Index

Abortion. See Women, right to choose
Achebe, Chinua, 181, 183
Affirmative action, 40; and Stephen Carter, 7; Clarence Thomas’s shifts, 6, 122–25, 160–63; distinguished from “preferences,” 7; and Randall Kennedy, 54
Africa: and V. S. Naipaul, xii, 177, 191; and Paul Theroux, 191
Ancestor worship, 58–60
Apolitical, myth of, 6, 7, 16, 21, 66, 87, 89, 128, 130, 142, 168
Appiah, Kwame Anthony, 44
Aryan Brotherhood, 147
Atwater, Lee, 120
Authoritarianism versus totalitarianism, 175
Autobiography: and law, 8; of Malcolm X, 8
Backlash: and feminism, 100; and racism, 12
Baker, Houston, 57
Barthes, Roland: and Julien Benda, 19; and Randall Kennedy, 56
Bate, Walter Jackson, 55
Bell, Derrick, 8; and Julien Benda, 23; and Stephen Carter, 45–46, 63, 64, 65, 67; and critical race theory, xii; and Randall Kennedy, 44, 50, 56; and Thomas Sowell, 46; and Clarence Thomas, 21, 121
Benda, Julien, 10, 19–26; and Stephen Carter, 38–39, 46, 48; conservative ideology, 20–22; and Randall Kennedy, 38–39, 44, 52, 54, 56; and law schools, 73–74, 77, 102; and partisanship, 194; and Clarence Thomas, 127–28; and the U.S. Constitution, 145; and V. S. Naipaul, 181, 184
Black conservatives, lack of constituency, 17–18
Blackmun, Justice Harry: death penalty, 134, 155; habeas corpus relief, 135, 136, 137, 157; and Haitian refugees, 139–40; hate speech, 148; prisoners’ rights, 159; standing to challenge minority set-aside program, 164
Black Panther party, 67
Black voice, xi, 44, 52–53, 61
Bloom, Allan, 8; and Randall Kennedy, 51, 55; and Clarence Thomas, 9
Bolick, Clint: and Civil Rights Act, 1991, 12; and Stephen Carter, 12; and Lani Guinier, 12, 169; and judicial impartiality, 169–70; and Randall Kennedy, 12, 13; and Deval Patrick, 12
Brock, David, 13, 125; and Thomas Sowell, 16; and Kathleen Sullivan, 22
Brown, Elaine, 67
Buchanan, Patrick, 116, 120; antisemitism, 7
Buckley, William F., Jr., 13, 161
Business judgment rule, 35

Café Crits, 23, 90, 103–7, 112
Caribbean. See West Indies
Carter, President Jimmy, 120
Carter, Stephen, xii, 3, 4, 170; abortion, 74; apolitical ideals, 5, 21, 46, 166–67; allegiance to inherited methods, 9, 59–60; and Julien Benda, 19, 24–25, 48; and Clint Bolick, 12; and Robert Bork, 166–67; claims of objectivity, 5, 7, 16, 166, 178; and cognitive science, 93; and constitutional balance of powers, 173; and Stanley Crouch, 25–26; faith in legal expertise, 14; and Anita Hill, 48; imperialism, 173–76, 187; intellectual independence, 37–40, 45; international law, 175; and judicial restraint, 21, 74–75, 166–68; liberalism, 61–69; original intent, 11, 167; patriarchy, 58–59, 67–68; prima facie obligation to obey law, 10; professionalism, 10, 15–16, 46–47, 49; religion, 74, 174; and Shelby Steele, 29; “silencing,” 49; South Africa, 175; stereotyping, 46; and Clarence Thomas, 48; tolerance, 40, 46, 57–58; U.S. foreign policy, 173–76, 187
Cavell, Stanley, 98; rule of law, 75; societal dialogue, 68–69; and Ludwig Wittgenstein, 90–93
Certiorari, 137–40
Chomsky, Noam: and Julien Benda, 22, 23; and Randall Kennedy, 52; and prevalence of conservatism, 100
Church. See Religion
Clinton, Bill, xii, 12, 17, 74, 120, 139, 166, 167, 169, 170, 175, 188, 195
Cohen, Felix, 88–89, 93
Columbia Journalism Review, 12
Cornell, Drucilla, 9, 89

Cose, Ellis, 22
Cover, Robert, 93, 111
Crenshaw, Kimberle, 67
Critical legal studies. See Café Crits
Critical race theory, xii, 40, 53–55, 75–77,
Crouch, Stanley, xii; and Stephen Carter, 25–26

