# THE LEGAL ACADEMY AND MINORITY SCHOLARS

*Milner S. Ball**

***I think it pisses God off if you walk by the color purple in a field somewhere and don't notice it.***

Alice Walker[1]

My reading of Derrick Bell, Richard Delgado, and Mari Matsuda[2] differs substantially from Professor Kennedy's.[3] Kennedy thinks the scholarly works of the three are cards in the "race game"[4] that "exacts a toll of increased cynicism and decreased sensitivity."[5] I find the same works to be constructive examples of a broad movement with great promise.

As I understand Bell, Delgado, and Matsuda, they do not seek, in Kennedy's terms, "to generate feelings of guilt"[6] among white academics to gain a consequent coddling of underachieving minorities. That pattern would dehumanize us all. These scholars are risking something quite different. They are taking responsibility for the legal academy and are staking a claim to the profession.[7] Their concern is with legal academia and not, as Kennedy would lead us to believe, "'the race question' . . . in legal academia."[8] By missing this crucial

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[1] A. WALKER, THE COLOR PURPLE 167 (1982).

[2] For related texts, see Delgado, *When A Story Is Just A Story: Does Voice Really Matter?* 76 VA. L. REV. 95, 95 n.1, 97 n.13 (1990); and Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745, 1747 n.13 (1989).

[3] *See* Kennedy, *supra* note 2.

[4] Kennedy describes the race game as "deploying accusations of prejudice in order to exploit the stigmatization of racial bigotry." *Id.* at 1809; *see also* Wiener, *Law Profs Fight the Power*, NATION, Sept. 4/11, 1989, at 246, 248 (quoting Kennedy as claiming that Bell and Delgado "are engaged in interest group ethnic politics — the familiar move of playing the race card").

[5] Kennedy, *supra* note 2, at 1810.

[6] *Id.* at 1807–08.

[7] Robert Cover noted that, a decade after Brown v. Board of Education, 347 U.S. 483 (1954), blacks vigorously prosecuted "a claim to be essential participants in the public choices of the day." Cover, *The Origins of Judicial Activism in the Protection of Minorities*, 91 YALE L.J. 1287, 1312 (1982). By taking responsibility for politics in this way, the black movement successfully shifted the emphasis in litigation from protection of blacks to protection of their political activity. Otherwise, "American race politics might have become like the European Jewish question: politics about the victim group." *Id.* As Cover concluded, "[s]uch a politics cannot help but betray, even at its best, a dehumanizing pattern." *Id.*

[8] Kennedy, *supra* note 2, at 1748.

difference in emphasis, Kennedy enacts a type of the misunderstanding that Bell, Delgado, and Matsuda have confronted more generally and are laboring to overcome.

I believe that Kennedy belongs to one world, and they to another. Differences of the sort at issue here have been talked about in various ways: as differences between ideology and utopia,[9] between paradigms,[10] between intellectual villages,[11] between conceptual metaphors,[12] between *nomoi*,[13] between constructs of similarity and difference.[14] One of the phenomena of the difference is that of discernment, portrayed in metaphors of sight and blindness: what is seen in one world may not be seen in the other.

Karl Mannheim said that people possessed by an ideology "are simply no longer able to see certain facts."[15] Thomas Kuhn described how a paradigm shift "enabled Lavoisier to see in experiments like Priestley's a gas that Priestley had been unable to see" and "was, to the end of his long life, unable to see."[16] Although Priestley's blindness to oxygen caused little harm, the failure of discernment associated with a difference of world is not often so benign. Blindness to people may be of a piece with their oppression.[17]

Bell, Delgado, and Matsuda find that minority scholarship has been invisible. Kennedy suggests as a reason that minority scholarship may not have been good enough to rise to attention on its own.[18] He then interprets the three as attempting to evoke guilt in the hope that standards will be waived and penitential attention devoted to work

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[9] *See* K. MANNHEIM, IDEOLOGY AND UTOPIA (1936).

[10] *See* T. KUHN, THE STRUCTURE OF SCIENTIFIC REVOLUTIONS (2d ed. 1970).

[11] *See* C. GEERTZ, LOCAL KNOWLEDGE 157 (1983).

[12] *See* M. BALL, LYING DOWN TOGETHER: LAW, METAPHOR, AND THEOLOGY (1985); G. LAKOFF & M. JOHNSON, METAPHORS WE LIVE BY (1980).

