

# Book Review

## Race and Races: Constructing a New Legal Actor

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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*Reviewed by Kathryn Abrams‡*

### INTRODUCTION

One crucial consequence of our classroom pedagogy is the formation of certain kinds of thinkers and actors. Most of us acknowledge this, in a general way: our teaching helps students to “think like lawyers.” Some scholars have theorized this thought process more specifically, when they have written, for example, about the kinds of intellectual habits engendered through rigorous exposure to the case method,<sup>1</sup> or the kinds of attitudes toward hierarchy produced by the substance and method of legal education.<sup>2</sup> But what is true of pedagogic methods, such as the Socratic method or case study, is also true of the texts from which students learn the law. The kinds of materials students encounter, the questions to which they are exposed, and the strategies and avenues for producing change with which they are presented, all contribute to the shaping of an actor who responds in particular ways to the law, or to the social problems it seeks to address.

Yet the recognition that choices made within casebooks can shape legal professionals has been slower to emerge, even among those scholars who have offered radical critiques of the law. Many factors may be responsible, from the institutional caution of casebook publishers to the divided attention of those seeking to establish the legitimacy of new bodies of legal

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

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

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

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

‡ Professor of Law, School of Law, University of California, Berkeley (Boalt Hall); Professor of Law, Cornell Law School.

1. KARL LLEWELLYN, *THE BRAMBLE BUSH* (1930).

2. DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY* (1983).

thought.<sup>3</sup> Even professionalization is likely to have played a role: most critical scholars were educated through the Socratic presentation of traditional Langdellian case materials. It may therefore have taken us time, and a full appreciation of the scope of our own critiques, to recognize that approaches that challenge the neutrality of traditional legal decisionmakers, or characterize law as one among many social structures that embed inequality, demand a different approach to the presentation of legal materials. For any or all of these reasons, casebooks that seek to foster a more critical and multidisciplinary understanding of the role of law and the domain of legal professionals have only gradually begun to appear.<sup>4</sup>

From this critical, multidisciplinary perspective, the publication of *Race and Races* reflects an important achievement. Edited by four distinguished scholars associated with the critical race theory movement, the casebook does more than compile a wide array of multidisciplinary perspectives on the meanings and consequences of race in American society. This book seeks to instill in a new generation of professionals a distinct, nontraditional understanding of the role of law in the genesis and solution of social problems. Although the book occasionally falls short of its reconstructive pedagogic aspirations, it represents a pathbreaking effort in transforming critical theory into practical, change-oriented pedagogy. In this respect, the book also reflects a major development in critical race theory as a body of thought. The increasingly insistent color-blindness of the Supreme Court,<sup>5</sup> and the federal courts in general, has raised questions about

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3. Beyond the complex task of bringing critical perspectives to scholarship, scholars advocating systematic change have been concerned with identifying the cases that should supplement existing sets of materials, compiling anthologies that bring new work to light, and focusing on those aspects of classroom pedagogy that hinder or facilitate critical thought, or impede or empower certain groups of students. This last task has been an object of intense focus, spawning numerous articles, conferences and published symposia. See, e.g., LANI GUINIER ET AL., *BECOMING GENTLEMEN* (1997); Kimberlé Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L.J. 1 (1989); Elizabeth Mertz et al., *What Difference Does Difference Make? The Challenge for Legal Education*, 48 J. LEGAL EDUC. 1 (1998); Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299 (1988); *Women in Legal Education—Pedagogy, Law, Theory and Practice*, 38 J. LEGAL EDUC. 1 (1988).

4. There are, of course, examples of such books. Many of these books are in fields that directly reflect the critical perspectives of the authors and editors. See e.g., KATHARINE T. BARTLETT & ANGELA P. HARRIS, *GENDER AND LAW: THEORY, DOCTRINE, COMMENTARY* (2d ed. 1998); MARY BECKER ET AL., *FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY* (1994); DERRICK A. BELL, JR., *RACE, RACISM, AND AMERICAN LAW* (4th ed. 2000). A few are in more traditional doctrinal fields. See e.g., JOSEPH WILLIAM SINGER, *PROPERTY LAW: RULES, POLICIES, AND PRACTICES* (2d ed. 1997). These books include innovations such as extensive explorations of group-based history, multidisciplinary articles and analyses, hypotheticals and role playing exercises that sometimes employ factual or fictional narratives, and emphasis on nontraditional areas of doctrine or extradoctrinal influences on law.

