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# RODRIGO'S PORTENT: CALIFORNIA AND THE COMING NEOCOLONIAL ORDER

RICHARD DELGADO\*

## INTRODUCTION: IN WHICH RODRIGO DROPS IN ON ME IN THE MIDDLE OF A MUNDANE TASK

"Lean your head back for a moment, Professor," my barber had just requested. I did so, anticipating the rush of soothing warm water that would mark the beginning of my monthly shampoo and haircut when a familiar voice caused me to jerk erect.

"Rodrigo!"<sup>1</sup> I exclaimed at the sight of my lanky, young friend standing next to my chair, a wide grin on his face. "What a sight for sore eyes. What are you doing here?"

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\* University Professor of Law, Seattle University. Thanks to Jean Stefancic, Ronald J. Krotoszynski, and Steven Bender for comments and suggestions; Michael Clyburn, Joseph Alvarado, Jennifer Yang, Jeanie Lee, and Jen Claypool for research assistance; librarians Tina Ching and Kerry Fitzgerald for bibliographic services; and Nanette Bradshaw for technical assistance.

1. See Richard Delgado, *Rodrigo's Chronicle*, 101 YALE L.J. 1357, 1357-59 (1992) (book review) [hereinafter Delgado, *Rodrigo's Chronicle*] (introducing Rodrigo). The son of a black serviceman and Italian mother, Rodrigo was born in the United States but raised in Italy when his father was assigned to a U.S. outpost there. Rodrigo graduates from the base high school and then attends an Italian university and law school ("the oldest one in the world, Professor") on government scholarships, graduating close to the top of his class. When the reader meets him, he has returned to the States to explore graduate law (LL.M.) programs. At the suggestion of his half-sister, celebrated civil-rights lawyer Geneva Crenshaw, see DERRICK BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE 7, 18-25 (1987) (recounting Geneva's adventures), the young man seeks out "the Professor" for career advice. Despite their age difference, the two become good friends, discussing such topics as affirmative action and the decline of the West. See Delgado, *Rodrigo's Chronicle*, supra at 1361-64, 1367-68; Richard Delgado, *Rodrigo's Second Chronicle: The Economics and Politics of Race*, 91 MICH. L. REV. 1183, 1187-98 (1993) (book review) [hereinafter Delgado, *Second Chronicle*] (law and economics); Richard Delgado, *Rodrigo's Third Chronicle: Care, Competition, and the Redemptive Tragedy of Race*, 81 CAL. L. REV. 387 (1993) (book review) [hereinafter Delgado, *Third Chronicle*] (love); Richard Delgado, *Rodrigo's Fourth Chronicle: Neutrality and Stasis in Antidiscrimination Law*, 45 STAN. L. REV. 1133 (1993) (book review) (legal rules); Richard Delgado, *Rodrigo's Sixth Chronicle: Intersections, Essences, and the Dilemma of Social Reform*, 68 N.Y.U. L. REV. 639 (1993) [hereinafter Delgado, *Sixth Chronicle*] (relationships between men and women of color); Richard Delgado, *Rodrigo's Eighth Chronicle: Black Crime, White Fears—On the Social Construction of Threat*, 80 VA. L. REV. 503 (1994) [hereinafter Delgado, *Eighth Chronicle*] (black and white crime); Richard Delgado, *Rodrigo's Tenth Chronicle: Merit and Affirmative Action*, 83 GEO. L.J. 1711 (1995) [hereinafter Delgado, *Tenth Chronicle*] (affirmative action); Richard Delgado, *Rodrigo's Eleventh Chronicle: Empathy and False Empathy*, 84 CAL. L. REV. 61 (1996) (the role of emotions in the law); Richard Delgado, *Rodrigo's Thirteenth Chronicle: The Problem of the Shanty*, 85 GEO. L.J. 667 (1997) [hereinafter Delgado, *Problem of the Shanty*] (the problem of poor border settlements); Richard Delgado, *Rodrigo's Remonstrance: Love and Despair in an Age of Indifference—Should Humans Have Standing?*, 88 GEO. L.J. 263 (2000) (book review)

“Giannina<sup>2</sup> and I are on our way back from a conference in California. We had a little time on our hands and decided to drop in. Your secretary said I might find you here.”

“I’m having my monthly haircut,” I stammered, immediately realizing that I had merely stated the obvious. Gesturing toward the barber, who had been standing by patiently, bottle of shampoo in hand, I said, “Rodrigo, this is Joe, who’s been cutting my hair for years. Joe, this is Rodrigo. He teaches law the next state over.”

The two nodded politely, and Joe gestured that Rodrigo might take a seat nearby.

“I could use a trim myself,” Rodrigo said, glancing at his image in the mirror. “I thought of getting one in the conference hotel. But when I walked in, the proprietor gave me a hard look, so I left. I don’t think they wanted my business.”

“We sure would here,” Joe said with alacrity. “My son, Keshawn, can handle you. He just went next door for a minute.”

“Perfect,” Rodrigo replied. “I can get my hair cut and catch up with Gus<sup>3</sup> at the same time. I have a thesis I’d love to run past you. You, too, Joe, if you’re interested.”

[hereinafter Delgado, *Remonstrance*] (racial indifference); Richard Delgado, *Rodrigo’s Fifteenth Chronicle: Racial Mixture, Latino-Critical Scholarship, and the Black-White Binary*, 75 TEX. L. REV. 1181 (1997) (book review) [hereinafter Delgado, *Fifteenth Chronicle*] (Latino civil rights); Richard Delgado, *Rodrigo’s Bookbag: Brimelow, Bork, Herrnstein, Murray, and D’Souza—Recent Conservative Thought and the End of Equality*, 50 STAN. L. REV. 1929 (1998) (book review) [hereinafter Delgado, *Bookbag*] (conservative legal thought); Richard Delgado, *Rodrigo’s Committee Assignment: A Skeptical Look at Judicial Independence*, 72 S. CAL. L. REV. 425 (1999) (judicial independence); Richard Delgado, *White Interests and Civil Rights Realism: Rodrigo’s Bittersweet Epiphany*, 101 MICH. L. REV. 1201 (2003) [hereinafter *Bittersweet Epiphany*] (reverse racism); Richard Delgado, *Rodrigo and Revisionism: Relearning the Lessons of History*, 99 NW. U. L. REV. 805 (2005) (book review) [hereinafter Delgado, *Revisionism*] (historical revisionism); Richard Delgado, *Rodrigo’s Roundelay: Hernandez v. Texas and the Interest-Convergence Dilemma*, 41 HARV. C.R.-C.L. L. REV. 23 (2006) [hereinafter Delgado, *Roundelay*] (Latino legal history); Richard Delgado, *Rodrigo’s Corrido: Race, Postcolonial Theory, and U.S. Civil Rights*, 60 VAND. L. REV. 1691 (2007) [hereinafter Delgado, *Corrido*] (postcolonial theory); and many other topics in the years ahead. During this period, the brash, talented Rodrigo earns his LL.M. degree and embarks on his first teaching position at a nearby university. The reader meets Rodrigo’s soul mate, Giannina, and her mother, Teresa, with whom the professor is immediately smitten. The reader also learns that Rodrigo’s father’s family immigrated to America via the Caribbean. His father, Lorenzo, looks black and identifies as such, but speaks perfect Spanish. The son of a black father and an Italian mother, Rodrigo is racially indeterminate in appearance with olive skin and curly hair. For further information on Rodrigo’s origins, loves, family, and career, see, for example, Delgado, *Bittersweet Epiphany*, *supra*, at 1202 n.1; Delgado, *Revisionism*, *supra*, at 806 n.2.

2. See Delgado, *Corrido*, *supra* note 1, at 1693 n.1 (introducing “Giannina,” Rodrigo’s soul mate and life companion); Delgado, *Third Chronicle*, *supra* note 1, at 402.

3. Sometimes Rodrigo refers to the narrator as “Gus” and other times as “Professor.” When the two met, Rodrigo was a young student who used the latter term as a mark of respect. As I have created

Joe, who had been gently lathering my hair with his strong fingers, nodded, then added, "Keshawn's going to the community college. Studying pre-law. I'm sure he'd love to listen in, too."

The bell on the door jangled. "There he is now," Joe said, gesturing toward a serious-looking black youth who had just come in. "Keshawn, this here's Rodrigo. He's a friend of the professor's. Wants a haircut, too."

Rodrigo nodded vigorously, Keshawn picked up a white pinstriped robe from a nearby shelf, and Joe began rinsing me off in preparation for transfer to his regular chair by the window. As he accompanied me to the new location, I noticed that we had the shop to ourselves.

Keshawn took Rodrigo to the now-vacant shampooing chair, while Joe and I made small talk about how his shop was doing in the current economic downturn.

Then, with my young friend settled in the chair next to mine, I said, "Rodrigo, this must be a first. Ever since you and I met years ago, we've gotten together at restaurants, AALS, that law-and-economics conference in the Far North, and once at an airport while waiting for a connection.<sup>4</sup> Now here we are at Joe's barber shop, where I'm looking forward to hearing about your California trip and new thesis."

"I went there for a conference on the state's prison crisis,"<sup>5</sup> Rodrigo began, stretching his neck out while Keshawn tucked a gauzy paper towel under his chin. "Giannina came along to get together with an old friend. The idea I want to run past you came to me afterward."

"I've been reading about the state's budgetary problems," I said.<sup>6</sup> "All those prisons can't be helping."

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him, the Professor is a senior scholar of color teaching at a major law school and in the late stages of his career. Like Rodrigo, he is a composite of many persons I have known and not to be identified with any one in particular.

4. See sources cited *supra* note 1 for the locations where the two have met over the years.

5. See, e.g., JAMES J. RAWLS & WALTON BEAN, CALIFORNIA: AN INTERPRETIVE HISTORY 444–56 (9th ed. 2008) (describing the recent wave of prison-building in that state); Solomon Moore, *Paring Plans on Health Care in California Prisons*, N.Y. TIMES, June 1, 2009, at A15; Solomon Moore, *Study Finds Record Number of Inmates Serving Life*, N.Y. TIMES, July 23, 2009, at A24 (noting that one-fifth of California prisoners are serving life sentences); Malia Wollan, *Judges to Decide Whether Crowded California Prisons are Unconstitutional*, N.Y. TIMES, Dec. 8, 2008, at A20; see also Sasha Abramsky, *The War Against the 'War on Drugs': Economic Necessity and Shifting Mores are Changing the Nation's Approach to Incarceration*, THE NATION, July 6, 2009, at 18 (noting the connection between California's prison crisis and its budgetary emergency). For a recent account of the "phenomenal growth of California's state prison system since 1982 and grassroots opposition to the expanding use of prisons as catchall solutions to social problems," see RUTH WILSON GILMORE, GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA 5 (2007).

6. E.g., Evan Halper, *California is Its Own Worst Enemy*, SEATTLE TIMES, May 24, 2009, at A9; NPR, *California in Crisis: On the Verge of a Cash Collapse*, <http://www.NPR.org/news/specials/2009/california-crisis/index.html> (last visited May 11, 2010) (noting that "the state is broke" with "no

“They’ve been building them at a great clip,” Rodrigo replied. “And although they initially boosted the economies of the surrounding towns, they’re now straining the treasury to the breaking point. According to one of the panelists, Californians pay nearly as much for prisons—over \$10 billion dollars a year—as they do for higher education.”<sup>7</sup>

“That’s shocking,” I replied. “Society needs all the educated people it can get. What was your talk about?”

“Something I’ve been writing about, namely, restorative justice.<sup>8</sup> Have you heard about it?”

I had, in fact, been reading about that new approach to criminal sentencing, but our two barbers looked blank, so I explained, “It’s an alternative to imprisonment that’s been catching on. The idea is to repair the breach of community that occurs when an offender . . .”

“Who is usually young and black,” Rodrigo interjected, slipping a slim black-and-white volume out from under his robe and holding it as if to remind himself to say something about it later.<sup>9</sup>

“Indeed,” I continued. “The youth may have broken into the house of a middle-class person or deprived him or her of a purse or wallet on the sidewalk. Restorative justice brings the offender and the victim together in front of a trained mediator in the hope that both sides will come to

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easy fixes”); see also Neal Peirce, *Prison Spending Shackles State*, SEATTLE TIMES, Aug. 18, 2009, at A11 (noting that the United States is the world’s top incarcerator and that California is paying heavily for its high rate of incarceration). On the state’s deteriorating public sector, services, and infrastructure, see John B. Judis, *End State: Is California Finished?*, THE NEW REPUBLIC, Nov. 4, 2009, at 16.

7. Abramsky, *supra* note 5, at 20; Timothy Egan, *California Will Survive Its Crackup*, in *Op-Extra: Excerpts from Opinion Online*, N.Y. TIMES, May 24, 2009, at 9 (pointing out that the prison-guard industry is highly profitable); Solomon Moore, *Study Shows High Cost of Criminal Corrections*, N.Y. TIMES, Mar. 3, 2009, at A13 (noting the high cost of prisons in general); Phillip Reese, *Higher Education vs. Prisons: See Where California’s Money Goes*, SACRAMENTO BEE, Jan. 6, 2010, <http://www.sacbee.com/2010/01/06/2442430/higher-education-vs-prisons-see.html>; NPR, *California Budget Held Captive by State Prisons*, July 15, 2009, <http://www.npr.org/templates/stay/story.php?storyId=106606909>; see also GILMORE, *supra* note 5, at 1 (calling the state’s prison-building program the biggest in the history of the world); GILMORE, *supra* note 5, at 104–05 (describing how prisons contribute to the local economies of the towns in which they are located); RAWLS & BEAN, *supra* note 5, at 517 (noting that California hired more prison guards in a recent period than all other state employees combined); Nina Bernstein, *Dependent on Jail, City of Immigrants Fills Cells with Its Own*, N.Y. TIMES, Dec. 27, 2008, at A1 (noting the profitability of prisons for surrounding communities); Peirce, *supra* note 5 (noting that California’s prison-guard union favors building more prisons to house increasing numbers of inmates).

8. See, e.g., Richard Delgado, *Goodbye to Hammurabi: Analyzing the Atavistic Appeal of Restorative Justice*, 52 STAN. L. REV. 751 (2000) (critiquing this approach to criminal justice).

9. The book is PAUL BUTLER, *LET’S GET FREE: A HIP-HOP THEORY OF CRIMINAL JUSTICE* (2009). On the preponderance of young black men in the criminal justice system in general, see, for example, MARC MAUER, *THE SENTENCING PROJECT, THE RACE TO INCARCERATE* (2006); Delgado, *Eighth Chronicle*, *supra* note 1.

recognize their common humanity.<sup>10</sup> The idea is popular in certain liberal circles.”

“The theory is appealing,” Rodrigo added. “The middle-class white learns that the black youth is a person, too. He just grew up on the wrong side of the tracks and started running with the wrong crowd.<sup>11</sup> And for his part, the young man learns that the elderly lady he robbed is just like his grandmother, with feelings and hopes. When he knocked her to the ground, bruising her hip, she suffered nightmares and was afraid to go out for weeks afterward.<sup>12</sup>

“At the end of the session, if all goes well, the two have a cathartic experience. They hug each other. The youth performs some kind of community service, such as raking leaves for the victim or repairing the equipment in a neighborhood playground. If he completes the work, that serves in lieu of a jail sentence.<sup>13</sup> The lady gets her leaves raked. The kid reflects on his behavior and resolves to lead a better life. Everybody is better off.” Rodrigo looked up quizzically.

“I gather you think it isn't that simple.”

“It isn't,” Rodrigo replied. “Recidivism runs higher than you might think because, after a while, some of the youth fail to show up for their community service and end up returning to court.<sup>14</sup> They can easily end up serving more time than if they had pleaded guilty or gone to trial in the first place.<sup>15</sup> Some who weren't even at fault go along out of fear that if

10. See Delgado, *supra* note 8, at 756–58 (discussing victim-offender mediation, the most popular form of restorative justice). As most readers will know, much crime exhibits a class, and even a racial, dimension, with petty property crimes being perpetrated largely by poor people and youths, and white-collar crime by elites in executive suites. See Delgado, *Eighth Chronicle*, *supra* note 1. In restorative justice, particularly the form known as victim-offender mediation, the disparity between the social class of victim and offender is apt to be great. See, e.g., Delgado, *supra* note 8, at 767–68.

11. See Delgado, *supra* note 8, at 756–58. For a discussion of love and redemption for those who are cast out, see, for example, Delgado, *Third Chronicle*, *supra* note 1.

12. Delgado, *supra* note 8, at 758, 768–69.

13. *Id.* at 757–58 (discussing community work as an alternative to a fine or jail sentence).

14. *Id.* at 763 and sources cited therein (noting that what offenders say in the course of a restorative-justice session is admissible against them if they return to court, and that basic attitudes can remain unchanged because of the compulsory nature of the process). The evidence on completion rates for victim-offender mediation, a key form of restorative justice, is mixed. See, e.g., Leena Kurki, *Restorative and Community Justice in the United States*, 27 CRIME & JUST. 235, 240–41, 268–69, 271 (2000).

15. See Delgado, *supra* note 8, at 763 (noting that the offender's statements in the course of mediation are admissible if the case returns to court); see also Michael S. King, *Restorative Justice, Therapeutic Justice, and the Rise of Emotionally Intelligent Justice*, 32 MELB. U. L. REV. 1096, 1106–07 (2008) (noting that, with this approach, a higher proportion of cases are brought to justice).

