

# Review Essay

## Rodrigo's Chronicle

*Illiberal Education: The Politics of Race and Sex on Campus.* By Dinesh D'Souza.\* *New York: Free Press, 1991. Pp. x, 319. \$19.95.*

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### I. INTRODUCTION: ENTER RODRIGO

"Excuse me, Professor, I'm Rodrigo Crenshaw. I believe we have an appointment."

Startled, I put down the book I was reading<sup>1</sup> and glanced quickly first at

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1. DINESH D'SOUZA, *ILLIBERAL EDUCATION: THE POLITICS OF RACE AND SEX ON CAMPUS* (1991) [hereinafter cited by page number only]. The author, an Indian American, was born in Bombay. He graduated recently from Dartmouth College, where he served as editor of the *Dartmouth Review*, a conservative campus newspaper. *Illiberal Education* focuses on six universities—U.C. Berkeley, Stanford, Howard, Michigan, Duke, and Harvard—where the author conducted interviews on affirmative action, curricular changes, teaching and scholarly styles, and the racial climate. See pp. 20-21. The book contains a harrowing series of stories showing the evils of affirmative action and curricular reform gone astray. At each of the campuses he visited, the author found minority students who were interested mainly in expanding their numbers and preserving their "victim" status. They were unconcerned about educational standards, unwilling to mix or compete with white students, and insistent on their right to special courses, theme

my visitor, then at my desk calendar. The tall, rangy man standing in my doorway was of indeterminate age—somewhere between twenty and forty—and, for that matter, ethnicity. His tightly curled hair and olive complexion suggested that he might be African American. But he could also be Latino, perhaps Mexican, Puerto Rican, or any one of the many Central American nationalities that have been applying in larger numbers to my law school in recent years.

“Come in,” I said. “I think I remember a message from you, but I seem not to have entered it into my appointment book. Please excuse all this confusion,” I added, pointing to the pile of papers and boxes that had littered my office floor since my recent move. I wondered: Was he an undergraduate seeking admission? A faculty candidate of color like the many who seek my advice about entering academia?<sup>2</sup> I searched my memory without success.

“Please sit down,” I said. “What can I do for you?”

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houses, and professors dealing with their peculiar, Balkanized concerns. *See* pp. 46-48, 56-57, 69-70, 182-85, 239, 242-43, 248, 302.

D’Souza depicts majority race professors and administrators as either spinelessly bowing to minority demands, *see* pp. 52-55, 65-67, 102-03, 151, 182-85, 194-97, or actively in league with the iconoclastic newcomers. He points to this latter phenomenon at Duke University, which he charges with abandoning Shakespeare and other traditional subjects for postmodernism, semiotics, Third World literature, and other *au courant* offerings. *See* pp. 157-92.

For their part, the white students are either sullenly adjusting to the radical, unprincipled leveling of their once-proud institutions, *see* pp. 47, 50-51, 236-39, or bravely rebelling against the tide of revolutionists of color, *see* pp. 19, 49, 224-25. At one campus—Berkeley—D’Souza finds an even more ironic consequence of the minority revolution. There, Hispanic and Black students have won concessions, but only at the expense of hard-working, high-achieving Asian students, who are beginning to fight back. *See* pp. 24-38.

Using events at Michigan as his main example, D’Souza criticizes universities that have responded to the recent wave of racist incidents and name-calling by enacting hate-speech prohibitions. These prohibitions, according to D’Souza, penalize students for harmless “jokes,” such as the Beethoven-Ujamaa House incident at Stanford, p. 133, make faculty and students alike fearful of expressing themselves freely, chill legitimate classroom speech, and weaken the First Amendment. Pp. 142-48. D’Souza asserts that this approach will make matters worse by driving racism underground, where it will fester and reemerge in even more virulent forms. P. 156. Running through the book is the author’s concern that each of the changes—minority admissions, curricular reform, limitations on hate speech, and changes in campus life to accommodate minority populations—are unprincipled and unjustifiable. He believes they endanger merit, self-reliance, and other tenets of Western culture. *See* pp. 56-64, 157-67. Efforts to diversify the campus culture, while laudable in intent, are often flawed in design. As such, D’Souza feels they are likely to backfire against their intended beneficiaries by inducing dependence, creating racial antagonisms where none existed before, and impairing the ability of universities to act as custodians of Western culture. *See* pp. 76-79, 82-85, 112-18, 184-90, 201-04, 230-42.

These were of course just my initial reactions and notes on reading and outlining the book. As luck would have it, Rodrigo and I discussed the book more fully later in our conversation. *See infra* notes 34, 47, 51, 74-89 and accompanying text.

2. Richard Delgado, *Minority Law Professors’ Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L. REV. 349 (1989).

"I'm Geneva Crenshaw's brother.<sup>3</sup> I want to talk to you about the LSAT, as well as the procedure for obtaining an appointment as a law professor at an American university."

As though sensing my surprise, my visitor explained: "Shortly after Geneva's accident,<sup>4</sup> I moved to Italy with my father, Lorenzo, who was in the Army. After he retired, we remained in Italy, where he worked as a civilian at the same base where he had been serving. I finished high school at the base, then attended an Italian university, earning my law degree last June.<sup>5</sup> I've applied for the LL.M. program at a number of U.S. law schools, including your own. I want to talk to you about the LSAT, which all the schools want me to take, and which, believe it or not, I've never taken. I'd also like to discuss my chances of landing a teaching position after I earn the degree."

I reflected a moment, then said: "Your situation is somewhat unusual. But I'll do my best. I didn't know Geneva had a brother."

"We're only half-siblings," he explained, "and separated by nearly twenty years. But I've kept in touch as best I could, and I'm grateful to you for bringing her message to the attention of your friends. She has a rather acerbic manner, as you know. But she respects you and your work enormously."<sup>6</sup>

"Your sister is a remarkable woman," I said. "I have learned at least as much from her as she from me."

### *Small Talk: Rodrigo Worries About the LSAT*

I continued, "You said you are going to be taking the LSAT. What are your concerns about that?"

"The usual," he replied, "including that I don't see why I should have to take it at all. I graduated fourth in my class at a law school even older than

3. Geneva Crenshaw is the fictional interlocutor and alter ego in a number of works, including DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987) [hereinafter BELL, *NOT SAVED*]; Derrick Bell, *The Supreme Court, 1984 Term—Foreword: The Civil Rights Chronicles*, 99 HARV. L. REV. 4 (1985) [hereinafter Bell, *Civil Rights Chronicles*]; Richard Delgado, *Derrick Bell and the Ideology of Racial Reform: Will We Ever Be Saved?*, 97 YALE L.J. 923 (1988) (reviewing BELL, *NOT SAVED*, *supra*). Each of these works is an example of the "legal storytelling" genre employed by a number of Critical Race theorists and feminists to analyze legal thought and culture. See *infra* notes 26-32 and accompany text.

4. In each of the works cited in note 3, Ms. Crenshaw is portrayed as a talented litigator at the NAACP Legal Defense Fund who suffered a mental breakdown resulting from the stress and physical danger of her work. Years later, her mind suddenly heals, and she emerges from confinement to confront the authors with her own challenging brand of racial and cultural analysis. Out of touch with events for some time, she sees things afresh. Like the child who declares the emperor naked, she punctures myth after comforting myth about progress toward racial justice.

5. So *that* accounts for his stylish Benetton clothes, I thought. See PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 44-51, 71 (1991). Professor Williams described her reaction to being excluded from a clothing boutique in New York by a young sales clerk who refused to press the buzzer opening the door. *Id.* After Professor Williams wrote of this incident, many minority law students and professors initiated an informal boycott of Benetton. That should remind me not to be too quick to judge!

6. Like his sister, Rodrigo has been away from U.S. society and thus sees it with new eyes.

yours.<sup>7</sup> I should think it would be obvious to anyone that I can read a case or make a legal argument. But I'm more than a little worried about the cultural bias people tell me the test contains. I'm proficient in English, as you can tell. But I've been away from the United States for nearly ten years; I'm afraid some of the questions may assume information I lack simply because I've taken half my schooling outside the culture."<sup>8</sup>

"I've made the same argument myself in the case of minorities in the United States," I said. "But it goes nowhere. They say the test is not biased because it predicts law school grades, which always seemed like a non sequitur to me.<sup>9</sup> I didn't realize that we required the test for foreign law graduates." I paused, then added, "Maybe they think it provides a check against grades, which might vary from one system to another."

"Yet in each system," Rodrigo countered levelly, "those grades reflect, in most cases, broader and more pervasive forms of cultural power, including the backgrounds and advantages of those who earn them. They also correspond to the law firm jobs and prestigious government positions the students will hold after they graduate. Identifying the LSAT as a predictor of grades, or even of later job performance, tells us only that this narrow test will identify people who thrive in particular types of environments—the ones, of course, that rely on the test to do a certain type of screening."

Not bad, I thought—I hoped he would come to my law school. But instead I asked: "So, what are you going to do? If you skip the test, you can kiss your LL.M. goodbye."

"I know, I know," he said, "if I have to take the test, I will. I bought one of those practice books. I'm sure I'll do OK—although I can't help thinking the whole thing is a waste of time."

"I agree—on both scores," I added.

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7. While studying in a language other than his native one, I thought. I was reminded of the many immigrants and Latino students I have known who labored under a similar handicap, yet achieved mightily in an alien system. Rodrigo disclosed the identity of his school later in the conversation: Bologna.

8. On bias in the LSAT, see Leslie G. Espinoza, *The LSAT: Narrative and Bias*, 1 AM. U. J. GENDER & L. (forthcoming 1992). On the controversy surrounding the validity and reliability of standardized tests, see *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) (job setting); *Sharif v. New York State Educ. Dep't*, 709 F. Supp. 345 (S.D.N.Y. 1989) (educational setting).

9. I thought of the many conservative scholars who treat the SAT as a virtual measuring rod for God-given merit. See pp. 44-45, 207, 265-68; see also *infra* notes 74-79 and accompanying text (Rodrigo and I discuss D'Souza's book as a reaction to the decline of the United States and of the West generally).

On various ways of assessing test bias, see Espinoza, *supra* note 8. On the test generally, see TOWARDS A DIVERSIFIED LEGAL PROFESSION: AN INQUIRY INTO THE LAW SCHOOL ADMISSION TEST, GRADE INFLATION, AND CURRENT ADMISSIONS POLICIES (David M. White ed., 1981); LINDA F. WIGHTMAN & DAVID G. MULLER, AN ANALYSIS OF DIFFERENTIAL VALIDITY AND DIFFERENTIAL PREDICTION FOR BLACK, MEXICAN AMERICAN, HISPANIC, AND WHITE LAW SCHOOL STUDENTS (1990).