[13] Cover, *The Supreme Court, 1982 Term — Foreword:* Nomos *and Narrative*, 97 HARV. L. REV. 4 (1983).

[14] *See* Minow, *The Supreme Court, 1986 Term — Foreword: Justice Engendered*, 101 HARV. L. REV. 10 (1987).

[15] K. MANNHEIM, *supra* note 9, at 36.

[16] T. KUHN, *supra* note 10, at 56. The phenomenon has an ancient history. *See, e.g.*, *Isaiah* 6:9–10, 29:9–12.

[17] John Adams noted, for example, that the poor person "is not disapproved, censured, or reproached, *he is only not seen.*" J. ADAMS, *Discourses on Davila*, in 6 THE WORKS OF JOHN ADAMS 221, 239 (C. Adams ed. 1851) (emphasis in original). The same is true of, among others, Native Americans, *see* Ball, *Constitution, Court, Indian Tribes*, 1987 AM. B. FOUND. RES. J. 1, 10; Resnik, *Dependent Sovereigns: Indian Tribes, States, and the Federal Courts*, 56 U. CHI. L. REV. 671, 676–86 (1989); Larsen, *The Invisible Minority*, L.A. Times, Oct. 8, 1989, pt. VI, at 1, col. 1, and many children, *see* R. RIST, THE INVISIBLE CHILDREN: SCHOOL INTEGRATION IN AMERICAN SOCIETY (1978); G. SERENY, THE INVISIBLE CHILDREN (1985) (discussing juvenile prostitutes). Perhaps the best known exploration of this invisibility is Ralph Ellison's INVISIBLE MAN (1952).

[18] *See* Kennedy, *supra* note 2, at 1766–67, 1769–70.

lacking in merit. My reading of the three yields another explanation: academic lawyers have not seen minority scholarship because of a difference between worlds. What is to be hoped for, then, is not a surrender of standards but translation, the art of "making it possible for people inhabiting different worlds to have a genuine, and reciprocal, impact upon one another."[19] Such translation will be transforming, for "to the degree [that] it can in fact be negotiated and the communities conceptually connected, [it] will doubtless bring something of a sea change in the thinking of both."[20]

A sea change is what blacks in the 1960's effected in laying claim to participation in public choices. They did not seek and could not have found room in the white world as it was then constituted. The white world, like their own, had to be transformed.[21] Blacks did not simply march into the white world. They remade the white world and their own with their marches. Among other things, they reconstituted the streets, the jails, and the D.C. Mall as public forums where whites as well as blacks could be seen and heard.

Absent transformation, Priestley will not see oxygen, the colorblind will not see the color purple, and members of the academic establishment will not see colored people. Kennedy says that Bell, Delgado, and Matsuda have not observed the proprieties of the conventional academy. He is correct. They have not. They have set about changing it. He faults them for what he views as their failures of proof. But how does one prove — or translate, or make visible — what is not seen to those without eyes for it?[22] There has to be sight-giving transformation.

Kennedy says that Bell fails to show that there is a pool of qualified minority scholars (or to contend with the absence of one).[23] But Bell

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[19] C. GEERTZ, *supra* note 11, at 161. Translation has also been a central theme in the work of James Boyd White. *See* J. WHITE, JUSTICE AS TRANSLATION (forthcoming 1990).

[20] C. GEERTZ, *supra* note 11, at 155.

[21] To say that the first shall be last and the last first is to say that values will be transvalued and not that the order will simply be reversed. *Cf.* D. BELL, AND WE ARE NOT SAVED 250 (1987) (arguing that the goal of racial justice is not "to transform blacks from slaves to slave owners").

[22] The science of color perception has explored the role performed by information in or supplied to the eye. Since Newton it has been known that various mixtures of a basic number of colors (three or four) can produce or cause the eye to see all the others. Edwin Land, of camera fame, added a fascinating twist: two beams of the *same* color (he used yellow), projected through a pair of black and white transparencies and combined on a screen, are seen as multiple colors. "[W]e are forced to the astonishing conclusion that the rays are not in themselves color-making. Rather they are bearers of information that the eye uses to assign appropriate colors to various objects in an image." Land, *Experiments in Color Vision*, SCI. AM., May 1959, at 84, 84. The eye does not need much external information but does need some. "It can build colored worlds of its own out of informative materials that have always been supposed to be inherently drab and colorless." *Id.*

