In Pursuit of the Gold Star: Diary of a Law Student

By Kristina Brittenham*

Part I: An Offering

Towards the end of my 2L year, I mentioned to a friend of mine that I was planning to turn a paper I wrote for a class into an article for publication. The topic encompasses— rather roughly—outlaw emotions, *Brown v. Board of Education*, and the things about law school that make me crazy.[1] He was intrigued and wanted to read it. I let him, and he insisted on taking me out for tea and telling me all of his thoughts on the matter.

The essence of our discussion was:

- Friend: Kristina, what you have done here is very interesting, even compelling. But you make so many assumptions when you write that I don't know where the basis for your paper is.
- Kristina: You mean assumptions like "racism is wrong"?
- Friend: Yes. You begin by assuming your reader agrees with you. So how will you convince a hostile reader that your take on law school makes any sense?
- Kristina: That's not the point. This is a purge, really, a cathartic purge in which I lay out my own experience. Like other (real) critical theorists, I assume my reader has a basic belief in social justice. If I tried to talk people into that before I wrote about my view, I wouldn't have any room for what I actually want to say.
- Friend: But that is not a very legal approach, is it?
- And my answer is: No, it is not.

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* J.D. Candidate 2005, Boston College Law School; B.A. 2001, Brown University. This article began as a paper for Professor Anthony Farley's class on Modern Legal Theory, and has evolved through an independent study with Professor Farley and the editing process with the staff of UNBOUND. Thanks to everyone who believed in this project and encouraged me to get it off of my laptop and out into the world. Thanks to Patricia Williams for the structure of this article, which was inspired by PATRICIA WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS: DIARY OF A LAW PROFESSOR (1991). Thanks also to Professor Anthony Farley for the gold star theme.

[1] 347 U.S. 483, 495 (1954).

I had several options for giving this article context, for explaining myself to my friend and anyone else who read my work. I could write another section of my article, discussing the rest of my time in law school thus far and laying out what I have learned since the original assignment. But that would not address the contextual problem in the straightforward manner I was beginning to envision. I could write a critique of my article that would follow it, analyzing my own approach and its pros and cons. But I like my article—with its irreverence and brash disregard for the rules of legal writing. I did not want to attack it, because I think it is somehow valuable in its own form. So I could choose what is behind door number three: I could write a short piece explaining that this is a phenomenological approach to the law, and that the whole point of it is to provide access to a point of view about the law and legal education that cannot be discovered any other way.[2] In keeping with my desire to preserve as much of my original intent as possible, I chose this last approach.

By way of explanation, I will use an example. Professor Anthony Farley, who mentored me on this project, wrote a piece called *The Black Body as Fetish Object*.[3] In this piece, he writes about race-pleasure—that is, race as an experience of pleasure for whites and humiliation for blacks, or race as a set of power relationships.[4] In his argument, he emphasizes the denial of the pain of racism as being even worse than the original humiliation.[5] Other stories about race get written while the stories of those who suffer its injury are quietly denied and, therefore, erased (e-raced) from our greater cultural understanding of the phenomenon.[6]

Farley lays out a personal experience of race-pleasure to illustrate his theory.[7] He tells the story of an eighth-grade school trip to Washington, D.C. in 1976. A cool, pretty girl with long, brown hair slowly and deliberately combed her hair on the bus. When she finished, she asked whose comb she was using. Someone answered mirthfully (and untruthfully) that it was Farley's comb, Farley being the only black student on the trip. Everyone burst out laughing, except the brunette, who began to sob and then retch.[8]

Farley explains his experience of the event:

> I was the collective soul of my white classmates. They transformed me with their jests, tears, and laughter. I could feel myself extruded as vomit, as sweat, as spit, as abjection itself.

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[2] *See generally* GASTON BACHELARD, THE POETICS OF SPACE (Maria Jolas trans., 1964).

[3] *See generally* Anthony Paul Farley, *The Black Body as Fetish Object*, 76 OR. L. REV. 457 (1997).

[4] *See id.* at 458–61.

[5] *Id.* at 467–73.

[6] *See id.* at 472–73. Farley analogizes between race and rape: in both circumstances, the perpetrator of the emotional crime seeks to impose his (or her) meaning of the experience on the body of the victim/other. *Id.*

[7] *Id.* at 480–82.

[8] Farley, *supra* note 3, at 480.

> Their souls flowed out through their tongues and I, silent and excrementalized, was filled with the nobodyness they desired of me.[9]

Were Farley's classmates all regurgitating him? Let us imagine (and I do believe we are imagining) that there is some other, non-race-related reason for this behavior, something Farley did not think of—perhaps he was overweight, or had an unusual habit, or had some other frivolous flaw that made him ripe for being picked on. Or alternatively, let us imagine some of the laughers were not laughing as a rejection of Farley, exactly, but were laughing out of plain fear of becoming the targets themselves.

This version of race as an exercise of power is just the truth of one person who has lived it. It may not be the whole story or the end of the story. But this experience of racism as lived and interpreted by Farley reveals to us something about the nature of racism and how it operates that cannot otherwise be known and understood.

We need this reading of race (or gender or sexual orientation or legal education) because it is very difficult to explain a phenomenon like racism in terms of truth at all. It is a perpetual contest of he said/she said (white said/black said, straight said/gay said). The "truth" about what "really happened" in an incident that theoretically may or may not have been racist in nature will come down to a credibility contest. In the way that we can all too often predict which witnesses before a jury will be found credible, we know which storyteller will win.

In Farley's story, it is the brunette, the mirthful boy, the gleeful classmates who have the storytelling authority. They were just kids, they (the collective they) will say, just picking on someone arbitrarily, because that is what happens in junior high school: lots of people are made outcasts at one point or another. This typical sort of denial of Farley's story, compounded by all the denials of all the stories of all the Farleys in all the junior high schools in the country over time, works to shape our view of race from the perspective of those who wield power.[10]

The reality of naming is that the person who gets to name another, to create another's social status discursively, is by definition creating the truth.[11] In other words, if you have enough power to do that, your power is in fact real.[12] To name is to create, like God le t-ting there be light and oceans and animals.[13] As Farley put it simply, "[e]very name is a

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[9] *Id.* at 481. I discovered after writing about this passage in Farley's piece that I am not the first to have been inspired to use it. *See* ADAM GEAREY, LAW AND AESTHETICS 82–85 (2001). Gearey notes that Farley reinforces his theme by making himself the object of his own analysis. *Id.* at 84.

[10] Later, Farley quotes Michel Foucault, who wrote that "power is tolerable only on condition that it mask a substantial part of itself. Its success is proportional to its ability to hide its own mechanisms." Farley, *supra* note 3, at 487 (quoting 1 MICHEL FOUCAULT, THE HISTORY OF SEXUALITY 103 (Vintage Books 1990) (1976)).

[11] *See* Farley, *supra* note 3, at 482–83.