5. See generally *Adarand Constructors, Inc. v. Peña* 515 U.S. 200 (1995); *Shaw v. Reno* 509 U.S. 630 (1993); *City of Richmond v. Croson*, 488 U.S. 469 (1989).

the direction of “critical race praxis.”<sup>6</sup> It has challenged critical race theorists to consider how they can intervene under circumstances in which courts are unlikely to heed their message, and how critical race theory can serve, more broadly, as an instrument for achieving racial equality.<sup>7</sup> *Race and Races* responds to this challenge with a vision of a legal professional whose understanding of salient social problems is only partly constituted by dominant legal understandings, and who views the courts and doctrinal intervention as only one among several strategies for producing change. This plural strategy of engaging with, while striving to decenter, legal doctrine may set a crucial course for critical intervention in the coming years. In this essay, I will describe the pedagogic innovations introduced by *Race and Races*, and the kind of legal actor they envision and help to produce. I will also explore certain ways in which these innovations proved unsatisfying, and highlight changes or new directions which might strengthen subsequent editions.

## I

The conventional legal casebook seeks to introduce students to a substantively discrete body of law. In the broadly realist tradition perhaps best articulated by Karl Llewellyn, most casebooks do not aim simply to introduce students to the prevailing rules: they seek to offer students a rich enough sense of the contextual operation of those rules to engender an understanding of how legal decisionmakers will respond in future cases.<sup>8</sup> Notwithstanding this postformalist emendation, the lawyer’s role, to which students are socialized through this approach, is predictive, accomodative, and persuasive. Students may be encouraged to press the limits of the doctrinal logic, or probe the intellectual developments through which it has emerged, but systematic challenge to or disruption of the dominant doctrinal framework is not the order of the day. The task of the legal professional is to anticipate the likely scope of the court’s response, so as to be able to characterize the client’s case favorably, or produce an incremental doctrinal movement that will insure victory.

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6. For discussions of this term and/or the challenges it reflects, see Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practicc in Post-Civil Rights America*, 95 MICH. L. REV. 821 (1997). See also Anthony V. Alfieri, *Black and White*, 85 CALIF. L. REV. 1647, 1648 (1997) (using term “Critical Race praxis”); Angela Harris, *Race Theory in Contemporary Legal Thought*, in CONTEMPORARY LEGAL THEORY (Robert Gordon & Margaret Jane Radin, eds.) (forthcoming 2002) (using similar term “critical race practice”).

7. One of the most radical responses to this challenge is Derrick Bell’s *Racial Realism*, which begins from a stark recognition that the law relating to inequality is unlikely to provide the means of achieving racial equality in our society. Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363 (1992); See also Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 CALIF. L. REV. 741 (1994).

8. LLEWELLYN, *supra* note 1, at 3-5.

One needs only the briefest exposure to *Race and Races*, to glimpse the many ways in which it diverges from this conventional model. To begin with, its focus is not on a discrete body of doctrine, but on the many bodies of law, and related historical and cultural materials, that bear on the entrenched social problem of race-based inequality. The light that these resources shed on this problem is provocatively varied, but also organized and unified by certain recurrent themes. Many of the selections in the book, for example, share the baseline assumption that race is integral to, and deeply constitutive of, one's identity.

Yet if *Race and Races* seeks to highlight this assumption and its many implications, it seeks with equal energy to disentangle this assumption from some of the intellectual frameworks with which it has historically been connected. Many varieties of contemporary race-consciousness take their bearings from a framework which treats the experience of African Americans as paradigmatic of that of other racial minority groups, or which envisions an encompassing dichotomy between Black and White perspectives. *Race and Races* begins with the insight that the increasingly diverse racial configuration of the American population, and the distinct patterns of oppression experienced by different racial groups, demand a more plural analytic approach. The book seeks to construct this approach from a set of discrete but intersecting group-based histories, and a series of distinct though thematically-related perspectives.