[23] *See* Kennedy, *supra* note 2, at 1762–70. Kennedy does not "prove" that there is a pool

is transformatively addressing the notion of what constitutes a qualified scholar. Kennedy says that Delgado and Matsuda fail to show that there is a pool of qualified minority scholarship.[24] But Delgado and Matsuda are precipitating change in the judgment of what qualifies as scholarship. Kennedy says that Matsuda creates stereotypes and fails to show that minority scholarship is distinctive.[25] But Matsuda is expanding practical conceptions of scholarly sources and research sites by bringing attention to the everyday experiences of real people that too exclusive a reliance upon theory and abstraction have hidden from view.

Evocation of guilt is no part of this labor of translation and transformation.[26] If something remains unnoticed, the appropriate response is not to inflict an evil conscience but to try something else. The "something else" chosen by Bell, Delgado, Matsuda, and others — the centrality and significance of the choice elude Kennedy — is storytelling. Although there may be limits to storytelling in contemporary law and legal scholarship,[27] the stories, chronicles, tales, parables, and autobiographical narratives of minority scholars may per-

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problem. On the pool problem, see Espinoza, *Masks and Other Disguises: Exposing Legal Academia*, 103 HARV. L. REV. 1878, 1882–83 (1990).

There is some parallel between Kennedy's world and that of the current majority of the Supreme Court and between his blindness and theirs. The Kennedy-like blindness was acutely realized in McCleskey v. Kemp, 481 U.S. 279 (1987). In *McCleskey*, although Georgia defendants "charged with killing whites were 4.3 times as likely to receive a death sentence as defendants charged with killing blacks" and "black defendants were 1.1 times as likely to receive a death sentence as other defendants," *id.* at 287, the Court could not see discrimination. A defendant "must prove that the decisionmakers in *his* case acted with discriminatory purpose." *Id.* at 242 (emphasis in original). This is the kind of proof that Kennedy demands for showings of discrimination in the legal academy.

It is not necessarily ironic that Kennedy's criticism of *McCleskey* is similar to my criticism of him. *See* Kennedy, McCleskey v. Kemp*: Race, Capital Punishment, and the Supreme Court*, 101 HARV. L. REV. 1388 (1988); *see also* Tribe, *The Curvature of Constitutional Space: What Lawyers Can Learn from Modern Physics*, 103 HARV. L. REV. 1, 34 (1989) (stating that Kennedy identifies a constitutional violation "invisible unless one takes a post-Newtonian perspective").

[24] *See* Kennedy, *supra* note 2, at 1773–78 (Delgado); *id.* at 1779 (Matsuda).

[25] *See id.* at 1778–87. The charge of stereotyping is especially puzzling because Matsuda is careful to note distinctions in experiences. *See* Matsuda, *When the First Quail Calls*, 11 Women's Rts. L. Rep. (Rutgers Univ.) 7, 10 (1989).

[26] As Mannheim noted, the failure of perception associated with a difference in worlds belongs to "a sphere of errors . . . which, unlike deliberate deception, are not intentional, but follow inevitably and unwittingly from certain causal determinants." K. MANNHEIM, *supra* note 9, at 54. Sloth and immorality do not cause me to misperceive the range of colors to which I am colorblind, and no Jeremiad can stimulate me to perceive them correctly.

[27] *See* Massaro, *Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?* 87 MICH. L. REV. 2099, 2126 (1989) ("The call to context, at its best, simply counsels against complacency."); Winter, *The Cognitive Dimension of the* Agon *Between Legal Power and Narrative Meaning*, 87 MICH. L. REV. 2225, 2228, 2255–67 (1989); *see also* P. NOVICK, THAT NOBLE DREAM 622–23 (1988) (stating that "the prospect of a revival of narrative seemed to drive historians further apart, not to bring them together").

form powerfully and affectively, may "get at the curve of someone else's experience and convey at least something of it to those whose own bends quite differently."[28]

My own sense of the situation is that storytelling by Bell, Delgado, Matsuda, and others works both as narrative and as legal scholarship. There is nothing novel or mysterious about stories in law. Lawyers are storytellers, and, more fundamentally, law depends upon story for its meaning and legitimacy.[29] The affective power — the proof — of the stories at issue here lies in their performance. For the present Response, given its limits, the best argument I can make for the success of these stories as stories is to suggest that they be read.