## II. RODRIGO AND THE PROFESSOR DISCUSS THE LAW SCHOOL HIRING MARKET

"But the main reason I'm here is to ask you about the law school hiring market. I've heard it's extremely tight. But I'm also worried about something else. Geneva said it's becoming saturated with minority professors. I think she used the term 'tipping point' and mentioned an experience she had recently at a school where she was teaching.<sup>10</sup> She produced several good candidates of color but couldn't get her colleagues to take them seriously because the school already had six minority professors and was thought to be in danger of losing its character as a white-dominated institution. Is this happening at other places?"

"Too few!" I replied. "Most of them purport to be searching desperately for candidates of color."

"Purport?" Rodrigo's eyebrows arched.

"Those that say they are looking the hardest complain the loudest that the pool is too small. And, of course, if they start with that assumption, that is what they are likely to find, whether it's true or not."<sup>11</sup>

"How can that be?" Rodrigo asked. "There must be many lawyers of color like Geneva and me with excellent grades, practical experience, and so on. Why are the schools having such trouble finding us?"

"It works something like this," I said, reaching for a much-thumbed reprint.<sup>12</sup> "Every law school appointments committee starts out in October looking for a candidate with stellar credentials—a super-graduate with top grades from one of the top law schools, a law review editorship, a Supreme Court clerkship, and just the right amount of experience at the right firm. This individual should be humane, compassionate, and wise. Ideally, she or he should have published a classic Note in the law review."

10. See BELL, NOT SAVED, *supra* note 3, at 140-61 (chronicle of the "seventh candidate"). The term "tipping point" entered the lexicon from the law of housing discrimination. It refers to the phenomenon of whites leaving a neighborhood when the percentage of Black families reaches a certain point. See Bruce L. Ackerman, *Integration for Subsidized Housing and the Question of Racial Occupancy Controls*, 26 STAN. L. REV. 245, 251-66 (1974); Boris I. Bittker, *The Case of the Checker-Board Ordinance: An Experiment in Race Relations*, 71 YALE L.J. 1387 (1962). On the validity of land use controls to promote integration, see *Otero v. New York Hous. Auth.*, 484 F.2d 1122 (2d Cir. 1973); *United States v. Starrett City Assoc.*, 660 F. Supp. 668 (E.D.N.Y. 1987), *aff'd*, 840 F.2d 1096 (2d Cir.), *cert. denied*, 488 U.S. 946 (1988).

11. For analysis of the "pool is too small" argument, see Richard Delgado, *Mindset and Metaphor*, 103 HARV. L. REV. 1872 (1990); see also pp. 157-73 (universities said to be engaged in bidding war for minority professors). For deployment of the argument in another setting, see *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 499-503 (1988) (pool of qualified and interested minority candidates may be smaller than is thought).

12. See Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2432-34 (1989) (ordinary hiring is deeply biased in favor of whites but not perceived as such). See generally Symposium, *Legal Storytelling*, 87 MICH. L. REV. 2073 (1989) (containing articles by Milner S. Ball, Derrick Bell, Mari J. Matsuda, Steven L. Winter, and others on use of stories and narratives to jar or displace majoritarian mindset).

"I have some of those things, but not all," Rodrigo noted with a trace of anxiety. "Do the schools actually find and hire people like that?"

"No, not at all," I replied. "They're looking for mythic figures, of which there are very few. To be sure, if they do find one who is Black or Hispanic, they'll hire him or her in a flash<sup>13</sup>—as they would, of course, if the person were white. But the AALS's own figures show that the pool of those actually hired, Black or white, is much less prepossessing than that.<sup>14</sup> Only about a third served on the law review, and half that figure were elected to Order of the Coif. Only a small percentage published anything at all."<sup>15</sup>

"So they obviously lower their standards at some point."

"Precisely. Although the committee members all begin the hiring season with these paragons in mind, by February they have managed to hire few, if any, of them. Several show up for interviews, only to turn down offers. So, now it's February and the dean is pressuring them to find someone to teach the UCC course and Trusts and Estates. Although by then there are few candidates left who were Supreme Court clerks and at the top of their classes at Harvard or Yale, there are several a notch below that—who graduated high, but not from a top school, or went to a top school but did not graduate at the head of their class. Still, the committee members know that these people are intellectually able and can do the job. They know this either from personal experience—someone on the committee practiced, clerked, or went to law school with one of them—or from someone they trust. Harry told Bill that Smith is really smart and will be a fine teacher. And so it works out—Smith is hired and goes on to have a fine career."<sup>16</sup>

"I see what you're saying," Rodrigo said. "Those hired according to the relaxed, informal criteria schools use in February when they are under pressure are always white—right?"<sup>17</sup>

"Exactly," I said. "With the result that majority-race candidates have two chances of being hired, while we have just one. They can be hired early in the season, just as we can, by being mythic figures—by satisfying the ostensible

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13. I thought of my young colleagues of color Stephen Carter, Randall Kennedy, Rachel Moran, and Scott Brewer, all of whom had stellar credentials and were hired in recent years by top law schools.

14. See Michael A. Olivas, *Latino Faculty at the Border: Increasing Numbers Key to More Hispanic Access*, CHANGE, May-June 1988, at 6, 7 (containing American Association of Law Schools (AALS) statistics on law review membership, Coif selection, LL.M. degrees, and publications of all entering law professors in recent period); Memorandum from Michael Olivas, Professor of Law, AALS Minority Representation Committee, to Richard Delgado (Mar. 1990) (on file with author).

15. See sources cited *supra* note 14.

16. See Delgado, *supra* note 12, at 2432.

17. *Id.* This is how racism works—it separates persons of majority race from persons of color so that we do not readily think of persons of color when distributing informal benefits. See Richard Delgado et al., *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, 1985 WIS. L. REV. 1359 (pointing out that formal rules can sometimes counteract this danger); cf. Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 YALE L.J. 1545 (1991) (informality of mediation process may be "destructive" to women in divorce proceedings).

criteria, the superstar ones you hear about. But they can also be hired by word of mouth, under the relaxed criteria that are employed late in the game."

"A sort of affirmative action for whites," Rodrigo observed.

"You *are* Geneva's brother. You may be twenty years younger, but something of her rubbed off on you."

"We've always kept in touch. I must also confess, Professor, I've been reading your stuff and that of your colleagues in the Critical Race Theory movement.<sup>18</sup> It's fairly popular in Europe; many Italian law students read and discuss it."

"I'm flattered. But I wish the news were better. The trouble is that the patterns I mentioned are self-perpetuating. When the all-white appointments committee hires the white professor late in the year, it doesn't trouble them at all—although it should."

"It wouldn't feel like an exception," Rodrigo interjected, "because business as usual never does.<sup>19</sup> One of our own intellectuals said something similar during a period of hard times for him."<sup>20</sup>

"To be sure," I quickly added, "once in a great while a law school will bend the rules and hire a professor of color who falls slightly short of the nominal criteria, who is just shy of Paul Freund or Thurgood Marshall in attainments and promise. And when they do so, the hiring *will* seem like an exception. They will congratulate themselves for bending down to lift up one of the downtrodden. The conservatives among them will complain that something unethical has been done—a great injustice to whites."<sup>21</sup>

"From my studies, it appears that those in the majority always see merit as God-given, fixed, and eternal," Rodrigo responded.

"And of course they are the ones who have it, while affirmative action is necessary for us who lack it," I replied.

18. The Critical Race Theory (C.R.T.) movement started in the summer of 1989 with a small workshop held outside Madison, Wisconsin. Its adherents, mostly writers of color, struggle to understand and cope with the shifting tides of racism in American society. Most are discontent with liberalism and bring insights from critical theory, deconstruction, counterstorytelling, and Third World thought to forge a new racial consciousness and program. On the C.R.T. movement, see Kimberlé W. Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988); Richard Delgado, *When a Story Is Just a Story: Does Voice Really Matter?*, 76 VA. L. REV. 95 (1990); Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7 (1989). On some of the controversy the movement has generated, see Charles Rothfeld, *Minority Critic Stirs Debate on Minority Writing*, N.Y. TIMES, Jan. 5, 1990, at B6; Jon Wiener, *Law Profs Fight the Power*, NATION, Sept. 4, 1989, at 246; . An emerging strand in C.R.T. is cultural nationalism. Judging from his remarks thus far, Rodrigo struck me as receptive to this point of view. As it turned out, I was right.

19. See Delgado, *supra* note 12, at 2432; cf. pp. 157-93 (minority hiring at Duke University, whose policy is relatively modest—goal of hiring one Black professor per department—described as serious departure from academic norms).

20. See ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS 416-18 (Quintin Hoare & Geoffrey N. Smith trans. & eds., 1971).

21. For authors deploring—in broad or narrow terms—affirmative action, see pp. 4, 16-17, 162-71; STEPHEN L. CARTER, REFLECTIONS OF AN AFFIRMATIVE ACTION BABY 47-95 (1991); SHELBY STEELE, THE CONTENT OF OUR CHARACTER (1990).

"Yet your account of the two avenues for whites paints a different picture. I'm sure you've had the experience, Professor, of trying to get your colleagues to hire one of us."

"Many times," I replied. "They're some of the most predictably frustrating moments in my career. Every year the same thing happens. They say they are looking for candidates with qualifications *A*, *B*, and *C*. I produce a hungry, hard-driving candidate of color with credentials *A*, *B*, and *C*, and they say, 'Well, there's really also qualification *D*, which your candidate does not have. So, we cannot hire him after all.' Then I produce a candidate who possesses credentials *A*, *B*, *C*, and *D*, and they say, 'We also meant *E*.' Or, 'We meant something different by *B* from what you understood.'"

"So, the criteria regress until it dawns on you they are really talking about themselves—the criteria will fit only candidates who are like them, i.e., white."

"Exactly," I said. "Although every now and then I try a different approach—namely pointing out that many of their most highly valued colleagues are also glaringly deficient in one or more of the criteria. Professor Jones hasn't published anything in twenty years. Professor Smith is such a lackadaisical teacher that none but the unwary take his classes, and so on."

"And what happens when you point this out?"

"They always have some excuse. Jones wrote the leading article on contingent remainders in 1949 and is obviously germinating an equally impressive one, which accounts for his silence. Fifteen years ago Smith, the notorious teacher, sat on a prestigious commission. And so on. It turns out there is a whole set of *defenses* available to their colleagues to justify their current positions—but not for us."

