Resistance and Transformation: Re-Reading Mari Matsuda in the Postracial Era

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THE POSTRACIAL ERA

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Sometimes the best theories are those that seem to tell us what is obvious but unspoken, reflecting the world as it is to help us organize, frame, and talk about our reality in new and useful ways. Other times, the best theories seem to be those that are counterintuitive, challenging us to rethink our world through a different frame and maybe even a different language that may feel unfamiliar but are nonetheless true. Mari Matsuda’s work exemplifies both these types of theories. Her work also exhibits a timelessness that renders her writing eminently relevant and readable even after decades of rapidly developing race scholarship.

This essay considers the impact and continuing relevance of Mari Matsuda’s seminal 1987 article, Looking to the Bottom: Critical Legal Studies and Reparations. I was in my third year of law school when I first read this piece in the course of researching for a class paper on Asian American civil rights. At the time, I had barely an inkling of the article’s importance in jurisprudence and the birth of Critical Race Theory. Back then, I was mainly preoccupied with its significance to me personally as an aspiring law professor. It is almost needless to say—because so many of us have felt it—that Mari Matsuda has been an influential and welcoming presence to especially people of color in legal academia.

In the ensuing years, I have come across Looking to the Bottom over and over again in bits and pieces as countless writers have turned to Matsuda’s words, ideas, and perspectives to help articulate their views on law and justice. The symposium by the Asian Pacific American Law Journal occasioned my re-reading of the article in full, after fifteen years, and I find that its effect is no less significant today than it was back then. Indeed, read in the so-called “postracial” era of diversity celebration, Looking to the Bottom may feel not only true, but also prophetic. Such an interpretation, however, would underestimate the profound impact of Mari Matsuda’s work: hers was not a project of prediction, but of resistance and transformation.

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Accordingly, in Part I, I describe some of the changes that have occurred as a result of her resistance. Through her work, Matsuda has not only contributed to the birth of Critical Race Theory and the growth of jurisprudence in general, but has also helped transform our commonsense understanding about race. Part II then explains how her approach of “looking to the bottom” continues to generate new insights for the discourse around race today. In particular, I analyze how Matsuda’s approach can address three common critiques about postracial America and help advance a robust and productive agenda toward greater racial justice in the twenty-first century.

I. CONSTRUCTING A NEW COMMON SENSE VIEW OF RACE

It is no exaggeration to say that Mari Matsuda has been a groundbreaking figure since the moment she joined the academy when she found herself as the only female Asian American law professor in the United States.⁵ Rather than viewing her situation as frightening, depressing, or alienating, as many of us might, she describes it as having afforded her the opportunity to agitate as a “traveling diva.”⁴ So perhaps it is not surprising that Looking to the Bottom, one of her first publications, also turned out to be one of the most influential pieces of legal scholarship ever written and served as a foundational work in the development of Critical Race Theory. In it, one can discern many of the hallmarks of the Critical Race Theory movement, including the notion that racism is an ordinary fact of everyday life for people of color, that race emerges out of social experience and knowledge, that counter-narratives are necessary to correct the often oppressive tendency of law, and that our understanding of collective and individual identities must take into account varying forms of racialization and intersectionality.⁵ The significance of these fundamental elements of Critical Race Theory reaches beyond the movement’s practitioners to inform the work of any serious scholar grappling with the complex issues of race and inequality.

Moreover, Matsuda’s epistemological and normative claims in Looking to the Bottom have also become standard approaches for any good theoretical writing. For example, her emphasis on narrative, especially narratives of the oppressed, helps mend the gap that often looms large between theoretical abstractions and everyday lived experiences.⁶ By not only legitimating but also prioritizing minority voices that describe oppression, Matsuda helped to expand the field of inquiry in standard legal scholarship. In so doing, she gave voice to those who had been silenced or ignored. To be sure, not every legal scholar

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⁵ See MARI J. MATSUDA, WHERE IS YOUR BODY?: AND OTHER ESSAYS ON RACE, GENDER, AND THE LAW ix (1996) [hereinafter MATSUDA, WHERE IS YOUR BODY?].
⁴ Id.
⁶ Although Matsuda focuses on people of color in Looking to the Bottom, elsewhere she has analyzed subordination based on gender and sexuality. See MATSUDA, WHERE IS YOUR BODY?, supra note 3; Mari Matsuda, Love, Change, 17 YALE J.L. & FEMINISM 185 (2005).
engages in storytelling and some are critical of that method. But, today, anyone doing theoretical work must engage with narratives of oppression whether they want to or not, because such narratives threaten to expose the potential falsity of the assumptions and logic that go into any theory of justice.

