

COUNTERSTORYTELLING: INTERSECTIONS OF RACE AND AMERICAN LAW IN
DERRICK BELL'S SCIENCE FICTION

by

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ABSTRACT

Recently, a division of legal scholarship, Critical Race Theory, began examining the law from a new perspective: creative literature. Within the legal community, CRT legal storytelling has received mixed reception; yet literary scholars have largely ignored this genre. This thesis aims to fill the research gap surrounding legal storytelling, examining the stories not only as works of legal scholarship, but as works of literature as well. Through application of literary theory and close-reading techniques, I argue for the value of literary works to legal scholarship, particularly civil rights. My research concerns four findings. First, literature broadens the scope of legal scholarship to examine how the law operates and our relationship to the law. Second, fiction allows for critique of the law and legal scholarship. Third, counterstories provide alternative strategies for the civil rights community. Finally, Derrick Bell's science fiction contains elements of fantasy well-suited to judicial critique of racial inequality.

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CHAPTER ONE INTRODUCTION

In the foreword to *Critical Race Theory: An Introduction* African American legal scholar Angela Harris writes that during her time as a law student at the University of Chicago in the early 1980s “there was, seemingly, no language in which to embark on a race-based systematic critique of legal reasoning and legal institutions themselves [...] We finished our legal educations never having found a place where the sophisticated discourse of racial critique in which we lived our everyday lives could enter the legal canon” (xvi-xvii). Harris is not the only legal scholar to suggest that Critical Race Theory (CRT) filled a crucial gap in legal scholarship, one that examined the pervasive intersections between race and American law. Richard Delgado, Jean Steffanic, and Kimberle Crenshaw each variously assert that the theory in which they are founding members is crucial to a well-rounded body of American legal scholarship in which “issues of racial ideology and power” are justifiably treated as central to law and policy in the United States (Crenshaw xxx). The political ideology and scholarship of Critical Race Theory’s “intellectual father figure,” Derrick Bell, is at the heart of this movement. His well-publicized struggles with his employer, Harvard Law School, and the formal legal scholarship he wrote during that period created the space for the application of critical theory to the law, particularly in issues of race and power. However, it is his unconventional scholarship, namely his (science) fiction, which continues to characterize the movement. The “legal storytelling” or “counterstorytelling” movement urges minority populations to undertake fiction in order to “recount their own unique perspectives to assess law’s master narratives” (Delgado and Steffanic 10). CRT’s supporters believe that the narrative mode provides a new voice for minority populations, allowing them to name, combat and analyze the discrimination they face through creative modes of expression. CRT’s critics, however, reject the inclusion of subjective modes of

representation in the accepted body of legal scholarship. Storytelling, they contend, lacks the objectivity and neutrality that characterizes academic scholarship in general and the law in particular. Many critical race theorists have undertaken a defense of their narrative pursuits; Derrick Bell, however, continued to engage in legal storytelling without addressing the critiques of his work. Contending that “the use of literary models” is a “more helpful vehicle than legal precedent in a continuing quest for new directions in our struggle for racial justice,” Bell published nineteen short stories, mostly in the science fiction genre, examining intersections of race and law through narrative and dialectic.

1.1 Research Goals and Limitations

In this thesis I assert that fiction can be a useful complement to traditional forms of legal scholarship and ought to be included therein. This study will answer four questions:

- 1) How does legal storytelling contribute to the current state of American legal scholarship, making it more attentive to the concerns of minority groups?
- 2) What is the pedagogical function of counterstorytelling?
- 3) How can literature be used to not only critique the status quo, but also to introduce specific strategies in the ongoing quest for equality?
- 4) What is the relevance of Bell’s chosen medium of science fiction?

My argument is composed of three parts: the second chapter contains an outline of the debate around CRT counter-storytelling (both supporters and critics); the third chapter contains an outline of legal and literary theories concerning the political function of literature and science fiction; finally, the fourth chapter provides a close reading of Bell’s work to demonstrate how his

fiction is capable of making reasoned arguments about race and law while simultaneously refuting criticisms made by CRT's detractors.

This is a necessary study because it fills the current gap around CRT legal storytelling that exists both in law and literature departments. Thus far, legal scholars, not literary ones, have performed research on counterstorytelling within the sphere of legal scholarship. The legal scholars who have addressed the topic generally fall into two camps: those loyal to the traditional modes of legal analysis and scholarship, who reject the inclusion of “subjective” modes of representation into the accepted legal body of scholarship, and Critical Race Theorists themselves, defending their medium from the former’s criticism and outlining their research goals. The latter defend fiction’s place within legal scholarship, claiming that subjective, narrative modes allow for a more inclusive representation of legal problems, specifically as they apply to minority groups. Fiction, they contend, allows those oppressed by the status quo the law upholds to articulate their concerns, or engage in legal scholarship that takes up those concerns. Critical Race Theorists also contend that fictional scholarship has a valuable pedagogical function – both in the classroom and into the broader community. While it is certainly relevant for legal scholars to engage with legal storytelling, the absence of scholarship on the topic from literature scholars is curious. Certainly, this is a result of the genre’s novelty – Derrick Bell wrote the first counterstory under the CRT banner in 1989 – however, after twenty-five years of legal scholars engaging in fiction, it is time their literary counterparts take notice. Thus, this thesis aims to fill a gap in our understanding of legal storytelling, to examine it not from the perspective of a lawyer or legal academic, but as a literary scholar. To do so, I have engaged in extensive research on literary, rather than legal, theory, as well as close-reading technique applied to Bell’s stories themselves to support CRT claims of fiction’s value.

Although I am using the most prolific writer of CRT counterstories to comment on the legal storytelling genre as a whole, there are certain limitations. In limiting my scope to a selection of one author's stories, I hope to make an argument about Bell's work that is applicable to the legal storytelling movement more generally; however, my argument cannot be taken as a complete rendering of the genre. Many other Critical Race Theorists engage in fiction to achieve similar ends, namely to challenge racial inequality as it is supported by the law and to introduce new pedagogical techniques into law schools across America. My findings will be applicable to the fiction written by Delgado, Crenshaw, Williams, and others; however, it cannot entirely stand in for a separate analysis of these CRT authors' work. Furthermore, CRT is largely concerned with the American legal system; to that end, the stories written by most Critical Race Theorists comment on the experience of ethnic peoples within the United States. Although my thesis argues for the centrality of fiction to the study of the law in general, this study ultimately pertains to American legal scholarship, the subject of Derrick Bell's work.

CHAPTER TWO CRT and Derrick Bell's Legal Storytelling

Legal storytelling of the kind Derrick Bell engaged in is a foundational element of the Critical Race Theory (CRT) movement, of which Bell was a founding member.¹ For the purposes of this examination, it is useful to understand Bell's own conception of narrative's place in legal discourse, the way he engages in narrative, and the broader CRT movement of which he was an integral part. It is also necessary to delineate the criticisms Bell and CRT have endured from other scholars of legal theory, particularly criticisms concerning CRT methodology (namely storytelling), and the movement's response to those criticisms. These concerns will structure the remaining chapters of this thesis, namely chapter two's theoretical study of fiction and chapter three's engagement with Bell's texts themselves.

2.1 Bell's Use of Narrative

Bell describes his first foray into legal narrative in the preface to his first work of fiction, *And We Are Not Saved: The Elusive Quest for Racial Justice* (1987). In 1985 Bell, a tenured Law professor at Harvard, was asked to write the foreword to the Supreme Court issue of America's most prestigious legal periodical, the *Harvard Law Review*. He wanted to examine Supreme Court precedent, specifically in relation to the civil rights movement after the landmark *Brown v. Board of Education*² decision, from a new perspective. Specifically, Bell aspired to broaden the existing analysis beyond the judicial and political ramifications of what has since been called the first breakthrough of the civil rights movement. In this extended analysis he aimed to examine

¹ Kimberle Crenshaw, editor of *Critical Race Theory: the Key Writings that Formed the Movement*, refers to Bell as the "dean and originator of the modern storytelling movement" (37). American philosopher Cornel West writes: "When Derrick Bell, Jr., began to question the basic assumptions of the law's treatment of people of color in the leading law reviews...he was virtually the lone dissenter in the arena of legal scholarship" (xi). Delgado and Steffanic refer to Bell as "the movement's intellectual forefather" (5).

² The 1954 case overturned of separate but equal legislation, in which the court struck down segregated schools.

what has or has not happened as a result of the ruling and how “black people (or some of us) feel about it” (xi). Bell asserts that the traditional legal scholarship to which the *Harvard Law Review* is accustomed is good at “the most exacting exegesis” concerning “judicial decisions, the antidiscrimination laws, and the changes in racial relationships reflected in those milestones”; however it insufficiently expresses the “spiritual manifestation of the continuing faith of a people” (xi). Essentially, conventional legal scholarship is figured as an accomplished means to understand the law, but it is ill equipped to convey the manner in which citizens, as legal subjects, relate to the law as such. Thus, Bell sought a new method of expression, one that spoke to the particular experience of African American civil rights, one “adequate to the phenomenon of rights gained, then lost, then gained again - a phenomenon that continues to surprise” (xi). Bell found that method of expression through a fictional interlocutor named Geneva Crenshaw through whom he created dialogues challenging the accepted view of how African Americans might gain substantive advancements in equality. Initially, Bell feared the rejection of his “unorthodox approach” by the *Law Review*’s editors, but his piece was accepted with great enthusiasm and thus was born the medium that continues to investigate “jurisprudential matters of significant importance in a language and format more usual in literature than in law” (Bell xii). That medium, now referred to as “legal storytelling,” or “counterstorytelling,”³ has become the backbone of the CRT Movement.

Bell’s own engagement in “counterstorytelling” is pedagogical, experimental, and reminiscent of Platonic dialogue. Its pedagogical value is twofold. Critical Race Theorists question the ability of standard legal scholarship to provide an ordinary legal subject with

³ These terms refer to CRT’s aim to give voice to the marginalized and counter prejudicial assumptions: “Critical writers use counterstories to challenge, displace, or mock these pernicious narratives and beliefs...Stories can name a type of discrimination; once named, it can be combated” (Delgado & Steffanic 49).

meaningful guidance concerning their judicial rights and restrictions. While Kent C. Olsen asserts that: “Access to the law is any citizen’s right, and much legal information is available in general libraries and through electronic sources” (3), the reality is that most people do not read or understand legal jargon, even though the issues under discussion may directly impact their lives. Thus, Olsen continues, “Although most law libraries are open to the public, their books are generally written for people with extensive legal training. Few resources are designed to help nonlawyers find and interpret the law” (3). The problem is not unique to the field; most areas of scholarship share the problem of public dissemination. However, Critical Race Theorists highly value the public’s comprehension of the laws to which they are subject, and so dissemination of their scholarship is a paramount concern. Critical Race Theorists regards narrative as a more effective means of instructive communication to people from diverse backgrounds; they believe that non-academics are more likely to read and understand a story than a peer-reviewed legal article.⁴ Furthermore, CRT legal fictions typically engage with ethnic communities; CRTs recognize that the legal storytelling method is highly reminiscent of the oral and written narrative traditions of many American subgroups: “Legal storytellers, such as Derrick Bell and Patricia Williams, draw on a long history with roots going back to the slave narrative, tales written by black captives to describe their condition” (Delgado and Steffanic 44). This comment on the African American narrative tradition can be likewise extended to Latino and Indigenous groups, whose cultures use stories and myths to bind the group together, often in the midst of Euro-American aggression.⁵ Stories are also meaningful for those of European descent who lack what

⁴ “Narratives provide a language to bridge the gaps in imagination and conception that give rise to the differend. They reduce alienation for members of excluded groups, while offering opportunities for members of the majority group to meet them halfway” (Delgado & Steffanic 51).

⁵ In “Hispanic Oral Tradition: Form and Content,” John H. McDowell describes the narrative tradition of American Latinos: “The Hispanic population of the United States nourishes a remarkable body of oral tradition produced through...and perpetrated in the midst of the North American polity...At the more formal end of the continuum we

W.E.B. Dubois called “double consciousness,” namely the capacity to conceptualize the conditions of both majority and minority populations; by exposing members of the majority group to alternative perspectives and concerns, powerfully written counterstories can challenge prevailing conceptions of race and “begin a process of correction in our system of beliefs and categories by calling attention to neglected evidence and reminding readers of our common humanity” (51). Legal storytelling is also pedagogical insofar as many CRTs extend their narrative method beyond publication and into the classroom. Bell’s *And We Are Not Saved* contains a “Classroom Appendix,” a chapter-by-chapter discussion plan inspired by Bell’s experience using his fiction as a pedagogical tool at Harvard; he writes: “Stories are, of course, valuable teaching tools. Subject matter in story form can gain and hold students’ attention, and the very telling of a story evokes ideas and images about the subject matter that broaden and deepen the issues for discussion” (259). Five years after the publication of *And We Are Not Saved*, Bell repeats the same pedagogical concerns in the preface to his second work of fiction, *Faces at the Bottom of the Well*, admitting: “Several of these stories were written to facilitate classroom discussion” (xiii). Bell’s engagement in narrative fiction began as experimental classroom pedagogy and research scholarship and broadened into a publishing medium that the CRT community adopted.

Like the pedagogical character of Bell’s stories, their experimental nature is also twofold: not only is he purposefully expanding the standard form of legal scholarship (a discourse previously closed to fictional narrative technique), he also engages in a multiplicity of

find narrative and lyric poetry of the sort that graces significant public events. At the more informal end, we find conversational forms such as jokes and personal experience stories” (218). Likewise, Native Americans traditionally employed myth and storytelling to embody their beliefs and values; Heather E. Bruce writes: “Indian rhetorical traditions and written literatures...capture the experience of individuals and circumscribed within community, within landscape, within ceremony, and within time” (55). Recently Middle Eastern writers have begun to describe their alienation and discrimination in narrative form as well, for example: Tehranian’s *Whitewashed: America’s Invisible Middle Eastern Minority* (2008).

literary styles to convey his message. Bell's first novel, *And We Are Not Saved*, is divided into ten "Chronicles," which although fictional, nevertheless "explore situations that are real enough but, in their many and contradictory dimensions, defy understanding" (7). Each story addresses barriers to racial equality and raises pragmatic questions about the efficacy of law and litigation to achieve meaningful racial reform.⁶ In a subsection following each story, Bell writes himself into the narrative: with his interlocutor he debates the chronicle's message and its implications for American legal reform. Bell explains his arrangement as follows: "This pattern of Chronicle and discussion is followed by subsequent chapters, where the one serves as the springboard for the other in which Geneva and the narrator express their strong, and usually conflicting, views" (7). Imagined dialogues, even ones speculating on the meaning of the story in which the dialogues themselves are contained, are a common occurrence in works of fiction. However, this fictional dialectic structure remains wholly absent from traditional legal scholarship, which typically contains one voice, that of the scholar writing the legal review. Furthermore, given legal scholarship's emphasis on objective facts and recorded occurrences, legal thinkers seem unable or unwilling to engage in a narrative style which imagines how citizens relate to the laws to which they are subject.

This method situates Bell's writing in the Platonic tradition, where the philosopher articulates a myth and debates its meaning with an interlocutor to uncover a particular truth. By choosing to replace myth with science fiction, and supplementing each story with a dialectic that exposes conflicting legal positions, Bell builds on the Platonic model.⁷ Bell's second book of

⁶ Delgado and Steffanic assert that these stories dare "to call our most prized legal doctrines and protections shams" (47).

⁷ Simon Blackburn describes the Platonic model as: "The process of eliciting the truth by means of questions aimed at opening out what is already implicitly known, or at exposing the contradictions and muddles of an opponent's

fiction, *Faces at the Bottom of the Well*, returns to this model: “through a series of allegorical stories, [Geneva and Derrick Bell] discussed the workings - and the failures - of civil rights law and policies” (ix). Bell continues to state the utility of the narrative mode over traditional legal scholarship: “Here, I again enlist the use of literary models as a more helpful vehicle than legal precedent in a continuing quest for new directions in our struggle for racial justice” (ix). His stories are highly experimental, not only in relation to standard legal scholarship, but also in relation to linear narrative form. The marriage of dialectic and science fiction (SF) narratives rooted in researched legal precedent is an experimental literary genre Bell invented.