"Merit sounds like white people's affirmative action!" Rodrigo exclaimed. "A way of keeping their own deficiencies neatly hidden while assuring that only people like them get in."

"I've often thought that myself," I said.

Rodrigo was silent for a time. Then: "I wonder how they'll see me? I'm Black, and my family is middle class. But I went to one of the great universities of the world."

"My guess is that one of them will hire you. And as with the rest of us, when it does so it will make sure that you know—and that the students do, too—what a huge favor it has done for you by extending an offer to you."<sup>22</sup>

Rodrigo was silent for a long time. Then he mused, "Ironic, but I suppose that's the price I have to pay for wanting to return to the States."

"Ironic?" I questioned. "How so? Tragic, unjust, and wrong are words that more readily come to mind, mine at least. What is the irony that you see?"

"The irony is that those who most need our help are those who most resist getting it."

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22. Delgado, *supra* note 12, at 2433.

### III. IN WHICH RODRIGO BEGINS TO SEEM A LITTLE DEMENTED

"I'm not sure I follow you."

"Let's start with something familiar—academic publishing. A recent article pointed out that nearly three-fourths of articles on equality or civil rights published in the leading journals during the last five years were written by women or minorities.<sup>23</sup> Ten years ago, the situation was reversed: minorities were beginning to publish, but their work was largely ignored.<sup>24</sup> The same is true in other areas as well. Critical legal studies and other modernist and postmodern approaches to law are virtually the norm in the top reviews. Formalism has run its course."<sup>25</sup>

"Perhaps," I said. "You don't see many articles in the classic vein today. In fact, I haven't seen one of those plodding, case-crunching, 150-page blockbusters with 600 footnotes in a top journal for a while."

"No one believes that way of writing is useful anymore. Some are writing chronicles.<sup>26</sup> Others are writing about storytelling in the law,<sup>27</sup> narrative theory,<sup>28</sup> or 'voice' scholarship.<sup>29</sup> The feminists are writing about changing the terms of legal discourse and putting women at the center.<sup>30</sup> Even 'mainstream' writers—the serious ones, at any rate—have moved beyond mere doctrinal analysis to realms such as political theory, legal history, and interdisciplinary analysis. There is a whole new emphasis on legal culture, perspective, and on

23. Richard Delgado, *The Imperial Scholar Revisited: How To Marginalize Outsider Writing, Ten Years Later*, 140 U. PA. L. REV. (forthcoming April 1992); see also Alex M. Johnson, Jr., *The New Voice of Color*, 100 YALE L.J. 2007 (1991).

24. Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984).

25. I thought of such special issues as Symposium, *supra* note 12; Symposium, *The Critique of Normativity*, 139 U. PA. L. REV. 801 (1991), and the work of the many radical feminists, some of color, who are adding their voices in increasing numbers to the debate about law's role and function. But what, I wondered, about law and economics? See, e.g., RICHARD POSNER, *ECONOMIC ANALYSIS OF LAW* (3d ed. 1986); Ronald H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1 (1960). Was that not an instrumental elaboration on legal formalism? I wondered if the irrepressible Rodrigo was familiar with this movement. See, e.g., *Symposium on Law & Economics*, 85 COLUM. L. REV. 899 (1985). I wondered, too, if this brash but talented newcomer realized how the so-called "new" movements are rooted in much earlier approaches, e.g., the legal realism of Felix Cohen and Jerome Frank, or of mid-century feminists, or Simone de Beauvoir. See, e.g., Elizabeth Mensch, *The History of Mainstream Legal Thought*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 13, 24-33 (David Kairys ed., 1982) [hereinafter *POLITICS OF LAW*]; Diane Polan, *Toward a Theory of Law and Patriarchy*, in *POLITICS OF LAW*, *supra*, at 294, 295, 302 nn.4-7. Is the line between the new and the old as clear as Rodrigo seems to think?

26. E.g., BELL, NOT SAVED, *supra* note 3; Bell, *Civil Rights Chronicles*, *supra* note 3; Delgado, *supra* note 3.

27. E.g., Symposium, *supra* note 12.

28. See Delgado, *supra* note 12, at 2411 n.1 (citing sources).

29. See Symposium, *Excluded Voices: Realities in Law and Law Reform*, 42 MIAMI L. REV. 1 (1987).

30. E.g., CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* (1987).

what some call 'positionality,'<sup>31</sup> as well as a renewed focus on the sociopolitical dimension of judging and legal reasoning."<sup>32</sup>

"I'm not up on all these postmodern approaches, Rodrigo," I said quickly, "although I have read your friend who, as you say, got into trouble with the authorities.<sup>33</sup> I find his work quite helpful. And I gather that the current ferment in American law is one of the reasons why you are thinking of returning here for your graduate degree?"<sup>34</sup>

"In part.<sup>35</sup> But I was mainly responding to your question about irony. However progressive certain mainstream scholars may be in their writing and analysis, the institutions they control still exclude and oppress minorities by manipulating the status quo and refusing to challenge their own informal expectations. The irony is that the old, dying order is resisting the new, rather than welcoming it with open arms."

Hmm. I thought of the words of a Bob Dylan song,<sup>36</sup> but instead asked: "And just who, or what, do you think this new order is, Rodrigo?"

"Well, let me put it this way," Rodrigo explained. "You've heard, I assume, of double consciousness?"

"Of course. It's W.E.B. DuBois' term.<sup>37</sup> It refers to the propensity of excluded people to see the world in terms of two perspectives at the same time—that of the majority race, according to which they are demonized, despised, and reviled, and their own, in which they are normal. Lately, some—particularly feminists of color—have invented the term 'multiple consciousness' to describe their experience."<sup>38</sup>

"And you know that many members of minority groups speak two languages, grow up in two cultures?"

31. *E.g.*, Steven L. Winter, *Contingency and Community in Normative Practice*, 139 U. PA. L. REV. 963 (1989).

32. I thought of collections I had in my office, such as *POLITICS OF LAW*, *supra* note 25. But again I wondered, just how new are all these approaches with which Rodrigo seems so enamored? *See supra* note 25.

33. *See* GRAMSCI, *supra* note 20; *see also* ANTONIO GRAMSCI, *LETTERS FROM PRISON* (Lynne Lawner ed. & trans., 1973).

34. I was thinking of the book I had been reading, D'SOUZA, *supra* note 1, and the controversy it stirred up, as well as the conflict between the "new" left and right thinking on race that has been going on in recent times. *See infra* notes 67-87 and accompanying text (discussing this conflict); *see also* Richard Delgado, *Left-Right Parallels in Recent Writing About Race*, 91 COLUM. L. REV. 1547 (1991) (reviewing BELL, *NOT SAVED*, *supra* note 3; CARTER, *supra* note 21; STEELE, *supra* note 21; WILLIAMS, *supra* note 5).

35. Rodrigo explains his reasons further in Part IV, *infra*.

36.

"You know, they rejected Jesus, too.

I said, you're not Him."

BOB DYLAN, *115th Dream*, on BRINGING IT ALL BACK HOME (Columbia/CBS Records 1970).

37. W.E.B. DUBOIS, *THE SOULS OF BLACK FOLKS* 16-17 (1903); *see also* RALPH ELLISON, *INVISIBLE MAN* (1952). For contemporary explications of double consciousness, *see* BELL HOOKS, *FEMINIST THEORY: FROM MARGIN TO CENTER* (1984).

38. *E.g.*, Matsuda, *supra* note 18.

"Of course, especially our Hispanic brothers and sisters; for them, bilingualism is as much an article of faith as, say, Martin Luther King and his writings are for African Americans."<sup>39</sup>

"And so," Rodrigo continued, "who has the advantage in mastering and applying critical social thought? Who tends to think of everything in two or more ways at the same time? Who is a postmodernist virtually as a condition of his or her being?"

"I suppose you are going to say us—people of color."

Rodrigo hesitated. "Remember that I have been sitting in Italian law libraries all these years, reading and learning about legal movements in the United States secondhand. I suppose it looks different to you here."

"It has scarcely been a bed of roses," I replied dryly.<sup>40</sup> "The old order, as you put it, has not welcomed the new voices with any great warmth, although I must agree that the law reviews seem much more open to them than my faculty colleagues.<sup>41</sup> And your notion that it is we—persons of color—who have the edge in mastering critical analysis would strike most of them as preposterous. If double consciousness turns out to be an advantage, they'll either deny it exists or insist that they can have it too.<sup>42</sup> Aren't you just trying to invert the hierarchy, placing at the top a group that until now has occupied the bottom—and isn't this just as wrong as what the others have been doing to us?"<sup>43</sup>

Rodrigo paused. "I see your point. But maybe this way of looking at things seems harsh only because it is so unfamiliar. In my circles everyone talks about the decline of Western thought, so finding evidence of it in law and legal scholarship doesn't seem so strange. I'm surprised it does to you. Are you familiar with the term 'false consciousness?'"<sup>44</sup>

"Yes, of course," I said (with some irritation—the impudent pup!). "It's a mechanism whereby oppressed people take on the consciousness of the

39. See generally Rachel F. Moran, *Bilingual Education as a Status Conflict*, 75 CALIF. L. REV. 321 (1987).

40. E.g., Bell, *Civil Rights Chronicles*, *supra* note 3; Delgado, *supra* note 2; Derrick Bell, *The Price and Pain of Racial Perspective*, THE JOURNAL (Stanford Law School), May 9, 1986, at 5.

41. For now, at any rate. See Ken Myers, *Law Review Editing: Profs Enter Where Students Used To Tread*, NAT'L L.J., Oct. 14, 1991, at 4 (describing movement by faculty at some schools to take control of law reviews).

42. Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745 (1989) (questioning whether a single minority "voice" exists or, if it does, whether it is limited to Blacks).

43. I thought of telling him to read BELL, NOT SAVED, *supra* note 3, at 250, 258 (urging that minorities should not try to replace their oppressors, but to transform the system to everyone's benefit), or the many articles by white scholars, such as Mary Dudziak, Kenneth Karst, Gary Peller, and Duncan Kennedy, that both ring true to the minority experience and are helpful to the cause of racial justice, discussed in a draft article I had read recently. Delgado, *supra* note 23 (singling out these authors for praise). But then I wondered, am I counseling him to avoid a hard-hitting, but possibly fruitful, line of analysis? I thought of the well-meaning senior professors who once dispensed similar advice to young professors of color. See Delgado, *supra* note 24, at 561. What was the right parallel for Rodrigo? I wasn't sure.