In addition, Matsuda’s article spoke to the ideas of diversity and inclusion in ways that advanced the material situation of racial minorities. *Looking to the Bottom* argued, for example, that it was not enough merely to employ law professors of color and relegate them to a token status within legal academia. Instead, Matsuda observed that it was also necessary to read and cite to their works in an effort to embrace a “bottom-up perspective.” One might characterize this effort as an example of interest convergence. By turning to previously untapped sources of knowledge about the lived reality of injustice and discrimination, mainstream legal scholars would be able to develop theories that are richer, truer, and more relevant than before. At the same time, this perspective would help to elevate the minority scholar by recognizing her as an important contributor of knowledge whose work calls for engagement rather than continued marginalization. Matsuda explicitly envisioned this process as transformative—that is, tearing down and reconstructing the systems and institutions of power and knowledge that had heretofore excluded the experiences, voices, and the very identities of the non-white other. Today, Matsuda’s contention that the experience of discrimination renders one’s perspective not only unique but also uniquely valuable is widely accepted as that idea now undergirds support for affirmative action by government, educational institutions, and private businesses.

However, the most compelling argument continues to be Matsuda’s moral argument for looking to the bottom. It is here that her prescriptive message to fellow progressives in academia is most keenly felt. She reminds us that we in the legal academy are also lawyers and advocates and that our work must serve the disadvantaged, the ones who daily face unjust conditions of life. In this important work, our role is not to define the needs of those at the bottom from our own perspective. Rather, our role is to learn from those at the bottom.

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10 Interest convergence theory posits that the advancement of minority interests will not occur unless it somehow serves the interests of the majority as well. See Derrick A. Bell, Jr., *Brown vs. Board of Education and the Interest Convergence Dilemma*, 93 Harv. L. Rev. 518, 523 (1980).


because they have “the real interest and the most information” as well as a more concrete and realistic vision of a better future. Although we must be critical at all times (for that is our native role as theorists, and moreover, injustice can also come from among the disadvantaged), Matsuda exhorts us to be mindful that a radical critique of real-life strategies that are more pragmatic than principled can be misplaced. This is not only because there are various avenues toward justice, but also because such a critique can sometimes pay insufficient respect to the traditions of resistance that have given hope and meaning to those who continue to struggle for justice even while at the bottom. And it is here, in the moral imperative of looking to the bottom, where important lessons can be drawn for an anti-racist movement in the twenty-first century.

II. SOME LESSONS FOR OUR POSTRACIAL ERA

Lately, the idea of a “postracial” America has captured the public imagination. And like so many other figments of the imagination, it is hard to define. Does it mean that race no longer matters? Does it claim that we have achieved racial equality at last? I have been grappling with these questions in my own work. (FYI, my answers to them are no and no). My sense is that the idea of the postracial signifies a dramatic transformation in another, well-known figment: the concept of race. By “figment” I do not mean to suggest that race is not real, but instead to reaffirm that it is made up and kept up by people and institutions that are invested in race as an organizing principle. In this way, race is simultaneously imaginary and real. And because it is “made up,” it is also capable of being re-made. Indeed, such re-making of the definition of race has been occurring thanks to decades of hard work by people like Mari Matsuda and others who have offered us a new commonsense understanding of race. Moreover, they have accomplished this by asserting agency and authority over the meaning of race as minority scholars whose experience with discrimination establishes a particular kind of “standing” in anti-racist discourse. Thus, we have moved away from the traditional understanding of race whereby whites

13 Matsuda, Looking to the Bottom, supra note 1, at 346-47.
14 See id. at 353-54.
15 See Sheila Thomas, Debunking the Myth of a Post-Racial Society, 37-FALL HUM. RTS. 22, 22 (2010). While the notion that the United States has become postracial appears to have originated from the media, race scholars have also liberally invoked the term. See id.; see, e.g., DEVON W. CARBADO & MITU GULATI, ACTING WHITE?: RETHINKING RACE IN POST-RACIAL AMERICA (2013); Signithia Fordham, Passin’ for Black: Race, Identity, and Bone Memory in Postracial America, 80(1) HARV. EDUC. REV. 4 (2010); Girardeau A. Spann, Postracial Discrimination, 5 MOD. AM. 26, 41-42 (2009). Some other examples of the use of the term are TERRY SMITH, BARACK OBAMA, POSTRACIALISM, AND THE POLITICS OF TRIANGULATION (2012); ANDRA GILLESPIE, WHOSE BLACK POLITICS? CASES IN POST-RACIAL BLACK LEadership (2009); Ian F. Haney Lopez, Post-Racial Racism: Racial Stratification and Mass Incarceration in the Age of Obama, 98 CALIF. L. REV. 1023 (2010).
16 See MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES 55 (2d ed. 1994).
17 See supra Part I.
18 Mari Matsuda’s discussion of appropriation and standing explain the legitimacy of these moves. See Matsuda, Looking to the Bottom, supra note 1, at 333 (on appropriation), 346 (on standing).
dominated the meaning-making process and imposed the social conditions of difference, denigration, and exclusion upon racial minorities. In the last twenty years or so, these conditions have been successfully challenged by people of color who have transformed the concept of race by linking it to the notion of identity, which demands equality and inclusion—especially for those who belong to groups that have experienced discrimination and disadvantage, both past and present.