In the Japanese criminal justice system, apologies are a central tool toward rehabilitation and reconciliation. See A. Didrick Castberg, *Prosecutorial Independence in Japan*, 16 UCLA PAC. BASIN L.J. 38, 60 (1997); David A. Suess, Note, *Paternalism Versus Pugnacity: The Right to Counsel in*

they go to trial, they'll be convicted and serve long terms. As with the practice of plea bargaining, this just breeds cynicism in minority youth.”

“The more things change, the more they stay the same,” Joe observed in a deep, stentorian voice, snipping away at my locks, which were becoming neater and trimmer by the minute.

“And so, Rodrigo, I gather your thesis has to do with restorative justice as a response to the imprisonment crisis.”

“It started out that way. In fact, that’s what the Californians invited me to talk about. But then I saw a parallel to a second movement—community policing.<sup>16</sup> When I reflected on the two together, a broader thesis emerged that I think will intrigue you.”

“We’ve been studying community policing in my criminology class,” Keshawn said, suspending his comb and scissors in midair above Rodrigo’s head. “It seems to proceed on a similar premise to restorative justice.”

“Hmm,” I thought. This young man wields words with the same precision as he does that pair of scissors. I hoped he would end up at my law school and resolved to talk to him about it sometime.

Rodrigo, too, did a quick double take. “Indeed it does. Like restorative justice, community policing aims to enlist the community in the crime-control function.<sup>17</sup> The idea is for the cops to meet with representatives of the community and learn its wants and needs. In turn, the police expect the community—usually a minority neighborhood—to tell them what they need to know.”<sup>18</sup>

“For example,” I continued, “that Raymond is basically a good kid who is a little wild right now, but will turn out okay in the end. The small group that hangs out on a certain street corner, however, is nothing but trouble.

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*Japan and the United States*, 72 IND. L.J. 291, 327 (1996). Might restorative justice be, in part, an attempt to engraft a Japanese-style, apology-driven approach into a culture in which insincere apology is practically an art form? See, e.g., Bill Carter & Brian Stelter, *Letterman Apologizes on the Air to his Wife*, N.Y. TIMES, Oct. 6, 2009, at B1. Thanks to Ronald Krotoszynski for pointing out this comparison.

16. On this form of policing, see, for example, Richard Delgado, *Law Enforcement in Subordinated Communities: Innovation and Response*, 106 MICH. L. REV. 1193, 1196–1200, 1203–04 (2008) (book review). For a variety of views on this approach, see *Colloquium on Community Policing*, 90 CAL. L. REV. 1415 (2002).

17. See Delgado, *supra* note 16, at 1196–1200 (discussing this justification for community policing). For a discussion of a similar mechanism—“287g pacts”—in which federal immigration authorities (ICE) and local police cooperate to enforce the country’s immigration laws, see Rigel C. Oliveri, *Between a Rock and a Hard Place: Landlords, Latinos, Anti-Illegal Immigrant Ordinances, and Housing Discrimination*, 62 VAND. L. REV. 55, 71–72 (2009); see also Julia Preston, *A Professor Fights Illegal Immigration One Court at a Time*, N.Y. TIMES, July 21, 2009, at A10.

18. Delgado, *supra* note 16, at 1196–99.

The empty building down the block is turning into a crack house. The garbage company is starting to miss pick-ups, and so on.”

“Right,” Rodrigo said. “The idea is to encourage the community to police itself. You see this on an individual level with restorative justice, but even more with community policing. It’s just like . . .”

“Just like what Foucault said,” Keshawn said, quick as a flash.<sup>19</sup> “We’ve been reading him, too. Both of those measures aim to induce the minority community to internalize the values of the dominant group—to begin disciplining itself, in effect.<sup>20</sup> Antonio Gramsci wrote about how oppressed people can easily take on the attitudes and mindset of the oppressors, becoming complicit in their own oppression. You see that at work, as well.”<sup>21</sup>

Rodrigo looked up appreciatively, prompting the young barber to caution him good-naturedly to hold still—“Or you’ll wind up with a bald patch on your head, Professor.”

“Oops,” Rodrigo said, promising to keep still. “But that’s where my thesis comes in. It turns out that these two movements are just the tip of the iceberg. A host of contemporary writers have been struggling to analyze the colonial condition.<sup>22</sup> Most of those writers are from Asia and Africa . . .”

“And a few from this continent, as I recall.”<sup>23</sup> I could see a glimmer of where Rodrigo was going and wanted to hear more.

“Right. These writers examine the role of resistance, collaboration, language rights, and the psychology of the oppressed in order to

19. See, e.g., MICHEL FOUCAULT, *DISCIPLINE AND PUNISH* (Alan Sheridan trans., Pantheon Books 1st ed. 1977) (1975) (discussing prisons as total institutions where control and supervision are unrelenting and pervasive). English philosopher Jeremy Bentham first proposed this totalistic approach to incarceration in his proposal for an all-seeing prison design in which the guards could observe everything that happened. JEREMY BENTHAM, *THE PANOPTICON* (1791); see also LOÏC WACQUANT, *PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY* (Duke Univ. Press 2009) (2004) (detailing how society increasingly relies on harsh measures, including imprisonment for the men and “workfare” for the women, to discipline the poor and control unrest).

20. That is, with community policing, the authorities attempt to enlist the community in the effort to report problems, identify offenders, and take on the crime-control attitudes of the police. With restorative justice, especially victim-offender mediation, the program aims to induce the offender to see things from the point of view of the victim, or of wider society.

21. See ANTONIO GRAMSCI, *SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI* 416–18 (Quintin Hoare & Geoffrey Nowell Smith eds. & trans., 1971) (discussing how a subaltern group can take on the consciousness of its oppressors). For further discussion of minority consciousness, see Delgado, *Sixth Chronicle*, *supra* note 1.

22. On postcolonial theory, see, for example, Delgado, *Corrido*, *supra* note 1, at 1695–718.

23. Rodrigo and I had discussed the movement not too long ago. See *id.* at 1697–702, 1705–19 (discussing some of the principal writers, including Ngugi wa Thiong’o, Chinue Achebe, Haunani-Kay Trask, Frantz Fanon, Trinh Minh-Ha, and Edward Said).



understand how a colonial power maintains control.<sup>24</sup> Some of them write about how the colonizers use ideology, literature, and even religion to persuade the natives that they should be grateful to the invaders for bringing them science, knowledge, and enlightened administration.”<sup>25</sup>

“Some of the writers discuss the role of educated natives, who accept midlevel jobs in the colonial administration in return for an implicit agreement to help the overlords keep an eye on their countrymen,” Keshawn added.<sup>26</sup> “One U.S. writer has discussed that.”<sup>27</sup>

Rodrigo nodded and jotted something down on a piece of paper. After a short pause, during which Joe got out his electric shaver to trim my sideburns and back of my neck, I said, “And so, Rodrigo, you think that postcolonial theory helps explain the ferment in California, with all those initiatives and excess incarceration?”

#### I. RODRIGO’S METAPHOR: THE STRUCTURE OF A PRISON

“I do,” he said with conviction. “Its prisons are just a microcosm of the state at large. Consider how the structure of a typical prison mirrors that of a colonial state.”

“Like India under Britain, where Gandhi fought for freedom from the colonizers,” Keshawn interjected.<sup>28</sup>

“Or Algeria under the French,” Joe added.<sup>29</sup>

“Indeed,” Rodrigo added. “The inmates are practically all black or Latino.<sup>30</sup> The guards are mixed, with some whites and a few blacks and Latinos thrown in.”

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24. *See id.* at 1696, 1704–18 (analyzing these and other themes).

25. *Id.* at 1714–16.

26. *Id.* at 1713–14.

27. *See* RODOLFO ACUÑA, *OCCUPIED AMERICA: A HISTORY OF CHICANOS*, at xi–xv (4th ed. 2000) (discussing the author’s internal-colony thesis); *id.* at 386–421 (discussing the rise of the broker class); *see also* ARMANDO NAVARRO, *THE IMMIGRATION CRISIS: NATIVISM, ARMED VIGILANTISM, AND THE RISE OF A COUNTERVAILING MOVEMENT* 38–41 (2008) (developing the author’s own internal-colony model); Bryan McKinley Jones Brayboy, *Toward a Tribal Critical Race Theory in Education*, 37 *URB. REV.* 425, 429, 431–32 (2006) (applying a neocolonial model to understand the U.S. government’s relationship to Native Americans).

28. Mahatma Gandhi is considered an early postcolonial figure. *See, e.g.*, ANTONY COPLEY, *GANDHI: AGAINST THE TIDE* 30–49, 99–104 (1987) (discussing the leader’s role in freeing India from colonial control); BHIKHU C. PAREKH, *COLONIALISM, TRADITION AND REFORM: AN ANALYSIS OF GANDHI’S POLITICAL DISCOURSE* 15–54, 81–119, 272–93 (2d ed. 1999) (discussing key features of his approach to resistance, including self-purification, nonviolence, and indianization of culture and personal identity).

29. *See, e.g.*, FRANTZ FANON, *THE WRETCHED OF THE EARTH* 93–94 (Constance Farrington trans., 1963) (discussing colonial rule under the French and violence as a cleansing force).

30. *See, e.g.*, TUSHAR KANSAL, *THE SENTENCING PROJECT, RACIAL DISPARITY IN SENTENCING:*

"Moving up the ladder, the wardens are white," Keshawn added. "And the parole board even more so. It's right out of Gramsci<sup>31</sup> or Rudyard Kipling."<sup>32</sup>

"Haven't a few prison law cases considered this point?" I asked.

"Say!" Rodrigo said. "I can use that. Oops." He looked up at Keshawn, who had raised his scissors into the air while Rodrigo was gesticulating. "Sorry about that. I get carried away sometimes."

I smiled at my young protégé's intellectual impetuosity. He had always been eager to share his ideas. "We're both thinking about that opinion by Richard Posner, right?"

"Right," Rodrigo said. "*Wittmer v. Peters*,<sup>33</sup> in which the famous . . ."

"And conservative," I added, unsure whether our two barber friends were familiar with Judge Posner and his reputation.

"Right, the famous appellate judge held that Illinois' shortage of black and Latino prison guards justified a racial preference in its hiring and promotion criteria."<sup>34</sup>

"Which otherwise would have been unconstitutional under strict scrutiny, as you law-types call it," Keshawn added.<sup>35</sup> "We were studying that in my political science class the other day."

"Exactly," Rodrigo said. "Because the inmate population is predominantly black,<sup>36</sup> it would have been unthinkable . . ."

A REVIEW OF THE LITERATURE (2005); The Sentencing Project, California, <http://www.sentencingproject.org/map/map.cfm#map> (last visited May 11, 2010); *see also* GILMORE, *supra* note 5, at 111 tbl.4 (illustrating California's prison population by race and ethnic group membership).

On the role of the fear of crime by nonwhites in driving mass imprisonment and governance in general, see MANUEL G. GONZALES & RICHARD DELGADO, *THE POLITICS OF FEAR: HOW REPUBLICANS USE MONEY, RACE, AND THE MEDIA TO WIN* (2006) (showing how conservative forces exploit fear of crime and immigration to enact harsh measures); Ian F. Haney-Lopez, *Post-Racial Racism: Racial Stratification and Mass Incarceration in the Age of Obama* (UC Berkeley Pub. Law Research Paper No. 1418212, Mar. 2010).

31. *See* GRAMSCI, *supra* note 21 (reflecting on social organization and prison life).

32. *See* Rudyard Kipling, *The White Man's Burden*, *MCCLURE'S MAG.*, Feb. 1899 (justifying close supervision of natives as an exercise in white benevolence).

33. 87 F.3d 916 (7th Cir. 1996).

34. *See id.* at 918–20.

35. On the heightened form of judicial review that courts apply to governmental actions burdening discrete and insular minorities, see *Hirabayashi v. United States*, 320 U.S. 81, 93 (1943); *United States v. Carolene Products Co.*, 304 U.S. 144, 152–53 n.4 (1938).

36. *See, e.g.*, The Sentencing Project, California, *supra* note 30. Rodrigo's discussion of the colonialism of the prison structure reminded me of the makeup of border-enforcement personnel, in which a mixed-race group of operatives and low-level agents, including some Latinos and blacks, police the country's borders and entry points. The higher up the ranks one goes up to Janet Napolitano, the whiter the staff are. *See* Alyssa Rosenberg, *House Report Criticizes Homeland Security's Workforce Diversity*, *GOV'T EXECUTIVE*, Mar. 11, 2008, <http://www.govexec.com/dailyfed/0308/031108ar1.htm>.

“Not to mention unworkable,” Joe added, transferring his attention to my other sideburn and peering intently at the other side to get the two lengths even.

“Exactly,” Rodrigo went on. “It would not have worked for a staff of white prison guards from blue-collar backgrounds, with tattoos on their arms and shaved heads, to try to rule over a large population of restless black and brown inmates.”<sup>37</sup>

“That would have made power relations too transparent,” I interjected. “So, the legal system obligingly provided for a few more black prison guards.”

“Just as postcolonial theory would predict,” Rodrigo said. “In any colonial situation, the ruling party will disguise the means of its control, relying on members of the subjugated group whenever possible.”<sup>38</sup>

“In this country, Acuña writes of the rise of the broker class,” Keshawn added.<sup>39</sup> “Suave, college-educated Latinos who work for corporations and large universities and do their masters’ bidding. We read him, too.”

“And unlike most of the other scholars, he was writing about conditions in this country,” Rodrigo said excitedly. “This ties in with my thesis. With restorative justice, the mediator tries to get the young offender to identify with the victim. The idea is to have him internalize the viewpoint of the dominant group, so that from then on he stops wanting to spray graffiti on walls and subways, sell drugs to college kids, or rob little old ladies while they’re walking their dogs in the evening.”<sup>40</sup> With community policing, the cops aim at much the same thing.”<sup>41</sup>

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37. See *Wittmer*, 87 F.3d at 920 (noting the undesirability of a largely white corps of prison guards).

38. See, e.g., Delgado, *Corrido*, *supra* note 1, at 1713–14 (discussing collaboration and cooptation in colonial relations); see also *Georgia v. McCollum*, 505 U.S. 42, 49–50, 57 (1992); *Batson v. Kentucky*, 476 U.S. 79, 85, 87–88 (1986) (emphasizing the importance of black jurors to the legitimacy of the criminal justice system). California, around this time, was carrying out a vigorous program of affirmative action throughout the prison industry, particularly in its lower ranks. See GILMORE, *supra* note 5, at 160–61.

39. See ACUÑA, *supra* note 27, at 386–421; Delgado, *Roundelay*, *supra* note 1, at 57–59 (describing the role of minority brokers, who use cultural information to help elite whites in corporate suites or government exercise control and sell products, like cigarettes and liquor, that harm their countrymen and women).

40. See *supra* notes 10–13 and accompanying text.

41. See *supra* notes 16–21 and accompanying text. Of course, robbing little old ladies is something that most groups, not just well-off whites, would detest, I thought, making a mental note to ask Rodrigo about this sometime. But, as luck would have it, our conversation soon veered into broader areas, including labor management, Bracero programs, and postcolonial theory. Would Rodrigo, now a young law professor with a wife and family, identify with common property criminals, including ones who might mug his wife on the street or steal his computer containing a draft of his

“And I gather both movements are on the rise in California?”

## II. IN WHICH RODRIGO BEGINS TO SHOW HOW CALIFORNIA IS BECOMING A NEOCOLONIAL STATE

“They are. Half of the conference was about them. Not surprising, considering that the state’s population recently reached a tipping point and is now more than one-half minority.<sup>42</sup> It’s the first one to have a majority-minority population. Several other states are likely to follow suit soon.”

“California’s school population tipped some time ago,<sup>43</sup> if I recall.”

“It did,” Rodrigo said, “and now is two-thirds minority.<sup>44</sup> Early on, California was a literal colony or territory, with a small population of Anglos wielding control over the original Indians and Mexicans.”<sup>45</sup> (Rodrigo slipped a second book out from under his robe.)<sup>46</sup> “After the discovery of gold and the completion of the transcontinental railroad, Anglo settlement increased rapidly so that the number of whites soon surpassed that of all the rest.<sup>47</sup> After that, the usual mechanisms of colonial authority were unnecessary. Anglos dominated by sheer force of numbers.”

“But today, the ratio is switching back.”

“Exactly. Because of immigration and a high birth rate, minorities have begun to outnumber whites.<sup>48</sup> That’s why you see all the unrest, including

next article? I doubted it, but wondered what he would say. For his earlier thoughts on black and white crime, see Delgado, *Eighth Chronicle*, *supra* note 1.

42. On California’s recent arrival at a demographic tipping point, see Todd S. Purdum, *Non-Hispanic Whites a Minority, California Census Figures Show*, N.Y. TIMES, Mar. 30, 2001, at A1. California is home to about one-eighth of the U.S. population. It is also the most ethnically diverse state. *See, e.g.*, RAWLS & BEAN, *supra* note 5, at xv. The nation’s wealthiest state, it leads the country in high technology and entertainment. *Id.* It also leads in industrial and agricultural production. If a separate country, the state would rank sixth in the world in gross domestic production. *Id.* On social and political changes that have accompanied the state’s recent demographic shift, see, for example, MARK BALDASSARE, *CALIFORNIA IN THE NEW MILLENNIUM: THE CHANGING SOCIAL AND POLITICAL LANDSCAPE* (2000).

43. On California’s growing minority student population, see, for example, RAWLS & BEAN, *supra* note 5, at 508–26 (discussing consequences of this shift in the school-age population).

