

The Chronicle of the Space Traders

Hypotheticals are a staple of discussion in law school classrooms. . . . Building on this foundation, I began extending these fictional stories to reflect the contradictions and dilemmas faced by those attempting to apply legal rules to the many forms of racial discrimination. . . . I am not sure who coined the phrase "Critical Race Theory" to describe this form of writing. I know that I have received more credit than I deserve for the movement's origins. I rather think that this writing is the response to a need for expressing views that cannot be communicated effectively through existing techniques. And I agree with two major writers of this genre regarding the purpose and goal of narrative writing:

Legal storytelling is a means by which representatives of new communities may introduce their views into the dialogue about the way society should be governed. Stories are in many ways more powerful than litigation or brief-writing and may be necessary precursors to law reform. They offer insights into the particulars of lives lived at the margins of society, margins that are rapidly collapsing toward a disappearing center. This is not true just of our times. In Biblical history, storytellers for oppressed groups told tales of hope and struggle—for example, that of the Promised Land—to inspire and comfort the community during difficult times. Reality could be better—and, perhaps, will be. Other storytellers have directed their attention to the oppressors, reminding them of a day when they would be called to account. Stories thus perform multiple functions, allowing us to uncover a more

layered reality than is immediately apparent: a refracted one that the legal system must confront.¹

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The Space Traders' Solution

1 JANUARY.

The first surprise was not their arrival. The radio messages had begun weeks before, announcing that one thousand ships from a star far out in space would land on 1 January in harbors along the Atlantic coast from Cape Cod to North Carolina. . . . The first surprise was the ships themselves. The people who lined the beaches of Cape Cod saw huge vessels, the size of an aircraft carrier, which the old men in the crowd recognized as being pretty much like the box-shaped landing craft that carried Allied troops to the Normandy beachheads during the Second World War. . . . Then came the second surprise. The leaders of this vast armada could speak English. Moreover, they spoke in the familiar comforting tones of a former U.S. president, having dubbed his recorded voice into a computerized language-translation system. After the initial greetings, the leader of the U.S. delegation opened his mouth to read his welcoming speech. . . . But before he could begin, the principal spokesperson for the space people . . . raised a hand and spoke crisply, and to the point.

And this point constituted the third surprise. Those mammoth vessels carried within their holds treasure of which the United States was in most desperate need: gold, to bail out the almost bankrupt federal, state, and local governments; special chemicals capable of unpolluting the environment, . . . and a totally safe nuclear engine and fuel, to relieve the nation's all-but-depleted supply of fossil fuel. In return, the visitors wanted only one thing—and that was to take back to their home star all the African Americans who lived in the United States.

They would wait sixteen days for a response to their offer. That is, on 17 January—the day when in that year the birthday of Martin Luther King, Jr., was to be observed—they would depart carrying with them every black man, woman, and child in the nation and leave behind untold treasure. . . . Then the visitors turned and glided back over the waves to their ships.

The phones of members of Congress began ringing. . . . A definite split opened up in the nature of the calls—one that reflected distinctly different perceptions of the Space Traders. Most white people were, like the welcoming delegation that morning, relieved and pleased to find the visitors from outer space unthreatening. . . . On the other hand many American blacks had seen the visitors as distinctly unpleasant, even menacing in appearance. While their perceptions of the visitors differed, black people all agreed that the Space Trade looked like bad news and burned up the phone lines urging black leaders to take action against it.

"Will the blacks never be free of their silly superstitions?" whites asked one another with condescending smiles. "Here, in this truly historic moment, when America has been selected as the site for this planet's first contact with people from another world, the blacks just revert to their primitive fear and foolishness." . . .

It was a time of crisis. Not only because of the Space Traders' offer per se, but because that offer came when the country found itself in dire straits. Decades of conservative, laissez-faire capitalism had emptied the coffers of all but a few of the very rich. The nation that had funded the reconstruction of the free world had given itself over to greed and willful exploitation of its natural resources. Massive debt had curtailed all but the most necessary services. The air was so polluted that the sick and elderly had to wear special masks whenever they ventured out-of-doors. In addition, supplies of crude oil and coal were almost exhausted. . . . Though few gave voice to their thoughts, many were thinking that the trade offer was, indeed, the ultimate solution to the nation's troubles.

