiscegenation statutes (pp. 909-18)[68] as a hopeful indication of a loosening of hierarchy-bound racial status in the field of interracial intimacy. In the realms of reproduction and the family, however,

65. 481 U.S. 279 (1987) (rejecting constitutional complaint of race-infected capital sentencing determinations under the Fourteenth and Eighth Amendments).

66. *See* People *ex rel.* Gallo v. Acuna, 929 P.2d 596 (Cal. 1997) (affirming trial court issuance of preliminary injunction under California anti-gang public nuisance statute).

67. 59 So. 480 (1912).

68. *Compare* Loving v. Virginia, 388 U.S. 1 (1967) (p. 914-18) (striking down Virginia miscegenation statute under Equal Protection and Due Process Clauses of the Fourteenth Amendment), *with* Roldan v. Los Angeles County, 18 P.2d 706 (Cal. App. 1933) (p. 909-11) (upholding California miscegenation statute).

neither low-status women nor women of color enjoy broad respite from state intervention and the discourse of subordination.[69]

V
RACE AND REFORM

The editors' exegetical reading of the sociolegal text of race in American law and society concludes with a meditation on the role of law and legal rights in obtaining reform. Canvassing multiple sites of racial contestation, they urge varied methods of resistance in law, lawyering, and political organizing. Resistance, they suggest, may spring from the logic of law and the rights-based commitment of the reform-minded lawyer. This optimistic stance, encouraged by Rennard Strickland's defense of Anglo-American jurisprudence in tribal courts (pp. 1092-96), gathers strength from the inheritance of civil rights statutes and grass-roots movements, like that of Dr. Martin Luther King, Jr. (pp. 1097-1104), which attack White supremacy by boycott and nonviolent action.

To their credit, the editors are alert to the creative tensions accompanying lawyer-engineered social change. Those tensions are inherent in coalition work. To mitigate the tensions spawned by inter-group conflict, they recommend interracial conflict management (pp. 1109-14). Effective conflict resolution hinges on the recognition of common interests and stakes. The White stake in this multiracial outcome, they assert, comes from linking up common systems of oppression and disclosing shared goals of community uplift. Yet as Derrick Bell and Richard Delgado comment, that stake is of uncertain measure. Absent a commitment to equality and racial healing, the divergent experiences and realities of race inhibit meaningful cross-racial discourse, even given the pressures of assimilation. Consequently, the editors look inward to the classroom and to the legal profession for opportunities to build antiracist coalitions and interracial communities (pp. 1091-1154).

CONCLUSION

The editors' inward turn to a classroom community and to a legal practice accepting of "an obligation to learn about race and strategize about how it could affect each case" (p. 1154) burdens *Race and Races* with the onus of prescription in pedagogy and advocacy. However praiseworthy, the text will not bear that heavy onus. Its principles of criticism leave us normatively unguided in the classroom and floundering in the vagne context of community. Its justice mandate lacks an algorithm to weigh benefit

69. *See* LINDA GORDON, PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE (1994); DOROTHY E. ROBERTS, KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY (1997); Dorothy E. Roberts, *Spiritual and Menial Housework*, 9 YALE J.L. & FEMINISM 51 (1997).

against harm or to reconcile the competing claims of the individual and the group. Its reliance on racial intuition misplaces faith where skepticism belongs.

To render prescriptive counsel properly, the editors must confront the tension dividing modern and postmodern modes of analysis in the critical race movement.[70] Perhaps wisely, they leave that tension unmediated. Accordingly, they declare commitments to neutrality and race-consciousness. They condemn and exploit the hegemonic logic of law. They ridicule and embrace formalism and process values. They celebrate multiracial identity and assail the ill-fitting methods of advocacy and adjudication. They deplore the limitations of rights-consciousness and agitate for its renewal. Like others devoted to race-conscious change in the law school curriculum[71] and its clinics,[72] and in the profession[73] and its ethos,[74] they labor in the ambiguity of this long moment of transition. The duration of this transition, its breadth, and its outcome are uncertain. The comfort of certainty comes only from the realization that race will continue its hold upon law and society, inciting rancor and inspiring reconciliation. Out of extraordinary devotion, the editors have carved a far-reaching path to reconciliation and respect in a community of race. We should be grateful for their work and hard-earned leadership. We should hope they do not grow weary.

---

70. *See* Anthony V. Alfieri, *Black and White*, 85 CALIF. L. REV. 1647 (1997) (book review).

71. *See* Eleanor Brown, *Black Like Me? "Gangsta" Culture, Clarence Thomas, and Afrocentric Academics*, 75 N.Y.U. L. REV. 308, 315-40 (2000); Kimberlé Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L.J. 1 (1989); Randall Kennedy, *Race Relations Law in the Canon of Legal Academia*, 68 FORDHAM L. REV. 1985, 1992-2010 (2000).

72. *See* Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 STAN. L. REV. 1807 (1993); Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345 (1997); Kevin R. Johnson & Amagda Perez, *Clinical Legal Education and the U.C. Davis Immigration Law Clinic: Putting Theory into Practice and Practice into Theory*, 51 SMU L. REV. 1423 (1998); Kimberly E. O'Leary, *Using "Difference Analysis" to Teach Problem-Solving*, 4 CLINICAL L. REV. 65 (1997); *see also* Jon C. Dubin, *Faculty Diversity as a Clinical Education Imperative*, 51 HASTINGS L.J. 445 (2000); Lucie E. White, *The Transformative Potential of Clinical Legal Education*, 35 OSGOODE HALL L.J. 603, 605 (1997).

73. *See* Alex M. Johnson, Jr., *The Underrepresentation of Minorities in the Legal Profession: A Critical Race Theorist's Perspective*, 95 MICH. L. REV. 1005 (1997); David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms: An Institutional Analysis*, 84 CALIF. L. REV. 493 (1996); *see also* David B. Wilkins, *Partners Without Power? A Preliminary Look at Black Partners in Corporate Law Firms*, 2 J. INST. FOR STUDY LEGAL ETHICS 15 (1999); David B. Wilkins, *Social Engineers or Corporate Tools:* Brown v. Board of Education *and the Conscience of the Black Corporate Bar*, *in* RACE, LAW AND CULTURE 137-69 (Austin Sarat ed., 1997); David B. Wilkins, *Two Paths to the Mountaintop?: The Role of Legal Education in Shaping the Values of Black Corporate Lawyers*, 45 STAN. L. REV. 1981 (1993).

74. *See* David B. Wilkins, *Beyond "Bleached out" Professionalism: Defining Professional Responsibility for Real Professionals*, *in* ETHICS IN PRACTICE 207-39 (Deborah L. Rhode ed., 2000).