44. See GEORG LUKÁCS, *HISTORY AND CLASS CONSCIOUSNESS* (Rodney Livingstone trans., 1971); Duncan Kennedy, *Antonio Gramsci and the Legal System*, 6 A.L.S.A. FORUM 32 (1982).

oppressor group, adjusting to and becoming parties to their own oppression. And I suppose you think I'm laboring under some form of it?"

"Not you, Professor. Far from it. But when you rebuked me a moment ago, I wondered if you weren't in effect counseling *me* to internalize the views of the majority group about such things as hierarchy and the definition of a 'troublemaker.'"<sup>45</sup>

"Perhaps," I admitted. "But my main concern is for you and your prospects. If you want to succeed in your LL.M. studies, not to mention in landing a professorship at a U.S. law school, perhaps you had better 'cool it' for a while.<sup>46</sup> Criticizing mainstream scholarship is one thing; everyone expects that from young firebrands like you.<sup>47</sup> But this business about a more general 'decline of the West'—that's out of our field, frowned on as flaky rhetoric, and nearly impossible to support with evidence. Even if you did have evidence to support your claims, no one would want to listen to you."

"Yes, I suppose so," admitted Rodrigo. "It's not the story you usually hear. If I had told you that I'm returning to the United States because it's the best country on earth, with rosy prospects, a high quality of life, and the fairest political system for minorities, your countrymen would accept that without question. No one would think of asking me for documentation, even though that is surely as much an empirical claim as its opposite."

"You're right," I said. "The dominant story always seems true and unexceptionable, not in need of proof. I've written about that myself, along with others.<sup>48</sup> And you and I discussed a case of it earlier when we talked about minority hiring.<sup>49</sup> But tell me more about your thoughts on the West."

45. On the need for self-definition among people of color, see Crenshaw, *supra* note 18; Richard Delgado, *Affirmative Action as a Majoritarian Device: Or, Do You Really Want To Be A Role Model?*, 89 MICH. L. REV. 1222 (1991); Derrick Bell, What's Love of Country Got to Do With It? Hidden Messages from Two Black Women, Keynote Address at the 1991 Award Breakfast of National Bar Association Women Lawyers' Division (Aug. 6, 1991) (on file with author).

46. I thought of the way in which robust—and healthy—criticism of another's ideas can, in a polarized climate, turn into rejection of his or her personhood. McCarthyism, Asian exclusion, and faculty takeovers of law reviews all came to mind. More close at hand, I thought of the anti-Crit sentiment, see Paul D. Carrington, *Of Law and the River*, 34 J. LEGAL EDUC. 222 (1984), that has resulted in the loss of appointments or tenure to certain outspoken members of Critical Legal Studies, e.g., Mark Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515, 1519 n.18, 1530 n.60 (1991), as well as the sharp criticism that has been leveled at Critical Race Theory, see Kennedy, *supra* note 42; Rothfeld, *supra* note 18; Wiener, *supra* note 18; see also p. 147 (taking this author and Mari Matsuda to task for promoting minority interests at expense of majority ones and weakening ideal of "liberal education").

47. Compare Rodrigo's youthful impetuosity with pp. 170-90 (criticizing Duke University for hiring flashy *au courant* scholars and *enfants terribles* such as Henry Louis Gates and Stanley Fish).

48. I thought of the recent spate of writing on narrativity and the way in which law's dominant stories change very slowly. If legal culture does resist insurgent thought until it is too late—until it has lost the power to transform us—what does this bode for Rodrigo? See, e.g., GRAMSCI, *supra* note 20; Bell, *Civil Rights Chronicles*, *supra* note 3; Delgado, *supra* note 11; Delgado, *supra* note 12; Symposium, *supra* note 12. On narrative theory or its application to law reform, see MACKINNON, *supra* note 30; PAUL RICOEUR, ON NARRATIVE I (1984); PAUL RICOEUR, ON NARRATIVE II (1985); WILLIAMS, *supra* note 5; Kennedy, *supra* note 44.

49. See *supra* Part II (institutional practices seem fair and normal, although structurally biased in favor of whites, who have two opportunities to be hired, while minorities have just one).

"Well, as I mentioned, my program of studies at Bologna centered on the history of Western culture. I'm mainly interested in the rise of Northern European thought and its contribution to our current predicament. During my early work I had hoped to extend my analysis to law and legal thought."

"I think I know what you will say about legal thought and scholarship. Tell me more about the big picture—how you see Northern European thought."

"I've been studying its rise in the late Middle Ages and decline beginning a few decades ago. I'm interested in what causes cultures to evolve, then go into eclipse. American society, even more than its European counterparts, is in the early stages of dissolution and crisis. It's like a wave that is just starting to crest. As you know, waves travel unimpeded across thousands of miles of ocean. When they approach the shore, they rise up for a short time, then crest and lose their energy. Western culture, particularly in this country, is approaching that stage. Which explains, in part, why I am back."<sup>50</sup>

I had already switched off my telephone. Now, hearing my secretary's footsteps, I stepped out into the hallway to tell her to cancel my appointments for the rest of the afternoon. I had a feeling I wanted to hear what this strange young thinker had to say undisturbed.<sup>51</sup> When I returned, I saw Rodrigo eyeing my computer inquiringly.

Returning his gaze to me, Rodrigo went on: "I'm sure all the things I'm going to say have occurred to you. Northern Europeans have been on top for a relatively short period—a mere wink in the eye of history.<sup>52</sup> And during that time they have accomplished little—except causing a significant number of deaths and the disruption of a number of more peaceful cultures, which they conquered, enslaved, exterminated, or relocated on their way to empire. Their principal advantages were linear thought, which lent itself to the development and production of weapons and other industrial technologies, and a kind of messianic self-image according to which they were justified in dominating other nations and groups. But now, as you can see"—Rodrigo gestured in the direction of the window and the murky air outside—"Saxon-Teuton culture has arrived at a terminus, demonstrating its own absurdity."

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50. I wondered in passing, how will he prove his wave metaphor? Of course, he might say: just wait around. I was glad I didn't interrupt, for he turned to this point later. See *infra* notes 53-55 and accompanying text; *infra* Appendix A.

51. I had been thinking of reviewing Dinesh D'Souza's book, *Illiberal Education*, see D'SOUZA, *supra* note 1, and the contrast between its near adulation of everything Western, see p. 95 (Western civilization a "towering human accomplishment"); pp. 94-123 ("In Search of Black Pharaohs"), and Rodrigo's theories intrigued me.

52. Five hundred years is more than a wink in the eye of recorded history, I thought to myself. Rome, Egypt, China, and India are the only civilizations that came to mind as having been on top longer.

"I'm not sure I follow you. Linear thought, as you call it, has surely conferred many benefits.<sup>53</sup> And is it really on its last legs? Aside from smoggy air, Western culture looks firmly in control to me."

"So does a wave, even when it's cresting—and you know what happens shortly thereafter. Turn on your computer, Professor," Rodrigo said, pointing at my new terminal. "Let me show you a few things."

For the next ten minutes, Rodrigo led me on a tour of articles and books on the West's economic and political condition. His fingers fairly danced over the keys of my computer. Accessing data bases I didn't even know existed, he showed me treatises on the theory of cultural cyclicity, articles and editorials from *The Economist*, *Corriere della Sera*, the *Wall Street Journal*, and other leading newspapers, all on our declining economic position; material from *The Statistical Abstract* and other sources on our increasing crime rate, rapidly dwindling fossil fuels, loss of markets, and switch from a production- to a service-based economy with high unemployment, an increasingly restless underclass, and increasing rates of drug addiction, suicide, and infant mortality. It was a sobering display of technical virtuosity. I had the feeling he had done this before and wondered how he had come by this proficiency while in Italy.<sup>54</sup>

Rodrigo finally turned off the computer<sup>55</sup> and looked at me inquiringly. "A bibliography alone will not persuade me," I said. "But let's suppose for the sake of argument that you have made a prima facie case, at least with respect to our economic problems and to issues concerning race and the underclass. I suppose you have a theory on how we got into this predicament?"

"I do," Rodrigo said with that combination of brashness and modesty that I find so charming in the young. "As I mentioned a moment ago, it has to do with linear thought—the hallmark of the West. When developed, it conferred a great initial advantage. Because of it, the culture was able to spawn, early on, classical physics, which, with the aid of a few borrowings here and there, like gunpowder from the Chinese, quickly enabled it to develop impressive armies. And, because it was basically a ruthless, restless culture, it quickly dominated others that lay in its path. It eradicated ones that resisted, enslaved others, and removed the Indians, all in the name of progress.<sup>56</sup> It opened up and mined

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53. I thought of countless examples. Just that morning I had read about a new medical breakthrough developed at an American research university. Only two weeks ago I had my car rebuilt by a mechanic who (I hope) was well versed in linear thought. The day before I had baked a batch of brownies following a 10-step recipe.

54. I had often remarked on the spiritual, near-magical powers of his sister Geneva, who seemed able to transcend barriers of time and distance almost at will. See BELL, NOT SAVED, *supra* note 3, at 17-19, 21-23, 26-42, 239-44. Did her brother share some of these abilities?

55. Fortunately, I had the good sense to keep the printout, portions of which follow at Appendix A *infra*.

56. For a summary of some of these sorry chapters in Western history, see ROBERT A. WILLIAMS, JR., *THE AMERICAN INDIAN IN WESTERN LEGAL THOUGHT* (1990); Robert A. Williams, Jr., *Documents of Barbarism: The Contemporary Legacy of European Racism and Colonialism in the Narrative Traditions of Federal Indian Law*, 31 ARIZ. L. REV. 237 (1989); Delgado, *supra* note 3, at 934-45.

new territories—here and elsewhere—as soon as they became available and extracted all the available mineral wealth so rapidly that fossil fuels and other mineral goods are now running out, as you and your colleagues have pointed out.”<sup>57</sup>

“But you are indicting just one civilization. Haven't all groups acted similarly? Non-linear societies are accomplishing at least as much environmental destruction as Western societies are capable of. And what about Genghis Khan, Columbus, the cruelties of the Chinese dynasties? The Turkish genocide of the Armenians, the war machine that was ancient Rome?”<sup>58</sup>

“True. But at least these other groups limited their own imperial impulses at some point.”

“Hah! With a little help from their friends,” I retorted.