Despite this transformation, or perhaps because of it, progressive writers have largely rejected the notion of a postracial America. There are several reasons for their skepticism. Some define the postracial society as one marked by a premature belief in the end of racism. Others fear that it signals a return to the false assertion of race neutrality and, with it, the abandonment of race-conscious programs such as affirmative action. Still others worry that being postracial means the loss of a cherished identity. Although each of these critiques is distinct, they have in common a nearly existential anxiety over erasure, which would render many of our most important and material concerns unspeakable and irrelevant.

Although I do not believe that we have arrived at such a desolate place, there is no gainsaying that this fear is both genuine and long-standing. In a racially stratified society such as ours, any significant effort toward redistribution of power is likely to be met with resistance by those invested in the status quo. Any success, too, is likely to be met with backlash. But here I wish to take Mari Matsuda’s cue to focus not on fear but on hope, resilience, and work—

19 Historical examples of these three conditions include slavery, segregation, and immigration and naturalization restrictions, all of which were based on ascriptions of race.

20 By “identity,” I mean both personal and collective identity that serves as a basis for equality and inclusion demands—formal (e.g., affirmative action) and informal (e.g., dignity and respect). See generally Janine Young Kim, Postracialism: Race After Exclusion, 17 LEWIS & CLARK L. REV. 1063 (2013).


24 See, e.g., Matsuda, Looking to the Bottom, supra note 1, at 336-37 (describing the resistance by black jazz musicians against what she calls “de-transformation,” cooptation, and commodification); see also Crenshaw, supra note 21, at 1325-27 (describing postracialism as the latest and most powerful iteration of colorblind ideology). It seems quite natural for progressives to fear regression and cooption; indeed, Critical Race Theory itself is said to have developed out of alarm over the state of the civil rights movement and a sense of “near desperation.” See André Douglas Pond Cummings, Derrick Bell: Godfather Provocateur, 28 HARV. J. ON RACIAL & ETHNIC JUST. 51, 52 (2012).

engage with the new discourse forming around the idea of the postracial and to transform it into an opportunity to further subvert racial hierarchy and to develop new theories and methods toward racial justice. Whether one believes that postracialism is a cause of continued subordination or, as I do, that it mainly signifies changes in race thinking that are largely progressive, Professor Matsuda’s prescription to look to the bottom can bring fresh insights and correctives for anti-racist agendas that may be faltering as new social conditions and fracturing alliances alter the political landscape.26

So let me turn to the three critiques identified above, elaborate on each of them, and proffer some reasons why looking to the bottom may help to address these concerns and direct our efforts toward a more productive agenda. The first charge is that postracialism represents a denial of continuing racism in the United States.27 Because discussions about a postracial America arose in the context of the successful presidential campaign of Barack Obama, his presidency may be said to either symbolize or usher in a postracial era in which race is no longer an obstacle for people of color.28 On the one hand, the response to such an obviously counterfactual claim is simple: we must persist in looking to the bottom for the narratives that speak of the racial subordination that currently exists. As Matsuda suggests, theoretical abstractions and moral platitudes are unequal to the stories of the concrete experiences and struggles of those at the bottom–stories that necessarily describe oppression in our unequal society. If one is truly concerned about justice in the United States, these stories should command attention and redress, even if solutions to the problem are not yet evident.29

On the other hand, we must confront the fact that stories of oppression are much more complex and varied than they once were, and thus their messages are more subtle and even confusing.30 Matsuda’s article, for example, refers to multiple narratives that depict the choices of people like Frederick Douglass,31 Rosa Parks,32 and the young Nisei who volunteered to fight in World War II from American concentration camps.33 These individuals struggled against slavery, segregation, and internment. Today, narratives from the bottom may look much less like Rosa Parks’s arrest when she decided to stay seated while a white man stood on a Montgomery bus, and more like Frank Wu’s recounting of the white