2 JANUARY.

. . . As soon as the President heard the space visitors' proposition on television, his political instincts immediately locked into place. . . . He had framed the outline of his plan by the time his cabinet members gathered at 8 o'clock the next morning.

His cabinet contained no blacks. . . . Although he had followed the practice of keeping one black on the Supreme Court, it had not won him many minority votes. Furthermore, the few black figures in the party always seemed to him overly opportunistic and, to be frank, not very smart. But now, as the cabinet members arrived, he wished he had covered his bases better.

In the few hours since the Space Traders' offer, the White House and the Congress had been inundated with phone calls and telegrams. The President was not surprised that a clear majority spontaneously urged acceptance of the offer. . . . At least a third of the flood of phone calls and faxes urging quick acceptance of the offer insisted that loss of what the nation would relinquish—its African American citizens—was as worthwhile as what it would receive. The statements accurately reflected relations at the dawn of the new century. . . .

. . . .
[The President] had asked Gleason Golightly, a conservative black economics professor, to attend the meeting. Highly intelligent, Golightly seemed to be truly conservative, not a man ready to sing any political tune for a price. His mere presence as a person of color at this crucial session would neutralize any possible critics in the media, if not in the black civil rights community. . . .

"I think we all know the situation," the President said. "Those extraterrestrial beings are carrying in their ships a guarantee that America will conquer its present problems and prosper for at least this new century."

"I would venture, sir," the Vice-President noted, "that the balance of your term will be known as 'America's Golden Age.' Indeed, the era will almost certainly extend to the terms of your successor."

The President smiled at the remark and, on cue, so did the cabinet. "The VP is right, of course," the President said. "Our visitors from outer space are offering us the chance to correct the excesses of several generations. . . . They are offering not only a solution to our nation's present problems but also to what might be called the great American racial experiment. That's the real issue before us today. Does the promise of restored prosperity justify our sending away fifteen percent of our citizens to Lord knows what fate?"

"There are pluses and minuses to this 'fate' issue, Mr. President," interjected Helen Hipmeyer, Secretary of Health and Human Services. . . . "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. Why, the cost of caring for black AIDS victims alone has been out of sight. 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 that might also reach astronomical levels. To gain the benefits we are discussing, without serious side effects, we must have more justification than I have heard thus far."

"Good point, Madame Secretary," the President answered, "but every opportunity comes with risks."

"I've never considered myself a particularly courageous individual, Mr. President." It was the Secretary of the Interior. . . . "But if I could guarantee prosperity for this great country by giving my life or going off with the Space Traders, I would do it without hesitation. And, if I would do it, I think every red-blooded American with an ounce of patriotism would as well." The Secretary sat down to the warm applause of his colleagues.

His suggestion kindled a thought in the Secretary of Defense. "Mr. President, the secretary's courage is not unlike that American men and women have exhibited when called to military service. . . . It is a call a country makes on the assumption that its citizens will respond. I think that is the situation we have here except that instead of just young men and women, the country needs all of its citizens of African descent to step forward and serve." More applause greeted this suggestion.

The Attorney General got the floor. "Mr. President, I think we could put together a legislative package modeled on the Selective Service Act of 1918. Courts have uniformly upheld this statute and its predecessors as being well within congressional power to exact enforced military duty at home or abroad by United States citizens. . . . But if the mail [Congress is] receiving is anything like ours, then the pressure for passage will be enormous."

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"What are your thoughts on all this, Professor Golightly?" asked the President. . . .

. . . .
"As you know, Mr. President. . . . I sincerely believe that black people needed to stand up on their own feet, free of the special protection of civil rights laws, the suffocating burden of welfare checks, and the stigmatizing influence of affirmative action programs. . . . Still I disagree strongly with both the Secretary of the Interior and the Attorney General. What they are proposing is not universal selective service for blacks. It is group banishment, a most severe penalty and one that the Attorney General would impose without benefit of either due process or judicial review. It is a mark of just how far out of the mainstream black people are that this proposition is given any serious consideration. Were the Space Traders asking for any other group, white women with red hair and green eyes, for example, a horrified public would order the visitors off the planet without a moment's hesitation. . . .