[12] *See id.*

[13] *See Genesis* 1:1–27.

true name."[14] Imagination, if that is what we wish to call it, shapes us. Gaston Bachelard wrote, and I adopt, "I propose . . . to consider the imagination as a major power of human nature. . . . By the swiftness of its actions, the imagination separates us from the past as well as from reality; it faces the future."[15]

Furthermore, when you are the namer, not the namee, you are the one with the right to tell the story for the record—the historical winner, the winner of history. Our legal history is similarly created and defined by a very small class of people, overwhelmingly white (heterosexual or pretending) men with property (power). Thus, presenting this slice of the truth, this lived experience, is the only way to make this view heard over the roar of the retching brunette, the hysterical classmates, the people who write our history and make our law. Farley's humiliation cannot be proven as a fact, but it can be told as a story. And my frustration about law school can be told that way too.

Law, and perhaps truth, is the version of the story we get to hear most often. Inevitably, it is limited because we are all socially located and cannot detach our point of view from our lived experience.[16] Alison Jaggar writes:

> [A]ll generalizations about 'people' are suspect. The divisions in our society are so deep, particularly the divisions of race, class, and gender, that many feminist theorists would claim that talk about people in general is ideologically dangerous because such talk obscures the fact that no one is simply a person but instead is constituted fundamentally by race, class, and gender. Race, class, and gender shape every aspect of our lives . . . . Recognizing this helps us to see more clearly the political functions of the myth of the dispassionate investigator.[17]

We cannot separate ourselves from our lived experience because we are our lived experience. To claim the role of the "reasonable person" is simply to prioritize one's point of view—to designate it as the view that is reasonable. And to do this is to obscure the unfortunate fact that none of us actually has the capacity to be objective—to move beyond our social location. It masks subjectivity as objectivity, hides other (valid) subjective viewpoints, and generally muddies the waters of the truth we allegedly seek.

To be clear, I do not subscribe to the Carol Gilligan view that women (or fill-in-the-blank) speak in a different voice.[18] I do not wish to pre-assign a point of view to anyone based on his or her particular social location. My point is that no one person has access to a meta-view, or the Truth, because we all read and rationalize and analyze and inter-

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[14] Farley, *supra* note 3, at 483.

[15] BACHELARD, *supra* note 2, at viii.

[16] *See* Alison M. Jaggar, *Love and Knowledge: Emotion in Feminist Epistemology* , Inquiry: An Interdisciplinary Journal of Philosophy, Jun. 1989, at 151, 163.

[17] *Id.*

[18] *See generally* CAROL GILLIGAN, IN A DIFFERENT VOICE (1982).

pret the world through our own limited sense of understanding, which is shaped by our social status.

Jaggar argues that outlaw emotions like those demonstrated by a transformed Farley—those attributed to the Other, the named—ought to be given a privileged status as we seek the truth: [19]

> [O]utlaw emotions may also enable us to perceive the world differently from its portrayal in conventional descriptions. They may provide the first indications that something is wrong with the way the alleged facts have been constructed, with accepted understandings of how things are. . . . They may help us to realize that what are taken generally to be facts have been constructed in a way that obscures the reality of subordinated people . . . .[20]

Outlaw emotions are particularly helpful in exposing truth because members of oppressed groups automatically have to consider status quo reactions to events, because it is in relation to these that their emotions are defined as outlaw. All emotions are not created equal. The reactionary nature of outlaw emotions thus allows them to encompass more information. In that sense, they may be more useful in understanding what "really happened" at any given time. Farley's pain and anguish is thus a revelation, an inside sneak peak at what whiteness and blackness may mean for those who live blackness and therefore must consider blackness and whiteness at all.[21] Similarly, I hope that my outlaw emotions reveal something about the way law school can impact some students, which may be overlooked by standard accounts of what law school is "really like."

There is another reason why outlaw emotions can be useful: those who deny them may be in denial themselves.[22] In *The Politics of Denial*, Michael Milburn and Sheree Conrad argue that the way we learn denial as a coping mechanism in childhood affects our ability to deal with uncomfortable emotions later on.[23] This in turn affects our politics, because when we see something awful it is easier to proceed as if the offending thing does not exist.[24]

When I am honest with myself (which is, of course, a prerequisite for overcoming denial), I know how often denial happens. I can block out things that bother me with amazing intensity. I have stopped paying attention to the news since George W. Bush was re-elected. On a more personal note, I tell myself that my job next year at an enter-

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[19] Jaggar, *supra* note 20, at 167–69.

[20] *Id.* at 167–68.

[21] I realize I am presenting a more or less standard antiessentialist critique in this introduction. *See, e.g.*, CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY 2 (Francisco Valdez et al. eds., 2002).

[22] *See generally* MICHAEL A. MILBURN & SHEREE D. CONRAD, THE POLITICS OF DENIAL (1996).

[23] *Id.* at 3.

[24] *Id.*

tainment litigation firm will train me to be a top-notch civil rights litigator someday. Plus, we represent artists as a general rule, not corporations, so I am not really working for The Man. I do love my firm—the people are smart and supportive, the work is challenging and fun—but it is a private firm that does excellent work in its field, not a hotbed of radical social change in the public sector. I may indeed take the skills I learn there and litigate the constitutionality of gay marriage all the way to the Supreme Court someday, but only a very weak thread connects these two versions of my life. The personal is political, indeed, and I cannot underestimate the extent to which denial shapes the way we engage with the world.

It is not even necessary to invoke the pitfalls of denial, however, in order to consider as useful or valid an alternative reading of an event. At a minimum, Farley is getting a version of the story of race out there, into the world of legal scholarship, by presenting us with his outlaw emotions. It is an offering. How can one begin to present this version of the truth in any other way? How else could I contribute to such truth-telling?

Ultimately, I propose that it is irrelevant whether the stories I tell here are "true," as in fair or "factually" accurate. I see them through my own set of values and my social location as a white, heterosexual woman. I put the spin of my own brain and heart on them. I admit that right now. But perhaps my experience of legal education is shared by others who have experienced learning the law in a similar way. Perhaps I am not alone in reacting to the Law in the manner that I do. And perhaps what happens in the heads of some law students who will relate to my story reveals something about what the law actually is or how it works. Perhaps it represents a legitimate version of Truth. Which is all we have, really—versions, pieces of the patchwork, squares to be examined one at a time.

This is only a version of my truth, too. It leaves out the things I love about the law—the satisfaction I get from manipulating its puzzle pieces, the respect I have for it when it does justice, the intellectual pleasure I get from working through the questions without answers. This is a snapshot of my own frustration—a Dennis Miller-style rant, almost—about the things that bother me about the law and legal education. It is a version of my story—a version of a version of the story. (Like hearsay within hearsay, something I am working on at the moment in Evidence.) What I suggest is that this may reveal something about the law that cannot be accessed in another way, because it exists in the world as visceral reactions and outlaw emotions, rather than as tangible phenomena or objective truth.

I am hardly the first to write a critique of legal education.[25] Duncan Kennedy writes:

> Law schools are intensely political places despite the fact that they seem intellectually unpretentious, barren of theoretical ambition or practical vision of what social life might be. The trade-school mentality, the endless attention to trees at the expense of forests, the alternating grimness and chumminess of focus on the limited task at hand, all these are only a

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[25] *See, e.g.*, Duncan Kennedy, *Legal Education as a Training for Hierarchy* , *in* THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 54–75 (David Kairys ed., 1998); Williams, *supra* note 1, at 80–97.

