

Altman: Critical Race Theory (CRT)

- Intellectual movement, holds that society remains deeply racist and that such racism is fundamentally a matter of the racial inequalities that result from the normal functioning of American institutions. (264)
- Society is not colorblind
- Law as a potentially effective tool for combating racism and moving toward racial equality.

CRT → Altman's claims of being controversial

Delgado & Butler: How does the Rule of Apply to racism?

- Delgado: ROL does not apply to minorities fighting for racial equality
- "Legal Instrumentalism"
- Butler: Black jurors have a moral responsibility to vote to acquit black defendants, even when guilt has been proved beyond a reasonable doubt (267)
- He concedes that his proposal is subversive of the rule of law, and draws the line between violent and non-violent crime.

Affirmative Action: Regents of the Univ. of California v. Bakke (1978)

- Bakke sued the University, saying he had been illegally denied admission based upon UC Davis's "special" admissions program.
- Justice Powell's argument, "strict scrutiny" – a policy would be judged constitutional under the Equal Protection Clause only if it were shown to be necessary in order to serve some compelling social interest. (271)

"Right of Nondiscrimination"

- Altman: race is irrelevant for purposes of university admissions, race conscious admissions violate the right of nondiscrimination. (273)
- Race color vs. Shoelace color

"The Relevance of Race"

- Race-conscious admissions: A student body can be diverse in all kinds of ways other than racially: economically, politically, religiously, geographically, and so on. (275)
- Altman: Not only is diversity important, but racial diversity is important for affirmative action defense.
- Altman: Race-conscious admissions policies are morally objectionable.