"Mr. President, I cannot be objective on this proposal. I will match my patriotism with that of the Secretary of the Interior. But my duty stops short of condemning my wife, my three children, my grandchildren, and my aged mother to an unknown fate. You simply cannot condemn 20 million people because they are black, and thus fit fodder for trade, so that this country can pay its debts, protect its environment, and ensure its energy supply. I am not ready to recommend such a sacrifice." . . .

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[After further discussions, Golightly continued as follows:]

"You and your cabinet must place this offer in historical perspective. This is far from the first time this country's leaders have considered and rejected the removal of all those here of African descent. Benjamin Franklin and other abolitionists actively sought schemes to free the slaves and return them to their homeland. Lincoln examined and supported emigration programs both before and after he freed the slaves. Even those Radical Republicans who drafted the Civil War Amendments wondered whether Africans could ever become a part of the national scene, a part of the American people. . . . Moreover, with all due respect, Mr. President, acceptance of the Space Traders' solution will not bring a century of prosperity to this country. What today seems to you a solution from heaven will instead herald a decade of shame and dissension mirroring the moral conflicts that precipitated this nation into its most bloody conflict, the Civil War. The deep, self-inflicted wounds of that era have never really healed. Their reopening will inevitably lead to confrontations and strife that could cause the eventual dissolution of the nation."

"You seem to assume, Professor Golightly," the Secretary of the Interior interrupted, "that the Space Traders want African Americans for some nefarious purpose. Why do you ignore alternative scenarios? Perhaps they have selected them to inhabit an interplanetary version of the Biblical land of milk and honey. Or, more seriously" the Secretary said, "they may offer your people a new start in a less competitive environment, or"—he added, with a slight smirk in the President's direction—"perhaps they are going to give your people that training in skills and work discipline you are always urging on them." . . .

"I think we get your point, Professor," the President replied smoothly. "We will give it weight in our considerations. Now," he said, rising, "we need to get to work on this thing. We don't have much time." He asked the Attorney General to draw up a rough draft of the proposed legislation by the end of the day. . . .

Long after the others had departed, Gleason Golightly sat at the long conference table. . . .

. . . .
"Oh, Golightly, glad you're still here. I want a word with you." Golightly looked up. The Secretary of the Interior, at his most unctuous, eased himself into the seat beside him.

"Listen, old man, sorry about our differences at the meeting. I understand your concerns."

Golightly did not look at the man and, indeed, kept his eyes on the wall throughout their conversation. "What do you want, Mr. Secretary?"

The Secretary ignored Golightly's coldness. "You could tell in the meeting and from the media reports that this Trade thing is big, very big. There will be debate—as there should be in a great, free country like ours. But if I were a betting man, which I am not because of my religious beliefs, I would wager that this offer will win approval. . . ."

"Why don't we simply follow your suggestion, Mr. Secretary, and tell everyone that the Space Traders are going to take the blacks to a land of milk and honey?"

The Secretary's voice hardened. "I don't think even black people are that stupid. No, Gleason, 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. . . ."

"And then?" Golightly asked, his eyes never moving from the wall.

"We know some blacks will escape. I understand some are leaving the country already. But if you go along with the program, Gleason, and the Trade is approved, the President says he will see to it that one hundred black families are smuggled out of the country. You decide who they are. They'll include you and yours, of course."

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... "Think about it, Golightly. It's the kind of deal we think you should go for."

3 JANUARY.

The Anti-Trade Coalition, a gathering of black and liberal white politicians, civil rights representatives, and progressive academics, quickly assembled early that morning. . . . The members drafted a series of legal and political steps designed to organize opposition to the Space Traders' offer.

... They drew up plans for direct action protests and boycotts, and, in the event that worse came to worst ... massive disobedience.

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Professor Gleason Golightly sought the floor to propose an alternative response to the Trade offer. ...