> part of what is going on. The other part is ideological training for willing service in the hierarchies of the corporate welfare state.[26]

Because Kennedy is a Law Professor, at Harvard (Harvard!) no less, he gets to write things that might sound pretentious or vulgar if I wrote them. Things like:

> Teachers convince students that legal reasoning exists, and is different from policy analysis, by bullying them into accepting as valid in particular cases arguments about legal correctness that are circular, question-begging, incoherent, or so vague as to be meaningless. Sometimes these are just arguments from authority, with the validity of the authoritative premise put outside discussion by professorial fiat. Sometimes they are policy arguments . . . that are treated in a particular situation as though they were rules that everyone accepts but will be ignored in the next case when they would suggest that the decision was wrong. Sometimes they are exercises in doctrinal logic that wouldn't stand up for a minute in a discussion between equals . . . .[27]

I have neither the perspective nor the political capital to make such claims. What I can provide is an account of what legal education looks like to someone who is still in the throes of it. I wish to present an alternative telling of the well-known 1L story.

I have one more justification for this piece, and it has to do with *Brown v. Board of Education*, the mother lode of all constitutional law cases.[28] The Supreme Court ultimately found in *Brown* that what happens in the hearts and minds of black students excluded from schools was important—important enough to require integration.[29] It is awfully easy to criticize why the Court came to its holding, and I do, regularly. The obvious attack is that the Court should have found a denial of equal protection without needing to get personal; that the feeling aspect should, in a world of perfect jurisprudence, be irrelevant because the legal violation is already so clear. But another reading of the case posits that this holding finally gives those segregated students their due. *Brown* can thus be read as a vindication: that what happens inside people's heads matters in some way in the real world; that this "feeling of inferiority" is a version of the truth that shapes race relations; and that these outlaw emotions are enough to require a serious change in the law.[30]

One wonders if the attacks on the research underlying *Brown* are a form of denial—of the pain of racism, of the legitimacy of any attempt to overcome it, of racism itself.[31] Per-

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[26] Kennedy, *supra* note 41, at 54.

[27] *Id.* at 60.

[28] 347 U.S. at 495.

[29] *Id.* at 494.

[30] *See id.* at 494–95.

[31] *See id.* at 494 n.11 (citing research on segregation by Dr. Kenneth Clark). For a brief discussion of the (in)validity of the research, see GEOFFREY R. STONE, LOUIS M. SEIDMAN, CASS R. SUNSTEIN & MARK V. TUSHNET, CONSTITUTIONAL LAW 450–51 (4th ed. 2001).

haps they are. Yet *Brown* is still a landmark case, the landmark case, that people still discuss and debate fifty years later. Maybe it matters. I believe it does.

I explain myself for three reasons. First, as I have said, I want to give my viewpoint some kind of context, some kind of handle on which a reader can grab so as to understand me. Second, I am afraid of putting such a personal thing as this assignment out there in the world. Afraid of offending people, afraid of hurting people, afraid of judgment, afraid of all the things law school makes you afraid of. A confession: I tell people that this assignment is "crazy," "unpublishable," and all the other things the products of outlaw emotions are often thought to be. I am my own oppressor. Yet deep down, I do not believe that, for all the reasons I have given. So actually spelling those reasons out helps me to be a little braver.

Third, I write this introduction in self-defense, because it may look like I am pointing fingers. I have changed people's initials, which I use instead of names, to protect their identities, but I realize that that may not be enough. The people I portray as frustrating or upsetting to me likely have their own legitimate versions of the story to tell, even about the same exact things I write of so passionately. But I cannot tell their story; I can only tell mine. I am limited to my version of the truth. So that is what I give you here: a small slice, a year and a half, of my legal education from a critical perspective. This is my phenomenological approach to legal pedagogy.

Part II: The Assignment

It is the end of my third semester in law school. Exams are here and I am on edge; the generalized anxiety inherent to being a law student is creeping into full-blown stress. I pick up an optional article from my Modern Legal Theory class and read:

> For those who are legally trained, the violence of the law is difficult to recall. It is difficult to recall because even where it emerges it does so in a legitimated form. The violence of the law emerges everywhere under the guise of the already authorized or under the guise of the necessarily justified.[32]

I want to write about the violence of the law, and of learning the law, for my term paper in this class; this I have already decided. I have not yet forgotten how learning the law is a violent process. In fact, in my second year, I am more aware of this than ever.

In order to explain my reaction to legal education, I need to back up to a point before it all started. My final year of college at Brown is a good place to begin, if for no other reason than for the contrast it highlights. By my senior year I had become the kind of student who got excited about challenging authority—not for its own sake, but to make a point if I felt it needed to be made. I had picked political theory to study; I had read

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[32] PIERRE SCHLAG, LAYING DOWN THE LAW: MYSTICISM, FETISHISM, AND THE AMERICAN LEGAL MIND 146 (1996).

Marx and Rawls, spent a semester in Sweden learning about social democracy.[33] I was primed for a little bit of resistance. In my academic life, I made bold choices: I wrote a paper in support of critical race theory because my professor said "more speech is better"; I bullied my so-called Radical Political Thought professor into assigning Judith Butler as a response to Foucault.[34]

My professors were impressed by this bravado, and I saw it as a strength—a source of self-esteem, even. My extra-curricular activities for a few months consisted of organizing protests against the 2000 election fiasco. All in all, I was getting braver than I ever had been before and more confident in my political choices. But I was in an institution where that behavior was rewarded: I was a true Brown University student now, and it was easy to like being that way when it only helped me in my pursuit of academic success. I liked getting good grades, glowing comments, gold stars; I expected to get them, as I always had. And I did not understand at that point that getting gold stars and becoming the person I wanted to be—someone brave, uncompromising, and true to my social and political beliefs—would ever have to be in conflict.

Fast-forward to the fall of 2002. It was my first week at Boston College Law School. I had survived the Law School Admissions Test and the wait for fat and thin envelopes and had been accepted into a respectable law school: my first gold star, post-college. I had bought books over the summer that explained how to brief a case and prepare for an exam. I felt as prepared as I could be for something that is impossible to prepare for.

The first few days were overwhelming: the 1Ls in business casual dress, the unfamiliarity of the laptops, the professors using our last names, the big heavy books in multiple bags. Mixed feelings abounded: I liked the rush of the Socratic method, I hated the stress of the Socratic method, etcetera. Then I had a moment in Property that introduced me to law school, officially, for the record.

One of the first cases we read—after, of course, that fox case everyone loves so much—is *State v. Shack*.[35] Our first topic is the right to exclude, which we are told is one of the more important sticks in the bundle of rights that constitute property rights.[36] *Shack* is a decision by the New Jersey Supreme Court, holding that an employer of migrant farmworkers cannot prevent an aid worker and an attorney from entering his property to assist the farmworkers, who also live there; this does not violate the law of trespass.[37] The

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[33] *See generally* KARL MARX, THE COMMUNIST MANIFESTO (Samuel Moore trans., 1888; David McClelland ed., Oxford UP 1998) (1848); JOHN RAWLS, A THEORY OF JUSTICE (rev. ed. 1999).