Bell’s employment of SF as his chief literary genre is also of crucial importance. As a lawyer and legal theorist, choosing to supplement his research requirements with fiction marked a movement from logic to the highly subjective world of art. The SF genre further marks a transition into “unreason,” for science fiction transforms reality to imagine a world typically beyond the author’s or reader’s own existence. Bell’s genre is not an arbitrary stylistic choice, but a conscious use of the qualities specific to SF:

In order to appraise the contradictions and inconsistencies that pervade the all too real world of racial oppression, I have chosen in this book the tools not only of reason, but of unreason, of fantasy...In resorting to the realm of fairy tale - and its modern counterpart, science fiction - I have devised ten metaphorical tales, or Chronicles... [Which follow] an ancient tradition in using fantasy and dialogue to uncover enduring truths... Through the allegory, we can discuss legal doctrines in a way that does not replicate the abstractions of legal discourse. It provides therefore a more rich, engaging, and suggestive way of reaching the truth. (*And We Are Not Saved* 5-7)

position” (104). Bell explicitly acknowledges the pedagogical value of dialectic engagement: “Socratic dialogue effectively illuminates essential principles” (6).

SF allows Bell to subvert or tailor narrative reality to his goals. Legal theory and discourse, according to Bell, is often “dry and disconnected,” focusing on outdated perspectives, concerns, and precedents, “to be dissected and analyzed, like mummies in a tomb” (Divining a Racial Realism Theory” 99). Arguably, scholarship concerning the unintended ramifications of jurisprudence and arguments in favor of affirmative action are more engaging to the general public when an element of fantasy is involved. Chapter two will discuss literary theorists who argue that SF broadens the tools readers use to understand the world while also commenting on important issues in society; this theoretical understanding of science fiction also illuminates the function of Bell’s chosen genre. Unfortunately, the inventive and speculative reality endemic to SF has become an aspect critics of CRT have seized upon, arguing that it is a further rejection of scholarly objectivity.

Using Chronicle Four, “Neither Separate Schools nor Mixed Schools,” as a representative example, I will demonstrate the typical manner in which Bell’s story/dialectic chronicles unfolds. This SF story envisions the supernatural disappearance from every public school of every African American student in order to convey Bell’s controversial interpretation of the *Brown v. Board* precedent: in the ideological struggle for educational desegregation, “the intended beneficiaries had been forgotten” (107), because “the curriculum, texts, and teaching approaches were designed for the middle class” (110). Although *Brown v. Board* represents a crucial symbolic development in racial equality, Bell argues that its implementation further marginalized African American students; as a slim minority in the new system, their concerns were further pushed to the periphery of the educational system. Immediately following this story, Bell and Geneva (the narrator and fictional interlocutor, respectively) engage in a lively debate on the reality of fifty years of desegregated schools. While both understand the story to represent the

“casualties of desegregation, their schooling irreparably damaged even though they themselves did not dramatically disappear,” Geneva interprets the story as an argument to improve American schooling, arguing that education will solve the most pervasive problems of black inequality. Bell disagrees: “Nonsense. If that were so, you and I would not encounter the discrimination we and even the best educated of us continue to experience” (107). The interlocutors are opposed: like most civil rights attorneys, Geneva advocates equal opportunity education, while Bell takes the controversial position that segregated schools might better serve black educational interests until “we are at least moving in the direction of ‘equal economic opportunity’” (121). Bell also integrates documented facts and statistics on the costs the black community paid for desegregation into the fictional narrative.⁸ Through this dialectic the author demonstrates the diversity of opinions on educational desegregation, questioning the accepted interpretation of *Brown v. Board* as a progressive moment in civil rights litigation. While most legal surveys tend to view *Brown* as a watershed moment for civil rights, Bell’s conversation with Geneva challenges and contextualizes that optimism: “resistance to desegregation was so fierce and came from so many directions that any progress we made in overcoming it was simply accepted as a victory without much thought of *how* we...had prevailed” (108). This dialectic approach also refrains from essentializing African American voices: regardless of the accepted interpretation of the *Brown* case by legal historians, the African American community does not homogeneously accept *Brown* as a victory and ought not be portrayed as such.

⁸ The story contains 25 footnotes of legal precedent and scholarly articles on the ramifications of *Brown V. Board*. While formerly “black schools” tailored their curriculum to their students’ particular concerns, African American history and culture was incorporated into the dominant curriculum. After *Brown v. Board* black students were forced to learn a whitewashed version of American history that ignored their past and marginalized their culture. Furthermore, previously “white schools” benefited from increased funding and infrastructure to accommodate the influx of new students, while black schools and community centres closed. Most black faculty and staff subsequently lost their jobs and to this day blacks still do not have proportional representation on school boards.

Unlike standard scholarly legal articles examining the *Brown* precedent, this narrative approach allows Bell to examine the social and spiritual effects of desegregation as African Americans have experienced it. As Harry T. Edwards, circuit judge and law professor, argues in his widely responded to paper,⁹ “The Growing Disjunction between Legal Education and the Legal Profession,” legal scholars spend far too much time creating purely theoretical scholarship with little application to the social effects of legislation: “too few law professors are producing articles or treatises that have direct utility for judges, administrators, legislators, and practitioners, too many important social issues are resolved without the needed input from academic lawyers” (36). Similarly, not enough legal theorists are concerned with the consequences of implemented laws. Bell argues that existing legal scholarship on the *Brown* case fails to adequately examine its substantiated effects on the educational system; (experimental) broadened legal analysis demonstrates that in many ways the *Brown* victory was more symbolic than substantive. Furthermore, legal criticism aims at securing answers and concrete innovations; while this is certainly a worthy pursuit, it fails to recognize the complexities and contradictions inherent in the judicial system. Dynamic social contingencies (in this case the social, spiritual, and economic effects of desegregation on white and black students alike) obfuscate the reality of the *Brown* precedent and call into question the very existence of absolute legal realities, related to Posner’s classification of law as an “exact science” in *Law and Literature*. As a system dealing with human contingencies, the judicial structure will always be subject to human fallibility and dynamic social changes; the concrete answers and innovations legal scholars search for are simply non-existent. Thus, Bell writes: “Rather than offering definitive answers, I

⁹ “[t]he response [to the article] has been so overwhelming ... [h]ardly a day has gone by during the past month when we have not seen new evidence of its force, from the Wall Street Journal article to calls and inquiries from academics and law firms” (personal letter from The Michigan Law Review’s editor to Edwards, reprinted in “The Growing Disjunction between Legal Education and the Legal Profession: a Postscript,” 2192-3).

hope, as a law teacher and social seer, mainly to provide discussion that will provide new insights and prompt more effective strategies” (3). Bell’s “Neither Separate Schools nor Mixed Schools” performs a necessary critique of civil rights history, thus filling a gap in American legal criticism, which had declared *Brown* as a judicial victory for American equality, thus silencing opinions and analyses that may help improve education, especially for African American students. Traditional legal research tools chiefly consist of a series of headnotes and index numbers referring to primary sources (cases, statutes, and regulations - in essence the laws themselves) and secondary sources (legal reviews, legal dictionaries, and peer-reviewed articles - all of which have no legal standing) (Olsen 8). Legal research tools aim to examine and communicate applications of legal decision making;¹⁰ however, these tools are ill-equipped to deal with the dynamic reality of American law. Bell’s method exposes the insufficiencies in traditional legal scholarship, which rarely acknowledges its own instability.

2.2 Critical Race Theory (CRT)

Bell’s own academic career became the focal point around which the first seeds of the CRT movement were germinated. When Bell left Harvard to accept the deanship at the University of Oregon Law School, Harvard students requested a minority scholar to replace him and teach his courses on race and law; at the time, Bell was one of two African American scholars in Harvard’s large faculty. An article published the day of the ensuing protests, May 11, 1988, in the *New York Times* describes the dean, James Vorenberg, and the law school administration as “unresponsive to the students’ attempts to obtain a commitment to increasing representation of minorities and women on the faculty” (npag). Kimberle Crenshaw, a law-

¹⁰ In *Legal Information*, Olsen asserts that legal sources aim to “explain the law, clarify legal situations, and provide easy access to the ruling doctrines in the primary sources” (8)

student at the time, relates the particularities of the Dean's response: "Dean Vorenberg asked a startled student delegation whether we wouldn't prefer 'an excellent white teacher' to a 'mediocre black one'... What was it, he queried, that was unique about a specific course on constitutional law and minority issues that required such a specific course? Why couldn't students distill what we wanted from existing courses" (*Crossroads, Directions and a New Critical Race Theory* 12). Crenshaw writes: "It was in the midst of this kind of institutional struggle....that many of us now writing in the Critical Race Theory genre began to elaborate what we took to be the limitations of traditional race analysis and argument" (xxi). Students organized a boycott of Harvard's classes, choosing instead to organize "The Alternative Course," chiefly based on Bell's course reader *Race, Racism and American Law*. The Alternative Course "marked the genesis of Critical Race Theory," uniting those that would comprise the movement,¹¹ and embodying the spirit of activism and public discourse at the heart of CRT (Crenshaw xxii).

This alternative and enduring movement has many features, chief among which is the reevaluation of American race relations and legal intersections. Although there is diversity in object and emphasis among CRT scholars,¹² Crenshaw asserts that the movement is "unified by two common interests":

The first is to understand how a regime of white supremacy and its subordination of people of color have been created and maintained in America, and, in particular, to examine the relationship between that social structure and professed ideals such as 'the

¹¹ Derrick Bell, Kimberle Crenshaw, Charles Lawrence, Linda Greene, Neil Gotanda and Richard Delgado.

¹² Although Bell's fiction deals chiefly with African American characters and concerns, the CRT movement addresses other forms of discrimination. What began as an African American civil rights branch of legal studies now encompasses Latino, Asian, Indigenous, Middle Eastern, Queer, Feminist, and intersectional concerns. Furthermore, CRTs engage in diverse modes of discourse: law-school pedagogical techniques and approaches, civil and LGBT rights activism and legal representation, grassroots community movements, peer-reviewed academic scholarship and often the employment of narrative to serve these ends.

rule of law' and 'equal participation.' The second is a desire not merely to understand the vexed bond between law and racial power but to change it. (xiii)

Delgado and Steffanic broaden this definition, asserting that “Unlike traditional civil rights, which stresses incrementalism and step-by-step progress, critical race theory questions the very foundations of the liberal order, including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law” (3). Perhaps the most important of these features is the challenge CRT poses to “legal reasoning and Enlightenment rationalism,” for it is this revaluation that justifies CRT’s foray into narrative. To reject the standard mode of scholarly (legal) expression requires a renegotiation of Enlightenment principles of rationalism, which places empirical pursuits over subjective, aesthetic ones. Because CRT asserts that reality is socially constructed,¹³ blurring the line between subjective and objective truth, they question the necessity and value of a fixed scholarly medium aimed at the examination of truth:

Critical Race Theory...rejects the prevailing orthodoxy that scholarship should be or could be 'neutral' and 'objective'. We believe that legal scholarship about race in American can never be written from a distance of detachment or with an attitude of objectivity...Legal scholarship about race is an important site for the construction of that power, and thus is always a factor, if 'only' ideologically, in the economy of racial power itself... [There is] no scholarly perch outside the social dynamics of racial power from which merely to observe and analyze. Scholarship- the formal production, identification, and organization of what will be called 'knowledge'- is inevitably political. (Crenshaw et al. xiii)

¹³ Race, for example, is a socially invented category, not a genetic or cultural reality; law is a human construction as well; both are constructed to serve certain social or political ends and are modified accordingly: “The ‘social construction’ thesis holds that race and races are products of social thought and relations. Not objective, inherent, or fixed, they correspond to no biological or genetic reality; rather, races are categories that society invents, manipulates, or retires when convenient” (Delgado & Steffanic 8).

Rejection of a fixed notion of objective academic scholarship has led CRT to embrace narrative fiction as an alternative means of scholarly communication. Through narrative, CRTs explore the “factual backgrounds and personalities frequently ignored in the casebooks,” legal theorists typically ignore these experiences because they are perceived as excessively personal, subjective not objective representations (Delgado and Steffanic 44). However, once legal scholars have accepted the “social construction thesis” they recognize that legal doctrines are no more objective than personal experiences. Anthony Alfieri asserts that the “dynamics of persuasion” operate strongly in the courtroom and the judicial bench; both lawyer and client tell a story that is either “true” to their experience in the world, or deemed more likely to win; likewise judges and lawmakers create a narrative according to the common perception of justice. As a reflection of human experience the law simply cannot be wholly objective because human experience is not. Therefore, legal scholarship must account for the myriad of contingent factors that affect and are affected by jurisprudence. Storytelling, with its subjective and speculative qualities, can supplement legal scholarship and convey marginalized experiences.

2.3 Critical Reception

CRT is criticized within the legal community for a variety of reasons. Some, like Randall Kennedy, challenge the idea that minority scholars have a unique “voice” or expertise on racial issues simply because of their racial identities. Members of the majority group, Kennedy argues, may have valid and unique insights that should not be ignored, while some minorities have little interest in racial issues. In the mid-nineties *The Wall Street Journal* published two negative articles reviewing CRT texts, while Jeffery Rosen published a scathing article in *The New Republic*, comparing the tenants of CRT to “Gangsta rappers openly calling for race war,” (npag). Rosen argues that CRT represents “a direct assault on the possibility of transracial

agreement... The reductio ad absurdum of the storytelling movement, with its celebration of subjectivity over objectivity, of emotion over truth, is the scholarly romanticizing of black conspiracy theories.” Rosen appeals to critiques made by Daniel Farber and Suzanna Sherry in a 1995 legal conference. Critics of CRT commonly appeal to Farber and Sherry, who along with Richard Posner have been the most strident critics of the movement for two decades. Their most forceful arguments focus on methodology, asking: “what techniques may be legitimately used in legal scholarship, for what purposes, and how these techniques may be evaluated” (Farber & Sherry 40). Central to this critique is scepticism of legal storytelling.

While Farber and Sherry list an array of charges against CRT in their book *Beyond All Reason: The Radical Assault on Truth in American Law*, their chief concern is the “de-emphasis” CRT scholars place on “conventional analytical methods” of legal scholarship (“Telling Stories Out of School” 283). “Radical multiculturalists,” the umbrella term for CRT and feminist scholars employed by Farber and Sherry in *Beyond All Reason*, “deny the objectivity of knowledge” (29), question the use of “standard tools for expanding knowledge as abstract rationality” (28), and through their narrative pursuits focus “on rhetoric rather than logic” (31). This focus is intensely problematic for Farber and Sherry, for “Objectivity, reason and universality are, of course, the crown jewels of our Enlightenment heritage” (28). Farber and Sherry assert, “Stories can distort legal debate, particularly if those stories are atypical, inaccurate, or incomplete,” and they call for “greater care and rigor in the use of narrative within the framework of scholarly analysis” (39). They are open to the use of fictional models within legal scholarship, but advocate methodological reform aligning the stories with the objective standard of academic research, arguing that the current state of legal storytelling is “impervious to formal empirical evidence” (128). Finally, Farber and Sherry are concerned with the message

conveyed in Bell's stories (they repeatedly refer to Bell and his work as symptomatic or representative of CRT at large), which "provides adherents with a vision of the world in which they are inevitably victims of white male power" (134). "Although this *paranoid mode of thought* does not necessarily signify either falsity or abnormality," they argue, "it does isolate radical multiculturalists from the kind of dialogue that might lead them to modify their views" (136, my emphasis). Legal storytelling is figured as a "radical assault on truth in American law," which has the potential to positively affect legal discourse, they state, but must be severely modified in its current state and continually monitored for objectivity, quality and veracity.