As he moved toward the podium, a wave of hostile murmuring broke out whose justification, Golightly acknowledged: "I am well aware that political and ideological differences have for several years sustained a wide chasm between us. But the events of two days ago have transformed our disputes into a painful reminder of our shared status. I am here because, whatever our ideological differences or our socio-economic positions, we all know that black rights, black interests, black property, even black lives are expendable whenever their sacrifice will further or sustain white needs or preferences. ... This tradition overshadows the national debate about the Space Traders' offer and may well foretell our reply to it.

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... "Although you have labored here unselfishly to devise a defense against what is surely the most dangerous threat to our survival since our forebears were kidnaped from Africa's shores, I think I have a better way, and I urge you to hear it objectively and without regard to our past differences. ... The only way we can deflect, and perhaps reverse a process that is virtually certain to result in approval of the Space Traders' offer, is to give up the oppositional stance you are about to adopt, and forthrightly urge the country to accept the Space Traders' offer."

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... Golightly waited until the audience quieted, then continued. "A major, perhaps the principal, motivation for racism in this country is the deeply held belief that black people should not have anything that white people don't have. Not only do whites insist on better jobs, higher incomes, better schools and neighborhoods, better everything, but they also usurp aspects of our culture that have sprung from our very subordination. ... Whites' appropriation of what is ours and their general acquisitiveness are facts we must make work for us. Rather than resisting the Space Traders' offer, 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—a virtual paradise. Remember, most whites are so jealous of their race-based prerogatives that they oppose affirmative action even though many of these programs would re-

move barriers that exclude whites as well as blacks. Can we not expect such whites ... to go all out to prevent blacks from gaining access to an extraterrestrial New Jerusalem? ... Mark my words, our 'milk and honey' story will inspire whites to institute such litigation on the grounds that limiting the Space Traders' offer to black people is unconstitutional discrimination against whites!"

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Justin Jasper, a well-known and highly respected Baptist minister, came to the microphone. "I readily concede Dr. Golightly's expertise in the psychology of whites' thinking. Furthermore, as he requests, I hold in abeyance my deep distrust of a black man whose willing service to whites has led him to become a master minstrel of political mimicry. But my problem with his plan is twofold. First, it rings hollow because it so resembles Dr. Golightly's consistent opposition in the past to all our civil rights initiatives. Once again, he is urging us to accept rather than oppose a racist policy. And, not only are we not to resist, but we are to beg the country to lead us to the sacrificial altar. God may have that power, but Dr. Golightly is not my God!"

A master orator, the Reverend Jasper quickly had his audience with him. "Second, because the proposal lacks truth, it insults my soul. In the forty years I have worked for civil rights, I have lost more battles than I have won, but I have never lost my integrity. Telling the truth about racism has put me in prison and many of my co-workers into early graves. The truth is, Dr. Golightly, that what this country is ready to do to us is wrong. ... I can speak only for myself, but ... I do not choose to save myself by a tactic that may preserve my body at the sacrifice of my soul. Until my Lord calls me home, I do not want to leave this country even for a land of milk and honey. My people were brought here involuntarily, and that is the only way they are going to get me out!"

The Reverend Jasper received a standing ovation. After thanking them, the minister asked everyone to join in singing the old nineteenth-century hymn, "Amazing Grace." ...

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With the hymn's melody still resonating, the coalition's members voted unanimously to approve their defensive package. ... Leaving the hall, everyone agreed that they had done all that could be done to oppose approval of the Space Traders' offer. As for Golightly, his proposal was dismissed as coming from a person who, in their view, had so often sold out black interests. ...

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... Golightly had failed, and he knew it. Sure, he was smarter than they were—smarter even than most whites; but he had finally outsmarted himself. At the crucial moment, when he most needed to help his people, both whites and blacks had rejected as untrustworthy both himself and his plans.

4 JANUARY.

In a nationally televised address, the President sought to reassure Trade supporters that he was responding favorably to their strong messages, and to blacks and whites opposed to the Trade that he would not ignore their views. . . .

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"Of course, I am aware of the sacrifice that some of our most highly regarded citizens would be asked to make in the proposed trade. While these citizens are of only one racial group, absolutely no evidence whatsoever indicates that the selection was intended to discriminate against any race or religion or ethnic background. No decisions have been made, and all options are under review. The materials the Traders have offered us are genuine and perform as promised. Early estimates indicate that, if these materials were made available to this nation, they would solve our economic crisis, and we could look forward to a century of unparalleled prosperity. . . ."