44. *Id.*

45. On this early period, see, for example, *id.* at 74–118.

46. *Id.*

47. *Id.* at 72–123 (describing the influx of Anglo settlers during this period).

48. *Id.* at 518–26 (describing California’s arrival at a demographic tipping point); *see also* Sam Roberts, *Asian and Hispanic Minorities Growing, but More Slowly*, N.Y. TIMES, May 14, 2009, at A21. The state also has a large number of foreign-born individuals. *See, e.g.*, DEMOGRAPHIC RESEARCH UNIT, CAL. DEP’T OF FIN., CALIFORNIA CURRENT POPULATION SURVEY REPORT DATA AS OF MARCH 2007 19–22 (2009), [http://www.dof.ca.gov/HTML/DEMOGRAP/ReportsPapers/documents/CPS07\\_final.pdf](http://www.dof.ca.gov/HTML/DEMOGRAP/ReportsPapers/documents/CPS07_final.pdf).

vigilante activity at the border and all those referendums.<sup>49</sup> As though realizing that they are soon to be a minority, whites have been trying to hang on to power as long as possible.”<sup>50</sup>

“And that explains all those voters’ initiatives we’ve been reading about,” Keshawn chimed in. “Going all the way back to the one that changed the system of property taxes.”

“Right,” Rodrigo said, stealing a quick look inside the second book. “That was Proposition 13.<sup>51</sup> Part of a taxpayers’ revolt, it came in the wake of a state fair-housing act that required home and apartment renters to make housing available to all.<sup>52</sup> Other referenda quickly followed, including one making English the official language,<sup>53</sup> another forbidding bilingual education,<sup>54</sup> and another rejecting affirmative action in governmental contracting and higher education.”<sup>55</sup>

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49. See *infra* notes 113–69 and accompanying text (discussing the current ferment).

50. See *infra* notes 120–240 and accompanying text. I recalled that when Congress denied admission to the territory of New Mexico, which had been petitioning for statehood for sixty-two years, a principal reason was the territory’s large Spanish-speaking population, which constituted a majority of its citizenry until 1912. When the number of Spanish speakers dropped below half, Congress granted the state’s petition for admission to the Union. JUAN PEREA ET AL., *RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA* 299 (2d ed. 2007). Rodrigo’s evidence showed that California was moving in the opposite direction—changing from a state to a colony—just as New Mexico had done a hundred years earlier. And its majority-race citizens were asserting control for many of the same reasons.

51. Enacted in 1978, this proposition equalized and capped property taxes in the state. See, e.g., RAWLS & BEAN, *supra* note 5, at 443–45, 455, 507–09; Paul Krugman, *State of Paralysis*, N.Y. TIMES, May 25, 2009, at A19; see also NPR, *California Faces a Day of Reckoning*, July 12, 2009, <http://www.npr.org/templates/story/story.php?storyID=106487720>.

52. California enacted fair-housing acts in 1959 and 1963 that prohibited discrimination on the basis of race in the sale and rental of housing. See RAWLS & BEAN, *supra* note 5, at 396–97. Some Californians believed that these laws deprived them of control over their own property. Proposition 14, which repudiated the Rumford Fair Housing Act, arrived as a result. See *Reitman v. Mulkey*, 387 U.S. 369, 373–81 (1967) (declaring the measure unconstitutional). Earlier, Proposition 13 aimed to punish the state government, which had been promoting minority rights too conspicuously, by depriving it of revenues that many citizens believed it would just devote to social programs for poor blacks. See RAWLS & BEAN, *supra* note 5, at 443–45, 455, 507–09. The measure, in turn, came on the heels of *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971), which struck down California’s scheme for funding public schools and required something approaching equalization. See *id.* at 1263.

53. See RAWLS & BEAN, *supra* note 5, at 402 (describing enactment of a measure making English the official language of the state); see also NPR, *Californians Hold the Power of the Proposition*, July 13, 2009, <http://www.npr.org/templates/story/story.php?storyID=106479362>.

54. See RAWLS & BEAN, *supra* note 5, at 510–24 (describing the measure that curtailed bilingual education for the foreign born).

55. See *id.* at 449, 512 (describing Proposition 209, the country’s earliest and most prominent anti-affirmative-action measure).

“And there’s the one that took aim at recent immigrants,”<sup>56</sup> Joe added, handing me a mirror. “Our state considered a version patterned after California’s but voted it down.”

“And a good thing, too,” Rodrigo said. “California’s would have denied the newcomers access to all nonemergency services, including public education.<sup>57</sup> A federal court quickly declared it unconstitutional.”<sup>58</sup>

“Striking, especially when you consider it all at once,” I said. “And the meaning you draw from all this, Rodrigo, is . . . ?”

“California is in the process of reverting to its former condition—becoming, in effect, a neocolonial state. Once you realize this, you see signs of it everywhere. My research assistants and I have started analyzing various areas of California life, including higher education, state government, and the entertainment industry. I have some figures right here.” He slid a slim blue binder out from under his robe and placed it next to the two books on his lap.

“Before you get into that, how does that length look to you, Professor?”

I stole a quick look at myself in the mirror and told Joe, “They say you can’t make a silk purse out of a sow’s ear. But you come close every time.”

“Want me to cover some of that gray, Professor?”

“Maybe next time,” I said. “If you don’t mind, I’ll just sit here until Keshawn and Rodrigo are finished. I’d like to hear more about that thesis of his.”

“No problem,” Joe said with a flourish of his scissors. “As California goes, so goes the nation.”

### III. IN WHICH I CHALLENGE RODRIGO TO DEFEND HIS THESIS

“So they say,” I said, resolving to push my young protégé a little. “Intriguing as your thesis is, Rodrigo, you need to do three things. First, you need to show that a colonial model explains California’s current unrest better than ordinary racism does. As you know, the competition-aggression theory holds that racism increases when a dominant and a subordinate group compete for scarce commodities, such as jobs.<sup>59</sup> Right

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56. *See id.* at 448–49, 525 (describing Proposition 187, denying access to nonemergency state services, including free public education).

57. *Id.*

58. *See League of United Latin Am. Citizens v. Wilson*, 997 F. Supp. 1244, 1252–61 (C.D. Cal. 1997) (invalidating major provisions of the proposition).

59. On this theory of the origin of racism, see, for example, Richard Delgado, *Campus Antiracism Rules: Constitutional Narratives in Collision*, 85 NW. U. L. REV. 343, 373 & nn.254–57

now, the state's economy is in a severe downturn.<sup>60</sup> Maybe ordinary competition explains events there."

"Okay," Rodrigo said. "That's the first point. What's the second?"

"Possibly the material in that binder helps with this one. You need to show that a neocolonial model explains a broad range of events in California, not just its prison crisis. Every state is having problems with excessive incarceration right now.<sup>61</sup> Does the neocolonial model hold true in areas other than criminal justice?"

Rodrigo made a fist with two fingers extended. "You mentioned a third point."

"Oh," I said. "It's those two books. I gather they support your thesis somehow." Rodrigo loved books and I made a point of keeping up with what the young folks were reading, if only to counter the stereotype some of my colleagues might be harboring of me as an old-time senior professor, behind in my reading, and living in the past.

"This first one is Paul Butler's *Let's Get Free: A Hip-Hop Theory of Justice*,"<sup>62</sup> Rodrigo said, pointing to the slim book lying open on his lap. "It's not exclusively about California, but it supports my thesis. The second one is a history of California written by two liberal scholars."<sup>63</sup>

"Take the points up in any order you like," I said, patting my neat mop of hair. "With luck, it'll be like a good haircut, all coming together in the end."

#### IV. PAUL BUTLER'S LET'S GET FREE: A HIP-HOP THEORY OF JUSTICE

"Let's go in reverse order. Have you read the Butler book, Professor?"

"Not yet. I saw a notice that the librarian sent around and asked her to route a copy to me when it comes in. Do you recommend it?"

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(1991); see also GORDON W. ALLPORT, *THE NATURE OF PREJUDICE* 229–33 (1979) (describing prejudice as a function of group competition). As the reader will glean, the Professor, an old civil-rights warrior, resists seeing California in terms of fancy theory. See Delgado, *Second Chronicle*, *supra* note 1, at 1191; Delgado, *Third Chronicle*, *supra* note 1, at 404.

60. On the downturn in the state's economy, see, for example, Jennifer Steinhauer, *California's Solution to \$24 Billion Budget Gap is Going to Bring Some Pain*, N.Y. TIMES, June 22, 2009, at A12; Jennifer Steinhauer, *Official Says California May Be Forced to Issue I.O.U.s*, N.Y. TIMES, June 25, 2009, at A15; Steve Wiegand, *Just How Did We Get Here, and Where Are We Going?*, SACRAMENTO BEE, June 22, 2009, at A1.

61. See, e.g., THE SENTENCING PROJECT, *NEW INCARCERATION FIGURES: THIRTY-THREE CONSECUTIVE YEARS OF GROWTH* (2006), [http://www.sentencingproject.org/doc/publications/inc\\_newfigures.pdf](http://www.sentencingproject.org/doc/publications/inc_newfigures.pdf).

62. BUTLER, *supra* note 9.

63. RAWLS & BEAN, *supra* note 5.

"I do," Rodrigo said. (Out of the corner of my eye I saw Keshawn scribble something on a scrap of paper and slip it into his pocket.) "It's a good read. The author of groundbreaking articles on black juries, minority crime, and the justice system,<sup>64</sup> Butler builds on his previous work to develop a powerful synthesis. His principal point is that the war on crime is harming society and making us less safe, not more."<sup>65</sup>

"Isn't he a former federal prosecutor?" I asked.

"He is," Rodrigo replied. "As an Assistant U.S. Attorney, he prosecuted major felonies, including political corruption.<sup>66</sup> But he suffered increasing qualms about sending young black men to jail for drug-related offenses such as possession of small amounts of marijuana or crack cocaine.<sup>67</sup> Eventually, he quit for that reason."<sup>68</sup>

"That reminds me of his jury-nullification article in the *Yale Law Journal*,"<sup>69</sup> I said. "It created quite a stir when it first came out."

"He builds on that piece. After an opening chapter in which he describes his own arrest in a neighborhood dispute over a garbage bag,<sup>70</sup> he enumerates the costs of mass incarceration.<sup>71</sup> Our country has one of the highest rates in the free world.<sup>72</sup> Mentioning California, he gives statistics comparing the U.S. record for incarcerating its citizens to that of other nations, as well as the costs of all that imprisonment.<sup>73</sup> One new jail opens in this country every week;<sup>74</sup> in California, more than one a year."<sup>75</sup>

64. See, e.g., Paul Butler, *Much Respect: Toward a Hip-Hop Theory of Punishment*, 56 STAN. L. REV. 983 (2004); Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 YALE L.J. 677 (1995) [hereinafter Butler, *Racially Based Jury Nullification*]; Paul Butler, *Retribution, for Liberals*, 46 UCLA L. REV. 1873 (1999); Paul Butler, *When Judges Lie (and When They Should)*, 91 MINN. L. REV. 1785 (2007).

65. BUTLER, *supra* note 9, at 23–40 (explaining why excessive incarceration increases violent crime); *id.* at 130 (noting that a black man born in 1991 has a 29% chance of going to prison and that more young black males are currently in prison than in college).

66. *Id.* at 1–19.

67. *Id.* at 17–20, 41–55 (analyzing the war on drugs).

68. *Id.* at 17–20.

69. See Butler, *Racially Based Jury Nullification*, *supra* note 64.

70. See BUTLER, *supra* note 9, at 1–21 (Chapter One, The Hunter Gets Captured by the Game: A Prosecutor Meets American Criminal Justice).

71. *Id.* at 23–40 (Chapter Two, Safety First: Why Mass Incarceration Matters).

72. *Id.* at 25–27.

73. *Id.* at 27, 34.

74. *Id.* at 27.

75. On California's prison-building spree, see, for example, GILMORE, *supra* note 5, at 7–10 (describing surge of prison building in that state); Abramsky, *supra* note 5, at 18; Jennifer Steinhauer, *California to Address Prison Overcrowding with Giant Building Program*, N.Y. TIMES, Apr. 27, 2007, at A18. On the problem of excessive incarceration in general, see, for example, David Cole, *Can Our Shameful Prisons Be Reformed?*, N.Y. REV. BOOKS, Nov. 19, 2009, at 41; Nicholas D. Kristof, *Priority Test: Health Care or Prisons?*, N.Y. TIMES, Aug. 20, 2009, at A27; Peter Monaghan, *Prison Studies*, CHRON. REV., Nov. 6, 2009.



“But surely we have the right to lock up dangerous criminals, don’t we?”

“Chapter two explains that excessive incarceration is making us all less safe, not more. Very few inmates spend their entire lives in jail. Almost all will eventually be released.<sup>76</sup> Many of them are there for nonviolent crimes.<sup>77</sup> These offenders are more likely to victimize their fellow citizens after they come out than before they went in.<sup>78</sup> Part of the reason is that a prison record makes them unemployable.”<sup>79</sup>

“Not to mention un-marriageable,”<sup>80</sup> Keshawn added. “Who would want a mate with a rap sheet and no job prospects?”

“Exactly,” Rodrigo continued. “Exposure to hard-core, violent inmates doesn’t help, either. But back to incarceration rates. Black people do not use illegal substances more often than anyone else, yet the police arrest and lock them up at a much higher rate.<sup>81</sup> Violent crime in the U.S. has been declining in recent years, yet the prison population keeps rising.<sup>82</sup> The war on drugs is the main reason.”

“Does Butler favor legalizing drugs?”

“Yes, particularly the milder ones.”<sup>83</sup> And in the meantime, black jurors should exercise their constitutional right to nullify, voting to acquit when they believe a defendant is of greater use to the black community free than behind bars.<sup>84</sup> A chapter on snitching makes the same point.<sup>85</sup> The black community should refuse to cooperate with the police when they are

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76. BUTLER, *supra* note 9, at 30 (noting that 95% of inmates will eventually be released).

77. *Id.* at 29–31, 41–55 (describing consequences of the current punitive drug policy).

78. *Id.* at 30–31.

79. *Id.* at 33; *see also* Erik Eckholm, *With Higher Numbers of Prisoners Comes a Tide of Troubled Children*, N.Y. TIMES, July 5, 2009, at A13.

80. BUTLER, *supra* note 9, at 30 (noting that the typical inmate “wouldn’t be your . . . first choice to marry your daughter”).

81. *See* Bob Herbert, Op-Ed., *Anger Has Its Place*, N.Y. TIMES, Aug. 1, 2009, at A17; *see also* BUTLER, *supra* note 9, at 43–46, 192–93 n.11 (listing sources on incarceration for drug offenses); Nicholas D. Kristof, *Drugs Won the War*, N.Y. TIMES, June 14, 2009, at WK10 (Opinion) (noting that the United States incarcerates its citizens at a rate nearly five times the world average, and that drugs are the main reason).

82. BUTLER, *supra* note 9, at 27. California’s rate of violent crime has been declining, as well, beginning about 1990. GILMORE, *supra* note 5, at 7; *see* RAWLS & BEAN, *supra* note 5, at 515.

83. BUTLER, *supra* note 9, at 41–55.

84. *Id.* at 57–78 (Chapter Four, Jury Duty: Power to the People). Although the Constitution does not mention jury nullification in so many words, it does guarantee the right to a jury trial, a guarantee that courts have protected assiduously ever since. Among those protections is the prohibition of double jeopardy and retrial for the same offense. Hence, a jury’s acquittal, even if it contravenes the law and flies in the face of the judge’s instructions, is generally final.

85. *Id.* at 79–100 (Chapter Five, Patriot Acts: Don’t Be a Snitch, Do Be a Witness, and Don’t Always Help the Police).

investigating nonviolent crimes such as marijuana use, graffiti writing, or shoplifting.”<sup>86</sup>

“What about being a federal prosecutor?” Keshawn asked. “He was one himself.”

“One of his chapters is entitled, *Should Good People be Prosecutors?*”<sup>87</sup> Its answer is, basically, no.”

“Can’t a good prosecutor temper justice with mercy, working within the system to render decisions in line with our evolving moral instincts?” I asked.

“Only to a very limited extent. The mores of the office limit what you can do.”<sup>88</sup> Some prosecutors start out as progressives. Over time, they become just like the others in their workplaces. What Butler calls a law-and-order culture eventually takes over. Everyone likes to win, and, for a prosecutor, winning means sending people to jail.”<sup>89</sup>

“What about those district attorneys’ offices eager to hire women and minorities?”

Rodrigo opened the book and leafed through it. “He says that prosecutors’ offices are, in fact, becoming more diverse, especially in cities with large minority populations.”<sup>90</sup> That’s just what my colonial thesis would predict.” He inserted a piece of paper to mark his place. “But trying to work within the system only ends up reinforcing it. When a liberal lawyer joins the prosecutor’s office, according to Butler, he or she merely legitimizes an unfair system.”<sup>91</sup> Real reform must come from the outside.”<sup>92</sup>

“That must be where his theory of justice comes in.”

“Exactly. Based on the lessons of hip-hop, he proposes a thoroughgoing reform of the criminal justice system that will empower the black community, reduce incarceration, and curb excessive police power.”<sup>93</sup> He says that these measures will make society both safer and more just.”<sup>94</sup>

86. *Id.* at 88–92; Butler, *Racially Based Jury Nullification*, *supra* note 64 (explaining that jurors should nullify and vote to acquit when the offense is minor, nonviolent, and especially when it constitutes a *malum prohibitum* offense).