The more nettlesome question, given that they are good stories, is whether they work as legal scholarship. I think they do, and on several levels. On a basic level, they are executed with erudition and critical ability. Indeed, they are internally self-critical; they speak with appreciation for the limits of mind and of language. It is a talking two ways at once, hard to achieve in forms other than story. On another level, they teach us about the felt effects of law and therefore something about its nature: on being an object of property, on being hurt by constitutionally protected speech, on being a minority member of a white law faculty.[30] On yet another level, they teach us how racism and sexism may be hidden but are nonetheless built into the law of the dominant world and dehumanize it. On still another level, they teach us about translation by enacting it and drawing us into the performance. If, as James Boyd White maintains, translation

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[28] C. GEERTZ, *supra* note 11, at 156; *see also* Winter, *supra* note 27, at 2279 (arguing that "empathetic understanding" of others requires an understanding of their expression).

[29] *See* Ball, *Stories of Origin and Constitutional Possibilities*, 87 MICH. L. REV. 2280 (1989); Cover, *supra* note 13. Their choice of storytelling may align scholars of color with others who have been exploring the moment of narrative in law, recently feminist scholars but also, and earlier, law and literature scholars. Heilbrun & Resnik, *Convergences: Law, Literature, and Feminism*, 99 YALE L.J. 1915 (1990), is a particularly rewarding example of feminist narrative scholarship — in this case, stories about teaching stories in law school — that explores the experience of institutional exclusion of women's voices and the slow, hard work of transformation.

Narrative has been critical to jurisprudence at least since Deuteronomy provided that questions about the meaning of Israel's law were to be answered with a recitation of the exodus story. *See Deuteronomy* 6:20–25.

In one press report of the Kennedy-sparked controversy, an anonymous professor is quoted as saying "Justice O'Connor is going to want more than a story." Rothfeld, *Minority Critic Stirs Debate on Minority Writing*, N.Y. Times, Jan. 5, 1990, at B6, col. 3. Justice O'Connor may want something other than a story, but that would be to want something less, not something more. I think it likely that what she will want is more than one story. Even so, there is no reason not to couple practice-based theory with story.

[30] I do not mean that they are tools for accessing information. Stories are not language-instruments that convey to a reader certain objects from a real world that exists outside language. Stories create worlds, characters, and experiences and invite us to recreate them in good readings.

is the center of what lawyers do, they offer in good reading of their stories an essential legal education.[31]

Personal narrative has found little place in Kennedy's world. His is a "cosmopolitan intellectual community,"[32] a "meritocracy" in which "merit stands for achieved honor by some standard that is indifferent to the social identity of a given author."[33] This reaffirmation of a kind of merit is animated by noble opposition to a regime in which race and status have figured or might figure in scholarly judgments to the detriment of minorities and the disestablished. Kennedy would reinvigorate an academic ideal of detached, individualistic, monastic purity of heart. I judge him to be wrong because I think racial prejudice is not a severable element that can simply be removed from the whole, like a diseased limb from a tree, and because I think the academic ideal and the standards he espouses have too frequently served as a mask for the operations of established power to be wholly innocent.

Bell, Delgado, and Matsuda invite us to a different reality. Their invitations are not delivered by disembodied voices, uttering propositions strung together as coercive arguments that draw us toward conclusions we must accept or refute. Instead, they present the reader with themselves and with experiences "that will not merely add to one's stock of information but change one's way of seeing and being, of talking and acting."[34] To be sure, no less than Kennedy, they are committed to "the work itself."[35] But their work is performance highly personal in nature. No less than Kennedy, they hope to overcome a regime in which race may cause a piece to lose (it cannot be good if written by a black person) or win (it must be good if the author is black). They hope to do so, however, not by making the competition more abstract and disinterested, but by remaking the competition into a common endeavor in which the particular and the personal are instructively important.[36]

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[31] *See* J. WHITE, *supra* note 19; White, *What Can a Lawyer Learn from Literature?* (Book Review), 102 HARV. L. REV. 2014, 2021 (1989). Perhaps recognition of the centrality of storytelling and of the success of minority storytelling as legal scholarship accounts for the facts that the *Michigan Law Review* devoted a recent issue to storytelling, *see* Symposium, *Legal Storytelling*, 87 MICH. L. REV. 2073 (1989), and that the 1990 annual meeting of the Association of American Law Schools included minority scholars and their stories among its prominent features.