While Farber and Sherry criticise Bell and CRT's overreliance on narrative, they do so carefully, acknowledging the potential benefits of legal storytelling, the sincerity of CRT scholars, and the relevance of their concerns.¹⁴ Richard Posner picks up on their critiques; however, he fails to extend the same respect to the CRT community, even going as far as to claim that "Their lodgment in the law schools is a disgrace to legal education, which lacks the moral courage and the intellectual self-confidence to pronounce a minority movement's scholarship as bunk" ("The Skin Trade" 43). Ironically, this sweeping and unsubstantiated comment (he fails to define the hiring and tenure criteria in law schools that CRT scholars supposedly affront) lacks the same objectivity Posner critiques CRT for rejecting:

What is most arresting about critical race theory is that...it turns its back on the Western tradition of rational inquiry, forswearing analysis for narrative. Rather than marshal logical arguments and empirical data, critical race theorists tell stories- fictional, science fictional, quasi-fictional, autobiographical, anecdotal- designed to expose the pervasive and debilitating racism of America today. By

¹⁴ Although they reject storytelling as "the main road to knowledge about social problems," they do acknowledge legal storytelling as "a useful complement to analytic reasoning" when done correctly (122).

repudiating reasoned argumentation, the storytellers reinforce stereotypes about the intellectual capacities of nonwhites. (42)

Posner shares Farber and Sherry's concern for fiction's rejections of objective truth, implying that an objective legal standard exists; however, in *Law and Literature* the former extends his critique far beyond the latter's. While Farber and Sherry admit that fiction can potentially be an alternative path to legal activism, Posner questions the utility of employing literature to serve socio-political or legal ends; readers rarely "extract from works of imaginative literature practical lessons for living," because "writers of imaginative literature are rarely practical people with practical lessons to impart" (316).

Posner's scepticism of literature and legal storytelling is rooted in a perceived division of ethic and aesthetic concerns. "Law is a system of social control as well as a body of texts, and its operation is illuminated by the social sciences and judged by ethical criteria," he asserts (7). Although Posner acknowledges his lack of training in literary theory and criticism, he nevertheless proceeds to offer an evaluative standard on an area of scholarship he is unfamiliar with; literature, in contrast to the law "is an art, and the best methods for interpreting and evaluating it are aesthetic" (7). Unfortunately Posner's dismissive evaluation of literature is shared by another prominent legal critic, Jeffery Rosen, who wrote: "This cult of contingency may be bracing, or forgivable, in literature departments, where what is at stake is the interpretation of Huckleberry Finn or the boundaries of the canon. For the law, however, the cult of contingency holds the seeds of nihilism. Judges, juries, lawyers and legal scholars are charged, among other things, with being objective" (npag). Yet Rosen's affirmation of judicial objectivity is incongruous with the breadth of his scholarship, particularly his notion of "judicial temperament," namely a judge's willingness to "suppress his or her ideological agenda or desire

for personal attention in the interest of achieving consensus,” articulated in his book *The Supreme Court: the Personalities and Rivalries that Defined America* (7). “Like any small group, the Court is a deeply human institution” Rosen argues, “where quirks of personality and temperament can mean as much as ideology in shaping the law ... some [judges] prove more successful on the bench than others, not only because of their judicial philosophies but also because of their judicial temperaments” (6). Rosen’s argument that judicial temperament, not objectivity, accounts for many judges’ success in *The Supreme Court* stands in direct contrast to his affirmation of judicial objectivity in “The Bloods and the Crits”. Like Posner, Rosen’s arguments against CRT can be used to undermine his assertions.

Aside from methodology, Posner also takes issue with the fundamental assertions of CRT scholars. He is particularly infuriated by Bell’s claim that universities discriminate against minorities in their hiring policies, countering: “Universities discriminate, all right; but they discriminate in favor of blacks, Hispanics, and women, and against white males” (43). He accuses CRTs of perpetuating negative stereotypes about “the intellectual capacities of nonwhites,” by appealing to an inferior method of scholarship (“The Skin Trade” 42). Because Bell and others place critical race scholarship in opposition to the Enlightenment, Posner believes they perpetuate notions that minorities are incapable of reasoning and “proper scholarship.” To accept this assertion one must first hierarchize the traditional academic model as the only legitimate standard, and as “white” as well. Posner further characterizes CRTs as “poor role models,” placing their careers in contrast with “the kind of exemplification that we find in the career of Colin Powell,” a member of a minority group who attained “achievement in the world outside the ghetto” (42). In contrast, CRT scholars, in Posner’s view, “teach by example that the role of a member of a minority group it to be paid a comfortable professional

salary to write childish stories about how awful it is to be a member of such a group” (42). Again, the kind of rigorous, verified scholarship Posner advocates is absent from this statement; not only does this claim reduce counterstories to nothing more than diatribes and complaints about minority status (ignoring that these stories often assert the positive qualities of minority status, express pride in their ethnic history and culture, and even frankly assess the responsibility minorities have to overcome stereotypes they themselves perpetuate),¹⁵ it also reduces these scholars’ impressive careers to a marginal fraction of their reality. Bell completed military service and was a successful attorney and activist for the Department of Justice and the NAACP throughout his academic career; he published prolifically until his death, not only allegories and personal reflections, but traditional legal scholarship published in premier journals and publishing houses like the *Harvard Law Review*, the *Yale Law Review*, the *Chronicle of Higher Education*, and *Oxford University Press*. To reduce Bell to nothing more than a fiction writer, a microscopic aspect of his varied career, is an unsubstantiated attack made for shock-value.

Critics variously critique CRT’s claim to speak with a “voice of color.” Harvard Professor Randall Kennedy expresses concern over critical race theorists’ claim to represent minorities in their work. Kennedy argues that many white people have valid interpretations of racial themes and should not be ignored, while many minority scholars ignore the issue altogether. To assume minority scholars have a particular expertise simply because of their race is simplistic and wrong. Likewise, Posner argues that critical race theorists are merely the “self-appointed spokesmen” for nonwhites, and their claims of authentic voice damage interracial progress: “By claiming to speak in the ‘Voice of Color,’ critical race theorists exaggerate the

¹⁵ Bell’s story “The Afrolantica Awakening” asserts that African Americans “themselves actually [possess] the qualities of liberation... a liberation- not of place, but of mind” (45-6); in “The Race-Charged Relationship of Black Men and Black Women,” Geneva asserts, “There are some acts we cannot blame on white people,” calling on black men to take responsibility for their violence and filial absence (204).

difficulty of interracial discussion of social issues and discourage such discussion” (“The Skin Trade 42). Farber and Sherry take issue with a claim to diverse minority representation that is in fact highly focused on the largest demographics of American minorities: “A valid conception of equality should condemn racism not only against blacks and Hispanics, but also against Asians and Jews” (*Beyond All Reason* 50).

Kennedy’s concern over inclusion within racial scholarship has been subsequently internalized and accepted by many CRT scholars. Engaging in persistent internal critique, CRT has grown beyond its original concern with African American civil rights and given birth to new inclusive movements such as Critical White Studies, and sub-disciplines such as LatCrit and queer-crit studies. Yet, critical race theorists like Leslie Espinoza and Robin Barnes were also quick to suggest that Kennedy’s critiques failed to grasp the powerful call of narrative. Legal storytelling urges minorities to recount their experiences with racism and the legal system so they can speak with the dominant white majority in a common language. Narratives work to develop understanding between disparate groups and familiarize us with the realities of the other. Once a common language has been established, Barnes argues, whites can, and indeed ought to, partake in the dialogue in a meaningful and equal fashion.

2.4 The Critical Race Theory Movement’s Response to Critics

Ultimately the chief critiques against Bell and other CRT scholars’ use of narrative (legal storytelling) are epitomized by Posner’s statement that: “we cannot learn a great deal about the day-to-day operations of a legal system from works of imaginative literature even when they depict trials or other activities of the formal legal system” (*Law and Literature* 5), and Farber and Sherry’s more cautious assertion that narrative can function as a “useful complement to

analytic reasoning,” but that it is nevertheless an empirically and methodologically flawed medium which can never be “the main road to knowledge about social problems” (*Beyond All Reason* 122). These assertions convey the standard approach to legal scholarship, one that aims to explore concrete truths by elucidating legal principles. This schema begins with the belief that a legal truth exists, both theoretically and in legal practice, and that the goal of legal scholars ought to be the clarification and interpretation of that truth. In their non-fiction publications Critical Race Theorists explicitly reject this premise as mere convention: “This conception of law as rational, apolitical, and technical operated as an institutional regulative principle, defining what was legitimate and illegitimate to pursue in legal scholarship, and symbolically defining the professional, businesslike culture of day-to-day life in mainstream law schools” (Crenshaw xviii). Likewise, their fiction serves to further underscore their departure from the standard legal mode.

Critical Race Theorists have responded the critiques of Posner, Farber and Sherry by reasserting the transformative power of narrative. Fiction, Delgado and Steffanic argue, can give voice to the marginalized and reveal discrimination as they have experienced it: not as a piece of data, but as a subjective reality. Once injustice is named, it can be combated. If race is not real but constructed, it can be deconstructed. Throughout the history of America, the locus of the CRT movement, minorities and liberals have unsuccessfully employed rational arguments against irrational racial prejudices; in his story “The Racial Preference Licensing Act,” Bell’s interlocutor states: “Racism is hardly based on logic. We need to fight racism the way a forest fighter fights fire with fire” (62). Powerfully written narratives represent an alternative process of correction more widely accessible than scholarly research alone. Along with Bell, Patricia Williams is frequently cited as one of the most prolific authors of legal stories; she admits that

she writes counterstories to succeed where standard legal scholarship falls short: “I think it has failed to make its words and un-words tangible, reach-able and applicable to those in this society who need its powerful assistance most” (85-6). Stories break out of the academic enclave and engage with legal subjects in a more tangible way: “Life in the law is not lived in a vacuum. It is part of a pervasive world of culture. If law is to work for the people in a society, it must be (and must be seen to be) an extension or reflection of their culture” (Amsterdam & Bruner 3). Thus, writers like Bell use counterstories to challenge and displace the most pernicious narratives affecting ethnic communities. In asserting that CRTs who write counterstories are undeserving of tenured jobs and “a disgrace to legal education,” Posner challenges their right to engage in “radical” or inventive scholarship at all (“The Skin Trade” 4). However, CRTs hold their right to alternative scholarship central to the academic process: “The opportunity for scholars, from the United States and abroad, to encounter other perspectives lies at the heart of academic freedom” (Barnes 339). Bell refused to account for or defend the fictional medium, but others filled his silence, defending not only the properties and values or narrative, but their right as legal scholars to engage in it as well.

Critical Race Theory has also engaged in intensive self-criticism as well. Delgado and Steffanic outline the questions CRTs have recently been debating:

What is the practical worth? Why is it not down in the trenches...Why is it so hard on liberals or so disdainful of existing civil rights statutes and remedies...Should [sic] crits¹⁶ work together in an interracial coalition or separately...Should whites be welcome in the movement and at its workshops and conferences? Should the critical race theory movement expand to include religious discrimination, against Jews and Muslims, for example? (105)

¹⁶ Delgado and Steffanic employ the word “crits” as an abbreviation for Critical Race Theorists.

These are not idle questions; in fact they serve to determine the future trajectory of the movement and “generate vital insights into America’s racial predicament” (108). These questions have led CRTs to allocate more resources and emphasis towards activism, tracking and testing, hate speech, globalization and economics, and expanding the scope of their investigation to include highly charged issues in American society, namely LGBT rights and Queer scholarship and the treatment of those of Middle Eastern descent in the aftermath of 9/11 (Delgado and Steffanic 105-108). However, legal fiction is thoroughly engrained into the CRT movement and has faced little internal criticism apart from broadening the scope of their narrative concerns.

The following chapter will present a close-reading to support the CRT claims of narrative value and refute the common criticisms discussed in this chapter. In particular, close examination of Bell’s SF texts shows an engagement with traditional legal standards, employing legal footnotes and appendixes to support claims. These stories also serve to refute claims of excessive negativity, or racial paranoia, as the narratives frequently assert positive aspects of minority experiences and express pride in ethnic history and culture. Finally Bell frankly assesses the responsibility minorities have to overcome stereotypes they themselves perpetuate, thus refuting claims that minorities are solely portrayed as victims of white patriarchy incapable of autonomous action.

CHAPTER THREE Literary Theory

In and beyond the field of legal scholarship, many have thought critically about the relationship between law and literature, and the latter's place in society. While the previous chapter outlined the arguments against literature as a valuable "science," this chapter presents the theories of three contemporary philosophers who variously argue for literature's power. Jacques Rancière asserts there is no division between aesthetic pursuits and "real world" politics: "There is no 'real world' that functions as the outside of art [...] The real is always a matter of construction, a matter of 'fiction'" (*Dissensus: on Politics and Aesthetics* 148). In *Poetic Justice*, Martha Nussbaum argues that "Storytelling and literary imagining are not opposed to rational argument but can provide essential ingredients in a rational argument" (xiii), contending that literature has a valuable place in the theory and practice of law. Finally, Richard Rorty puts forth a powerful argument against positivism in *Contingency, Irony, and Solidarity*, ultimately asserting literature's relevance to a liberal society. Fiction, he argues, helps us recognize "how social practices which we have taken for granted have made us cruel"; this recognition of cruelty and the ensuing commitment to change it is essential to a liberal society (141). Rancière, Nussbaum, and Rorty qualify and support Bell's project in diverse and vital ways. In addition, this chapter will explore literary theory surrounding the science fiction genre. Fredric Jameson describes SF's unique ability to destabilize the reader's perception of reality, using an alternative past or future to comment on the present. Finally, in his new book Michael Saler, *As If*, explores the fascination with fantasy literature, ultimately contending that the "enchantment" it provides serves to counteract modern "disenchantment." The inclusion of these theorists serves a vital purpose in the argument of this thesis: Rancière, Nussbaum, and Rorty refute Posner's critique of the value of literature, while Jameson and Saler's theories lend insight into Bell's chosen

medium of legal-science-fiction. Furthermore, each theorist will illuminate an element of Bell's fiction, analyzed in the following chapter.

3.1 Jacques Rancière

In articulating his “politics of literature,” Rancière traces the early modern history of French writing to illustrate the fundamental shift by which literature became inherently political: writing, “*belles lettres*,” once represented “the power of a social hierarchy” which distinguished certain “speech-acts” to certain types of audiences (*Dissensus: on Politics and Aesthetics* 157). *Belles lettres* became literature through a process of democratization, born in the age of Flaubert, who rejected the idea of high and low subject matter: “literature is this new regime of writing in which the writer is anybody and the reader is anybody.” Literature gains a new purpose in this shift: to introduce new relationships between words and things. Politics, in Rancière's understanding, operates through disagreement, or *dissensus*: “a conflict between a sensory presentation and a way of making sense of it” (139), or “the cluster of perceptions and practices that shape this common world” (152).¹⁷ Likewise, literature participates in *dissensus* by challenging the relationship between words and things. Rancière proposes a redefinition of the word “fiction,” where it means not imagination in opposition to the real, but rather, “the re-framing of the ‘real,’ or the framing of a *dissensus* (...) building new relationships between reality and appearance, the individual and the collective (...) Similar to political action, it effectuates a change in the distribution of the sensible” (141). In Rancière's philosophy, art, by its very nature, performs politics, and literature has “real world” power:

¹⁷“Politics breaks with the sensory self-evidence of the 'natural' order that destines specific individuals and groups to occupy positions of rule or being ruled, assigning them to private or public lives, pinning them down to a certain time and space, to specific 'bodies', that it to specific ways of being, seeing and saying” (139).

Art does not become critical or political by “moving beyond itself,” or “departing from itself,” and intervening in the “real world”. There is no “real world” that functions as the outside of art... instead, there are definite configurations of what is given as our real, as the object of our perceptions and the field of our interventions. The real is always a matter of construction, a matter of “fiction,” in the sense that I tried to define [fiction]. (148)

Because both art and politics operate through *dissensus*, challenging the existing relationship between words and things, reality and appearance, there can be no qualitative separation between literature and the political world. They both engage in the “re-framing” of our perception; however, they operate on different scales. Literature investigates particularities, the lives and actions of individual characters within a representative population; political action engages in generalities, influencing a broader range of subjects, namely a population.