The structure and substance of *Race and Races* reflects this aspiration. After a bracing chapter on the challenges of defining racism and race, the book delves into the historical experience of each of four racial minority groups (African Americans, American Indians, Latinos/as, and Asian Americans) in the United States. These rich social, political, and military histories sound recurrent themes of exclusion and marginalization, but also highlight distinguishing characteristics: the role of slavery in the African American experience; the effects of imperialism and conquest in the history of Latinos/as; the centrality of property disputes and issues of inter-governmental relations in the histories of American Indians; the dilemmas of segregation and integration in the histories of African Americans and American Indians; and the importance of immigration policies and foreign relations in the treatment of Asian Americans and Latinos/as. They are also histories in which law and legal decision making play a salient, but not dominant, role. Moreover, one quickly observes that "law" is defined more broadly in these pages than is characteristic in legal textbooks. These chapters offer the reader not simply the usual appellate opinions, but district court decisions, state and federal statutes, and federal treaties. They also provide the contemporaneous commentary of some of those responsible for these enactments; we hear the views of Andrew Jackson (pp. 188-90), for example, as a preface to the Indian Removal Act (p. 190). These

histories, finally, are interspersed with provocative editorial questions, which probe not only the materials and the student's response to the materials, but the student's prior historical exposure. The editors are aware that they are presenting materials that many students may not have encountered before; they underscore this point by asking students why they believe that such materials are frequently excluded from conventional historical surveys.

These lengthy and surprising initial chapters, comprising more than a third of the book, highlight several conceptual cornerstones of the editors' approach. The first is an emphasis on social construction in the formation of racial categories and identities. The challenges implicit in defining race for various institutional regimes, such as the birth certificate records for the National Center for Health Statistics (p. 50-55) or the census, demonstrate the complexity of the categories some students may view as straightforward. Moreover, the historical accounts, with their narratives of subtly shifting stereotypes and opportunistic characterizations of race, make clear the operation of these social forces on the lives of people of color. Should White students have any doubt that this conceptual framework applies to them as well, a chapter on "The Case of Whiteness" (pp. 429-99) challenges the transparency of race privilege. Readings such as the section on "How the Irish, Italians, and Jews Became White" (pp. 445-55) raise questions for even the most resistant students about the fixity of racial identities and meanings. Though a complex, constructivist approach to social and legal categories may be quite familiar in critical scholarship, this casebook's emphasis represents a departure in training students for a profession that often deploys racial categories as if their meaning were definitively established.

The second element visible in these chapters is the editors' understanding of law as one among many social and institutional forces that shape relations among racial groups. Law is unquestionably a prominent feature of the group-based histories that open the book. We learn about legal support for slavery and for Jim Crow (pp. 103-55); about Indian Removal (pp. 188-91) and Reorganization (pp. 216-19); about the Treaty of Guadalupe Hidalgo and its consequences for land ownership (pp. 260-90); and about Chinese Exclusion (pp. 381-95) and Japanese Internment (pp. 406-11). Yet law is not presented as an exclusive or even a predominant influence. In the opening pages of the book, for example, the editors describe one aspect of racism as "the effort to structure social life and state policy along lines of racial difference . . ." (p. 5). But while law may be one determinant of racial relations and identities, there are numerous others, from children's fairy tales (pp. 464-78) to imagery from mass media (pp. 1017-42) and cyberspace (pp. 486-88) to ideologies that ascribe

characteristics by race (pp. 5-23). These other factors also exert an influence on racial identity and receive careful coverage in *Race and Races*.

The third distinctive aspect of these chapters is the critical posture they encourage in the reader. Readers are continually challenged to interrogate the preconceptions with which they approach the material. "Did you know this?" the editors repeatedly ask, "If not, why not?" Their practice of placing at the conceptual center those histories which have often been treated as marginal, and their treatment of whiteness as a racial identity subject to social construction, offer a useful provocation to White readers who are accustomed to taking their privileged status and group's history for granted. The editors' insistence that all racial categories are constituted by contingent social influence also encourages reflection by those students of color who may be accustomed to a more static view of racial identity. Yet at the same time as the editors engender in their readers a critical stance toward their own preconceptions, they also authorize their readers to develop and refine their own viewpoints, based on the new information to which they are being exposed. At the beginning of Chapter 1, for example, the editors state:

In [this section] we will explore various definitions of racism in search of a common vocabulary and understanding. As we do so, reflect on your own starting point. When you meet a new person do you make a mental note of his/her race? Do you think about his/her ethnicity? Does your answer to these questions depend upon whom you are meeting? What do *you* think racism is? (p. 6).