Danforth, Senator William, 115
Death penalty: and Randall Kennedy, 41–44; and Clarence Thomas, 151–57
Dedalus, Stephen, 8, 24, 26, 29–30
Delgado, Richard, 38, 39, 50
Democratic Leadership Conference, 13
Derrida, Jacques, 9, 90
Dicey, A. W., 85
Difference theory, 79–80
Dissent, 5; Stephen Carter, 7, 30; loyalty, 38, 61; posturing, 40, 46, 48, 56, 58; “right to,” 47, 58; Shelby Steele, 30; Clarence Thomas, xiii; and truth, 17; U.S. Supreme Court procedure, 84
Duke, David: distinguished from Clarence Thomas, 118; death penalty, 152
Dworkin, Ronald: and legal interpretation, 108–10; and Clarence Thomas, 134

EEOC, xii, 6, 10, 20, 35, 115; allegedly apolitical nature of work, 127; broad impact strategies, 124; congressional dissatisfaction with Clarence Thomas, 132; and Clarence Thomas, xiii, 6, 10, 20, 35, 115; Clarence Thomas defends morality of, 116; Clarence Thomas imposes managerialism, 128–29; necessity for, 123; Clarence Thomas and parental leave laws, 119; Clarence Thomas and Reagan administration, 121–22; and sexual harassment guidelines, 119
Ellis, Tray, 45
Empiricism: alleged strict empiricism of
INDEX 217

legal realist movement, 89; empirical hunch, 14
Equality, alleged impossibility of, 21, 39
Expertise, exaggerated claims of, 12-14, 19, 30-31, 32-36, 49-51, 60, 73, 93-97, 101-3, 104, 110, 125-29, 176-77
False consciousness, 178-79
Family values, 16
Fanon, Franz, 8
Farrakhan, Louis, 7
Feminism, 100
Feyerabend, Paul, 93, 101
First amendment: Stephen Carter, 65; Clarence Thomas, 147-49
Fish, Stanley, 107-11
Foucault, Michel, 3, 40, 44, 77-78; and phenomenology, 103
Gabel, Peter, 103-4
Gates, Henry Louis, Jr., 8; critique as caring, 7; and New Black Aesthetic, 45; and Shelby Steele, 30; “thought police,” xiii
Gergen, David, 17
Ginsberg, Justice Ruth Bader, 84; and racial representation on the U.S. Supreme Court, 47
Glendon, Mary Ann, 20
Goodheart, Eugene, 178-79
Guinier, Lani, xii, 3, 16, 69, 169-70, 195; on careerism, 10-11; alleged failure of impartiality, 20, 167-68; and the “mainstream,” 3, 13; and the press, 12; and Clarence Thomas, 83
Harvard Law Review, xi, 57, 76
Helms, Jesse, 120
Hill, Anita; and Stephen Carter, 48; credibility of, 12, 16; and the Senate, 47; and Thomas Sowell, 16; and Clarence Thomas, 120
Hilliard, David, 67
Hinduism, and V.S. Naipaul, 182
Hooks, Benjamin, 54, 162
Horton, Willie, 120, 153
Humanism, 11, 57-58, 66-69
Impartiality, 166-70, 194-95
India, 44; and V.S. Naipaul, xii, 6, 177, 178, 182-83, 184, 185, 188; alleged changes in, 190-91
Individualism versus communitarianism, 10, 24-26, 30, 46, 126, 178-80
Investigation, limits of, 16-17
Iran-Contra, and independent prosecutor, 68
Islam: and Stephen Carter, 174; and V. S. Naipaul, 191-92
Ivory tower, 73-74; ivory-tower careerism, 10
Jackson, Jesse, 25
James, C. L. R., 8, 186-87
Joyce, James, 26, 29, 30, 44, 73, 167
Judicial restraint, 82, 87, 166-67
Kennedy, Duncan, 103-7
Kennedy, Justice Anthony, 135; constitutionality of forced drugging in criminal case, 158; death penalty, 154-55; disparate impact analysis, 162; and judicial policymaking, 133
Kennedy, Randall, xii, 3, 4, 6, 40, 170; academic merit, 49-51; and Stephen Carter, 49, 60; claims of objectivity, 13, 20, 45, 53, 76; commitment to African America, 25, 26, 52, 53; confirmation conversion, 54; critical race theory, 38; death penalty, 41-44, 61, 152; and Democratic Leadership Conference, 13; group interests, 43-45; and Lani Guinier, 10-11, 12-13, 69; intellectual independence, 10, 20, 24-25, 37, 40, 52, 53-56; law as science, 51; and Martin Luther King, 67; and Shelby Steele, 29, 30, 37; “silencing,” 39, 57-58; and Clarence
Kennedy, Randall (Continued)