26 See Cho, supra note 22, at 1600; Crenshaw, supra note 21, at 1314.
27 In this essay, I admittedly use the terms “postracial” and “postracialism” somewhat loosely and interchangeably. The reason for this is that there is no consensus on the meaning of these terms, as the three critiques I discuss demonstrate. Thus, the words are used here largely as placeholders for various concerns about the role of race and racism in contemporary American society.
29 See Matsuda, Looking to the Bottom, supra note 1, at 353 (“Indeed, in twentieth century America the play of race, class, and post-industrial capitalism is so different from anything that has come before that no one knows what the process of fundamental social change will look like in our landscape.”).
30 Cf. Lawrence, supra note 7, at 252 (observing that every story has a moral).
31 See Matsuda, Looking to the Bottom, supra note 1, at 334-35.
32 See id. at 361.
33 See id. at 339.
man who got up and moved when a black man “plopped down” across from him on the San Francisco Muni train. 34 How should we interpret the reaction of the black man who then yelled out to the white, “What’s the matter? Too much color for you?”35 Did it reveal a deep understanding or misunderstanding of the situation? If the white man did not move because of “color,” should we nonetheless expect him to stay in his original seat out of consideration for the signal he is likely to be sending to his seatmates?36 Wu, a highly-respected legal scholar who has written about race many times during his nearly twenty years in legal academia, admits that he is “unsure what to make of this vignette” and “wonder[s] what if anything [he] might be able to do to change the world.”37

It does not inevitably follow from such ambivalence that racism does not exist or cannot be talked about. But it does appear that the language and concepts traditionally used to understand racial oppression can be inadequate. The kind of bare-knuckle racism demonstrated in segregation, racial violence, and the use of epithets in everyday speech are no longer the norm; now, we speak of implicit bias and microaggressions (especially by a well-meaning majority) as the prevailing forms of racial subordination.38 Moreover, continuing to conceptualize race solely through the lens of such older forms of oppression is likely to stymie the development of interpretive tools that can make Wu’s Muni ride a coherent narrative that participates in anti-racist theory-building.

So despite the uncertainty and even discomfort raised by many contemporary stories of race, we need more of them, not less.39 It is through hearing and learning from these race stories from the bottom that we can develop


35 Id.

36 Some readers might reflexively reject the idea that the white man should remain in his seat to spare the black man’s feelings, concluding that the story indicates it is the black man that has the “problem” of misunderstanding the white man’s intent. But we often act in ways to avoid interpretation by others that may offend or hurt their feelings. A male employer who innocently believes that his female employee is wearing an attractive sweater may reasonably suppress his initial inclination to compliment her. A woman may refrain from detailing her recent visit to her mother to a friend grieving the death of a parent. A man about to spit on the street usually turns his head away from other pedestrians even though he knows that the spittle will never make contact with them. These are decisions that arise from ordinary courtesy and common sense, where individuals make efforts to take account of the larger, shared context in which their words and actions occur. Thus, it does not serve to react defensively and insist that one is not being racist (or sexist/callous/rude). Instead, what may be called for is a means (perhaps through more narratives like Riding Race) of showing the white man on the train how and why his innocently intended act elicited the response he received.

37 Wu, supra note 34. In addition, Dean Wu discloses that his perspective of the events on the train is informed (and complicated) by the fact that he is an Asian American man who grew up in a white suburb and taught for a decade at a historically black institution. See id.


39 Cf. Banks, supra note 28, at 41 (calling the traditional narrative of racism “oddly comforting in its familiarity”).
a useful theory in these postracial times. Naked exclusion still exists; there is currently systematic mass incarceration of black and brown people in the United States, a deeply unequal educational system, and significant residential segregation that lead to immense suffering within communities at the bottom. But at least for progressive academics, the need may be even greater for the stories that get told less often because they are harder to pin down—stories that are, as Dean Wu writes, “nothing and everything, merely an incident neither inconsequential nor unique.” Matsuda admonished us to look to the bottom so that the academic’s search for a neat and complete theory is tempered by understanding how those at the bottom live with duality, ambiguity, and inconsistency. We need to heed Matsuda’s words now more than ever.

The second critique of postracial America represents an attack on what is viewed as the prevailing racial ideology of the twenty-first century, identified as a new and more powerful iteration of colorblindness. In contrast to the first critique, which rejects the claim that our nation is actually postracial in the sense of being postracist, this critique appears to posit that we are (or are at least becoming) postracial in a way that is deeply problematic from a racial justice point of view. These two critiques are clearly related: it is because racism and conditions of inequality persist that colorblind attitudes, policies, and laws will work to maintain, and perhaps exacerbate, the unjust status quo.

The threat of colorblindness is not new. Colorblind ideology has been embraced by racial conservatives since at least the 1970s to undo the achievements of the Civil Rights Era. Adherence to colorblindness would mean the end of race-conscious remedies, such as affirmative action, racial redistricting, and perhaps even antidiscrimination laws, because it mandates that we ignore race in crafting public policies.