87. BUTLER, *supra* note 9, at 101–21 (Chapter Six, *Should Good People Be Prosecutors?*).

88. *Id.* at 114–18.

89. *Id.*

90. *Id.* at 105–06, 112–14, 118.

91. *Id.* at 112–14, 120–21.

92. *Id.*

93. *Id.* at 123–45 (Chapter Seven, *A Hip-Hop Theory of Justice*).

94. Some of these measures include seeing certain offenses as understandable rebellion, *id.* at 132; devising a theory of punishment that takes into account voices from below, including those of hip-hop artists, *id.* at 133–34, 144–45; respecting the personhood of offenders, *id.* at 135–36; pondering the role of the environment in criminogenesis, *id.* at 136; reducing punishment where it is

After a pause, I said, “It sounds like a stimulating book. And I can see how it bolsters your thesis that California is becoming a neocolonial state that uses punishment to keep its citizens under control. It employs as many of the subaltern group to perform low-level policing as possible. It teaches that the system is necessary for orderly administration. It disseminates ideology to persuade the underdogs to identify with the values of the control group.”

“He doesn’t mention neocolonialism in so many terms,” Rodrigo said. “But he paints a picture of the black community and its relations with the police and prosecutor’s offices that evoke that regime time and again. The authorities are an alien, invading force. The people secretly reject them and their values. They refuse to cooperate and give them information. With jury nullification, they go against the law . . .”

“As Gandhi urged his fellow citizens to do,”<sup>95</sup> Keshawn interjected.

“Martin Luther King, Jr., too,”<sup>96</sup> Joe added, straightening himself up, his expression taking on a faraway look.

“So I’m not the only one moving toward a postcolonial understanding of the relationship of citizen and state,” Rodrigo said. “Yet it’s not merely with the criminal justice system that you see this. Are you ready for my second topic?”

We all nodded. But I added, “Don’t forget to address my objection at some point. All the unrest you see in California might be simple racial politics, with whites, blacks, and browns at each others’ throats because their numbers are now nearly equal, and the economic climate is casting them in direct competition.”

Keshawn added, “Occam’s Razor and the principle of parsimony<sup>97</sup> hold that you should not invent new entities to account for phenomena that are explainable in terms of ordinary, well-known forces.”

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likely to fall heavily on members of an offender’s family, *id.* at 138; criminalizing white-collar offenses, *id.* at 139–40; decriminalizing drug offenses, 140–42; and reducing the use of imprisonment, *id.* at 142–44. *See also* Delgado, *Eighth Chronicle*, *supra* note 1 (discussing black and white crime); Delgado, *Remonstrance*, *supra* note 1 (discussing the perilous condition of many black males); Delgado, *Third Chronicle*, *supra* note 1 (suggesting love and concern for offenders).

95. On Gandhi’s use of nonviolent resistance to liberate India from British control, see, for example, COPLE, *supra* note 28; PAREKH, *supra* note 28.

96. *See, e.g.*, Martin Luther King, Jr., *Letter from Birmingham Jail* (1963), in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* 289 (James W. Washington ed., 1986).

97. Attributed to William of Occam, the principle holds that one should not multiply entities beyond necessity. As applied to scientific theorizing, it holds that usually the simplest explanation is most likely to be true. *See* Dave Beckett, William of Occam (1994), <http://wotug.ukc.ac.uk/parallel/www/occam/occam-bio.html>.

“In other words, why do we need neocolonialism?” Rodrigo asked, wincing—one of the few times I had seen him abandon his usual air of blithe confidence. “I think I have an answer. But why don't we consider a few statistics first.”

#### V. IN WHICH RODRIGO APPLIES POSTCOLONIAL THEORY TO CALIFORNIA

When we all nodded, Rodrigo stole a quick glance inside his folder and looked up. “I've started examining a number of areas, including state government, the K-12 system, higher education, corporate life, and Hollywood and the media. In each area, you see that the colonial model explains events in a way that other approaches don't.”

I reached over and put my hand on his arm. “I do want to hear your statistics, Rodrigo. But before you begin, could you give us a quick review of postcolonial theory? It will help us put those facts of yours in perspective. I know you and I discussed this school of thought once before, but I don't remember every detail. And Joe and Keshawn may not be very familiar with it at all.”

##### A. *Postcolonial Theory: A Brief Overview*

When the two barbers nodded gratefully, Rodrigo began. “In a nutshell, it's a body of writing that seeks to understand the colonial condition. The main authors, as the Professor mentioned, are from Asia, Africa, and Latin America.<sup>98</sup> Some of them ponder the psychology of the oppressed<sup>99</sup> and the role of educated natives who collaborate with the colonial overlords.<sup>100</sup> Others address how the occupying power uses ideology, literature, and

98. Some of the writers that Rodrigo was thinking about include CHINUA ACHEBE, *ANTHILLS OF THE SAVANNAH* (1987) (describing the continuing ills and aftereffects of French and English colonialism in contemporary Africa); CHINUA ACHEBE, *THINGS FALL APART* (1952) (describing the decline of a proud, purposive village under colonial rule); FANON, *supra* note 29, at 201–51 (describing the challenge of maintaining sanity and integrity during colonial occupation); ALBERT MEMMI, *THE COLONIZER AND THE COLONIZED* (Howard Greenfeld trans., 1965) (describing the tension between the two); TRINH T. MINH-HA, *WOMAN, NATIVE, OTHER* (1989) (describing role of culture and language in resisting colonial order); ARUNDHATI ROY, *WAR TALK* (2003) (discussing contemporary issues in formerly colonized countries); EDWARD W. SAID, *CULTURE AND IMPERIALISM* (1993) (discussing the West's tactics in extending imperial control); NGUGI WA THIONG'O, *DECOLONIZING THE MIND: THE POLITICS OF LANGUAGE IN AFRICAN LITERATURE* (1986); HAUNANI-KAY TRASK, *FROM A NATIVE DAUGHTER: COLONIALISM AND SOVEREIGNTY IN HAWAI'I* (rev. ed., Univ. of Haw. Press 1999) (1993). See generally *THE POST-COLONIAL STUDIES READER* (Bill Ashcroft et al. eds., 1995) (collecting postcolonial writing).

99. E.g., FANON, *supra* note 29.

100. See ROBERT L. ALLEN, *BLACK AWAKENING IN CAPITALIST AMERICA* 10–11 (1969); MEMMI, *supra* note 98, at 15–16.

popular culture to paint natives as simple and in need of the superior culture and science of the settling forces.<sup>101</sup> Still others write about resistance and how the colonial subject can maintain sanity in a society where others wield complete control.”<sup>102</sup>

“One or two of their suggestions are chilling, if I recall.”

“Right,” Keshawn interjected, “Frantz Fanon’s in particular.”

“Particularly that remark about blood,”<sup>103</sup> Rodrigo said. “Oh, and others discuss the role of language and how the native intellectual who chooses to write in French or English can easily lose touch with his people and culture.”<sup>104</sup>

“I seem to recall that a few American writers have written in this vein,” I ventured.

“Right,” Rodrigo replied. “Thoreau was one.”<sup>105</sup> He detested the Mexican-American War, believing it a case of sheer imperialism, and went to jail rather than pay taxes to support it.<sup>106</sup> Martin Luther King, Jr., cited Gandhi and his theory of nonviolent resistance.<sup>107</sup> The Black Panthers quoted a host of postcolonial writers.<sup>108</sup> And, in our time, Robert Blauner,<sup>109</sup> Robert Allen,<sup>110</sup> Armando Navarro,<sup>111</sup> and Rodolfo Acuña<sup>112</sup>

101. *E.g.*, SAID, *supra* note 98, at xii–xiii, 100, 162.

102. *E.g.*, HERBERT APTEKER, *AMERICAN NEGRO SLAVE REVOLTS 162–339* (1st ed. 1943); MEMMI, *supra* note 98, at 120–52; PAREKH, *supra* note 28, at 148–51; ROBERT J. ROSENBAUM, *MEXICANO RESISTANCE IN THE SOUTHWEST: THE SACRED RIGHT OF SELF-PRESERVATION* (1981); Roy, *supra* note 98, at 9–15; JAMES C. SCOTT, *WEAPONS OF THE WEAK: EVERYDAY FORMS OF PEASANT RESISTANCE xv–xviii* (1985); E. P. THOMPSON, *THE MAKING OF THE ENGLISH WORKING CLASS 62–78, 225–228, 500–21* (1963); HOWARD ZINN, *A PEOPLE’S HISTORY OF THE UNITED STATES: 1492–PRESENT 131, 198–99, 382–83* (rev. & updated ed. 1995); *see also* Ernesto Hernández-López, *Law and Popular Culture: Examples from Colombian Slang and Spanish-Language Radio in the U.S.*, 19 *BERKELEY LA RAZA L.J.* 117 (2008) (describing insider slang as a form of resistance).

103. *Viz.* that it is only through washing himself in the blood of the oppressor that the colonial subject gains psychic healing. FANON, *supra* note 29, at 103–04.

104. *E.g.*, NGUGI WA THIONG’O, *supra* note 98, at 23, 27–28; Jean Stefancic & Richard Delgado, *Crossover*, 33 *AM. INDIAN L. REV.* 1 (2009); Ngugi wa Thiong’o, *On the Abolition of the English Department*, in *THE POSTCOLONIAL STUDIES READER*, *supra* note 98, at 438. On suppression of the Spanish language in contemporary society, *see*, for example, Delgado, *Fifteenth Chronicle*, *supra* note 1; Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 *MINN. L. REV.* 169 (1992).

105. *See* HENRY THOREAU, *ON THE DUTY OF CIVIL DISOBEDIENCE 245* (Collier Books 1962) (1849) (written in part to protest the War with Mexico, which Thoreau considered an act of naked imperialism, the book urges readers to refuse to pay taxes for it. Thoreau spent a night in jail as a result).

106. *Id.*

107. *See* KING, JR., *supra* note 96.

108. These writers included FANON, *supra* note 29, Mao Zedong, and Karl Marx, all of whom figure prominently in postcolonial literature. *See* Richard Delgado, *Explaining the Rise and Fall of African-American Fortunes: Interest Convergence and Civil Rights Gains*, 37 *HARV. C.R.-C.L. L. REV.* 369, 381 (2002) (book review) (describing the Black Panthers’ reliance on these scholars).

109. ROBERT BLAUNER, *RACIAL OPPRESSION IN AMERICA* (1972).

have analyzed power relations in the United States in these terms, as well.”

When Rodrigo paused, Keshawn thanked him, scribbled a long note on a second scrap of paper, and then said, “All right, how about California?”

### *B. California's Colonial Turn: Objective Manifestations*

Rodrigo glanced inside his blue folder, then looked up. “I’ve been examining several sectors for evidence of postcolonial forces at work. EEOC figures enabled me to document a number of trends; this other book was helpful, too.”<sup>113</sup>

“To start off, the state’s ethnic representation in each of the areas I looked at almost screams ‘colonialism.’” He held up a handful of charts and tables. “As you see, that’s true whether you look at the prison system, the entertainment industry, politics, major corporations, or education. Whites are almost always at the top, with the others in subordinate positions.

“With public education, for example, most of the superintendents are white, as are the members of the school boards.”<sup>114</sup> The same is true for

110. ALLEN, *supra* note 100.

111. NAVARRO, *supra* note 27, at 11, 32, 39–41; *see also* ARMANDO NAVARRO, MEXICANO POLITICAL EXPERIENCE IN OCCUPIED AZTLÁN 1–12 (2005) (outlining the neocolonial model).

112. ACUÑA, *supra* note 27 (applying the internal-colony model to the full sweep of Mexican American history).

113. The book was RAWLS & BEAN, *supra* note 5 (setting out how Californians have found work and income over several centuries of its history).

For statistics on the representation of races in a range of sectors of California’s workforce, see EEOC, Job Patterns for Minorities and Women In Private Industry, 2007: State Aggregate by NAICS-2, [http://www.eeoc.gov/eeoc/statistics/employment/job\\_pat-eeo1/2007/state\\_nac2/](http://www.eeoc.gov/eeoc/statistics/employment/job_pat-eeo1/2007/state_nac2/) (2007) (listing figures for that state under California State Aggregate). For charts and graphs illustrating these statistics and showing the distribution of minority and white workers in lower-level, midlevel, and professional and higher-level jobs in California, see *infra* Appendix: Rodrigo’s Blue Binder. For EEOC’s definitions of the various job categories it uses in compiling its state-by-state figures, see EEOC, Job Patterns for Minorities and Women in Private Industry: A Glossary, <http://archive.eeoc.gov/stats/jobpat/glossary.html> (last modified July 7, 2005).

114. *See, e.g.*, LINDA C. TILLMAN, THE SAGE HANDBOOK OF AFRICAN AMERICAN EDUCATION 150 (2009) (noting the very small number of black school superintendents and that they clustered in inner-city districts); Jason A. Grissom, *Who Sits on School Boards in California?* (Inst. for Research on Educ. Policy & Practice, Working Paper No. 2007-04, 2007); Amy Klauke, *Preparing School Administrators*, *ERIC Digest Series EA 57* (1990), <http://www.ericdigests.org/pre-9218/school.htm> (noting that in a recent year, 14% of school administrators were members of minority groups). In academia, diversity officers are often minorities, and in business, too. In law schools, the same is often true of assistant deans—but rarely the main dean. *See, e.g.*, ASS’N OF AM. LAW SCH., STATISTICAL REPORT ON LAW SCHOOL FACULTY AND CANDIDATES FOR LAW FACULTY POSITIONS, 29 tbl.3, 34 tbl.4C (2004–05), [http://aals.org.cnchost.com/documents/statistics/Report\\_tables\\_0405.pdf](http://aals.org.cnchost.com/documents/statistics/Report_tables_0405.pdf); ASS’N OF AM. LAW SCH., STATISTICAL REPORT ON LAW FACULTY, DIRECTORY OF LAW TEACHERS: TITLES 17–23 (2007–08), <http://aals.org.cnchost.com/statistics/report-07-08.pdf> (both reports showing the small

principals, except for a handful of inner-city schools.<sup>115</sup> In the teaching ranks, the racial makeup is more mixed,<sup>116</sup> while most of the teacher's aides are people of color.<sup>117</sup> And, of course, most of the students are minorities. It goes right down the line.”

“In a way, that’s what you would expect,” I said, determined to play the devil’s advocate as long as possible. “Schools are the purveyors of official knowledge. They pass culture down from one generation to the next. So, it’s vital that minority children internalize the lessons that the Anglo establishment wants. You might not, then, be dealing with neocolonialism, but a culture’s perfectly understandable desire for ideological continuity from one generation to the next. But how about some of your other areas? With business, you have the profit motive, so barriers against minority advancement ought to be lower. Are the ranks of higher executives more balanced?”

“Not at all,” Rodrigo said. “Even in sectors such as computers and places like Silicon Valley, where Asians have experienced success, few of the companies have Asian CEOs. The few that do are start-ups begun by an Asian.”<sup>118</sup>

“Very few blacks, too,” added Joe. “I read that in a minority-business magazine I get.”<sup>119</sup>

“Close to zero,” Rodrigo agreed. “And with politics, the situation is little better. For example, Cruz Bustamante was the only Latino in recent history to win a statewide election, and that was for a lieutenant governor

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number of minority law deans but somewhat larger numbers of minority associate deans and assistant deans).

115. See Lekan Oguntoyinbo, *Akron Board Troubled by Lack of Black School Principals*, CLEVELAND PLAIN DEALER, June 7, 1995, at 1B (noting low number of black school principals in that city); Celina Echols, *Challenges Facing Black American Principals: A Conversation About Coping*, <http://cnx.org/content/m13821/latest/> (last visited May 11, 2010) (noting that, in a recent year, 82% of principals were white, 11% black, and 5% Hispanic); Klauke, *supra* note 114 (noting that the ranks of administrators were largely white).

116. See Oguntoyinbo, *supra* note 115, at 1B (noting that the teaching ranks were 70.7% white, 16.1% Latino, 4.4% African American, 5.1% Asian American, and 1.4% Filipino).

117. “Paraprofessional” or teaching aide jobs require less preparation than that of a credentialed teacher but may serve, with further training, as “career ladders,” leading to positions as fully credentialed teachers. NAT’L COLLABORATIVE ON DIVERSITY IN THE TEACHING FORCE, ASSESSMENT OF DIVERSITY IN AMERICA’S TEACHING FORCE: A CALL TO ACTION (2004).

118. See, e.g., Mike Swift, *Why Haven’t Asians Scaled Corporate Heights*, SEATTLE TIMES, June 1, 2009, at A8. The few exceptions include Yahoo’s Jerry Yang.

119. Joe may have been referring to M.B.E.: MINORITY BUSINESS ENTREPRENEUR, available at [www.mbemag.com](http://www.mbemag.com) (containing articles on the struggles of entrepreneurs and executives of color). On the small number of black CEOs of major corporations, see Charles Whitaker, *Franklin Raines: First Black Head of a Fortune 500 Corporation*, EBONY, Apr. 2001, at 106.

slot.<sup>120</sup> When he ran for governor, the opposing party aired commercials implying that he was part of a secret plan to return California and the Southwest to Mexico.<sup>121</sup> He lost. When, a few years later, Antonio Villaraigosa ran for mayor of Los Angeles and won—the first Latino to hold that office since 1872—his opponents resurrected ads showing a person cutting cocaine and a voiceover intoning, ‘Los Angeles can’t trust Antonio Villaraigosa.’<sup>122</sup> The number of blacks who have won any office at all is small, and the voting rates for that group have declined over the years.<sup>123</sup> The number of Latinos and Asians who have won election has increased, but is still much lower than their portion of the population at large.<sup>124</sup> Minority underrepresentation is particularly acute in the state senate.<sup>125</sup>

“I think you mentioned Hollywood and the entertainment industry,” I said. “What did you find there?”