“Anyway,” continued Rodrigo, “these groups produced valuable art, music, or literature along the way. Northern Europeans have produced next to nothing—little sculpture, art, or music worth listening to, and only a modest amount of truly great literature.<sup>59</sup> And the few accomplishments they can cite with pride can be traced to the Egyptians, an African culture.”<sup>60</sup>

“Rodrigo, you greatly underestimate the dominant culture. Some of them may be derivative and warlike, as you say. Others are not; they are creative and humane. And even the ones you impeach have a kind of dogged ingenuity for which you do not give them credit. They have the staying and adaptive powers to remain on top. For example, when linear physics reached a dead end, as you pointed out, they developed relativity physics. When formalism expired, at least some of them developed Critical Legal Studies, reaching back and drawing on existing strands of thought such as psychoanalysis, phenomenology, Marxism, and philosophy of science.”

“Good point,” admitted Rodrigo a little grudgingly, “although I've already pointed out the contributions of Gramsci, a Mediterranean. Fanon and your Critical Race Theory friends are Black or brown. And Freud and Einstein are, of course, Jews. Consider, as well, Cervantes, Verdi, Michelangelo, Duke Ellington, the current crop of Black writers—non-Saxons all.”

“But Northern Europeans, at least in the case of the two Jewish giants,” I interrupted.

57. See Derrick Bell, *After We're Gone: Prudent Speculations on America in a Post-Racial Epoch*, 34 ST. LOUIS U. L.J. 393 (1990); Derrick Bell, *Racism: A Prophecy for the Year 2000*, 42 RUTGERS L. REV. 93 (1989); Richard Delgado, “*Our Better Natures*”: A Revisionist View of Joe Sax's Public-Trust Theory of Environmental Protection, and Some Dark Thoughts on the Possibility of Law Reform, 45 VAND. L. REV. 1200 (1991); Michael A. Olivas, *The Chronicles, My Grandfather's Stories, And Immigration History*, 34 ST. LOUIS U. L.J. 425 (1990).

58. I thought again of the book I had been reading, whose author had a radically different explanation for the decline of colleges, at any rate. For D'Souza, the newcomers of color were the culprits, whose importunings should be resisted to stem decline and maintain standards. See, e.g., pp. 59-93, 110-21.

59. The suggestion that Beethoven was a mulatto still has the power to shock. See WILLIAMS, *supra* note 5, at 110-15 (discussing angry reaction of white Stanford students at being told this for the first time).

60. MARTIN BERNAL, *BLACK ATHENA I* (1987); MARTIN BERNAL, *BLACK ATHENA II* (1991). Provocative books—I resolved to press Rodrigo later if he didn't supply additional authority soon.

"True, people move," he countered.

"Don't be flip," I responded. "Since when are the Spanish and Italians exempt from criticism for 'Western' foibles? What about the exploitive capacity of the colonizing conquistadors? Wasn't the rise of commercial city-states in Renaissance Italy a central foundation for subsequent European cultural imperialism? Most ideas of Eurocentric superiority date to the Renaissance and draw on its rationalist, humanist intellectual, and artistic traditions."

"We've had our lapses," Rodrigo conceded. "But theirs are far worse and more systematic." Rodrigo was again eyeing my computer.

Wondering what else he had in mind, I continued: "What about Rembrandt, Mozart, Shakespeare, Milton? And American popular culture—is it not the envy of the rest of the world? What's more, even if some of our Saxon brothers and sisters are doggedly linear, or, as you put it, exploitive of nature and warlike—surely you cannot believe that their behavior is biologically based—that there is something genetic that prevents them from doing anything except invent and manufacture weapons?" Rodrigo's earnest and shrewd retelling of history had intrigued me, although, to be honest, I was alarmed. Was he an Italian Louis Farrakhan?<sup>61</sup>

"The Saxons do all that, plus dig up the earth to extract minerals that are sent to factories that darken the skies, until everything runs out and we find ourselves in the situation where we are now."<sup>62</sup> Then, after a pause: "Why do you so strongly resist a biological explanation, Professor? Their own scientists are happy to conjure up and apply them to us."<sup>63</sup> But from one point of view, it is they whose exploits—or rather lack of them—need explaining."

"I'd love to hear your evidence."

"Let me begin this way. Do you remember that famous photo of the finish of the hundred-meter dash at the World Games this past summer?<sup>64</sup> It showed six magnificent athletes straining to break the tape. The first two finished under the world record. All were Black."

"I do remember."

"Black athletes dominated most of the events, the shorter ones at any rate. People of color are simply faster and quicker than our white brothers and sisters. Even the marathon has come to be dominated by people of color."<sup>65</sup> And, to anticipate your question, yes I do believe the same holds true in the

61. I thought of recent writings condemning the sin of "essentialism." *E.g.*, Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *STAN. L. REV.* 581 (1990). The writings of early anthropologists (and a few latter-day pseudo-scientists) purporting to find race-based differences in intellectual endowment also came to mind. *See infra* note 63.

62. *See* Delgado, *supra* note 57.

63. *See, e.g.*, STEPHEN J. GOULD, *THE MISMEASURE OF MAN* 30-72 (1981); NANCY STEPAN, *THE IDEA OF RACE IN SCIENCE* (1982); Richard Delgado et al., *Can Science Be Inopportune?*, 31 *UCLA L. REV.* 128 (1983).

64. *See* Amby Burfoot, *Race of the Century*, *RUNNER'S WORLD*, Dec. 1991, at 70, 74.

65. Didn't I read that Mexican and African runners occupied the first three places in the New York City marathon?

mental realm. In the ghetto they play 'the dozens'<sup>66</sup>—a game that requires throwaway speed. The dominant group has nothing similar. And take your field, law. Saxons developed the hundred-page linear, densely footnoted, impeccably crafted article—saying, in most cases, very little. They also brought us the LSAT, which tests the same boring, linear capacities they developed over time and that now exclude the very voices they need for salvation. Yet you, Matsuda, Lawrence, Torres, Peller, and others toss off articles with ridiculous ease—critical thought comes easy for you, hard for them.<sup>67</sup> I can't, of course, prove your friends are genetically inferior; it may be their mindset or culture. But they act like lemmings. They go on building factories until the natural resources run out, thermonuclear weapons when their absurdity is realized and everyone knows they cannot be used, hundred-page law review articles that rehash cases when everyone knows that vein of thought has run dry—and they fail to even sense their own danger. You say they are adaptive. I doubt it.”

“Rodrigo,” I burst in. “You seriously misread the times. Your ideas on cultural superiority and inferiority will obviously generate resistance, as you yourself concede. Wait till you see how they respond to your hundred-yard dash example; you're sure to find *yourself* labeled as racist. Maybe we both are—half the time I agree with you. But even the other things you say about the West's predicament and its need for an infusion of new thought—things I strongly agree with—will fall on deaf ears. All the movement is the other way. This is a time of retrenchment. The country is listening to the conservatives, not to people like you and me.”

“I know,” said Rodrigo. “I've been reading about that retrenchment. We do get the *New York Times* in Italy, even if it comes a few days late.”

“And so you must know about conservative writers like Allan Bloom,<sup>68</sup> Thomas Sowell,<sup>69</sup> Glenn Loury,<sup>70</sup> Roger Kimball,<sup>71</sup> Shelby Steele,<sup>72</sup> E.D. Hirsch,<sup>73</sup> and Dinesh D'Souza<sup>74</sup> and the tremendous reception they have been receiving, both in popular circles<sup>75</sup> and in the academy?”

“Yes. I read D'Souza on the flight over, in fact. Like the others, he has a number of insightful things to say.<sup>76</sup> But he's seriously wrong—and hardly represents the wave of the future, as you fear.”

66. A game involving rapid-fire repartee, in which the objective is to insult or wound one's antagonist more often, elegantly, and completely than he or she is able to insult you.

67. Easy? I thought: I only wish. Wait till this brash newcomer tries *his* hand at it.

68. ALAN BLOOM, *THE CLOSING OF THE AMERICAN MIND* (1987).

69. THOMAS SOWELL, *CIVIL RIGHTS: RHETORIC OR REALITY?* (1984).

70. Glenn Loury, *Who Speaks for American Blacks?*, COMMENTARY, Jan. 1987, at 34.

71. ROGER KIMBALL, *TENURED RADICALS* (1990).

72. STEELE, *supra* note 21.

73. E.D. HIRSCH, JR., *CULTURAL LITERACY* (1987).

74. See D'SOUZA, *supra* note 1.

75. Bloom and Hirsch, in particular, I thought. See BLOOM, *supra* note 68; HIRSCH, *supra* note 73.

76. See Delgado, *supra* note 34 (citing contributions of new conservative thought to racial dialogue); see also pp. 110-21 (detailing excesses and exaggerations of back-to-Africa movement).

"They certainly represent the present," I grumbled. "I can't remember a period—except perhaps the late 1950's—when I have seen such resistance to racial reform. The public seems tired of minorities,<sup>77</sup> and the current Administration is no different. The backlash is apparent in the university setting as well: African-American studies departments are underfunded<sup>78</sup> and the exclusionary Eurocentric curriculum is making a comeback."<sup>79</sup>

"But it's ordinary, natural—and will pass," Rodrigo responded. "In troubled times, a people turns to the past, to its own more glorious period. That's why these neoconservative writers are popular—they preach that the culture need not change direction to survive, but only do the things it did before, harder and more energetically."<sup>80</sup>

"What our psychologist friends call 'perseveration,'" I said.

"Exactly. In my studies, I found that most beleaguered people do this, plus search for a scapegoat—a group they can depict as the source of all their troubles."<sup>81</sup>

"An old story," I agreed ruefully. "D'Souza, for example, places most of the blame for colleges' troubles at the doorstep of those demanding minorities who, along with a few deluded white sympathizers, have been broadening the curriculum, instituting Third World courses, hiring minority professors, and

77. The increasing tide of racism, insults, and indifference to minorities is documented in, e.g., T. Alexander Aleinikoff, *The Constitution in Context: The Continuing Significance of Racism*, 63 COLO. L. REV. (forthcoming March 1992); Mari S. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2327-31 (1989).

78. See, e.g., Adam Begley, *Black Studies' New Star: Henry Lewis Gates, Jr.*, N.Y. TIMES April 1, 1990, § 6 (Magazine), at 24 ("African-American studies is now generally an 'interdisciplinary program,' a poor relation of more established departments—English, history, sociology, economics."); Peggy Hernandez, *Afro-American Studies Show Strength*, BOSTON GLOBE, Nov. 16, 1990, at B2 (noting that notwithstanding student interest, Harvard still does not fully fund its African-American Studies department). This and other indicia of Black despair are succinctly summarized in Derrick Bell, *Racial Realism*, 24 CONN. L. REV. (forthcoming April 1992).