Postracial ideology is said to take colorblindness to the next level, not only through its descriptive claim that racial inequality has ceased to exist, but also by

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40 See generally Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness (2012) (arguing that the criminal justice system works to subordinate racial minorities much in the manner of Jim Crow and slavery).
43 Wu, supra note 34.
44 See Matsuda, Looking to the Bottom, supra note 1, at 333-42.
47 See Plessy v. Ferguson, 163 U.S. 537, 559 (Harlan, J., dissenting). Although Justice Harlan coined the phrase “color-blind,” the idea is also closely associated with Martin Luther King, Jr., who expressed his hope in 1963 that his children will “one day live in a nation where they will not be judged by the color of their skin but by the content of their character.” See Bonilla-Silva, supra note 46, at 1. Thus, the term is ultimately ambiguous. For progressives, the ideal of colorblindness means that race is ignored in contexts where it does not (or should not) matter. For conservatives, colorblindness requires that race is ignored even in contexts where it does.
its stylishness and pragmatism. It is stylish because the label appears new and purports to capture twenty-first century, postmodernist sensibilities toward race; accordingly, it is said to appeal particularly to “disaffected youth.” It is also pragmatic because it eschews aggressive opposition to racial injustice, and instead seeks to compromise and scale back on hard-fought victories of the past in order to avoid unseemly racial conflict. Such pragmatism is likely to be espoused in particular by white liberals, who are described as “exhausted” by what seems to them be unending racial guilt and remediation. Although both disaffected youths and exhausted whites are likely to espouse the abstract goal of racial equality, this critique suggests that they are increasingly distancing themselves from more radical civil rights advocates who are viewed as too extreme, too angry, and too “old school” to acknowledge the complexity of race today. Such distancing, moreover, is occurring not only at the level of ideology but also method (e.g., ways of political mobilization and protest). Thus, postracial America is marked by a fracturing of solidarity among those who have traditionally been allies in racial progress: race radicals, youth, and liberals. If this is true, what is to be done? Is part of our task to try to rebuild these alliances that seem to be broken or are we to move forward without them? My own preference is for the former course of action, so that we move forward together to create and realize a shared vision of a more just future. History tells us that while small social movements do effect change, broad-scale movements—like the civil rights and anticolonial movements of the 1950s and 60s—can be revolutionary. Broad coalitions of people make change more viable and faster. As theorists, too, our job is not only to critique, but through critique, also persuade. Therefore, despite the difficulties involved in the work of persuasion, we should seek to enlarge rather than disown the varied collections of people willing to participate in achieving real social change.

Looking to the Bottom exemplifies just such a project. The article is, at heart, a critique of Critical Legal Studies (“CLS”). Yet Matsuda does not set

48 In fact, however, the word “postracial” can be traced back to progressive writings in the 1970s. See Ada Harvey Wingfield & Joe R. Feagin, Yes We Can? White Racial Framing and the 2008 Presidential Campaign 217 (2010).
50 See Crenshaw, supra note 21, at 1332-35. For example, Sumi Cho argues that postracialism allows people to embrace racial equality and at the same time denounce affirmative action by casting race-conscious remedies as divisive and anachronistic. See Cho, supra note 22, at 1600-03.
52 See Cho, supra note 22, at 1603-04.
53 See id. at 1596-97.
54 See Crenshaw, supra note 21, at 1341.
55 See Banks, supra note 28, at 52.
56 CLS is an “intellectual program” developed in the 1970s that “challenged the claims that law is objective, determinate, and politically neutral.” Robert L. Hayman, Jr. et al., Jurisprudence
out to destroy CLS, but urges CLS practitioners to look to the bottom for
guidance toward developing normative priorities within CLS that are informed
by the real experiences and needs of subordinated people. In doing so, she
sought to create a fruitful coalition between people of color and the presumably
well-meaning white males who dominated the CLS movement. A particular
means of coalition building that Matsuda suggests is consciousness-raising,
which includes “self-inquiry into one’s attitudes toward race, dialogue across
racial lines, and inquiry into the life experiences of people of color.”
This method, Matsuda argues, can help forge a stronger commitment to racial justice
that may overcome the difficulties of achieving it.

It seems to me that consciousness-raising has application not only among
the radical theorists of CLS, but to anyone affected by race—which is to say,
everyone. The critique against postracial ideology observes that liberals and the
youth are “persuadable” toward a more conservative racial agenda masked by the
universal themes of equality and unity. But this also implies that defection by
these groups is neither inevitable nor irreversible. The struggle for racial justice
is just that—a struggle; we have always battled, and perhaps always will have to
battle, white supremacist racial projects. Surely victory will entail—as both
means and end—the predominance (in all senses of the word) of allies who are
genuinely committed to realizing equality and unity. In my mind, this alliance
includes those well-meaning liberals and youth who, precisely because they are
well-meaning, are most likely to be influenced by the consciousness-raising
method Matsuda advocates.