The breadth and focus of these questions makes it clear to students that they are not being asked simply to point out the flaws in theoretical analyses or legal decisions, but to clarify their own perspectives on the most pressing issues raised by the book.

These initial chapters are succeeded by a series of chapters with a more explicit doctrinal focus. "Developing Notions of Equality" (pp. 500-79) are introduced through an exposition of Fourteenth Amendment and Title VII law. Readers are then exposed to doctrinal developments in areas such as "Race, Voting, and Political Participation" (pp. 580-645), "Residential Segregation, Education, and Race" (pp. 646-753), "Racism and Freedom of Expression" (pp. 754-865), and "Race and Crime" (pp. 1017-90). Yet even these chapters differ substantially from their counterparts in more conventional casebooks. Because the book surveys so many doctrinal areas germane to race, chapters are not organized around extended or chronological treatments of the elements of central legal claims. Instead, each chapter explores a limited series of doctrinal developments that are frequently illustrative of larger conceptual themes. Case law discussions are punctuated by excerpts from theoretical scholarship, often scholarship that is systematically critical of the doctrinal law being

explored. These excerpts are not the brief paragraphs used to provide jumping-off points for discussion, for example, in many Constitutional Law texts. Rather, they are extended discussions, many numbering eight or more pages, that introduce new theoretical frameworks for conceptualizing and critiquing doctrinal developments, and that discuss at length cases that are not otherwise reproduced in the text.

These doctrinally-grounded chapters are also juxtaposed with others that have an extralegal focus. "Racism and Popular Culture" (pp. 959-1016) offers some illustrative legal contexts in which cultural images may bear on decision making, but focuses primarily on the exposition of these images and the identification of the cultural contexts in which they have arisen. Similarly, "Race, Sexuality, and the Family" (pp. 866-958) explores an eclectic range of topics, from the meanings ascribed to sexual relations between masters and slaves, to contemporary practices echoing the era of forced sterilization of women of color, to the role of dating in generating racial identity for biracial teens. The issues probed in this chapter may arise from legal rules legitimizing slavery or eugenic sterilization, or prohibiting intermarriage, but they are examined as social and psychological rather than exclusively legal phenomena. A concluding chapter on "Responses to Racism" (pp. 1091-1154) explores legal and extralegal strategies, to be deployed both by Whites and by people of color, for ameliorating racism and inequality.

These chapters build on and complicate the conceptual themes introduced in the early sections of the book. Racial categories are presented not only as the shifting products of human artifice, but also as ultimately inadequate to contain the complexity of racial experience. The difficulties of classification are a recurring theme in these chapters, as are the social and individual meanings of bi- or multiraciality. Shirlee Taylor Haizlip's essay on being a Black woman whose life "[has] been deeply colored by [her] absence of deep color" (pp. 948-50), and Lisa Jones' fictional interview with the "Identity Fairy," who discusses multiracial identity and the movement to add the category "multiracial" to census forms (pp. 951-58), are vivid and evocative illustrations of these themes. The law's role as one among many influences in the construction of race is paralleled by its role as one among many expedients necessary to remedy racial inequality. The editors pose questions that encourage doctrinal critique, and help students flesh out the arguments that might be used to support new doctrinal positions. But they also present "classroom exercises" in which students are asked to position themselves as school board members, institutional planners, and voters, as well as legal advocates.<sup>9</sup>

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9. An illustrative exercise appears at the end of the chapter on "Racism and Freedom of Expression." It presents students with a bill that would make Spanish the official language of Florida. After asking students "[w]ould such a measure be constitutional?" the editors follow with a series of

In the final chapter on ameliorative strategies (pp. 1091-1154), students are urged to consider the role of coalition building and various forms of interpersonal engagement. The critical stance students are urged to take toward their own preconceptions in the initial chapters of the book is extended to the major legal and cultural institutions of our society. Students are encouraged to apply a critical lens to judicial decisions, legal initiatives, social practices, and cultural imagery. Moreover, the questions advanced by the editors have affective as well as analytic components. After presenting Lenore Look's narrative on her mother's decision to vote for the first time after many years as a naturalized citizen (pp. 580-82), the editors ask their readers, "Did you have an emotional reaction when Ms. Look's mother said that she had finally voted? Positive or negative? What meanings are imbedded in the idea of voting?" (p. 583). Readers are encouraged to draw on their feelings and intuitions as resources for evaluating new perspectives, as well as on their analytic powers.