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5 JANUARY.

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Media and business polls all reported tremendous public support for the Trade—unhappy but hardly unexpected news for the nation's richest and most powerful men. First, blacks represented 12 percent of the market and generally consumed much more of their income than did their white counterparts. No one wanted to send that portion of the market into outer space—not even for the social and practical benefits offered by the Space Traders.

Even those benefits were a mixed blessing. Coal and oil companies were not elated at the prospect of an inexhaustible energy source. Similarly, businesses whose profits were based on sales in black ghetto communities

—or who supplied law enforcement agencies, prisons, and other such institutions—faced substantial losses in sales. The real estate industry, for example, annually reaped uncounted millions in commissions on sales and rentals, inflated by the understanding that blacks would not be allowed to purchase or rent in the area. Even these concerns were overshadowed by fears of what the huge influx of gold to pay all state debts would do to the economy, or to the value of either the current money supply or gold.

Most business leaders understood that blacks were crucial in stabilizing the economy with its ever-increasing disparity between the incomes of the rich and the poor. They recognized that potentially turbulent unrest among those on the bottom was deflected by the continuing efforts of poorer whites to ensure that they at least remained ahead of blacks. If blacks were removed from the society, working and middle-class whites—deprived of their racial distraction—might look upward toward the top of the societal well and realize that they as well as the blacks below them suffered because of the gross disparities in opportunities and income.

Many of these corporate leaders and their elected representatives had for years exploited poor whites' ignorance of their real enemy. Now, what had been a comforting insulation of their privileges and wealth posed a serious barrier to what a majority saw as a first priority: persuade the country to reject the Trade. A quick survey of the media and advertising representatives was not encouraging. "It would be quite a challenge," one network executive said, "but we simply can't change this country's view about the superiority of whites and the inferiority of blacks in a week. I doubt you could do it in a decade." Even so, the corporate leaders decided to try. They planned to launch immediately a major media campaign—television, radio, and the press—to exploit both the integration achieved in America and the moral cost of its loss. . . .

Newspaper and magazine publishers promised supportive editorials, but the Vice President and other government representatives, in line with the administration's pro-Trade leanings, argued that the immediate political gains from accepting the Trade would translate into business benefits as well.

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"We need your financial support," the Vice President told corporate leaders, "but our polls show most white voters favor the Trade and the administration is under increasing pressure to do the same. . . ."

"However enticing such benefits of the Trade may be," countered a census expert from a major foundation, "the real attraction for a great

many whites is that it would remove black people from this society. My staff and I have interviewed literally thousands of citizens across the country, and, though they don't say it directly, it's clear that at bottom, they simply think this will be a better country without black people. I fear, gentlemen, that those of us who have been perpetuating this belief over the years have done a better job than we knew."

"I must add what you probably already know," the Vice President responded. "The Administration is leaning toward acceptance of the Space Traders' offer. . . . [The President] knows that the working and middle-class white people in this country want the blacks to go, and if they get a chance to express their real views in the privacy of a polling place, the Trade plan will pass overwhelmingly."

"Bullshit!" roared a billionaire who had made his fortune in construction. "I'm sick of this defeatist talk! . . . Everyone says that money talks. Well dammit, let's get out there and spend some money. If this thing goes to a public referendum, we can buy whatever and whoever is necessary. It sure as hell will not be the first time," he wound up, pounding both fists on the long conference table, "and likely not the last."

. . . The business leaders began making specific plans to suspend all regular broadcasting and, through 16 January, to air nothing but anti-Trade ads and special Trade programs.

6 JANUARY.

Although the Television Evangelists of America also owned jets, they understood that their power lay less in these perks of the wealthy than in their own ability to manipulate their TV congregations' religious feelings. So, after a lengthy conference call, they announced a massive evangelical rally in the Houston Astrodome which would be televised over their religious cable network. The Trade offer was the evangelists' chance to rebuild their prestige and fortunes. . . . They would achieve this much-desired goal by playing on, rather than trying to change, the strongly racist views of their mostly working-class television audiences. True, some of the preachers had a substantial black following, but evangelical support for the Trade would not be the evangelists' decision. Rather, these media Messiahs heralded it as God's will.