To be clear, while I believe that preservation of alliances is important, I am
not suggesting that we hew to the “old school” understanding of race and racism.
The appeal of postracialism is real and we must take account of it, which
includes recognition that much has changed since those old school
understandings were first developed. We are a much more racially integrated
and inclusive society than in the 1960s or even the 1990s, and the opportunities
and challenges facing racial minorities are in many ways more diverse. Thus, the
issues surrounding race have indeed become more complex, although I think that
this point is sometimes overstated to the point of debilitating productive
discussions toward furthering racial progress. It is a grave mistake to conflate
political sophistication with a brand of postmodernist indeterminacy that offers
little hope of improving the life chances of those at the bottom. At the same

57 Matsuda, Looking to the Bottom, supra note 1, at 359.
58 See id.
59 See Cho, supra note 22, at 1600.
60 Cf. OMI & WINANT, supra note 16, at 55 (“The effort must be made to understand race as an unstable
and ‘decentered’ complex of social meanings constantly being transformed by political struggle.”).
61 See, e.g., TOURE, WHO’S AFRAID OF POST-BLACKNESS?: WHAT IT MEANS TO BE BLACK NOW (2011)
denying that any unified notion of black identity exists).
time, we cannot dismiss postracialism as merely a fad or a capitulation to self-interest but must instead engage with the new conditions that racial progress has engendered.

Accordingly, it is important, as Matsuda has argued, to expand the dialogue. For example, while employment discrimination scholarship has traditionally focused on hiring and firing decisions, Devon Carbado and Mitu Gulati have explored the conditions of employment “after inclusion” that reinforce white normativity and create pressures for employees of color to engage in strategies of “racial comfort.”

Carbado and Gulati explain that when such employees are forced to perform their identities in ways that make whites comfortable, it is a form of employment discrimination that remains unacknowledged by law. Notably, such stories of discrimination do not necessarily come from what one typically imagines as the “bottom”; indeed, young associates of color at a prestigious law firm are probably more likely to experience the pressure to perform race in a comforting way than, say, minority employees at a meatpacking plant. In an increasingly inclusive society, the “bottom” shifts depending on the context. Such shifts do render discussions about race and racism more complex but not unmanageable, as Carbado and Gulati’s incisive analysis demonstrates. In addition, grappling with these contextual shifts can illuminate how racism does not necessarily end by virtue of there being such a thing as young lawyers (or doctors, or professors, or even U.S. Presidents) of

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63 See id.
64 Id. at 1289-90. The factory employees, however, may experience other severe forms of discrimination. See, e.g., Garcia v. Spun Steak Co., 998 F.2d 1480 (9th Cir. 1993) (upholding employer’s English-only policy in a traditionally Spanish-speaking workplace).
65 See Devon Carbado, Catherine Fisk & Mitu Gulati, After Inclusion, 4 ANN. REV. L. SOC. SCI. 83, 84 (2008). While one might argue that this has long been the case because there were always minorities who may be characterized as “included” (even in the context of slavery, there was a distinction made between “house slaves” and “field slaves”), there was greater stability to the notion of the bottom than there is today. In fact, one senses such stability in Looking to the Bottom, where the distinction between “people of color” and “minority scholars” is often elided. See Matsuda, Looking to the Bottom, supra note 1, at 326-30. It may be tempting to criticize Matsuda for failing to recognize that minority law professors are hardly the bottom of society—after all, they are highly educated, hold prestigious jobs, and are probably firmly ensconced in the middle class. However, this criticism overlooks the fact that, as Matsuda described during this symposium, minority professors were often hired and tenured in the 1980s under pressure from student protests and threat of litigation. Thus, there was a real and palpable sense of exclusion even among those who were ostensibly included. Moreover, according to Kimberlé Crenshaw, Critical Race Theory’s “point of departure” was Harvard Law School’s refusal to hire a minority professor in 1982, despite having no minority professors in its tenured ranks. See Crenshaw, supra note 21, at 1264-65. Crenshaw also suggests that when the students at Harvard Law School insisted on hiring a professor of color, they sought someone who “lived the life they would teach about.” Id. at 1271.
color. Instead, they support the need for a fuller notion of racial inclusion that must be developed in order to see racism’s true end.

The third critique defines postracialism as encompassing a deracialization process, one that presumably involves divestment from, or dis-recognition of, the meanings that have coalesced around race. In many ways, this is the most difficult argument to unpack because the concept of identity, especially racial identity, is so fraught.\(^\text{67}\) Identity is a construct. It is simultaneously personal and political, a state of being as well as becoming, requiring both performance and authenticity.\(^\text{68}\) In our postmodern age with its myriad scientific and technological tools that broaden the possibilities of (re)construction (e.g., plastic surgery, social media), identity is fetishized.\(^\text{69}\) And while the project of self-construction may be generally seen as involving mere preferences, racial identity construction has a strong normative and ethical component to it because it is widely believed to be the social product of a history and experience of oppression.