[34] *See generally* JUDITH BUTLER, BODIES THAT MATTER: ON THE DISCURSIVE LIMITS OF "SEX" (1993); JUDITH BUTLER, GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY (1990); MICHEL FOUCAULT, POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS, 1972-1977 (Colin Gordon et al. trans., Colin Gordon ed.) (1980).

[35] 277 A.2d 369, 374–75 (N.J. 1971). The fox case is *Pierson v. Post*, 3 Cai. R. 175 (N.Y. Sup. 1805). *See also* WILLIAMS, *supra* note 1, at 156–57 (discussing *Pierson v. Post*).

[36] *See, e.g.*, Kaiser Aetna v. United States, 444 U.S. 164, 176 (1979).

[37] 277 A.2d at 374–75.

professor explains that this is a minority rule and that generally the right to exclude is much more absolute. A hypothetical (my new, ever-present companion) presents itself at the end of the section in my textbook:

> Suppose one of the farmworkers in *Shack* has a sister who comes to stay with her temporarily at the camp on Tedesco's farm while she goes out to look for work. The sister cannot afford to stay at a hotel and cannot obtain her own apartment until she finds a job. As soon as she finds a job, she intends to move into her own apartment. Tedesco asks the sister to leave because she is not working for him and therefore has no right to stay at the camp. When she refuses to leave, Tedesco brings eviction proceedings against her. . . .[38]

The professor asks, as he will in nearly every class throughout the year, for a democratic vote: who thinks the sister is entitled to stay, and who thinks the employer is entitled to evict her?

I raise my hand for the sister, expecting to look around and see that everyone has agreed. In fact, a few lone hands are scattered about the large, U-shaped room. The rest of the hands go flying up to support the employer as mine goes down. I turn red; I am confused. How is this possible? Did I misunderstand the question? I realize that I understood perfectly and spend the rest of the class ready to burst out of my seat and speed home.

From my apartment, I call a friend from Brown. In tears, I think: this is because I am at a Catholic school, maybe. Catholics are more conservative. Or (I am a bit off the wall at this point) it is because Boston College is not a top ten school; maybe the student body is not as smart overall and is missing some analytical capability. At this point, it does not even occur to me that this is about more than the school I picked—that it is about law school, and law, in general. Property equals power, and power equals rights: this is apparently the way it works in the law. I just think I have made a poor choice and at another law school—a better law school—everyone's hands would be up with mine, recognizing that the powerless should not be denied a baseline of rights because of their lack of power. I have not stopped to consider that my classmates were simply agreeing with what was already the majority rule.

I decide to get past it, though. I am stuck here for a minimum of one year, before I even have the option to transfer to my imaginary better school where the law looks different (or at least everyone thinks it should look different). So I submit myself to the violence after one brief episode of feeling that something about all this is very wrong. I want the gold star; I want to make law review; I want to get the big picture that they say will materialize by the end of the first year. So I decide that I will not let these kinds of things, like political differences with classmates, bother me. It is not what matters, I tell myself, in learning the objective law that will ultimately make sense as a coherent whole, once I have more exposure to it. I decide that I will do whatever it takes to start thinking like a lawyer.

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[38] JOSEPH SINGER, PROPERTY LAW: RULES, POLICIES AND PRACTICES 118 (2002).

I start dreaming about contracts and talking about torts over lunch and after class. I let law school take over my brain entirely. It gets to a point where in the span of a single week I forget the power cord to my laptop, then forget my laptop but bring the power cord, then lock everything in my car before class, including my keys. My head is so chock full of law that there is no room for anything else, and though I try to take breaks more often after the car incident, this is the way I like it.

Still, although I have chosen to throw myself into my legal education with total commitment, I notice things along the way that do not make sense to me. The difference now is that, at this point, I am usually convinced that I am missing something: it is my fault that things seem strange. Each time this happens, I resolve to figure out where I am making a mistake; if I cannot figure it out, I brush the problem off as an aberration.

In Contracts, I do not understand the idea of consideration. Our first brush with this legal concept is a British case, *Dickinson v. Dodds*.[39] In this case, Dodds offers to sell Dickinson a piece of real property: he signs a paper agreeing to keep the offer open until a given date and time.[40] Dickinson chases Dodds down at a train station to provide him with an acceptance on the morning on the deadline.[41] Dodds says Dickinson is too late, although the deadline has not yet passed; he has already sold the property to someone else.[42] We are still in offer-and-acceptance land in the class, so this is a new idea; we have not yet learned that a peppercorn of consideration is necessary and also sufficient to satisfy the consideration requirement for a contract.[43] Still, I cannot wrap my mind around the idea that a promise like this, a specific promise in writing, does not have to be kept. Why is a written agreement not enough? It was not as though Dodds had promised to give Dickinson his land for nothing; it was only a promise to keep an offer open for a small period of time.[44] I failed to understand why Dickinson could have changed his fate by giving Dodds a pound, or a peppercorn—why some thing of value has to be exchanged in order to get someone keep a promise.[45] But I accept it and move on, enjoying in particular the doctrine of promissory estoppel, an equitable remedy which allows a promise which reasonably induces detrimental reliance to be enforceable.[46]

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[39] 2 Ch. D. 463, 466 (1876).

[40] I did not know what "real" property was for a while, either. To me this phrase emphasizes our roots in landowning as a necessary prerequisite to power; land is the real or true property one must have in order to have political power.

[41] 2 Ch. D. at 463–64.

[42] *Id*. at 464.

[43] *See, e.g.*, *Thomas v. Thomas*, 2 Q.B. 851 (1842).

[44] Soon we will learn, though, that a promise to give something for nothing is unenforceable as well. *See Dougherty v. Salt*, 125 N.E. 94, 95 (N.Y. 1919).

[45] *See Thomas*, 2 Q.B. 851.

[46] *See Ricketts v. Scothorn* , 77 N.W. 365, 365 (Neb. 1898); RESTATEMENT (SECOND) OF CONTRACTS § 90 (2001).

In Civil Procedure, we begin with due process, examining the line between procedure and substance (which our professor quite correctly assures us cannot be drawn clearly). We read a number of cases in which the Supreme Court determines how much due process is required before poor people's belongings, or even welfare benefits, can be taken from them.[47] It appears at first that the Court has some empathy for human circumstances when access to judicial process is at stake; we read *Boddie v. Connecticut*, in which the Court held that the state cannot deny access to divorce through the financial burden of a court fee.[48] But apparently, a person can be too poor to go bankrupt: so the Court held in *United States v. Kras*.[49] I struggle with this concept: the point of bankruptcy is that a person is out of money, yet if he is so entirely out of money that he cannot pay a court fee, he may be denied even this last-resort solution to his problems.[50] Justice Blackmun explained that the prohibitory fee "is a sum less than the payments that Kras makes on his couch of negligible value in storage, and less than the price of a movie and little more than the cost of a pack or two of cigarettes."[51] This sentence, rather than giving weight to the reasonableness of the Court's decision, emphasizes to me the dire straits Kras found himself in as well as the Court's demonstrated insensitivity to the reality of this man's circumstances. Justice Stewart, dissenting, argued in vain that Kras's debt was effective only because our "legal system" was there to enforce it, and that without access to bankruptcy court Kras would remain in his hopeless situation.[52] In this brief introduction to Supreme Court jurisprudence, I see the way in which the Court can create law that is entirely out of touch with political and social reality. I do not yet know how much this strange case will begin to look normal later on when I learn about equal protection.