In short, *Race and Races* strives to bring into being a law student and prospective legal professional distinct from the conventional product of Langdellian pedagogy. This student learns to direct her thinking toward the resolution of social problems in which law is implicated, as well as toward bodies of doctrine. She learns to view law not as autonomous, but as a politically and culturally embedded resource, which shapes and is shaped by other social and institutional practices. She comes to understand the ongoing social contention that has been central to the production of racial categories, and the shifting social meanings that threaten constantly to exceed the most complex or variable categories we construct for them. She is reflective about, and sometimes critical of, her own experience as a guide to legal and social understanding, but she also feels sufficiently authorized to begin to formulate new frameworks and understandings as she gains new knowledge. She does not hierarchize emotion and reason, but deploys both so as to more fully understand the social and legal practices to which she is exposed. She uses law, and a variety of other institutional, coalitional, and interpersonal resources, in pragmatic combination, to address the remedial tasks connected with the problem. Of course, few students are likely to develop all of these habits of mind through exposure to a single casebook. But the incitement that *Race and Races* provides to question familiar methodological assumptions and develop new ones, and the aspiration it demonstrates to cultivate such understandings in a new generation of law students as well as in scholarly colleagues, are some of the book's most promising achievements.

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less conventional questions that ask students to position themselves in a different way: "If you lived in Florida, would you vote for it? Learn Spanish as quickly as possible? Gladly, or grudgingly?" (p. 865).

## II

Notwithstanding these valuable innovations, *Race and Races* sometimes falls short of its aspirations. Some of these shortcomings relate less to the conceptual innovations discussed above than to the book's substantive treatment of certain issues relating to race. Selection of representative doctrinal areas is inevitably challenging; when questions of race infuse a legal system as thoroughly as they do ours, reasonable minds may surely differ about the importance of various topics. Nonetheless, a few choices made by the editors seem surprising.

First, the book offers no discrete, sustained treatment of the intersection of race and gender. This seems a noteworthy omission, given the strong and growing body of legal and related scholarship located at this intersection, and given the prominence of two of the casebook's editors in this very area.<sup>10</sup> There is no doubt that gender is consistently at issue in the chapter on sexuality and family (pp. 866-958); and it is also treated more episodically in sections on employment discrimination (pp. 570-79), crime (pp. 1017-90), freedom of expression (pp. 754-865), and voting (pp. 580-645). But to explore gender predominantly under the rubrics of sexuality and family risks confining it to two of its most limiting conceptualizations. More affirmatively, to explore intersections between gender and race in a more systematic way might provide another concrete way of demonstrating the complexity of racial categories, or of revealing connections or contrasts among different examples of racism. For example, the editors could have afforded this set of a issues a larger chapter, including or in addition to the explorations of sexuality and family.

A second choice that raised questions was the omission of any sustained analysis of race and poverty, or of recent efforts to reform the welfare system. An emphasis on poverty was, again, not altogether absent. The relationship between race and poverty is implicated in the materials on residential segregation, on race and family, and on race and crime. But the complex entanglements between these two characteristics, for most of the groups the book surveys, would seem to merit separate treatment. Moreover, recent legislative efforts at welfare reform, culminating in the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,<sup>11</sup> are so heavily marked by ideologies of race, and have such potential to immiserate women of color and their children, that they seem to demand more extended treatment.

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10. See, e.g., STEPHANIE M. WILDMAN, ET AL., *PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA* (1996); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *STAN. L. REV.* 581 (1990).

11. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified in scattered sections of 7, 8, 21, 25 and 42 U.S.C.).