120. See Matt A. Barreto & Nathan D. Woods, *Latino Voting Behavior in an Anti-Latino Political Context: The Case of Los Angeles County*, in DIVERSITY IN DEMOCRACY: MINORITY REPRESENTATION IN THE UNITED STATES 148, 148 (Gary M. Segura & Shaun Bowler eds., 2005); see also RAWLS & BEAN, *supra* note 5, at 526 (describing Bustamante’s campaign). In 1871, Romualdo Pacheco was the first Latino to win election to a significant California office. Barreto & Woods, *supra* at 148. Similarly, Cruz Reynoso was appointed by Governor Pat Brown to the California Supreme Court, after which he won a statewide reconfirmation election in 1982 before being ousted by the voters in the next election in 1986. On the high points of his career, see Kristina Horton Flaherty, *Cruz Reynoso Honored as a “Legal Giant,”* CAL. BAR J., Oct. 2009, [http://calbar.ca.gov/state/calbar/calbar\\_cbj.jsp?sCategoryPath=/Home/Attorney%20Resources/California%20Bar%20Journal/October2009&sCatHtmlPath=cbj/2009-10\\_TH\\_05\\_reynoso.html&sCatHtmlTitle=Top%20Headlines](http://calbar.ca.gov/state/calbar/calbar_cbj.jsp?sCategoryPath=/Home/Attorney%20Resources/California%20Bar%20Journal/October2009&sCatHtmlPath=cbj/2009-10_TH_05_reynoso.html&sCatHtmlTitle=Top%20Headlines); see also RAWLS & BEAN, *supra* note 5, at 402 (describing his 1986 electoral defeat).

121. See STEVEN W. BENDER, GREASERS AND GRINGOS: LATINOS, LAW, AND THE AMERICAN IMAGINATION 8, 63 (2003) (discussing ads opposing Villaraigosa’s campaign); Federation for American Immigration Reform, *Chicano Nationalism, Revanchism and the Aztlan Myth* (Jan. 2005), [http://www.fairus.org/site/PageServer?pagename=iic\\_immigrationissuecenters861a](http://www.fairus.org/site/PageServer?pagename=iic_immigrationissuecenters861a) (repeating same charge about Mexican American activists in general).

122. BENDER, *supra* note 121, at 63; RAWLS & BEAN, *supra* note 5, at 526 (describing Villaraigosa and a new generation of Latino politicians).

123. See, e.g., PUB. POLICY INST. OF CAL., A PORTRAIT OF RACE AND ETHNICITY IN CALIFORNIA: AN ASSESSMENT OF SOCIAL AND ECONOMIC WELL-BEING, at ix (Belinda I. Reyes ed., 2001), available at [http://www.ppic.org/content/pubs/report/R\\_201BRR.pdf](http://www.ppic.org/content/pubs/report/R_201BRR.pdf). Blacks who have won high office in California include Maxine Waters and Ron Dellums. See, e.g., RAWLS & BEAN, *supra* note 5, at 399.

124. PUB. POLICY INST. OF CAL., *supra* note 123.

125. For example, Latinos are only about 25% of that body and 21% of the House. See National Conference of State Legislatures, 2009 Latino Legislators, <http://www.ncsl.org/programs/legismgt/ABOUT/LatinoLegislatorsOverview.htm> (last visited May 11, 2010). Recently, the number of blacks in the California state senate was even smaller, namely two. Cal. Sec’y of State, California State Senate, California Roster, <http://www.sen.ca.gov/~newsen/senators/senators.htm> (last visited May 11, 2010) (providing links to each California senator’s website with photographs). The number of Latinos is about nine (out of thirty-seven), and Asians about two. *Id.*



“Much the same as with the schools. They, too, are in the business of articulating cultural values.<sup>126</sup> The entire industry is a prime source of official narratives, scripts, and ideology.”<sup>127</sup>

“I bet I know what you found,” Keshawn interjected. “Aside from Spike Lee and a few aging black stars, Hollywood is pretty much a white preserve.”

“It is,” Rodrigo replied. “Minority groups have been complaining for years. The National Hispanic Media Coalition filed a petition with the FCC just this spring, documenting widespread ethnic stereotypes and an absence of minority broadcasters, movie directors, and newspaper editors.<sup>128</sup> A recent book points out that television programming over a recent thirty-year period depicted Latinos as criminals twice as often as whites, and three times as often as blacks.<sup>129</sup> California, of course, is the center of moviemaking and much of the television industry.”

“Speaking of moviemaking, I was just reading about California’s Walt Disney as champion of white, middle-class values,”<sup>130</sup> I said. But, recalling my resolution to press Rodrigo, I added, “A lot of the media are centered in New York and other cities, and I doubt that they are any freer of the stereotypes you mention. So, I’m not sure you can lay all of the blame on California and its discontents. Besides, white folks have more money and connections than our brothers and sisters of color and, by and large, better educations. Wouldn’t you need to show that the disparities in broadcasters, writers, and editors have increased in recent years as the

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126. See, e.g., BENDER, *supra* note 121, at 8–9, 12–13 (describing media stereotypes of four minority groups); Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 CORNELL L. REV. 1258, 1261–75 (1992) (same, in both media and the schools); see also Delgado, *Bittersweet Epiphany*, *supra* note 1 (describing some of the consequences of a negative social construction); *infra* notes 129–30 and accompanying text.

127. Adeno Addis, *Hell Man, They Did Invent Us: The Mass Media, Law, and African Americans*, 41 BUFF. L. REV. 523 (1993); Delgado & Stefancic, *supra* note 126, at 1264–66, 1269–70, 1272, 1275, 1287.

128. See Edward Wyatt, *No Smooth Ride on TV Networks’ Road to Diversity*, N.Y. TIMES, Mar. 18, 2009, at C1; see Petition Filed on Behalf of The National Hispanic Media Coalition (NHMC), *In re Hate Speech in the Media* (Jan. 28, 2009) (undocketed but on file with author).

129. See BENDER, *supra* note 121, at 1–5, 30–63 (discussing television coverage of Latinos as criminals); Tara J. Yosso & David G. Garcia, “Who are These Kids, Rejects from Hell?” *Analyzing Hollywood Distortions of Latina/o High School Students*, in HANDBOOK OF LATINOS AND EDUCATION: THEORY, RESEARCH, AND PRACTICE 450 (Enrique G. Murillo, Jr. et al. eds., 2009) (describing movies as a colonial force).

130. On Anglocentric values and narratives in Disney productions, see, for example, Henry A. Giroux, *Beyond the Politics of Innocence: Memory and Pedagogy in the ‘Wonderful World of Disney,’* 23 SOCIALIST REV. 79 (1993); Dorothy L. Hurley, *Seeing White: Children of Color and the Disney Fairy Tale Princess*, 74 J. NEGRO EDUC. 221 (2005); John Newsinger, *US: Me Disney, You Tarzan*, 42 RACE & CLASS 78 (2000); Yosso, *supra* note 129.

minority population has grown? Shouldn't you be looking at things from a historical perspective?"

"I've started doing that. As luck would have it, a recent book and article collect much of this material." Rodrigo held up a thick book with a blue and gold cover.

I squinted and asked, "Who is it by?"

"Two California academics, Walton Bean and James Rawls. Entitled *California: An Interpretive History*,<sup>131</sup> it just came out in a new edition by Rawls. Like the Butler book, it's a good read. It begins by reviewing the state's early history, including settlement,<sup>132</sup> Conquest,<sup>133</sup> and early farm fascism in the 1930s;<sup>134</sup> Indian massacres and relocation;<sup>135</sup> and unspeakable brutality toward blacks, Chinese, and Asians.<sup>136</sup> It discusses the rise of the great corporations, the railroads, and agribusiness.<sup>137</sup> The last few chapters, on the modern era, were particularly helpful."

"Do the authors describe the state in neocolonial terms?" I asked.

"No, although they are scathing about the state's treatment of Indians, women, and minorities.<sup>138</sup> But if you read carefully, you begin to see the outlines of a colonial society coming into focus, especially in the closing chapters.<sup>139</sup> So, even though the authors don't apply the term to recent developments, they do in all but name."

"Incidentally, I was reading a law review article about California," I said.<sup>140</sup> "It covers some of the same ground, although I don't think it mentions a neocolonial thesis, either."

131. RAWLS & BEAN, *supra* note 5.

132. *Id.* at 22–83.

133. *See id.* at 1–31 (discussing Spanish colonization and the role of missions); *id.* at 84–92 (discussing the Anglo version that followed).

134. *E.g., id.* at 378–79.

135. *E.g., id.* at 140–57, 388–90; *see also* KEVIN STARR, *GOLDEN DREAMS: CALIFORNIA IN AN AGE OF ABUNDANCE, 1950–1963*, at 436–39, 454–55 (2009) (describing some of the same episodes).

136. *E.g.,* RAWLS & BEAN, *supra* note 5, at 192–95, 249–50, 354–59.

137. *Id.* at 169–72, 202–40, 294–305.

138. *See supra* notes 132–35 and accompanying text; *see also* RAWLS & BEAN, *supra* note 5, at 388 (describing California's treatment of its Indian population as evincing a "sickening record of racist murder and sanctimonious fraud").

139. *E.g.,* RAWLS & BEAN, *supra* note 5, at 439 (describing upsurge in conservatism, *passim*; describing antimorality measures and referenda; TV commercials depicting shadowy, sneaky figures bent on mischief; and increasing inequality between the haves and the have-nots); *see also id.* at 504 (discussing the widening income and wealth gap); *id.* at 521 (quoting another scholar describing California as a "two-tiered society filled with rage").

140. Richard Delgado & Jean Stefancic, *California's Racial History and Constitutional Rationales for Race-Conscious Decision Making in Higher Education*, 47 *UCLA L. REV.* 1521 (2000).

“Is it this one here?” Rodrigo asked, pulling a much-thumbed reprint with a tan cover and blue lettering out from under his robe. “It cites Bean and Rawls, but an earlier edition.”<sup>141</sup>

“I see we’ve been doing some of the same reading. Please go on.”

“Sure. As I mentioned, Rawls, who wrote most of the material on the modern period, points out how whites have gained control of all of the state’s industries, including agribusiness.<sup>142</sup> He also notes that the content of official ideology, such as in state textbooks, has often been Anglocentric.”<sup>143</sup>

“Just as one would expect in an emerging colony,” I said.<sup>144</sup> Then, after a pause, “I just read about a controversy that arose when President Obama appointed a new head of the National Endowment for the Humanities. The previous director had stirred up conservatives when he introduced a set of standards, formulated at UCLA, for teaching U.S. history. They would have emphasized the role of ordinary citizens, workers, women, and activists like Harriet Tubman at the expense of generals, presidents, and the founders. When the new director reintroduced the standards, the U.S. Senate indignantly rejected them.”<sup>145</sup>

“I read about that controversy,” Rodrigo said, “and it struck me as further evidence that the United States is taking on the outlines of a colonial society. Resistance to bottom-up history is exactly what you would expect in a system wary of sharing power with a large population of color. It’s hard to explain in terms of ordinary racism, or even classism. One of those previous directors was a Republican, while the next one was a Democrat.”<sup>146</sup>

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141. Delgado & Stefancic, *supra* note 140, at 1538 n.96 (citing JAMES J. RAWLS & WALTON BEAN, CALIFORNIA: AN INTERPRETIVE HISTORY (7th ed. 1997)); *see also id.* at 1539 n.105 (citing JAMES J. RAWLS, INDIANS OF CALIFORNIA: THE CHANGING IMAGE, at xiii (1984)).

142. RAWLS & BEAN, *supra* note 5, at 376–86 (describing the rise of agribusiness); *see also* Delgado & Stefancic, *supra* note 140, at 1540–41, 1598–613 (same).

143. *See* RAWLS & BEAN, *supra* note 5, at 366, 498–500 (describing the advent of the Walt Disney empire, which articulated an informal set of American values, including cheerfulness, cleanliness, and fresh-faced heroes and heroines rescuing each other from dire situations); *infra* notes 145–50 (describing struggles over official school curricula and textbooks).

144. *See* Sam Tanenhaus, *Sound of Silence: The Culture Wars Take a Break*, N.Y. TIMES, June 28, 2009, at WK1 (describing Republican efforts to suppress standards, developed at UCLA, that would emphasize teaching “history from below” as experienced by women, workers, and Native Americans, as opposed to that featuring kings, generals, and presidents). A country that is in the process of resuming colonial lines would naturally, I thought, want to suppress the former view of history and accentuate the latter. On “history from below,” *see* PATRICIA NELSON LIMERICK, THE LEGACY OF CONQUEST: THE UNBROKEN PAST OF THE AMERICAN WEST (1987).

145. *See* Tanenhaus, *supra* note 144 (describing the reign of various National Endowment chairs, including Republican Lynne Cheney).

146. *Id.*

“So the concern over official history cuts across party lines,” I said. “But back to the California book. Do the authors have anything to say about their own discipline?”

“They do. They mention that in 1964, official textbooks were so full of demeaning images of Native Americans that the American Indian Historical Society called for their revision.<sup>147</sup> Three years later, concern over the inadequacy of Indian education led to the formation of the California Indian Educational Association.”<sup>148</sup>

“Over the years,” Keshawn added, “Indians have had to struggle against government-operated boarding schools that cut off the children’s ponytails and taught them to hate their own culture and language.”<sup>149</sup>

“Rawls covers all of that. He also describes how Latinos have been challenging culturally insensitive schools, textbooks, and curricula that disrespect their culture and contributions.<sup>150</sup> He covers their struggles against segregation and inferior, crowded schools.<sup>151</sup> He also takes up those referenda and initiatives that we discussed earlier, deeming them evidence of a distinct antiminority shift. Other times, he calls them evidence of a taxpayer revolt. Either way, it comes down to the same thing, in my opinion.”<sup>152</sup>

147. RAWLS & BEAN, *supra* note 5, at 390–92; Delgado & Stefancic, *supra* note 140, at 1569–71.

148. RAWLS & BEAN, *supra* note 5, at 390–92.

149. *See, e.g.*, PEREA ET AL., *supra* note 50, at 741–45, 928, 1020–24; Delgado & Stefancic, *supra* note 140, at 1569–71 (discussing fortunes of Indian schoolchildren in California schools).

150. *See* RAWLS & BEAN, *supra* note 5, at 401–02; STARR, *supra* note 135, at 442–43; Delgado & Stefancic, *supra* note 140, at 1571–75 (describing treatment of Mexican schoolchildren in California, including routine assignment to the retarded track). California schools today teach Latino schoolchildren patriotism and military values, and encourage them to enroll in ROTC courses and speak to recruiters about a military career. *See* TARA J. YOSSO, CRITICAL RACE COUNTERSTORIES ALONG THE CHICANA/CHICANO EDUCATIONAL PIPELINE 59–60 (2006); National Priorities Project, Top 50 High Schools Ranked by Hispanic Recruits, 2004, <http://www.nationalpriorities.org/Top%2050%20High%20Schools%20Ranked%20by%20Hispanic%20Recruits%202004> (last visited May 11, 2010) (noting the large number of Latino recruits in certain high schools in a recent year); *see also* Delgado & Stefancic, *supra* note 140, at 1568–69. The article describes Japanese World War II internment camps that required the children of the Japanese inmates to attend camp schools, which were operated by the state of California, employing official textbooks and state-licensed teachers. The Japanese children studied subjects like English and social studies from books featuring traditional American families with cardigan-wearing dads, apron-wearing mothers, happy children, and a dog called Spot. The Japanese children were not fooled. The cover of a high-school yearbook from the period showed a hand grasping a pair of pliers, cutting a strand of barbed wire. Delgado & Stefancic, *supra* note 140, at 1569.

151. BUTLER, *supra* note 9, at 528–46; Delgado & Stefancic, *supra* note 140, at 1573 n.402, 1575–76; *see also* Carrie Kahn, *California Schools Quake from Budget Cuts*, July 14, 2009, <http://www.npr.org/templates/story/story.php?storyID=106355588>.

152. RAWLS & BEAN, *supra* note 5, at 544–48 (referring to recent developments as evidence of a taxpayer revolt); *see also* Delgado & Stefancic, *supra* note 140, at 1552–57 (discussing initiatives and referendums that made life difficult for members of minority groups).

“What about that struggle over official ideology?” I asked. “Do you see it anywhere else, apart from the educational arena and the media?”

“One area is beauty and official aesthetics.”

“You’re referring to early travel literature, I gather, that painted the West as a beautiful, fertile land that was too good for the indolent Mexicans and Indians.”<sup>153</sup>

“Right. Rawls, Horsman, Kevin Starr, and others make that point. It’s connected to the idea of Manifest Destiny and is undergoing a revival today in right-wing literature complaining of how immigrants and Latinos are writing graffiti, littering lawns and sidewalks, and driving beat-up, smoky cars. They are destroying the Golden State, the California Dream.”<sup>154</sup>

“Interesting point, Rodrigo. I hadn’t connected beauty and neatness to colonialism. But early colonial societies certainly drew a line between themselves, with their pink cheeks and noble profiles, and the swarthy natives with furrowed brows.”<sup>155</sup>

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153. Delgado & Stefancic, *supra* note 140, at 1532 (noting that residents have long considered their state to embody a golden promise, coupled with rare natural beauty and as holding out “the California Dream” of a better life for those intelligent or lucky enough to gain a spot there). On the notion that the golden West with its fertile lands, beaches, and natural riches was too good for the indolent Indians and Mexicans who were its original occupants, see REGINALD HORSMAN, RACE AND MANIFEST DESTINY: THE ORIGINS OF AMERICAN RACIAL ANGLO-SAXONISM (1981) (documenting how these intuitions coalesced in the idea of the Anglo-Saxon race); Delgado & Stefancic, *supra* note 140, at 1532.