Thomas, 152; U.S. Supreme Court, 35

King, Martin Luther, Jr., 67, 68
Knowledge: and law, 23 n. 10, 95; and power, 39–40
Kuhn, Thomas: ideas misapplied in law, 100–101; lawyers distinguished from scientists, 51

Law: bindingness of, 63, 82, 85–88; compared to politics, 86–87; and culture, 90–93; as dialogue, 68–69, 79–80, 93–94; as ethical alibi, 85; and ethics, 88–90; legal activism, 86–87, 107, 110; legal communitarianism, 89; and morality, 82–112; and mysticism, 75, 89, 104–5; and phenomenology, 103–7; rule of law, 62, 84–85, 130–37, 153; and science, 93–103; strict enforcement of, 67–68; and subjectivity, 107–11, 134; Clarence Thomas and, 152
Leff, Laurel, 12
Legal realism, 82–112, esp. 88, 130–38
Liberalism: and empathy, 79–81; and infantilization, 58, and intolerance, 58, 64; and tension with racial justice, 61–67; and sadism, 67–69
Lorde, Audre, 8, 52, 67, 82, 105

Mainstream, 3; and Lani Guinier, 12; and the white norm, 167
Malcolm X, 67
Marley, Robert Nesta, 37, 107
Marshall, Justice Thurgood, 47, 138; and Stephen Carter, 62; and death penalty, 152; and liberal empathy, 80; and persuasive legal argument, 100; and Clarence Thomas, 118
Matsuda, Mari, 67
Merit: and academic excellence, 49–51; and job performance, 33; and professionalism, 15–16
Merton, Robert, 50–51

Metatheory, 89

Middle America: and African Americans, xi; Stephen Carter’s allegiance to, 61, 63
Minow, Martha, 79–80
Misogyny, 68
Morrison, Toni, 29
Murdoch, Rupert, 195
Murphy, Walter, 21

Naipaul, Vida (V. S. Naipaul), xii, xiii; alleged prescience, 178; allegiance to old methods, 11; and American literary establishment, 187; and Julien Benda, 20, 25, 184–85; claims of objectivity, 6, 11–12, 176–79, 184–86; Indian novelists, 182–83; and C. L. R. James, 186–87; concern for postcolonial peoples, 3, 4, 26, 180, 182–84; ideal of truth as revolution, 180, 182; imperialism, 4, 9, 187, 189; modernism and antimodernism, 6, 188; novel as social enquiry, 176; novel as vehicle of truth, 177; political impact of work, 192; politics of self-reliance, xiii; reverence for established order, 189; truth as revolution, 180–84; Western rationality versus Islamic zeal, 191