Against this backdrop, we may discern why people of color oppose deracialization, or to put it another way, why the transcendence of race would be considered a loss.\(^\text{70}\) In the past, ascriptions of racial identity were used by whites in order to engage in differentiation, denigration, and exclusion of racial minorities across all dimensions of public and private life. Today, however, the concept of race embraces meanings that are valuable to people of color.\(^\text{71}\) Such so doing, Obama has been credited with ushering in a new form of politics—especially black politics—that can be termed postracial. See generally GWEN IFILL, THE BREAKTHROUGH: POLITICS AND RACE IN THE AGE OF OBAMA (2009) (exploring the shift among black politicians from protest politics to mainstream politics).

\(^{67}\) As one observer writes in describing identity in relation to the postmodern condition: “Increasingly, people are living through the ‘dissolution of the self’ discussed within the academy—and experiencing directly the shocks of dislocation, the dilemmas of identity, and the thrills of newly opened vistas.” KENNETH J. GERGEN, THE SATURATED SELF: DILEMMAS OF IDENTITY IN CONTEMPORARY LIFE vii (1991). The 1990s and 2000s also witnessed the rise of multiracial identity, which emerged in debates about the racial categories in the U.S. census and in the media through celebrities like Tiger Woods who self-identified as “cablinasian” on Oprah Winfrey’s talk show. See KIMBERLY MCCLAN DÁCOSTA, MAKING MULTIRACIALS: STATE, FAMILY, AND MARKET IN THE REDRAWING OF THE COLOR LINE 1-3 (2007). Critics of multiracial identity argue that the assertion of such identity merely reinforces racial hierarchy because multiracials are actually staking out an intermediate position above blacks. See, e.g., Rainier Spencer, Militant Multiraciality: Rejecting Race and Rejecting the Conveniences of Complicity, in COLOR STRUCK: ESSAYS ON RACE AND ETHNICITY IN GLOBAL PERSPECTIVE 155, 158 (Julius O. Adekunle & Hettie V. Williams ed., 2010).

\(^{68}\) See Carbado & Gulati, Working Identity, supra note 62, at 1264, nn.8-9.

\(^{69}\) See, e.g., SHERRY TURKLE, ALONE TOGETHER: WHY WE EXPECT MORE FROM TECHNOLOGY AND LESS FROM EACH OTHER (2011) (discussing the inordinate amount of time and near agonizing thought that gets put into building one’s Facebook page); see also TOURE, supra note 61, at 11 (suggesting that “the ability to maneuver within white society . . . is often tied to your ability to modulate” black identity). One might also consider the popularity of makeover shows—from the somewhat moderate alterations being made on TLC’s What Not to Wear to the quite radical changes made on ABC’s Extreme Makeover—and the ways that they engage with ideas of both performance and authenticity through a (re)making of the self.

\(^{70}\) To be clear, race transcendence is not the same as race “blindness.” The idea of blindness is strongly associated with the ideological commitments that are described above. See supra text accompanying note 47. By using the word transcendence, I am trying to explore more broadly commitments that may lie outside of such ideological, and usually conservative, positions.

\(^{71}\) See, e.g., Roy D. Morrison II, Self-Transformation in American Blacks: The Harlem Renaissance and
value is not restricted to race’s instrumental uses—say, in enabling claims under contemporary affirmative action or diversity programs—but extends into the more personal, communal, and symbolic realms as well. Race has become a fundamental aspect of identity because it has been forged by shared histories and shared experiences of discrimination. Thus, race speaks to the felt bonds of culture, mutual support, belonging, and kinship. In light of this evolution in the meaning of race, it is unsurprising that many people of color are reluctant to embrace a postracial, race-transcendent outlook.

There is a down side to race, however, even apart from the continuing influence of difference, denigration, and exclusion. Constructing a unified and coherent political entity out of diverse individuals, families, tribes, and ethnicities has required a certain degree of essentialism and intra-group discipline. Because of the particularly ethical commitment traditionally involved in self-identifying as non-white, there are strong norms against the “sellout” and the “race traitor” that also make potentially self-compromising performance demands. Indeed, such pressures may be greater than ever in today’s diversity oriented society, where the assertion of a non-white identity may be as much for pecuniary gain as it is expressive of identification and solidarity with the oppressed. In this context, both non-whites and whites may demand a racially “authentic” performance that is not much more than an essentialized definition of racial identity.