[32] Kennedy, *supra* note 2, at 1802.

[33] *Id.* at 1772 n.114.

[34] White, *supra* note 31, at 2018.

[35] Kennedy, *supra* note 2, at 1798.

[36] They thereby challenge the prejudice that what we have in common — the universals — "are more revelatory of how we think than the versions and visions . . . that, in this time or that place, we socially construct." C. GEERTZ, *supra* note 11, at 154–55. They are thereby also reteaching us the fugitive truth that "it is from the . . . difficult achievement of seeing ourselves amongst others, as a local example of the forms human life has locally taken, a case among

If the work of an African-American or a Chicano or a Japanese-American legal scholar successfully performs the duality of affirming and disaffirming the Constitution,[37] the tension of adopting an alien legal system while maintaining one's own and transforming them both,[38] the person — race, gender, and all — of the author is presented and the person of the reader is engaged in response. Race is not to be taken into account in order to compromise some strict, impersonal standard applied to colorless, academic piecegoods; this is not a market in which the concern is to make competition more fair. Race counts because an ethnography of thought is needed when we are trying to find out "how others, across the sea or down the corridor, organize their significative world."[39]

In this difficult, if collegial and promising, work of translation, there is every reason to suppose that we should turn first to the experts, who, in this case, are those at the bottom, largely but not exclusively people of color.[40] Often, and often from necessity, they must live in two worlds, the dominant, dominantly white one, and their own.[41] They are the more likely bilingual, with experience in translation. I seek them out to learn more about my world and theirs, and about the art of translation. This is neither to patronize nor to encourage nostalgia about living at the bottom. It is to challenge conventional references for locating who is at the top and who on the bottom and who therefore may enjoy a view with broad horizons.[42]

I question whether Kennedy's academy is truly intellectual or, at least, truly humanistic; in it one is admonished "to abjure *all* practices that exploit the trappings of meritocracy to advance interests — friendship, the reputation of one's school, career ambitions, ideological af-

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cases, a world among worlds, that the largeness of mind, without which objectivity is self-congratulation and tolerance a sham, comes." *Id.* at 16.

[37] The story of Frederick Douglass comes to mind, as do the stories of Japanese-Americans persecuted during World War II. *See* Ball, *supra* note 29, at 2282–85; Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 339–41 & nn.71, 73 (1987).

[38] *See* Matsuda, *supra* note 37, at 337–42.

[39] C. GEERTZ, *supra* note 11, at 151.

[40] According to orthodox Christian theological accounts, in the biblical stories, "almost to the point of prejudice — [God] ignored all those who are high and mighty and wealthy in the world in favour of the weak and meek and lowly." 4 K. BARTH, CHURCH DOGMATICS pt. 2, § 64, at 168 (G. Bromiley & T. Torrance eds. 1958). On a theologically-based preference for the poor, see M. BALL, cited above in note 12, at 186–88 & n.32.

[41] There may be more than two worlds. Amy Tan's THE JOY LUCK CLUB (1989) creates a sense of having to live in many worlds: Chinese, American, Chinese-American, male, female, past, and present.

[42] Martha Minow observes that feminist analysis "challenges the very reference points that in the past have defined what is central and what is marginal." Minow, *Beyond Universality*, 1989 U. CHI. LEGAL F. 115, 126; *see also id.* at 122, 132 (describing marginality as a social construct).

filiations — that have nothing to do with the intellectual characteristics of the subject being judged."[43] In humanistic scholarship, friendship is not an interest whose advancement is to be abjured. In fact, the exemplary education that animates one kind of virtue may be defined as "education between friends."[44]

Educative friendship is the central labor of the world from which Bell, Delgado, and Matsuda write. Here is a *collegium* rather than a competition of cosmopolitan intellectual experts. This does not mean that they indulge in sentimentality, indolence, or lack of discipline. Judgments are to be made about the qualifications of people as professionals and about their work. The question is not whether to follow standards but which standards to follow.

With respect to standards for scholars, Bell, for example, suggests use of an index that favors those "who are articulate, hard-working, and have experienced and overcome economic or other obstacles or handicaps . . . . These individuals possess a strong feeling of self-worth based less on a sense of superiority to others than a record of service to others."[45] It is a matter of their readiness for collegiality.