Torts very quickly becomes my least favorite class. The professor has a somewhat off-color sense of humor, which oscillates between providing comic relief and creating an uncomfortable environment. The nature of the subject is inherently gross and even offensive to me, so I try not to hold it against the professor. The exam, though, is plainly inappropriate, which jumps out at me dramatically in retrospect.[53]

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[47] See *Mathews, Sec'y of Health, Educ. & Welfare v. Eldridge* , 424 U.S. 319, 334–35 (1976), outlining the three-part test to be used in determining how much due process is enough: the private interest in question, times the possibility of error in denying the interest, must be weighed against the government interest at stake. *See also Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (discussing that a hearing and notice must occur at a "meaningful time" before property is taken away); *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970) (holding that a pre-termination hearing is necessary before welfare benefits are taken away).

[48] 401 U.S. 371, 383 (1971).

[49] 409 U.S. 434, 457 (1973) (Stewart, J., dissenting); *see id*. at 450.

[50] *See id.* at 450.

[51] *Id*. at 449.

[52] *Id.* at 455 (Stewart, J., dissenting).

[53] *See* WILLIAMS, *supra* note 1, at 80–94 (discussing law school exams).

The first question is about a gay man who molests a little boy at the preschool where he works. The major theme is respondeat superior—employer responsibility for an employee's actions—so it is unclear why the professor chose to inscribe the gay-man-as-pedophile stereotype on my exam page. Another question focuses on intentional infliction of emotional distress: a man whose wife has had an affair with another woman proceeds to torture them both, putting them in fear of death. Finally, I notice in a medical malpractice question that a black baby is born to an artificially inseminated white woman: a prima facie case of wrongful birth, since the woman did not have a chance to abort her "wrongfully" black fetus.[54] My professor managed to target a whole range of politically powerless classes with his sadistic imagination. I walk out of the exam unsurprised that my professor consistently chose these insulting fact patterns, given his previous comments in class. But I am more concerned about my shaky understanding of defamation than about the content of the test; all I truly care about now is making sure I get the answers right—that I get a gold star on my bad exam.

Constitutional Law I, on national powers and federalism, is where I begin to see that the big picture may fit together but that it does not have an internal logic that only the most dedicated law students can divine. It quickly becomes clear that cases are distinguished one from another on the basis of the political issue at stake or the political composition of the Court.[55] Wolves are worth protecting in interstate commerce, my friend F. points out, but women are not.[56] My friend L. is worried that he is missing something; he cannot figure out why the cases do not seem to fit together seamlessly. I express a similar concern to my father, a lawyer, who tells me that there is no big picture outside of Con Law aside from politics. Towards the end of the year, I begin to think that it may not be my own lack of intelligence or discipline that prevents the big picture from coming together in the way I thought it would. I do see some connections—between property and contract, how civil procedure fits in with purely substantive law. But I also see holes in the big picture that keep getting wider and more frequent, like an old patchwork quilt falling apart. Still, I do not want to believe that this may actually be a result of the reality that the big picture is ugly, firmly rooted in bias towards money and power (not that money and power can necessarily be separated), and inherently unstable.

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[54] For an example of a wrongful birth action, see *Greco v. United States* , 893 P.2d 345, 351 (Nev. 1995), in which a mother sustained a wrongful birth action for a deformed child she did not have an opportunity to abort. I am baffled as to how it occurred to my professor to create a parallel of wrongful birth on the basis of race for the exam.

[55] *Compare Lujan v. Defenders of Wildlife* , 504 U.S. 555, 578 (1992) (holding that people concerned about protecting endangered species have no standing to sue under the Endangered Species Act) *with Bennett v. Spear*, 520 U.S. 154, 176–77 (1997) (holding that farmers have standing to sue because they suffered an economic injury from the Act).

[56] *Compare Gibbs v. Babbitt* , 214 F.3d 483, 477 (4th Cir. 2000) (allowing legislation to protect wolves under the commerce clause) *with United Stated v. Morrison*, 529 U.S. 598, 613 (2000) (disallowing legislation to protect women under the commerce clause).

In the meantime, I am learning that my submission to the rule of law is perfectly acceptable in Introduction to Lawyering and Professional Responsibility, which expands on some introductory issues from Civil Procedure about our legal system. The adversary system—in which we duke it out in court, lawyer against lawyer, may the "best" lawyer win—may have its problems, but it is the best available alternative, as far as potential legal systems go.[57] Sure, as an attorney you may have to do things you are uncomfortable with sometimes, but you are fulfilling a very important function. You are providing your services without judgment and thus allowing the process to work its magic—a clash of opposing sides that reveals the Truth.[58]

I am unsure of how that works, even on a logical level—how two conflicting accounts will result in the truth being exposed. It appears to me that it will result in a confusing mess; absent alchemy, I do not understand how this is supposed to work.[59] We have no better option, however—would you rather be caught with drugs in Russia or Taiwan, honestly? And the system needs its widgets to keep turning out cases. We can therefore be widgets without guilt.[60] I try to sell this to my sister on the phone, who says, "you had better really believe in that system if you are going to do the things you will have to do." I wonder if I do believe in it. I wonder if I could do this if I did not.

I like this Lawyering class, though, because we at least have an opportunity to discuss whether the absolution of moral responsibility makes sense. We read an excerpt from the most powerful work I have come across all year:

> The man sitting in the iron seat did not look like a man; gloved, goggled, rubber dust mask over nose and mouth, he was a part of the monster, the robot in the seat. . . . the monster that sent the tractor out, had somehow got into the driver's hands, into his brain and muscle, had goggled him and muzzled him—goggled his mind, muzzled his speech, goggled his perception, muzzled his protest. . . . He could not cheer or beat or curse or encourage the extension of his power, and because of this he could not cheer or whip or curse or encourage himself.[61]

I am grateful that there are at least some moments in law school when I can stop and breathe and ask a real question. Yet I am left more confused than before: should I be doing this? Why do I want to be a lawyer? Do I believe in the adversary system? If I do not, what am I supposed to do now? How do I reconcile my sympathy for the *Grapes of Wrath*

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[57] *See, e.g.*, David Luban, *Lawyers and Justice: An Ethical Study* , *in* CIVIL PROCEDURE: DOCTRINE, PRACTICE, AND CONTENT 570 (2000).

[58] *See id*. at 564.

[59] *See id*. Luban has doubts about the logic of this idea as well.

[60] *See, e.g.*, Stephen Pepper, *The Lawyer's Amoral Ethical Role* , *in* Andrew L. Kaufman, PROBLEMS IN PROFESSIONAL RESPONSIBILITY 246 (3d ed. 1989).

[61] JOHN STEINBECK, THE GRAPES OF WRATH 35 (1939).

metaphor with my desire to move forward and stay committed to this learning process? I have no answers, only questions.

