In *The Bridge: The Life and Rise of Barack Obama*, David Remnick relates a story from Obama’s first year at Harvard Law School, when he registered for “Race, Racism, and American Law,” a course taught by Randall Kennedy, now Klein professor of law. “Kennedy had caused some controversy, writing critically in *The New Republic* and elsewhere about some aspects of affirmative action,” Remnick relates. “At the first class, Obama [J.D. ’91] and [his friend Cassandra] Butts, [J.D. ’91] watched as a predictable debate unfolded between black students who objected to Kennedy’s critique and students on the right, almost all white, who embraced it. Obama feared a semester-long shout-fest. He dropped the course.” Thus Kennedy never taught the future president, although he did instruct Michelle LaVaughn Robinson [subsequently, Obama], J.D. ’88, who also did research for him.

A “semester-long shout-fest” may be hyperbolic, but Kennedy admits, “Yes, those classes were very contentious. I structured them that way.” It wasn’t hard: Kennedy, an African American himself, consistently introduced the kinds of racial issues—such as “reverse discrimination” against whites—that explode like hand grenades in an interracial classroom. “Should there be a right to a multiracial jury?” he asks, smiling. “Boom!”

Kennedy is “the kind of professor who thrives on iconoclasm, defying the embedded expectations of his students,” according to one of them, Brad Berenson, J.D. ’91, a member of the White House Counsel’s Office under George W. Bush and now a vice president of litigation and legal policy at General Electric. “Whether this comes from Randy’s convictions, or from playing devil’s advocate, it makes him hard to pin down or characterize. He’s a great example of the inquiring mind of an academic, someone who is willing to question dogmas and encourage his students to do the same.”

The interaction of race and legal institutions is Kennedy’s niche. This is how he describes the approach he’s used in his classes and five books: “Here’s this deep, complex, troubling, anxiety-producing subject. Let’s really go at it. Let’s not be afraid of it.
Let’s turn it over and take a look at what your opponents have to say. There were people who believed slavery was a positive good, and that segregation was a positive good. Who were they? Let’s really be precise, let’s not just condemn them and laugh at them, but understand them, get in a position where you can state very clearly what their point of view was. You might end up condemning it, but let’s understand it first….I take strong positions, but I also try to be attentive to the complexity of things.”

“Randy Kennedy is one of the most searching, open-minded, critical scholars of law in any subject,” declares Martha Minow, dean of the law school. “The great thing about his work is that you can never predict where he will end up—on racial justice, he sometimes seems conservative, sometimes liberal. In his field of race and the law, he is unique in the legal academy. I don’t know anyone else who has his commitment to pursuing the truth about controversial issues to wherever it goes.”

For example, Kennedy’s first book, Race, Crime, and the Law (1997), bluntly acknowledges a fact that many liberals would prefer to ignore or explain away: blacks commit a lot of crimes. Although he clearly describes the prejudicial association of criminality with black skin in the United States, he also unblinkingly reports that “a notably large proportion of the crimes that people fear most—aggravated assault, robbery, rape, murder—are committed by persons who happen to be black.”

Yet he also concludes that black citizens are undercounted as victims of crime, and that “the principal injury suffered by African-Americans in criminal matters is not overenforcement but under-enforcement of the laws.” This is because, “Like many activities in America, crime tends to be racially segregated; four-fifths of violent crimes are committed by persons of the same race as their victims. Hence, behind high rates of blacks perpetrating violent crimes are high rates of black victimization. Black teenagers are nine times more likely to be murdered than their white counterparts….One out of every twenty-one black men can expect to be murdered, a death rate double that of American servicemen in World War II.” Even so, African-American criminals draw far more attention than their black victims.

Two major themes run through Kennedy’s work. The title of his 2011 book on racial politics and the Obama presidency, The Persistence of the Color Line, summarizes the first. “The race question has been a deep issue in American life since the beginning and it continues to be a deep, volatile issue,” he says. “I’ve been most concerned about showing racial conflict as it affects the legal system, but you can also analyze how it manifests itself in literature, movies, patterns of dating and marriage, or housing.”

The second theme is that much commentary on race “can be boiled down to two schools of thought: optimistic and pessimistic. The pessimistic school believes that ‘We shall not overcome’—racial animus and prejudice are so deeply embedded that they will never go away. Thomas Jefferson, Abraham Lincoln, and Malcolm X fell into the pessimistic camp. The optimists, in contrast, feel that, notwithstanding the depth and horror of oppression, there are resources in American society that, deployed intelligently, will allow us to overcome. I put myself in that camp, along with Frederick Douglass, the great [nineteenth-century abolitionist] Wendell Phillips [A.B. 1831, LL.B. 1833], and Martin Luther King. I hope I don’t turn away from the horror, but also hope I try to be attentive to the real fact of change in American life.”