Negro Crit. See Negro Criticism
Negro Criticism: Allan Bloom and, 8; Café Cris and, 23, 104; Stephen Carter and, 11, 58, 63–64, 67; critique of ideal of impartiality, 166–70; defined, 8; distinguished from biological determinism, 44, 45; Randall Kennedy and, 11, 38, 49–51; law and, 73–77; relationship to the New Black Aesthetic, 45; resistance to, 8–9, 38, 75–77; Clarence Thomas and, 9
Neutral. See Impartiality
New Black Aesthetic, 8, 45
New Yorker, 4, 57
New York Times, xiii, 7, 17, 20, 56, 57, 74, 80, 115, 191
New York Times Book Review, 58, 191
Nietzsche, Friedrich, 179
Nixon, Rob, 173, 176
North, Oliver, 17, 195; alleged enforcer of appropriate constitutional balance, 132, 141
O'Connor, Justice Sandra Day: as “centrist,” 170; and criminal sentencing, 134; and death penalty, 154–55; and empathy, 80–81; and political redistricting, 142–44; and prisoners’ rights, 158; and standing to challenge minority set-asides, 164; symbolic harms, 165
Opportunism: and Randall Kennedy, 10, 53–56; and Clarence Thomas, 4, 35, 125–26
Original intent, 11; and ancestor worship, 59–60; and Clarence Thomas, 144–47
Patrick, Deval, 12
Phenomenology, and Café Criticism, 23, 104–7
Picard, Roland, 55–56
"Political correctness": debunked by Randall Kennedy, 39; and Clarence Thomas, 149
Politics, and scholarship, 7–9, 52–53, 54
Principles versus practice, 82–83, 121, 166; universal legal principles criticized, 85
Professionalism: Tough Love version static and politically conservative, 14, 16; preferable version vibrant and transformative, 15
Psychoanalysis, 4
Psychology: and Shelby Steele, 30–31; and Clarence Thomas, 115–16
Quixote, Don, 120
Rationality, versus passions, 5, 20–21, 127–28
Reagan, President Ronald, 16, 17, 195; and Clint Bolick, 170; and Stephen Carter, 166, 175; and Noam Chomsky, 100; and foreign policy, 175; and V. S. Naipaul, 191; Reagan era, 22, 100; and South Africa, 175; and Thomas Sowell, 46; and the Supreme Court, 131; and Clarence Thomas, 115, 121–22, 123, 126; and truth, 167; and Welfare Queen, 120
Reality. See Truth
Reed, Ishmael, 195
Rehnquist, Chief Justice William, 4, 33, 57, 135, 136; racism not valid character evidence in criminal trial, 147
Religion: as opium of the masses, 14; and Clarence Thomas, 125–26; and U.S. civil rights, 125–26
Reno, Janet, 169
Reynolds, William Bradford, 120; and Randall Kennedy, 54; and Clarence Thomas, 122
Ross, Andrew: and Café Crits, 23; and Randall Kennedy, 39; and “disinterestedness” as a political strategy, 39
Rule of law, 75, 76, 82–112, 130–42
Safire, William: and Iraq, 192; and V. S. Naipaul, 192
Said, Edward: and Julien Benda, 22; and Stephen Carter, 174; and cultural disenfranchisement, 9; and the ethics of scholarship, 9; and V. S. Naipaul, 189, 192; and Shelby Steele, 31; and traditionalism in scholarship, 38; and tyranny of liberal cultural idealism, 66
Sartre, Jean-Paul, 5
Scalia, Justice Antonin, 158, 159; and death penalty, 151–57; employment discrimination, 162–63; and judicial policymaking, 132; and majoritarianism, 131; and original intent, 144, 146, 147; ostensible allegiance to legal lan-
Scalia, Justice Antonin (Continued)
guage, 134, 135; the right to choose, 120; and Clarence Thomas, 4, 120, 144, 148, 150, 160
Senate Judiciary Committee, 47
“Silencing,” 49, 57–58

Skepticism. See Truth, and skepticism
Smith, Adam, Shelby Steele’s allegiance to, 12, 29–30
Smith, William Kennedy, 17
Snobbery, and Naipaul, 9
Souter, Justice David, 47, 84; speedy-trial clause, 157; Title VII, 162–63
Sowell, Thomas, xi, 3, 4, 6, 11, 12, 16, 24, 25, 26, 170; and Derrick Bell, 45; and the Civil Rights Acts, 34, 36; claims of objectivity, 32–33, 35, and employer’s rights, 34; and internationalism, 176; job performance and merit, 33; and Ronald Reagan, 46; and Clarence Thomas, 127
Spivak, Gayatri, 8
Steele, Shelby, xii, 3, 4, 6, 12, 24, 25, 26, 37, 170; claims of objectivity, 30–31; and Stephen Dedalus, 29–30; and ideal of racelessness, 30, 44; legal analysis, 34–35; and Randall Kennedy, 30, 55; and Adam Smith individualism, 29; and V. S. Naipaul, 177
Sullivan, Kathleen, 22
Sununu, John, 17
Supreme Court. See United States Supreme Court
Swift, Jonathan, 77, 106

Thomas, Justice Clarence: claims of objectivity, 125–27, 129, 161–62; commitment to racial justice, 116, 117–18; death penalty, 133–34, 151–57; debt to civil rights movement, 118; doctrine of original intent, 144–47; fair trials, 157–58; family values, 124, 125; First Amendment, 147–49; Haitians, 137–42; historically black colleges, 150–51; ideology of self-reliance, 116, 123–24; minority set-asides, 163; natural law, 125; prisoners’ rights, 158–60; as professional managerial expert, 10, 128–29; reapportionment and redistricting, 142–44; religion, 125–26; Republicans, 120–23; rule of law, 84–85, 130–37, 161; school desegregation, 149–51; statistical remedies, 162; symbolic harms, 164–65; Title VII, 162; women, 119–20, 125, 160–62