At the end of the year, my utter submission eases a bit. I have been a talker all along, but I find that I am turning into something of a brawler. We end property with cases about American Indian Nations, and my casebook becomes riddled with exclamation marks. We read that white Americans have an exclusive right to extinguish American Indian "occupancy" of land by purchase or conquest.[62] We learn that this right of occ u-pancy can be interfered with at will.[63] We also discover that normal takings doctrine does not apply to American Indians; their property is less worthy of compensation.[64] You can have property, and lots of it, but if you are the wrong kind of owner it does not appear to make any difference. I am already approaching outrage when I reach a section of Justice Rehnquist's dissent that really pushes me over the edge. His premise is that cultural conflict between the whites and Indians was inevitable and that we cannot judge white atrocities because atrocities have been committed on both sides. Rehnquist chose to quote a historical text as support:

> The Plains Indians seldom practiced agriculture or other primitive arts, but they were fine physical specimens; and in warfare, once they had learned the use of the rifle, [were] much more formidable than Eastern tribes who had slowly yielded to the white man. . . . They lived only for the day, recognized no rights of property, robbed or killed anyone if they thought they could get away with it, inflicted cruelty without a qualm, and endured torture without flinching.[65]

The result of reading this blatantly racist passage is me yelling at another student in class who attempts to justify Rehnquist's argument. It is literally the last day of class, and I am ready for a break.

Despite noticing the glitches in the Matrix—the indications I have that something is wrong with the big picture—I manage to submit to the process of my legal education so well that I get the shiniest gold star I could ask for: I make law review.[66] This is the holy grail of gold stars, the make-it-or-break-it moment of law school, the key that will open the door to job interviews, clerkships, and life-long respect and admiration. This is what they tell me, anyway.

I skim through the Boston College Law Review Handbook I am e-mailed over the summer and I feel like I am in trouble already. The handbook is full of warnings, in bold and underlined, about the things we could do wrong: write a sentence without a footnote,

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[62] *Johnson v. M'Intosh*, 21 U.S. 543, 587 (1823).

[63] *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272, 285 (1955).

[64] *See United States v. Sioux Nation of Indians*, 448 U.S. 371, 389 (1980).

[65] *Sioux Nation* , 448 U.S. at 437–37 (alteration in original) (Rehnquist, J., dissenting) (quoting THE OXFORD HISTORY OF THE AMERICAN PEOPLE 539–40 (1965)).

[66] Thanks to Professor Farley for the *Matrix* metaphor.

wait to address a problem with an editor, forget to fill in a pinpoint citation. Deadlines for our note will come fast and furious. I feel like the handbook is trying to intimidate me, and I cannot figure out if I want to defy the rules of the handbook or practice my citation now so I can show the handbook it has nothing on me. My ambivalence about law school—wanting to amass a collection of gold stars and at the same time feeling frustrated at this act of, and desire for, self-prostitution—is overtaking my 1L submission to the violence.

As the second year begins, I decide right away (per handbook) that I want to write my law review note about gay rights and equal protection. There is a lot to say about gay rights in the law today, and equal protection is my pet interest. I choose Harvey Milk High School as my topic, the new school in New York City that works to meet the needs of lesbian, gay, bisexual, transgender, and questioning students. My senior editor is supportive and helpful; I feel encouraged that this law review thing might turn out to be a good experience after all. But first, I need to learn everything I can about equal protection in Constitutional Law II, which is where my faith in the law—and law school—truly begins to fall apart.

The first case we read on equal protection is *Grutter v. Bollinger*, the Supreme Court's most recent statement on the topic of affirmative action.[67] My professor starts with the most recent case first because he likes for us to argue about the issues right off the bat; this way, we can look back on it in a different light after we have gone over the case law building up to that point. In *Grutter*, the Court found that a state law school could use race as a factor in admissions, but only in a holistic fashion where race is considered as one factor among many.[68] Strict scrutiny, the highest level of scrutiny that can be applied in equal protection, was technically applied (even though the discrimination in question was against white students).[69] Under strict scrutiny, any government action that discriminates on the basis of race, which is a suspect classification, must be narrowly tailored to achieve a compelling government interest in order to survive.[70] The goal of diversity was compelling enough in the context of education that this practice did survive in limited form.[71] In a companion case, *Gratz v. Bollinger*, the Court found that a state university could not use a points system in admissions (such that an applicant may be awarded more points than another applicant on the basis of race); this apparently was not narrowly tailored enough to survive strict scrutiny.[72] Discussing *Grutter* in class, I get upset in a *State v. Shack*, red-faced, shaky-voice kind of way.

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[67] 539 U.S. 306, 343–44 (2003).

[68] *Id.* at 337–39.

[69] *Id.* at 324–27. *See also Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 277 (clarifying that strict scrutiny now applies to suspect classifications, not classes).

[70] 539 U.S. at 324–27.

[71] *Id.* at 330.

[72] 539 U.S. 244, 252–57, 275–76 (2003).

My professor, an ACLU-supporting, "I may not agree with what you have to say but I will defend your right to say it" kind of liberal, has invited another Con Law II professor to lead the discussion with him. (The other professor is of the moderate conservative, "if we see the world in black and white, we will see the world in black and white" variety.) The discussion rapidly disintegrates into a near-yelling match between me and another student, J., who feels that this decision is "disgusting," a total abomination, a shame on the Supreme Court. He says that this is because there is no "merit" in being of a particular (minority) race. Unlike poverty, race is no longer an obstacle that needs to be overcome, so why should African-Americans get special treatment? I try to explain in as calm and coherent a way as I can muster that racism is still with us and, as such, race still poses an obstacle to be overcome, in and of itself. As the white girl speaking for minorities in general, I feel like I am talking out of turn.[73] I also stumble over my words because I am so frustrated and upset by J. There are only two minority students in my class of twenty-three—an African-American woman, A., and an Asian-American woman. A. gets up and leaves about halfway through the class. I silently pray that I have not said anything insensitive and that my speaking on her general behalf at all was not offensive to her.

After class, I bump into A. in the hallway. She looks as though she has been crying. Later in the semester, when we have established a little liberal camaraderie, she will tell me that she vomited in the bathroom when she walked out on that class. For now, she thanks me for speaking. I am secretly thrilled on the one hand—at least I was not offensive—but I also tell her that I think it would mean more to kids like J. to hear the words come from her mouth: real words, based on the truth of her experience, unlike my shaky façade of understanding. I can never know about racism like A. does. She tells me she wishes it could be she who speaks up, but that she cannot do it—the speaker cannot be her. She does not explain why. I wish J. had overheard our conversation.

We back up in Con Law II to *Dred Scott v. Sanford* (slaves are not citizens) and *Plessy v. Ferguson* (separate but equal is fine), but before we know it, we are on to *Brown v. Board of Education*.[74] This granddaddy case is the one we all know; it is the springboard to the civil rights movement, the big moment where racial equality was achieved in America, or so I thought. The first moment of surprise comes when my professor tells me that *Brown* did not actually overrule *Plessy*.[75] The case was limited to the special context of education, as the Court is careful to emphasize.[76] Although the Court appeared to extend its ruling to

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[73] I identify with the Catherine character in *The Monkey Suit* almost to a point that makes me uncomfortable; someone has got my number. *See* DAVID DANTE TROUTT, *The Monkey Suit*, in THE MONKEY SUIT: AND OTHER SHORT FICTION ON AFRICAN AMERICANS AND JUSTICE 260, 274–75, 281, 292–93 (1998) (painting a portrait of a liberal white woman lawyer).