The Space Traders were, according to the televised "Gospel," bringing America blessings earned by their listeners' and viewers' faithful dedication to freedom, liberty, and God's word. . . . True, a sacrifice was re-

quired if they were to obtain God's bounty—a painful sacrifice. But here, too, God was testing Americans, his chosen people, to ensure that they were worthy of His bounty, deserving of His love. . . . That night, millions of messages, all urging acceptance of the Space Traders' offer, deluged the President and Congress.

7 JANUARY.

Groups supporting the Space Traders' proposition . . . had set in motion the steps necessary to convene a Constitutional convention in Philadelphia. . . . And there, on this day, on the site of the original Constitutional convention, delegates chosen by the state legislatures quickly drafted, and by a substantial majority passed, the Twenty-seventh Amendment to the Constitution of the United States. It declared:

Without regard to the language or interpretations previously given any other provision of this document, every United States citizen is subject at the call of Congress to selection for special service for periods necessary to protect domestic interests and international needs.

The amendment was scheduled for ratification by the states on 15 January in a national referendum. If ratified, the amendment would validate amendments to existing Selective Service laws authorizing the induction of all blacks into special service for transportation under the terms of the Space Traders' offer.

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10 JANUARY.

In the brief but intense pre-election day campaign, the pro-ratification groups' major argument exhibited an appeal that surprised even those who made it. Their message was straightforward:

The Framers intended America to be a white country. The evidence of their intentions is present in the original Constitution. . . . We have concluded—as the Framers did in the beginning that our survival today requires that we sacrifice the rights of blacks in order to protect and further the interests of whites. The Framers' example must be our guide. Patriotism and not pity must govern our decision. . . .

In response, a coalition of liberal opponents sought to combine pragmatism and principle in what they called their “slippery Trade slope” argument. First, they proclaimed that trading away a group of Americans identifiable by race is wrong and violates our basic principles. The coalition aimed its major thrust, however, at the self-interest of white Americans: “Does not consigning blacks to an unknown fate set a dangerous precedent?” the liberals demanded. “Who will be next?”

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Astutely sidestepping the Trade precedent arguments, the response focused on the past sacrifices of blacks. “In each instance,” they contended, “the sacrifice of black rights was absolutely necessary to accomplish an important government purpose. These decisions were neither arbitrary nor capricious. Without the compromises on slavery in the Constitution of 1787, there would be no America. Nor would there be any framework under which those opposed to slavery could continue the struggle that eventually led to the Civil War and emancipation.”

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In countering the anti-Trade contention that the sacrifice of black rights was both evil and unprecedented, pro-Traders claimed, “Beginning with the Civil War in which black people gained their liberty, this nation has called on its people to serve in its defense. Many men and women have voluntarily enlisted in the armed services, but literally millions of men have been conscripted, required to serve their country and, if necessary, to sacrifice not simply their rights but also their lives. As for the argument that the sacrifice of black rights in political compromises was odious racial discrimination, pro-Trade forces contended that “fortuitous fate and not blatant racism” should be held responsible. . . . “All Americans are expected to make sacrifices for the good of their country. Black people are no exceptions to this basic obligation of citizenship. Their role may be special, but so is that of many of those who serve. The role that blacks may be called on to play is, however regrettable, neither immoral nor unconstitutional.”

. . . The “racial sacrifice as historic necessity” argument made the pro-Trade position irresistible to millions of voters—and to their Congressional representatives.

11 JANUARY.

Unconfirmed media reports asserted that U.S. officials tried in secret negotiations to get the Space Traders to take in trade only those blacks currently under the jurisdiction of the criminal justice system—that is, in prison or on parole or probation. Government negotiators noted that this would include almost one half of the black males in the 20-to-29-year-old age bracket.² Negotiators were also reported to have offered to trade blacks locked in the inner cities. . . . In rejecting the American offer, the Space Traders warned that they would withdraw their proposition unless the United States halted the flight of the growing numbers of blacks who—fearing the worst—were fleeing the country.