Kennedy’s books typically start with, and remain rooted in, history and an inventory of pertinent facts. This may reflect his legal training, with its emphasis on precedents and evidence. “My first approach to any subject is to seek a mastery of its history—where did this come from?” he says. His lawyerly habits also impel him to spend a lot of time investigating cases, “stories based on fact.” Facts, he says, are “complex, mixed, and really quite stubborn. If you are really attentive to facts, that makes you accepting of complexity.”

His most famous book, Nigger: The Strange Career of a Troublesome Word (2002), opens with a 52-page compendium of occurrences of the titular epithet, from crude jokes to usage by politicians like Harry Truman and Lyndon Johnson, as well as reports from Richard Wright and Dick Gregory, hate mail received by Henry Aaron as he closed in on Babe Ruth’s home-run record, and the hilarious, iconoclastic comedy of Richard Pryor, whose “single best performance,” Kennedy writes, appears on That Nigger’s Crazy, winner of the 1974 Grammy Award for best comedy album.

Nigger describes how courts have handled the word, as well as the pitfalls that can accompany efforts to ban, censor, or suppress its use. Kennedy’s premise here, as elsewhere, is that Americans are better off dragging the troublesome word out into daylight and exploring how it really functions in discourse—as a racist slur, to be sure, but also as a term fraught with irony or, among some blacks, as a jocular expression of solidarity, even affection. For Kennedy, nigger does not mean only one thing; a word’s meaning, he says, always depends on the context and manner of its use, the speaker, and the speaker’s intentions.

“I’m against tyranny,” he says. “Tyranny can sometimes take a
legal form, but it can also take the form of custom, or habit. In all my books you'll notice I use a very wide range of labels for racial groups—for example, black, African American, Negro, or colored for black Americans. I do it partly to avoid word echoes, but another reason is that people get stuck, they get hemmed in. Somebody tells them, ‘You’re supposed to say black.’ But they don’t know anything about the history of the terminology. People find themselves subject to all sorts of tyrannies, small and large. Frankly, the more you learn, the more you recognize the variousness of things.”

*Nigger* became a bestseller, but “the variousness of things” has made scant impression on those who adhere to a binary, either/or perspective on the taboo word. “I still get e-mails every day about that book,” Kennedy says. “I’ve never been more harshly criticized. The book tour was wild and woolly: in Santa Monica, a guy started running down the aisle at me; some people jumped him before he got to me. People got really angry. But they would have their say, and I felt privileged to have my say. I wrote back and talked with some of those who were very tough on me, and I learned a lot.”

Randall Kennedy at the table where he does his research in the reading room of Harvard Law School’s Langdell Library

When hate mail came in, I’d put it in envelopes, and it is now part of the Harvard Law School collection.” His one regret about *Nigger* is that “it’s the shortest book I’ve written, and the one most closely associated with my name. When I die, I can imagine the obituary: ‘Randall Kennedy, author of Nigger’—and nothing else. I only wish that some of my other books, on which I’ve spent a lot more time, had received the same attention that one did.”

His longest book and his personal favorite, *Interracial Intimacies: Sex, Marriage, Identity, and Adoption* (2003), is a searching exploration of intimate relations—sex, love, marriage, parenthood, adoption, and more—between people of different races (see “Race, Sex, and Love,” March-April 2003, page 11). It’s another example of Kennedy’s penchant for placing a racially charged subject at center stage. “The stories in it are so gripping,” he says. “And it has had the most influence on people. I constantly get e-mails about it,
particularly concerning interracial adoption. Some adoptive parents who wanted to adopt a child of a different race took encouragement from reading the book, and it's been used by lawyers fighting for people who've been stifled by anti-interracial adoption policies.

The book gives a comprehensive account—it is nearly 700 pages long—of the history and legal consequences of racial intermingling. For example, at various times, 42 U.S. states have outlawed miscegenation but, as Kennedy writes, in “the aptly named United States Supreme Court decision” Loving vs. Virginia (1967), the high court invalidated all state antimiscegenation statutes.

“I'm against any laws that limit interracial intimacy,” he declares. “I'm part of the love camp: however it sprouts, I'm in favor of that.”