154. On California as the only state embodying a dream in its self-image, see, for example, RAWLS & BEAN, *supra* note 5, at 407, 411, 422–24; PETER SCHRAG, PARADISE LOST: CALIFORNIA’S EXPERIENCE, AMERICA’S FUTURE (1998); STARR, *supra* note 135. On the recent wave of nativism that charges immigrants and foreigners with despoiling America and soiling the golden dream, see, for example, IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES (Juan F. Perea ed., 1997); Christopher Jencks, *The Immigration Charade*, N.Y. REV. BOOKS, Sept. 27, 2007, at 49; Kirk Semple, *A Killing in a Town Where Latinos Sense Hate, 7 Long Island Youths Held in Stabbing of an Ecuadorean Resident*, N.Y. TIMES, Nov. 24, 2008, at A24. For an example of a work charging the recent immigrants with despoiling California, see VICTOR DAVIS HANSON, MEXIFORNIA: A STATE OF BECOMING (2003). On “Manifest Destiny”—the idea that North America belonged, by right, to Anglo settlers—see, for example, HORSMAN, *supra* note 153; Kipling, *supra* note 32; 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). The earlier colonization of Latin America by Spain, of course, featured colonialism of a different type by settlers who were not so Aryan-looking as those from Britain and Northern Europe. When California celebrates “Spanish days,” might it be implicitly endorsing colonialism of an earlier variety? For a discussion of the politics of nativism, see Delgado, *Bookbag*, *supra* note 1.

155. See, e.g., Kipling, *supra* note 32; *Ethnic Notions* (PBS 1986) (by director Marlon Riggs, documenting dominant attitudes toward the appearance and features of black and Indian women in early U.S. history); see also JOHANN FRIEDRICH BLUMENBACH, ON THE NATURAL VARIETIES OF MANKIND 209, 264, 271 (1969) (1865) (setting out early anthropological thought on racial differences and likeness to monkeys).

Joe snorted. "Maybe they hadn't heard of Wesley Snipes, Denzel Washington, or Will Smith. Women are crazy about them. But don't worry, you two. We'll try our best to make you look good—on top, I mean."

"Oh," Rodrigo interjected. "I forgot. The colonials also devalued native languages, considering them vastly inferior to English, French, or Spanish.<sup>156</sup> Today, the English-Only movement is on the march, particularly in California.<sup>157</sup> Partly on aesthetic grounds, but partly on the basis of trumped-up pseudoscience, they want to get rid of all that 'babble.'"<sup>158</sup>

After a pause, I asked, "What about labor issues? I would think that the Bracero movement is a prime example of colonial exploitation."

"A number of authors mention how American society manipulated immigration quotas to admit labor at times when the U.S. economy needed low-wage workers. Then, after the emergency ended, we showed them the door."<sup>159</sup>

"Like today," I added. "The job market is hurting, so we deport as many undocumented immigrants as we can."<sup>160</sup>

"Even those who have been here for years and have children who are United States citizens. We treat them, in effect, as a surplus population whose purpose is to mow our lawns, pick our crops, make our beds, and cook our meals. Rawls shows that this was true of the Chinese and Japanese in earlier times, as well."<sup>161</sup>

"What about resistance, another postcolonial theme?"

156. On the suppression of native languages, see NGUGI WA THIONG'O, *DECOLONIZING THE MIND: THE POLITICS OF LANGUAGE IN AFRICAN LITERATURE* 4 (1986); Ngugi wa Thiong'o, *Moving the Center: An Interview with Charles Cantalupo*, in *THE WORLD OF NGUGI WA THIONG'O* 219–20 (Charles Cantalupo ed., 1993).

157. Perea, *supra* note 104 (critiquing the movement). California enacted one of the earliest Official-English measures, Proposition 227 (1986), discussed in RAWLS & BEAN, *supra* note 5, at 402.

158. For a discussion of the role of "babble" and "jabber" in constructing a triple taboo against Latinos, see Delgado, *Corrido*, *supra* note 1, at 1734–38 (discussing criticism that the newcomers insist on speaking an inscrutable and inferior language).

159. See RAWLS & BEAN, *supra* note 5, at 380–88; STARR, *supra* note 135, at 444–46. The Bracero programs brought Mexican laborers to the United States for temporary periods, such as the harvest. On labor's cyclical demands and their role in setting immigration policy, see, for example, RICHARD DELGADO, JUAN F. PEREA & JEAN STEFANCIC, *LATINOS AND THE LAW: CASES AND MATERIALS* 430–39 (2008). For a critique of the news media's coverage of farm-labor issues, see Tim Rutten, *Regarding Media: CNN, Corrupt News Network*, L.A. TIMES, Dec. 1, 2007 (accusing the network of dubious motives in its programming of anti-immigrant material).

160. See DELGADO ET AL., *supra* note 159, at 406–539 (discussing furor over immigration); Hector Tobar, *Striking a Nerve on Racism*, L.A. TIMES, June 30, 2009 (commenting on parallels between hatred against blacks and that toward Latinos).

161. RAWLS & BEAN, *supra* note 5, at 192, 195, 249–50.

“Rawls discusses that. Let’s see.” (Rodrigo flipped through some pages). “Right here. He says that the Japanese protested their treatment at the hands of California nativists.<sup>162</sup> The Chinese, too.<sup>163</sup> And Filipinos and Mexicans united under Cesar Chavez and the farmworkers’ movement—striking, picketing, and registering a number of gains.”<sup>164</sup>

“Which, as we know, didn’t last long,” I said a little morosely.

“True. But Rawls recounts more recent examples of resistance, such as when minority voters struck back after a Republican administration took an anti-immigrant position. They also complained of toxins piled up in minority neighborhoods and a state-wide housing gap between the rich and the poor, whites and minorities.<sup>165</sup> They protested when the state dismantled bilingual education programs created for students whose native language was not English.<sup>166</sup> Conservatives had criticized those programs as pandering to foreigners refusing to fit in.<sup>167</sup> By 2005, the drop-out rate for blacks and Latinos was over 40% in the high schools and even at the California state universities.<sup>168</sup> Their poor reception in the public schools obviously played a part.”

“You could also consider graffiti a kind of cultural protest,” Keshawn added.<sup>169</sup> “Not to mention hip-hop music.”

“The very subject of Paul Butler’s book!”<sup>170</sup> Rodrigo exclaimed. “Just like the Prof here said—it all comes together in the end.”

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162. *E.g.*, PEREA, *supra* note 50, at 455–86; RAWLS & BEAN, *supra* note 5, at 192, 249–50; *see also* Korematsu v. United States, 584 F. Supp. 1406 (N.D. Cal. 1984) (granting writ of *coram nobis*, rectifying improper wartime internment); Delgado & Stefancic, *supra* note 140, at 1564–69.

163. RAWLS & BEAN, *supra* note 5, at 249–50; *see* Delgado & Stefancic, *supra* note 140, at 1564–69.

164. RAWLS & BEAN, *supra* note 5, at 83–85, 476, 502; *see* DELGADO ET AL., *supra* note 159, at 685–88; STARR, *supra* note 135, at 447–50.

165. RAWLS & BEAN, *supra* note 5, at 450 (describing how minority voters mobilized to elect a Democratic regime in the wake of a series of antiminority actions by the former Republican Administration); *id.* at 476–77.

166. *Id.* at 510, 524 (discussing Proposition 227, which mandated public-school education in English); *see also id.* at 450–61 (discussing the revolt of Latino voters).

167. For discussion of the controversy over bilingual education, *see id.* at 402. For some of the harsh consequences of the cutback in these programs, *see* YOSSO, *supra* note 150, at 58.

168. RAWLS & BEAN, *supra* note 5, at 512 (describing the high drop-out rate at state college campuses for Latino and black students).

169. On graffiti as a form of folk art and protest, *see* JEFF FERRELL, CRIMES OF STYLE: URBAN GRAFFITI AND THE POLITICS OF CRIMINALITY 57–100, 159–207 (1996); Jeff Ferrell, *Crimes of Style: Urban Graffiti and the Politics of Criminality*, 3 J. CRIM. JUST. & POPULAR CULTURE 98 (1995).

170. *See* BUTLER, *supra* note 9.

*C. Colonialism and the Imposition of Belief*

I didn't let him revel in self-congratulation for long. "You said you were going to address the contents of education and the media. If you want to persuade your readers that California is taking on the contours of a colonial society, you need to show how the state is indoctrinating its citizens. True colonial societies do that. They don't just run the show. They dominate and dictate belief."

"The law review article helps me there," Rodrigo replied.<sup>171</sup> "It shows how the state's elite campuses created an official structure of knowledge that legitimated existing power relations. The authors call it a caste-based system of knowledge."<sup>172</sup>

"All universities are in the business of knowledge creation," I caviled. "I hope you can show more than that they joined forces with corporations from time to time to market inventions and expand knowledge."

"I can," Rodrigo replied. "For example, beginning in the late seventies, California scientists contributed to the discourse about race-IQ connections.<sup>173</sup> A number were in the forefront of the movement to prove that minorities were less intellectually able than whites.<sup>174</sup> As recently as the 1930s, the University of California was 99.9% white.<sup>175</sup> A prominent sociologist . . ."

"Was it Troy Duster, by any chance?" I asked. Duster was of my generation,<sup>176</sup> and I wondered if he played a part in opposing the events that Rodrigo was describing.

"No, he came later. The sociologist's name was Robert Nisbet, and he said that he didn't know of a single American-born black student at U.C.-

171. See Delgado & Stefancic, *supra* note 140.

172. See *id.* at 1592–98. The article addresses many of the same events as the Rawls book, including early subjugation of Indians, who were hunted "like wild animals," *id.* at 1521–40; early resistance from minorities over their treatment at the hands of the Anglos, *id.* at 1545; Proposition 13, which arrived when white voters decided that minorities had reached a saturation point, *id.* at 1557; and a controversy over the representation of Japanese in public school textbooks, *id.* at 1568. Mexican children were sent to schools with a vocational emphasis, since this is what their teachers believed to be their natural calling. *Id.* at 1572. Indian boarding schools indoctrinated the children in Anglo values and taught them to despise their culture. *Id.* at 1570–71. Borrowing "deficit theory" notions of the inadequacy of Chicano family life from Oscar Lewis, public-school teachers bowed to what they considered the inevitable and taught Spanish-surnamed children to prepare for jobs as field workers or maids. *Id.* at 1574.

173. *Id.* at 1596–98.

174. *Id.*

175. *Id.* at 1579.

176. On Troy Duster's career, see New York University Department of Sociology, Troy Duster, <http://sociology.fas.nyu.edu/object/troyduster> (last visited May 11, 2010).



Berkeley in the thirties. He also wrote that Berkeley was entirely satisfied with that situation.<sup>177</sup> Thirty years later, in 1964 . . .”

“A decade after *Brown v. Board of Education*,”<sup>178</sup> I interjected.

“Right. Ten years after that landmark decision and nine after the civil disobedience of Rosa Parks, Berkeley’s Boalt Hall School of Law did not graduate a single black.<sup>179</sup> UCLA’s medical school, established in 1951, did not graduate a black doctor for the first twenty years of its existence.<sup>180</sup> The undergraduate admissions office based its process almost entirely on grades, recommendations, and family connections.<sup>181</sup> It also kept a close eye on inner-city and Catholic schools, applying a correction factor based on the performance of their previous graduates. The result was that a student from an inner-city school with a perfect average would have his or her grades marked down automatically.”<sup>182</sup>

“It sounds like the state was not exactly friendly toward people like me,” Keshawn said.

“Or your dad,” Rodrigo replied. “When standardized tests arrived in the late sixties, the UC system—after years of resistance—quickly embraced them.<sup>183</sup> This lowered minority numbers even further.<sup>184</sup> The university then bowed to pressure and instituted a weak form of affirmative action, which improved minority numbers somewhat. But the era did not last long—a scant twenty-seven years.<sup>185</sup> A regents directive, followed shortly by that referendum Keshawn mentioned, dealt it the *coup de grace*.<sup>186</sup> Enrollment of blacks and Latinos at all of the selective programs plummeted and has not recovered.”<sup>187</sup>

After a brief pause, I said, “As sobering as that history is, Rodrigo, it is not that different from that of other states that have struggled over

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177. *Id.*

178. 347 U.S. 483 (1954).

179. Delgado & Stefancic, *supra* note 140, at 1580.

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.* at 1581–82.

184. *Id.*

185. *Id.* at 1582–84, 1585 (noting that the advent of affirmative action saw an increase in campus hate crimes and speech); see also Delgado, *Tenth Chronicle*, *supra* note 1 (discussing merit and affirmative action).

186. Delgado & Stefancic, *supra* note 140, at 1584. A regents directive is an order from that governing board directing the university to institute a policy. See, for example, Press Release, U.C. Newsroom, Regents Approve UC Partnership Plan with Public Schools (July 17, 1997), available at <http://www.ucop.edu/ucophome/commserv/press/pubpartn.html> (illustrating the operation of such an order).

187. Delgado & Stefancic, *supra* note 140, at 1584; see also RAWLS & BEAN, *supra* note 5, at 512 (describing 50% drop at UC campuses and higher in the professional schools).

minority admissions. To show neocolonialism at work in California, you would need to demonstrate an ideological component. You said that certain California educators were in the leading ranks of race-IQ scientists.<sup>188</sup> Do you have more along those lines?"

"I do," Rodrigo said, glancing at the reprint. "That's where my caste-based structure of knowledge comes in."<sup>189</sup> Under UC President Clark Kerr, California adopted a blueprint called the Master Plan, which divided the state's universities into a three-part system.<sup>190</sup> The University of California would admit the top one-eighth of high school graduates and the California State University campuses the top one-third. The community colleges would enroll all of the rest."<sup>191</sup>

"Sounds like Plato's plan for the citizens of Athens," Keshawn interjected. "We were reading about that in my political science class."<sup>192</sup>

"The similarity is striking," Rodrigo said, adding, "With only a few changes, the plan remains in effect today, consigning each population and income group to its proper place."

"Kerr was a big planner,<sup>193</sup> as I recall."

"He was. But California's intellectuals also contributed to the development of a paradigm of knowledge—in effect an intellectual master

188. See Delgado & Stefancic, *supra* note 140, at 1593, 1597–98.

189. *Id.* at 1592–98.

190. See, e.g., *id.* at 1526–27, 1573.

191. See STARR, *supra* note 135, at 234–36; Delgado & Stefancic, *supra* note 140, at 1526–27. For a recent analysis evincing the same penchant for sorting according to ability level, see Richard H. Sander, *A Systemic Analysis of Affirmative Action in American Law Schools*, 57 STAN. L. REV. 367 (2004).

192. See, e.g., THE REPUBLIC OF PLATO (Allan Bloom trans., paper ed. 2006) (proposing division of Athens' citizens according to intelligence and nobility of character). On quick reflection, I grasped Keshawn's point: The elite UC campuses enroll the state's future leaders, who, historically, have been white or Asian. The few Latino or black students who make it that far in the system are groomed for slots as middlemen and brokers. With a start, I recalled hearing somewhere that at certain elite programs, minority applicants with middling, but still strong test scores enjoy better chances of admission than ones with scores in the superstar range. Might that be because, at some level, the universities aim to train students of color for midlevel positions in the emerging neocolonial order, rather than for ones of genuine intellectual leadership that might challenge white ascendancy? Cf. David Leonhardt, *The New Affirmative Action*, N.Y. TIMES MAG., Sept. 30, 2009, at 1, 3, available at [http://www.nytimes.com/2007/09/30/magazine/30affirmative-t.html?\\_r=1](http://www.nytimes.com/2007/09/30/magazine/30affirmative-t.html?_r=1) (noting that a researcher at a top school saw test scores as a barrier to minority admissions, one that "strikes many people as unjust"); see also Interview with Professor Deirdre Bowen, Ph.D. (sociology) in Seattle, Wash. (Mar. 14, 2010) (on file with author) (noting that, in an experimental setting, whites reading college essays for the purpose of admitting students exhibited hostility toward minority candidates with advantaged backgrounds).

193. On Clark Kerr's propensity for planning and structure, see Richard Delgado, *Liberal McCarthyism and the Origins of Critical Race Theory*, 94 IOWA L. REV. 1505, 1522–25 (2009).

plan—that firmly marginalized women and minorities as articulators of official knowledge.”<sup>194</sup>

“It does start to sound like India under the Brits or Algeria under the French,” Keshawn said.

Rodrigo continued excitedly, “We’ve already noted how Arthur Jensen and William Shockley tried to prove that blacks were genetically inferior.<sup>195</sup> Official historians exonerated white politicians, such as Earl Warren, for moral missteps that fell heavily on minorities.<sup>196</sup> The state’s agriculture schools sided with agribusiness over farmworker interests.<sup>197</sup> Faculty from those schools opposed unionization and preached the virtues of chemical farming at the expense of the workers who toiled in the fields.<sup>198</sup> Social workers and sociologists taught that minorities were problem groups, rather than potential contributors to California society.”<sup>199</sup>

After a pause, Rodrigo concluded, “Oh, and the state always happens to establish new campuses in attractive, middle-class communities, never in inner-city neighborhoods.<sup>200</sup> This sends a powerful signal about who the universities see as their intended audience. In a few cases, the system conspired with towns to purge minorities to pave the way for a new campus.”<sup>201</sup>

Rodrigo paused, while Keshawn eyed his sideburns. “Want those any shorter, Professor?” he asked.