[74] *Brown*, 347 U.S. 483, 495 (1954); *Plessy*, 163 U.S. 537, 550–51 (1896); *Dred Scott*, 60 U.S. 393, 427 (1856).

[75] *See* 347 U.S. at 493, 495.

[76] *See id.*

public accommodations in cases like *Watson v. Memphis*, the Court left loopholes open in this department: *Palmer v. Thompson*, for example, upheld the closing of a public swimming pool altogether to avoid integration.[77] I am thoroughly shocked that this case appears to be good law.

The second surprise comes when the professor asks if *Brown* was a good decision. It is clear that he is not asking whether *Brown* went far enough; he is asking if it went too far. I am confused; what is he looking for? What kind of logical answer could there be to this question? He appears to be asking from the perspective that judicial activism could result in a backlash, but I do not understand why generalized prejudice could justify the Court in waiting to do the right thing. The Court has made it clear that in this arena, prejudice cannot have a stifling effect on the Court's decisions.[78] My professor is a practical man—a man who thinks *Roe v. Wade* may have spawned the anti-abortion movement and as such it may have been a bad decision.[79] But I still am confused at the thought that a public reaction against a decision could justify an argument for coming out the other way.

The problem is this: the legal classroom is supposed to be a vacuum. Absent any kind of political reality or fundamental truth—that racism exists and that it is wrong—we must logically find explanations for answers that cannot really be answered outside of political reality. Yet outside of reality is where law students are supposed to live. Objectively, is giving legal rights to African-Americans the right thing to do? Probably. Objectively, was the Court outside the bounds of judicial discretion in *Brown*? Probably. Objectively, does this way of thinking make sense to me? No.

In this way, law school reminds me of a class I sat in on in college but decided not to take: Introduction to Philosophy. The professor asked us all to answer, very seriously, how we did not know that we were not on a table with little plugs all over our bodies that were actually manipulating out brains to make it appear as though we were in this classroom listening to her speak. Either scenario could be true: we could be in the classroom, or we could be on the tables. I did not wait to find out how we do differentiate between these circumstances because the answer appeared to me entirely irrelevant to my reality, which involved shopping for new textbooks and having dinner with my roommates later that day. I did not care about what could be, but is not, in any way that does not matter in the real world; I cared about what is and what should be, in the real world, and as such, I did not want to waste my time. In law school, I feel like I am back in that Philosophy classroom where I am supposed to divorce my knowledge of reality from the "right" answer.

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[77] *Palmer*, 403 U.S. 217, 226 (1971); *Watson*, 373 U.S. 526, 539 (1958) (holding that the "all deliberate speed" method of integrating schools does not apply to integrating public accommodations, which should not be complicated).

[78] *See Palmore v. Sidoti*, 466 U.S. 429, 433 (1984); *Cooper v. Aaron*, 358 U.S. 1 at 6, 16, 19–20 (1958).

[79] *See* 410 U.S. 113, 164–66 (1973); STONE ET AL., *supra* note 49, at 835.

It is easier to argue about *Grutter*, where affirmative action at least has logical opposing arguments, such as the argument that taking racial classifications into consideration is stigmatizing.[80] I do not agree with these arguments, but I understand them and I can counter them with my own. I cannot counter the suggestion that *Brown* was a bad decision. I simply do not know how to do that without resorting to what is, to me, the truth—that racism is wrong. As an objective law student, I am not supposed to know this. So I am left speechless, wondering why this is how the law works.

I receive an e-mail from the law review's editor-in-chief (EIC) about our new masthead, the first in which the 2Ls' names will appear. We are instructed to initial the spelling of our names on a list posted outside the law review lounge. Additionally, 3Ls are permitted to indicate whether they would like to include their middle initials in their names, while 2Ls will have to wait another year. I am surprised and yet amused by this little exercise of power, this reinforcing of the journal hierarchy, this keeping-of-me-in-my-place. I never understood the middle initial phenomenon anyway. I laugh about it with my friends when I am tired of reading citations out loud with a partner, one of my mind-numbing editing duties.

In Con Law II, I am encouraged for a while by the Court's progress, especially in some of the desegregation cases after *Brown*.[81] It appears, for a brief moment, that the Court is trying to take the problem of racial discrimination seriously.[82] There are a few aberrations, but I want to write them off as lapses in judgment along a steady, coherent path to achieve racial equality. Then something happens. The Court starts distinguishing these cases and limiting its new decisions: mandatory busing can only happen if the segregation occurs across districts now, or if a legislative body and not a lower court orders it.[83] Legislative redistricting may matter, but African-Americans are not entitled to proportional representation.[84] Disparate impact on a racial group is not enough to trigger strict scrutiny; there must be proof of intentional discrimination for the higher standard to be used, a requirement that is almost impossible to meet.[85] Then it seems that not

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[80] *See Grutter*, at 539 U.S. at 383–74 (Thomas, J., concurring in part and dissenting in part).

[81] *See, e.g.*, *Wash. v. Seattle School District No. 1* , 458 U.S. 457, 486 (1982); Keyes v. School District No. 1, Denver, Colo., 413 U.S. 189, 208–09 (1973); Cooper v. Aaron, 358 U.S. at 6, 16, 19–20.

[82] *See id*.; *see also Harper v. Va. State Board of Elections* , 383 U.S. 663, 670 (1966) (overruling a poll tax as a precondition for voting); Reynolds v. Sims, 377 U.S. 533, 568 (1964) (holding that the right to vote is unconstitutionally impaired when its weight is substantially diluted).

[83] *See Jenkins v. Mo*., 515 U.S. 70, 71–72 (1995) (limiting the powers of lower courts in ordering desegregation); *Milliken v. Bradley*, 418 U.S. 717, 752–53 (1974) (limiting desegregation efforts to intra-district remedies in the absence of an inter-district violation).

[84] *Compare Reynolds*, 377 U.S. at 568, *with City of Mobile, Ala. v. Bolden* , 446 U.S. 55, 78 (1980) (limiting the concept of vote dilution such that proportional representation is not required).

[85] *See Washington v. Davis*, 426 U.S. 229, 242 (1976); *see also McCleskey v. Kemp*, 481 U.S. 279, 292 (1987).

only are the remedies for African-Americans limited, but the Court is more worried than ever about discrimination—against white people.[86]

Affirmative action cases hold that there must be a specific, identifiable harm to an individual person in order for remedy of past harm to suffice as a compelling government interest.[87] In cases where the First Amendment is implicated—in education and possibly in broadcasting—diversity could be used as a justification and broader action could be taken.[88] But general societal harm to African-Americans, or any other group, cannot be remedied by state action.[89] Thus, the Court has managed to narrow the opportunities to use equal protection for minorities extremely narrowly and has shifted the focus to discrimination against white people in the process.[90] I notice this shift in class, but we do not discuss it as a part of the Court's strategy to defeat civil rights action. Instead, we try to explain how these cases fit together and how we can rationally justify the Court's behavior. I feel like I am missing something, but I know that I am not. I know that the Court is up to something and that I am not crazy, even if I am confused. I breathe a sigh of relief when I read Alan David Freeman's article on critical race theory for Modern Legal Theory, detailing how the law has legitimated racial discrimination.[91] I am not alone, an y-way. And I start to get a little bit angry.