79. See, e.g., Loren Feldman, *Tracking to the Right at George Mason*, AM. LAWYER, Dec. 1991, at 60; Anthony Flint, *Turmoil at Yale Management School*, BOSTON GLOBE, Nov. 24, 1991, at A24; Joseph P. Kahn, *Is Yale for Sale?: A \$20 Million Endowment for Western Civilization Divides the Campus*, BOSTON GLOBE, June 10, 1991, at 40; Donald Kagan, *Western Values are Central*, N.Y. TIMES, May 4, 1991, at A23.

80. On the various divisions among conservatives, see Charles Krauthammer, *Why Buchanan Runs, The Fight for the Right*, WASH. POST, Nov. 24, 1991, at C7 (distinguishing between "neo-" and "Paleo-" conservatives).

81. Examples of the scapegoating phenomenon are legion: D'Souza blames minorities and their sympathizers for the academy's problems, pp. 46-70, 142-48, 182-85, 257; the Republican Party and David Duke capitalize on Willie Horton and black crime; beleaguered American workers blame Japan for our troubles; Reconstruction-era writers blame emancipation for the Civil War's destructiveness in the South (I was pleasantly surprised that Rodrigo knew *that*); and so on. For discussions of racial scapegoating, see GORDON W. ALLPORT, *THE NATURE OF PREJUDICE* 224 (25th ed. 1979); IRWIN KATZ, *STIGMA—A SOCIAL PSYCHOLOGICAL ANALYSIS* 121 (1981).

In addition to scapegoating, a beleaguered people also engages in denial. Consider, for example, Rodrigo's "proof" of a Western decline, *supra* text accompanying note 54; *infra* Appendix A. Would his documentation persuade a skeptic who believed in the West's inherent superiority? No, all such evidence is subject to *interpretation*. Unless one is receptive to a new paradigm or perspective, all such evidence will seem like annoying flyspecks. It is only later, in retrospect—when the new view has been adapted—that we say, "Of course!" See Delgado, *supra* note 57.

recruiting 'unqualified' students of color—all at the expense of academic rigor and standards.<sup>82</sup> He says the barbarians—meaning us—are running the place<sup>83</sup> and urges university administrators to hold the line against what he sees as bullying and a new form of racism.<sup>84</sup>

"Have you ever thought it curious," Rodrigo mused, "how some whites can see themselves as victimized by us—a pristine example of the sort of post-modern move they purport to hate.<sup>85</sup> I suppose if one has been in power a long time, any change seems threatening, offensive, unprincipled, and wrong. But reality eventually intervenes.<sup>86</sup> Western culture's predicament runs very deep—every indicator shows it. And, there are straws in the wind, harbingers of hopeful change."<sup>87</sup>

"Rodrigo, I'll say this for you—you've proposed a novel approach to affirmative action. Until now, we've struggled with finding a moral basis for sustaining what looked like breaches of the merit principle, like hiring a less qualified person over a more qualified person for racial reasons.<sup>88</sup> But you're saying that white people should welcome nonwhites into their fold as rapidly as possible out of simple self-interest—that is, if they want their society to survive.<sup>89</sup> This is something that they are not accustomed to hearing, to put it mildly. Do you have any support for *this* assertion?"

"Turn on your computer again, Professor. This won't take but a minute."

I obliged him, and was treated to a second lightning display of technological wizardry as Rodrigo showed me books on Asian business organization, Eastern mysticism, Japanese schooling, ancient Egyptian origins of modern

82. Pp. 2-23 (listing areas of liberal excess in admissions policy in class, and on campus); pp. 94-122 (criticizing Afrocentric curricular reforms); pp. 124-56 (decrying university restrictions on offensive speech).

83. Pp. 256-57 ("[T]he activists set the agenda and timorous administrators usually go along.").

84. P. 51 (white and Asian students see themselves as victims); p. 131 (white students feel "under attack"); p. 84 (reporting that academics are being intimidated by colleagues); pp. 146, 152-56 (complaining of censorship of sensitive speech); p. 200 (complaining of truculent minority students).

85. See also Albert Shanker, *The Danger in Multiple Perspectives*, NEW REPUBLIC, Dec. 2, 1991, at 47 (assuming that there is, or might be, a Chicano or Black perspective on history or literature is (a) "essentialist" and (b) divisive in that it promotes different views when formerly there was unity). Compare pp. 176-92 (deploring ascendancy of deconstruction at Duke University) with p. 146 (new campus orthodoxy restricting racist and sexist speech) and p. 257 ("The liberal university is a distinctive and fragile institution. . . . [T]he current revolution of minority victims threatens to destroy the highest ideals of liberal education, and with them that enlightenment and understanding which hold out the only prospects for . . . social justice . . .").

86. But *when*, I wondered? Rodrigo's self-assurance on this point made me think of the public's reaction to President Bush's recent trip to Japan in a humiliating and vain effort to persuade the Japanese to buy American automobiles. Many Americans still seemed prone to blame the Japanese and the rest of the world for our troubles, believing that the solution lies in making others change, rather than changing ourselves.

87. Did he mean the favorable reception of a handful of critical scholars of color? See *supra* note 23 and accompanying text. The election of an occasional Black official to preside over a decaying city from which affluent whites had fled?

88. Pp. 24-58 (arguing that affirmative action at Berkeley has resulted in campus unrest, a high dropout rate, and other ills).

89. See Derrick Bell, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980) (arguing that whites permit advances in racial justice for Blacks only when doing so coincides with whites' self-interest).

astronomy and physics, and even on the debt our Founding Fathers owed the Iroquois for the political ideas that shaped our Constitution. He showed me articles on the Japanese computer and automobile industries, the seemingly more successful approach that African and Latino societies have taken to family organization and the treatment of their own aged and destitute, and even the roots of popular American music in Black composers and groups.<sup>90</sup>

"It's only a beginning," Rodrigo said, switching off my computer. "I want to make this my life's work. Do you think anyone will listen to me?"

"It's hard to say. I don't know if the times are right. Most Americans believe that their economic problems are just temporary and that they have the best, fairest political system in the world—conveniently forgetting a chapter or two of their own history.<sup>91</sup> But never mind that. Let me ask you instead a personal question: If things are really as bad as you say, why are you, who have a choice, thinking of returning? Shouldn't you remain safely in Italy while your native culture self-destructs? When a wave crests, then hits the beach, it creates an immediate commotion. There's a lot of foam, a loud noise, a great expenditure of energy, and sometimes an undertow. I should think someone like you would be at some risk here—particularly if you go around speaking as candidly as you have to me today—notwithstanding our much-vaunted system of free expression."<sup>92</sup>

#### IV. RODRIGO EXPLAINS WHY HE HAS RETURNED

"I'm back for family reasons. Geneva and my other half-brothers and sisters are here. And since my father died, I have no other relatives in Italy. Your decreasing quality of life<sup>93</sup> and high white-collar crime rate<sup>94</sup> gave me

90. Fortunately, I also kept this second printout, portions of which follow at Appendix B, *infra*.

91. See BELL, NOT SAVED, *supra* note 3, at 26-51 (discussing original Constitution's slavery compromises); Richard Delgado & Jean Stefancic, *Norms and Narratives: Can Judges Avoid Serious Moral Error?*, 69 TEX. L. REV. 1929, 1934-52 (1991) (reviewing U.S. court decisions that approved slavery and "separate but equal" laws, Indian relocation, Asian exclusion, female subordination, Japanese internment, and sterilization of persons accused of mental retardation).

92. My thought train, of course, included: U.S. CONST. amend. I. But see Richard Delgado, *Campus Antiracism Rules: Constitutional Narratives in Collision*, 85 NW. U. L. REV. 343, 385 (1991) (arguing First Amendment more beneficial for members of the majority race than minorities); Charles Lawrence, *If He Hollers, Let Him Go: Regulating Racist Speech on Campus*, 1990 DUKE L.J. 431, 466 (same); Editorial, *Problem Professor*, WASH. POST, Nov. 6, 1991, at A24 (suggesting detenuing and dismissal of Black professor who taught that white moviemakers had conspired to denigrate Blacks and that whites are untrustworthy and inferior to Blacks); Denise Wagner, *Controversial City College Professor is a Study in Contradictions, Hero of Afrocentrism or Flamboyant Racist?*, CHRON. HIGHER EDUC., Dec. 18, 1991, at A17 (describing same controversy).

I also recalled an article that reported that a professor who promotes the theory that Blacks are inherently less intelligent than whites had won a legal battle against his university, while a Black professor at the same university was under fire for teaching essentially the opposite views. See Laurie Goodstein, *CUNY Virtually Puts Professor on Probation: Board Limits Term of Black Studies Chairman*, WASH. POST, Oct. 29, 1991, at A4.

93. See Gary Blonston, *Are Americans Really Working More Hours?*, DENVER POST, Feb. 17, 1992, at 1-A; Mary Roser, *Achievement Scores Troubling, 90% of U.S. Students Rate Among World's Worst in New Tests*, DENVER POST, Feb. 6, 1992, at 5-A; Hobart Rowen, *The Bentsen Initiative*, WASH. POST, Oct.

pause. And I could be quite comfortable in Italy, now that I've got my military service out of the way. I suppose I thought, as well, that with a little more training I could do something to ease the pain of my native country as it goes through a difficult transition."

"You mean helping America adjust to its new multiracial character, plus its own shrinking share of world markets?" I asked.

"That and more," Rodrigo answered quietly. "The dominant group will need help. All of us will."

"What if they don't see it that way?" I pressed. "Has a dominant group ever given up power gracefully? Has it ever abandoned the modes of thought, military organization, and extractive industries that brought it to power without a struggle?<sup>95</sup> And if so, how are we—I mean those who believe like you—going to conduct such a campaign? I'm afraid they have all the power. You may think truth and history are on your side. But what if they don't go along?"

"They will," Rodrigo replied with conviction, "as soon as they recognize their own dilemma. The early Visigoths destroyed themselves by warring. We can help the current dominant culture avoid a similar fate.<sup>96</sup> We may even have some friends and allies in the majority group—ones who believe as we do.<sup>97</sup> Maybe we can bill our offerings as 'hybrid vigor'—something they already endorse."

"And, once again—what if they refuse? Paradigms change slowly.<sup>98</sup> What if your transformation requires a hundred years?"

"In that case, we can simply use sabotage and what you call terrorism to speed things up. The more advanced, the more technologically complex a

24, 1991, at A23 (computing six-percent drop in quality of life in America); *Top 10 Countries for Quality of Life*, WASH. POST, Nov. 5, 1991, at Z5 (ranking United States seventh, behind Japan, Canada, Iceland, Sweden, Switzerland, and Norway, on quality-of-life measurements such as life expectancy, infant mortality, and per capita income); George Will, *Four Small Indicators of Our National Stress*, BOULDER DAILY CAMERA, Jan. 16, 1992, at 9-A.