“Maybe a little,” Rodrigo replied. “I’m hoping I won’t need another trim until the term is over.”

As Keshawn bent to the task, I said, “The state’s educational system may well exhibit shades of neocolonialism, especially in its alliance with agricultural interests. I hadn’t known about that. But all educational systems articulate official knowledge and so, in that sense, entrench a traditional, class-based system of knowledge. You mentioned the distribution of leadership in various jobs—teacher, principal, teacher’s aide, and the like—and I suspect you have more such data in that folder. But what about the qualitative side? Colonialism doesn’t just consist of a set of skewed statistics. It feels and looks different. Do you have anything that addresses that?”

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194. See Delgado & Stefancic, *supra* note 140, at 1592.

195. See Delgado & Stefancic, *supra* note 140, at 1593; *supra* note 187 and accompanying text.

196. See Delgado & Stefancic, *supra* note 140, at 1593, 1595–96.

197. *Id.* at 1593.

198. *Id.*; see also RAWLS & BEAN, *supra* note 5, at 380–88.

199. Delgado & Stefancic, *supra* note 140, at 1594.

200. *Id.*

201. *Id.* at 1606–13.

*D. In Which Rodrigo Shows How Life in California Is Taking On the Character of a Neocolonial Regime*

“Good question, Professor. I like the way you push me. I do have the beginnings of a qualitative analysis, although nothing systematic. This could easily be a life’s work.”

“Don’t apologize. This helps us see where the country may be heading. I may not agree with you in every detail, but you’re definitely onto something.”

“Okay,” he said. “Aside from the numbers, three or four developments smack, to me at least, of colonialism,” Rodrigo began. “Qualitatively speaking, I mean. Two recent ones that I have hit upon are the dispute over drivers’ licenses<sup>202</sup> and Anglos who are starting to see minorities as cannibals.”<sup>203</sup>

“Cannibals?” I said, raising my eyebrows. “You mean in the literal, flesh-eating sense? And what do drivers’ licenses have to do with neocolonialism?”

Rodrigo’s face flushed slightly, but he continued resolutely. “Take drivers’ licenses first. In the middle ages, only the nobility were permitted to ride horses.<sup>204</sup> Gentlemen could ride, but commoners could not. It was a privilege of rank and a symbol of high social office.”<sup>205</sup>

“The same was true during slavery,” Keshawn added. “State codes made it a crime for a slave to ride a horse, even for a commercial errand the master wanted done.<sup>206</sup> The slave had to walk wherever he went.”

202. See Kevin R. Johnson, *Driver’s Licenses and Undocumented Immigrants: The Future of Civil Rights Law?*, 5 NEV. L.J. 213 (2004) (discussing the controversy over issuing drivers’ licenses to immigrants); Federation for American Immigration Reform, *Unlicensed to Kill* (2006), [http://www.fairus.org/site/PageServer?pagename=iic\\_unlicensed](http://www.fairus.org/site/PageServer?pagename=iic_unlicensed) (complaining of high number of hit-and-run incidents in which an undocumented alien is a victim or a perpetrator).

203. On cannibalism in colonial and postcolonial literature, see, for example, Delgado & Stefancic, *supra* note 126, at 1268 & n.72 (noting the appearance of this concept during the early period of colonialism). On its reappearance in recent literature, see, for example, Matthew Fletcher, *Red Leaves and the Dirty Ground: The Cannibalism of Law and Economics*, 33 AM. INDIAN L. REV. 33 (2009) (discussing how Westerners named people of the New World cannibals in order to dehumanize them, but noting that Western culture is now cannibalizing that very world).

204. On horse riding as a mark of nobility, see, for example, G.W. Bernard, *The Tudor Nobility in Perspective*, in *THE TUDOR NOBILITY I* (G.W. Bernard ed., 1992) (noting that horse riding was equated with noble status, since it elevated the rider above the level of common people). In France, similarly, the chevalier, or gentleman, derived from the word for horse (cheval).

205. *Id.*

206. On slave laws forbidding the riding or driving of horses, see, for example, WILLIAM G. MCLOUGHLIN, *AFTER THE TRAIL OF TEARS: THE CHEROKEES’ STRUGGLE FOR SOVEREIGNTY, 1839–1880*, at 127 (1993) (noting that Indian slave owners were slightly more permissive in this respect); *Slave Codes of the State of Georgia 1848*, <http://academic.udayton.edu/Race/02rights/slavelaw.htm> (last updated Mar. 10, 2010).

“That’s another good parallel,” Rodrigo agreed. “In present-day California, as you know, a recent governor refused to back immigrants, even though he is one himself, in their effort to gain the ability to obtain official drivers’ licenses.<sup>207</sup> Latinos, of course, needed licenses in order to drive from job to job, as well as for more mundane purposes such as shopping or taking the kids to school or the doctor. Liberals and business owners supported their right to drive, but conservatives opposed it, arguing that undocumented aliens did not deserve the privilege.”<sup>208</sup>

“So, they’re supposed to walk, I suppose, even though the next farm might be five miles away.”

“Just like in feudal times,” Rodrigo replied. “Tugging their forelocks all the while. Or maybe taking public transit. And then you have those references to minorities . . .”

“Especially Latinos, I assume.”

“Right. Especially them. As cannibals, eating up California and its wealth.”<sup>209</sup>

“Its sweet, white flesh,” Keshawn said, letting out a loud snort. “As though all of us are just dying to sink our fangs . . .”

“Or other body parts,” Joe seconded. “Hee, hee.”

“Indeed,” Rodrigo said, blushing a little. (Despite his cosmopolitan roots,<sup>210</sup> Rodrigo was surprisingly prudish, I recalled with a start.) “When white Europeans discovered black people in Africa and Indians in North

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207. On Arnold Schwarzenegger’s position on this issue, see Katharine Q. Seelye, *Business Group Endorses Schwarzenegger*, N.Y. TIMES, Sept. 6, 2003, at A7.

208. See Johnson, *supra* note 202 (describing various positions on this issue); Lou Dobbs, *Dobbs: NY Governor Needs a Learner’s Permit*, CNN, Oct. 31, 2007, <http://www.cnn.com/2007/US/10/30/Dobbs.Oct31/index.html>; U.S. Immigration Support, *Drivers Licenses and Social Security Numbers for Illegal Immigrants*, <http://www.usimmigrationsupport.org/illegalimmigrant-driverslicense.html> (last visited May 11, 2010) (describing the “most common discourse surrounding” drivers’ licenses as a privilege that should be rightfully reserved for U.S. citizens and denied to the undocumented). Are these anti-immigrant attitudes a reversion to former colonialist attitudes rather than part of a long-continuing trend? Nativism has waxed and waned, of course, see IMMIGRANTS OUT!, *supra* note 154, but the uproar over immigrants’ driving habits seems new. And, I noted to myself, it did not reach the same pitch over other categories of illegitimate drivers, such as ones with expired licenses or out-of-state college students who neglected to register.

209. See, e.g., Federation for American Immigration Reform, *Immigration Issues: Illegal Immigration*, [http://www.fairus.org/site/PageNavigator/issues/illegal\\_immigration/](http://www.fairus.org/site/PageNavigator/issues/illegal_immigration/) (last visited May 11, 2010) (website of anti-immigration organization expressing various views, including that immigrants are consuming vital resources that should go to Americans); Americans for Immigration Control, <http://www.immigrationcontrol.com/page1.aspx> (last visited May 11, 2010) (same).

210. I.e., raised in Europe and educated at a top Italian university, possessor of an LL.M. degree from a U.S. law school, and a faculty member of a good law school. See Delgado, *Rodrigo’s Chronicle*, *supra* note 1 (introducing Rodrigo); Delgado, *Bittersweet Epiphany*, *supra* note 1, at 1202 n.1 (describing Rodrigo’s subsequent career and love interest).

America, they were fascinated by tales of cannibalism.<sup>211</sup> That and leaving old people out in the wild to die, as some Indian tribes are said to have done.”<sup>212</sup>

“Shakespeare mentions cannibalism,” I said.<sup>213</sup> “And I think some of the early travel writers do, as well.”<sup>214</sup>

“They do. And what we see today shows the same fixation on Latinos as excessive consumers. They squander state resources. They eat strange food. They want to have babies in our hospitals.”<sup>215</sup>

“They want to get haircuts in nice white hotels,” Keshawn commented, brandishing his scissors with a flourish. “Like you did.”

“Hmm,” said Rodrigo. “You might be right. That owner might easily have seen me as an interloper who didn’t belong there. It would be as if a respectably attired, educated Indian gentleman walked into the British officers’ club. The members would greet him with a wall of disapproving looks: What’s *he* doing here? Eventually, someone would ask him to leave. Similarly, that California owner might have seen me as a kind of cannibal, eating the nice atmosphere of his fancy shop.”<sup>216</sup>

As we were absorbing his novel thesis, he added, “I’ve thought of another kind of cannibalism. Many nonwhites, especially Latino

211. See, e.g., Delgado & Stefancic, *supra* note 126, at 1268 & n.72 (noting this figure in William Shakespeare’s *The Tempest*, who may have borrowed it from Montaigne’s *On Cannibals*). See generally JEFF BERGLUND, *CANNIBAL FICTIONS: AMERICAN EXPLORATIONS OF COLONIALISM, RACE, GENDER, AND SEXUALITY* (2006); *CANNIBALISM AND THE COLONIAL WORLD* (Francis Barker et al. eds., 1998). See also *supra* note 203.

212. On travel writers and anthropologists who were fascinated by these and similar stories, see, for example, ARNOLDO DE LEON, *THEY CALLED THEM GREASERS: ANGLO ATTITUDES TOWARD MEXICANS IN TEXAS 1821–1900*, at 5–9, 16–18 (1983) (discussing Anglo reactions toward the Indians and Mexicans in the newly opened territories); HORSMAN, *supra* note 153, at 208–13; MARK TWAIN, *ROUGHING IT* (1913) (1872).

213. I was thinking of *THE TEMPEST* (Jonathan Bate & Eric Rasmussen eds., 2008) and Shakespeare’s early tragedy, *TITUS ANDRONICUS* (Alan Hughes ed., 2006) (1584).

214. For discussion of the surprise of these early travel writers when they first encountered non-Western people, see, for example, DE LEON, *supra* note 212; HORSMAN, *supra* note 153, at 208–13; David M. Wrobel, *Exceptionalism and Globalism: Travel Writers and the Nineteenth-Century American West*, 68 *THE HISTORIAN* 430 (2006) (discussing these writers’ role in framing public knowledge of the frontier).

215. See Federation for American Immigration Reform, *supra* note 209. Might the common accusation that minorities, especially blacks, are prone to shoplifting tap the same sentiment that they are cannibalizing white people’s goods? On Latinos’ peculiar food habits, see, for example, Ernesto Hernandez-Lopez, *Law, Food, and Culture: Mexican Corn’s National Identity in “Tortilla Discourses” Post-TLC/NAFTA*, 20 *ST. THOMAS L. REV.* 670 (2008). On their supposed source of contagious diseases, see *Immigrants Scapegoated After Swine Flue Outbreak*, SPLC REP., Summer 2009, at 3.

216. Even though I said nothing, I felt a pang of sympathy for my young colleague. Ever since I had known him, Rodrigo had dressed stylishly and behaved in a dignified fashion, especially in public settings. He must have found it galling when a barbershop owner declined him service.

immigrants, have a lot of children. Enough to worry some of our Anglo friends.”

“The idea is a little ludicrous,” I mused. “But it possesses a certain insane logic. You could see overbreeding as a kind of cannibalism. Earthy and overfertile, the newcomers create too many of their own kind.<sup>217</sup> Their growing population is starting to overwhelm the state’s emergency rooms, schools, and welfare facilities. It’s eating away at a white people’s state, like a flock of fast-breeding insects.”<sup>218</sup>

“Conservative websites repeat the overconsumption charge as though it were an article of faith,” Rodrigo added. “Although the reality, as we know, is quite different. The group is—on the whole—young, hardworking, and healthy. It consumes fewer social resources, on average, than do whites.<sup>219</sup> And Latino men hold jobs at a higher rate than any other group, including Asians.<sup>220</sup> Although they do, of course, consume social services, they also pay for them through their taxes.”

“I read a study from Harvard that showed that the group commits, on average, less crime than any other,” I said.<sup>221</sup> “Even though you couldn’t tell that from talk radio.”

“You must mean the Sampson study showing a drop in crime rates in the cities where immigrants settle,” Rodrigo said.

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217. See, e.g., ELENA R. GUTIÉRREZ, *FERTILE MATTERS: THE POLITICS OF MEXICAN-ORIGIN WOMEN’S REPRODUCTION* (2008) (describing rhetoric accusing Latinos as hypersexual, over-fertile, and mainly interested in having babies in U.S. hospitals in order to provide them with the advantages of American citizenship); Delgado, *Corrido*, *supra* note 1, at 1732–34 (same); Federation for American Immigration Reform, *Anchor Babies: Part of the Immigration-Related American Lexicon*, [http://www.fairus.org/site/News2?page=NewsArticle&id=16535&security=1601&news\\_iv\\_ctrl=1007](http://www.fairus.org/site/News2?page=NewsArticle&id=16535&security=1601&news_iv_ctrl=1007) (last visited May 11, 2010) (charging that each undocumented woman can produce a large number of offspring, all of whom will be U.S. citizens); Lou Dobbs, *Dobbs: Big Media Hide Truth About Immigration*, CNN, Apr. 25, 2007, <http://www.cnn.com/2007/US04/24/Dobbs.April25/index.html> (commenting on immigrants’ rapid breeding habits); see also BENDER, *supra* note 121, at 64–81 (discussing the media stereotype of Latinos as intensely interested in having babies). On the movement to change current law under which the U.S.-born child of an immigrant automatically becomes a U.S. citizen, see Teresa Watanabe, *Target: Illegals’ U.S.-Born Kids*, SEATTLE TIMES, July 17, 2009, at A4.

218. See *supra* note 217.

219. On the group’s modest consumption of social welfare services, see, for example, Delgado, *Corrido*, *supra* note 1, at 1730 n.155; Mary Engel, *Latinos’ Use of Health Services Studied*, L.A. TIMES, Nov. 27, 2007, at B1 (citing study by the Rand Corporation); see also BENDER, *supra* note 121, at 11–13 (discussing the stereotype of the lazy Latino, happy to rely on welfare).

220. See Delgado, *Corrido*, *supra* note 1, at 1730 n.155; Engel, *supra* note 219.

221. See Robert J. Sampson, *Rethinking Crime and Immigration*, 7 CONTEXTS 28 (2008); Robert J. Sampson, *Open Doors Don’t Invite Criminals*, N.Y. TIMES, Mar. 11, 2006, at A15; see also IMMIGRATION POLICY CTR., *FROM ANECDOTES TO EVIDENCE: SETTING THE RECORD STRAIGHT ON IMMIGRANTS AND CRIME I* (Sept. 10, 2008) (citing evidence that crime rates in the United States fell as the undocumented population doubled, and that this occurred even in areas—such as San Diego, El Paso, Los Angeles, New York, Chicago, and Miami—that experienced the heaviest immigration).

"And another by two California economists," Keshawn added. "I just read about that somewhere."<sup>222</sup>

"I'll track it down," Rodrigo said. "But demonizing this law-abiding, pious, hard-working group, most of whom just want to get a job and send money home to their families is, in one way of looking at it, a classic neocolonial trope. The natives are wayward children, in need of taming and tutelage. In the case of the Mexicans, some of them are beyond training. So we want to keep them out of the country altogether."

"Something was on the tip of my tongue right now," I said. "Oh, now I remember. It's another kind of cannibalism. Patricia Williams wrote about 'raiding the [c]hicken [c]oop of [k]nowledge,'<sup>223</sup> in which she describes the indignation of certain upper-class families in communities like Beverly Hills. They become upset when they learn that a neighbor's maid—usually Latina—has been dropping her kid off at the neighborhood school and giving the employer's address for purposes of enrollment. The fancy school ends up with a brown face nobody counted on. The proceeds of all those bake sales and property taxes, by right, ought to be going to little Anglo kids living in the rich houses. The maid is raiding the chicken coop of knowledge, so the neighbors organize to have the child thrown out."<sup>224</sup>

"Can't go around eating Anglo culture and education," Rodrigo said, a little wryly.

After a pause, while Keshawn stepped back to admire his handiwork and asked Rodrigo if he liked the way his hair looked—he did—I asked, "Rodrigo, what about Obama's victory? Some writers say that it proves that we have entered a post-civil-rights era when race doesn't matter any more. Doesn't his election cut against your thesis?"