Rancière’s conception of literature, particularly fiction’s ability to intervene in the political realm, has significant applications to Bell’s use of legal fiction. Posner’s charge that literature is merely “aesthetic,” can only be judged by aesthetic criteria, and is incapable of providing insights into political and ethical phenomena is wholly at odds with Rancière’s position. In the latter’s philosophy of the “politics of literature,” there is no meaningful distinction between an aesthetic act and a political one, for an aesthetic act is implicitly political: both function to destabilize, broaden, and modify our perception of reality. Rancière’s assertion that fiction reframes the “real” through *dissensus* is particularly relevant to Bell’s fiction. Through short stories, Bell challenges the common understanding of race and racism in America. He strives to create *dissensus*, to produce conflict between the reader’s existing perception of American law and equality, and the way the law actually operates to maintain the status quo, effectively perpetuating racial and class discrimination. Rancière’s assertion of the

democratization of literature, “literature and investigations into literature belong to everyone,” further emphasizes Bell’s decision to supplement his formal academic research with fiction (“Interview” 9).¹⁸ Academic law reviews are read by law students and scholars, lawyers, judges, perhaps even politicians; rarely, however, are peer-reviewed law articles, which aim to illuminate the inner workings of the law, read by a broad audience, who are legal subjects themselves. In formatting legal research through fiction, Critical Race Theorists increase the dissemination of their scholarship. This is evidenced by the expansion of Bell’s teaching duties (before his death in 2011 he taught in both law and literature departments at NYU), and by the popularity of Bell’s “The Space Traders” story, made into a television episode of HBO’s series *Cosmic Slop*.

Furthermore, Farber and Sherry’s assertion that legal storytelling represents a “radical assault on truth in American law,” is also refuted by Rancière: “Fiction becomes a procedure of organizing signs and images [...] But this organization of signs is not ‘outside the truth.’ When fiction becomes a ‘general bent of the human spirit,’ it is once again under the rule of truth. This is essentially what Flaubert says: if a sentence does not ring true, it’s because the idea is false” (“Interview” 9). Farber and Sherry claim they are sympathetic to the concerns and goals of Critical Race Theory, namely addressing the existence of racial inequality in America and its legal system: “If we shared no political views with the radical multiculturalists, this would be [a] pointless enquiry [...] we do share some premises with them,” thus suggesting they align with the “ideas” portrayed in CRT scholarship (*Beyond All Reason* 50). A reading of Rancière suggests that CRT legal storytelling is in fact “under the rule of truth”; it is not inherently false or inaccurate simply because it is presented through a “subjective” or aesthetic medium. Rancière’s

¹⁸ Guenoun, Kavanagh, and Lapidus interviewed Rancière in 1999; the interview was published by the University of Wisconsin Press in 2000 under the title: “Jacques Rancière: Literature, Politics, Aesthetics: Approaches to Democratic Disagreement”.

conception of literature is one that intervenes in “real world politics” to challenge the reader’s perception. Although Rancière stops short of attributing the creation of *dissensus* to the author, “The politics of literature is not the politics of its writers. It does not deal with their personal commitment to the social and political issues and struggles of their times” (*Dissensus: on Politics and Aesthetics* 152), Bell’s short stories do precisely that, destabilizing the reader’s relationship to race and American law.

3.2 Martha Nussbaum

Nussbaum, a pioneer in the “Law and Literature” field, places her scholarship in opposition to the “Law and Economics” school of thought. While law and literature promotes the study of fiction to illuminate and challenge the meaning of legal precedent and theory, law and economics applies the rational calculative method of economics to understand law as it exists. In his book *The Lost Lawyer* (1993), former dean of law at Yale Anthony Kronman asserts that the law and economics school, strongly supported by Richard Posner, is “the greatest influence on American academic law in the past quarter-century” (166). Nussbaum dedicates *Poetic Justice* to Posner, whose “indefatigable” arguments helped develop her position on the important relationship between law and literature (xii). In many ways, Posner’s *Law and Literature* and Nussbaum’s *Poetic Justice* are in dialogue with each other; while Posner begins his book with the assertion: “I shall argue that we cannot learn a great deal about the day-to-day operations of a legal system from works of imaginative literature even when they depict trials or other activities of the formal legal system” (5), Nussbaum commences hers with the claim: “I believe more strongly than ever that thinking about narrative literature does have the potential to make a contribution to the law in particular, to public reasoning generally” (xv). Given that she spent

much time debating the legal merits of a literary imagination with Posner, Nussbaum predicts counter-arguments to her claims and structures her book in response to those arguments, much like Bell's dialectic structure: "First, it will be said that the literary imagination is unscientific and subversive of scientific social thought. Second, it will be said that it is irrational in its commitment to the emotions. Third, it will be charged that it has nothing to do with the impartiality and universality that we associate with law and public judgement" (4). She addresses the first argument in her second chapter, asserting that while social science methodology has its place, it tends to work in generalities, lumping individuals together into aggregate statistics, effectively dehumanizing the very population it serves. Literature, by its very nature, individualizes its subjects, showing the "mysteries and complexities of their lives" (31). Furthermore, Nussbaum asserts that readers of rational treatises are interested not by love, fear, anticipation and imagination (the qualities that hold the interest of readers of imaginative fiction), but by "a mixture of intellectual exhilaration and rational self-interest" (30). Rather than disparage the latter, Nussbaum argues that both the imaginative and rational qualities are necessary to a healthy public discourse: "literary imagination is an essential part of both the theory and the practice of citizenship" (52).

The third chapter of her book serves to refute the second argument, that literature is irrational in its appeal to the emotions. Nussbaum begins by asserting the omnipresence of emotions in legal practice, the presence of which she believes is ignored in legal scholarship. Thus, she contends that "Getting clear about the unexamined contrast between emotions and reason thus makes a practical difference in the law" (55). Citing contemporary philosophy, cognitive psychology and anthropology to discredit the flawed assertion that emotions are merely blind animal impulses, Nussbaum ultimately argues that judgments based on emotion, just as

those based on reason, can be either true or false depending on the quality of evidence, critical thought and time spend developing that judgement (63). Emotions, Nussbaum argues, do not tell us how to solve problems, but “they do keep our attention focused on them as problems we ought to solve” (69). Thus, Nussbaum refutes a dismissal of literature on the basis of its emotional appeal by qualifying the value of that emotional appeal.

The most relevant aspect of her study to an analysis of Bell’s legal fiction, is her claim that literature is excluded from the impartiality and universality associated with the law. This position stems from the belief that the law is only a respectable field if it is a science; this is a flawed argument because, “the law is a humanistic as well as a scientific field” (86). She begins by enhancing her previous attack on the notion of “judicial neutrality,” using detailed analysis of Supreme Court precedent to demonstrate that “good and moral” judicial decisions fairly weigh emotional, historical and social facts, while unjust rulings tend to ignore relevant social and emotional contingencies, employing a “bizarre sort of Martian neutrality,” that dehumanizes the entire process (89). Because social and historical facts are indeed relevant, Nussbaum argues that judges ought to “develop as rich and comprehensive an understanding as possible of the situation of the groups involved” (89-90). Here lies the importance of literary training in those who practice, teach, or analyze the law: literature puts the reader in contact with a myriad of social and historical circumstances and challenges readers to investigate the meanings and implications of character’s various sufferings.

Nussbaum repeatedly qualifies her assertion of literature’s value to “law in particular [and] public reasoning generally” (xv), arguing the importance of applied critical reader response: “Ethical assessment of the novels themselves, in conversation both with other readers and with the arguments of moral and political theory, is therefore necessary if the contribution of

novels is to be politically fruitful” (10). She frequently states that “an emphasis on literary imagination is not meant to displace moral and political theory or to substitute emotions for principled arguments” (12); rather, Nussbaum demonstrates how works of imaginative literature can serve as a useful complement to the traditional work performed by government offices, courts, and schools of public policy and law. “My approach,” she clarifies, “stresses the need for technical mastery as well as sentiment and imagination and insists, too, that the latter must continually be informed and tethered by the former” (99). Rather than argue the supremacy of literature and similar imaginative works to the world of rational investigation inherited from the Enlightenment, Nussbaum argues for its inclusion into the existing sphere of law.

The last subsection of *Poetic Justice's* fourth and final chapter is important to the study of Bell’s work, for here Nussbaum focuses on group hatred and racism. In chapter two, Nussbaum argues that “the experience of novel reading yields a strong commitment to regard each life as individual and separate from other lives” (92). This is particularly relevant to combating racism, for the oppression of groups is “very often based on a failure to individualize. Racism, sexism, and many other forms of pernicious prejudice frequently ground themselves in the attribution of negative characteristics to the entire group” (92). Nussbaum asserts that “sympathetic engagement” with individual characters is an integral part of the literary experience; thus, the dehumanizing portrayal of individuals and groups is often unsustainable for one grounded in the literary imagination. Again, this area of Nussbaum’s argument works in dialogue with Posner’s critique of fiction in *Law and Literature*. He uses the example of Germany, “the world’s most cultured nation,” to argue that art did not save twentieth-century Germans their allegiance with totalitarianism. “Cultured Germans willingly and often enthusiastically served these regimes,” Posner argues, concluding: “Cultured people are not on the whole morally superior to philistines

(...) In fact, immersion in literature and art can breed rancorous and destructive feelings of personal superiority, alienation, and resentment” (310). Under scrutiny, both Nussbaum and Posner’s assertions simplify reader’s moral engagement with literature. Posner fails to consider the myriad of historical, political, and economic contingencies that contributed to the rise of National Socialism in a cultured nation, while Nussbaum ignores the antithesis of her argument, namely that fiction can present both positive and negative images of individuals and groups. A complete account of literature’s moral influence would place the responsibility on the reader to accept or reject positive or negative portrayals of characters and populations in works of imaginative fiction and scholarly non-fiction (for many fields of social science Posner champions were also enthusiastic collaborators with German totalitarianism¹⁹). Nussbaum’s argument does, however, raise an important point: literature allows readers to consider the complexity of human behaviour. An appreciation of human complexity may invalidate the overly generalized assertions of hierarchically binary thinkers.

Nussbaum’s arguments in *Poetic Justice* have important implications for the study of Bell’s speculative legal fiction, supporting Bell’s work and claims in six ways. First she begins by outlining the shortcomings of the social sciences, arguing that the scientific approach dehumanizes by ignoring the particular in favour of the general, turning individuals into statistics. In contrast, literature represents a broad range of human experiences, forcing us to acknowledge the particularity of the individual. Bell makes similar claims, arguing that traditional legal scholarship tends to focus on appellate court opinions supporting the status quo instead of the rights on the individual. Second, Nussbaum applies literature’s ability to develop individualization into a “habit of mind” to the cause of fighting racism: arguing that group hatred

¹⁹ For more information on the relationship between the Nazis and the social sciences see Gretchen Schafft’s article “Scientific Racism in the Service of the Reich” (2002), which documents the work national and international anthropologists, physicians, and scientific researchers (biologists, geneticists etc.) performed for the Reich.

rests on turning the individual into a mere reflection of a stereotyped group. Literature destabilizes group hatred by breaking the group into individuals. The aforementioned inconsistencies in this particular argument still stand; nevertheless Bell's fiction suggests that her argument, while incomplete, has some validity. His counterstories combat racism by placing names and sympathetic personalities onto topics like affirmative action, desegregation, poverty, education and immigration, issues that legal and social theorists normally address in an impersonal, statistical, and often dehumanized form. Mixing rational scholarship with imaginative fiction, Bell employs narrative as a more useful and powerful critique of topics he addresses in traditional law reviews, suggesting his third affinity with Nussbaum's work. She claims that literature has a greater power to hold attention, using emotional and imaginative anticipation in addition to intellectual reason (the chief property of the logical treatise) to captivate the reader. She then demonstrates why appeals to emotion are valid in ethical and intellectual pursuits, the fourth claim supporting Bell's legal fiction. Emotions, she argues, are not merely blind animal forces; they can be informed by our reason to make critical judgements that are either true or false. Furthermore, they maintain our focus on social problems that need to be addressed. Bell uses "fantasy" in conjunction with reason to challenge reader's perception of racial issues in America; in choosing a medium which appeals to reason and emotions, Bell implicitly argues for the value of both approaches. This relates to the fifth supporting element of Nussbaum's argument: the argument for the inclusion of literature into legal scholarship and practice as a useful complement to the existing sphere of law. Both Bell and Nussbaum argue for the inclusion of fiction into traditional legal scholarship, teaching, and practice, supplementing rather than abandoning the latter. Finally, Nussbaum dismantles the notion that law is only valuable as a rational science by appealing to the law's humanistic side: the law is ultimately

concerned with people and cannot ignore vital parts of the human experience- emotional, social and historical contingencies. Literature familiarizes readers with the broad range of human experiences, and is thus an excellent training tool for lawyers and judges. Likewise, Bell affirms the humanistic side of legal practice and scholarship. The law, he argues, ought to be ethically engaged in the realities of legal subjects, their backgrounds, relevant emotions, and histories. Furthermore, Bell and other CRT scholars incorporate literature- their own legal fiction and other classic works which take law as their subject- into the law school setting as a useful pedagogical tool. Familiarization with works of imaginative literature is deemed a crucial aspect of legal education. Ultimately, Nussbaum's *Poetic Justice* serves a dual function: both to support Bell and other CRT scholars' use of legal fiction as a critical and pedagogical tool, and to directly refute the claims made by one of CRT's most determined opponents, Richard Posner.

3.3 Richard Rorty

Rorty is a useful complement to the study of Bell's legal fiction in two ways. Not only does he arrive at the position that imaginative literature lends crucial insight into the nature of the world and our ethical obligation to others, but, like Nussbaum, his argument takes on the basis of one of CRT's chief criticisms. Farber and Sherry's argument in *Beyond All Reason* rests on their belief in eternally existent truths which the scholar examines, clarifies, and sets forth as fact. Heirs to the Enlightenment tradition of rational inquiry and the scientific mind, they critique CRT's alleged rejection of objective truths and rational inquiry in favour of intensely subjective and precarious narrative assertions: "Objectivity, reason, and universality are, of course, the crown jewels of our Enlightenment heritage" (Farber and Sherry 28). Rorty, in contrast, opens

Contingency, Irony and Solidarity's first chapter by aligning himself with those who challenge the very concept of objective truth:

Some philosophers have remained faithful to the Enlightenment and have continued to identify themselves with the cause of science. They see [...] a struggle between reason and all those forces within culture which think of truth as made rather than found. These philosophers take science as the paradigmatic human activity, and they insist that natural science discovers truth rather than makes it [...] Other philosophers, realizing that the world as it is described by physical science teaches no moral lesson, offers no spiritual comfort, have concluded that science is no more than the handmaiden of technology...Whereas the first kind of philosopher contrasts "hard scientific fact" with the "subjective" or with "metaphor," the second kind sees science as one more human activity. (3-4)

Rorty implicitly aligns himself with the foundational tenet of CRT: that reality is constructed. For critical race theorists this assertion has two basic implications: that racism and racial tensions are created by humans and can be undermined by them as well, and that the law is also a human construction, subject to the contingencies of the given historical and political situation and subject to change as society changes. Farber and Sherry deny the contingency of law; for them it is a social and ethical pursuit of fixed truths, best served by objective scholarly analysis, not imaginative fiction. The term "contingency," particularly in relation to the concept of truth, is central to Rorty's entire argument, and it rests on a philosophy of language: "Truth cannot be out there -- cannot exist independently of the human mind," he claims, "because sentences cannot exist, or be out there. The world is out there, but descriptions of the world are not" (5). Thus Rorty recommends we develop a willingness to "drop the idea of 'intrinsic nature,' a willingness to face up to the *contingency* of the language we use [...] a recognition of that contingency leads

to a recognition of the contingency of conscience, and [both] lead to a picture of intellectual and moral progress as a history of increasingly useful metaphors rather than of increasing understanding of how things really are” (9, author’s emphasis). For Rorty truths, ethics, and scientific discoveries are not representative of a progressive understanding of objective manifestations of reality; instead, they merely reflect a society’s habit of using certain words and adhering to certain beliefs. Progress is no more than a “gradually acquired habit” of new language (6). Reality is contingent upon context and chance, and truth rests on our flawed ability to express it.