94. Perhaps Rodrigo was thinking of figures like those reported by Russell Mokhiber, *Invisible, Expensive Crime*, WASH. POST, Nov. 18, 1991, at A20. Corporate crime and violence, including pollution, procurement and financial fraud, public corruption, and occupational safety crimes cost the public more than street crimes. The total loss from street robbery in the United States in 1989 was \$405 million, but a single price-fixing conspiracy by oil companies cost the nation's consumers \$432 million; 3.2 million burglaries accounted for a \$3.4 billion loss, yet the S&L scandal cost this nation from \$300 to \$500 billion. *Id.*

95. See DERRICK BELL, *RACE, RACISM AND AMERICAN LAW* 3, 40-41 (2d ed. 1980) (arguing that ideal factors play little role in racial reform); Bell, *supra* note 78 (same); Delgado, *supra* note 57.

96. BELL, *NOT SAVED*, *supra* note 3, at 250-58 (arguing that minorities should not work to replace whites at top of hierarchy, but to transform entire system in more humane directions).

97. I thought: If he doesn't frighten them all away by his cultural-supremacist ideas.

But then I thought: Maybe the indignation some whites will feel on hearing Rodrigo's message will cause them to reflect on how *we* feel when they speak about "quality," "merit," and "standards" (with us in mind) or about not sacrificing *innocent* whites on the altar of affirmative action. (If whites are innocent, what does that make us?)

Is that Rodrigo's plan?

98. See *supra* text accompanying notes 40-44 (concerning role of dominant narrative in confining change).

society becomes, the more vulnerable it is to disruption.<sup>99</sup> Imagine what a few strategic—and nonviolent—taps on telephone switching stations around the country could do—or a few computer viruses, for that matter. Disruption is economically efficient for the subordinated group. In Italy, the government tried for a time to exclude leftist organizations. A few kidnappings and commando raids, and they were ready for serious negotiation. Something like that could happen here—or do you think I'm wrong, Professor?"

"Rodrigo, I have many doubts about all the things you have said—and particularly this one. If you repeat even half of what you have told me today to your colleagues or students, you will find yourself out of academia on your ear—and probably disbarred to boot."<sup>100</sup>

"I had no idea those were the rules of discourse. On the Continent we discuss these things openly—especially since recent events in Eastern Europe showed that rapid reform is, in fact, possible.<sup>101</sup> Your society certainly perpetrated plenty of terrorism on Blacks, Chicanos, and Indians.<sup>102</sup> Nevertheless, if one cannot discuss these things in—how do you put it?—polite company, I'll keep them to myself and for my close friends. I don't want to be seen as having an attitude problem."

Our conversation soon concluded. I had to prepare for a faculty colloquium I was to give at my new school that afternoon, and Rodrigo quickly excused himself, saying he had to get ready for the LSAT—"that dinosaur relic of an outmoded system of thought"—the coming Saturday. But I couldn't shake his image. Here was a man who spoke what he saw. I feared for him.<sup>103</sup>

99. Compare Robert J. Cottrol & Raymond T. Diamond, *The Second Amendment: Toward an Afro-Americanist Reconsideration*, 80 GEO. L.J. 309 (1991) (arguing that African Americans need right to own guns as an aspect of right to resist illegitimate authority) with Symposium, *Protest and Resistance: Civil Disobedience in the 1990s*, 48 WASH. & LEE L. REV. 15 (1989) and Symposium, *On the Necessity of Violence for Any Possibility of Justice*, 13 CARDOZO L. REV. 1082 (1991) (both discussing legal and moral bases for violence as response to social inequity and injustice).

100. See *supra* note 46 (assessing anti-Crit sentiment at some law schools).

101. For the role of postmodern thought in ushering in reform, see Robin West, *The Supreme Court, 1989 Term—Foreword: Taking Freedom Seriously*, 104 HARV. L. REV. 43 (1990) (discussing Vaclav Havel, Czech liberator and postmodern essayist and playwright); MILAN KUNDERA, *THE JOKE* (Michael H. Heim trans., 1982); MILAN KUNDERA, *THE UNBEARABLE LIGHTNESS OF BEING* (Michael H. Heim trans., 1980); MILAN KUNDERA, *THE BOOK OF LAUGHTER AND FORGETTING* (Michael H. Heim trans., 1980).

102. See *supra* note 56 and accompanying text; see also BOULDER DAILY CAMERA, Dec. 15, 1991, at B-2 (editorial compilation, quoting freed hostage Joseph Cicippio on his attitude toward his captors: "I feel I have to forgive them. It was their Boston Tea Party, their avenue. I was caught in the middle.")

103. In retrospect, my feelings for him were complex. Part of me felt joy and hope, the first time anything in the currently dismal racial scene had inspired those feelings in quite a while. For this I was grateful. But I wondered: Would majority society heed what Rodrigo would say? And, would he himself persist in saying it—or would he soften in time, perhaps becoming seduced by the opportunities available to a high-achieving law graduate? He was certainly prepared to seek conventional indicia of success—an LL.M., a professorship, publications in respectable law reviews. And I earlier noted his pride in having attended a university (Bologna) associated with the rise of mercantilism, rationalism, and, of course, the dreaded "linear thought." Was Rodrigo likely to free himself easily from these influences? And would his disdain for Western society survive his probable later success?

*Exit Rodrigo*

I heard from him a few more times in the weeks ahead. He left a message the following Monday saying he had found the LSAT easier than expected and hoped he had done well. About a week later, I received a polite letter saying how much he had enjoyed meeting me and asking whether, in view of our lengthy conversation, I felt I could write letters of recommendation on his behalf to certain LL.M. programs. I called him at Geneva's Greenwich Village apartment where he was staying, and we spoke for nearly half an hour, during which I tried to get a better sense of his professional and personal goals. In particular, I wanted assurance that he would not too openly advocate or prematurely engage in disruptive acts of the sort he had mentioned so casually in my office. Hearing enough to satisfy myself, I wrote four letters of recommendation, each to a different LL.M. program, over the next week.

All my work was wasted. Three weeks later, I received a long letter, on flimsy airmail stationery, written from a city in southern Italy. It read:

Dear Professor:

Thank you for all your efforts on my behalf. As you can see, I am back in Italy, courtesy of your immigration authorities. It seems I made the fundamental error of performing six months of part-time military training in the Italian Army shortly after my twentieth birthday. At the time it seemed a reasonable way of paying back the Italian nation for subsidizing my education at a fine university. Also, I don't know if I told you, but my late mother was an Italian citizen. How all this came to the attention of your authorities, I do not know. Is it possible your office or telephone is being monitored?<sup>104</sup> The immigration officer who conducted my hearing seemed to know a great deal about my political attitudes and interests.

At any rate, I have been informed that I am subject to denaturalization, whatever that means. I have to apply for a U.S. visa like any other foreigner, which could mean a delay of several years. So you will be deprived of further exchanges with me, in person at any rate, for the foreseeable future. I've found decent employment here, but had looked forward to returning to my homeland. I guess there is no reason to assume that a culture bent on demonstrating its own destructive absurdity will interrupt that demonstration for critical remonstrance. Well, as they say, Que sera, sera.

Arrivederci,  
Rodrigo

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104. I immediately thought of a magazine article I had read recently. See Richard Lacayo, *Nowhere To Hide*, TIME, Nov. 11, 1991, at 34 (documenting huge U.S. industry devoted to electronic snooping and monitoring).

As I walked across Washington Square park that evening I thought: Have we lost a prophet, or a madman? A racist or a savior? One with a message of hope, or of hatred and confusion? All these things at once?

A homeless man, his few possessions stacked neatly on the bench beside him, looked up at me despairingly as I walked past. Rodrigo's image of a wave cresting rose in my consciousness. I wondered if I would see him again.

## APPENDIX A

## RODRIGO'S PRINTOUT #1: THE WEST'S PREDICAMENT

A. *Essays and Books on the Theory of Cyclicity in Nations and Cultures*

- ROBERT M. ADAMS, *DECADENT SOCIETIES* (1983).  
 THE BREAKDOWN OF DEMOCRATIC REGIMES (Joan J. Linz & Alfred Stepan eds., 1978).  
 DANIEL BELL, *THE CULTURAL CONTRADICTIONS OF CAPITALISM* (1975).  
 GEORG W.F. HEGEL, *PHILOSOPHY OF RIGHT* 13 (T.M. Knox trans., 1967).  
 DAVID HUME, *POLITICAL ESSAYS* 120 (Charles W. Hendel ed., 1953).  
 MANCUR OLSON, *THE RISE AND DECLINE OF NATIONS: ECONOMIC GROWTH, STAGFLATION, AND SOCIAL RIGIDITIES* (1982).  
 PITIRIM A. SIROKIN, *THE CRISIS OF OUR AGE* (1942).  
 OSWALD SPENGLER, *DECLINE OF THE WEST* (Helmut Werner ed., 1991).  
 ARNOLD TOYNBEE, *CIVILIZATION ON TRIAL* (1948).

B. *Essays and Articles on the General Decline of the West*

- BELL, *supra*.  
 ALLAN BLOOM, *THE CLOSING OF THE AMERICAN MIND* (1987).  
 LAWRENCE HAWORTH, *DECADENCE AND OBJECTIVITY* (1977).  
 CHRISTOPHER LASCH, *THE CULTURE OF NARCISSISM: AMERICAN LIFE IN AN AGE OF DIMINISHING EXPECTATIONS* (1978).  
 ALASDAIR C. MACINTYRE, *AFTER VIRTUE: A STUDY IN MORAL THEORY* (2d ed. 1984).  
 SPENGLER, *supra*.  
 Israel Shanker, *Solzhenitsyn, in Harvard Speech, Terms West Weak and Cowardly*, N.Y. TIMES, June 9, 1978, at A8.  
 Michael Loewe, *Decline and Fall in East and West*, 19 EUR. J. SOC. 168 (1978).