#### VI. GESTALT SWITCH: IN WHICH RODRIGO EXPLAINS WHY NEOCOLONIALISM IS SUPERIOR TO RACE IN EXPLAINING RECENT DEVELOPMENTS

"No," Rodrigo replied. "Racism is not declining, according to social scientists and studies like the IAT."<sup>225</sup> And, even if it were, the victory of

222. See Jeff Jacoby, Op-Ed., *Immigration and Crime*, BOSTON GLOBE, Mar. 5, 2008, at 15A.

223. Patricia J. Williams, *The Theft of Education*, THE NATION, May 19, 1997, at 10.

224. See *id.* (describing the wealthy residents' indignation at the theft of knowledge).

225. See, e.g., CRITICAL RACE REALISM: INTERSECTIONS OF PSYCHOLOGY, RACE AND LAW (Gregory S. Park et al. eds., 2008) (containing essays on the IAT—Implicit Associations Test—and its implications for social policy); see also Project Implicit, <https://implicit.harvard.edu/implicit> (last visited May 11, 2010) (discussing and reproducing a version of the test).



this exceptional candidate was also a function of a weak opposition party and an American public disgusted at the way things were going.”

“Not to mention that only 43% of white people voted for him,” Keshawn added. “His victory was almost entirely due to the minority vote.”

“Indeed,” Rodrigo replied. “That’s why I’m not sure that the election says anything about the declining significance of race. But Obama’s election supports my neocolonial thesis. Other events do so as well.”

“Hold on a second,” I said. “Are you suggesting that Obama is some sort of colonial lackey?”

“No, not at all,” Rodrigo replied coolly. “He’s his own man. But those who voted for and surround him may be another matter. He may believe he is free to pursue his own lights, but be so corralled by Timothy Geithner, Lawrence Summers, Robert Gates, and the others that he is not fully in charge.”<sup>226</sup>

“But is instead an exemplary overseer of his own people, put in power to keep them in place,” said Keshawn. “Just like in colonial times. As Dad said, the more things change, the more they stay the same.”

“I don’t buy it!” I exclaimed. “Granted, it’s a little hard to explain why 43% of whites voted for him, if racism were still a force. You may be right about that. But do you actually see him as a colonial figure?”

“No,” Rodrigo replied. “But who knows what was going on in the minds of those millions of white voters who supported him? Is it possible that some of them thought that a well-educated black man, born to a white mother and raised by white grandparents, with a sincere manner and good diction, was exactly what was needed to keep the lid on?<sup>227</sup> Note that California, the most diverse state, went for him in a landslide. Even a majority of white voters there favored him.”<sup>228</sup>

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226. Alexander Cockburn, ‘*Let Me Be Clear*,’ THE NATION, Aug. 3–10, 2009, at 9 (positing that the president is little more than “Wall Street’s sermonizing serf in the White House”); see also Michael Crowley, *The Decider: Who Runs U.S. Foreign Policy?*, THE NEW REPUBLIC, Aug. 12, 2009, at 24 (answering that the “decider” is not an actual person, but “the process” featuring the role of a small circle of White House insiders); Katha Pollitt, *What Ever Happened to Candidate Obama?*, THE NATION, Mar. 8, 2010, at 9 (“We’ve had ample evidence of how little power he has over the Democratic barons of the Senate . . .”); Garry Wills, *Entangled Giant*, N.Y. REV. BOOKS, Oct. 8, 2009, at 4 (calling attention to the power of the intelligence establishment in shaping U.S. policy and noting that “a new president quickly becomes aware of the vast empire that is largely invisible to the citizenry”).

227. See Frank Rich, Op-Ed., *Guess Who’s Coming to Dinner*, N.Y. TIMES, Nov. 2, 2008, at WK10 (discussing campaign references to Obama as “clean” and “articulate”).

228. See Pollster.com, *White Vote for Obama in the States*, Nov. 12, 2008, [http://www.pollster.com/blogs/white\\_vote\\_for\\_obama\\_in\\_the\\_st.php](http://www.pollster.com/blogs/white_vote_for_obama_in_the_st.php).

"I don't find it useful to try to analyze my white friends," I said, a little sharply. "Although I can see how some of them might have found him a comforting figure, I don't see how you can prove that they saw him as some sort of middleman, like those well-educated Indian figures who accepted jobs in the British colonial administration." Then, after a pause, "I guess it's possible that some of them were happy to vote for a candidate who could postpone social change in a period when minorities were beginning to approach whites' numbers. Come to think of it, legal commentator Jeff Rosen recently wrote that Obama could wean liberals from their reflexive willingness to attribute everything to racism.<sup>229</sup> He thought that was a good idea."

"I read that article," Rodrigo said. "Rosen also said that, as a black man, Obama could roll back judicial supervision providing safe black voting districts in the South. Rosen said that blacks would resent this bitterly, but that it would end up benefitting the Democratic Party. Providing safe black districts reduces the chances of the Democrats winning other mixed districts. So, powerful whites in the Democratic Party favor the idea."<sup>230</sup>

"And it's one only a president like Obama could pull off," I said, shaking my head a little. "It sounds outrageous when you first hear it, but who knows, it might contain an element of truth. But you said you had additional—I hope not quite so paradoxical—evidence."

"I do," he replied. "I'm sure you've heard about the struggles that have been raging at the University of California over admissions. The competition is especially keen at the most prestigious campuses, like Berkeley and UCLA, and in the graduate and professional schools, such as law and medicine."<sup>231</sup>

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229. See Jeff Rosen, *Race to the Top*, THE NEW REPUBLIC, May 6, 2009, at 19.

230. *Id.* at 20. I recalled how strongly some of President Obama's pronouncements appealed to the Republican "tough-love" crowd. See Ross Douthat, *Race in 2028*, N.Y. TIMES, July 20, 2009, at A19 (praising Obama for his postracial rhetoric and "an insistent vision of black America as the master of its own fate"). I wondered if Rodrigo was going to bring up Obama's lecture to the NAACP, urging that blacks "take greater responsibility for their own future" and play more active roles with their families. Krissah Thompson & Cheryl W. Thompson, *President Talks of Progress, Barriers*, SEATTLE TIMES, July 17, 2009, at A7. Obama also urged black children to aspire to conventional careers, including scientists and doctors, rather than rap stars, comedians, or professional athletes. Would Rodrigo consider this speech evidence of a colonial-lackey mentality or an unconscious appeal to fearful white conservatives? I felt my blood pressure rising at the thought, but Rodrigo did not raise this possibility.

231. On the most recent chapter, in which Asian Americans have been challenging newly adopted UC admissions criteria aimed at attracting well-rounded students who are not "dull," see, for example, Walter E. Williams, *We Can't Let Colleges Limit Asian Students*, DAILY PRESS (Newport News, Va.), June 24, 2009, at A17.

The three of us nodded. Keshawn looked particularly interested, and I wondered if he was considering transferring to one of those schools when he finished his two years at the community college. I doubled my resolve to talk with him about law school sometime.

Rodrigo continued, “Asians have been complaining that new admissions criteria disfavor them.<sup>232</sup> Earlier, the university offered little resistance to the regents directive and, later, the state referendum barring affirmative action.<sup>233</sup> It took the *Rios* suit for the university to agree to perform a holistic review of every candidate.”<sup>234</sup>

“And your conclusion, Rodrigo, is . . .?”

“Well, you know how social scientists believe that racism is a function of levels of education.<sup>235</sup> The higher up the educational ladder you go, the less racist people tend to be, at least in the raw sense.”

“And what do you make of that?”

“It means that the university ought to be the least resistant sector of society to minorities trying to get ahead. Instead, you find consistent, unrelenting resistance. Racism can’t explain it. But my colonial thesis can. Universities are purveyors and articulators of official knowledge. They are also the gateway to jobs of power and influence. A colonial society wouldn’t want a lot of minorities there. A few, yes. But large numbers, no.”

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232. See Williams, *supra* note 231.

233. See, e.g., ANDREA GUERRERO, SILENCE AT BOALT HALL: THE DISMANTLING OF AFFIRMATIVE ACTION 82–102 (2002) (describing the university’s feeble resistance to the dismantling of affirmative action).

234. See *Rios v. Regents, Univ. of Cal.*, No. 99-0525 (N.D. Cal. Feb. 2, 1999); Alan E. Schoenfeld, Note, *Challenging the Bounds of Educational Litigation: Castaneda v. Regents and Daniel v. California*, 10 MICH. J. RACE & L. 195 (2009) (discussing the *Rios* case, which slightly broadened admissions at the University of California). The case was originally filed as *Rios v. Regents of the University of California* and subsequently amended to *Castaneda v. Regents of the University of California*. First Amended Complaint of Plaintiffs, *Castaneda v. Regents of the Univ. of Cal.*, No. C99-0525 (N.D. Cal. Feb. 2, 1999).

235. That is, the racist, because of inadequate experience or exposure, comes to hold mistaken views of persons other than his own group. Racism, in short, is a kind of cognitive error or mistake. Through education and broad reading and experience, a person learns that members of other groups are much like her own—some good, some bad. See, e.g., ALLPORT, *supra* note 59, at 432–34 (highlighting the connection between educational level and prejudice); Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161 (1995) (noting how unconscious impressions influence what we see and perceive). On racialist thinking as a cognitive error, see RAYMOND BOUDON, *THE ANALYSIS OF IDEOLOGY* (Malcolm Slater trans., 1989); Jens Rydgren, *The Logic of Xenophobia*, 16(2) RATIONALITY & SOC’Y 123 (2004).

Ding! All four of us looked up in surprise as a middle-aged black man, accompanied by a large, energetic poodle, entered the shop. "I'm here to make an appointment," he said, looking at Joe.

Our meeting broke up. Joe stepped to his cash register to schedule the appointment of someone who I gathered was a steady customer. Rodrigo stood, his robe trailing, walked over and petted the poodle, and then returned to his chair. Keshawn reviewed some slips of paper from his pocket and asked Rodrigo to clarify a reference. I stole a look inside Rodrigo's blue binder, which he had left open on his chair. It was full of charts and graphs.

When we reconvened, minutes later, I cautioned Rodrigo that he'd better think about wrapping up. Dinnertime was approaching, and our two friends might need to close up shop and head home.

"Where were we?" Rodrigo asked. "Oh, yes—the qualitative side of colonialism. Well, there's one last thing. Remember the Opium Wars?"<sup>236</sup>

We nodded. "Great Britain introduced opium to the Chinese, causing millions of them to become addicted."<sup>237</sup> When the Chinese government, to its credit, attempted to end the lucrative trade, Great Britain deployed the full might of the Royal Navy to vindicate the sacred principle of free trade.<sup>238</sup> When the Chinese later violated the terms of the peace treaty that Britain dictated, she—along with her allies, France and the United States—went to war a second time, forcing China to cede a vital port, partition her empire, pay reparations, and agree to permit the export of indentured Chinese workers to the Americas.<sup>239</sup>

"So, imperial powers are not beyond using drug policy to get their way."

"Exactly," Rodrigo said. "Today, the United States is using the drug scare to close the border with Mexico, detain Mexicans suspected of trafficking, and strengthen the hand of the Mexican and Colombian security forces, thereby remilitarizing those countries and increasing their dependency on the United States."<sup>240</sup>

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236. On these wars of imperialist aggression, see, for example, JACK BEECHING, *THE CHINESE OPIUM WARS* (1975); W. TRAVIS HANES III & FRANK SANIELLO, *THE OPIUM WARS: THE ADDICTION OF ONE EMPIRE AND THE CORRUPTION OF ANOTHER* (2002).

237. See sources cited *supra* note 236.

238. *Id.*; see also Delgado, *Problem of the Shanty*, *supra* note 1 (pondering intractable poverty in border towns or "colonias"); Delgado, *Second Chronicle*, *supra* note 1 (analyzing the connection between economic forces and the social construction of race).

239. See *supra* note 236.

240. On the United States' recent militarization of drug policy, see, for example, Richard Delgado, *Locating Latinos in the Field of Civil Rights: Assessing the Neoliberal Case for Radical Exclusion*, 83 *TEX. L. REV.* 489, 508 (2004) (book review). On the remilitarization of Latin America, see Larry Birns

“I hope you are not saying that drugs are harmless,” I said. “If so, many of your readers might think that a little colonialism is a good thing.”

“Not really,” Rodrigo replied. “I’m only pointing out that the government isn’t above using a drug scare to put pressure on Latin America. It could have just as easily decided to focus on Americans’ own contribution to the drug problem. After all, for every seller, a willing buyer. No one is forcing clean-cut suburban youth to buy drugs from Mexico, Colombia, or Afghanistan. The Brits used military force when they saw a demand problem starting to arise. The Chinese emperor, who didn’t like 300 million languid, drug-addicted subjects lying around instead of working . . .”

“Violating Confucian ethics,” Keshawn said.

“Right. He wanted to end the British drug trade, which was extremely profitable. The British used brute force and the might of the Royal Navy to keep trade open. That’s not much different from what the United States is doing today, except that our intervention lies on the supply side.”

“And similarly aims to cement control,” Rodrigo replied, “but over Latin America and the U.S. domestic population. The establishment has decided that it doesn’t want Latino drug lords raking in all that money . . .”

“And driving Mercedes and sending their kids to Swiss boarding schools,” I added.

“Right. Nor does the establishment want the young growing up addicted, unproductive, and antiauthoritarian in outlook. This has been especially true of California. As early as the midfifties, newspaper magnate William Randolph Hearst had it in for the Mexicans.<sup>241</sup> He had lost some 800,000 acres of his timberland during the Mexican Revolution.<sup>242</sup> When Congress was considering passing the nation’s first antimarijuana legislation, he lobbied strongly for it.<sup>243</sup> White supremacists in California have campaigned relentlessly to add Mexico to the list of countries whose citizens are severely limited in immigrating here.<sup>244</sup> Linking Mexicans with marijuana, they use the connection to prove the group’s genetic inferiority. As one commentator put it: ‘Marijuana was

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& Nora Connor, *Arms Transfers Hold up Peace: More Military Aid Is Not Colombia’s Cure*, WASH. TIMES, Nov. 3, 1999, at A17; Simon Romero, *Plan to Increase U.S. Troop Presence in Colombia Worries Neighbors*, N.Y. TIMES, July 23, 2009, at A14.

241. On Hearst’s anti-Mexicanism, see, for example, Peter Schrag, *Blowback at the Border: How Our Obsession with Drug Prohibition and Unregulated Guns Gave Us Mexican Drug Wars*, THE NATION, May 4, 2009, at 23.

242. *Id.*

243. *Id.*

244. *Id.* at 24.

bad because Mexicans used it; Mexicans were bad because they used marijuana.<sup>245</sup> They also sold it to nice, middle-class American youth, addicting them to the Mexicans' slovenly ways.

"So, we're acting like the Chinese emperor, but using ideology, force, and military might on the opposite side," Rodrigo said, closing the book on his lap with a slap. "Both interventions had the same purposes—profits and control—the earmarks of a colonial system."

Not a moment too soon. A mother with a young child walked in, the child holding her hand tightly. "Do you do children?" she asked.

#### CONCLUSION

After paying for our haircuts and thanking the barbers, we walked out in search of a place to eat. While Rodrigo called Giannina on his cell phone, I reflected on what we had said. Despite my initial skepticism, I found Rodrigo's analysis of developments in California forceful and imaginative. Beginning with his example of the two criminal-law trends, he showed how Anglo elites had been working to instill a cooperative mentality in which poor minorities went along with their oppression, securing jobs in the prison industry or, even better, learning to police themselves. I recalled how he had broadened his analysis to include education, economics, politics, and the entertainment industry, showing how each sphere was beginning to show the hallmarks of a neocolonial order, including suppression of culture, devaluation of languages other than English, and cooptation of outsiders who might otherwise cause trouble.

He showed how colonialism was starting to supplant race as an organizing principle, enabling whites to maintain control in the face of demographic change. He showed how qualitative concerns, as well as numbers and statistics, supported his thesis and that California was beginning to take on the "feel" of a neocolonial society.

He argued, on the basis of several kinds of evidence, that seeing California in those terms better explained events than did race and racial competition. Some of the evidence for both colonialism and racism was the same, I reflected. But, as in one of those drawings by Escher, if you looked at the scene in one way, you saw birds flying to the left; in another, fish swimming to the right. Rodrigo was arguing, in effect, for a gestalt

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245. *Id.*

shift and positing that doing so would offer a better lens for understanding events in that complex state.

I looked forward to hearing more and wondered whether his analysis, once in print, could pave the way for the much-awaited union between postcolonial scholars in Third-World countries and their counterparts—civil-rights scholars, critical-race theorists, and activists—here. I hoped Giannina, Rodrigo’s talented wife, would be able to join us for dinner and wondered whether she could add a feminist perspective to the issues we had been discussing.<sup>246</sup>

Rodrigo closed his cell phone with a decisive click. “She says she’d love to join us. And that Italian restaurant on the next block that I passed on the way here would be fine. She also said she has some ideas on women and neocolonialism that she’d like to run past us.”

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246. Perhaps she would discuss the role of women workers in *maquiladoras*, I thought, or guest-worker schemes, like the Bracero programs of previous eras, that favored Latino men and led to a largely male presence. Perhaps she would discuss colonial mechanisms that featured male adventurers from Western nations venturing into exotic lands, where they would take native women as concubines, setting male-female relations on a path that would continue long into the future. I looked forward to the next chapter in our friendship and to hearing her perspective on developments in California and feminist thought in general. See Delgado, *Sixth Chronicle*, *supra* note 1 (discussing her earlier views on relations between men and women). I wondered, as well, whether Rodrigo thought people of color in California could subvert from within, gaining access to the neocolonial levers of power, then using their positions to undercut the system. In a sense, academics like Paul Butler are doing just that. Might not legions of blacks and Latinos take jobs as principals in the local public schools, but then implement Afrocentric curricula?

APPENDIX: RODRIGO'S BLUE BINDER

(Please see footnote 113 for source note).