Rorty commences *Contingency, Irony, and Solidarity* by defining the latter terms in relation to the former: “I use the word ‘ironist’ to name the sort of person who faces up to the contingency of his or her own most central beliefs and desires -- someone sufficiently historicist and nominalist to have abandoned the idea that those central beliefs and desires refer back to something beyond the reach of time and chance” (xvi). In Rorty’s vocabulary “irony” is the recognition of contingency without despairing or sliding into immobilized relativism, and solidarity is the recognition that the goals of liberalism are human constructions that we must work toward, no less relevant because of their contingency: “In my utopia, human solidarity would be seen not as a fact to be recognized by clearing away ‘prejudice’ or burrowing down to previously hidden depths, but, rather, as a goal to be achieved. It is to be achieved not by inquiry but by imagination, the imaginative ability to see strange people as fellow sufferers. Solidarity is not discovered by reflection but created” (vxi). Rorty’s concept of “solidarity” is inseparable from the concerns of legal narrative. The creation, dissemination and familiarization with fiction, Rorty argues, is key to achieving liberalism’s goal of reducing human suffering (Rorty borrows Judith Shklar’s definition of the liberal as one for whom “cruelty is the worst thing [to] do”).

Solidarity, like values and the language with which we articulate values, is not discovered, but created:

It is created by increasing our sensitivity to the particular details of the pain and humiliation of other, unfamiliar sorts of people...The process of coming to see other human beings as ‘one of us’ rather than as ‘them’...is a task not for theory but for genres such as ethnography, the journalist’s report, the comic book, the docudrama, and, especially, the novel... In my liberal utopia, this replacement would receive a kind of recognition which it still lacks. That recognition would be part of a general turn against theory and toward narrative. Such a turn would be emblematic of our having given up the attempt to hold all the sides of our life in a single vision, to describe them with a single vocabulary. It would amount to a recognition of what [...] I call “the contingency of language.” (xvi)

Rorty values fiction, and places it in the position of social and philosophical seer. It intervenes in the rigidity of “common sense,” the values and assertions we take for granted (Rorty claims that “common sense” is the opposite of “irony” 74). So-called common sense leads us to apply all situations and persons to a fixed, predetermined value-system that leads to gross generalizations. Aligned with Nussbaum, Rorty asserts that the inability to identify the particular within the general, to “change our final vocabulary” in response to new experiences, produces the complacency that allows the suffering of the other to continue. Literature articulates alternative human experiences while affirming our shared humanity, the recognition of which leads to solidarity in that we intervene in the suffering of others.

Like Nussbaum, Rorty ascribes high value to literature’s ability to convey the diversity of the human experience and the suffering that lies therein. Furthermore, Rorty shares in Nussbaum’s assertion that literature will not produce a reason to care about suffering; it will, however, “produce a heightened awareness of the possibility of suffering” (93). Literature places

the contingency and diversity of the human experience at the forefront, and the liberal ironist uses literature to increase her “skill at recognizing and describing the different sorts of little things around which individual or communities center their fantasies and their lives.” “Solidarity has to be constructed out of little pieces, rather than found already waiting” (94), those little pieces are found in works of imaginative literature.

Rorty asserts the importance of reading books: “Our doubts about our own characters or our own culture can be resolved or assuaged only by enlarging our acquaintance. The easiest way of doing that is to read books” (80). In addition to a vast knowledge of the history of literature, Rorty also asserts the importance of the liberal ironist’s familiarity with literary criticism, for which he proposes the more accurate replacement term “culture criticism.” Rorty argues that reading allows people to enlarge their acquaintance with the diversity of the world; he argues for an increased readership of literary criticism because critics have “an exceptionally large range of acquaintance [...] They have read more books and are thus in a better position not to get trapped in the vocabulary of any single book” (80-1). Rorty values critics who will “enlarge the canon, and will give us a set of classical texts as rich and diverse as possible” (81).

Rorty places himself in opposition to Farber and Sherry’s emphasis on objective rationality and truth; however, his subsequent claims also serve as a response to Posner’s conception of literature. The notion of rational objectivity is “woven into the public rhetoric of modern liberal societies,” Rorty argues and “so is the distinction between the moral and the merely aesthetic- a distinction which is often used to relegate ‘literature’ to a subordinate position within culture and to suggest that novels and poems are irrelevant to moral reflection” (82). Rorty’s assertion stands in direct contrast to Posner’s claim: “Law is a system of social control as well as a body of texts, and its operation is illuminated by the social sciences and

judged by ethical criteria. Literature is an art, and the best methods for interpreting and evaluating it are aesthetic” (*Law and Literature* 7). Posner relegates mere literature to the pursuit of pleasure, an art-form with no relevance to the ethical concerns of ostensibly legitimate fields like law. Rorty, in contrast, erodes the distinction between ethics and aesthetics, arguing that literature is indeed relevant to ethical inquiry.

The theories put forth in *Contingency, Irony, and Solidarity* can be applied to Critical Race Theory and more specifically Derrick Bell’s fiction. In defining the ability to familiarize readers with a diversity of human experience and the articulation of suffering as literature’s most important qualities, Rorty affirms the importance of Bell’s project. Furthermore, he destabilizes the arguments of CRT’s chief critics by attacking their foundational assertions: applying his notion of “contingency,” Farber and Sherry’s belief in objective rationality, and Posner’s unbridgeable separation of aesthetics and ethics are critiqued and found to be wanting. Rorty’s opposition to both positions aligns him with the basic tenets of CRT: that reality, including racism and the legal system, is a human construction subject to change when a society deems convenient, and that works of imaginative literature can be the impetus for that change. Related to the arguments against thinkers like Posner, Farber and Sherry is Rorty’s notion of “irony,” the ability to hold values and beliefs while admitting their contingency. The former legal scholars fall outside the domain of the liberal ironist, for they favour rigid assertions, claim to represent the objective truth, and variously critique Critical Race Theorists for their contingency. Finally, in placing solidarity and the recognition and elimination of human suffering, at the heart of a liberal democracy, Rorty is further aligned with CRT’s goals. Critical Race Theorists, including Bell, variously critique liberalism for failing to adequately address the continued suffering of certain groups. The liberal belief in colour-blindness in response to racism fails to reduce the

suffering faced by Ethnic-American sub-groups. Rorty and CRT are aligned in their focus on naming, recognizing, and alleviating the suffering of others.

3.4 Theories of Science Fiction

In both the introduction and the extended analysis of Orwell's *Nineteen Eighty-Four*, Rorty crafts a narrative theory remarkably similar to that of Fredric Jameson. Rorty asserts that the best fiction contains

narratives which connect the present with the past, on the one hand, and with utopian futures on the other. Most important, it would regard the realization of utopias, and the envisaging of still further utopias, as an endless process- an endless, proliferating realization of Freedom, rather than a convergence toward an already existing Truth. (xvi)

Rorty suggests that Orwell's seminal science fiction novel succeeds precisely for its ability to provide "an alternative context, an alternative perspective, from which we liberals [...] could describe the political history of our century" (173). For Rorty, the reader's ability to truly interrogate the present, relative to the past and future, is a crucial step in developing the attitude of contingency necessary to be a true liberal ironist: one who is cognizant of and prepared to engage with the diversity of human experiences. It is also a crucial aspect of Jameson's account of science fiction.

In "Progress versus Utopia: Or, Can We Imagine the Future?" Jameson investigates the value of science fiction narratives in the modern era. He begins by rejecting the "canonical defence of the genre" that ascribes value to SF's ability to acclimate readers to rapid technological innovation, as an "elaborate shock-absorbing mechanism" (151). This account of SF, Jameson argues, is dated because we no longer maintain this relationship to technological

innovation; it is merely a routine aspect of modern life. Instead Jameson puts forth the theory that SF functions to “defamiliarize and restructure our experience of our own present” (151). This defamiliarization is necessary in order to investigate the nature of the society we occupy and understand it as fully as possible, a difficult task because “the present... is inaccessible directly, is numb, habituated, empty of affect. Elaborate strategies of indirection are therefore necessary if we are somehow to break through our monadic insulation and to ‘experience,’ for some first and real time, this ‘present,’ which is after all all we have” (151). Fiction that aims to investigate the reader’s present must begin by radically destabilizing the relationship to the present; this destabilization is achieved through temporal shifts in which the present is explored through its relationship to an alternate future: “SF does not seriously attempt to imagine the ‘real’ future of our social system. Rather, its multiple mock futures serve the quite different function of transforming our own present moment [...] that upon our return from the imaginary constructs of SF is offered to us in the form of some future world’s remote past, as if posthumous and as though collectively remembered” (152). In narrating the future, one of the typical settings of SF fiction, as an outcome of the present world - our technologies, philosophies, politics and wars - SF enables readers to apprehend “the present as history” (153). Regardless of the “‘pessimism’ or ‘optimism’ of the imaginary future world,” Jameson argues, history is brought forth in the reader’s present, raising the question: “How to fix this intolerable present of history” (153). SF forces readers to contemplate the potential outcomes of our present actions, framing them as precursors to ambiguous, virtuous, or tragic future events.

Although Posner denounces Bell’s use of science fiction to analyze American law and race, there is in fact a strong precedent for using SF to investigate serious issues like race and law. SF writers Samuel Delany and Octavia Butler frequently explore the political implications

of minority status (not only race, but class, sexuality, and gender) in their fiction. Butler's short story "Amnesty" is highly reminiscent of Bell's "The Space Traders," the latter of which depicts white Americans trading the nation's African American citizens to an alien race for unlimited wealth and fuel. While Bell's story explicitly comments on the African American experience by placing that community at the centre of the narrative, Butler's comment on minority experience is more subtle, even though her protagonist Noah self-identifies as black. Noah is abducted by an alien race and subjected to cruel experiments; upon her release a suspicious American government kidnaps and tortures her as well. In both communities Noah is an outsider, yet she works as a translator and emissary between the two communities: "Where else would I be but here at a bubble, trying to help the two species understand and accept one another before one of them does something fatal?" (Butler 606). Through Noah's employment with the aliens Butler's story comments on outsider status, contract and labour law. Delany's *Trouble on Triton* shows life on the colonized moon Triton, a utopia realized chiefly through libertarian values and citizens' ability to technologically transform their race, gender, and a myriad of sexual preferences and physical attributes. However, amid the myriad of possible alterations, the protagonist cannot change his economic position, his relationship to the warfare politics of Triton, or his caustic personality. SF texts like these often engage in difficult questions concerning technological innovation and its implications on politics, the law, war, and human relations, as well as minority status

Jameson provides an account of SF that emphasizes temporality. In discussing "imagined worlds," Michael Saler provides an account of SF focusing on enchantment and illusion. In *As If: Modern Enchantment and the Literary Prehistory of Virtual Reality*, Saler explores the value of "imagined worlds" in the modern era. The proliferation of SF and fantasy in popular culture,

Saler argues, serves the function of “re-enchanting an allegedly disenchanted world” (6). Saler borrows his conception of modern “disenchantment” from Max Weber, who posited the loss or subordination of “overarching meanings [...] magical orientations and spiritual explanations,” to Enlightenment processes of “rationalism, secularization, and bureaucratization” (quoted in Saler 8). Saler outlines a series of emotive revolts against modern disenchantment, such as the fascination with spiritualism, the occult, and fantasy literature, concluding that post-modern enchantment is self-conscious: “embracing illusions while acknowledging their artificial status” (13). The marriage of illusion and truth is characteristic of the fantastic genre out of which SF emerged: “fantasy, cast in a rigorously logical mode replete with ‘objective’ details, was one solution to the crisis on modern disenchantment” (7). Immersion in fantasy literature, film, and video games, Saler argues, serves to counteract the pervasive disenchantment of the modern era, re-infusing creativity and imagination into a sterile society.

In discussing narrative enchantment, Saler’s terminology is remarkably similar to Rorty’s. According to Saler, readers seeking enchantment in fantastic fiction develop an “ironic imagination” which trains them to recognize the contingency of reality. These readers engage with “multiple identities and multiple realities, in the process training themselves to question essentialist outlooks” (14). The ironic imagination further trains readers, “not only to think divergently but also to be self-reflexive about the socially constructed dimension of experience: to perceive one’s subjective existence as resulting from the dynamic interaction of material realities and *contingent* stories” (19, my emphasis). In essence, both Rorty’s and Saler’s arguments are grounded in the belief that reality is contingent and familiarization with works of imaginative literature develop the reader’s sense of irony, the ability to embrace alternative perspectives, experiences, and worlds. However, Saler’s theory departs from Rorty’s in regards

to rationalism. For Rorty, there are no “truths” to be found, nothing lies beyond the contingent, and thus rationalism and objectivity are misguided attempts to understand the world. Saler, however, conceives of reason and imagination in conversation with each other; works of imaginative literature train readers to inhabit both worlds, constantly informing reason through the imagination. Imagined worlds, Saler argues, “usually foreground critical reason even in their most outré imaginings. In their virtual instantiations, they provide safe and playful arenas for their inhabitants to reflect on the status of the real and to discuss prospects for effecting concrete personal and social changes” (7). Reason is not discredited in Saler’s theory; like Nussbaum, Saler advocates rational thinking tied to creative and imaginative engagement.

Jameson and Saler’s theories concerning science fiction’s attributes and functions contribute greatly to an understanding of Bell’s SF texts. These texts will be explored in greater depth in the following chapter; however it is appropriate to demonstrate the importance of temporality and enchantment in Bell’s legal-science-fiction stories. Bell frequently plays with the time frame of his narratives: many stories take place in an alternative future, for example an American society eroded by pollution, greed, debt, and ultimately pervasive racism, in “The Space Traders.” Or, Bell’s characters may use time-travel technology in order to go back in time, as occurs in “The Real Status of Blacks Today,” where the narrator travels back to 1787, to witness the framing of the Constitution. In the introduction to his first book of short stories Bell acknowledges that this temporal shift uses the past in order to develop a new understanding of the present reality of American racism: “In this Chronicle, I take the liberty of tampering with time and history to examine the original contradiction in the Constitution of the United States- a contradiction that is at the heart of the blacks’ present difficulty in gaining legal redress” (*And We Are Not Saved* 7). Bell is able to make these radical temporal shifts because of the genre he

works in: science fiction is replete with images of the distant past or an imagined future, attainable through remarkable technology. Both Jameson's theory and Bell's commentary suggests that these temporal shifts serve to comment on the present in a meaningful way. Saler argues that the popularity of "fantasy" (entertainment in the form of video games, movies, experiments in the occult, and SF literature) lies in its ability to re-infuse "enchantment," into a sterile, "disenchanted," society. In the introduction to *And We Are Not Saved*, Bell argues that a return to fantasy is necessary in order to understand the irrational forces of racism: "In order to appraise the contradictions and inconsistencies that pervade the all too real world of racial oppression, I have chosen in this book the tools not only of reason, but of unreason, of fantasy" (5). Saler also argues that modern fantasy is characterized by a marriage of illusion and truth, "fantasy, cast in a rigorously logical mode replete with 'objective' details." Bell's fiction is self-conscious in a similar manner: "Thus the Chronicles employ stories that are not true to explore situations that are real enough but, in their many contradictory dimensions, defy understanding" (*And We Are Not Saved* 7). To counteract a world, specifically the academic and legal community, obsessed by objectivity and rationality, Bell argues for a return to the Platonic tradition, in which "fantasy and dialogue" are used to "uncover enduring truths" (6). In this manner, Bell's project is supported by Saler's theories of "modern enchantment."

Both Jameson's theory of temporality and Saler's notion of enchantment refer back to Richard Rorty's notion of the liberal ironist, but they also relate to Rancière's notion of "real-world" politics of literature and Nussbaum's poetic justice. These three theorists argue that literature has the power to intervene in the moral, social, political, and (in Nussbaum's case) the legal realm. Their claims serve to support Bell's project of using legal-science-fiction to effect change, a change in perspective (the way we view race), a change in pedagogy (the way we teach

law), and a change in policy (as his stories advocate meaningful legal and political reform). The following chapter will employ a close-reading technique to elucidate the manner in which Bell's legal-science-fiction stories promote change.