C. *Essays and Books on the United States' and West's Economic Decline*

- AMERICAN ENTERPRISE INSTITUTE FOR PUBLIC POLICY RESEARCH, *SHARING WORLD LEADERSHIP?: A NEW ERA FOR AMERICA & JAPAN* (John H. Makin & Donald C. Hellmann eds., 1989).  
 BARRY BLUESTONE & BENNETT HARRISON, *THE GREAT AMERICAN JOB MACHINE: THE PROLIFERATION OF LOW-WAGE EMPLOYMENT IN THE U.S. ECONOMY* (1986).  
 PEARL M. KAMER, *THE U.S. ECONOMY IN CRISIS: ADJUSTING TO THE NEW REALITIES* (1988).  
 TOM KEMP, *CLIMAX OF CAPITALISM: THE U.S. ECONOMY IN THE TWENTIETH CENTURY* (1990).  
 JAMES LAXER, *DECLINE OF THE SUPERPOWERS: WINNERS AND LOSERS IN TODAY'S GLOBAL ECONOMY* (1987).  
 FRANK S. LEVY & RICHARD C. MICHEL, *THE ECONOMIC FUTURE OF AMERICAN FAMILIES: INCOME AND WEALTH TRENDS* (1941).  
 PAUL A. TIFFANY, *THE DECLINE OF AMERICAN STEEL: HOW MANAGEMENT, LABOR, AND GOVERNMENT WENT WRONG* (1988).  
 DAVID M. TUCKER, *THE DECLINE OF THRIFT IN AMERICA* (1990).  
*America's Wasting Disease*, ECONOMIST, Mar. 25, 1989, at 95.  
 Charles A. Ferguson, *America's High-Tech Decline*, FOREIGN POL'Y, Spring 1989, at 123.  
 Samuel P. Huntington, *The U.S.—Decline or Renewal?*, FOREIGN AFF., Winter 1988/89, at 76.  
 Paul Kennedy, *The U.S. as World Leader: The (Relative) Decline of America*, CURRENT, Dec. 1987, at 30.  
 Robert Kuttner, *The Abyss: Does America Have a Parachute?*, NEW REPUBLIC, Oct. 29, 1990, at 21.  
 Werner Meyer-Larsen, *America's Century Will End with a Whimper: A German Forecasts the Decline of a Superpower*, WORLD PRESS REV., Jan. 1991, at 24.  
 Alicia H. Munnell, *Why Have Productivity and Growth Declined?*, NEW ENGLAND ECON. REV., Jan. 1, 1990, at 3.  
 Ben Stein, *The Decline and Fall of the American Empire*, BUS. MONTHLY May 1990, at 60.  
*Suffering from Decline? Try the Consortium Cure*, ECONOMIST, Mar. 25, 1989, at 45.

D. *Essays and Books on Problems of the Cities and the Underclass*

REYNOLDS FARLEY & WALTER ALLEN, *THE COLOR LINE AND THE QUALITY OF LIFE IN AMERICA* (1987).  
WILLIAM J. WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* (1987).

Jose E. Becerra et al., *Infant Mortality Among Hispanics*, 265 JAMA 217 (1991).  
Council on Ethical and Judicial Affairs, *Black-White Disparities in Health Care*, 263 JAMA 2344 (1990).  
Sarah Glazer, *Crime and Punishment: A Tenuous Link*, EDITORIAL RES. REP. 586, 596 (1989).  
Ezra E.H. Griffin & Carl C. Bell, *Recent Trends in Suicide and Homicides Among Blacks*, 262 JAMA 2265 (1989).

Gene Koretz, *A Disturbing Decline in Black Life Expectancy*, BUS. WEEK, Feb. 27, 1989, at 28.  
*Study Finds High Death-Sentencing Rate Among Blacks*, NAT'L CATH. REP., Apr. 20, 1990, at 5.  
Philip Yam, *Grim Expectations: Life Expectancy of Blacks Is Sliding*, SCI. AM., Mar. 1991, at 33.  
Allan C. Hutchinson, *Indiana Dworkin and Law's Empire*, 96 YALE L.J. 637 (1987) (book review).

This last source offered a dazzling array of statistics:

Percentage of Black children who live below the poverty line: 47.3.

Percentage of non-Black Americans who say that there should be a law against interracial marriage: 28.

Percentage of non-Black Americans who say that Blacks "should not push themselves where they are not wanted": 58.

Chance that a white male in the United States will be murdered in a given year: 1 in 9927.

Chance that a Black male in the United States will be murdered in a given year: 1 in 1539.

Percentage of Black high school graduates over 16 who are unemployed: 18.3.

Percentage of white high school dropouts under 25 who are unemployed: 15.2.

Percentage of Blacks unemployed in 1984: 17.2.

Percentage of whites unemployed in 1984: 7.2.

Percentage increase in ratio of Black to white unemployment rates between 1965 and 1984: 20.

Percentage of elected officials who were Black in 1985: 1.2.

Percentage of Black families below poverty level: 32.4.

Percentage of white families at poverty level: 9.7.

Ratio of male Black children dying in first year of life to male white children dying in first year of life: 1.8 to 1.

Percentage of persons in New Orleans who are Black: 50.

Percentage of qualified applicants for police in New Orleans who are Black: 40.

Percentage of police officers in New Orleans who are Black: 2.

Chance of an American being in state prison on any given day: 1 in 800.

Chance of a Black male American being in state prison on any given day: 1 in 33.

Median income for all Black families in 1983: \$14,506.

Median income for all white families in 1983: \$25,757.

Median income of Black families as a percentage of that of white families in 1970: 61.

Median income of Black families as a percentage of that of white families in 1983: 56.

Percentage increase in Black unemployment rate from 1972-82: 82.

Percentage increase in white unemployment rate from 1972-82: 69.

*Id.* at 662-64.

When I queried him about the relevance of these statistics, Rodrigo explained that great disparity in wealth and well-being is a standard index of social malaise and a barometer indicating possible trouble for a society. It later struck me that slavery and other forms of group exploitation may be fully compatible with stability and a flourishing of the arts.

E. *Books and Articles on the United States' and West's Environmental Predicament and Exhaustion of Natural Resources*

RACHEL CARSON, *SILENT SPRING* (1963).

ALDO LEOPOLD, *SAND COUNTY ALMANAC* (1972).

REWEAVING THE WORLD: *EMERGENCE OF ECOFEMINISM* (Irene Diamond & Gloria F. Orenstein eds., 1990).

WILLIAM H. RODGERS, *NATURAL RESOURCES LAW: CASES AND MATERIALS* (2d ed. 1983).

Derrick Bell, *After We're Gone: Prudent Speculations on America in a Post-Racial Epoch*, 34 ST. LOUIS U. L.J. 393 (1990).

See also sources cited *supra* notes 93-94 (United States' high rates of incarceration, white-collar and ordinary crime, law school test scores, declining quality of life, lengthening work week, and increasing indicators of stress).

## APPENDIX B

### RODRIGO'S PRINTOUT #2: NONWESTERN SOURCES

#### A. *Essays and Books on Nonwestern Business Organization and Management*

WILLIAM G. OUCHI, *THEORY Z: HOW AMERICAN BUSINESS CAN MEET THE JAPANESE CHALLENGE* (1981).  
 YOSHITAKA SUZUKI, *JAPANESE MANAGEMENT STRUCTURES 1920-80* (1991).  
 Alan S. Blinder, *How Japan Puts the "Human" in Human Capital*, *BUS. WK.*, Nov. 11, 1991, at 22.  
*The Evolving Mind of Global Management: An Inside View of Japan in a Changing Business Environment*,  
*FORTUNE*, July 29, 1991, at S1.  
 Neil Gross, *Rails That Run on Software*, *BUS. WK.*, Oct. 25, 1991, at 84.

#### B. *Essays and Books on Japanese Educational Systems*

JAMES J. SHIELDS, *JAPANESE SCHOOLING: PATTERNS OF SOCIALIZATION, EQUALITY, AND POLITICAL CONTROL* (1989).  
 David Seligman, *Is America Smart Enough? IQ and National Productivity*, 43 *NAT'L REV.*, Apr. 15, 1991, at 24.  
 Alison L. Sprout, *Do U.S. Schools Make the Grade?*, *FORTUNE*, Spring 1991, at 50.

#### C. *Essays and Books on Eastern religious and mystical thought and its relation to modern physics*

ROBERT AITKIN, *TAKING THE PATH OF ZEN* (1982).  
 FRITJOF CAPRA, *THE TAO OF PHYSICS* (2d ed. 1983).  
 ALAN W. WATTS, *THE WAY OF ZEN* (1957).  
 GARY ZUKAV, *THE DANCING WU LI MASTERS: AN OVERVIEW OF THE NEW PHYSICS* (1979).

#### D. *Books on Hispanic Families and Care-giving*

ESSAYS ON MEXICAN KINSHIP (Hugo G. Nutini et al. eds., 1976).  
 OSCAR LEWIS, *FIVE FAMILIES* (1965).  
 EDWARD RIVERA, *FAMILY INSTALLMENTS: MEMORIES OF GROWING UP HISPANIC* (1982).  
 RICHARD RODRIGUEZ, *HUNGER OF MEMORY: THE EDUCATION OF RICHARD RODRIGUEZ* (1981).

#### E. *Essays and Books on the Influence of Black Composers and Musicians on American Popular Music*

BLACK MUSIC IN THE HARLEM RENAISSANCE: A COLLECTION OF ESSAYS (Samuel A. Floyd, Jr. ed., 1991).  
 JAMES H. CONE, *THE SPIRITUALS AND THE BLUES: AN INTERPRETATION* (1991).  
 ARNOLD SHAW, *BLACK POPULAR MUSIC: FROM THE SPIRITUALS, MINSTRELS, AND RAGTIME TO SOUL, DISCO, AND HIP-HOP* (1986).  
 DAVID TOOP, *THE RAP ATTACK: AFRICAN JIVE TO NEW YORK HIP HOP* (1984).  
 Mark Moses, *Aretha*, *NEW YORKER*, Feb. 1, 1988, at 84.  
 Lynn Norment, *Music*, *EBONY*, Aug. 1991, at 42.  
 Ed Ward, *Generation Rap*, *MOTHER JONES*, Oct. 1988, at 48.

#### F. *Essays and Books on the Influence of American Indian ideas on the U.S. Constitution*

BRUCE JOHANSEN, *FORGOTTEN FOUNDERS: BENJAMIN FRANKLIN, THE IROQUOIS, AND THE RATIONALE FOR THE AMERICAN REVOLUTION* (1982).  
 NATIVE ROOTS: HOW THE INDIANS NOURISHED AMERICA (1991).  
 J. MCIVER WEATHERFORD, *INDIAN GIVERS: HOW THE INDIANS OF THE AMERICAS TRANSFORMED THE WORLD* (1988).  
 Felix Cohen, *Americanizing the White Man, in THE LEGAL CONSCIENCE: SELECTED PAPERS OF FELIX COHEN* 315 (Lucy K. Cohen ed., 1960).