In response, executive orders barred blacks from leaving the country until the Space Traders’ proposition was fully debated and resolved. “It is your patriotic duty,” blacks were told by the White House, “to allow this great issue to be resolved through the democratic process and in accordance with the rule of law.” To ensure that the trade debate and referendum were concluded in a “noncoercive environment,” all blacks serving in the military were placed on furlough and relieved of their weapons. State officials took similar action with respect to blacks on active duty in state and local police forces.

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14 JANUARY.

The U.S. government announced that as a result of intensive negotiations with Space Trader leaders, the visitors had agreed to amend their offer and exclude from the Trade all black people who were seventy years old and older, seriously handicapped, ill, or injured. In addition, a thousand otherwise-eligible blacks and their immediate families would be left behind as trustees of black property and possessions, all of which were to be stored or held in escrow in case blacks were returned to this country. Each of the thousand black “detainees” was required to pledge to accept a subordinate status with “suspended citizenship” until such time as the “special service inductees” were returned to the country. The administration selected blacks to remain who had records of loyalty to the conservative party and no recorded instances of militant activity. Even so, many of those blacks selected declined to remain. “We will, like the others,” one

black who rejected detainee status said, "take our chances with the Referendum."

15 JANUARY.

By 70 percent to 30 percent, American citizens voted to ratify the constitutional amendment that provided a legal basis for acceptance of the Space Traders' offer. In anticipation of this result, government agencies had secretly made preparations to facilitate the transfer. Some blacks escaped, and many thousands lost their lives in futile efforts to resist the joint federal and state police teams responsible for rounding up, cataloguing, and transporting blacks to the coast.

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17 JANUARY.

The last Martin Luther King holiday the nation would ever observe dawned on an extraordinary sight. In the night, the Space Traders had drawn their strange ships right up to the beaches and discharged their cargoes of gold, minerals, and machinery. They closed the doors. As the sun rose, they began to arrange in long lines some twenty million silent black men, women, and children, including babes in arms. First, the Traders directed the inductees to strip of all but a single undergarment. Then the doors swung open. Ahead, the traders directed them toward the yawning holds where they would be swallowed by what Milton might have described as a "darkness visible." Behind them, the U.S. guards, guns in hand, stood watch. 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.

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NOTES

1. Richard Delgado & Jean Stefancic, Derrick Bell's *Chronicle of the Space Traders: Would the U.S. Sacrifice People of Color If the Price Were Right?*, 62 U. Colo. L. Rev. 321 (1991).

2. David Savage, 1 in 4 Young Blacks in Jail Or in Court Control, *Study Says*, L.A. Times, Feb. 27, 1990, p. 1, col. 1, at § A.

Racial Realism

Black people's struggle for freedom, justice, and dignity is as old as this nation. . . . In spite of dramatic civil rights movements and periodic victories in the legislatures, black Americans by no means are equal to whites. Racial equality is, in fact, not a realistic goal. By constantly aiming for a status that is unobtainable in a perilously racist America, black Americans face frustration and despair. Over time, our persistent quest for integration has hardened into self-defeating rigidity.

Black people need reform of our civil rights strategies as badly as those in the law needed a new way to consider American jurisprudence prior to the advent of the Legal Realists. By viewing the law—and by extension, the courts—as instruments for preserving the status quo and only periodically and unpredictably serving as a refuge of oppressed people, blacks can refine the work of the Realists. Rather than challenging the entire jurisprudential system, as the Realists did, blacks' challenge must be much narrower—to the principle of racial equality. This new movement—Racial Realism—is a legal and social mechanism on which blacks can rely to have their voice and outrage heard.

. . . Racial Realism is to race relations what Legal Realism is to jurisprudential thought. The Legal Realists were a group of scholars in the early part of the twentieth century who challenged the classical structure of law as a formal group of rules that, if properly applied to any given situation, lead to a right—and therefore just—result.¹ . . . Realists accept a critical and empirical attitude towards the law, in contrast to the formalists who insist that law is logically self-evident, objective, a priori valid, and internally consistent. . . . They stress the function of law, rather than the abstract conceptualization of it.

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24 Conn. L. Rev. 363 (1992). Used by permission.