CHAPTER FOUR Textual Analysis

This chapter presents close-readings to support claims of the value of fiction to the teaching of law, and to address the most common criticisms against the work of Bell and other critical race theorists. In particular, close examination of Bell's fiction demonstrates his engagement with the standards of traditional legal discourse, employing legal footnotes and appendices to support his theoretical approach to law and the implications of that study. However, to maintain some traditional aspects of legal scholarship is not to affirm the existing state of law and legal scholarship; Bell's stories also contain clearly articulated critiques of these institutions. These stories also serve to refute criticisms of excessive negativity, or racial paranoia, as the narratives frequently assert positive aspects of minority experiences and express pride in ethnic history and culture. In addition, Bell frankly assesses the responsibility members of minority groups bear to overcome racial prejudice, thus refuting claims that minority groups are solely portrayed as victims of white patriarchy incapable of autonomous action. CRT's claim to speak with a limited "voice of color" has also been the subject of critique; however, Bell's texts suggest a wide range of ethnic concerns. Finally, with exceptions, Bell normally addresses these concerns within a science fiction framework, the purpose and function of which will be further investigated. I will examine representative stories from each of Bell's collected works of short stories, *And We Are Not Saved*, and *Faces at the Bottom of the Well: "The Real Status of Blacks Today: the Chronicle of Constitutional Contradiction"* from the former, and "Divining a Racial Realism Theory," and "The Space Traders" from the latter. The former employs a traditional SF narrative in order to investigate, as the title suggests, the status of African Americans in the modern era and the origins of that status in slavery. The latter departs from SF framework to develop Bell's notion of "racial realism," and his critique of the law and legal

scholarship. Both stories provide insights into Bell's work which are crucial to this thesis, highlighting not only the general principles of CRT, but their specific application to issues of racial equality within the scope of American law and politics.

4.1 "The Real Status of Blacks Today"

The first chronicle in Bell's first collected book of short stories introduces the main theme running through the nineteen stories in *And We Are Not Saved* and *Faces at the Bottom of the Well*: slavery and campaigns against indigenous peoples corrupted so-called American values of liberty and equality and contributed to persistent racial inequality. In determining certain people's status as property, the law contributed to this original contradiction and continues to maintain the status quo, rather than challenge inequality, to this day. This message of "Real Status" is presented through a science fiction narrative in which the protagonist travels back in time to prevent the inevitable Constitutional accommodations made to the institution of slavery:

At the end of a journey back millions of light-years, I found myself standing quietly at the podium at the Constitutional Convention of 1787 [...]

"Gentlemen," I said, "my name is Geneva Crenshaw, and I appear here to you as a representative of the late twentieth century to test whether the decisions you are making today might be altered if you were to know their future disastrous effect on the nation's people, both white and black." (26)

Geneva presents a series of reasoned arguments, epitomized by the statement: "The stark truth is that the racial grief that persists today [...] originated in the slavery institutionalized in the document you are drafting. Is this, gentlemen, an achievement for which you wish to be remembered?" (29). In the ensuing dialogue, Geneva offers prepared counterarguments to the anticipated justifications of the Constitution's delegates. These justifications include the

arguments that compromises between the North and South must be made in order to preserve the Union from anarchy and bankruptcy; that the protection of property is the main object of American society and trumps “life and liberty”; that morality must serve economic concerns; that the North *and* South benefit from slavery; and that slavery effectively funded the Revolution and Indian campaigns, thereby making American independence possible. In response to each argument Geneva elaborates her main point, that morality cannot be sacrificed to serve political ideology or economics: “Such sacrifices of the rights of one group of human beings will, unless arrested here, become a difficult-to-break pattern in the nation’s politics” (32). She repeats such statements throughout her argument in order to emphasize the degree to which the United States of America has failed to live up to its Constitutional promise of freedom and equality, from the eighteenth century to the twentieth. In the end, Geneva is unable to dissuade her opponents and must return to the twentieth century when the local militia is summoned to remove her from the convention. Ultimately, Geneva adopts a tone of resignation to her story, contending that even the most reasoned rhetoric could not prevent the enslavement of her ancestors:

[The Chronicle] was not a debate. The Chronicle’s message is that no one could have prevented the Framers from drafting a constitution including provisions protecting property in slaves. If they believed, as they had every reason to do, that the country’s survival requires the economic advantage provided by the slave system, then it was essential that slavery be recognized, rationalized, and protected in the country’s basic law. It is as simple as that. (43)

This is the first story in Bell’s first published work of fiction, and it sets the stage for his other stories: combining science fiction, reasoned arguments presented through dialogue, and the careful insertion of historical, economic, and political facts to examine the relationship between race and law in America.

This story is framed as an embedded narrative written by Geneva and read to the narrator (Bell). However, after the story ends and the two interlocutors converse to uncover the meaning of the tale, Bell realizes that Geneva's story is not entirely fictional. The book's prologue sets up the framing, presenting readers with the back-story of two old friends and civil-rights era legal-colleagues. Geneva contacts Bell (the narrator) to read her SF stories, stating:

My mind is filled with allegorical visions that, taking me out of our topsy-turvy world and into a strange and a more rational existence, have revealed to me new truths about the dilemma of blacks in this country. To be made real, to be potent, these visions - or Chronicles, as I call them - must be interpreted. I have chosen you to help me in this vital task. (22)

The SF framing is fully revealed when Geneva claims to have been abducted by an alien group named "The Celestia Curia." Now an integrated member of this powerful intergalactic group of otherworldly beings, Geneva regularly partakes in their visions of human society. "The Real Status," and every other story Geneva recounts in *And We Are*, is one such vision. Geneva seems to anticipate not only her interlocutor's incredulity at her mystical claims, but Posner, Farber and Sherry's critiques of her medium, stating: "Western peoples simply reject anything not explicable in scientific terms" (101). Throughout *And We Are*, SF narratives weave in and out of focus; through the subsequent dialogue between protagonist and narrator, each short story is ultimately related to the SF framing of Geneva's intergalactic travels.

The ability to play with temporality, technology, and history, is integral to "The Real Status of Blacks Today." As such, the qualities of science fiction are essential to the narrative. The narrator does not have to explain the particularities of time-travel, for instance; it is a familiar SF trope, easily applicable to most situations. The opening statement, "At the end of a journey back millions of light-years, I found myself [...] at the Constitutional Convention of

1787,” sufficiently introduces the concept of time-travel necessary to this story’s functioning (26), while a brief reference to a “transparent light shield” employs common SF vocabulary to explain Geneva’s safety precautions (27). Bell could have addressed this topic through the medium of historical-fiction; rather than a time-travelling protagonist, these arguments could easily have been rendered through any like-minded person living in the late eighteenth-century. However, posterity allows Geneva to make persuasive arguments about America’s future; her interlocutor even suggests, “if you had provided more information about the future, you might have better demonstrated your superior knowledge and your entitlement to be heard” (43). The ability to destabilize the reader’s present, conveying it as the future or past of another time, is, according to Jameson, SF’s chief virtue. In “The Real Status of Blacks Today” this temporal destabilization works to link present racial inequality, which the law fails to address, to racial tensions existing in the eighteenth-century, sustained by the law. Thus, the science fiction framing of “The Real Status of Blacks Today,” particularly the time-travelling, better serves Bell’s purposes than historical-fiction – the only alternative genre capable of relating this particular time-travelling narrative.

As the title, “The Real Status of Blacks Today,” suggests, this story is concerned not only with presenting an accurate historical representation and analysis of the origins of American racial inequality, but with the state of racial inequality today. Thus, in the ensuing dialogue, Bell employs a variety of statistics, reports, academic articles, and recent court cases (including census records, reports from the *Center for the Study of Social Policy* and the *Center on Budget and Policy Priorities*) to present the status of American Americans in the late twentieth century. The careful insertion of employment rates, income distribution, family status, prison demographics, and education reports demonstrates that “black people made strong progress in

the 1960s, peaked in the 1970s, and have been sliding back ever since” (45). While these statistics necessitate a bleak representation of the reality of the African American community, the story is not wholly negative. The dialectic approach functions to present a broad range of opinions: commonly voiced positions as well as rare, dissenting ones are given a voice through Geneva and Bell’s “strong, and usually conflicting, views” (“Introduction,” *AWANS* 7). The interlocutors debate at length how to interpret these bleak statistics. Geneva characterizes Bell as an optimist for his relativistic approach to poverty, such as: “The severe cutbacks in social service programs have also worsened unemployment statistics for black workers, though whites have been hurt by all these factors as well” (47). She also disagrees with statements like the following, which positively contextualize bleak statistics:

“We must, of course, keep in mind,” [Bell] cautioned, “that, despite the disparate statistics on virtually every measure of black/white comparison, not all blacks are adrift on the sea of poverty. In the deluge of statistics concerning the plight of the black family, we must not lose sight of the fact that over half of them (53 percent) are intact, married-couple families. Such families represent the most economically viable family unit.” (46)

Yet, Bell is quick to point out his “optimism about the future” does not mean he is unconcerned about “the current condition of black people in this country” (49). Despite their disagreement, the interlocutors are able to achieve a consensus that serves to structure the remaining chronicle/dialectic chapters in *AWANS*,

The necessary question that I hope we can decide during our discussion is whether this result – the economic-political disadvantage set in motion by the [Constitution’s] Framers – is beyond any known power to halt or even alter. Or,

whether different strategies might make the annual observances of the *Brown*²⁰ decision celebrations of great expectations realized. (49)

This statement epitomizes how Critical Race Theorists conceive of specific applications of their theories. The first task is to name a particular type of discrimination and contextualize its origins; the next task is to think about how, once inequality is named, Critical Race Theories can work towards racial equality. “The Real Status” claims that the current economic-political disadvantage of African Americans is directly related to the concessions made to slavery in the eighteenth-century. The story’s narrators believe that recognition of historical inequality is the first step to addressing the current manifestation of the type of racism that lead to these concessions, namely, that America’s basic law continues to subvert the interests of minority groups when the majority population will benefit. The first story in *And We Are* introduces the aim of the entire book: to investigate whether “different strategies,” rather than litigation and civil rights reform, might better achieve the goal of racial equality. The following nine stories use fiction and dialogue to develop these controversial strategies. For example, “The Racial Limitation on Black Voting Power” treats electoral reform, rather than legal reform, as the most pressing issue facing civil rights activists; “Neither Separate Schools Nor Mixed School” controversially suggests that segregated schools might better serve black educational interests for the time being; “The Unspoken Limit on Affirmative Action” modifies the black militant stance to question whether minority populations ought to take full advantage of war to advance their goals, for historically “common crises,” such as the Revolutionary War, serve as catalysts to racial reform; “The Afrolantica Awakening” explores the idea of black repatriation, a search for a homeland similar to that of the Jewish people and Israel; “A Law Professor’s Protest” uses Bell’s own experience at Harvard to explore whether racialized professionals ought to publically

²⁰ *Brown v. Board of Education* 347 US 483 struck down segregated schools in 1954.

denounce the prejudice they experience. Each of these stories investigates alternative paths to racial equality other than legal reform: “Rather than offering definitive answers, I hope [...] mainly to provoke discussion that will provide new insights and prompt more effective strategies” (“Introduction” *And We Are* 3).

Ultimately, “The Real Status” can be chiefly characterized by its engagement in “racial realism.” “The Real Status of Blacks Today” frankly assesses the difficulty African Americans continue to face in the twentieth century, a phenomenon with roots in the Constitution’s original contradiction- one that paradoxically maintained the property status of certain peoples while proclaiming all “men” equal. Bell’s critics wrongly assume that to unapologetically confront the inconsistencies in American democracy is necessarily to despair; however, to acknowledge the contradiction in American democracy is not to abandon hope. Rather, Bell and other Critical Race Theorists continually affirm the necessity and function of realistically evaluating racial tensions: “stories can name a type of discrimination,” Delgado and Steffanic assert, “once named, it can be combated” (49). In keeping with Delgado and Steffanic’s assertion, recognition of racial prejudice is merely a point of departure for Bell’s true question: “If this situation is part of the nation’s basic law, how are we to reach the whites in power today and gain redress?” (50). This statement is central not only to “The Real Status of Blacks Today,” and the rest of Bell’s corpus, but to his career as a civil rights attorney, legal scholar, and activist. At the heart of Critical Race Theory is a commitment to critique and change the racial inequality preserved in the American legal system through an increased engagement in creative scholarship.

Racial realism is fundamentally a hopeful and investigative method. Underlying Bell’s most vehement assertions concerning American racism is the assertion of individual and community responsibility: oppressors need to acknowledge structural racism and commit to

ending the cycle, while the oppressed also need to take responsibility in their own lives and the livelihood of their communities. Geneva repeatedly asserts the culpability of black men in their community's problems: "Isn't the major issue here...the disappearance of black men, whose absence has led to the tremendous growth in black-female-headed families and the accompanying rise in poverty among black families?" (46-7). Her interlocutor, Bell, agrees, "It would seem obvious," and cites research from Wilson and Neckerman's article "Poverty and Family Structure," as well as studies from the Center for the Study of Social Policy to support Geneva's claims. Rather than present a community of victims at the mercy of white patriarchy, Bell's fiction implores readers to educate themselves: know their history and their culture, and commit to improving that culture.

Methodologically, "The Real Status of Blacks Today," like each of Bell's short stories, maintains aspects of traditional legal scholarship; thus, it is not wholly impervious to rigorous formal academic work – as CRT's critics suggest. This story contains extensive citations supporting various claims. Among the forty-eight footnotes is a list of the direct and indirect accommodations to slavery contained in the Constitution (mainly Articles I, IV & V), the aforementioned statistical research on the current state of the African American community, and references to various peer-reviewed articles in fields like law, history, and economics. These citations also cross-reference Bell's fiction with his peer-reviewed articles, further buttressing his relationship to formal scholarship. Additionally, Bell's references show that he did extensive historical research in order to accurately portray the social, economic, and political circumstances surrounding the Constitution's framing. Geneva converses with those who were actually present at the 1787 convention, and directly quotes certain actors. General Washington's response to Geneva is taken directly from a letter he wrote to Jefferson in 1788, in which he

states: “I am President of this Convention... and I am ready to embrace any tolerable compromise that ... [is] competent to save us from impending ruin” (rpt. from Dumas Malone’s *Jefferson and the Rights of Man*). Likewise, this story takes James Madison’s dialogue directly from his notes of the proceedings, which *The Records of the Federal Convention of 1787, 3 vols.* attests to. In other words, although it is certainly a work of imaginative fiction, “The Real Status of Blacks Today” is constructed from the same factual sources that comprise traditional legal scholarship.

Cognisant of the importance of research and verifiability, Bell also directly confronts the importance of citation elsewhere in his fiction. In “The Equal-Protection Clause,” Bell (the narrator) asks Geneva (his interlocutor) to defend her position that “in recent years the Supreme Court seems to have closed the ranks of fundamental rights in equal-protection review,” asking: “Can you cite particular decisions that support your point?” (171). Geneva responds by directly referencing three exemplary cases: *City of Memphis v. Greene* (1981), *Palmer v. Thompson* (1971), and *City of Mobile v. Bolden* (1980) (Bell 171-5). Through extensive footnotes the story also indirectly cites three additional cases: *City of New Orleans v. Dukes* (1976), *Plyer v. Doe* (457 US, 1982), and *San Antonio Independent School District v. Rodriguez* (1976). These six precedents share a common factor which supports Geneva’s claim: in each case the court applied “tough-to-meet intent” standards which undermined existing civil rights laws and their application in black and Hispanic communities (172). Each of Bell’s nineteen short stories contains extensive footnote citations. These stories are well researched and provide a consequent trail of verifiability.

4.2 “The Afrolantica Awakening”

The second story in *Faces at the Bottom of the Well* re-imagines Plato’s island allegory expressed in *Timaeus* in a modern SF context to comment on the idea of black repatriation. In Bell’s version of the Atlantis myth, an island emerges from the Atlantic Ocean off the coast of South Carolina. Assuming it to be the fabled “lost continent of Atlantis,” scientists and navigators immediately undertake the island’s exploration only to discover conditions hazardous to humans. However, “African Americans did appear immune to the strange air pressures that rendered impossible other human life” (35). In an effort to take control of this new territory, the U.S. government deploys a troupe of African American military officers, who return to report a “heightened sense of self-esteem, of liberation, of waking up” (35). Drawing a page from the Zionist desire for a promised land, a pro-emigration group lobby a resistant Congress for repatriation rights and thousands of black settlers eventually set out for what the media term “Afrolantica.” Upon their arrival the island disappears, “sinking back into the ocean whence it had arisen” (45). Yet, to their surprise, the settlers feel not despair, but rather a sense of satisfaction in their enterprise. The spirit of cooperation that had enabled the black settlers to undertake their mission was taken back to America, changing the community entirely.