Over time, many people of color have expressed the personal
pain that these pressures cause. As a result of these pressures, particularly in our postracial age, we may be seeing an outright rejection of race among people of color who resent the constraints that racial identity seems to impose from all sides. Moreover, the attraction of racelessness is amplified precisely because it is couched in terms of maximizing freedom over one’s individual identity.

It is uncertain whether race is something that will, or should, endure for all time as a fundamental, intrinsically valuable part of identity. If race is a construct born out of a continuous struggle over competing social meanings, what can it be but an inert historical artifact when (if) the struggle ends? But for now, at least, the struggle is not at an end. Even a superficial understanding of the narratives of those at the bottom demonstrates that we are not yet at a historical juncture where the conceptualization of race as a purely personal, as opposed to a largely political, identity is appropriate, let alone possible.

There remains much that we can accomplish when we choose to engage with race, and Looking to the Bottom sheds light on these possibilities. As the foregoing discussion suggests, racial identity can understandably trigger ambivalence among people of color. While historically it has underwritten subordination, more recently it has also come to be widely accepted as the basis for inclusive policies (e.g., diversity programs) as well as attitudes (e.g., respect for cultural difference). This latter, more positive conception of race is surely a great step forward in the struggle for racial justice and freedom for people of color, but it does not diminish the continuing importance of racial self-identification. On the contrary, it reinforces it because if postracialism really does offer us genuine alternatives for identity, especially racelessness, our choices become infinitely more meaningful. Choosing race is to choose ambivalence, which Matsuda suggests is an integral condition of both resistance and transformation.

It is within the space between the apparent paradox of racial identity as simultaneously liberating and confining that we can reshape the meaning of race. Thus, we must reject destructive, facile, and regressive understandings of racial identity that constrain us too much. But we must also recognize the possibility for political change when, for example, a person of color demands to be treated as an individual and do so precisely by asserting a group based racial identity. In exposing the duality of racial identity within

78 See, e.g., BARACK OBAMA, DREAMS FROM MY FATHER 87 (1995) (describing an incident where the author is silenced by a black friend who tells him “I don’t need no books to tell me how to be black”); Loury, supra note 75; KENNEDY, supra note 74, at 68-69 (describing Stephen L. Carter’s claim that dissent from “prevailing orthodoxy” on issues such as affirmative action may lead to the disdiss of being “’purged’” from the black community).
79 See generally TOURÉ, supra note 61 (suggesting that post-blackness can be equated to individualism). Interestingly, Touré embraces post-blackness but rejects the postracial. See id. at 12. Professor Randall Kennedy, has previously questioned the validity of racial kinship. See Randall Kennedy, My Race Problem—and Ours, 279 THE ATLANTIC MONTHLY 55-66 (1997), available at http://www.theatlantic.com/past/docs/issues/97may/kennedy.htm. He criticizes Touré for failing to recognize that loyalty norms are inherent to any group enterprise. See Randall Kennedy, The Fallacy of Touré’s Post-Blackness Theory, supra note 75.
80 See Matsuda, Looking to the Bottom, supra note 1, at 336.
81 See id. at 333-34.
U.S. society, that person not only participates in constructing her own racial identity and the identity of the group(s) to which she belongs, but she also challenges and transforms the meaning of the “individual” in American society.⁸²

CONCLUSION

There are no surefire solutions to the problems attributed to postracial America. Looking to the Bottom itself promotes a method rather than a fully articulated vision of racial justice. But behind this modest approach toward greater inclusion and engagement is an idealized, almost utopian conviction that hearing and understanding people’s stories of oppression will provide grounding and direction to legal theories that may otherwise seem too abstract, elitist, or cynical. When it was written, Looking to the Bottom attempted to rescue both law and CLS from nihilism and self-destruction. It recommended looking to the bottom also for hope—to see and be inspired by how those who struggle daily against racial injustice continue to resist and endure.⁸³

Postracialism brings almost the opposite dilemma. There may be an exaggerated sense of achievement, a rash belief that our mission has been accomplished. Despite this difference, looking to the bottom remains instructive. Matsuda’s approach suggests that we should not denounce or ridicule the joy and optimism that the 2008 presidential election brought to so many who wholeheartedly desire the end of racial subordination and a true transcendence of race. Matsuda’s article also offers a caution against false hope and requires us to take a sobering look at the real world experiences of people of color to test our claims. In addition, looking to the bottom offers us a means of seeing how such experiences have changed and, consequently, how theory may need to be revised in order to respond to the call for greater justice.

⁸² Cf. id. at 334 (describing how Frederick Douglass’s reinterpretation of the Constitution as an anti-slavery document not only contributed to the abolitionist cause but did so by radicalizing the Constitution).
⁸³ See id. at 349.