Kennedy favors interracial adoption on similar grounds. This stance puts him at odds with those—like the National Association of Black Social Workers—who believe that adopted children should be matched with parents of the same race for reasons such as the absorption of racial identity. He objects. “Race matching is a destructive practice in all its various guises, from moderate to extreme,” he writes in Interracial Intimacies. “It ought to be replaced by a system under which children in need of homes may be assigned to the care of foster or adoptive parents as quickly as reasonably possible, regardless of perceived racial differences. Such a policy would greatly benefit vulnerable children. It would also benefit American race relations.”

ON THE OTHER HAND, Kennedy defends the prerogative of members of racial groups to, so to speak, hang out together. The underlying commitment is to freedom of self-expression, and preventing the law from needlessly limiting it. In Sellout: The Politics of Racial Betrayal (2007), he wrestles with the problem of racial solidarity and the incentives that operate for or against it. For example, was W.E.B. Du Bois, A.B. 1890, Ph.D. 1895, a man who desired to escape his Negro heritage and join the privileged white race, as Marcus Garvey declared? Does Justice Clarence Thomas’s marriage to a white woman signify a rejection of black America? Are black police officers or African-American corporate attorneys somehow disloyal to their communities?

“They are likely to reverse the lower court, I think, on rather narrow grounds. I don't think the Supreme Court is going to ban affirmative action poses—no one's going to have to pay a cost! But the reason why people fight over it is that, yeah, there’s a cost to be paid. As an electoral politician, he doesn't want to lose voters, so the word ‘repairs’ never came out of his mouth. Reparations really rub a lot of Americans, particularly white Americans, the wrong way. But in its origins, in the late 1960s, affirmative action was a type of reparative justice—that was the primary moral impetus behind it.”

Kennedy adduces other arguments for the policy, like the integration of institutions. “People ask, ‘What about the relatively new immigrants to the United States? These people weren't subject to Jim Crow segregation—where do they get off getting affirmative action?’ Well, even if they weren't, maybe these institutions don't want these people to be outsiders; they might want to integrate them into the main forms of American life. There’s also a ‘diversity’ justification, which I think is valid, although claims made on behalf of it are sometimes exaggerated. I also bring up and push the criticisms. I don't want anybody reading my book to go away saying, ‘Kennedy avoided a good criticism of the position he embraces.’” (For Discrimination focuses much of its attention on higher education. Regarding the current Supreme Court case on affirmative action, Fisher v. University of Texas, Kennedy says, “They are likely to reverse the lower court, I think, on rather narrow grounds. I don't think the Supreme Court is going to ban affirmative action, but they will further constrain it, and I don't like that. Nor do I like the Court’s constitutional doctrine: the Court makes no distinction in form between malign discrimination and benign discrimination. That's stupid. The law should recognize that difference and treat them very differently.”)

KENNEDY WAS BORN in Columbia, South Carolina, but his family moved to Washington, D.C., when he was four. Parents Henry and Rachel Kennedy had two boys and a girl, all of whom went to Princeton and became lawyers. (“It was a case of ‘follow the leader,’” Kennedy explains. “My brother had such a good experience there, and my parents were happy about that.”) Older brother Henry H. Kennedy Jr. is now a retired U.S. District Court judge for the District of Columbia; younger sister Angela Kennedy Acree is a public defender in Washington.

The name of Thurgood Marshall "was very present" in the family home; in those years Marshall, a National Association for the Advancement of Colored People (NAACP) lawyer known as “Mr. Civil Rights,” roamed the South trying cases. In the 1940s, South Carolina was a one-party state in which the Democratic primaries

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were closed to black voters. Kennedy’s father, a postal worker, went to court to see Marshall contest those party rules. “My father never talked about the legal issues,” Kennedy recalls. “Foremost in his mind was the fact that the judges and other lawyers in the courtroom called him Mister Marshall.”

“We had wonderful parents,” Kennedy says. “They did not push us into law. But they sat on you really hard—discipline, chores—until you were about 12, and then took a step back, feeling they’d set the foundation. There was only one rule: you had to find something about which you were going to be passionate.”

Kennedy emulated his older brother by finding a passion for competitive tennis. “My parents always knew where I was—down at the courts,” he says. He became an accomplished player and won a scholarship—based on financial need, academic achievement, and tennis prowess—to the St. Albans School: “the formative intellectual experience of my life.” In particular, history teacher (and later St. Albans headmaster) John F. McCune introduced Kennedy to the major historians—such as Richard Hofstadter—“and got me interested in being a serious intellectual.”