Thought police, xii

Tough Love, definition of, xi

Tower, John, 17

Trinidad, 8; and Trinidad Guardian, 6; and V. S. Naipaul, 173, 181, 184, 185, 188, 189

Truth: consensus and dissensus models of, 37, 45–46, 195–96; empirical hunch, 14; and the law, 59, 77–79; and Ronald Reagan, 167; and skepticism, 9, 16, 92; strategic invocation of, 5–6, 32, 36; unavailability in politics, 13–14, 16–17, 33; and the United States Constitution, 144–47, 153–60; usefulness as a political strategy, 14–15, 17–18, 167

Turner, Ted, 195

Uncle Tom, 4

Unger, Roberto: and Julien Benda, 23; and bindingness of law, 91, 91 n. 11

United States, xii; Constitution, allegedly unhappy limits of, 144–47, 154–57; criminal justice system, 41–45, 68, 133–37, 146–49, 151–60; Declaration of Independence, 22; and EEOC, 127–28; equal opportunity, 22; executive powers, 139–42, 173; feminist America, 100; founding of, 59–61; foreign policy, 174–75; law schools, 45, 73–77; law, United States Code, Anno-
tated, 138; manifest destiny, 174; and V. S. Naipaul, 173, 183, 187; Native Americans, 174; and racial apologists, 56; Reconstruction, 60–61; and religion, 61–62, 66, 174–75; and Tough Love, 28–170; and white norm, 166
United States Supreme Court: and certiorari, 137; Court’s furtherance of human freedom, 53; and a country’s political vision, 78
Universities: and nonpartisanship, 73; and power, 74–75

*Village Voice*, xii

Walcott, Derek: and new methods, 8; and V. S. Naipaul, 182
Walker, Alice, xi; critique of misogyny, 68
*Wall Street Journal*, 7, 11, 13, 20, 21, 62, 83, 143; and ideal of judicial impartiality as a political weapon, 166–70, 195
*Washington Post*, 173
*Washington Times*, 13
Welfare Queen, 120
West, Cornel: and new methods, 8; and progressive vision of legal practice, 110
West Indies: and V. S. Naipaul, 6, 177; and U.S. foreign policy, 174–75
White, Justice Byron, 111; and desegregated education, 151; and hate speech, 148–49
Williams, Eric: and C. L. R. James, 187; and new methods, 8
Williams, Joan: law and culture, 91; misreading of Felix Cohen, 89 n. 6; misreading of Roberto Unger, 91; misreading of Ludwig Wittgenstein, 91–92; rule of law, 90–93
Williams, Patricia: and Stephen Carter, 67; and Randall Kennedy, 45; and the New Black Aesthetic, 45; and new methods, 8; and truth, 75–76
Winter, Steven: law and cognitive science, 93–103; misapplication of Thomas Kuhn, 100–102; as quack scientist, 102
Wittgenstein, Ludwig, 90–93
Women: and Stephen Carter, 14, 48, 67–68; right to choose, 14, 17, 119–20, 125; and Clarence Thomas, 118, 119–20, 125, 161–62
Praise for the Book

“Will provoke a lively and vigorous debate among liberals, conservatives, and radicals of many different colors. Roberts is a cultural critic in the tradition of Cornel West, Trey Ellis, Michele Wallace, and bell hooks, with a powerful, passionate, and brash voice.”

— Angela P. Harris, University of California, Berkeley

“Roberts maneuvers deftly among the many facets of law and philosophy, and makes complex and theoretical arguments more readily accessible to the lay reader. A timely piece of work, one that will enhance immensely the raging debate in the academy concerning critical race theory and critical legal studies.”

— Drucilla Cornell, Yeshiva University

Enlisting black neoconservatives’ own writings and proclamations, Ronald Suresh Roberts serves up a devastating critique of public figures such as Clarence Thomas, Shelby Steele, Stephen Carter, and V. S. Naipaul. He reveals how every significant argument they advance rests on fervent mantras of “harsh truths” and “simple realities” and how effectively they have deployed the ideal of impartiality as a partisan weapon.

Ronald Suresh Roberts is currently on leave from the law firm of Winthrop, Stimson, Putnam, and Roberts, advising the South African government on privatization, antitrust, and other legal reforms.

Cover design by Adventure House, NYC
Cover photo: Reuters/Bettmann