The editors also seem ambivalent about their own use of categorization, when they seek either to cluster cases within subject areas or to conceptualize the accounts of inequality presented in some of the longer excerpts. The chapter on "Race, Sexuality and the Family" (pp. 866-958), for example, brings together a wide array of factually distinct issues, but organizes them only very broadly under the headings of "Sexuality," "Marriage," and "Children and Families." The variety of cases within each category, and the issues that recur among categories (each, for example, includes issues of coercion or consent, or fluidity or fixity in identity) made me wonder whether a more decisive, conceptual form of organization would have been more helpful to the reader. The chapter on developing notions of equality makes a similar, substantively-based distinction between the Fourteenth Amendment and Title VII, leaving the excerpted articles to do the more strenuous work of framing the specific notions of equality themselves. Here, too, a heavier conceptual hand by the editors might have clarified things for the reader: a chapter organized by different notions of equality, which scholars have observed<sup>12</sup> cut across different constitutional and statutory categories, might have helped the reader to see the emergence of particular conceptions and to make comparisons among them. There are plausible reasons for the editors' reticence in these respects: a casebook that aims to foster critical thinking in its readers may want them to expend energy to grasp its organization. More importantly, a book that aims to highlight the inevitable limitations of categories might wish to avoid imposing too many of its own. But it is possible to overstate these rationales, and there are strong arguments on the other side. The broad range and ambition of this casebook (and the fact that it might successfully be used as an introduction to this area) make an effort toward greater clarity in presentation important. Moreover, students learn to challenge and resist categories by first understanding how they operate. A greater willingness by the editors to conceptualize groups of cases and theoretical insights to which they contribute would help on both of these counts.

Other weaknesses in the book bear more directly on its mission of producing a new kind of legal actor. The book might have been strengthened, for example, by a more sustained treatment of the affirmative meanings of race.<sup>13</sup> The affirmative valuation of minority racial experience, and

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12. See, e.g., Tracey E. Higgins & Laura A. Rosenbury, *Agency, Equality and Antidiscrimination Law*, 85 CORNELL L. REV. 1194 (2000); D. Marvin Jones, *No Time For Trumpets: Title VII, Equality and the Fin de Siecle*, 92 MICH. L. REV. 2311 (1994) (describing continuities in constitutional and statutory doctrines relating to race discrimination).

13. See, e.g., PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT* 99-103, 107-10 (1991) (describing affirmative racial imagery that Black women have generated to contrast dominant images); SHIRLEE TAYLOR HAZLIPP, *THE SWEETER THE JUICE: A FAMILY MEMOIR IN BLACK AND WHITE* (1994) (offering affirmative conceptions of African American racial identity that have emerged within

of racial difference, has met with a mixed reception in the law. The once-potent state interest in diversity<sup>14</sup> is now embattled,<sup>15</sup> and other rationales for affirmative action have suffered even harsher fates.<sup>16</sup> But the next generation of lawyers, who are being trained to address race-based inequality with a range of legal and extralegal resources, should be equipped to convey a full understanding of the affirmative meanings of minority racial experience. These meanings surface in some sections of the book: they are particularly salient among biracial writers of Black and White parentage like Shirlee Taylor Haizlip (pp. 948-50) and Lisa Jones (pp. 951-58), who reflect pride in and deliberate identification with their blackness. Such meanings are also a factor in the desegregation cases discussed by Drew Days (pp. 710-22), in which Black plaintiffs seek state support for racially identifiable schools rather than further efforts at racial integration. But there are other sections that would have been enriched by a discussion of such affirmative meanings.

The history of residential segregation in this country is importantly one of stigmatization and exclusion, but there are also instances of more self-consciously affirmative or ambivalent residential groupings. What affirmative benefits are gained through the creation or preservation of Chinatowns in major urban areas? What positive experiences and identifications arise from neighborhoods strongly populated by members of a flourishing Black middle class? What dilemmas arise for successful people of color as they contemplate departing central city areas for the suburbs? More emphasis on the affirmative meanings assigned to race would highlight complexities or tensions within the self-conceptions of minority populations, and would underscore the agency of people of color in resisting dominant racial ideologies.

Another weakness is the book's failure fully to disrupt a unitary paradigm for understanding racism and race. One of the editors' prime examples of the limits of categorical thinking is the tendency to conceptualize race in "black and white": to use the species of racism directed against African Americans as a paradigm for understanding other kinds of racial discrimination. The need to go "beyond black and white" has an aspirational aspect as well: today's race lawyers, who will confront a far more

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the author's own experience). There are also qualitative, empirical accounts that seek to give content to the sometimes strategic legal or policy claim that racial diversity makes an affirmative institutional contribution. See RICHARD J. LIGHT, MAKING THE MOST OF COLLEGE: STUDENTS SPEAK THEIR MINDS 129-89 (2001).