Princeton, where he majored in American history, was a “wonderful experience,” largely because his academic adventure there was such a rich one—“a number of my closest friends are professors I had at Princeton.” (He is now in his second term as a Princeton trustee.) Civil War historian James McPherson, who advised his senior thesis (a biography of Hofstadter) had advised his brother’s thesis as well. (As for tennis, Kennedy didn’t play at Princeton—I was a total nerd,” he says—but he now competes in open tournaments in his age group.)

After earning his bachelor’s in 1977, Kennedy left for Balliol College, Oxford, on a Rhodes scholarship, then earned a law degree at Yale in 1982. He served clerkships with Judge J. Skelly Wright of the U.S. Court of Appeals for the D.C. Circuit and, in 1983-84, with Thurgood Marshall himself—by then an associate justice of the U.S. Supreme Court. On one of his final days with Marshall, Kennedy brought his father in to meet the man he had so long admired.

In law school, Kennedy had imagined himself working for the NAACP Legal Defense Fund, following in Marshall’s footsteps. But although Kennedy is a member of the bars of Washington, D.C., and the Supreme Court of the United States, he has never practiced law. At a young age he had begun publishing essays in law journals, as well as articles in national periodicals like Harper’s and The New Republic—and during his last year at Yale, then-Harvard Law dean James Vorenberg called him to discuss teaching in Cambridge. Kennedy was eventually hired at the law school in 1984.

His main scholarly focus at the time was campaign-finance regulation, but in 1991, assistant dean Philip Heymann (now Ames professor of law) invited him to take over “Race, Racism, and American Law,” a course previously taught by Derrick Bell, who had left Harvard to become dean of the University of Oregon Law School. Kennedy’s answer was yes, and he has taught it ever since.

He says he and Bell had a “warm, cordial personal relationship,” but “we differed, sometimes harshly, in print.” Kennedy would put Bell into the “pessimist” camp on race relations, and that difference surfaced intellectually. Bell excoriated Race, Crime, and the Law in a 1998 review that labeled Kennedy an apologist for a legal system rife with racist biases: “Professor Kennedy has become the impartial, black intellectual, commenting on our still benighted condition and as ready to criticize as commend,” he wrote. “When advocates condemn a system that is filling the nation’s jails and prisons with legions of young, black men, he responds with the non sequitur that these men are guilty of many of the crimes that lead to their imprisonment.”

Kennedy observes, “Derrick thought I was naïve, that I was too impressed by the amount of change that had occurred in American society.” Nonetheless, when Bell died in 2011, Kennedy taught Bell’s class at New York University Law School the week after his fellow scholar passed away.

Kennedy lives in Dedham with his three children: Henry, a senior at nearby St. Sebastian’s School, and 14-year old fraternal twins Rachel and Thaddeus, who attend Noble and Greenough, and St. Sebastian’s, respectively. St. Sebastian’s is a Roman Catholic private school, and both boys have been baptized in that faith. “I’m a secularist, a nonbeliever,” their father says, “but I wouldn’t encroach on their prerogatives. If the boys have a religious inclination, that’s fine.” (Kennedy’s wife, Yvedt Matory, M.D., a breast cancer surgeon at Brigham and Women’s Hospital, died in 2005 at age 48 from complications of melanoma. “I’ve lived a very charmed life,” he says. “My one great tragedy has been the death of my wife.”)

Kennedy is fully aware of the privileges he enjoys, from tenure at Harvard to a top literary agent, Andrew Wylie ’70 (see “Fifteen Percent of Immortality,” July-August 2010, page 44), to the law school’s “great cadre of reference librarians who can get you anything.” In my book I acknowledge every reference librarian. Why? Because I love them!” He cherishes his bright, articulate students who critique his ideas, and says he has often learned the most from the conservatives who challenge his premises. Given these advantages, he feels there is “no good excuse for not being systematic, unblinking, and rigorous.”

His overarching view is that “the trajectory of black Americans is an extraordinary trajectory. The fact is that 1865 was not that long ago, and at that time the great majority of black Americans were illiterate slaves. From there to now, when the president and attorney general of the country are African Americans, is astonishing. In every important sphere of American life, black people have been absolutely essential, and have accomplished this through an amazing display of collective resilience, persistence, discipline, and an unquenchable optimism. I don’t want to be a Pollyanna—I give lectures on lynching, and my last book was called The Persistence of the Color Line—but African Americans have been coming on in an extraordinary way.”

Craig A. Lambert ’69, Ph.D. ’78, is deputy editor of this magazine.