With respect to standards for scholarship, narrative is no more immune to normative criticism than other forms of legal scholarship. Kennedy's attack, because it gives currency to inappropriate standards, may postpone elaboration of appropriate ones. (Suitable criticism is possible and necessary but currently underdeveloped.) One of the several functions of minority storytelling is to nudge the language of law toward art and away from social-science discourse. Types of aesthetic judgment become available.[46] Beginning questions of fit evaluation revolve around whether a story is well-written: what does it do with language? With silence? Is it an exercise in domination and self-indulgence? Or is it an invitation to engaging, communal creation and re-creation?

There is another apt possibility of evaluation, as much a matter of ethics as of aesthetics. George Steiner notes that "[t]he best readings

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[43] Kennedy, *supra* note 2, at 1807.

[44] J. WHITE, THE LEGAL IMAGINATION 292 (abridged ed. 1973).

[45] Bell, *The Final Report: Harvard's Affirmative Action Allegory*, 87 MICH. L. REV. 2382, 2409 (1989).

[46] For example, Barbara Johnson offers a literary-critical judgment of Patricia Williams' legal scholarship as written "'with a short story writer's sense of pace and vividness, with a literary theorist's sophistication and with a lawyer's attention to detail and passion for justice.'" Wiener, *supra* note 4, at 247 (quoting Johnson).

Because Bell, Delgado, and Matsuda observe and commend standards of quality as well as productivity, they would be as dismayed as G. Edward White if we have "reached a point in legal scholarship where, because of the obvious lack of coherence about what constitutes 'good' scholarship or 'appropriate' genres for scholarly communication, any ruminations on any subjects, so long as conducted by high-status persons, deserve attention." White, *The Parable as Legal Scholarship* (Book Review), 87 MICH. L. REV. 1508, 1526 (1989).

of art are art"[47] — Tolstoy's *Anna Karenina*, for example, as a fundamental critique of Flaubert's *Madame Bovary*.[48] In criticism as answering performance, "the executant invests his own being in the process of interpretation" and criticism.[49] Responsive enactment of this type is one form of normative-critical assessment appropriately brought to bear upon the storytelling of minority legal scholars. It is not another instance of academic high gossip. It is demanding of both author and evaluator. It asks emboldening questions: what does this voice now make it possible for me to say in my own writing? Who does this text now make it possible for me to be as a law faculty member? Which empowering connections, freshly revealed as possible, can I now risk establishing between me as a lawyer and those belittled by law? The telling criticism, that is to say, will be an animating change in academic lawyers and the legal academy. Or the lack of such change. The standard is exacting.

Bell, Delgado, and Matsuda have embarked, with hope and no script, on various experiments in world-crossing translations.[50] I also think they know and intend that these experiments will be, in outcome and meaning, joint ventures involving not only themselves but also whites. Maybe, wittingly or unwittingly, Kennedy's critique will serve to expand conversation about their efforts and so provide moment to the inclusiveness they seek. Maybe this Response of mine is testimony to his success as well as theirs.

I still have my doubts about a sanguine reading of Kennedy. The detachment and remove of his article, mistaken for necessary characteristics of scholarship, may act as a buffer to the urgency of the translations undertaken by Bell, Delgado, Matsuda, and their friends. Racism is no more an exogenous element in our society than was anti-Semitism in Europe — or than is poverty, sexism, environmental degradation, or addiction to militarism and to drugs. A just society is not realized by trying to eliminate one or more unjust elements from the interstices, leaving the rest intact. We have to remake — always be remaking — the whole.

I hope for the ongoing success of scholarship of color not only for Kennedy's sake, but also for my own. The academy of Bell, Delgado, and Matsuda is after all, his academy too, and mine.

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[47] G. STEINER, REAL PRESENCES 17 (1989).

[48] *See id.* at 14–15.

[49] *Id.* at 8.

[50] Kennedy tends to write as though Bell-Delgado-Matsuda is a single entity. I have followed his lead, but in fact their worlds appear to me to have their differences as well as their overlapping commonalities. Unlike Kennedy, I do not read in their texts anything nearly so uniform as the pushing of a program. *See* Kennedy, *supra* note 2, at 1807 (discussing "the programmatic side of the racial critique literature").

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