14. See *Metro Broadcasting v. FCC*, 497 U.S. 547 (1990) (diversity accepted as important state interest); *Regents of the Univ. of Cal. v. Bakke* 438 U.S. 265 (1978) (Powell, J.) (diversity accepted as compelling state interest).

15. See *Hopwood v. Texas*, 78 F.3d 932, 948 (5th Cir. 1996) (diversity rejected as compelling state interest); *Grutter v. Bollinger*, 137 F. Supp. 2d 821, 843-50 (E.D. Mich. 2001) (same).

16. See *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267 (1986) (role model theory rejected as compelling state interest).

plural social world, should understand how to conceptualize and address the different dimensions of racial inequality in a more comprehensive way.

Yet the editors are only partially successful in their efforts to displace, or pluralize, this paradigm. The excerpts from scholarship that address this theme, notably the important work done by editor Juan Perea (pp. 549, 858-59, 1017-18), focus more on the critique than on the reconceptualization. And the more practical proposals, such as Mari Matsuda's injunction to "Ask the other question," that link racism with other systems of oppression (p. 1113), offer pragmatic incitements to further thought, rather than the outline of a more complex conceptual structure. Moreover, the readings in several of the doctrinal sections tend to focus primarily on the experience of African Americans, either underemphasizing the distinct experiences of other groups, or treating the experience of Blacks as paradigmatic. This is not, to be sure, a consistent problem. Some chapters, such as the discussion of voting rights, are surprisingly plural given the central role played by African Americans in extending the right to vote. Others, such as the chapter on crime, intersperse discussions of stereotypes regarding Blacks (and Latinos/as) as perpetrators with discussions of stereotypes regarding Asians as victims. But in some chapters, such as the chapter on residential segregation and education, the focus on African American patterns predominates; the reader finishes the chapter with unanswered questions about contrasts between Blacks and other racial minority groups. In the discussion of cross-racial adoption, White parents' adoption of Black children is, again, the primary focus. This focus is in some respects justified: this particular pairing has been the subject of greatest controversy, because of the numbers of African American children in need of permanent homes, and because of the opposition of the National Association of Black Social Workers to White adoption of Black children (p. 946). Yet other patterns, which have become increasingly prevalent, such as the adoption by White parents of female infants from China, would seem to raise distinct issues. While these are addressed in a few provocative editorial questions (p. 948), a more extensive, textual treatment might help the reader to envision a more plural conceptual framework.

A more fully-theorized, multiracial framework would not only juxtapose the assumptions and ideologies that affect different minority groups, it might also explore salient tensions within these groups themselves. It is important not to overemphasize intra-group (or inter-minority-group) divisions, particularly when some of these arise from the constraints imposed by racial hierarchy and inequality.<sup>17</sup> But while the same is true, for example, within feminism, analyses of divergences among feminists (or among

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17. See Mary Louise Fellows & Sherene Razack, *The Race to Innocence: Confronting Hierarchical Relations Among Women*, 1 J. GENDER RACE & JUST. 335 (1998) (discussing role of intersecting inequalities and hierarchies in creating conflicts among groups of women).

women) have fruitfully illuminated tensions within the goals and self-conceptions of the group.<sup>18</sup> Several features of the current organization of the book make such analyses difficult. The decision to explore history group-by-group, rather than on a multi-group, chronological basis, complicates the drawing of contrasts regarding the White majority's treatment of different minority groups. It also complicates the analysis of relations among groups (or within groups) by focusing instead on each group's relationship to dominant Whites. Furthermore, the editors explore relatively few instances of either tension or coalition among racial minority groups, or subgroups thereof. They describe some disagreement among Latinos/as, or among Asian Americans, for example, about English-only statutes (844-56, 859-61), and they return on several occasions to the divisions among biracial and multiracial individuals about the movement for new census categories (pp. 64-77, 951-58). But there are other places, such as in the areas of racial districting and interracial adoption, where further exploration of the dialogue among and within minority groups would have been illuminating.