As discussed in the first chapter of this study, Bell places his scholarship in line with Platonic thought, using fantasy and dialogue to uncover hidden truths. Specifically, Bell aims to broaden the concerns of civil rights activists who focus on litigation and reform by exploring novel or controversial topics that might achieve racial equality. In “The Afrolantica Awakening,” he explicitly takes up a Platonic myth, modifying it to comment not on war, but on liberation. Plato is not the only influence in this story; in the early 1920s emigration was a popular topic in the African American community due to the efforts of Marcus Garvey, who made definite plans

for emigration to Africa. While the story's conclusion appears to argue against African American emigration, using the metaphoric disappearance of the island to suggest the impossibility of the dream, Bell uses dialogue to give voice to both sides of the debate. Supporters buttress their arguments with the history of the idea – Garvey, Paul Cuffe, Martin R. Delany, Lincoln's plan for "Negro colonization," and the seeds of desire in the Book of Exodus (13:21) realized in the twentieth century through the state of Israel. However, as the latter example suggests, the desire to correct ethnic inequality with the creation of a homeland is fraught with tensions. Critics of Afrolantica-emigration assert: "We must not surrender the gains made through civil rights efforts. We must not relinquish the labor of generations who came before us and for whom life was even harder than it is for us. America [...] is our land too" (36). This debate, and the conclusion the story draws from it, namely the emancipation of the mind rather than the environment, demonstrates a central principle of CRT: intersectionality and anti-essentialism (Delgado and Steffanic 10). While the history of the African American and Jewish peoples contains many parallels – diaspora, servitude, persecution – the problems that arose as a result of those occurrences, as well as the potential solutions, diverge. Bell resists commenting on the success of the Zionist movement; however, through the conclusion he suggests a specific application of his story. What is needed is not a new land, but rather a new attitude:

Blacks discovered that they themselves actually possessed the qualities of liberation they had hoped to realize on their new homeland. Feeling this was, they all agreed, an Afrolantica Awakening, a liberation – not of place, but of mind [...] And it was possible to affirm it, and return to American, because they understood they need no longer act as the victims of centuries of oppression. They could act on their own, as their own people, as they had demonstrated to themselves and other blacks in their preparations to settle Afrolantica. (46)

“The Afrolantica Awakening” suggests that the black community must undertake more community projects in a spirit of hope and cooperation. African Americans already possess the necessary “qualities” of liberation, and those qualities can be developed into skills that will raise the community out of the “Marks of Oppression.”²¹ While many place their hopes on civil rights litigation to correct an imbalance supported by the law as it currently exists, Bell suggests that even legal reform alone cannot mentally “decolonize black minds,” as a story bearing that name in *And We Are Not Saved* further suggests. “The Right to Decolonize Black Minds” asserts that education in African American history ignites “a determination to achieve in ways that would forever justify the faith of the slaves who hoped when there was no reason to hope” (217). Both “Afrolantica” and “Decolonize” emphasize the presence of qualities of success already within the black community, and propose unleashing those qualities in two specific ways. The former story emphasizes the present and the future of the community through grassroots projects, any communal action undertaken with an emancipatory goal in mind. The latter story emphasizes the past: education in the community’s history will highlight the enduring strength of a people, demonstrating their ability to overcome and advance. Both of these assertions buttress Bell’s original position: civil rights activists must broaden their scope beyond litigation and extend their concern to the daily lives of members of the community. The legal reform they seek will only achieve its full value when mental emancipation is achieved.

²¹ Bell cites Kardiner and Ovesey’s 1962 study naming crime, addiction, and self-hate as lasting badges of slavery within the African America community.

4.3 “The Space Traders”

The last story from Bell’s second collection of fiction, *Faces at the Bottom of the Well*, is also the most well-known. “The Space Traders” story of a rather curious alien invasion was turned into an episode of HBO’s *Cosmic Slop*. Consequently, this story has received wide attention, most notably from the right-wing website *breitbart.com*, which criticized it as an inflammatory “blaxploitation flick.” In “The Space Traders,” aliens land on American shores and offer unlimited gold, renewable fuel, and the technology to fix the polluted environment in exchange for every African American citizen. The story is narrated over seventeen days in which citizens, the media, special interests and business groups, and the government weigh the moral decision they face, articulated by the President: “Does the promise of restored prosperity justify our sending away fifteen percent of our citizens to Lord knows what fate?” (164). Consequently, this story remains one of Bell’s best articulations of his theory of “interest convergence.” Many Americans are outraged; no amount of wealth or power can justify the proposed exile. Others, while sympathetic to the ethical dilemma, are nevertheless in favor of a trade that seems to solve America’s most pressing economic and environmental issues. An even smaller group are in favor of the proposed exile even if in the absence of wealth in exchange; removing the African American population, they claim, would ostensibly free America of the racial tensions originating in slavery. Ultimately, the government accepts the trade and all African Americans are led onto alien airships: “There was no escape, no alternative. Heads bowed, arms now linked by slender chains, black people left the New World as their forebears had arrived” (194). In the absence of Bell’s typical story/dialectic pattern, where multiple readings of the story are presented, readers are left with the task of determining the message of “The Space Traders.” Is it merely a paranoid mode of thinking, dramatizing an impossible scenario to gain sympathy, as

critics have suggested? Or should readers accept Bell's explanation of the story: "I wrote ["The Space Traders"] to convince a resisting class that the patterns of sacrificing black rights to further white interests, so present in American history, pose a continuing threat" ("Who's Afraid of Critical Race Theory?" 902). Regardless, "The Space Traders" provides insight into the law's maintenance of the status quo and race relations.

"The Space Traders" chiefly illustrates Bell's notion of interest convergence and material determinism. Delgado and Steffanic define these terms as the notion that "racism is a means by which society allocates privilege and status [...] Circumstances change so that one group finds it possible to seize advantage or exploit another. They do so and then form appropriate collective attitudes to rationalize what was done" (21). The episode where the President calls a cabinet meeting to discuss the trade expresses the manner in which interest convergence operates. Various professionals, from polling experts to the Secretary of Health and Human Services, weigh in on the effect such a trade will have on American society. The former predicts "America's Golden Age" if the trade is accepted: economic prosperity and environmental stability would not only benefit the whole country, but also ensure that the current executive leadership maintains its power in the upcoming election. The latter expresses conflicted concern:

"There are pluses and minuses [...] A large percentage of blacks rely on welfare and other social services. Their departure would ease substantially the burden on our state and national budgets [...] On the other hand, the consternation and guilt among many whites if the blacks are sent away would take a severe psychological toll, with medical and other costs which might also reach astronomical levels. To gain the benefits we are discussing, without serious side effects, we must have more justification than I've heard thus far." (164-5)

This dialogue demonstrates that racial inequality is not an arbitrary occurrence; possible consequences are carefully weighed, typically subverting the interests of racialized groups to that of the majority. The Attorney General's suggestion to justify the trade as an act of conscription, "to exact military duty at home or abroad by United States citizens" (165), and the Secretary of Defense's support, "instead of just young men and women, the country needs all its citizens of African descent to step forward and serve" (165) further demonstrates the importance of rhetoric when using the law to uphold racial discrimination. In order to make the trade more palatable to the American population in general and African Americans in particular, the President enlists the help of Gleason Golightly, "the conservative black economics professor, who was [the President's] unofficial black cabinet member [...] His mere presence as a person of color at this crucial session would neutralize any possible critics in the media" (163-4). Bell uses Professor Golightly to illustrate the manner in which insiders might be used to further the interests of a hegemonic group. The Secretary of the Interior informs Golightly: "The president wants you to say whatever you can in favor of this plan [...] talk about patriotism, about the readiness of black people to make sacrifices for this country, about how they are really worthy citizens no matter what some may think. We'll leave the wording to you" (172). Regardless of his history of support for conservative policies repealing many civil rights laws and the offer of asylum for himself and one-hundred black families of his choosing (173), Golightly refuses to support the trade:

"I disagree strongly with both the Secretary and the Attorney General. What they are proposing is not universal selective service for blacks. It's group banishment, a most severe penalty and one that the Attorney General would impose without benefit of either due process or judicial review [...] You simply cannot condemn

twenty million people because they are black, and thus fit fodder for trade, so that this country can pay its debts.” (167)

However, the Professor’s appeal to ethics is ignored. He instead chooses an alternative approach, again demonstrating Bell’s theory of interest convergence. Addressing the “Anti-Trade Coalition,” a gathering of liberal politicians, lawyers, academics, and African Americans, Golightly asserts: “your plans for legislation, litigation, and protest cannot prevail against the tradition of sacrificing black rights” (174). “Rather than resisting the Space Traders’ offer,” he suggests, “let us circulate widely the rumor that the Space Traders, aware of our long fruitless struggle on this planet, are arranging to transport us to a land of milk and honey [...] our ‘milk and honey’ story will inspire whites to institute such litigation on the grounds that limiting the Space Trader’s offer to black people is unconstitutional discrimination against whites” (176). Bell’s theory of interest convergence states that reform only occurs when it will benefit the interests of the ruling group; thus, Golightly suggests that if that group were convinced that accepting the trade would actually benefit the minority rather than the majority, the trade would be rejected. The Professor’s suggestion is also aligned with Bell’s belief that those looking for racial equality ought to consider alternative, even controversial, approaches to civil rights reform. Unfortunately, Golightly is unable to reverse his long-held reputation as an “Uncle Tom” (175), an African American willing to sacrifice his community’s interests in favor of the white hegemony. The members of the “Anti-Trade Coalition” are aware that the Professor was chosen by the President to advance the hegemonic interests of the majority group and reject his plan.

Shortly after the “Anti-Trade Coalition,” the leaders of American Fortune-500 businesses, heads of banks and insurance companies hold a secret meeting to decide where to throw their support. Ultimately, they decide to oppose the trade, not on moral but economic

grounds. Banks, lenders, coal and oil companies all fear their obsolescence should the trade provide unlimited wealth and fuel. Furthermore, the consumer-value of the African American population would be lost, subjecting many businesses and real-estate agencies to crisis. Finally, many fear that in the absence of impoverished blacks, many working-class whites – deprived of an easily identifiable distraction – will recognize the disparity between the rich and the poor. The meeting of the American business elite serves as another example of interest convergence: the rich oppose the trade, not to improve the status of African Americans, but rather to benefit their shareholders and maintain the current economic system. Throughout this passage Bell comments on consumer-capitalism, labor law, and class-division, demonstrating the interrelatedness of race and these issues.

The science fiction genre is, of course, integral to this tale. The story is replete with descriptions of “ships from a star far out in space” (158), and “the first beings from outer space anyone on Earth had ever seen” (159), these alien visitors “distinctly unpleasant, even menacing in appearance” (160), yet they possess “special chemicals capable of unpolluting the environment” (159). Bell wrote “The Space Traders” to “convince a resisting class that the patterns of sacrificing black rights to further white interests, so present in American history, pose a continuing threat” (“Who’s Afraid of Critical Race Theory?” 902). To achieve this goal, he chose a dramatic, impossible scenario to illustrate a very possible occurrence, namely, the continuation of minority people’s subordination to white hegemonic interests. As discussed in the second chapter of this study, Jameson would argue that Bell is using an alternative future to destabilize reader’s relationship to the present, commenting on what could result should we continue to ignore racial inequality. SF theorist Michael Saler would agree with Jameson, arguing that “The Space Traders,” as an imaginative space, provides a “safe and playful arena”

for Bell and readers to “reflect on the status of the real and to discuss prospects for effecting concrete personal and social changes” (7). Rancière would argue that “The Space Traders” confronts reader’s perceptions of “reality and appearance,” creating *dissensus* by challenging “what is given as our real” (“The Politics of Literature” 148), namely, the notion of a post-civil-rights-era America in which the interests of minority groups are of equal value to the interests of the white majority. The humanistic portrayal of the African American population being led in chains on board an alien ship, Nussbaum would argue, puts the reader in contact with alternative social occurrences, forcing the reader to investigate the humanity and implications of the character’s sufferings. Likewise, Golightly’s dilemma provides insight into the complexity of human behaviour, an appreciation of which may invalidate the overly generalized assertions of hierarchically binary thinkers. Similarly, Richard Rorty argues that the creation and dissemination of literature creates human solidarity; only under the circumstance of solidarity can we confront and reduce human suffering. Bell’s portrayal of the anxieties of the African American population leading up to the trade could possibly provide readers with the “ability to see strange people as fellow sufferers” (Rorty xvi).

4.4 Science Fiction and Racial Realism

On the surface Bell’s chosen genre may seem incongruous with his chief tenet: how can an ostensibly unrealistic genre further the cause of realistically evaluating the progress of racial equality in America? In the preface to *AWANS* Bell thanks his editors at Basic Books for providing “intelligent form and logical structure” to his stories, admitting: “The interweaving of fact and fiction requires writing skill and experience possessed by few law teachers, including this author” (xiii). The appeal to both “fact and fiction” suggests that there is actually “fact” to be

found in his stories; Bell inserts the tools of standard legal scholarship (legal precedent, case studies, and peer-reviewed articles) into his fiction to provide the rational approach he is accused of rejecting. Yet, this accusation is not wholly unfounded, for in the subsequent introduction Bell describes the incompatibility of civil rights scholarship and logic:

Even those most deeply involved in this struggle are at a loss for a rational explanation of how the promise of racial equality escaped a fulfillment that thirty years ago appeared assured. Indeed, logical explanation fails before the patterns of contemporary racial discrimination... In order to appraise the contradictions and inconsistencies that pervade the all too real world of racial oppression, I have chosen in this book the tools not only of reason but of unreason, of fantasy. (5)

This statement is an extended syllogism in which racism is figured as an irrational occurrence which can be fought on its own grounds: fantasy. Bell further qualifies his foray into fiction: “The provocative format of story, a product of experience and imagination, allows me to take a new look at what, for want of a better phrase, I will call ‘racial themes’” (13). Here more mainstream legal scholarship is implicitly critiqued for failing to provide an outlet for “experience and imagination,” thus Bell must develop a supplementary method to integrate those areas into his scholarship. Occasionally his fiction further develops his rationale for legal storytelling. In “The Benefits of Civil Rights Litigation,” the character Geneva argues: “There has been less change than either of us would like because there has been too little *creative protest*, and too much focusing on changing laws that are the products of racism, not its cause” (70, my emphasis). Geneva implicitly situates legal narratives as a form of “creative protest” capable of addressing racial inequality at its root cause. In an article entitled “Who’s Afraid of Critical Race Theory?” Bell answers the title’s question by asserting that CRT is a movement “ideologically committed to the struggle against racism, particularly as institutionalized in and

by law,” further characterized by the “unapologetic use of creativity” (899). This appeal to unapologetic creativity within the framework of scholarship and activism further suggests that Bell undertakes science fiction with tangible goals in mind.