I meet with the EIC about law review. This is a mandatory meeting, a requirement for all 2Ls, just to talk about "how things are going." I have spoken with EIC from time to time around school, but I have to have a similar conversation sitting across from him at his desk in order to meet the law review requirement. A staff member hands him an article that has just been approved for publication and, because I am not sure what to say, I use it as an opportunity to ask about what they look for when accepting submitted articles. I expect that they are seeking articles in hot substantive areas, or ones that take some sort of approach to the law they find fresh and exciting. Instead I am presented with a list of considerations: where the author is a professor; whether he (and it is a he, I suspect) is a full professor, assistant professor, or associate professor; whether he is perhaps currently unknown but about to make a name for himself, an up-and-comer. EIC describes a recent near-crisis in which an unusually short article was rejected before the staff

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[86] *See Adarand,* 515 U.S. at 227; *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 289–90 (1978).

[87] *See Grutter v. Bollinger* , 539 U.S. at 339–40 (emphasizing that remedial government action must be as narrowly tailored as possible); *Adarand*, 515 U.S. at 201–02 (emphasizing that equal protection is for individuals, not groups).

[88] *See Grutter*, 539 U.S. at 330–33 (discussing the compelling governmental interest of educ a-tional diversity); *Metro Broad., Inc. v. Fed. Comm. Comm'n*, 497 U.S. 547, 566 (1990) (discussing the compelling governmental interest of broadcasting diversity).

[89] *Adarand*, 515 U.S. at 201–02.

[90] *See Grutter*, 539 U.S. at 330–33; *Adarand*, 515 U.S. at 201–02; *Metro Broad.*, 497 U.S. at 566.

[91] David Alan Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049, 1049–50 (1978).

members discovered it was authored by a well-respected expert; luckily, some politicking rectified the situation and got the article back. I smile and remark that it all sounds very, well, political. I am otherwise out of things to say.

I am not out of things to say in Con Law II, though. When we get to gender, I point out right away that most of the important cases seem to result from state action that disadvantaged men somehow.[92] I cut the professor off when we disagree on a point. I do it again. He cuts me off too. We generally have a good rapport, but my increasing disdain—for law review, constitutional law, the law itself—is starting to show itself in my attitude.

During all of this I am working on my note. My thesis is something to the effect of: lesbian, gay, bisexual, transgender, and questioning students should not be mistreated in school. In fact, although creating a separate school for them is a positive remedy for kids who cannot face the abuse they receive in their regular schools, it is not enough. Until we make a commitment to eliminating the problems these kids face in regular schools, we will have failed; we will have sent these kids the message that this problem is not important enough to actually fix. I need many pages of voluntary school segregation discourse and equal protection theory, as well as many Supreme Court cases, to make this astonishingly simple point. I wonder why something so obvious takes so much work to justify. I also wonder if I am resorting to traditional liberalism (separating kids is bad) instead of taking a more radical position (who cares? we need to take care of these kids now—this is reality). I wonder if my continued desire for the next gold star—publication—is driving me to pick my position. I used to write to show my professors I knew better than they did, and now I am writing to please EIC, gatekeeper to publication, a law student with one more year of legal education than I have and perhaps less knowledge of constitutional law. I still do not know if my thesis is what I believe to be true in my heart of hearts.

At the end of the semester, my Con Law II professor points out, as he did before, that there has been a shift in the language in equal protection doctrine from suspect classes to suspect classifications—from racial minority to race, from women to gender.[93] This sinks in, finally, and I see the tool the court has been using to accomplish its masterful feat of turning equal protection around and sending it back where it came from (to the back of the bus?). I like to think of Supreme Court decisions as a big word dance: the justices change the rhetoric ever so slightly, and speak with more authority, and thus they can do whatever they please while maintaining the appearance of legitimacy. The rest of us may be confused at how they did it, but we can figure out how to keep up. We cannot change it, though, and this leaves me feeling frustrated and sad.

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[92] *See, e.g.*, *Miss. Univ. for Women v. Hogan* , 458 U.S. 718, 720–21 (1982) (men had been prohibited from attending a single-sex nursing school); *Craig v. Boren*, 429 U.S. 190, 190 (1976) (men had been preventing from buying 3.2% beer at the same age as women).

[93] *See Adarand*, 515 U.S. at 216–17 (classifications with respect to race); *Craig*, 429 U.S. at 197–98 (classifications with respect to gender).

I also feel concerned about this very paper I am writing, my final assignment of the semester, the marker of half my legal education. It is autobiographical, which is not generally endorsed in academia, much less law school. I have my professor's permission to write on this topic, but it feels, well, not "legal" enough. I have tried to cite cases and ground my reactions to legal education in those cases. Perhaps I should have analyzed something someone else wrote instead. I tell my boyfriend about my paper, and he tells me this sounds like a creative writing assignment, not a law school assignment. "The personal is political," I snap back. Critical theory is creative; why should that make it less respectable? Come to think of it, the way in which the Supreme Court destroyed fledgling equal protection theory was pretty creative as well, and those decisions are as legal as it gets. Besides, Patricia Williams writes in an autobiographical style, and her work is respected, at least among critical theorists. In fact, she believes that impersonal writing is nothing but a denial of self.[94]

I am not Patricia Williams, though. I do not have anything so brilliant to weave through my work as polar bears.[95] I have gold stars, twinkling, bright, off in the distance. Always another one to reach for. Too hot to touch, perhaps—I might get burned. Flat and thin on my papers. I do not just want gold stars, in all sizes and textures and degrees of glittery goodness: I want to be a gold star. I also want to say what I need to say and find a way to make sense of this system of organized violence so that I can live with it.

This is what I know about the law: it can be, and often is, out of touch with political and social reality. It is designed to mainly protect the powerful (defined by race, class, gender, and sexual orientation). It is justified in a way that makes it appear legitimate. This is the big picture and it is indeed ugly.

This is what I know about being a student of the law: I am supposed to be objective, or remove myself from my real-world knowledge and help rationalize the law from a place that does not exist. I am supposed to be diligent in learning to think like a lawyer in this way. I am supposed to follow the rules—from the respect for precedent to the importance of EM dashes versus EN dashes. If I question, I should be asking how the law works, not why it works the way it does.

I like this paper, though, enough to overcome my worry about whether it is star-shaped. It says some things I have been wanting to say. It has been a friend to me, submitting to the violence of my typing, not judging my petty desires, my fears, my righteous yet slightly hypocritical indignation about the law. The paper is personally revelatory, to be sure, but I believe it is revelatory about the greater realm of law and legal education, too. Underneath it all, I believe that for some readers it will sound comfortably familiar, and for others, it just may have the uncomfortable ring of truth.

And if I cannot find a way to get my stars through honesty and bravery, or to stop caring about stars altogether, at least I will have this small memento of my journey. Twinkle, twinkle, little star…how I wonder what you are.

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[94] WILLIAMS, *supra* note 1, at 92.

[95] *See, e.g.*, *id.* at 6–8, 207–08, 236.