Finally, the editors' articulation of a new role for lawyers committed to racial justice, while a noteworthy departure, does not extend as far as it might. The clear implication of the book is that a lawyer confronting entrenched inequality, and the law's continuing implication in that inequality, must have a range of remedial resources at her disposal. She must continue the ongoing efforts to use doctrine and legislation to her advantage, but she must also understand the importance of addressing nonlegal barriers to equality with non-legal means. And she must be able to shift pragmatically to the latter form of solution when legal efforts are thwarted. To fuel this pragmatic impulse the editors explore a range of remedial strategies, particularly in the final chapter. They offer Martin Luther King's *Letter from a Birmingham Jail* (pp. 1097-1104), discuss strategies of coalition building (pp. 1104-17), and explain the practice of "race treason" by Whites (pp. 1118-21). They also offer excerpts on racial healing, in the form of apology (pp. 1123-30) and collaborative participation in various forms of cultural exploration (pp. 1130-35). It is new and enlivening to see these strategies as resources that every beginning lawyer should have at her disposal. Yet the approaches surveyed by the editors seemed in some respects to reflect a dichotomous strategy of the legal and the interpersonal. Without denying the crucial character of legal or interpersonal strategies for political change, I wondered if they might have focused more on fleshing out a middle

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18. See, e.g., SEYLA BENHABIB ET AL., *FEMINIST CONTENTIONS* (1995); *CONFLICTS IN FEMINISM* (Marianne Hirsch & Evelyn Fox Keller, eds.) (1990). See also JOAN WILLIAMS, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT* (2000) (discussing conflicts among different schools of feminist thinkers and advocates in the context of work or family conflict).

ground. King's words, for example, allude to a range of nonviolent action strategies that have been and might be used in the struggle for racial justice. It might have been helpful to elicit discussion of various examples. Discussion of institutional approaches, such as those that have succeeded within governmental institutions, businesses, or civic organizations, would also have been helpful. Lawyers often counsel such institutions, and familiarity with successful strategies might be an integral part of that role. Finally, strategies of economic or cultural self-sufficiency for racial minorities<sup>19</sup> might usefully be explored, to complete the range of options available to the new generation of legal professionals.

### III

Happily, many of these drawbacks can be remedied by supplementation; the editors of a casebook have opportunities for revision that authors of other scholarly works may not enjoy. They do not, in any case, detract substantially from the very real accomplishments of *Race and Races*. To use the opportunities provided by a casebook to help form a different kind of legal professional is no small achievement, particularly given the relative stasis of legal pedagogy (as opposed to legal scholarship) over the last decades. It is, moreover, an achievement that seems particularly imperative in light of recent movements in the law relating to race. With the Court's turn to color blindness,<sup>20</sup> and increasingly restrictive reading of Congress' power over civil rights,<sup>21</sup> and with the prospect of new Republican-appointed justices on the horizon, we may be approaching the time prophesied by Derrick Bell in his incitement to "Racial Realism":<sup>22</sup> a time when it becomes clear that neither legislation nor legal doctrine will provide the answer to racial inequality. This impasse poses a crucial challenge to equality lawyers who have turned consistently to the legal system, and to critical race theorists who have questioned this strategy, but now find an even less reliable audience among lawyers and judges for their reconstructive theorizing. By training a generation of lawyers who can deploy

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19. Regina Austin has done thoughtful and challenging work on this question. See, e.g., Regina Austin, "An Honest Living": *Street Vendors, Municipal Regulation, and the Black Public Sphere*, 103 YALE L.J. 2119 (1994); Regina Austin, "Not Just for the Fun of It!": *Government Restraints on Black Leisure, Social Inequality, and the Privatization of Public Space*, 71 S. CAL. L. REV. 667 (1998).

20. See cases cited *supra* note 5.

21. The Court has recently begun to restrict this power through several confluent lines of doctrine. See, e.g., *United States v. Morrison*, 529 U.S. 598 (2000) (limitations on Congress's Commerce Clause power); *Kimel v. Florida Bd. of Regents*, 528 U.S. 62 (2000) (limitations on Congress's enforcement power under Section 5 of the Fourteenth Amendment); *Morrison*, 529 U.S. 598 (same); *City of Boerne v. Flores*, 521 U.S. 507 (1997) (same); *Florida Prepaid Postsecondary Educ. Expense Bd. v. College Sav. Bank*, 527 U.S. 627 (1999) (refusals to abrogate state sovereign immunity in the context of statutory civil rights actions); *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996) (same).

22. See Bell, *supra* note 7.

institutional, coalitional, and interpersonal strategies as they undertake reconceptualizations that permit renewal in the legal system, educators such as the authors of *Race and Races* may provide the best chance for surviving, and transforming, this impasse.