4.5 A Final Note on Multiculturalism in Bell’s Work

While “The Real Status of Blacks Today,” and “Divining a Racial Realism Theory” can be read closely to provide insight into the fiction and science-fiction genre, as well as refutations against the five aspects of CRT storytelling most critiqued by detractors (namely, methodology, distrust of legal practice and scholarship, charges of excessive negativity, the assertion that critical race theorists exonerate minorities by expecting whites to end racism, and arguments against racial realism), the final critique made against the representation of minority voice cannot be addressed through analysis of these two stories. Critics argue that CRT is only concerned with African Americans, and is thus not inclusive. Farber and Sherry charge Bell with inconsistency, arguing that his “radical multiculturalism” does “not command a broad consensus,” thus betraying “anti-Semitic and anti-Asian implications” (51). When he was a litigator for the NAACP and the Department of Justice, Bell specialized in African-American civil rights, and while the majority of the cases cited in his stories refer to his area of expertise, they are not limited to African American civil rights cases alone. Cases like *United Jewish Organization of Williamsburg, Inc. v. Carey* (rejecting Hasidic Jews’ request for ethnic voting representation) and *Korematsu v. United States* (an unsuccessful repeal of the curfew order imposed against Japanese-Americans during the Second World War) are also referenced. Furthermore, the central hero of the story “The Chronicle of the Black Reparations Foundation” is Jewish business-mogul Ben Goldrich, a selfless billionaire who links his own community’s history of oppression to the plight of African Americans and donates his fortune to a black reparation fund, stating: “All of

Jewish history...counsels my commitment to defend any group designated as society's scapegoat" (127). These aspects of his fiction demonstrate where Bell's concern lies: not limited to his own ethnic community, but to the broader population of Americans who experience racial discrimination. He happens to have a vast knowledge of African civil rights through his legal career that predates his academic positions, and as an African American himself, his preoccupation with his own rights and freedoms is understandable. The real question is not "is he justified in focusing on one ethnic group," but, "does he adequately represent that particular group?" Given the diversity of positions and interests presented in his fiction, chiefly through the interlocutor's conflicting dialectic which presents alternative perspectives on African American civil rights and minority justice, it is evident that Bell strives not to essentialize the black community.

In content as well as form, Bell works to accurately represent African Americans. He situates his fiction within a tradition of narrative appeals to justice. The biblical title *And We Are Not Saved* comes from the book of Jeremiah: "The harvest is past, the summer is ended/ and we are not saved" (Jeremiah 8:20).²² His stories frequently return to the biblical precedent for narrative appeals to justice, such as the story "The Rules of Racial Standing," which recounts the David and Goliath story, allegorizing a minority's inevitable victory over the oppressor. The African American oral and literary traditions have long appealed to biblical narratives for

²² "Jeremiah's lament that "we are not saved" echoes down through the ages and gives appropriate voice to present concerns of those who, flushed with the enthusiasm generated by the Supreme Court's 1954 holding that segregated public schools are unconstitutional, pledged publicly that the progeny of America's slaves would at last be 'Free by 1963'...Not even the most skeptical at that convention would have foreseen that, less than three decades later, that achievement would be so eroded as to bring us once again into fateful and frightening coincidence with Jeremiah's lament" (Bell 3).

allegories of freedom,²³ particularly the Exodus story where God intervenes to bring an enslaved people to the Promised Land. Thus, Bell's fiction takes part in this literary precedent; Delgado and Steffanic write: "Legal storytellers, such as Derrick Bell and Patricia Williams, draw on a long history with roots going back to the slave narratives" (44). Bell's fiction also appeals to another aspect of African American culture: call and response, a "spontaneous" interaction between speaker and listener in which, "responses function to affirm or agree with the speaker, urge the speaker on, repeat what the speaker has said, complete the speaker's statement...or indicate extremely powerful affirmation of what the speaker has said" (Foster 2).²⁴ Dialogue between Bell's characters, such as this exchange in the story "The Benefit of Civil Rights Litigation," is often reminiscent of this tradition:

"When will they come to know-"

"That equality cannot be obtained merely by enacting civil rights laws or winning cases in the courts?"

"When will they come to know-"

"That equality will not come though an array of social programs." (55)

Bell's fiction is multifaceted, appealing not only to strategic social ends (the erosion of racial inequality) and legal ends (the transformation of legal scholarship into a more inclusive body of research), but also to a more active engagement in his own ethnic tradition. He strives to depict the African American community in accurate, realistic terms, even if the result is not always positive (such as his repeated condemnations against the absence of black fathers contributing to

²³ The spiritual "Go Down, Moses," for example, likens American slaves to the Israelites under Pharaoh, as told in Exodus in the Old Testament. These biblical references also served to refute slave-owners' claims that Christianity, particularly the doctrines of humility and obedience, justified slavery.

²⁴ "Using Call-and-Response To Facilitate Language Mastery and Literacy Acquisition among African American Students"

the rise in single-parent families). Bell's notion of "minority voice" is not limited to African Americans speaking about the issues within the African American community; his fiction as well as his civil rights career attests to his engagement in racial equality for all ethnicities; however, when he does speak of the issues facing his ethnic community he strives to do so in a responsible and accurate manner.

CHAPTER 5 CONCLUSION

This study set out to explore the contribution of legal storytelling to the existing sphere of legal scholarship. Using Derrick Bell's science fiction short stories as a representative example characterizing the genre, I employed a mix of theoretical research with close-reading and analysis in order to understand the manner in which CRT counterstories function to elucidate and critique intersections of race and American law. Specifically, I performed textual analysis from a literary theory perspective in order to provide an alternative to the criticisms CRT has received for engaging in legal storytelling from the legal scholarship community.

CRT and legal storytelling is a relatively new division of legal scholarship. In the twenty-five years since its inception, general research on this topic has been scarce and incomplete. Most often, those within the CRT community and the broader field of legal scholarship perform research on legal storytelling. Despite the opportunity to examine how this new literary medium of legal scholarship operates, literary scholars remain largely removed from the concerns of CRT fiction. This thesis was a necessary step towards filling the gap in not only the study of legal scholarship, but to address the relative obscurity of this new genre within literary scholarship as well.

Through the use of theoretical study and textual-analysis of Derrick Bell, the most prolific writer of legal fiction, this study set out to answer four questions:

- 1) How does legal storytelling contribute to the current state of American legal scholarship, enhancing its alignment with the concerns of minority groups?
- 2) What is the political and pedagogical function of counterstorytelling?
- 3) How can literature be used to not only critique the status quo, but also to introduce specific strategies in the ongoing quest for equality?

4) What is the relevance of Bell's chosen medium of science fiction?

Findings

The main findings are largely chapter specific and were summarized within Chapter Two, "CRT and Derrick Bell's Legal Storytelling," Chapter Three, "Literary Theory," and Chapter Four, "Textual Engagement." This section will synthesize the findings of these three chapters to answer to study's main research questions.

Chapter Two was intended to demonstrate two gaps. The first was the gap that existed in legal scholarship prior to Bell's creation of the CRT and the movement towards fiction as a medium to address racial inequality. In summarizing the movement's inception and the resistance scholars with ties to minority communities faced in addressing the concerns of those communities, I demonstrated the importance of CRT in general, and legal storytelling in particular, to the development of legal scholarship. The second gap demonstrated in Chapter Two is the scarcity of proper literary research on legal storytelling. On the one hand, the current scholarship that exists on the topic, none engages with counterstories as works of literature, but rather as elements of legal scholarship. CRT's critics do not engage with the stories themselves, but instead critique the very notion of including fiction into the accepted body of legal scholarship. Critical Race Theorists themselves, on the other hand, defend the presence of legal storytelling within academic scholarship, but in their defense neglect concrete textual engagement with the stories themselves. Thus, Chapter Two set up Critical Race Theory legal storytelling as a relatively new medium deserving closer scrutiny.

Given the relative absence of engagement with legal storytelling from a literary perspective, Chapter Three outlined various theories of literature relevant to the subject matter of

Bell's work. Nussbaum, Rancière, and Rorty each variously contributed to an understanding of literature's potential for political action. Although their research goals diverged, each theorist agreed on three basic premises. First, literature was unanimously accepted as possessing a definite ability to change the political realm and our ethical relation to others. Second, the scholars I surveyed agreed that literature broadens readers' perception by challenging the accepted relationship between reality and appearance. Third, each theorist challenged the primacy of objectivity over subjective modes of analysis. While Nussbaum, Rancière, and Rorty commented on literature in general, Saler and Jameson's scholarship was used to elucidate the particular value of the science fiction genre that Bell typically uses. The former argues that works of "fantasy" provide a "safe arena" for readers to question their perception of the real, while the latter asserts that SF uses the background of an "alternative future" to defamiliarize and thus produce original comments on the present. These five theorists contributed to a new way to approach counterstories in general, and Bell's SF in particular. Rather than focus on them as legal critiques, I departed from the typical scholarship on the topic and examined them as works of literature. As such, literary theory can be applied to them to demonstrate their ability, as literature, to engage in what Rancière refers to as "realworld politics." This is important because Critical Race Theorists, including Bell, assert that their stories are equally capable of performing the intended work of legal scholarship in more traditional mediums; however, they neglect to employ literary theory to support this assertion. Nussbaum, Rancière, Rorty, Jameson, and Saler contribute to an understanding of *how* legal storytelling functions as both fiction and scholarship.

Of course, a study aiming to examine legal storytelling from a literary perspective cannot rely on literary theory alone. Thus, in Chapter Four I employed a close-reading technique to explore how Bell's stories actually function. This textual engagement, lacking from the existing

scholarship on the topic, examined the texts as literature and further elucidated the relevance of Nussbaum, Rancière, Rorty, Jameson, and Saler to the study of CRT legal storytelling. Through textual engagement with “The Real Status of Blacks Today,” “The Space Traders,” and “The Afrolantica Awakening,” I was able to demonstrate how aesthetic, subjective representations can be a valuable contribution to legal scholarship. Three main points developed from this chapter study, answering the aforementioned questions this thesis set out to address:

- 1) While traditional legal scholarship focuses on elucidating particular laws and precedent, it is largely unconcerned with how citizens relate to the law. This is particularly relevant for minority communities because the majority of legal scholars believe civil rights and affirmative action legislation result in racial inequality, yet they rarely examine how the law can actually work to uphold racial inequality. Counterstories, on the other hand, provide a medium for legal scholars to examine the law from a humanistic perspective, commenting on, as Derrick Bell puts it “how black people, or at least some of us, fell about it.”
- 2) Thus far, traditional civil rights scholarship has been concerned with using the law to secure equal rights. Bell’s stories demonstrate the need for alternative strategies in the quest for racial justice. The law, he contends, often serves to uphold racial inequality; thus, civil rights legislation must be critiqued from a legal, and a social perspective. Legal stories become a platform with which to perform such critique; counterstories are one alternative strategy. Furthermore, as a pedagogical technique, legal storytelling functions to broaden the education lawyers receive. In familiarizing themselves with

counterstories, lawyers and legislators are better able to address the concerns of minority communities. Finally, the increased dissemination stories receive relative to traditional legal scholarship means that the average legal subject may receive an element of legal pedagogy.

- 3) A foundational assertion of CRT is that the law most often works to uphold the status quo, rather than critique it. Traditional legal scholarship is largely unconcerned with developing other alternative strategies to civil rights reform. Thus, Critical Race Theorists, including Bell, use counterstorytelling to critique the law and to suggest and examine alternative strategies. For example, “The Afrolantica Awakening” explored the idea of black repatriation as a potential solution to the most pressing issues facing the African American community. “Neither Separate Schools, Nor Equal Schools” similarly questioned whether segregated schools might better serve black educational needs. These examples show how fiction can be used to broaden the concerns typically taken up in legal scholarship to examine the law’s failings and suggest a means of redress.
- 4) The discussion of Jameson and Saler’s theories in chapter three introduced how Bell’s chosen genre of SF is particularly able to comment on legal and social issues important to minority groups. Chapter four’s analysis of three SF stories supported that assertion by showing how the genre’s qualities contribute to an understanding of civil rights issues. Specifically, the ability to play with time and space in “The Real Status of Blacks Today,” the invention of a mystical island temporarily inhabitable only by blacks in “The

Afrolantica Awakening,” and the allegorical portrayal of aliens invading earth not to declare war, but rather to challenge America’s commitment to “the great American racial experiment” (Bell 164).

This textual engagement demonstrated that it is precisely that which receives the most negative critique from traditional legal scholars, namely subjectivity and fantasy, which allows Bell’s stories to challenge the reader’s perceptions of justice and equality in America. Through fiction Bell challenges the accepted representation of American law as progressively moving toward racial equality. This is valuable critique, and should not be ignored within the legal community merely because it departs from traditional methods.

Theoretical Implications

The theoretical case for diversification of legal scholarship to include works of imaginative, subjective fiction has significant implications on the way law-schools operate, legal scholarship is conducted, and thus how lawyers relate to their trade. In allowing more subjective modes of analysis to supplement traditional forms of legal research, the legal community is better equipped to address the current failure of the law to legislate racial equality. Furthermore, an engagement with fiction within the field of legal scholarship has the potential to impact the scope of literary scholarship as well. Counterstorytelling is a means by which literary scholars can engage in the concerns of the law, and minority peoples, in a meaningful way. This genre provides a segue from literature to law, allowing us to contribute to an area of scholarship often divorced from the concerns of literary scholars.

Ultimately, I contend that legal storytelling has a valuable place in legal scholarship. This finding is consistent with the assertions of Critical Race Theorists themselves, who variously

assert that narrative modes may better address racial inequality as it is supported by the law than traditional legal scholarship alone. Conversely, this finding is wholly inconsistent with the assertions of Posner, Farber and Sherry, outspoken legal scholars wary of adopting subjective methods to understand the law. A movement by Critical Race Theorists and literary theorists to engage with these texts as works of literature with literary and legal value may better serve the defense CRT authors of legal fiction make in response to critiques.

Limitations

While this study was able to successfully employ Bell's stories to elucidate the value of CRT fiction, a better-rounded approach to legal storytelling is needed. In limiting my research to Derrick Bell's science fiction I was unable to explore more general principles of legal storytelling. Although he is the most prolific writer of legal stories, Bell is certainly not the only legal scholar engaging in fiction to critique legal scholarship and pedagogy. Furthermore, Bell's chosen genre, science fiction, is not entirely representative of the body of legal stories. Mari Matasura, Richard Delgado, Kimberle Crenshaw, and Patricia Williams, among others, engage in legal fiction that is not science fiction, and differs significantly from the concerns of Bell. Delgado's stories, for example, typically take a Hispanic subject to comment on the particular concerns of that community. Likewise, Matasura typically writes stories from an Asian-American perspective. Engagement with these authors' works may elucidate a broader applicability of CRT, and refute Farber and Sherry's concern that CRT is overly concerned with African Americans.

Recommendations for Further Research

To generate a more complete understanding of the ability of CRT fiction to investigate the intersections between race and law in America, there is need for further study. Exploring the following as future research strategies can enhance our understanding of the place of fiction within the law in particular, and scholarship in general:

- 1) A more general study of CRT fiction needs to be undertaken. Bell passed away two years ago, and while his legacy is carried on through the work of other critical race theorists, particularly Matasura, Delgado, Crenshaw and Williams. A subsequent study of counterstorytelling that included these authors would produce a more inclusive understanding of the genre.
- 2) An ethnographical study of the relative success of CRT compared to other pedagogical techniques within the law school setting must be fulfilled. A survey of student response and the use of CRT principles in the courtroom will contribute to a more objective understanding of fiction's place within the legal sphere, and further defend it from those who critique the place of subjective modes of legal research.
- 3) This study focused on CRT's use of fiction to achieve the goal of legal and social reform, particularly as it pertains to minority populations in America. By focusing on Derrick Bell, my study limited the scope of my concerns to the American legal system; however, in recent years CRT has become increasingly concerned with issues of globalization and democracy. Further study must be undertaken to apply CRT principles to other cultures with a similar colonial experience. Furthermore, more research needs to be performed to ascertain

whether or not similar movements toward fiction exist in other departments, and in other countries.

If these research directions are preformed, critical race theorists and those sympathetic to the desire to broaden scholarship to include subjective modes of analysis will be better equipped to make a case for more inclusive legal scholarship. This will ensure that the legal community is more sympathetic to the concerns of minority groups.

Conclusion

In spite of what is often reported about Critical Race Theory's use of fiction, it is indeed a useful complement to legal reasoning. Posner, Farber and Sherry present objective modes of legal scholarship as the norm which ought not be deviated from. My research, however, suggests otherwise. Fiction allows legal scholars a supplementary means to critique the law and suggest different strategies to legal reform, particularly as it pertains to concerns raised by various minority communities. Furthermore, an increased engagement on the part of literary scholars with unconventional occurrences of fiction, in this case its use within legal departments in America as an alternative mode of scholarship, broadens our concerns and makes it clear in yet another way – as if this point needed to be made – the political nature of literature.

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